

District Judge Ricardo S. Martinez

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOMPHALAVANH SOPHANTHAVONG,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02405-RSM

FEDERAL RESPONDENTS'¹
RETURN

I. INTRODUCTION

This Court should deny Petitioner Somphalavanh Sophanthavong's habeas petition. Dkt. No. 1, Petition for Writ of Habeas Corpus ("Petition" or "Pet."). Petitioner is a citizen and native of Laos who is in U.S. Immigration and Customs Enforcement ("ICE") custody pending his removal. He asserts that his detention is unlawful because his removal to Laos is not reasonably foreseeable. But Petitioner is a noncitizen subject to an administratively final order of removal, and he is lawfully detained under Section 241 of the Immigration and Nationality Act ("INA"). See 8 U.S.C. § 1231. Petitioner's detention is not indefinite under *Zadvydas v. Davis*, 533 U.S.

¹ Bruce Scott is not a Federal Respondent.

1 678, 701 (2001), as his removal is likely to occur in the reasonably foreseeable future.
2 Furthermore, the revocation of his supervised release was consistent with the regulations and due
3 process.

4 Finally, although the Petition speculates that Petitioner may be removed to a third country,
5 he presents *no evidence* of any intention for him removal to a country other than Laos. And in
6 fact, ICE is seeking to remove Petitioner only to Laos and has no plans to attempt a third country
7 removal.

8 Accordingly, Federal Respondents respectfully request that this Court deny the Petition.

9 II. BACKGROUND

10 A. Detention Authorities and Removal Procedures

11 The INA governs the detention and release of noncitizens during and following their
12 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
13 detention periods are generally referred to as “pre-order” (meaning before the entry of a final
14 order of removal) and, relevant here, “post-order” (meaning after the entry of a final order of
15 removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a)
16 (authorizing post-order detention).

17 When a final order of removal has been entered, a noncitizen enters a 90-day “removal
18 period.” 8 U.S.C. § 1231(a)(1). During the removal period, ICE² is charged with attempting to
19 effect removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Congress has
20 directed that the Secretary of Homeland Security “shall remove the [noncitizen] from the United
21 States.” *Id.* To ensure a noncitizen’s presence for removal and to protect the community from
22 noncitizens who may present a danger, Congress has mandated detention while removal is being
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24 ² Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

1 effectuated. 8 U.S.C. § 1231(a)(2). Section 1231(a)(6) authorizes ICE to continue detention of
2 noncitizens after the expiration of the removal period. Although there is no statutory time limit
3 on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may
4 be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal
5 from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified
6 six months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.*, at 701.

7 **B. Order of Supervised Release (“OSUP”)**

8 Once it is determined that there is no significant likelihood of removal in the reasonably
9 foreseeable future, U.S. Department of Homeland Security (“DHS”) may release noncitizens on
10 an OSUP. 8 C.F.R. § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation
11 of an OSUP is governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the
12 noncitizen “violates any of the conditions of release,” *id.*, §§ 241.13(i)(1), 241.4(l)(1); or (2) if it
13 is determined “that there is a significant likelihood that the alien may be removed in the
14 reasonably foreseeable future.” *Id.*, § 241.13(i)(2).

15 Section 241.13(i)(3) provides that upon revocation, the alien “will be notified of the
16 reasons for revocation of his or her release” and will receive an “initial informal interview
17 promptly” after being detained, to “afford the alien an opportunity to respond to the reasons for
18 revocation stated in the notification.” *Id.*, § 241.13(i)(3). “The revocation custody review will
19 include an evaluation of any contested facts relevant to the revocation and a determination
20 whether the facts as determined warrant revocation and further denial of release.” *Id.* Then, if
21 the alien’s request for release is denied, he or she “may submit a request for review of his or her
22 detention . . . six months after [DHS’s] last denial of release[.]” *Id.*, § 241.13(j).

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1 **C. D.V.D. v. Dep't of Homeland Security**

2 In March 2025, three plaintiffs instituted a putative class action suit challenging their third
3 country removals in the District of Massachusetts. *D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.).
4 On March 28, 2025, the district court entered a TRO enjoining the DHS and others from
5 “[r]emoving any individual subject to a final order of removal from the United States to a third
6 country, *i.e.*, a country other than the country designated for removal in immigration proceedings”
7 unless certain conditions were met. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676,
8 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025).

9 On April 18, 2025, the court granted the plaintiffs’ motion for class certification and
10 motion for preliminary injunction. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355,
11 394 (D. Mass. 2025). A class was certified pursuant to Rule 23(b)(2) of the Federal Rules of
12 Civil Procedure without a provision for an opt out. *See id.*, at 386. The Preliminary Injunction
13 was national in effect and established certain procedures that DHS was required to follow before
14 removing an alien with a final order of removal to a third country. Specifically, the certified class
15 is defined as:

16 All individuals who have a final removal order issued in proceedings under
17 Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only
18 proceedings) who DHS has deported or will deport on or after February 18, 2025,
19 to a country (a) not previously designated as the country or alternative country of
20 removal, and (b) not identified in writing in the prior proceedings as a country to
21 which the individual would be removed.

19 *Id.*, at 378.

20 On May 21, 2025, the district court issued a Memorandum on Preliminary Injunction
21 offering the following summary and clarification of its Preliminary Injunction:

22 All removals to third countries, *i.e.*, removal to a country other than the country or
23 countries designated during immigration proceedings as the country of removal on
24 the non-citizen’s order of removal, *see* 8 U.S.C. § 1231(b)(1)(C), must be preceded
by written notice to both the non-citizen and the non-citizen’s counsel in a
language the non-citizen can understand. Dkt. 64 at 46– 47. Following notice, the

individual must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal. *See id.* If the non-citizen demonstrates “reasonable fear” of removal to the third country, Defendants must move to reopen the non-citizen’s immigration proceedings. *Id.* If the non-citizen is not found to have demonstrated a “reasonable fear” of removal to the third country, Defendants must provide a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings. *Id.*

D.V.D. v. U.S. Dep’t of Homeland Sec., 2025 WL 1453640, at *1 (D. Mass. May 21, 2025).

The *D.V.D.* court indicated that the Order applied “to the Defendants, including the Department of Homeland Security, as well as their officers, agents, servants, employees, attorneys, any person acting in concert, and any person with notice of the Preliminary Injunction.”

Id.

On June 23, 2025, the United States Supreme Court stayed the District of Massachusetts’ preliminary injunction pending appeal in the First Circuit Court of Appeals. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). That same day, the District Court ordered that, notwithstanding the Supreme Court’s order, its remedial order granting relief to eight individual class members who DHS sought to remove to South Sudan remained in effect. Order, *D.V.D.* (Dkt. 176). Defendants moved to clarify the Supreme Court’s Order and, on July 3, 2025, the Supreme Court granted the motion, allowing the eight individual aliens to be removed to South Sudan. *Dep’t of Homeland Sec. v. D. V. D.*, 145 S. Ct. 2627, 2629 (2025). The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court’s stay. *See id.*

D. DHS Policy on Third-Country Removals

On March 30, 2025, and then on July 9, 2025, DHS issued guidance regarding third country removals. U.S. Department of Homeland Security, “Guidance Regarding Third Country Removals,” Kristi Noem, March 30, 2025, *available at* <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1>

1 1.pdf (last visited Dec. 4, 2025) (“DHS Memo”); U.S. Immigration and Customs Enforcement,
2 “Third Country Removals Following the Supreme Court’s Order in Department of Homeland
3 Security v. D.V.D., No. 24A1153 (U.S. June 23, 2025),” Todd M. Lyons, July 9, 2025, *available*
4 at
5 [https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf)
6 1.pdf (last visited Dec. 4, 2025).

7 The DHS memo discusses DHS’s policies and procedures regarding the removal of
8 individuals with final orders of removals to countries other than those designated for removal in
9 those orders (referred to as “third country removals”). DHS Memo. According to the guidance,
10 if DHS has not received diplomatic reassurances from the designated country, DHS will first
11 inform the individual that DHS seeks removal to that country. *Id.*, at 2. If the individual expresses
12 that they are afraid of being removed to that country, DHS will refer them to the U.S. Citizenship
13 and Immigration Services (“USCIS”) for a reasonable fear interview, to screen that person for
14 protection against removal to that country. *Id.*

15 After the interview is conducted, USCIS will determine whether the individual would
16 more likely than not be persecuted or tortured in the country of removal. *Id.* If USCIS finds that
17 the individual has met this standard, if the person was previously in removal proceedings, USCIS
18 will inform ICE, and ICE can then file a motion to reopen with the Immigration Court. *Id.*
19 Alternatively, ICE can also choose to designate another country of removal. If USCIS finds that
20 the person has not met the standard, according to DHS policy, they will be removed. *Id.* There
21 is nothing in the memo or in ICE policy that prevents an individual from filing a motion to reopen
22 their prior removal proceedings at any time they so choose, based on a request for asylum,
23 withholding of removal, or protection under the Convention Against Torture. *See id.*; *see also* 8
24 C.F.R. § 1003.23(b)(4)(i).

E. Petitioner Somphalavanh Sophanthavong

Petitioner is a native and citizen of Laos. Du Decl., ¶ 4. He entered the United States on or about September 1982 as a lawful permanent resident. *Id.* In 1995, Petitioner was convicted of Murder and sentenced to 15 years of incarceration. *Id.*, ¶ 5; Lambert Decl., Ex. A, Criminal Judgment.

In 2007, ICE detained Petitioner and he was placed into removal proceedings. Du Decl., ¶ 6. An immigration judge ordered him removed to Laos on November 13, 2007. *Id.*; Lambert Decl., ¶ 7; [REDACTED]. ICE released Petitioner on an OSUP in February of 2008 because ICE could not remove him to Laos at that time. Du Decl., ¶ 7; [REDACTED] P. ICE again detained Petitioner in 2011 due to another conviction, but Petitioner was again released on an OSUP. Du Decl., ¶ 8. Petitioner has remained on an OSUP since that time.

Since January 2025, there has been a shift in cooperation for most countries towards assisting with the repatriation of their citizens. Du Decl., ¶ 14. ICE is presently removing individuals to Laos. *Id.* ICE requested Petitioner's file on October 9, 2025, to complete a travel document request. *Id.*, ¶ 9. On October 31, 2025, ICE detained Petitioner for the purposes of his removal. *Id.*, ¶ 10; Lambert Decl., [REDACTED]; [REDACTED]. ICE revoked Petitioner's OSUP as set forth in the regulations. Du Decl., ¶ 10; Lambert Decl., [REDACTED]; [REDACTED]. ICE transferred Petitioner to the Northwest ICE Processing Center ("NWIPC") that same day. Du Decl., ¶ 11. ICE received his file a few days later. *Id.*, ¶ 12. ICE is in possession of what appears to be Petitioner's Laotian birth certificate. *Id.*

On December 3, 2025, local ICE forwarded Petitioner's information as part of the removal process to the person at ICE Headquarters responsible for the coordination of removals to Laos. *Id.*, ¶¶ 14, 16. While Petitioner was unable to be included on a flight to Laos this

1 month, Petitioner appears to be eligible for inclusion on a flight to Laos that is anticipated to be
2 in the second week of January. *Id.*, ¶ 17. Accordingly, ICE believes that there is a significant
3 likelihood that Petitioner will be removed to Laos in the reasonably foreseeable future. *Id.* ICE
4 has no plans to remove Petitioner to any other country other than Laos. *Id.*, ¶ 18.

5 Petitioner filed the instant habeas litigation on November 26, 2025. Petitioner asks this
6 Court to order: (1) his immediate release from ICE custody; (2) an order enjoining ICE from
7 redetaining him “without first holding a hearing before a neutral decisionmaker at which the
8 government bears the burden of establishing flight risk or danger to the community by clear and
9 convincing evidence based on changed circumstances since Petitioner was previously released;”
10 (3) an order enjoining ICE from third country removal without reopened removal proceedings;
11 and (4) an order enjoining his removal to any third country. Pet., Prayer for Relief.

12 III. LEGAL STANDARD

13 “The district courts of the United States ... are courts of limited jurisdiction. They possess
14 only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopach Servs.,*
15 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been
16 tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of*
17 *Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241
18 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of
19 habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the
20 Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v.*
21 *Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

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IV. ARGUMENT

A. Petitioner's detention is lawful pending his removal.

Petitioner cannot show that he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241. He has not demonstrated that his detention has become “indefinite” or unconstitutional. In *Zadvydas*, the Supreme Court analyzed whether the potentially open-ended duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an implicit limitation of post-removal detention “to a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. It was further specified that Section 1231(a)(6) does not permit indefinite detention. *Id.* Thus, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order detention. *Id.* (stating that “for detention to remain reasonable, as the period of post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink”). However, the Supreme Court determined that it is “presumptively reasonable” for the Government to detain a noncitizen for six months following entry of a final removal order, while it worked to remove the noncitizen from the United States. *Id.*, at 701. Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen’s detention could raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption “does not mean that every [noncitizen] not removed must be released after six months. To the contrary, [a noncitizen] may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

1 Although *Zadvydas*'s six month presumptive period has likely run, Petitioner's detention
2 is not indefinite under *Zadvydas*. As Petitioner remains unlawfully in the United States while
3 subject to a final order of removal, ICE recently exercised its discretion to arrest and detain
4 Petitioner under 8 U.S.C. § 1231(a) to effectuate his removal. His removal to Laos is anticipated
5 to occur during the second week of January 2026. Du Decl., ¶ 17. Accordingly, his removal is
6 likely to occur in the reasonably foreseeable future and satisfies due process.

7 **B. Petitioner's redetention complied with regulations and due process.**

8 Petitioner incorrectly asserts that his redetention violated regulations and due process.
9 First, procedural due process does not require a pre-OSUP revocation hearing to establish whether
10 the noncitizen is a flight risk or a danger to the community. Pet., at 10-14. "Due process is
11 flexible and calls for such procedural protections as the particular situation demands." *Mathews*
12 *v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that Petitioner's detention
13 is consistent with his due process rights. Under *Mathews*, "[t]he fundamental requirement of due
14 process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.*, at
15 333 (internal quotation marks omitted). This calls for an analysis of (1) "the private interest that
16 will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest
17 through the procedures used, and probable value, if any, of additional or substitute procedural
18 safeguards," and (3) the Government's interest. *Id.*, at 334-35. The *Mathews* factors do not favor
19 Petitioner's position that a pre-detention was required here.

20 Federal Respondents recognize the "weighty liberty interests implicated by the
21 Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at
22 *11 (S.D.N.Y. Aug. 20, 2021). However, Petitioner's interest in his liberty *generally* does not
23 mean that he possesses a separate or heightened liberty interest in the continuation of his
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1 conditional release on OSUP once ICE is able to execute an outstanding order of removal.³ The
2 recognized liberty interests of U.S. citizens and aliens who have been ordered removed are not
3 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition that
4 Congress may make rules as to aliens that would be unacceptable if applied to citizens.’”
5 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538
6 U.S. 510, 522 (2003)). As the Supreme Court has explained, “[i]n the exercise of its broad power
7 over naturalization and immigration, Congress regularly makes rules that would be unacceptable
8 if applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976).

9 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation
10 of Petitioner’s liberty here was minimal when he was redetained. Petitioner’s circumstances had
11 changed because ICE now had reason to believe that Petitioner’s removal to Laos was reasonably
12 foreseeable. 8 C.F.R. § 241.13(i)(2). Furthermore, ICE followed the regulatory requirements and
13 provided Petitioner with appropriate process.

14 As outlined above, DHS established a clear statutory framework in 8 C.F.R. § 241.13(i)
15 that sets forth the requirements and process for affecting an OSUP revocation. When ICE
16 determines that there is a “significant likelihood” an alien can be removed from the United States
17 within the “reasonably foreseeable future,” ICE is clearly permitted to revoke the OSUP and take
18 the alien into custody. Nothing else is required for revocation under these circumstances. *Id.*, §
19 241.13(i)(1) and (2); *see also Nizar Esmail v. Noem*, et al., 2025 WL 3030590, at *2 (C.D. Cal.
20 Sept. 12, 2025).

21 Due process does not require a pre-deprivation hearing prior to the revocation of an OSUP.
22 At the time of his redetention, Petitioner was subject to a final order of removal and his country
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24 ³ Federal Respondents acknowledge that courts in this District have found that noncitizens have a liberty interest in their release on OSUP but respectfully disagree with those decisions.

1 of removal was accepting its citizens for repatriation. Based on those facts, any protected liberty
2 interest that Petitioner may have had in remaining in the community on supervision is addressed
3 by 8 C.F.R. § 241.13. *See Ahmad v. Whitaker*, No. 18-cv-287-JLR-BAT, 2018 WL 6928540, at
4 *5 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted*, 2019 WL 95571 (W.D.
5 Wash. Jan. 3, 2019) (discussing requirements of Section 241.13 and stating that “[t]he regulations
6 do not require notice”).

7 It is unclear what relevance a pre-detention hearing concerning Petitioner’s dangerousness
8 or flight risk would have to the likelihood of his removal in the reasonably foreseeable future.
9 *Pet.*, at 14. To support his assertion that a pre-detention hearing on those issues is required,
10 Petitioner relies on cases not involving OSUP revocations for removal purposes. *See, e.g., Pet.*,
11 at 14 (citing *Sanchez-Rivera v. Matuszewski*, No. 22-cv-1357-MMA (JLB), 2023 WL 139801, at
12 *2 (S.D. Cal. Jan. 9, 2023) (noncitizen detained while PFR is pending); *Odinara v. Bostock*, No.
13 CV24-1412-MJP-TLF, 2025 WL 1490395, at *10 (W.D. Wash. Mar. 27, 2025), *report and*
14 *recommendation adopted*, No. CV24-1412 MJP, 2025 WL 1489705 (W.D. Wash. May 23, 2025)
15 (pre-order detention pursuant to 8 U.S.C. § 1226(c)); *Duong v. Kaiser*, No. CV25-7598-JST, 2025
16 WL 2689266, at *10 (N.D. Cal. Sept. 19, 2025) (pre-order detention).

17 Petitioner further states that “[a] detainees release to the community on an OREC reflected
18 ICE’s determination that Petitioner was neither a flight risk nor a danger to the community.” *Pet.*,
19 at 12. But Petitioner was not released on an OREC, which is governed by different regulations,
20 and cases involving OREC revocations are not comparable to the facts here. An OSUP is issued
21 when a person with a removal order cannot be removed in the reasonably foreseeable future. In
22 contrast, a noncitizen may be released on an order of release on recognizance (“OREC”) while
23 removal proceedings are still pending when ICE determines that the noncitizen is not a danger or
24 a risk of flight. *See* 8 C.F.R. § 1236.1(c)(8). Thus, some district courts have found that

1 redetaining a person released during pending removal proceedings without first reconsidering
2 dangerousness and risk of flight “poses a significant risk of an erroneous deprivation of
3 Petitioner’s liberty interest in continued release.” *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316,
4 1323 (W.D. Wash. 2025). But those factors are not relevant here when Petitioner’s OSUP
5 revocation was based on the likelihood of his removal.

6 The OSUP regulation requires a cause for redetention, “namely a change in circumstances
7 such that there is a significant likelihood that the noncitizen will be removed in the reasonably
8 foreseeable future.” *Id.* (citing 8 C.F.R. § 241.13(i)(2)). The facts here demonstrate such a
9 change in circumstances. While ICE had been unable to obtain a travel document to conduct
10 Petitioner’s removal to Laos before he was released on an OSUP, ICE now can effect that removal
11 and believes that it will happen in January.

12 Also, the regulations do not support a requirement that Petitioner be provided with a
13 hearing before OSUP revocation. Section 241.13(i)(3) further outlines the OSUP revocation
14 procedures and provides that “upon revocation,” i.e., not before revocation, “the alien will be
15 notified of the reasons for the revocation” and to conduct an “initial interview promptly *after* his
16 or return to Service custody to afford the alien an opportunity to respond to the reasons for
17 revocation stated in the notification.” 8 C.F.R. § 241.13(i)(3). Furthermore, Petitioner received
18 written notification that his release was being revoked to effect his removal. Lambert Decl., Ex.
19 F. ICE conducted an informal interview and Petitioner submitted a written statement. *Id.*, Ex. G;
20 *see also* 8 C.F.R. § 241.13(i)(3).

21 Here, ICE properly took custody of Petitioner to effect his removal, which is now
22 anticipated for January. Upon revocation, ICE provided Petitioner with written notice of the
23 reason for its determination. An informal interview was conducted and he was given an
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1 opportunity to be heard. Accordingly, Petitioner's redetention aligned with the principles of due
2 process.

3 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
4 test "must account for the heightened government interest in the immigration detention context."
5 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the
6 Ninth Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in
7 preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez*
8 *Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). Petitioner was ordered removed
9 because after being convicted of a heinous crime: murder. As a result, the Government's interest
10 to execute the outstanding removal order now that Laos is accepting its citizens for repatriation
11 is significant. Petitioner asserts that the Government's interest in detaining hi "without providing
12 a pre-deprivation hearing" tips the third *Mathews* factor in his favor. Pet., at 13. However,
13 Petitioner provides no legal support that an OSUP revocation requires a pre-detention hearing.
14 As described above, cases involving other types of release are not relevant. Also, as changed
15 circumstances, such as a foreseeable removal, are required for an OSUP revocation, there is no
16 relevance to a pre-detention hearing on Petitioner's dangerousness or risk of flight.

17 In sum, the three *Mathews* factors demonstrate that Petitioner's detention comports with
18 procedural due process and that ICE adhered to its own regulations in revoking Petitioner's
19 OSUP. Regarding substantive due process, there is no evidence that Petitioner's OSUP
20 revocation or redetention is in any way punitive. Pet., at 16, 27. Petitioner's detention is to
21 execute his removal which will occur in the reasonably foreseeable future and within the
22 regulatory purpose for OSUP revocation. 8 C.F.R. § 241.13.

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1 **C. Petitioner's claim of fear of removal to a third country is both premature and already**
2 **protected under existing DHS policy.**

3 The relief Petitioner requests regarding a third country removal is (1) currently speculative
4 and (2) already addressed by existing DHS policy, which provides the protection he seeks.

5 Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing
6 cases or controversies. *Deakins v. Monaghan*, 484 U.S. 193, 199 (1988). "To invoke the
7 jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury
8 traceable to the defendant and likely to be redressed by a favorable judicial decision." *Lewis v.*
9 *Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). It remains unclear what due process violations
10 exist concerning third country removal *in relation to Petitioner* that this Court could redress.

11 First, Petitioner requests that the Court order DHS to "not remove or seek to remove
12 Petitioner to a third country without notice and meaningful opportunity to respond in compliance
13 with the statute and due process in reopened removal proceedings." Pet., Prayer for Relief.
14 However, foundationally, Petitioner's request is speculative. Petitioner does not allege any
15 specific threat of third country removal and the only rationale provided by Federal Respondents
16 here for his detention is that Petitioner's deportation to *Laos* is reasonably foreseeable. Courts in
17 similar positions have declined to address relief in similar circumstances due to the speculative
18 nature of the request. *See e.g., Khamba v. Albarran*, No. 1:25-CV-01227 JLT SKO, 2025 WL
19 2959276, at *10 (E.D. Cal. Oct. 17, 2025) ("The Court declines to address Petitioner's other
20 claims at this time. For example, he requests an injunction against third country removal without
21 certain procedural protections (Doc. 4 at 28), but any such fear is speculative.").

22 Additionally, as noted above, there is nothing preventing Petitioner from going straight to
23 the immigration court himself and requesting that his prior proceedings be reopened based on a
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new fear or removal to any other country than Laos. *See* 8 C.F.R. § 1003.23(b)(4)(i). Thus far, he has not chosen to do so.

Second, the relief Petitioner seeks—namely, notice and a meaningful opportunity to respond—is already DHS policy. If ICE were to seek Petitioner’s removal to a third country, ICE would provide him with a notice of its intent to remove him and notice as to which country. *See* DHS Memo. This notice would allow Petitioner to claim fear of removal to that country. *Id.* If Petitioner claimed a fear of removal, ICE would refer him to USCIS, and USCIS would schedule him for an interview to determine whether it is more likely than not that he will be persecuted or tortured in that third country. *Id.*

Petitioner has suffered no injury concerning a third country removal and any allegation that he is likely to face an injury in the future is entirely speculative. Accordingly, Petitioner has failed to meet the case-or-controversy requirement, and he is unlikely to succeed on this claim. *Cf. Spencer v. Kemna*, 523 U.S. 1, 16 (1998) (rejecting the petitioner’s alleged consequences as “a possibility rather than a certainty or even a probability” and as “purely a matter of speculation”).

D. Petitioner is a member of the Plaintiff Class in *D.V.D. v. Dep’t of Homeland Sec.* and is bound by the proceedings in that case.

Furthermore, to the extent Petitioner alleges that he is an individual subject to a final order of removal who fears removal to a third country that was not previously described as an alternative country of removal, Petitioner would undisputedly be a member of the plaintiff class in *D.V.D.* As a member of the plaintiff class in *D.V.D.*, he is bound by the proceedings in that case the same as all other class members. The plaintiff class in *D.V.D.* sought an injunction precluding their removal to a third country unless they were first afforded essentially the same process that Petitioner asks the Court to order here. The Supreme Court’s stay of the preliminary injunction

1 entered in that case is both precedent and the result is binding on Petitioner here by virtue of his
2 status as a member of the *D.V.D.* plaintiff class.

3 Additionally, courts recognize that members of class action lawsuits should not be
4 permitted to bring separate actions where they seek to re-litigate individually issues that were
5 raised in the class action. *See Wynn v. Vilsack*, No. 3:21-cv-514, 2021 WL 7501821, at *3 (M.D.
6 Fla. Dec. 7, 2021) (collecting cases) (“Multiple courts of appeal have approved the practice of
7 staying a case, or dismissing it without prejudice, on the ground that the plaintiff is a member of
8 a parallel class action.”) (internal quotations omitted). This prevents class members from
9 avoiding the binding results of the class action. *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982).

10 This is also the rule in this Circuit. A district court may properly dismiss an individual
11 complaint where the plaintiff is a member in a class action, to the extent the individual action
12 duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d
13 1130, 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)). Such
14 a dismissal is within the court’s discretion based on its inherent power to control its own docket.
15 *Crawford*, 599 F.2d at 893. But it is “imperative to avoid concurrent litigation in more than one
16 forum whenever consistent with the rights of the parties.” *Id.*; *see Frost v. Symington*, 197 F.3d
17 348, 359 (9th Cir. 1999) (“To the extent that a class action involving the same issues raised by
18 [plaintiff] is currently pending . . . [he] may have to bring all of his related claims for equitable
19 relief . . . through . . . class counsel.”).

20 This Court should decline to exercise jurisdiction over Petitioner’s third country removal
21 claim as a matter of comity because the District of Massachusetts has certified a class action that
22 includes the same claim Petitioner is pursuing here. *Pacesetter Systems, Inc. v. Medtronic, Inc.*,
23 678 F.2d 93, 94-95 (9th Cir. 1982) (“There is a generally recognized doctrine of federal comity

1 which permits a district court to decline jurisdiction over an action when a complaint involving
2 the same parties and issues has already been filed in another district.”).

3 **E. Petitioner’s “punitive third country banishment” claim does not demonstrate that**
4 **the policy is unconstitutional.**

5 Petitioner’s “punitive third country banishment” claim fails because it lacks any factual
6 basis demonstrating that the third-country removal policy is unconstitutional either on its face or
7 as applied to the facts here. *See* Pet., at 28-29.

8 Petitioner cannot meet the heavy burden required for a facial challenge. A facial challenge
9 demands a showing that a law “is invalid in toto—and therefore incapable of any valid
10 application.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5
11 (1982). Such challenges are “strong medicine” and are disfavored because they “often rest on
12 speculation” and risk “premature interpretation of statutes on the basis of factually barebones
13 records.” *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998); *Wash. State Grange*
14 *v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008). Petitioner’s broad assertions that the
15 program imposes punishment on its subjects are precisely the type of speculative allegations that
16 these cases reject.

17 Furthermore, Petitioner pleads no facts supporting an as-applied claim. He does not allege
18 which third country he might be removed to, what harm he personally faces, or any circumstances
19 that would make removal to any specific country punitive in his case. A claim resting on an
20 imaginary injury does not satisfy Article III’s case-or-controversy requirement. *Lewis v. Cont’l*
21 *Bank Corp.*, 494 U.S. at 477. Unlike in *Y.T.D. v. Andrews* or *Nguyen v. Scott*, Petitioner provides
22 no evidence that his speculative removal to a third country would result in imprisonment or harm.
23 *Y.T.D. v. Andrews*, No. 1:25-cv-01100, 2025 WL 2675760, at *4 (E.D. Cal. Sept. 18, 2025);
24 *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *25 (W.D. Wash. Aug. 21, 2025).

1 Without factual allegations establishing a realistic danger of punitive treatment, Petitioner's
2 theory remains purely conjectural and nonjusticiable.

3 **IV. CONCLUSION**

4 For these reasons, Federal Respondents request this Court deny the Petition.

5 DATED this 10th day of December, 2025.

6 Respectfully submitted,

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18 *I certify that this memorandum contains 5,593*
19 *words, in compliance with the Local Civil Rules.*