District Judge Tana Lin

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

RAMY KAMAL ELSHOURBAGY, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Case No. 2:25-cv-02432-TL FEDERAL RESPONDENTS' RETURN MEMORANDUM Noted for Consideration: December 22, 2025

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Ramy Kamal Elshourbagy, a noncitizen subject to an administratively final order of removal, pursuant to Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner brings this habeas litigation pursuant to 28 U.S.C. § 2241 to challenge the lawfulness of his immigration detention. In response, Federal Respondents submit the following factual background as contained in the records of Petitioner's immigration case and as set forth in the Declaration of Deportation Gabriel Arambula ("Arambula Decl."), as well as the relevant legal authorities.

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Petitioner also requests this Court to order Federal Respondents to provide additional process as it relates any third-country removal, and simultaneously prohibit Petitioner's removal to any third country. Pet. at 17. The U.S. Department of Homeland Security's ("DHS") policy addresses protections concerning third country removals, and to the extent that Petitioner seeks additional process, Petitioner should be required to seek that relief as a plaintiff class member in *D.V.D. v. U.S. Dep't of Homeland Sec.*, CV 25-10676-BEM, 2025 WL 942948 (D. Mass. Mar. 28, 2025). Accordingly, these requests must be denied.

II. LEGAL STANDARD

To succeed on a habeas petition, Petitioner "must show [he] is in custody in violation of the Constitution or laws or treaties of the United States." *Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 WL 3291033, at *5 (W.D. Wash. Mar. 29, 2024), report and recommendation adopted, No. C24-0326JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6, 2024) (citing 28 U.S.C. § 2241). Because habeas proceedings are civil in nature, the "[p]etitioner 'bears the burden of proving that he is being held contrary to law, . . . [and] he must satisfy his burden of proof by a preponderance of the evidence.'" *Aditya W. H. v. Trump*, No. 25-cv-1976, 2025 WL 1420131, at *7 (D. Minn. May 14, 2025) (quoting *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (citations omitted))

III. DETENTION AND REMOVAL AUTHORITY

A. Post-Order Detention

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527-29 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and "post-order" (meaning after the entry of a final order of removal). *Compare*

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8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for removal and to protect the community from noncitizens who may present a danger, Congress mandated detention during the "removal period," which is the 90-day period following the issuance of a final order of removal. 8 U.S.C. § 1231(a)(2).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

> [A noncitizen] ordered removed who is inadmissible under section 1182, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] to be a risk to the community or unlikely to comply with the order of removal, *may* be detained *beyond the removal period* and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6) (emphasis added).

During the removal period, ICE is charged with attempting to effectuate removal of a noncitizen from the United States. 8 C.F.R. § 241.2(b); 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has further identified six months as a presumptively reasonable time necessary to bring about a noncitizen's removal. *Id.*, at 701. Once it is determined that there is no

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significant likelihood of removal in the reasonably foreseeable future, noncitizens may be released on an Order of Supervision ("OSUP"). 8 C.F.R. § 241.13(h).

B. Third Country Removal

When the Government seeks to remove an individual, it may do so through removal proceedings involving an evidentiary hearing before an Immigration Judge ("IJ"). 8 U.S.C. § 1229a. In removal proceedings, the IJ determines both whether the individual may be removed from the United States and also the country to which they will be removed. *Id.*; 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). The Immigration and Nationality Act ("INA") sets out the process for determining the country of removal.

First, the alien may select a country. 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). If the alien declines, the IJ will designate one and may also designate alternative countries. 8 U.S.C. § 1231(b)(2)(C)-(D); 8 C.F.R. § 1240.10(f). In selecting an alternative country of removal, the IJ must first select the "country of which the alien is a subject, national, or citizen[.]" 8 U.S.C. § 1231(b)(2)(D). If removal to that country is impossible, the IJ may remove the alien to "any of the following countries" listed in 8 U.S.C. § 1231(b)(2)(E):

(i) The country from which the alien was admitted to the United States.
(ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
(iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
(iv) The country in which the alien was born.
(v) The country that had sovereignty over the alien's birthplace when the alien was born.
(vi) The country in which the alien's birthplace is located when the alien is ordered removed.

Lastly, § 1231(b)(2)(E)(vii) provides that "[i]f impracticable, inadvisable, or impossible to remove the alien to each country" described above, the statute permits removal to any "country whose government will accept the" noncitizen. *Id.* § 1231(b)(2)(E)(vii).

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The government is prohibited from removing a person to a third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the government cannot remove a person to a country where they would be tortured, a form of protection known as protection under the Convention Against Torture (CAT). *See* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. § 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. Withholding of removal and CAT protection are mandatory, but "only restrict *where* the Government may remove a noncitizen to, not *whether* the noncitizen is subject to removal." *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). "Thus, even if the IJ grants such protection, the removal order remains valid and enforceable, albeit not to the identified country or countries of risk." *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004).

If the government has a removal order but no country to which an IJ has authorized removal, it can remove the noncitizen to a third country, meaning any country not designated on the removal order. *D.V.D.*, 2025 WL 942948, at *1. It remains the case that the government cannot remove an alien to any third country where they would face persecution or torture. 8 U.S.C. § 1231(b)(3)(A); 28 C.F.R. § 200.1; 8 C.F.R. §§ 208.16–18, 1208.16–18.

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

In March 2025, three plaintiffs instituted a putative class action suit challenging their third country removals in the District of Massachusetts. *D.V.D.*, 2025 WL 942948, at *1. On March 28, 2025, the district court entered a TRO enjoining the DHS and others from "[r]emoving any individual subject to a final order of removal from the United States to a third country, *i.e.*, a

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country other than the country designated for removal in immigration proceedings" unless certain conditions were met. *Id.*

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

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

Id., at 378.

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

> All removals to third countries, *i.e.*, removal to a country other than the country or countries designated during immigration proceedings as the country of removal on 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).

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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. *D. V. D.*, 145 S. Ct. at 2629. 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 later, on July 9, 2025, DHS issued a guidance regarding third country removals. *See* 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.pdf (last visited Dec. 4, 2025) ("DHS Memo"); U.S. Immigration and Customs Enforcement, "Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)," Todd M. Lyons, July 9, 2025, *available* at https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.

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1.pdf (last visited Dec. 4, 2025) (hereinafter "July 9 Memo"); *see also Kumar*, 2025 WL 3204724, at *2-3 (describing contents of these memos and the distinction between the two);

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

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

IV. FACTUAL BACKGROUND

Petitioner is a native and citizen of Egypt. Declaration of Deportation Officer Gabriel Arambula (Arambula Decl.), ¶ 3; Declaration of Katherine G. Collins (Collins Decl.), Exh. A, I-213; Exh. C, NTA. He entered the United States from Mexico on or about October 20, 2024,

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without being inspected, admitted, or paroled, near Otay Mesa, California. *See id.* Petitioner was initially processed for Expedited Removal and detained. Arambula Decl., ¶ 4. While pending a credible fear interview with an asylum officer, on or about January 14, 2025, U.S. Citizenship and Immigration Services ("CIS") served a discretionary Notice to Appear on Petitioner, charging him as removable under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). Arambula Decl., ¶ 5; Collins Decl., Exh. C, NTA.

On May 6, 2025, the Immigration Judge ordered Petitioner removed to Egypt but granted withholding under the Convention Against Torture. Arambula Decl., ¶ 9; Collins Decl., Exh. D, IJ Order. That same day, both parties waived appeal and the removal order became final. Collins Decl., Exh. D, IJ Order.

On May 7, 2025, Petitioner was served a Warning for Failure to Depart, but Petitioner refused to sign. Arambula Decl., ¶ 10; Collins Decl., Exh. E, Warning for Failure to Depart. From May 19, 2025, to July 2, 2025, ERO Tacoma sent the following consulates a Request for Acceptance of Alien: Mauritania, El Salvador, Panama, Costa Rica, Philippines, United Kingdom, Australia, Chile, Denmark, Mongolia, Netherlands, Peru, United Arab Emirates, Belgium, Bolivia, Kazakhstan, Canada, Switzerland, Thailand, Belize, Portugal, Qatar, France, Guyana, Papau New Guinea. Arambula Decl., ¶ 11; Collins Decl., Exh. F, Requests for Acceptance. As of the date of this filing, all requests remain pending except for Costa Rica, Denmark, Mongolia, and Australia, who denied the requests. Arambula Decl., ¶ 12.

On September 2, 2025, Petitioner was served third country removal notice regarding Uganda. Arambula Decl., ¶ 13; Collins Dec., Exh. G, Third Country Notice. Petitioner did not make any claim of fear of harm in Uganda in response to this notice. Arambula Decl., ¶ 13.

On December 15, 2025, ERO directed Petitioner to fill out a travel document application to Mauritania, but Petitioner refused to fill out the travel document application. Arambula Decl.,

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¶ 16. On December 16, 2025, ERO Tacoma requested ERO Headquarters assistance in obtaining a travel document for Mauritania. *Id.*, ¶ 18. ERO Headquarters replied with further instructions which local ERO intends to follow. *Id.*

On December 2, 025, Petitioner filed the instant habeas petition. He alleges that his current detention and future third country removal violate his constitutional rights. Pet. at 15-16. For relief, Petitioner requests this Court to order his immediate release. Pet. at 17. He further asks this Court to order that he not be removed to a third country "without notice and meaningful opportunity to respond," and further requests that the Court enjoin his removal from the United States to any third country. *Id.* at 17-18.

V. ARGUMENT

Petitioner has been detained in ICE custody post-final order of removal for a total of 225 days. Arambula Decl., ¶ 9; Collins Decl., Exh. D, IJ Order. During this time, ICE has taken steps to execute Petitioner's removal from the United States, and continues to actively do so. Arambula Decl., ¶¶ 11,16-19. ICE is lawfully pursuing Petitioner's removal to third countries, and Petitioner's request to limit ICE from doing so should be denied.

A. Petitioner is Currently Receiving the Due Process he Requests; There is no Controversy in This Case, and his Request for Additional Process as it Relates to Third Country Removal Should be Denied

Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies. *Deakins v. Monaghan*, 484 U.S. 193, 199, 108 S.Ct. 523, 528, 98 L.Ed.2d 529 (1988). "To invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477, 110 S. Ct. 1249, 1253, 108 L. Ed. 2d 400 (1990). Petitioner requests this Court to require Federal Respondents to provide him with notice and an opportunity to respond "in compliance with the statute and due

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process in reopen removal proceedings." Pet. at 17. However, at this point, this is what Federal Respondents have provided.

The relief Petitioner requests regarding third country removal is already addressed by existing DHS policy. When ICE seeks Petitioner's removal to a third country, ICE will provide him with a notice of its intent to remove her and notice as to which country. *See* July 9 Memo. This notice will allow Petitioner to claim fear of removal to that country. *Id.* If Petitioner claims a fear of removal, ICE will 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.*

ICE provided Petitioner notice of their intent to remove him to Uganda almost three months ago. Arambula Decl., ¶ 13; Collins Dec., Exh. G, Third Country Notice. He did not claim fear of removal to that country. Arambula Decl., ¶ 13. Additionally, there is nothing preventing Petitioner from going straight to the immigration court himself and requesting that his prior proceedings be reopened based on a new fear or removal to any other country than Egypt. *See* 8 C.F.R. § 1003.23(b)(4)(i). Thus far, he has not chosen to do so.

Petitioner has suffered no injury at this time and any allegation that he is likely to face an injury in the future is speculative. Accordingly, Petitioner has failed meet the case-or-controversy requirement, and his petition must be denied. *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").

B. 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

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

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

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

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

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This Court should decline to exercise jurisdiction over Petitioner's third country removal claim as a matter of comity because the District of Massachusetts has certified a class action that includes the same claim Petitioner is pursuing here. *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) ("There is a generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district.

C. Petitioner's Punitive Banishment Argument Restates his Due Process Challenge and does not Demonstrate that the Policy is Unconstitutional

Petitioner's "punitive third country banishment" argument fails because it lacks any factual basis demonstrating that the third-country removal policy is unconstitutional either on its face or as applied. *See* Pet. at 12-15.

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

Furthermore, Petitioner pleads no facts supporting an as-applied claim. He does not allege which third country he might be removed to, what harm he personally faces, or any circumstances that would make removal punitive in his case. A claim resting on imaginary injury does not satisfy Article III's case-or-controversy requirement. *Lewis v. Cont'l Bank Corp.*, 494 U.S. at 477. Unlike

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in *Y.T.D. v. Andrews* or *Nguyen v. Scott*, Petitioner provides no evidence that his removal would result in imprisonment or harm. *Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *4 (E.D. Cal. Sept. 18, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *25 (W.D. Wash. Aug. 21, 2025); Pet., pgs. 19-20. Without factual allegations establishing a realistic danger of punitive treatment, Petitioner's theory remains purely conjectural and nonjusticiable. Therefore, the Court should deny the writ to the extent it seeks to bar third-country removal.

VI. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully requests that this Court deny the Petition.

DATED this 17th day of December, 2025

Respectfully submitted,

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I certify that this memorandum contains 4,159 words, in compliance with Local Civil Rules