

District Judge James L. Robart

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

WILLIAM PANTOJA,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02440-JLR

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
December 22, 2025

I. INTRODUCTION

This Court should deny Petitioner William Pantoja's Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 and Request for Injunctive Relief. Dkt. No. 1 ("Petition" or "Pet."). U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner, a Cuban citizen, to facilitate his removal from the United States. He asserts that his detention is unlawful because his removal is not reasonably foreseeable. But Petitioner is a noncitizen subject to a 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 also is not indefinite under *Zadvydas v.*

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

1 *Davis*, 533 U.S. 678, 701 (2001). ICE anticipates Petitioner’s removal to Mexico by this
2 weekend.²

3 Although Petitioner had expressed fear of removal to Mexico, he has undergone a
4 reasonable fear interview with U.S. Citizenship and Immigration Services with negative results.
5 If Petitioner is dissatisfied with this result, he may seek to reopen his prior proceedings.

6 Furthermore, this Court may not issue the relief sought concerning the third country
7 removal process because Petitioner is a member of the plaintiff class in *D.V.D. v. Dep’t of*
8 *Homeland Sec.*, Civ. A. No. 25-10676 (D. Mass.). The plaintiff class in *D.V.D.* sought and
9 received an injunction barring ICE from removing members of the class to third countries. That
10 injunction was stayed by two orders of the Supreme Court. Petitioner cannot end-run the Supreme
11 Court’s stay of an injunction barring his removal to a third country by seeking the same relief in a
12 different court. Thus, Petitioner’s request for an injunction barring his removal to a third country
13 and an order requiring Federal Respondents to undertake a specific reasonable fear screening
14 process should be denied.

15 II. BACKGROUND

16 A. Detention Authorities and Removal Procedures

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

23
24 ² Pursuant to this Court’s Order (Dkt. No. 5), undersigned counsel provided Petitioner’s counsel with 48-hour notice of the removal via email today at 11:35 am.

1 When a final order of removal has been entered, a noncitizen enters a 90-day “removal
2 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
3 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for
4 removal and to protect the community from noncitizens who may present a danger, Congress has
5 mandated detention while removal is being effectuated. 8 U.S.C. § 1231(a)(2). During the
6 removal period, ICE³ is charged with attempting to effect removal of a noncitizen from the United
7 States. 8 U.S.C. § 1231(a)(1).

8 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration
9 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention
10 and does not place any temporal limit on the length of detention under that provision. 8 U.S.C.
11 § 1231(a)(6). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6),
12 the Supreme Court has held that a noncitizen may be detained only “for a period reasonably
13 necessary to bring about that [noncitizen’s] removal from the United States.” *Zadvydas*, 533 U.S.
14 at 689. The Supreme Court has further identified six months as a presumptively reasonable time
15 to bring about a noncitizen’s removal. *Id.*, at 701.

16 **B. D.V.D. v. Dep’t of Homeland Security**

17 In March 2025, three plaintiffs instituted a putative class action suit challenging their third
18 country removals in the District of Massachusetts. *D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.).
19 On March 28, 2025, the district court entered a TRO enjoining U.S. Department of Homeland
20 Security (“DHS”) and others from “[r]emoving any individual subject to a final order of removal
21 from the United States to a third country, *i.e.*, a country other than the country designated for
22
23

24 ³ 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 removal in immigration proceedings” unless certain conditions were met. *D.V.D. v. U.S. Dep’t of*
2 *Homeland Sec.*, No. 25-cv-10676, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025).

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

10 All individuals who have a final removal order issued in proceedings under Section
11 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) who
12 DHS has deported or will deport on or after February 18, 2025, to a country (a) not
13 previously designated as the country or alternative country of removal, and (b) not
14 identified in writing in the prior proceedings as a country to which the individual
15 would be removed.

14 *Id.*, at 378.

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

17 All removals to third countries, *i.e.*, removal to a country other than the country or
18 countries designated during immigration proceedings as the country of removal on
19 the non-citizen’s order of removal, *see* 8 U.S.C. § 1231(b)(1)(C), must be preceded
20 by written notice to both the non-citizen and the non-citizen’s counsel in a language
21 the non-citizen can understand. Dkt. 64 at 46–47. Following notice, the individual
22 must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-
23 based claim for CAT protection prior to removal. *See id.* If the non-citizen
24 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.*

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

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

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

14 **C. DHS Policy on Third-Country Removals**

15 On March 30, 2025, and then on July 9, 2025, DHS issued guidance regarding third country
16 removals. U.S. Department of Homeland Security, “Guidance Regarding Third Country
17 Removals,” Kristi Noem, March 30, 2025, *available at*
18 <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1>
19 [1.pdf](#) (last visited Dec. 4, 2025) (“DHS Memo”); U.S. Immigration and Customs Enforcement,
20 “Third Country Removals Following the Supreme Court’s Order in Department of Homeland
21 Security v. D.V.D., No. 24A1153 (U.S. June 23, 2025),” Todd M. Lyons, July 9, 2025, *available*
22 *at*
23 <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1>
24 [.pdf](#) (last visited Dec. 4, 2025).

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

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

19 **D. Petitioner William Pantoja**

20 Petitioner is a native and citizen of Cuba. *See* Pet., at 4; Benjamin Decl., ¶ 3. Petitioner
21 entered the United States in 2004 and was subsequently granted lawful permanent resident status.
22 Pet., at 6; Benjamin Decl., ¶ 4. In 2007, Petitioner pled guilty to Battery/Aggravated/ of a Pregnant
23 Victim, Florida Statutes § 784.045(1)(b) and was sentenced to two years of probation. Benjamin
24 Decl., ¶ 5.

1 In 2010, Petitioner, after having left the country, returned to the United States at the Miami
2 International Airport. Benjamin Decl., ¶ 6. He was paroled into United States for the purposes of
3 undergoing removal proceedings pursuant to 8 U.S.C. § 1229a. *Id.* In January 2011, DHS served
4 Petitioner with a notice to appear that charged him as inadmissible pursuant to 8 U.S.C.
5 § 1182(a)(2)(A)(i)(I). *Id.* That same month, the immigration court in Miami ordered Petitioner
6 removed from the United States. *Id.*, ¶ 8; Lambert Decl., Ex. A, Order of the Immigration Judge.
7 Because both sides waived appeal, the order became administratively final on January 13, 2011.
8 Benjamin Decl., ¶ 8. However, DHS released Petitioner from detention on an order of supervised
9 release (“OSUP”) because his removal to Cuba could not be executed. Pet., at 7; Lambert Decl.,
10 Ex. B., Release Notification; Ex. C, OSUP. Petitioner’s OSUP has since been reissued, including
11 in 2017. Benjamin Decl., ¶ 9; Lambert Decl., Ex. D, OSUP.

12 In 2023, Petitioner filed a Form I-485, Application to Register Permanent Residence or
13 Adjust Status under the Cuban Adjustment Act. Pet., at 7. He also filed a Form I-601, Application
14 for Waiver of Grounds of Inadmissibility. *Id.* In 2024, an immigration judge denied Petitioner’s
15 motion to reopen his removal proceedings. Benjamin Decl., ¶ 10. On March 17, 2025, USCIS
16 denied his Form I-485 and Form I-601. Pet., at 7. His administrative appeals of these decisions
17 have both been denied. Lambert Decl., Exs. E & F.

18 On May 27, 2025, ICE took Petitioner into custody at the ICE Miramar Sub-Office in
19 Florida and revoked his OSUP. Benjamin Decl., ¶ 13; Lambert Decl., Ex. G, Form I-213; Ex. H,
20 Notice of Revocation of Release; Ex. I, Warrant for Arrest; Ex. J, Notice of Custody
21 Determination. He was transferred to the Northwest ICE Processing Center (“NWIPC”).
22 Benjamin Decl., ¶ 14. ICE has since notified him that it intends to remove him to Mexico.
23 Benjamin Decl., ¶¶ 14, 18; Lambert Decl., Ex. K. Petitioner has expressed fear of removal to
24 Mexico. Benjamin Decl., ¶ 16. Accordingly, on December 8, 2025, USCIS conducted a

reasonable fear interview and found that Petitioner had not established that more likely than not he would be persecuted or tortured in Mexico. *Id.*, ¶ 19.

ICE expects that Petitioner will be removed to Mexico this weekend. *Id.*, ¶ 20.

Petitioner filed the instant habeas litigation on December 2, 2025. Petitioner asks this Court to order: (1) his immediate release from ICE custody; (2) an order enjoining ICE from redetaining him where the government bears the burden of establishing a flight risk or danger to the community; (3) an order enjoining ICE from third country removal without reopened removal proceedings; and (4) an order enjoining his removal to any third country under the U.S. Department of Homeland Security’s (“DHS”) alleged “punitive banishment policy and practices.” Pet., Prayer for Relief.

III. LEGAL STANDARD

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

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

1 become “indefinite” or unconstitutional. In *Zadvydas*, the Supreme Court analyzed whether the
2 potentially open-ended duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional.
3 The Court read an implicit limitation of post-removal detention “to a period reasonably necessary
4 to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. It was
5 further specified that Section 1231(a)(6) does not permit indefinite detention. *Id.* Thus, “once
6 removal is no longer reasonably foreseeable, continued detention is no longer authorized by
7 statute.” *Id.* at 699.

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

20 Although *Zadvydas*’s six-month presumptive period may have expired here, Petitioner’s
21 detention is not indefinite under *Zadvydas*. His removal to Mexico is anticipated to occur as early
22 as this weekend. Benjamin Decl., ¶ 20. Accordingly, his removal is likely to occur in the
23 reasonably foreseeable future and satisfies due process.

24 **B. Petitioner is not entitled to a pre-detention hearing prior to an OSUP revocation.**

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

13 Federal Respondents recognize the “weighty liberty interests implicated by the
14 Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at
15 *11 (S.D.N.Y. Aug. 20, 2021). However, Petitioner’s interest in his liberty *generally* does not
16 mean that he possesses a separate or heightened liberty interest in the continuation of his
17 conditional release on OSUP once ICE is able to execute an outstanding order of removal.⁴ The
18 recognized liberty interests of U.S. citizens and aliens who have been ordered removed are not
19 coextensive: the Supreme Court has “firmly and repeatedly endorsed the proposition that Congress
20 may make rules as to aliens that would be unacceptable if applied to citizens.” *Rodriguez Diaz v.*
21 *Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)).
22 As the Supreme Court has explained, “[i]n the exercise of its broad power over naturalization and
23

24 ⁴ 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 immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.”

2 *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976).

3 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation
4 of Petitioner’s liberty here without a pre-detention hearing is minimal. DHS established a clear
5 regulatory framework in 8 C.F.R. § 241.13(i) that sets forth the requirements and process for
6 affecting an OSUP revocation. When ICE determines that there is a “significant likelihood” an
7 alien can be removed from the United States within the “reasonably foreseeable future,” ICE is
8 clearly permitted to revoke the OSUP and take the alien into custody. Nothing else is required for
9 revocation under these circumstances. *Id.*, § 241.13(i)(1) and (2); *see also Nizar Esmail v. Noem*,
10 *et al.*, 2025 WL 3030590, at *2 (C.D. Cal. Sept. 12, 2025).

11 Due process does not require a pre-deprivation hearing prior to the revocation of an OSUP.
12 Any protected liberty interest that Petitioner may have had in remaining in the community on
13 supervision is addressed by 8 C.F.R. § 241.13. *See Ahmad v. Whitaker*, No. 18-cv-287-JLR-BAT,
14 2018 WL 6928540, at *5 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted*, 2019
15 WL 95571 (W.D. Wash. Jan. 3, 2019) (discussing requirements of Section 241.13 and stating that
16 “[t]he regulations do not require notice”).

17 It is unclear what relevance a pre-detention hearing concerning Petitioner’s dangerousness
18 or flight risk would have to the likelihood of his removal in the reasonably foreseeable future. Pet.,
19 at 14. To support his assertion that a pre-detention hearing on those issues is required, Petitioner
20 relies on cases not involving OSUP revocations for removal purposes. *See, e.g., Pet.*, at 14 (citing
21 *Ledesma Gonzalez v. Bostock*, No. 25-cv-1404, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025)
22 (revocation of release on recognizance (“OREC”) during pendency of removal proceedings);
23 *Barrenechea v. Albarran*, No. 25-cv-7883, 2025 WL 2717279 (N.D. Cal. Sept. 22, 2025) (same).
24 But Petitioner was not released on an OREC, which is governed by different regulations, and cases

1 involving OREC revocations are not comparable to the facts here. An OSUP is issued when a
2 person with a removal order cannot be removed in the reasonably foreseeable future. In contrast,
3 a noncitizen may be released on an order of release on recognizance (“OREC”) while removal
4 proceedings are still pending when ICE determines that the noncitizen is not a danger or a risk of
5 flight. *See* 8 C.F.R. § 1236.1(c)(8). Thus, some district courts have found that redetaining a person
6 released during pending removal proceedings without first reconsidering dangerousness and risk
7 of flight “poses a significant risk of an erroneous deprivation of Petitioner’s liberty interest in
8 continued release.” *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1323 (W.D. Wash. 2025). But
9 those factors are not relevant here when Petitioner’s OSUP revocation was based on the likelihood
10 of his removal.

11 Also, the regulations do not support a requirement that Petitioner be provided with a
12 hearing before OSUP revocation. Section 241.13(i)(3) further outlines the OSUP revocation
13 procedures and provides that “upon revocation,” i.e., not before revocation, “the alien will be
14 notified of the reasons for the revocation” and to conduct an “initial interview promptly *after* his
15 or return to Service custody to afford the alien an opportunity to respond to the reasons for
16 revocation stated in the notification.” 8 C.F.R. § 241.13(i)(3).

17 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
18 test “must account for the heightened government interest in the immigration detention context.”
19 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth
20 Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
21 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*,
22 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). Here, Petitioner has been subject to a final
23 order of removal since 2011. While he could not be repatriated to Cuba, ICE can now remove him
24 to Mexico.

1 Petitioner's detention is to execute his removal which will occur in the reasonably
2 foreseeable future and within the regulatory purpose for OSUP revocation. 8 C.F.R. § 241.13.

3
4 **C. Petitioner's claim of fear of removal to a third country is already protected under
existing DHS policy.**

5 The relief Petitioner requests regarding a third country removal is already addressed by
6 existing DHS policy, which provides the protection he seeks. ICE intends to remove Petitioner to
7 Mexico, a third country. In accordance with the DHS Memo, ICE provided him with a notice of
8 its intent to remove him to Mexico. *See* DHS Memo. This allowed Petitioner to claim fear of
9 removal to Mexico. *Id.* As a result, ICE referred him to USCIS, and USCIS conducted an
10 interview to determine whether it is more likely than not that he will be persecuted or tortured in
11 that third country. *Id.* Additionally, as noted above, there is nothing preventing Petitioner from
12 going straight to the immigration court himself and requesting that his prior proceedings be
13 reopened based on a new fear or removal to any other country than Cuba. *See* 8 C.F.R. §
14 1003.23(b)(4)(i). Thus far, he has not chosen to do so.

15
16 **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.**

17 Furthermore, to the extent Petitioner alleges that he is an individual subject to a final order
18 of removal who fears removal to a third country that was not previously described as an alternative
19 country of removal, Petitioner would undisputedly be a member of the plaintiff class in *D.V.D.* As
20 a member of the plaintiff class in *D.V.D.*, he is bound by the proceedings in that case the same as
21 all other class members. The plaintiff class in *D.V.D.* sought an injunction precluding their
22 removal to a third country unless they were first afforded essentially the same process that
23 Petitioner asks the Court to order here. The Supreme Court's stay of the preliminary injunction
24

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 a
8 parallel class action.”) (internal quotations omitted). This prevents class members from avoiding
9 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 1130,
13 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)). Such a
14 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
24

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
4 **E. Petitioner’s “punitive third country banishment” claim does not demonstrate
that 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 29-30.

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

1 at *25 (W.D. Wash. Aug. 21, 2025). Without factual allegations establishing a realistic danger of
2 punitive treatment, Petitioner's theory remains purely conjectural and nonjusticiable.

3 **V. CONCLUSION**

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

6 DATED this 17th day of December, 2025.

7 Respectfully submitted,

8 CHARLES NEIL FLOYD
United States Attorney

9 s/ Michelle R. Lambert
10 MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
11 United States Attorney's Office
Western District of Washington
12 1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
13 Phone: (253) 428-3824
Fax: (253) 428-3826
14 Email: michelle.lambert@usdoj.gov

15 *Attorneys for Federal Respondents*

16 *I certify that this memorandum contains 4,719*
17 *words, in compliance with the Local Civil Rules.*