District Judge Tana Lin

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

LUIS SANCHEZ-ALFONSO, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Case No. 2:25-cv-02748-TL FEDERAL RESPONDENTS'[1] RETURN Noted for Consideration: January 20, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Luis Sanchez-Alfonso, a Cuban national 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.

Petitioner is currently detained under 8 U.S.C. § 1231 pending his removal to Mexico. Petitioner claims his detention violates due process even though his removal is likely to occur in

[1] Respondent Bruce Scott is not a federal official and is not represented by undersigned counsel.

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the reasonably foreseeable future. Petitioner also claims that ICE's decision to revoke his supervised release violates the Fifth Amendment's Due Process Clause and the Administrative Procedure Act ("APA"). His claims are without merit.

In 2012, an immigration judge ordered Petitioner be removed to Cuba. Because ICE could not obtain travel documents to execute the removal order, Petitioner was released from immigration detention on an order of supervision ("OSUP"), which placed various conditions on Petitioner's release, such as not committing any crimes. Since his release, Petitioner violated these conditions numerous times. As a result, ICE detained Petitioner on December 2, 2025, and revoked his OSUP. Petitioner is currently detained at the Northwest ICE Processing Center. ICE anticipates Petitioner's removal to Mexico in the reasonably foreseeable future.

Petitioner additionally requests this Court to enjoin the government "from applying their third-country removal policy until it passes statutory and constitutional muster." Pet., Request for Relief. 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, the Petition should be denied.

II. BACKGROUND

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). 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).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. 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 significant likelihood of removal in the reasonably foreseeable future, noncitizens may be released on OSUP. 8 C.F.R. § 241.13(h).

The right to remain under an OSUP is not unlimited. Revocation of an OSUP is governed by 8 C.F.R. §§ 241.13(i) and 241.4(l), and may occur (1) if the noncitizen "violates any of the conditions of release," 8 C.F.R. §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined "that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). Alternatively, certain designated officials may also revoke an OSUP as an act of discretion when revocation is in the public interest. *Id.* § 241.4(l)(2).

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Sections 241.13(i)(3) and 241.4(l)(1) provide that upon revocation, the alien "will be notified of the reasons for revocation of his or her release" and will receive an "initial informal interview promptly" after being detained, to "afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. §§ 241.13(i)(3); 241.4(l)(1).

B. Third Country Removal

In removal proceedings, an immigration judge determines both whether the individual may be removed from the United States as well as the country to which they will be removed. 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). The 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 immigration judge will designate a country 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 immigration judge 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 immigration judge 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, Section 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. 25-cv-2055-KKE, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). "Thus, even if the [immigration judge] 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 immigration judge 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. DHS*

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 temporary restraining order enjoining DHS and others from "[r]emoving any individual subject to a final order of removal from the United States to a third

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country, *i.e.*, a 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 Jan. 14, 2026) ("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 Jan. 14, 2026) (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"). According to the guidance outlined in the July 9 Memo, if DHS has not received diplomatic reassurances from the country, DHS will first inform the individual that DHS seeks removal to the third country. *Id.*, at 2. If the individual expresses that they are afraid of being removed to that country, DHS will refer them to 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).

E. Factual Background

Petitioner, a native and citizen of Cuba, was admitted to the United States in 1992 as a lawful permanent resident. Dunn Decl., ¶ 4. In 2012, DHS detained Petitioner and initiated removal proceedings after numerous criminal convictions. Dunn Decl., ¶¶ 5-9; Lambert Decl.,

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Ex. A, Notice to Appear. In December 2012, an immigration judge ordered Petitioner be removed to Cuba. Dumo Decl., ¶ 9; Lambert Decl., Ex. B, Order of the Immigration Judge. ICE released Petitioner on an OSUP in 2013 after being unable to secure travel documents to execute the removal order. Dumo Decl., ¶ 10; Lambert Decl., Ex. C, OSUP. After his release, Petitioner violated the conditions of his release on numerous occasions. Dumo Decl., ¶ 12.

On December 2, 2025, U.S. Customs and Border Protection ("CBP") conducted a targeted operation that resulted in Petitioner's arrest. *Id.*; Lambert Decl., Ex. D, Form I-213. CBP brought Petitioner to the ICE office in Portland, Oregon. Dumo Decl., ¶ 12. At the office, ICE notified Petitioner of the revocation of his OSUP and conducted an initial informal interview where he was allowed to respond to the reasons for the revocation. *Id.*; Lambert Decl., Ex. E, Notice of Revocation of Release; Ex. F, Alien Informal Interview. He was thereafter transferred to the NWIPC. Dumo Decl., ¶ 13.

On December 23, 2025, ICE served Petitioner with a third country removal notice of his pending removal to Mexico. Dumo Decl., ¶¶ 15, 16; Lambert Decl., Ex. G, Notice. Petitioner has not claimed fear of removal to Mexico, nor has he filed a motion to reopen his underlying removal order. Dumo Decl., ¶ 17. ICE is currently preparing his removal to Mexico pending an internal legal review. *Id.* ICE believes that that Petitioner's removal to Mexico will occur in the reasonably foreseeable future. *Id.*

III. LEGAL STANDARD

It is axiomatic that "[t]he 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. Allopath 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

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day." *Thuraissigiam*, 591 U.S. at 125 n. 20. 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); *Morris v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

ICE lawfully detains Petitioner pursuant to 8 U.S.C. § 1231(a)(6). Petitioner asserts that his detention violates due process and that the revocation of his OSUP violated the Administrative Procedure Act ("APA"). Specifically, he claims that ICE detained him without cause, notice, or an opportunity to respond. His claims are without merit. Further, he seeks to enjoin ICE from applying its third country removal policy to him. ICE is lawfully pursuing Petitioner's removal to Mexico, and Petitioner's request to limit ICE from doing so should be denied.

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 burden is on Petitioner to show that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Pelich v. I.N.S.*,

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329 F.3d 1057, 1059 (9th Cir. 2003) (citing *Zadvydas*). If a petitioner meets his evidentiary burden, the government must then introduce evidence to refute the petitioner's assertion. *Id.*

It is undisputed that Petitioner is subject to a removal order that became administratively final in 2012. Following his removal order, he was released on OSUP. While released from ICE custody, Petitioner was arrested numerous times and failed to report to ICE, in violation of the terms of his release. Based on these violations, ICE revoked his OSUP and detained Petitioner.

ICE believes that Petitioner will be removed to Mexico in the reasonably foreseeable future. The fact that Petitioner does not yet have a specific date of anticipated removal does not make his detention indefinite. *Diouf v. Mukasey* ("Diouf I"), 542 F. 3d 1222, 1233 (9th Cir. 2008). As the Supreme Court has repeatedly recognized, detention is a constitutionally permissible aspect of the Government's enforcement of the immigration laws. *See Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018); *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Zadvydas*, 533 U.S. at 690-91. Accordingly, Petitioner's detention has not violated principals of substantive due process.

B. Petitioner's OSUP revocation comports with due process and DHS regulations.

"Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that Petitioner's detention is consistent with his due process rights. Under *Mathews*, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.*, at 333 (internal quotation marks omitted). This calls for an analysis of (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards," and (3) the Government's interest. *Id.*, at 334-35.

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1. Petitioner's liberty interest in remaining released on conditions is reduced.

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

Petitioner's release on OSUP was always subject to many conditions, including that he abstains from criminal activity. Accordingly, Petitioner cannot now claim that Federal Respondents promised him ongoing, limitless freedom from detention.

2. The existing procedures for OSUP revocation are constitutionally sufficient and Petitioner's detention does not violate ICE's regulations.

Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation of Petitioner's liberty here is minimal, and ICE has complied with all procedural safeguards in this case. Petitioner claims that the agency failed to give him both notice and an opportunity to be heard regarding his OSUP revocation. This is factually inaccurate.

[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.

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As outlined above, Congress established a clear statutory framework in 8 C.F.R. § 241.13(i) that sets forth the requirements and process for affecting an OSUP revocation. When an alien has violated any condition of their release, as Petitioner did many times over in committing numerous criminal offenses, or ICE determines that there is a "significant likelihood" an alien can be removed from the United States within the "reasonably foreseeable future," ICE is clearly permitted to revoke the OSUP and take the alien into custody; nothing else is required for revocation under these circumstances. 8 C.F.R. §§ 241.13(i)(1) & (2); *see also Nizar Esmail v. Noem*, No. 2:25-cv-08325, 2025 WL 3030590, at *2 (C.D. Cal. Sept. 12, 2025).[3]

Section 241.13(i)(3) further outlines OSUP revocation procedures and provides that "upon revocation," i.e., not before revocation, "the alien will be notified of the reasons for the revocation" and to conduct an "initial interview promptly after his or return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(3). These are precisely the procedures ICE followed when the agency revoked Petitioner's OSUP.

Here, ICE properly took custody of Petitioner based on its determination that Petitioner violated the conditions of his release. Upon revocation, ICE provided Petitioner with written notice of the specific reasons for its determination, which included a list of Petitioner's many violations. *Id.* That same day, an ICE Officer conducted an informal interview with Petitioner, giving him an opportunity to respond to ICE's determination. Accordingly, Petitioner's unevidenced contentions that he was detained without cause, notice, and an opportunity to respond are simply incorrect. In revoking Petitioner's OSUP, ICE adhered to the requirements

[3]While ICE may also revoke an OSUP as an act of discretion if revocation is in the public interest, pursuant to 8 C.F.R. § 241.4(l)(2), this is not what ICE has chosen to do in this case.

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outline in 8 C.F.R. § 241.13(i), consistent with foundational principals of procedural due process. *Mathews*, 424 U.S. at 333.

3. The Government has a strong interest in returning aliens to custody who violate conditions of release.

Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews* test "must account for the heightened government interest in the immigration detention context." *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court's 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). The government likewise has an interest in enforcing compliance with its orders of release and returning individuals to custody who violate their terms. This is especially the case when such violations involve putting public safety at risk —such as the case with Petitioner's long history of repeated criminal activity.

In sum, the three *Mathews* factors demonstrate that Petitioner's detention comports with procedural due process and that ICE adhered to its own regulations in revoking Petitioner's OSUP.

C. 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 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

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entered in that case is both precedent and the result is binding on Petitioner here by virtue of his 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.").

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

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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.").

V. CONCLUSION

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

Dated: January 14, 2026

Respectfully submitted,

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I certify that this memorandum contains 4,648 words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers.

I further certify on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

-0 –

I further certify on this date, I arranged for service of the foregoing on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, addressed as follows:

Luis Sanchez-Alfonso, *Pro Se* Petitioner
A#:XX-XX0-094
NW Detention Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

DATED this 14th day of January, 2026.

s/ Joseph A. Fonseca
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