

District Judge James L. Robart

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

DORIS ELIZABETH MORAN,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02755-JLR

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
January 26, 2026

I. INTRODUCTION

This Court should deny Petitioner Doris Elizabeth Moran's Petition for Writ of Habeas Corpus. Dkt. No. 5 ("Pet."). Petitioner is a noncitizen who is subject to an administratively final order of removal. U.S. Immigration and Customs Enforcement ("ICE") lawfully detains her pursuant to Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner challenges her approximate 7-month post-order detention at the Northwest ICE Processing Center ("NWIPC") as unconstitutional and unlawful while she awaits removal from

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

1 the United States. However, Petitioner has failed to demonstrate that her continued immigration
2 detention has become indefinite or unconstitutional. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

3 Petitioner additionally requests this Court to enjoin the government from removing
4 Petitioner “to any third country without notice and meaningful opportunity to respond in
5 compliance with the statute and due process in reopened proceedings.” Pet., Prayer for Relief. As
6 described below, ICE has notified Petitioner of its intent to remove Petitioner to Mexico. Because
7 Petitioner has claimed fear of removal to Mexico, ICE will not remove Petitioner to Mexico until
8 U.S. Citizenship and Immigration Services (“USCIS”) has conducted a fear screening and then
9 only if USCIS determines that she does not have a reasonable fear of removal to Mexico. If
10 Petitioner wishes to reopen her removal proceedings herself, nothing prevents her from moving to
11 do so. 8 C.F.R. § 1003.23(b)(4)(i). Furthermore, U.S. Department of Homeland Security’s
12 (“DHS”) policy addresses protections concerning third country removals, and to the extent that
13 Petitioner seeks additional process, Petitioner should be required to seek that relief as a plaintiff
14 class member in *D.V.D. v. U.S. Dep’t of Homeland Sec.*, CV 25-10676-BEM, 2025 WL 942948
15 (D. Mass. Mar. 28, 2025).

16 II. BACKGROUND

17 A. Legal Background

18 1. Detention Authority

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

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 alien from the United States.” *Id.* To ensure a noncitizen’s presence for removal
4 and to protect the community from dangerous noncitizens while removal is being effectuated,
5 Congress mandated detention. 8 U.S.C. § 1231(a)(2). During the removal period, ICE² is charged
6 with attempting to effect removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1).

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

11 An alien ordered removed who is inadmissible under section 1182, removable
12 under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been
13 determined by the [Secretary of Homeland Security] to be a risk to the community
14 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
15 paragraph (3).

16 8 U.S.C. § 1231(a)(6) (emphasis added). Although there is no statutory time limit on detention
17 pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only
18 “for a period reasonably necessary to bring about that [noncitizen’s] removal from the United
19 States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six months as a
20 presumptively reasonable time to bring about a noncitizen’s removal. *Id.*, at 701.

21 In this case, Petitioner is the subject of an order of removal that became final on June 16, 2025.
22 Accordingly, the removal period expired on September 14, 2025. 8 U.S.C. § 1231(a)(1)(B)(ii).
23 The “presumptively reasonable” six-month period recently expired on December 16, 2025.

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 *Zadvydas*, 533 U.S. at 701. Petitioner commenced this habeas action on December 31, 2025. Dkt.
2 No. 1.

3 **2. Third Country Removal**

4 When the government seeks to remove an individual, it may do so through removal
5 proceedings involving an evidentiary hearing before an immigration judge. 8 U.S.C. § 1229a. In
6 removal proceedings, an immigration judge determines whether the individual may be removed
7 from the United States and designates a country or countries to which they will be removed, subject
8 to DHS's statutory authority under 8 U.S.C. § 1231(b)(2). *Id.*; 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R.
9 § 1240.10(f). The INA sets out the process for determining the country of removal.

10 First, the alien may select a country. 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). If the
11 alien declines, the immigration judge will designate a country and may also designate alternative
12 countries. 8 U.S.C. §§ 1231(b)(2)(C), (D); 8 C.F.R. § 1240.10(f). In selecting an alternative
13 country of removal, the immigration judge must first select the "country of which the alien is a
14 subject, national, or citizen[.]" 8 U.S.C. § 1231(b)(2)(D). If removal to that country is impossible,
15 the immigration judge may remove the alien to "any of the following countries" listed in 8 U.S.C.
16 § 1231(b)(2)(E):

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

1 Finally, Section 1231(b)(2)(E)(vii) provides that “[i]f impracticable, inadvisable, or
2 impossible to remove the alien to each country” described above, the statute permits removal to
3 any “country whose government will accept the” noncitizen. 8 U.S.C. § 1231(b)(2)(E)(vii).

4 The government is prohibited from removing a person to a third country where they may
5 be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. §
6 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the government cannot remove a
7 person to a country where they would be tortured, a form of protection known as protection under
8 the Convention Against Torture (“CAT”). *See* Foreign Affairs Reform and Restructuring Act of
9 1998 (FARRA), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. §
10 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. Withholding of removal and
11 CAT protection are mandatory, but “only restrict *where* the Government may remove a noncitizen
12 to, not *whether* the noncitizen is subject to removal.” *Kumar v. Wamsley*, No. C25-2055-KKE,
13 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). “Thus, even if the immigration judge
14 grants such protection, the removal order remains valid and enforceable, albeit not to the identified
15 country or countries of risk.” *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson*,
16 594 U.S. at 536; *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004).

17 3. D.V.D. v. Dep’t of Homeland Security

18 In March 2025, three plaintiffs instituted a putative class action suit challenging their third
19 country removals in the District of Massachusetts. *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No.
20 25-cv-10676, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025), *appeal dismissed*, No. 25-1311,
21 2025 WL 2720812 (1st Cir. June 30, 2025). On March 28, 2025, the district court entered a
22 temporary restraining order enjoining DHS and others from “[r]emoving any individual subject to
23 a final order of removal from the United States to a third country, *i.e.*, a country other than the
24

1 country designated for removal in immigration proceedings” unless certain conditions were met.
2 *Id.*

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

24 //

1 *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676, 2025 WL 1453640, at *1 (D. Mass. May
 2 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep't of Homeland Sec.*, 786 F. Supp.
 3 3d 223 (D. Mass. 2025). The *D.V.D.* court indicated that the Order applied “to the Defendants,
 4 including the Department of Homeland Security, as well as their officers, agents, servants,
 5 employees, attorneys, any person acting in concert, and any person with notice of the Preliminary
 6 Injunction.” *Id.*

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

16 **4. DHS Policy on Third-Country Removals**

17 On March 30, 2025, and then later, on July 9, 2025, DHS issued a guidance regarding third
 18 country removals. See U.S. Department of Homeland Security, “Guidance Regarding Third
 19 Country Removals,” Kristi Noem, March 30, 2025,
 20 available at [https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.2](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1.1.pdf)
 21 [82404.43.1.1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404.43.1.1.pdf) (last visited January 14, 2026) (“DHS Memo”); U.S. Immigration and Customs
 22 Enforcement, “Third Country Removals Following the Supreme Court’s Order in *Department of*
 23 *Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025),” Todd M. Lyons, July 9, 2025,
 24 available

1 at <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.19>
2 [0.1.pdf](#) (last visited January 14, 2026) (hereinafter “July 9 Memo”); *see also* *Kumar*, 2025 WL
3 3204724, at *2-3 (describing contents of these memos and the distinction between the two).

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

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

21 **B. Petitioner Doris Elizabeth Moran**

22 Petitioner, a citizen of El Salvador, entered the United States without inspection or parole
23 at an unknown time and at an unknown place. Pet., at 5; Bloom Decl., ¶ 3; Lambert Decl., Ex. A,
24 Notice to Appear. ICE detained Petitioner on August 6, 2024, and she was placed in removal

proceedings. Bloom Decl., ¶ 4; Lambert Decl., Ex. B, Form I-213; Ex. C, Warrant for Arrest; Ex. D, Notice of Custody Determination; Ex. A.

On June 16, 2025, an immigration judge ordered Petitioner removed to El Salvador but granted deferral of removal to El Salvador under CAT (8 C.F.R. § 1208.17). Bloom Decl., ¶ 5; Dkt. No. 5-1, Order of the Immigration Judge; Pet., at 4. Because Petitioner is still eligible for removal to countries other than El Salvador, ICE began seeking a third country to accept Petitioner for removal. Bloom Decl., ¶¶ 6-11. ICE served a notice to Petitioner of the agency's intent to remove her to Mexico in June and December 2025. Bloom Decl., ¶¶ 9, 13; Lambert Decl., Ex. E. Petitioner has expressed fear of removal to Mexico. Bloom Decl., ¶¶ 9, 13. Pursuant to DHS policy, Petitioner has been referred to USCIS for a reasonable fear screening. Bloom Decl., ¶ 14. ICE will not remove Petitioner to Mexico until USCIS has conducted its fear screening and then only if USCIS determines that Petitioner does not have a reasonable fear of removal to Mexico. *Id.*

On September 22, 2025, ICE issued a decision to continue Petitioner's detention because she had not demonstrated that, if released, she would not pose a significant danger to the community or a significant risk of flight. Lambert Decl., Ex. F, Decision to Continue Detention. A post order custody review was held on October 1, 2025. Bloom Decl., ¶ 12.

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. Allopah 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

1 habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of
2 the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v.*
3 *Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

4 IV. ARGUMENT

5 A. An alien's interest in liberty does not raise a serious constitutional question until her 6 detention has become indefinite or permanent.

7 Petitioner cannot demonstrate that her detention has become "indefinite" or
8 unconstitutional. In *Zadvydas*, the Supreme Court found that post-order detention could
9 potentially become indefinite as authorized under the open-ended terms of Section 1231(a)(6).
10 Finding the possibility of indefinite detention troublesome, the Supreme Court clarified that there
11 is a point at which Congress's interest in detaining an alien to facilitate her removal may eventually
12 give way to the alien's liberty interest. *Zadvydas*, 533 at 690 ("A statute permitting indefinite
13 detention of an alien would raise a serious constitutional problem.").

14 The Supreme Court in *Zadvydas* recognized that as detention becomes prolonged, an alien's liberty
15 interest grows and may eventually outweigh Congress's interest in detaining an alien to facilitate
16 his removal. The six-month period established in *Zadvydas* reflects the earliest moment at which
17 these conflicting interests might raise serious constitutional issues. *See Zadvydas*, 533 U.S. at 701.
18 As the length of detention grows, a sliding scale of burdens is applied to assess the continuing
19 lawfulness of an alien's post-order detention. *Id.* (stating that "for detention to remain reasonable,
20 as the period of post-removal confinement grows, what counts as the 'reasonably foreseeable
21 future' conversely would have to shrink"). But as the Supreme Court has noted, the six-month
22 presumption "does not mean that every alien not removed must be released after six months. To
23 the contrary, an alien may be held in confinement until it has been determined that there is no
24 significant likelihood of removal in the reasonably foreseeable future." *Id.*

1 Here, Petitioner's current 7-month detention is neither indefinite nor permanent. The fact that
2 Petitioner does not yet have a specific date of anticipated removal does not make his detention
3 indefinite. *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008). While the grant of deferral of
4 removal prevents Petitioner's removal to El Salvador, she may be removed to a third country. ICE
5 has been actively pursuing a third country removal. In December, ICE provided Petitioner with
6 notice of its intent to remove her to Mexico. She has claimed fear of removal to Mexico.
7 Depending on USCIS's determination of whether her claim of fear is reasonable, Petitioner may
8 be removed to Mexico or a different third country.

9 Accordingly, Petitioner's detention has not become "indefinite," and this Court should not order
10 that she be released.

11 **B. Petitioner's claim of fear of removal to a third country is already addressed by**
12 **existing DHS policy**

13 Petitioner claims that any third country removal requires meaningful notice to the alien and
14 an opportunity to respond to such removal in reopened removal proceedings. Pet., at 18-19. But
15 DHS policy already provides the process Petitioner requests. For instance, ICE has notified
16 Petitioner of her intended third country removal to Mexico and has afforded Petitioner to the
17 opportunity to express fear of removal to that country, which she has done. As a result, Petitioner
18 has been referred to USCIS for a reasonable fear interview to determine whether it is more likely
19 than not that Petitioner would be persecuted or tortured if removed to that country. If Petitioner's
20 fear claim is found to be credible, ICE may seek third country removal to another third country.
21 In that scenario, ICE will again provide Petitioner with notice of the intention to remove her to that
22 country, and she will be able to assert a claim of fear to that country. Thus, the main protection
23 Petitioner seeks – notice and opportunity to be heard – is already addressed by existing DHS
24 policy. While this policy does not require that proceedings be reopened automatically as her

1 request for relief seeks, she has the power to move to reopen her removal proceedings on her own.
2 *See* 8 C.F.R. § 1003.23(b)(4)(i). Thus far, she has not chosen to do so even though she has been
3 notified of an intended third country removal.

4 Accordingly, DHS policy provides Petitioner with notice and opportunity to be heard
5 concerning fear of removal to a third country.

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

8 The relief Petitioner seeks here is the same relief at issue in *D.V.D.* Because Petitioner is
9 a member of the certified *D.V.D.* class and seeks the same injunctive relief at issue there, principles
10 of comity and docket control counsel against parallel litigation of identical claims. As a member
11 of the plaintiff class in *D.V.D.*, Petitioner is bound by the proceedings in that case the same as all
12 other class members. The plaintiff class in *D.V.D.* sought an injunction precluding their removal
13 to a third country unless they were first afforded essentially the same process that Petitioner asks
14 the Court to order here. The Supreme Court's stay of the preliminary injunction entered in that
15 case is both precedent and the result is binding on Petitioner here by virtue of her status as a
16 member of the *D.V.D.* plaintiff class.

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

1 This is also the rule in this Circuit. A district court may properly dismiss an individual
2 complaint where the plaintiff is a member in a class action, to the extent the individual action
3 duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d 1130,
4 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)). Such a
5 dismissal is within the court's discretion based on its inherent power to control its own docket.
6 *Crawford*, 599 F.2d at 893. But it is "imperative to avoid concurrent litigation in more than one
7 forum whenever consistent with the rights of the parties." *Id.*; see *Frost v. Symington*, 197 F.3d
8 348, 359 (9th Cir. 1999) ("To the extent that a class action involving the same issues raised by
9 [plaintiff] is currently pending . . . [he] may have to bring all of his related claims for equitable
10 relief . . . through . . . class counsel.").

11 This Court should decline to exercise jurisdiction over Petitioner's third country removal
12 claim as a matter of comity because the District of Massachusetts has certified a class action that
13 includes the same claim Petitioner is pursuing here. *Pacesetter Systems, Inc. v. Medtronic, Inc.*,
14 678 F.2d 93, 94-95 (9th Cir. 1982) ("There is a generally recognized doctrine of federal comity
15 which permits a district court to decline jurisdiction over an action when a complaint involving
16 the same parties and issues has already been filed in another district.").

17 **D. Petitioner's punitive banishment argument does not demonstrate that DHS third**
18 **country removal policy is unconstitutional.**

19 Petitioner's "punitive third country banishment" argument fails because it lacks any factual
20 basis demonstrating that the third-country removal policy is unconstitutional either on its face or
21 as applied to the facts here. Pet., 19-20. First, Petitioner cannot meet the heavy burden required
22 for a facial challenge. A facial challenge demands a showing that a law "is invalid in toto – and
23 therefore incapable of any valid application." *Vill. of Hoffman Estates v. Flipside, Hoffman*
24 *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.

Second, Petitioner pleads no facts supporting an as-applied claim. Petitioner does not allege which third country she fears removal to because of its punitive nature, what harm she personally faces, or any circumstances that would make removal punitive in her case. A claim resting on speculative and unsupported injury does not satisfy Article III’s case-or-controversy requirement. *Lewis v. Cont’l Bank Corp.*, 494 U.S. at 477. Without factual allegations establishing a realistic danger of punitive treatment, Petitioner’s theory remains purely conjectural and nonjusticiable. Therefore, Petitioner’s “punitive” third country removal claim fails.

V. CONCLUSION

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

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1 DATED this 20th day of January, 2026.

2 Respectfully submitted,

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15 *Attorneys for Federal Respondents*

16 *I certify that this memorandum contains 4,183*
17 *words, in compliance with the Local Civil*
18 *Rules.*