

District Judge Tiffany M. Cartwright

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

STANISLAV RODRIGUEZ-FERNANDEZ,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:26-cv-00170-TMC

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
February 9, 2026.

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Stanislav Rodriguez-Fernandez, a noncitizen subject to an administratively final order of removal, pursuant to Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner brings this habeas litigation pursuant to 28 U.S.C. § 2241 to challenge the lawfulness of his immigration detention.

Petitioner was ordered removed to Cuba in 2010. ICE placed Petitioner on an ("OSUP") in 2010. Petitioner's OSUP was revoked by ICE in 2025 because the agency believes that

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

Petitioner can now be removed. ICE intends to remove Petitioner to Mexico. Petitioner has not expressed fear of removal to Mexico. Instead, he refuses to go anywhere except Cuba. See Dkt. 5 Petition ("Pet.") at 6-8.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Detention Authorities and Removal Procedures

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 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and, relevant here, "post-order" (meaning after the entry of a final order of removal). *Compare* 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 has mandated detention while removal is being effectuated:

During the removal period, the [Secretary of Homeland Security]² shall detain the [noncitizen]. Under no circumstance during the removal period shall the [Secretary] release [a noncitizen] who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

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² Although 8 U.S.C. § 1231(a)(2) refers to the "Attorney General" as having responsibility for detaining noncitizens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this authority to the Secretary of the Department of Homeland Security ("DHS"), of which ICE is a component. *See also* 6 U.S.C. § 251.

8 U.S.C. § 1231(a)(2). During the removal period, ICE³ is charged with attempting to effect removal of a noncitizen from the United States. 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. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

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

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

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*, 533 U.S. at 689. The Supreme Court has identified six months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.* at 701. The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order detention. *Id.* (stating that “for detention to remain reasonable, as the period of post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink”). Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen’s detention could raise constitutional issues. *Id.*

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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 **B. OSUP and Revocation**

2 Once it is determined that there is no significant likelihood of removal in the reasonably
3 foreseeable future, DHS may release noncitizens on an Order of Supervision (“OSUP”). 8 C.F.R.
4 § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is
5 governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the noncitizen “violates
6 any of the conditions of release,” *id.* §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined “that
7 there is a significant likelihood that the alien may be removed in the reasonably foreseeable
8 future.” *Id.* § 241.13(i)(2). Whether there is a significant likelihood that the alien may be removed
9 in the reasonably foreseeable future is determined by assessing a series of factors, including “the
10 history of the alien's efforts to comply with the order of removal, the history of the Service's
11 efforts to remove aliens to the country in question or to third countries ... and the views of the
12 Department of State regarding the prospects for removal of aliens to the country or countries in
13 question.” *Id.* § 241.13(f). Alternatively, certain designated officials may also revoke an OSUP
14 as an act of discretion when revocation is in the public interest. *Id.* § 241.4(l)(2).

15 Section 241.13(i)(3) provides that upon revocation, the alien “will be notified of the
16 reasons for revocation of his or her release” and will receive an “initial informal interview
17 promptly” after being detained, to “afford the alien an opportunity to respond to the reasons for
18 revocation stated in the notification.” *Id.* § 241.13(i)(3). During such an interview, the noncitizen
19 “may submit any evidence or information that he or she believes shows there is no significant
20 likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not
21 violated the order of supervision.” *Id.* “The revocation custody review will include an evaluation
22 of any contested facts relevant to the revocation and a determination whether the facts as
23 determined warrant revocation and further denial of release.” *Id.* Then, if the alien’s request for
24

1 release is denied, he or she “may submit a request for review of his or her detention . . . six months
2 after [DHS’s] last denial of release[.]” *Id.* § 241.13(j).

3 **C. 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 (“IJ”). 8 U.S.C. §
6 1229a. In removal proceedings, the IJ determines both whether the individual may be removed
7 from the United States and also the country to which they will be removed. *Id.*; 8 U.S.C. §
8 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). The INA sets out the process for determining the country
9 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
11 the alien declines, the IJ will designate one and may also designate alternative countries. 8 U.S.C.
12 § 1231(b)(2)(C)-(D); 8 C.F.R. § 1240.10(f). In selecting an alternative country of removal, the IJ
13 must first select the “country of which the alien is a subject, national, or citizen[.]” 8 U.S.C. §
14 1231(b)(2)(D). If removal to that country is impossible, the IJ may remove the alien to “any of
15 the following countries” listed in 8 U.S.C. § 1231(b)(2)(E):

- 16 (i) The country from which the alien was admitted to the United States.
17 (ii) The country in which is located the foreign port from which the alien left for the United
18 States or for a foreign territory contiguous to the United States.
19 (iii) A country in which the alien resided before the alien entered the country from which
20 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.

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

1 The government is prohibited from removing a person to a third country where they may
 2 be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. §
 3 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the government cannot remove
 4 a person to a country where they would be tortured, a form of protection known as protection
 5 under the Convention Against Torture (“CAT”). *See* Foreign Affairs Reform and Restructuring
 6 Act of 1998 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8
 7 U.S.C. § 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. Withholding of
 8 removal and CAT protection are mandatory, but “only restrict *where* the Government may remove
 9 a noncitizen to, not *whether* the noncitizen is subject to removal.” *Kumar v. Wamsley*, No. C25-
 10 2055-KKE, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). “Thus, even if the IJ grants
 11 such protection, the removal order remains valid and enforceable, albeit not to the identified
 12 country or countries of risk.” *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson*
 13 *v. Guzman Chavez*, 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir.
 14 2004).

15 If the government has a removal order but no country to which an IJ has authorized
 16 removal, it can remove the noncitizen to a third country, meaning any country not designated on
 17 the removal order. *D.V.D.*, 2025 WL 942948, at *1. It remains the case that the government cannot
 18 remove an alien to any third country where they would face persecution or torture. 8 U.S.C. §
 19 1231(b)(3)(A); 28 C.F.R. § 200.1; 8 C.F.R. §§ 208.16–18, 1208.16–18.

20 **D. *D.V.D. v. Dep’t of Homeland Security***

21 In March 2025, three plaintiffs instituted a putative class action suit challenging their third
 22 country removals in the District of Massachusetts. *D.V.D.*, 2025 WL 942948, at *1. On March
 23 28, 2025, the district court entered a TRO enjoining the DHS and others from “[r]emoving any
 24 individual subject to a final order of removal from the United States to a third country, *i.e.*, a

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

3 On April 18, 2025, the court granted the plaintiffs’ motion for class certification and
4 motion for preliminary injunction. *D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355,
5 394 (D. 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.

16 *Id.*, at 378.

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

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

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

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

Id.

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

E. 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](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1.pdf)
[1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1.pdf) (last visited January 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>.

1 l.pdf (last visited January 14, 2026) (hereinafter “July 9 Memo”); *see also* Kumar, 2025 WL
2 3204724, at *2-3 (describing contents of these memos and the distinction between the two).

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

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

20 **F. Petitioner Stanislav Rodriguez-Fernandez**

21 Petitioner is a native and citizen of Cuba. Declaration of Deportation Officer Kurtis Reed
22 (“Reed Decl.”), ¶ 4. On February 16, 2010, an immigration judge ordered Petitioner removed.
23 Reed Decl., ¶ 10. One week later, ICE released Petitioner on OSUP. Reed Decl., ¶ 13; Declaration
24 of Jordan Steveson (“Steveson Decl.”) Exh. A, OSUP.

1 On May 27, 2025, Petitioner reported to ICE in Miami, which revoked OSUP and detained
2 Petitioner for removal. Reed Decl., ¶ 16. Steveson Decl., Exh. B, I-213; Exh. C, OSUP
3 Revocation. Petitioner was served with a notice that his OSUP was revoked because ICE believed
4 it could remove Petitioner, although it is unclear if there was an informal interview. *Id.*

5 On June 25, 2025, and again on December 23, 2025, ICE served Petitioner with a notice
6 of third country removal to Mexico, both of which Petitioner refused to sign. Reed Decl., ¶¶ 17-
7 18. Mexico has been accepting citizens of Cuba; ICE believes that Mexico will accept Petitioner.
8 Reed Decl., ¶ 19. Petitioner has not claimed fear of removal to Mexico and has not moved to
9 reopen his immigration proceedings. Reed Decl., ¶ 20; Pet. 6-8.

10 III. ARGUMENT

11 A. Petitioner's Administrative Procedure Act claims must be dismissed for lack of 12 Subject Matter Jurisdiction

13 Petitioner seeks to challenge his detention on grounds that violated Sections 706(2)(A),
14 (B) and (C) of the Administrative Procedure Act ("APA"). The Court has no subject matter
15 jurisdiction to hear these claims.

16 Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C.
17 § 704 ("Agency action made reviewable by statute and final agency action *for which there is no*
18 *other adequate remedy in a court* are subject to judicial review.") (emphasis added). Simply put,
19 "federal courts lack jurisdiction over APA challenges whenever Congress has provided another
20 'adequate remedy.'" *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

21 Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial
22 detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See*
23 *Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs'
24 claims necessarily implied the invalidity of the Plaintiffs' confinement and removal under the

1 “Alien Enemies Act” and so had to be brought as habeas corpus claims in the jurisdiction of their
2 confinement). As Justice Kavanaugh stated in his concurring opinion, “[e]specially given the
3 history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704,
4 which states that claims under the APA are not available when there is another ‘adequate remedy
5 in a court,’ I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.”
6 *Id.* at 674; *cf. O’Banion v. Matevosian*, 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that
7 “habeas actions” provide an “adequate remedy” displacing APA review under Section 704); *and*
8 *see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018)
9 (“Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in
10 a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.”).

11 Moreover, to be reviewable under the APA an action must be a “final agency action,”
12 which is to say that it is the “consummation of the agency’s decisionmaking process.” *See Bennett*
13 *v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of executing a
14 removal order is not within that category because it is only an intermediary step in the process.
15 *See Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025). Accordingly,
16 Petitioner’s claims based on alleged APA should be denied.

17 **B. Petitioner is not entitled to a pre-detention hearing in the post-order context**

18 Petitioner’s request for a pre-detention hearing, requiring the government to establish
19 danger or flight risk. Pet., Prayer for Relief, ¶ (d). Petitioner also requests that he only be re-
20 detained if he is removed to Cuba and that he be given the opportunity to self-remove first. Pet.,
21 Prayer for Relief, ¶ (e). Petitioner is subject to a final order of removal. Reed Decl., ¶¶ 10-11.

22 Due process did not require a pre-detention hearing before Petitioner’s arrest. There is a
23 process for revoking OSUP. Congress established a clear statutory framework in 8 C.F.R. §
24 241.13(i) that sets forth the requirements and process for affecting an OSUP revocation, which is

1 the process due to an alien released on OSUP. When an alien has violated any condition of their
2 release, or ICE determines that there is a “significant likelihood” an alien can be removed from
3 the United States within the “reasonably foreseeable future,” ICE is clearly permitted to revoke
4 the OSUP and take the alien into custody; nothing else is required for revocation under these
5 circumstances. *Id.*; § 241.13(i)(1) and (2). This Court should examine ICE’s compliance with the
6 procedures set forth for revocation of OSUP – not create new procedures.

7
8 **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**

9 To the extent Petitioner alleges that he is an individual subject to a final order of removal
10 who fears removal to a third country that was not previously described as an alternative country
11 of removal, Petitioner would undisputedly be a member of the plaintiff class in *D.V.D.* As a
12 member of the plaintiff class in *D.V.D.*, he is bound by the proceedings in that case the same as
13 all other class members. The plaintiff class in *D.V.D.* sought an injunction precluding their
14 removal to a third country unless they were first afforded essentially the same process that
15 Petitioner asks the Court to order here. The Supreme Court’s stay of the preliminary injunction
16 entered in that case is both precedent and the result is binding on Petitioner here by virtue of his
17 status as a member of the *D.V.D.* plaintiff class.

18 Additionally, courts recognize that members of class action lawsuits should not be
19 permitted to bring separate actions where they seek to re-litigate individually issues that were
20 raised in the class action. *See Wynn v. Vilsack*, No. 3:21-cv-514, 2021 WL 7501821, at *3 (M.D.
21 Fla. Dec. 7, 2021) (collecting cases) (“Multiple courts of appeal have approved the practice of
22 staying a case, or dismissing it without prejudice, on the ground that the plaintiff is a member of
23 a parallel class action.”) (internal quotations omitted). This prevents class members from avoiding
24 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 restates his due process challenge and**
18 **does not demonstrate that the policy is unconstitutional**

19 Petitioner's "punitive third country banishment" argument fails because it merely restates
20 his due process objections and lacks any factual basis demonstrating that the third-country
21 removal policy is unconstitutional on its face.

22 First, Petitioner's allegations of punishment rest entirely on the asserted absence of notice
23 and an opportunity to be heard –matters governed by the Due Process Clause. *See id.* This claim
24 is therefore duplicative of his due process argument and does not identify any distinct punitive

1 conduct by the Federal Respondents. Furthermore, he has been given notice of his removal to
2 Mexico and has the ability to raise a fear claim or seek to reopen his removal proceedings.

3 Second, Petitioner cannot meet the heavy burden required for a facial challenge. A facial
4 challenge demands a showing that a law “is invalid in toto –and therefore incapable of any valid
5 application.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5
6 (1982). Such challenges are “strong medicine” and are disfavored because they “often rest on
7 speculation” and risk “premature interpretation of statutes on the basis of factually barebones
8 records.” *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998); *Wash. State Grange*
9 *v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008). Petitioner’s broad assertions that the
10 program imposes punishment on its subjects are precisely the type of speculative allegations that
11 these cases reject.

12 IV. CONCLUSION

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

15 Dated this 3rd day of February, 2026.

16 Respectfully submitted,

17 s/ Jordan C. Steveson

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I certify that this memorandum contains 4,255 words, in compliance with the Local Civil Rules.