District Judge Michelle L. Peterson

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

MEHAWI YOHANNES MEHARI, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Case No. 2:26-cv-00175-MLP FEDERAL RESPONDENTS'[1] RETURN MEMORANDUM Noted for Consideration: February 9, 2026.

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Mehawi Yohannes Mehari, 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 Eritrea or in the alternative to Ethiopia in 2009. ICE placed Petitioner on an ("OSUP") multiple times, most recently in 2018. One of the terms of

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

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

OSUP is that Petitioner is not to commit any crimes. However, Petitioner continues to commit crimes and has criminal convictions as recently as 2025. On October 6, 2025, ICE revoked Petitioner's OSUP due to his criminal convictions. Although Eritrea has previously denied a travel document application, another application is being submitted.

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.

---

[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.

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

8 U.S.C. § 1231(a)(2). During the removal period, ICE[3] 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.*

---

[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.

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

B. OSUP and Revocation

Once it is determined that there is no significant likelihood of removal in the reasonably foreseeable future, DHS may release noncitizens on an Order of Supervision ("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), 241.4(l), and may occur either: (1) if the noncitizen "violates any of the conditions of release," *id.* §§ 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." *Id.* § 241.13(i)(2). Whether there is a significant likelihood that the alien may be removed in the reasonably foreseeable future is determined by assessing a series of factors, including "the history of the alien's efforts to comply with the order of removal, the history of the Service's efforts to remove aliens to the country in question or to third countries ... and the views of the Department of State regarding the prospects for removal of aliens to the country or countries in question." *Id.* § 241.13(f). 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).

Section 241.13(i)(3) provides 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." *Id.* § 241.13(i)(3). During such an interview, the noncitizen "may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision." *Id.* "The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.* Then, if the alien's request for

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

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

C. Third Country Removal

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

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

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

Lastly, 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).

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

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

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

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

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

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

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).

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

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_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.

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

1.pdf (last visited January 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"). July 9 Memo. According to the guidance outlined in the July 9 Memo, if DHS has not received diplomatic reassurances from the designated country, DHS will first inform the individual that DHS seeks removal to that country. *Id.*, at 2. If the individual expresses that they are afraid of being removed to that country, DHS will refer them to the U.S. Citizenship and Immigration Services ("USCIS") for a reasonable fear interview, to screen that person for protection against removal to that country. *Id.*

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

F. Petitioner Mehawi Yohannes Mehari

Petitioner was born in Ethiopia but is a citizen of Eritrea. Declaration of Jordan C. Steveson ("Steveson Decl."), Exh. A, 2009 I-213; Exh B, NTA with Amendments. He was previously admitted to the United States as a lawful permanent resident. *Id.* In 2009, Petitioner

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

was charged with removal from the United States for violation of 8 U.S.C §§ 1227(a)(2)(A)(iii) by Notice to Appear, with subsequent amendments. Steveson Decl., Exh. B, NTA with Amendments.

On July 22, 2009, Petitioner was ordered removed from the United States to Eritrea, with Ethiopia listed in the alternative. Steveson Decl., Exh. C, IJ Order. Petitioner was released on OSUP on October 28, 2009. Declaration of Deportation Officer Wendy Chandler ("Chandler Decl.") ¶ 8. Petitioner's OSUP has been revoked multiple times due to criminal activity and one instance where reported to an ICE office and requested that ICE remove him. Chandler Decl., ¶¶ 9-11; Steveson Decl., Exh. D, 2018 I-213. ICE has not been successful in securing a travel document to Eritrea or Ethiopia in the past. Chandler Decl., ¶¶ 7, 11.

Petitioner's most recent placement on OSUP was on September 19, 2018. Steveson Decl., Exh. E, OSUP. This included a condition that Petitioner not commit any crimes. *Id.* Petitioner accrued several criminal convictions after his release on OSUP in 2018. Steveson Decl., Exh. F, 2025 I-213. On October 6, 2025, ICE revoked Petitioner's OSUP related to several listed convictions. Steveson Decl., Exh. G, OSUP Revocation. That same date, ICE informally interviewed Petitioner, allowing him the opportunity to give a response on the reasons for OSUP revocation. *Id.* In October and December 2025 Petitioner refused to fill out a travel document application to Eritrea. Chandler Decl., ¶ 16. ICE is working on a travel document application to Eritrea without the cooperation of Petitioner. Chandler Decl., ¶17.

//

//

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

III. ARGUMENT

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

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

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

Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs' claims necessarily implied the invalidity of the Plaintiffs' confinement and removal under the "Alien Enemies Act" and so had to be brought as habeas corpus claims in the jurisdiction of their confinement). As Justice Kavanaugh stated in his concurring opinion, "[e]specially given the history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 674; *cf. O'Banion v. Matevousian,* 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that "habeas actions" provide an "adequate remedy" displacing APA review under Section 704); *and see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018)

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

("Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.").

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

B. Petitioner's OSUP revocation comported with due process and was consistent with its own procedural 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.

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

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

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

on OSUP.[4] 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*, 53 F.4th at 1206 (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). 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 not commit any crimes. Petitioner was notified that he could be re-detained if he violated these terms. Steveson Decl., Exh. E, OSUP. Accordingly, Petitioner cannot now claim that the 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 procedural safeguards in this case. Petitioner presents no evidence for his claims that the agency failed to give him both notice and an opportunity to be heard regarding his OSUP revocation.

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

[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.

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

is clearly permitted to revoke the OSUP and take the alien into custody; nothing else is required for revocation under these circumstances. *Id.* § 241.13(i)(1) and (2); *see also Nizar Esmail v. Noem*, et al., 2025 WL 3030590, at *2 (C.D. Cal. Sept. 12, 2025).[5] Additionally, when ICE's revocation is based on an alien's violation of a condition of release, the statute does not require that only certain officials may revoke the OSUP. *See generally* 8 C.F.R. § 241.13(i); *see also Nizar Esmail*, 2025 WL 3030590, at *2, n.3 (distinguishing between Sections 241.4 and 241.13, explaining that "Section 241.13 applies to cases where a petitioner is in revocation proceedings, whereas Section 241.4 applies to routine custody reviews for aliens detained after the 90-day removal period.").

8 C.F.R. § 241.13(i)(3) further outlines the 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." *Id.* § 241.13(3).

Here, ICE took custody of Petitioner based on its determination that Petitioner violated the conditions of his release through his repeated criminal activity. Steveson Decl., Exh. F-G. Thus, the risk of a constitutionally significant deprivation of Petitioner's liberty here is minimal because the revocation of his OSUP is based on objective facts that show a clear violation of the terms of release. Upon revocation, ICE provided Petitioner with written notice of the specific reasons for its determination, which included Petitioner's criminal offenses. Steveson Decl., Exh. G. That same day, ICE records reflect that an ICE Officer conducted an informal interview with

[5] 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.

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

Petitioner. *Id.*, Accordingly, Petitioner's fails to meet his burden to demonstrate his unevidenced contentions that he was detained without cause, notice, and an opportunity to respond.

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 not Entitled to a Pre-Detention Hearing in the Post-Order Context

Petitioner's request for a pre-detention hearing, requiring the government to establish danger or flight risk, should be denied. Pet., Prayer for Relief, ¶ (d). Petitioner is subject to a final order of removal. Steveson Decl., Exh. C, IJ Order.

There is already a process for revoking OSUP. 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, which is the process due to an alien released on OSUP. When an alien has violated any condition of their release, or ICE determines that there is a "significant likelihood"

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

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. *Id.* § 241.13(i)(1) and (2). This Court should examine ICE's compliance with the procedures set forth for revocation of OSUP – not create new procedures.

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.

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 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).

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

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 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.

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

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

First, Petitioner's allegations of punishment rest entirely on the asserted absence of notice and an opportunity to be heard –matters governed by the Due Process Clause. *See id.* This claim

UNITED STATES ATTORNEY
1201 PACIFIC AVE.,STE.700
TACOMA,WA 98402
(253)428-3800

is therefore duplicative of his due process argument and does not identify any distinct punitive conduct by the Federal Respondents.

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

IV. CONCLUSION

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

Dated this 3rd day of February, 2026.

Respectfully submitted,

s/ Jordan C. Steveson
JORDAN C. STEVESON, WA #40636
Special Assistant United States Attorney
United States Attorney's Office
Western District of Washington
1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
Phone: 253-428-3802
Fax: 253-428-3826
Email: jordan.steveson@usdoj.gov

Attorney for Federal Respondents

I certify that this memorandum contains 5,365 words, in compliance with the Local Civil Rules.