

The Honorable Robert S. Lasnik  
The Honorable Michelle L. Peterson

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALEJANDRO BALTODANO,

Petitioner,

v.

PAMELA BONDI, Attorney General of the  
United States; KRISTI NOEM, Secretary,  
United States Department of Homeland  
Security; CAMMILLA WAMSLEY, Seattle  
Field Office Director, United States Citizenship  
and Immigration Services; BRUCE SCOTT,  
Warden of Immigration Detention Facility; and  
the UNITED STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT,

Respondents.

Case No. 2:25-cv-01958-RSL-MLP

FEDERAL RESPONDENTS' OPPOSITION  
TO PETITIONER'S MOTION FOR  
PRELIMINARY INJUNCTION

**I. INTRODUCTION**

Petitioner Alejandro Baltodano fails to make a clear showing that he is entitled to the extraordinary remedy of a preliminary injunction granting his immediate release from immigration custody and enjoining the government from pursuing third country removal. Baltodano has failed to establish that he is currently being held in unconstitutionally indefinite detention pursuant to the

1 Supreme Court’s directives in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and is suffering irreparable  
2 harm as a result.

3 Under the *Zadvydas* framework, Baltodano fails to carry his heavy burden to disrupt the  
4 status quo by mandatory injunctive relief requiring the government to immediately release him.  
5 He has been detained during his removal proceedings, and it has been eight months since an  
6 Immigration Judge granted him deferral of removal to his home nation of Nicaragua on March 5,  
7 2025. The government is actively pursuing a third country removal. Baltodano has been served  
8 written notice of the government’s intent to remove him to Honduras and will also be served  
9 written notice of intent to remove him to Mexico. If Baltodano claims fear to any country the  
10 government attempts to remove him to, he may file a motion to reopen his immigration case, and  
11 the government will not attempt to remove him if a motion to reopen is pending.

12 Baltodano suggests that he cannot be removed to any third country in the foreseeable future  
13 and so must be immediately released. But the Supreme Court was clear in *Zadvydas* that there is  
14 no such “automatic release” at six months. Instead, a non-citizen with a final removal order “may  
15 be held in confinement until it has been determined that there is no significant likelihood of  
16 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701.

17 Baltodano has not proven that he is stuck in unremovable limbo. Nor is he. His removal to  
18 third countries is not barred. And he has not established prolonged government inaction; to the  
19 contrary, he appears to be objecting to his being removed too quickly, without sufficient advance  
20 notice to raise objections to any specific third country identified for his removal. Understanding  
21 that Baltodano may object to third countries that the government might identify, the delay inherent  
22 in the extended notice and objection process does not itself establish indefiniteness under the  
23 *Zadvydas* criteria.

1 By law, the government may remove non-citizens with final removal orders to any  
2 “country whose government will accept the alien into that country” when removal to their home  
3 nation would be “impracticable, inadvisable, or impossible.” 8 U.S.C. §§ 1231(b)(1)(C)(iv),  
4 (2)(E)(vii). Baltodano does not establish that his case is radically different than other third country  
5 removals.

6 In sum, Baltodano’s moving papers fail to carry his heavy burden to establish entitlement  
7 to mandatory injunctive relief that disrupts the status quo by requiring his immediate release from  
8 detention pursuant to a final removal order. Also fatal to his request for a preliminary injunction,  
9 he has not demonstrated an irreparable injury. In fact, if his alleged injury was found to be  
10 irreparable, then every habeas claim would satisfy the injury requirement for emergency injunctive  
11 relief. Finally, the balance of equities and public interest tilt against granting a preliminary  
12 injunction.

13 Furthermore, the injunction sought by Baltodano would inappropriately have this Court,  
14 on a time-compressed basis, grant him the ultimate relief that he seeks in his habeas petition  
15 without the requisite showing of facts that clearly favor his position. *See Univ. of Texas v.*  
16 *Camenisch*, 451 U.S. 390, 395 (1981) (“[I]t is generally inappropriate for a federal court at the  
17 preliminary-injunction stage to give a final judgment on the merits”). As the Ninth Circuit has  
18 emphasized, mandatory injunctive relief is “particularly disfavored,” and courts should be  
19 “extremely cautious” before granting it. *Garcia v. Google Inc.*, 786 F.3d 733, 740 (9th Cir. 2015)  
20 (en banc); *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994). Such relief is only  
21 appropriate when “the law and facts clearly favor the moving party,” not merely when there is a  
22 likelihood of success.

23 Finally, the Court may not issue the relief sought by Baltodano because he is a member of  
24 the plaintiff class in *D.V.D. v. Dep’t of Homeland Sec.*, 778 F.Supp.3d 355 (D. Mass. Apr. 18,

1 2025). The plaintiff class in *D.V.D.* sought and received an injunction barring U.S. Immigration  
2 and Customs Enforcement (“ICE”) from removing members of the class to third countries. That  
3 injunction was stayed by two orders of the Supreme Court. Baltodano cannot end-run the Supreme  
4 Court’s stay of an injunction barring his removal to a third country by seeking the same relief in a  
5 different court.

6 Accordingly, Federal Respondents<sup>1</sup> respectfully request that the Court deny Baltodano’s  
7 Motion. This Opposition is supported by the Declaration of Deportation Officer Daniel Strzelczyk  
8 (“Strzelczyk Decl.”) (Dkt. 13) and the Declaration of Kristin B. Johnson (“Johnson Decl.”) and  
9 supporting exhibits.

## 10 II. FACTUAL BACKGROUND

11 Baltodano is a native and citizen of Nicaragua who had previously been ordered removed  
12 from the United States on November 14, 2018, following a determination by an immigration judge  
13 that he was ineligible for most forms of relief due to commission of a particularly serious crime.  
14 Strzelczyk Decl. ¶ 4; Johnson Decl. Exs. A, B. He was thereafter removed on February 6, 2019.  
15 Strzelczyk Decl. ¶ 4. Prior to being ordered removed, he had on several occasions been  
16 encountered by immigration officers and allowed to depart the United States voluntarily. *Id.*

17 Baltodano re-entered the United States without inspection or parole at an unknown location  
18 on an unknown date but is believed to have entered on or about January 7, 2024. Strzelczyk Decl.  
19 ¶ 5; Johnson Decl. Ex. B. He was encountered by a U.S. Border Patrol agent on or about January  
20 8, 2024, and was processed for reinstatement of the prior removal order. Strzelczyk Decl. ¶ 6;  
21 Johnson Decl. Ex. C. Baltodano claimed fear of return to Nicaragua and was held pending a  
22 reasonable fear interview by U.S. Citizenship and Immigration Services (“USCIS”). Strzelczyk  
23

24 <sup>1</sup> Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney’s Office.

1 Decl. ¶ 7; Johnson Decl. Exs. B-D.

2 On March 27, 2024, following a reasonable fear interview, USCIS referred the case to an  
3 immigration judge for withholding only proceedings before the Otay Mesa, California immigration  
4 court. Strzelczyk Decl. ¶ 8. Baltodano's initial hearing in 2024 occurred on April 4, 2024. *Id.* at ¶  
5 9. Because he had been found to be incompetent to represent himself in prior immigration  
6 proceedings, the Immigration Judge reset the case for a competency inquiry on April 24, 2024. *Id.*  
7 On April 24, 2024, the Immigration Judge found that Baltodano was not competent to represent  
8 himself and appointed a Qualified Representative (QR). *Id.* at ¶ 10. Petitioner next appeared in  
9 court on May 22, 2024, and his QR requested a continuance. *Id.*

10 Baltodano next appeared before the immigration court on June 12, 2024, and his case was  
11 reset to July 18, 2024, to allow him to file any applications for relief. *Id.* at ¶ 11. He next appeared  
12 on July 16, 2024, for a bond hearing, where the Immigration Judge found that DHS had shown by  
13 clear and convincing evidence that he is a danger. *Id.* at ¶ 12; Johnson Decl. at Exs. E, F. Neither  
14 party appealed. *Id.*

15 Baltodano next appeared on June 18, 2024, and requested a continuance to gather evidence  
16 on his case. *Id.* at ¶ 13. He next appeared on August 14, 2024, and his case was set for a final  
17 hearing on his applications for relief, to be held on September 19, 2024. *Id.* at ¶ 14. This hearing  
18 was later moved by the immigration court to September 26, 2024. *Id.*

19 Baltodano was transferred to the Northwest ICE Processing Center ("NWIPC") in Tacoma,  
20 Washington on or about September 16, 2024. *Id.* at ¶ 15. Baltodano's case remained with the Otay  
21 Mesa immigration court. *Id.* at ¶ 16. On September 26, 2024, it appears the Otay Mesa immigration  
22 court set the matter over due to video connectivity and mental health problems. *Id.* On October 31,  
23 2024, Petitioner appeared before the Otay Mesa immigration court via video, and the immigration  
24 judge set the case over to another master calendar hearing. *Id.* at ¶ 17. The case was set over again

1 on December 4, 2024. *Id.* On January 15, 2024, Baltodano's case was set for a final hearing on  
2 February 11, 2025. *Id.* at ¶ 18. He filed a motion to continue the case on January 17, 2025, and the  
3 case was continued to February 14, 2025. *Id.* at ¶ 19.

4 On February 14, 2025, the immigration judge found that the court was bound by the prior  
5 determination that Baltodano had committed a particularly serious crime. *Id.* at ¶ 20. The case was  
6 set over for issuance of a decision on Baltodano's applications. *Id.* The Immigration Judge issued  
7 a written decision on March 5, 2025, granting deferral of removal to Nicaragua. *Id.* at ¶ 21; Johnson  
8 Decl. Ex. G. The parties had thirty days to appeal. Strzelczyk Decl. ¶ 21. Neither party filed an  
9 appeal. *Id.*

10 On June 10, 2025, Baltodano filed a motion for bond based on a material change in  
11 circumstances. *Id.* at ¶ 22. The court issued a written decision denying bond on June 27, 2025. *Id.*;  
12 Johnson Decl. at Ex. F. The Immigration Judge found that Baltodano had already been provided  
13 with a bond hearing where DHS proved that he was a danger to the community and he failed to set  
14 forth any materially changed circumstances about the determinative factors that led to that initial  
15 decision, such as his extensive criminal history. Johnson Decl. at Ex. F. Neither party appealed the  
16 Immigration Judge's bond determination. Strzelczyk Decl. ¶ 22.

17 As noted above, the immigration court has twice found Baltodano to be a danger to the  
18 community. His extensive and dangerous criminal history includes the following convictions:

- 19 • 06/30/2016 – Robbery
- 20 • 03/19/2010 – Assault
- 21 • 10/19/2016 – Burglary
- 22 • 09/19/2012 – Vehicle Theft
- 23 • 05/11/2005 – Receive Stolen Property
- 24 • 02/25/2009 – Damage Property
- 02/20/2004 – Dangerous Drugs
- 01/05/2015 – Cruelty Toward Child
- 02/23/2007 – Resisting Officer
- 02/23/2007 – Obstruct Police

- 1 • 02/23/2007 – Obstructing Justice
- 2 • 8/15/2012 – Driving Under Influence Liquor
- 3 • 02/16/2010 – Driving Under Influence Liquor
- 4 • 09/27/2010 – Driving Under Influence Liquor
- 5 • 12/24/2008 – Driving Under Influence Liquor
- 6 • 10/23/2000 – Driving Under Influence Liquor
- 7 • 08/15/2012 – Traffic Offense
- 8 • 02/16/2010 – Traffic Offense
- 9 • 03/19/2010 – Traffic Offense
- 10 • 09/27/2010 – Traffic Offense
- 11 • 02/25/2009 – Property Crimes
- 12 • 03/19/2010 – Battery
- 13 • 01/05/2015 – Domestic Violence
- 14 • 09/27/2010 – Licensing Violation

15 Strzelczyk Decl. ¶ 23; Johnson Decl. Ex. B.

16 Given Baltodano’s extensive and violent criminal history, ICE intends to remove him to a  
17 third country. Strzelczyk Decl. ¶ 23. On October 21, 2025, Baltodano was served written notice of  
18 ERO’s intent to remove him to Honduras. *Id.* at ¶ 24. Baltodano claimed an inability to speak or  
19 communicate in Spanish, and as such was served in English. *Id.* ERO anticipates also serving  
20 Baltodano written notice of intent to remove him to Mexico. *Id.* Baltodano’s QR has previously  
21 indicated to ERO that Baltodano will claim fear to any country ICE attempts to remove him to. *Id.*  
22 at ¶ 25. If he does fear removal to Honduras or Mexico, Baltodano may file a motion to reopen his  
23 immigration case. *Id.* ERO will not attempt to remove him if a motion to reopen is pending. *Id.*

### 24 **III. DETENTION AUTHORITIES AND REMOVAL PROCEDURES**

25 The INA governs the detention and release of noncitizens during and following their  
26 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general  
27 detention periods are generally referred to as “pre-order” (meaning before the entry of a final order  
28 of removal) and, relevant here, “post-order” (meaning after the entry of a final order of removal).  
29 *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order  
30 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 [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for  
4 removal and to protect the community from noncitizens who may present a danger, Congress has  
5 mandated detention while removal is being effectuated:

6 During the removal period, the [Secretary of Homeland Security]<sup>2</sup> shall detain the  
7 [noncitizen]. Under no circumstance during the removal period shall the [Secretary]  
8 release [a noncitizen] who has been found inadmissible under section 1182(a)(2) or  
9 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B)  
10 of this title.

11 8 U.S.C. § 1231(a)(2).

12 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration  
13 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention  
14 and does not place any temporal limit on the length of detention under that provision:

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

21 8 U.S.C. § 1231(a)(6) (emphasis added).

22 During the removal period, ICE<sup>3</sup> is charged with attempting to effect removal of a  
23 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit  
24 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

---

25 <sup>2</sup> 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, of which ICE is a component. *See also* 6 U.S.C.  
§ 251.

26 <sup>3</sup> 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 the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six  
2 months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.* at 701.

3 Here, Baltodano was granted deferral of removal to his home country of Nicaragua on  
4 March 5, 2025. Strzelczyk Decl. ¶ 21. He has been in ICE custody approximately eight months –  
5 just two months more than the “presumptively reasonable” six-month custody period. *Zadvydas*,  
6 533 U.S. at 701.

7 **IV. LEGAL STANDARD**

8 “It frequently is observed that a preliminary injunction is an extraordinary and drastic  
9 remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden  
10 of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal  
11 quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

12 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on  
13 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
14 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter*, 555  
15 U.S. at 20. Alternatively, a plaintiff can show that there are “serious questions going to the merits  
16 and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter*  
17 factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017)  
18 (internal quotation omitted).

19 The purpose of preliminary injunctive relief is to preserve the status quo pending final  
20 judgment, rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v.*  
21 *Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). “A preliminary injunction can take  
22 two forms.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th  
23 Cir. 2009). “A prohibitory injunction prohibits a party from taking action and ‘preserves the status  
24 quo pending a determination of the action on the merits.’” *Id.*, (internal quotation omitted). “A

1 mandatory injunction orders a responsible party to take action.” *Id.* at 879 (internal quotation  
2 omitted). “A mandatory injunction goes well beyond simply maintaining the status quo pendente  
3 lite and is particularly disfavored.” *Id.* (internal quotation omitted). “In general, mandatory  
4 injunctions are not granted unless extreme or very serious damage will result and are not issued in  
5 doubtful cases.” *Id.* (internal quotation omitted). Where a plaintiff seeks mandatory injunctive  
6 relief, “courts should be extremely cautious.” *Stanley*, 13 F.3d at 1319 (internal quotation omitted).  
7 Thus, in a mandatory injunction request, the moving party “must establish that the law and facts  
8 *clearly favor* [his] position, not simply that [he] is likely to succeed.” *Garcia*, 786 F.3d at 740  
9 (emphasis in original).

10 Here, rather than preserving the status quo, Baltodano seeks mandatory injunctive relief in  
11 the form of an order requiring his immediate release and enjoining the government from pursuing  
12 third country removal.

### 13 **V. ARGUMENT**

#### 14 **A. Baltodano fails to establish a likelihood of success on the merits of his *Zadyvdas* 15 claim.**

16 Likelihood of success on the merits is a threshold issue: “[W]hen a plaintiff has failed to  
17 show the likelihood of success on the merits, [the court] need not consider the remaining three  
18 *Winters* elements.” *Garcia*, 786 F.3d at 740 (internal quotation omitted). To succeed on a habeas  
19 petition, Baltodano must show that he is “in custody in violation of the Constitution or laws or  
20 treaties of the United States.” *See* 28 U.S.C. § 2241. And because he is seeking mandatory  
21 injunctive relief, he must demonstrate that the law and facts clearly favor his position. Simply put,  
22 he has failed to prove that he is currently being held in indefinite detention pursuant to *Zadvydas*.

23 *Zadvydas* explained that if after six months of detention pursuant to a final removal order  
24 a detained non-citizen provides “good reason to believe there is no significant likelihood of

1 removal in the reasonably foreseeable future,” the government must respond with some evidence  
2 rebutting that claim:

3 After this 6-month period, once the alien provides good reason to believe that there is no  
4 significant likelihood of removal in the reasonably foreseeable future, the Government  
5 must respond with evidence sufficient to rebut that showing. And for detention to remain  
6 reasonable, as the period of prior postremoval confinement grows, what counts as the  
7 “reasonably foreseeable future” conversely would have to shrink. This 6-month  
presumption, of course, does not mean that every alien not removed must be released after  
six months. To the contrary, an alien may be held in confinement until it has been  
determined that there is no significant likelihood of removal in the reasonably foreseeable  
future.

8 *Zadvydas*, 533 U.S. at 701. Accordingly, the noncitizen “may be held in confinement until it has  
9 been determined that there is no significant likelihood of removal in the reasonably foreseeable  
10 future.” *Id.* As *Zadyvdas* counsels, relatively little evidence is initially required, but as the  
11 detention period continues to increase over time, the weight of the required evidentiary showing  
12 increases.

13 The Ninth Circuit has explained that the *Zadvydas* language requires an alien to show that  
14 “he is stuck in a ‘removable-but-unremovable limbo,’ as the petitioners in *Zadvydas* were[;]” that  
15 is, the alien must show he “is unremovable because the destination country will not accept him or  
16 his removal is barred by our own laws.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir.  
17 2008).

18 There is a significant likelihood that Baltodano will be removed in the reasonably  
19 foreseeable future. He was granted deferment of removal to Nicaragua, his home country on March  
20 5, 2025. Strzelczyk Decl. ¶ 21; Johnson Decl. Ex. G. He has been found to have committed a  
21 particularly serious crime and indeed has an extensive and dangerous criminal history. Strzelczyk  
22 Decl. ¶ 23; Johnson Decl. Ex. B. The government is now taking steps to remove him to a third  
23 country, and such removals are authorized pursuant to 8 U.S.C. § 1231(b)(2)(E)(vii), which  
24 permits (subject to notice requirements) removing a noncitizen to any “country whose government

1 will accept the alien into that country.”

2 As discussed above, given Baltodano’s extensive and violent criminal history, ICE intends  
3 to remove him to a third country. Strzelczyk Decl. at ¶ 23. On October 21, 2025, Baltodano was  
4 served written notice of ERO’s intent to remove him to Honduras. *Id.* at ¶ 24. Baltodano claimed  
5 an inability to speak or communicate in Spanish, and as such was served in English. *Id.* ERO  
6 anticipates also serving Baltodano written notice of intent to remove him to Mexico. *Id.*

7 Baltodano’s QR has previously indicated to ERO that Baltodano will claim fear to any  
8 country ICE attempts to remove him to. *Id.* at ¶ 25. If he does fear removal to Honduras or Mexico,  
9 Baltodano may file a motion to reopen his immigration case. *Id.* ERO will not attempt to remove  
10 him if a motion to reopen is pending. *Id.*

11 Thus, it is likely that the government will be able to remove Baltodano to a third country  
12 in the reasonably foreseeable future and his detention is not indefinite. He is also receiving notice  
13 of the third country removal efforts and can seek administrative relief.

14 Courts have rejected *Zadvydas* claims in circumstances akin to Baltodano’s case here. *See,*  
15 *e.g., Y.T.D. v. Andrews*, 2025 WL 2675760 (E.D. Cal. Sept. 18, 2025) (denying *Zadvydas* TRO  
16 for individual with serious criminal history who could not be removed to his home nation and  
17 claimed indefinite detention because third-country removal was unlikely). Significantly longer  
18 periods have been found insufficient to justify exigent injunctive relief. *See Malkandi v. Mukasey*,  
19 2008 WL 916974, at \*1 (W.D. Wash. Apr. 2, 2008) (Martinez, J.) (denying *Zadvydas* petition  
20 where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Off.*  
21 *Dir.*, 2013 WL 2319402, at \*3 (W.D. Wash. May 28, 2013) (Martinez, J.) (petitioner “failed to  
22 satisfy his burden of showing that there is no significant likelihood of his removal in the reasonably  
23 foreseeable future” where he was detained more than seven months post-final order).

1 The fact that Baltodano does not yet have a specific date of anticipated removal does not  
2 make his detention indefinite either. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008).  
3 A “habeas petitioner’s assertion as to the unforeseeability of removal, supported only by the mere  
4 passage of time, [is] insufficient to meet the petitioner’s burden to demonstrate no significant  
5 likelihood of removal under the Supreme Court’s holding in *Zadvydas*.” *Muthalib v. Kelly*, 2017  
6 WL 11696616, at \*3 (C.D. Cal. Apr. 19, 2017) (collecting cases).

7 **B. Baltodano fails to establish a likelihood of success on his third country**  
8 **removal claims.**

9 The government has the legal authority to remove Baltodano to a third country and his  
10 challenges to third country removal will likely fail. First and foremost, ICE is giving Baltodano  
11 adequate notice of the intended third country removal and he has the opportunity to pursue  
12 administrative remedies to challenge any removal. Contrary to his assertions, Baltodano has a  
13 meaningful opportunity to assert a fear-based claim for withholding of removal.

14 Given Baltodano’s extensive and violent criminal history, ICE intends to remove him to a  
15 third country. Strzelczyk Decl. ¶ 23. On October 21, 2025, Baltodano was served written notice of  
16 ERO’s intent to remove him to Honduras. *Id.* at ¶ 24. Baltodano claimed an inability to speak or  
17 communicate in Spanish, and as such was served in English. *Id.* ERO anticipates also serving  
18 Baltodano written notice of intent to remove him to Mexico. *Id.* Baltodano’s QR has previously  
19 indicated to ERO that Baltodano will claim fear to any country ICE attempts to remove him to. *Id.*  
20 at ¶ 25. If he does fear removal to Honduras or Mexico, Baltodano may file a motion to reopen his  
21 immigration case. *Id.* ERO will not attempt to remove him if a motion to reopen is pending. *Id.*

22 Therefore, Baltodano is receiving notice and an opportunity to be heard before any  
23 potential third country removal. He has a meaningful opportunity to assert a fear-based claim for  
24 withholding of removal.

1 Second, Baltodano is not entitled to the relief he seeks because he is a member of the non-  
2 opt out *D.V.D.* certified class. He is an individual subject to a final order of removal who DHS will  
3 deport to a country (a) not previously designated as the country or alternative country of removal,  
4 and (b) not identified in writing in the prior proceedings as a country to which the individual would  
5 be removed. *D.V.D.*, 778 F.Supp.3d at 378.

6 Because Baltodano is bound as a member of the non-opt out class of individuals governed  
7 by the *D.V.D.* nationwide preliminary injunction, which the Supreme Court has now stayed finding  
8 that the government is likely to prevail on the merits of its appeal, this Court should deny the  
9 motion for a preliminary injunction. Simply put, Baltodano is not entitled to another bite at the  
10 apple before this Court to obtain relief that has already been stayed by the Supreme Court.

11 As explained above, the District of Massachusetts entered a preliminary injunction  
12 prescribing the process to which *D.V.D.* class members were entitled before removal to a third  
13 country and certified a non-opt out class. Baltodano is undisputedly a member of that class. The  
14 Supreme Court stayed the preliminary injunction but left certification of the non-opt out class  
15 intact, signaling that the *D.V.D.* class members would not succeed on the merits of their claims  
16 and the Government would ultimately prevail.

17 First, this Court should avoid providing Baltodano with relief that eventually may conflict  
18 with the relief, if any, ultimately provided to the *D.V.D.* class. Baltodano's habeas petition, seeking  
19 an order preventing his removal to a third country challenges how Respondents should implement  
20 a decision to remove him to a third country should that occur. Dkt. 1. That is precisely the  
21 challenge brought by the *D.V.D.* class. This Court, therefore, should not wade into Baltodano's  
22 claims because such claims are being actively litigated in the *D.V.D.* class action, which is  
23 currently before the First Circuit. To do otherwise would cut against the entire purpose of a Rule  
24 23(b)(2) non-opt out class action and risk an order that will conflict with not only the relief, if any,

1 eventually provided to the *D.V.D.* class, but also the Supreme Court’s rejection of the relief initially  
2 temporarily provided to class members by the District of Massachusetts.

3 Second, this Court should avoid providing Baltodano with relief that is likely to be rejected  
4 and overturned by the Supreme Court. The District of Massachusetts attempted to set parameters  
5 around third country removals, but the Supreme Court, in staying the *D.V.D.* preliminary  
6 injunction, effectively rejected those parameters and signaled that ultimately the class members  
7 would not succeed on the merits of the case and the Government would prevail. The Supreme  
8 Court confirmed that its stay applied to individual class members by granting the government’s  
9 motion for clarification on July 3, 2025. Baltodano cannot now make an end run around the  
10 Supreme Court’s stay in *D.V.D.* by seeking relief in this Court. The Supreme Court has already  
11 found that Respondents are likely to succeed on the legal arguments presented in response to the  
12 instant habeas petition. Limiting Respondents’ ability to remove Baltodano to a third country  
13 would therefore be directly contrary to the Supreme Court’s decision to stay the preliminary  
14 injunction in *D.V.D.*

15 Additionally, courts recognize that members of class action lawsuits should not be  
16 permitted to bring separate actions that litigate issues raised in the class action. *See Wynn v.*  
17 *Vilsack*, 2021 WL 7501821, at \*3 (M.D. Fla. Dec. 7, 2021) (collecting cases) (“Multiple courts of  
18 appeal have approved the practice of staying a case, or dismissing it without prejudice, on the  
19 ground that the plaintiff is a member of a parallel class action.”) (internal quotations omitted). This  
20 prevents class members from avoiding the binding results of the class action. *Goff v. Menke*, 672  
21 F.2d 702, 704 (8th Cir. 1982).

22 This is also the rule in this Circuit. A district court may properly dismiss an individual  
23 complaint where the plaintiff is a member in a class action, to the extent the individual action  
24 duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d 1130,

1 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)). Such a  
2 dismissal is up to the court’s discretion based on its inherent power to control its own docket.  
3 *Crawford*, 599 F.2d at 893. But it is “imperative to avoid concurrent litigation in more than one  
4 forum whenever consistent with the rights of the parties.” *Id.*; see *Frost v. Symington*, 197 F.3d  
5 348, 359 (9th Cir. 1999) (“To the extent that a class action involving the same issues raised by  
6 [plaintiff] is currently pending . . . [he] may have to bring all of this related claims for equitable  
7 relief . . . through . . . class counsel.”).

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

14 Consequently, in light of *D.V.D.*, federal district courts in other jurisdictions have denied  
15 claimants the same relief that Baltodano is seeking here. See *Ghamelian v. Baker*, 2025 WL  
16 2049981, at \*3 (D. Md. July 22, 2025), *reconsideration denied*, 2025 WL 2074155 (D. Md. July  
17 23, 2025) (“In light of Plaintiff’s apparent class membership, claims relating to his potential third  
18 country removal are more appropriately resolved in the *D.V.D.* case and will not be addressed in  
19 this Court.”) (footnote omitted); *Tanha v. Warden*, 2025 WL 2062181, at \*5 (D. Md. July 22,  
20 2025) (matters pertaining to Petitioner’s removal destination are more properly addressed by the  
21 District of Massachusetts); *but see Nguyen v. Scott*, 2025 WL 2419288, at \*20-23 (W.D. Wash.  
22 Aug. 21, 2025).

1           **C. Baltodano has not shown he will suffer irreparable harm absent a preliminary**  
2           **injunction.**

3           Baltodano has not demonstrated that he will suffer irreparable injury absent the mandatory  
4 injunctive relief he seeks. “The Ninth Circuit makes clear that a showing of immediate irreparable  
5 harm is essential for prevailing on a temporary restraining order.” *Juarez v. Asher*, 556 F.Supp.3d  
6 1181, 1191 (W.D. Wash. 2021) (citing *Caribbean Marine Co., Inc. v. Bladridge*, 844 F.2d 668,  
7 674 (9th Cir. 1988)).

8           To do so, he must demonstrate “immediate threatened injury.” *Caribbean Marine Services*  
9 *Co., Inc.*, 844 F.2d at 674 (citing *Los Angeles Memorial Coliseum Commission v. National*  
10 *Football League*, 634 F.2d 1197, 1201 (9th Cir.1980)). Merely showing a “possibility” of  
11 irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Moreover, mandatory injunctions are  
12 not granted unless extreme or very serious damage will result. *Marlyn Nutraceuticals, Inc.*, 571  
13 F.3d at 879 (internal citation omitted). “Issuing a preliminary injunction based only on a possibility  
14 of irreparable harm is inconsistent with [the Supreme Court’s] characterization of injunctive relief  
15 as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is  
16 entitled to such relief.” *Winter*, 555 U.S. at 22.

17           In sum, Baltodano asserts that his detention and its purported effects constitutes irreparable  
18 injury. But this irreparable harm argument “begs the constitutional questions presented in [his]  
19 petition by assuming that [P]etitioner has suffered a constitutional injury.” *Cortez v. Nielsen*, 19-  
20 cv-754, 2019 WL 1508458, at \*3 (N.D. Cal. Apr. 5, 2019). Moreover, Baltodano’s “loss of liberty”  
21 is “common to all [noncitizens] seeking review of their custody or bond determinations.” *See*  
22 *Resendiz v. Holder*, 12-cv-4850, 2012 WL 5451162, at \*5 (N.D. Cal. Nov. 7, 2012).

23           “[A] noncitizen must show that there is a reason specific to his or her case, as opposed to  
24 a reason that would apply equally well to all aliens and all cases, that removal would inflict

1 irreparable harm[.]” *Taha v. Bostock*, No. 25-cv-649, 2025 WL 1126681, at \*3 (W.D. Wash. Apr.  
2 16, 2025) (quoting *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011)).

3 Baltodano also complains about medical care, but he does not provide specifics in that  
4 regard, and it is well established that complaints about conditions of confinement are not a basis  
5 for habeas relief. *See Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023).

6 Accordingly, Baltodano has not made a clear showing that he will be subject to immediate  
7 irreparable injury without the requested mandatory injunctive relief.

8 **D. The balance of interests favors the government.**

9 It is well settled that the public interest in enforcement of the United States’s immigration  
10 laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976);  
11 *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme  
12 Court has recognized that the public interest in enforcement of the immigration laws is  
13 significant.”) (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is always  
14 a public interest in prompt execution of removal orders[.]”). This public interest outweighs  
15 Baltodano’s private interest here. Baltodano asks the Court to declare his detention unlawful,  
16 despite the government’s valid reasons and statutory bases for detaining him to effectuate his  
17 removal pursuant to a valid final removal order that he does not challenge.

18 **E. Any preliminary injunction should be limited, accompanied by security, and  
19 be stayed.**

20 If the Court concludes that Baltodano is entitled to an injunction, the relief granted “should  
21 be no more burdensome to the defendant than necessary to provide complete relief to the  
22 plaintiffs.” *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (citation omitted).  
23 Injunctions must be no broader than necessary to provide complete relief to each plaintiff with  
24 standing to sue. *Trump v. Casa*, 606 U.S. 831, 861 (2025). Any preliminary injunction should do

1 no more than necessary to alleviate the irreparable harm to any specific plaintiff that the Court  
2 finds to have established such harm. Extending relief that is broader either in substance or scope  
3 would violate the foundational Article III principle that judicial remedies “must be tailored to  
4 redress the plaintiff’s particular injury.” *Gill v. Whitford*, 585 U.S. 48, 73 (2018).

5 Any preliminary injunction should also require Baltodano to post security. The Court may  
6 issue a preliminary injunction “only if the movant gives security” for “costs and damages  
7 sustained” by Defendants if they are later found to “have been wrongfully enjoined.” Fed. R. Civ.  
8 P. 65(c). The Court should require Baltodano to post an appropriate bond commensurate with the  
9 scope of any injunction issued. If Baltodano fails to comply with Rule 65(c), the Court should  
10 deny or dissolve the requested injunctive relief.

11 Finally, to the extent the Court issues any injunctive relief, the Federal Respondents request  
12 that such relief be stayed pending any appeal, or at a minimum that such relief be administratively  
13 stayed for a period of seven days to allow Federal Respondents to seek an emergency, expedited  
14 stay from the Court of Appeals if an appeal is authorized.

15 **VI. CONCLUSION**

16 The motion for a preliminary injunction should be denied.

17 DATED this 3rd day of November, 2025.

18 Respectfully submitted,

19 CHARLES NEIL FLOYD  
20 United States Attorney

21 s/ Kristin B. Johnson  
22 KRISTIN B. JOHNSON, WSBA #28189  
23 Assistant United States Attorney  
24 United States Attorney’s Office  
700 Stewart Street, Suite 5220  
Seattle, Washington 98101-1271  
Telephone No. (206) 553-7970

Fax No. (206) 553-4073  
Email: [kristin.b.johnson@usdoj.gov](mailto:kristin.b.johnson@usdoj.gov)

*Attorneys for Federal Respondents*

I certify that this memorandum contains 5,836 words, in compliance with the Local Civil Rules.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24