District Judge Tiffany M. Cartwright
Magistrate Judge Michelle L. Peterson

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

FELIX DANIEL VEIGA,

Petitioner,

v.

PAMELA BONDI, Attorney General of the United States; KRISTI NOEM, Secretary, United States Department of Homeland Security; LAURA HERMOSILLO, Acting Seattle Field Office Director;[1] United States Citizenship and Immigration Services; BRUCE SCOTT, Warden of Immigration Detention Facility; and the United States Immigration and Customs Enforcement,

Respondent.

Case No. 2:25-cv-02168-TMC-MLP

FEDERAL RESPONDENTS'[2] RETURN MEMORANDUM

Noted for Consideration:
November 19, 2025

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Laura Hermosillo for Cammilla Wamsley.

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

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I. INTRODUCTION

Petitioner Felix Daniel Veiga, a noncitizen subject to an administratively final order of removal, is lawfully detained pursuant to Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner challenges his approximately 5-month post-order detention at the Northwest ICE Processing Center ("NWIPC") as unconstitutional while he awaits removal from the United States to Cuba. Yet his detention is constitutional. The 6-month presumptively reasonable period necessary for U.S. Immigration and Customs Enforcement ("ICE") to bring about his removal has not expired. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Any allegation by Petitioner that he is likely to be removed to a third country in the future is purely a matter of speculation, and ICE is actively seeking his removal to Cuba. Petitioner has not shown that Federal Respondents' practice of third-country removal violates due process. Petitioner's "punitive third country banishment" argument also fails because it merely restates his due process objections and lacks any factual basis demonstrating that the third-country removal policy is unconstitutional either on its face or as applied to him.

Accordingly, ICE respectfully requests that the Court deny the Petition. This return is supported by the pleadings and documents on file in this case, and the Declaration of Deportation Officer Enrique Rodriguez ("Rodriguez Decl."). Federal Respondents do not believe that an evidentiary hearing is necessary.

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

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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 dangerous noncitizens while removal is being effected, Congress mandated detention:

> During the removal period, the [Secretary of Homeland Security][3] 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.

8 U.S.C. § 1231(a)(2).

Section 1231(a)(6) authorizes DHS 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).

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[3] 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"). *See also* 6 U.S.C. § 251.

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

During the removal period, ICE[4] is charged with attempting to effectuate removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1). 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 further identified 6 months as a presumptively reasonable time necessary to bring about a noncitizen's removal. *Id.*, at 701.

In this case, Petitioner is the subject of an administrative order of removal that became final on August 27, 2013. Rodriguez Decl. ¶ 10. Following Petitioner's incarceration at the Federal Correctional Institution in Mississippi, Petitioner was released on an Order of Supervision ("OSUP") as Office of Enforcement and Removal Operations ("ERO") was not successfully removing Cubans at that time. *Id.* ¶ 11. Following a change in cooperation by the Cuban government, Petitioner's OSUP was revoked, and he was detained to effectuate removal on May 30, 2025. *Id.* ¶¶ 13-14. Therefore, the "presumptively reasonable" six-month period is ongoing and will expire on November 26, 2025. *Zadvydas*, 533 U.S. at 701.

B. *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. v. DHS*, No. 25-cv-10676 (D. Mass.). On March 28, 2025, that court entered a TRO enjoining DHS and others from "[r]emoving any individual subject to a final order of removal from the United States to a third

[4] Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security's authority to execute removal orders.

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country, *i.e.*, a country other than the country designated for removal in immigration proceedings" unless certain conditions were met. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025). On April 18, 2025, the court in *D.V.D.* issued an order granting 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 386.2 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 class in *D.V.D.* 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 *D.V.D.* court issued a Memorandum on Preliminary Injunction offering the following summary and clarification of its Preliminary Injunction:

> All removals to third countries, *i.e.*, removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen's order of removal, *see* 8 U.S.C. § 1231(b)(1)(C), must be preceded by written notice to both the non-citizen and the non-citizen's counsel in a language the non-citizen can understand. Dkt. 64 at 46– 47. Following notice, the individual must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal. *See id.* If the non-citizen demonstrates "reasonable fear" of removal to the third country, Defendants must move to reopen the non-citizen's immigration proceedings. *Id.* If the non-citizen is not found to have demonstrated a "reasonable fear" of removal to the third country, Defendants must provide a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings. *Id.*

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

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

On June 23, 2025, the United States Supreme Court stayed the District of Massachusetts' preliminary injunction pending appeal in the First Circuit Court of Appeals. *Dep't of Homeland Sec. v. D.V.D.*, __ U.S. __, 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 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. *Dep't of Homeland Sec. v. D. V. D.*, ___ U.S. ___, 145 S. Ct. 2627, 2629 (2025). The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay. *See id.*

C. DHS Policy on Third-Country Removals

On March 30, 2025, and then on July 9, 2025, DHS issued guidance regarding third country removals. 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 November 11, 2025) ("DHS Memo").

The DHS memo discusses DHS' 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"). *Id.* According to the guidance, if DHS has not received diplomatic reassurances from the designated country, DHS will first inform the

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individual that DHS seeks removal to that country. *Id.*, pg. 2. If the individual expresses that they are afraid of being removed to that country, DHS will refer them to 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 their prior removal proceedings at any time they so choose, based on a request for asylum, withholding of removal, or protection under the Convention Against Torture. *See id.*; *see also* 8 C.F.R. § 1003.23(b)(4)(i).

D. Petitioner Felix Daniel Veiga

Petitioner is a native and citizen of Cuba and entered the United States on or about November 21, 2008. Rodriguez Decl., ¶ 4[5]. On August 23, 2011, Petitioner was convicted in the United States District Court for the Southern District of Georgia for possession of fifteen or more unauthorized access devices in violation of 18 U.S.C. § 1029(a)(3) and was sentenced to forty-eight months. *Id.* ¶ 6. On July 10, 2013, while Petitioner was still in custody for his federal crimes, ICE issued a Notice to Appear, charging him as removable pursuant to 1227(a)(2)(A)(ii) (conviction of a crime involving moral turpitude). *Id.*, ¶ 7; Dkt. 1 ("Pet.") pgs. 5-6. During his incarceration, Petitioner, through counsel, and DHS agreed to proceed with an order of removal,

[5] Given the expedited briefing schedule, the Federal Respondents were unable to obtain Petitioner's Alien File (A-file) prior to the ordered response date of this Return.

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subsequently filing a motion for stipulated removal and waiver of an immigration hearing. Rodriguez Decl., ¶ 9; Pet., pg. 6. Pursuant to this stipulation, an immigration judge ordered Petitioner removed on August 27, 2013. Rodriguez Decl. ¶ 10; Pet., pg. 6.

ICE is actively seeking Petitioner's removal to Cuba. Rodriguez Decl., ¶¶ 13-14. The government of Cuba cooperates in this process. *Id.* ¶¶ 13-14. ICE believes that there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* ¶ 14.

III. ARGUMENT

1. Petitioner's Detention is Presumptively Reasonable, and he has a Significant Likelihood of Removal in the Reasonably Foreseeable Future

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. Petitioner has not met his burden by showing "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*, at 701. His approximately 5-month detention is presumptively reasonable while ICE works to arrange his removal to Cuba.

Even though the removal period has now passed, the Supreme Court held that the 6-month period after the removal order issued is a presumptively reasonable period for the government to affect the order. *Zadvydas*, 533 U.S. at 701. Petitioner's detention is squarely within this presumptively reasonable period. "After this 6–month period, once the [noncitizen] alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* Therefore, Petitioner's habeas petition in relation to his post-order detention is premature.

Petitioner concedes that "at least 643 Cuban citizens were removed to Cuba" in 2025. Pet., pg. 7. Petitioner's own data presents a likelihood of removal. *Id.*, pgs. 7-9. Petitioner

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provides no support for his assertion that the alleged backlog of Cuban nationals somehow impacts Petitioner. *Id.* In fact, Cuba continues to cooperate in the process to effectuate removal of its citizens from the United States. Rodriguez Decl., ¶ 14. And ICE believes that Petitioner will be removed to Cuba in the reasonably foreseeable future. *Id.*

Because ICE is actively pursuing Petitioner's removal during the presumptively reasonable period established by the Supreme Court, the Petition must be denied.

2. Petitioner's Claim of Fear of Removal to a Third Country is both Premature and Already Protected Under Existing DHS Policy.

The relief Petitioner requests regarding his alleged fear of removal to a third country is (1) currently speculative and (2) already addressed by existing DHS policy, which provides the protection he seeks[6].

Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies. *Deakins v. Monaghan*, 484 U.S. 193, 199 (1988). "To invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). It remains unclear what due process violations exist that this Court could redress.

First, Petitioner unreasonably requests that the Court order DHS to "not remove or seek to remove Petitioner to a third country without notice and meaningful opportunity to respond." Pet., pg. 20 (Prayer for Relief). However, foundationally, Petitioner's request is speculative at this time. Petitioner does not allege any specific threat of third country removal and the only rationale provided by Federal Respondents here for a changed circumstance is that Petitioner's

[6] Federal Respondents acknowledge that courts in this District have generally ruled against the government's position on the third-country removal issue.

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deportation to Cuba is reasonably foreseeable. *See* Rogriguez Decl. ¶¶ 13-14. Courts in similar positions have declined to address relief in similar circumstances due to the speculative nature of the request. *See e.g., Khamba v. Albarran*, No. 1:25-CV-01227 JLT SKO, 2025 WL 2959276, at *10 (E.D. Cal. Oct. 17, 2025) ("The Court declines to address Petitioner's other claims at this time. For example, he requests an injunction against third country removal without certain procedural protections (Doc. 4 at 28), but any such fear is speculative.").

Additionally, as noted above, there is nothing preventing Petitioner from going straight to the Immigration Court himself and requesting that his prior proceedings be reopened based on a new fear or removal to any other country. *See* 8 C.F.R. § 1003.23(b)(4)(i). Thus far, he has not chosen to do so.

Second, the relief Petitioner seeks—namely, notice and a meaningful opportunity to respond—are already DHS policy. If ICE were to seek Petitioner's removal to a third country, ICE would provide Petitioner notice of its intent to remove him and notice as to which country. *See* DHS Memo. This notice would allow Petitioner to claim fear of removal to that country. *Id.* If Petitioner claimed a fear of removal, ICE would refer Petitioner to USCIS, and USCIS would schedule Petitioner for an interview to determine whether it is more likely than not that he will be persecuted or tortured in that third country. *Id.*

Petitioner has suffered no injury and any allegation that he is likely to face an injury in the future is entirely speculative. Accordingly, Petitioner has failed meet the case-or-controversy requirement, and his petition must be denied. *Cf. Spencer v. Kemna*, 523 U.S. 1, 16 (1998) (rejecting the petitioner's alleged consequences as "a possibility rather than a certainty or even a probability" and as "purely a matter of speculation").

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3. 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.

Furthermore, to the extent Petitioner alleges 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.* Dkt. 1 ¶ 43. 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.*, of which Petitioner is a member, 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*, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) ("Multiple courts of appeal have approved the practice of staying a case, or dismissing it without prejudice, on the ground that the plaintiff is a member of a parallel class action.") (internal quotations omitted). This prevents class members from avoiding the binding results of the class action. *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982).

This is also the rule in this Circuit. A district court may properly dismiss an individual complaint where the plaintiff is a member in a class action, to the extent the individual action duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d 1130, 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)). Such a dismissal is within the court's discretion based on its inherent power to control its own docket. *Crawford*, 599 F.2d at 893. But it is "imperative to avoid concurrent litigation in more

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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.").

4. 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 either on its face or as applied. *See* Pet., pgs. 19-20.

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 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

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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.

Third, Petitioner pleads no facts supporting an as-applied claim. He does not allege which third country he might be removed to, what harm he personally faces, or any circumstances that would make removal punitive in his case. A claim resting on imaginary injury does not satisfy Article III's case-or-controversy requirement. *Lewis v. Cont'l Bank Corp.*, 494 U.S. at 477. Unlike in *Y.T.D. v. Andrews* or *Nguyen v. Scott*, Petitioner provides no evidence that his removal would result in imprisonment or harm. *Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *4 (E.D. Cal. Sept. 18, 2025); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *25 (W.D. Wash. Aug. 21, 2025); Pet., pgs. 19-20. Without factual allegations establishing a realistic danger of punitive treatment, Petitioner's theory remains purely conjectural and nonjusticiable. Therefore, the Court should deny the writ to the extent it seeks to bar third-country removal.

IV. CONCLUSION

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

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DATED this 11th day of November, 2025.

Respectfully submitted,

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I certify that this memorandum contains 3,756 words, in compliance with the Local Civil Rules.

Attorney for Federal Respondents