

District Judge Tiffany M. Cartwright

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

TAN HOANG BUI,

Petitioner,

v.

BRUCE SCOTT, *et al.*,

Respondents.

Case No. 2:25-cv-02268-TMC

FEDERAL RESPONDENTS'¹
OPPOSITION TO PETITIONER'S
MOTION FOR TEMPORARY
RESTRAINING ORDER

I. INTRODUCTION

This Court should deny Petitioner Tan Hoang Bui's Motion for a Temporary Restraining Order ("TRO"). Dkt. No. 2. Bui is a Vietnamese national who is in U.S. Immigration and Customs Enforcement ("ICE") custody pending his removal. The requested emergency relief is the same as the ultimate relief sought in Bui's habeas corpus petition: (1) his immediate release from ICE custody; (2) an order enjoining ICE from redetaining him without a travel document and scheduled removal; (3) an order enjoining ICE from third country removal without reopened

¹ Bruce Scott is not a Federal Respondent.

1 removal proceedings; and (4) an order enjoining his removal to a third country for “a punitive
2 purpose and effect.” TRO Motion, at 2; Dkt. No. 1, Pet., Prayer for Relief.

3 Bui has not demonstrated that the law and facts favor the grant of emergency injunctive
4 relief here and the balance of equities and public interest tilt against granting a TRO. Indeed, the
5 preliminary relief sought by Bui would inappropriately have this Court, on a time-compressed
6 basis, grant him the ultimate relief that he seeks in his habeas petition without the requisite
7 showing of facts that favor his position. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395
8 (1981) (“[I]t is generally inappropriate for a federal court at the preliminary-injunction stage to
9 give a final judgment on the merits”); *Guy v. Tanner*, No. 13-cv-6750, 2014 WL 2818684, at *3
10 (E.D. La. June 23, 2014) (“[petitioner’s] motion [for TRO] is no more than a veiled attempt to
11 expedite the resolution of his habeas petition”).

12 Contrary to his allegations, Bui’s detention is lawful. He is a noncitizen subject to an
13 administratively final order of removal, and he is lawfully detained under Section 241 of the
14 Immigration and Nationality Act (“INA”). *See* 8 U.S.C. § 1231. Bui’s detention also is not
15 indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). With increased inter-governmental
16 cooperation, ICE is working to effectuate Bui’s removal to Vietnam. While Bui’s petition and
17 Motion speculate that he may be removed to a third country, he presents *no evidence* of any
18 intention for his removal to a country other than Vietnam.

19 Because Bui’s detention presents no extraordinary emergency and is lawful, Federal
20 Respondents request the Court deny his TRO motion.

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II. 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.

8 U.S.C. § 1231(a)(2).

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:

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.

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

7 8 U.S.C. § 1231(a)(6) (emphasis added).

8 During the removal period, ICE³ is charged with attempting to effect removal of a
 9 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time
 10 limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen
 11 may be detained only “for a period reasonably necessary to bring about that [noncitizen’s]
 12 removal from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further
 13 identified six months as a presumptively reasonable time to bring about a noncitizen’s removal.
 14 *Id.*, at 701.

15 Here, Bui is the subject of an administrative order of removal that became final on October
 16 6, 2000. Strzelczyk Decl., ¶ 5. He was released from immigration detention on an Order of
 17 Supervision (“OSUP”) on June 18, 2001. *Id.*, ¶ 6. Following Vietnam’s agreement to increase
 18 cooperation with the United States in repatriating its citizens, ICE took Bui into custody on
 19 October 28, 2025, to execute the removal order. *Id.*, ¶¶ 7, 11; Pet., ¶ 32.

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

21 In March 2025, three plaintiffs instituted a putative class action suit challenging their third
 22 country removals in the District of Massachusetts. *D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.).
 23 On March 28, 2025, the district court entered a TRO enjoining the DHS and others from
 24 “[r]emoving any individual subject to a final order of removal from the United States to a third

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.

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.*, No. 25-cv-10676, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025).

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).

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

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

14 **C. DHS Policy on Third-Country Removals**

15 On March 30, 2025, and then on July 9, 2025, DHS issued guidance regarding third
16 country removals. U.S. Department of Homeland Security, “Guidance Regarding Third Country
17 Removals,” Kristi Noem, March 30, 2025, *available at*
18 <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1>
19 [1.pdf](#) (last visited November 18, 2025) (“DHS Memo”); U.S. Immigration and Customs
20 Enforcement, “Third Country Removals Following the Supreme Court’s Order in Department of
21 Homeland Security v. D.V.D., No. 24A1153 (U.S. June 23, 2025),” Todd M. Lyons, July 9, 2025,
22 *available at*
23 [https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf)
24 [1.pdf](#).

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

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

18 **D. Petitioner Tan Hoang Bui⁴**

19 Bui is a native and citizen of Vietnam. *See* Pet., ¶ 18. He was admitted to the United
20 States as a refugee in 1983. *Id.* He later adjusted to lawful permanent resident status. *Id.*;
21 Strzelczyk Decl., ¶ 3. In 1996, Bui was convicted of Voluntary Manslaughter and sentenced to
22 four years of imprisonment. *Id.*, ¶ 4(c); Pet., ¶ 21.

23
24 ⁴ Undersigned counsel has not yet received Bui's alien file.

1 In 2000, the Immigration and Naturalization Service (“INS”) detained Bui and placed him
 2 in removal proceedings, charging him with an aggravated felony under 8 U.S.C. § 1227(a)(2)(iii).
 3 Pet., ¶ 22; Strzelczyk Decl., ¶ 5. On October 6, 2000, an immigration judge ordered Bui removed
 4 to Vietnam. Lambert Decl., Ex. A, Order of the Immigration Judge. INS released Bui on an
 5 OSUP in June 2001 because the agency had been unable to remove Bui to Vietnam. *Id.*, Ex. B,
 6 Decision of Post Order Custody Review – Release; Ex. C, OSUP. He was placed on another
 7 OSUP in 2009. *Id.*, Ex. D, OSUP.

8 The government of Vietnam has agreed to increase cooperation with the United States and
 9 by seeking to issue travel documents within 30 days of a request. Strzelczyk Decl., ¶ 9. As of
 10 September 11, 2025, there were 569 removals of Vietnamese citizens to Vietnam during fiscal
 11 year 2025. *Id.*, ¶ 11.

12 After ICE determined that there was a significant likelihood of removal in the foreseeable
 13 future due to this cooperation, ICE took Bui into custody on October 28, 2025 and revoked his
 14 OSUP. *Id.*, ¶ 7; Lambert Decl., Ex. E, Form I-213; Ex. F, Warrant for Arrest. ICE orally notified
 15 Bui of his OSUP revocation when he was taken into custody. Strzelczyk Decl., ¶ 7. He refused
 16 to make any statement in response to the revocation. *Id.* ICE anticipates Bui’s removal to
 17 Vietnam will occur in the reasonably foreseeable future due to Vietnam’s increased cooperation
 18 to issue travel documents within 30 days of receipt of request. *Id.*, ¶¶ 12-13.

19 III. LEGAL STANDARD

20 A TRO is “an extraordinary remedy that may only be awarded upon a clear showing that
 21 the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22
 22 (2008); *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)
 23 (the TRO standard is “substantially identical” to preliminary injunction standard). A petitioner
 24 must establish: (1) “that he is likely to succeed on the merits”; (2) “that he is likely to suffer

1 irreparable harm in the absence of preliminary relief”; (3) “that the balance of equities tips in his
 2 favor”; and (4) “that an injunction is in the public interest.” *Winter*, 555 U.S. at 20. Alternatively,
 3 a petitioner who shows only that there are “serious questions going to the merits” may satisfy the
 4 *Winter* requirements by establishing that the “balance of hardships [] tips sharply towards [the
 5 petitioner],” and that the remaining two *Winter* factors are met. *All. for the Wild Rockies v.*
 6 *Cottrell*, 632 F.3d 1127, 1131–35 (9th Cir. 2011).

7 IV. ARGUMENT

8 A. Bui is unlikely to succeed on the merits.

9 1. Bui’s detention is lawful pending his removal.

10 Likelihood of success on the merits is a threshold issue: “[W]hen a plaintiff has failed to
 11 show the likelihood of success on the merits, [the court] need not consider the remaining three
 12 *Winter* elements.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation
 13 omitted). To succeed on a habeas petition, Bui must show that he is “in custody in violation of
 14 the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241. However, his claim
 15 that his detention is unlawful lacks merit.

16 Bui has not demonstrated that his detention has become “indefinite” or unconstitutional.
 17 In *Zadvydas*, the Supreme Court analyzed whether the potentially open-ended duration of
 18 detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an implicit limitation
 19 of post-removal detention “to a period reasonably necessary to bring about that alien’s removal
 20 from the United States.” *Zadvydas*, 533 U.S. at 689. It was further specified that Section
 21 1231(a)(6) does not permit indefinite detention. *Id.* Thus, “once removal is no longer reasonably
 22 foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699.

23 The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of
 24 burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order detention. *Id.*

1 (stating that “for detention to remain reasonable, as the period of post-removal confinement
2 grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink”).
3 However, the Supreme Court determined that it is “presumptively reasonable” for the
4 Government to detain a noncitizen for six months following entry of a final removal order, while
5 it worked to remove the noncitizen from the United States. *Id.*, at 701. Thus, the Supreme Court
6 implicitly recognized that six months is the *earliest* point at which a noncitizen’s detention could
7 raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption
8 “does not mean that every [noncitizen] not removed must be released after six months. To the
9 contrary, [a noncitizen] may be held in confinement until it has been determined that there is no
10 significant likelihood of removal in the reasonably foreseeable future.” *Id.*

11 Bui’s detention is not indefinite under *Zadvydas*. INS released Bui on an OSUP after
12 approximately eight months of post-order custody in 2001 because it could not execute his
13 removal to Vietnam. As the United States has increasingly cooperated with Vietnam in
14 repatriating its citizens, ICE recently exercised its discretion to arrest and detain Bui under 8
15 U.S.C. § 1231(a)(6) to effectuate his removal. Strzelczyk Decl., ¶ 7. ICE anticipates receiving
16 travel documents for Bui because the government of Vietnam has agreed to issue travel
17 documents within 30 days. *Id.*, ¶¶ 9, 12-13. Indeed, it has issued travel documents in hundreds
18 of cases just this fiscal year, including 154 Vietnamese citizens who entered the United States
19 before July 12, 1995. *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *17 (W.D.
20 Wash. Sept. 11, 2025). Because of this increased cooperation with the government of Vietnam,
21 DHS believes that Bui’s removal will likely occur in the reasonably foreseeable future. *See*
22 Strzelczyk Decl. ¶ 14.

23 Since his re-arrest, Bui has been detained for less than one month. His detention is not
24 indefinite nor potentially permanent. *See, e.g., Malkandi v. Mukasey*, No. 07-cv-1858, 2008 WL

1 916974, at *1 (W.D. Wash. Apr. 2, 2008) (denying *Zadvydas* petition where petitioner had been
2 detained more than 14 months post-final order). That Bui does not yet have a specific date of
3 anticipated removal does not make his detention indefinite. See *Diouf v. Mukasey*, 542 F. 3d
4 1222, 1233 (9th Cir. 2008). Detention becomes indefinite in situations where the country of
5 removal refuses to accept the noncitizen or if removal is legally barred. *Id.* There is no reason to
6 believe that is the situation here.

7 The regulations at 8 C.F.R. § 241.4 allow ICE to revoke a noncitizen's OSUP when it
8 determines he has violated a condition of release, or when the conduct of the noncitizen, or any
9 other circumstance, indicates that release would no longer be appropriate. Here, Bui has a final
10 removal order, and Vietnam has been cooperating with the United States in the repatriation of its
11 citizens.

12 Due to the expedited nature of this briefing, it is unclear whether Bui has had an informal
13 interview concerning his OSUP revocation but the alleged lack of an interview does not entitle
14 Bui to release because it has resulted in no injury to him. While courts in this District have
15 ordered noncitizens' release based on procedural deficiencies, as well as the lack of
16 predeprivation hearings, Federal Respondents respectfully disagree with those decisions. Instead,
17 the Court should review the facts of the case to determine what process is reasonable and due to
18 Bui.

19 In *Ahmad v. Whitaker*, for example, the government revoked the petitioner's release but
20 did not provide him an informal interview. *Ahmad v. Whitaker*, No. 18-cv-287, 2018 WL
21 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash.
22 Jan. 3, 2019). The petitioner argued the revocation of his release was unlawful because, he
23 contended, the federal regulations prohibited re-detention without, among other things, an
24 opportunity to be heard. *Id.* In rejecting his claim, the Court held that although the regulations

1 called for an informal interview, petitioner could not establish “any actionable injury from this
2 violation of the regulations” because the government had procured a travel document for the
3 petitioner, and his removable was reasonably foreseeable. *Id.*

4 Similarly, in *Doe v. Smith*, the U.S. District Court for the District of Massachusetts held
5 that even if the ICE detainee petitioner had not received a timely interview following her return
6 to custody, there was “no apparent reason why a violation of the regulation ... should result in
7 release.” *Doe v. Smith*, No. 18-cv-11363, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The
8 court elaborated, “[I]t is difficult to see an actionable injury stemming from such a violation. Doe
9 is not challenging the underlying justification for the removal order.... Nor is this a situation
10 where a prompt interview might have led to her immediate release—for example, a case of
11 mistaken identity.” *Id.*

12 The same is true here. Whatever procedural deficiencies may have occurred, they do not
13 warrant Bui’s release. He does not challenge his removal order, and an interview would not have
14 resulted in his release because DHS expects removal to occur in the reasonably foreseeable future
15 because of increased cooperation with Vietnam.

16 Moreover, neither the statute nor the regulations require a pre-deprivation hearing before
17 revoking an OSUP for the purposes of executing a removal order. TRO Mot., at 20-21. This
18 would be impracticable and unworkable as a noncitizen released on an OSUP is not in removal
19 proceedings. That means that the noncitizens are subject to final orders of removal and no longer
20 before the immigration court or the BIA. Thus, a pre-deprivation hearing would provide a
21 significant delay in executing a removal order in conflict with the Government’s interest in
22 executing removal orders. *Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is always a public
23 interest in prompt execution of removal orders).

1 Lastly, Bui asks this Court to enjoin ICE from redetaining him without first obtaining a
2 travel document and scheduling his removal. This does not comport with the law. Because Bui
3 is subject to an order of removal, ICE's legal authority to detain him is clear. 8 U.S.C.
4 § 1231(a)(6); *Zadvydas*, 533 U.S. at 683. While it may be necessary under certain circumstances
5 to release a detainee on supervision to avoid having the detainee's detention become "indefinite,"
6 no statutory or regulatory authority cited by Bui requires ICE to have a travel document in-hand
7 before detaining or re-detaining an individual who is subject to a removal order.

8 **2. Bui's claim of fear of removal to a third Country is both premature and**
9 **already protected under existing DHS policy.**

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

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

19 First, Bui unreasonably requests that the Court order DHS to "not remove or seek to
20 remove Petitioner to a third country without notice and meaningful opportunity to respond." Pet.,
21 Prayer for Relief. However, foundationally, Bui's request is speculative. Bui does not allege any
22 specific threat of third country removal and the only rationale provided by Federal Respondents
23 here for a changed circumstance is that Petitioner's deportation to *Vietnam* is reasonably
24 foreseeable. Courts in similar positions have declined to address relief in similar circumstances

1 due to the speculative nature of the request. *See e.g., Khamba v. Albarran*, No. 1:25-CV-01227
2 JLT SKO, 2025 WL 2959276, at *10 (E.D. Cal. Oct. 17, 2025) (“The Court declines to address
3 Petitioner’s other claims at this time. For example, he requests an injunction against third country
4 removal without certain procedural protections (Doc. 4 at 28), but any such fear is speculative.”).

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

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

16 Bui has suffered no injury concerning a third country removal and any allegation that he
17 is likely to face an injury in the future is entirely speculative. Accordingly, Bui has failed to meet
18 the case-or-controversy requirement, and he is unlikely to succeed on this claim. *Cf. Spencer v.*
19 *Kemna*, 523 U.S. 1, 16 (1998) (rejecting the petitioner’s alleged consequences as “a possibility
20 rather than a certainty or even a probability” and as “purely a matter of speculation”).

21 **3. Bui is a member of the Plaintiff Class in *D.V.D. v. Dep’t of Homeland Sec.***
22 **and is bound by the proceedings in that case.**

23 Furthermore, to the extent Bui alleges he is an individual subject to a final order of
24 removal who fears removal to a third country that was not previously described as an alternative

1 country of removal, Bui would undisputedly be a member of the plaintiff class in *D.V.D.* As a
2 member of the plaintiff class in *D.V.D.*, he is bound by the proceedings in that case the same as
3 all other class members. The plaintiff class in *D.V.D.* sought an injunction precluding their
4 removal to a third country unless they were first afforded essentially the same process that Bui
5 asks the Court to order here. The Supreme Court's stay of the preliminary injunction entered in
6 that case is both precedent and the result is binding on Bui here by virtue of his status as a member
7 of the *D.V.D.* plaintiff class.

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

15 This is also the rule in this Circuit. A district court may properly dismiss an individual
16 complaint where the plaintiff is a member in a class action, to the extent the individual action
17 duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d
18 1130, 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)). Such
19 a dismissal is within the court's discretion based on its inherent power to control its own docket.
20 *Crawford*, 599 F.2d at 893. But it is "imperative to avoid concurrent litigation in more than one
21 forum whenever consistent with the rights of the parties." *Id.*; see *Frost v. Symington*, 197 F.3d
22 348, 359 (9th Cir. 1999) ("To the extent that a class action involving the same issues raised by
23 [plaintiff] is currently pending . . . [he] may have to bring all of his related claims for equitable
24 relief . . . through . . . class counsel.").

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

7 **4. Bui's punitive banishment argument does not demonstrate that the policy is**
8 **unconstitutional.**

9 Bui's "punitive third country banishment" argument fails because it lacks any factual basis
10 demonstrating that the third-country removal policy is unconstitutional either on its face or as
11 applied to the facts here. *See* Pet., ¶¶ 47-53; 72-74; 86-92.

12 Bui cannot meet the heavy burden required for a facial challenge. A facial challenge
13 demands a showing that a law "is invalid in toto—and therefore incapable of any valid
14 application." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5
15 (1982). Such challenges are "strong medicine" and are disfavored because they "often rest on
16 speculation" and risk "premature interpretation of statutes on the basis of factually barebones
17 records." *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998); *Wash. State Grange*
18 *v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008). Bui's broad assertions that the
19 program imposes punishment on its subjects are precisely the type of speculative allegations that
20 these cases reject.

21 Furthermore, Bui pleads no facts supporting an as-applied claim. He does not allege
22 which third country he might be removed to, what harm he personally faces, or any circumstances
23 that would make removal punitive in his case. A claim resting on imaginary injury does not
24 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 speculative removal to a third country would result in imprisonment or harm. *Y.T.D. v. Andrews*, No. 1:25-cv-01100, 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., ¶¶ 86-92. Without factual allegations establishing a realistic danger of punitive treatment, Bui's theory remains purely conjectural and nonjusticiable. Therefore, Bui is unlikely to succeed on his third country removal claims.

B. Bui has not shown irreparable harm.

Bui has not demonstrated that he will suffer irreparable injury absent his release or with an order enjoining his removal to a third country. To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. See *Winter*, 555 U.S. at 22. "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Bui argues that "deprivation of constitutional rights unquestionably constitutes irreparable injury." TRO Mot, at 26 (internal quotation marks omitted). But this argument "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019). Moreover, Bui's "loss of liberty" is "common to all [noncitizens] seeking review of their custody or bond determinations." See *Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012).

1 **C. The balance of interests favors the Government.**

2 It is well settled that the public interest in enforcement of the United States's immigration
3 laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976);
4 *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme
5 Court has recognized that the public interest in enforcement of the immigration laws is
6 significant.”) (citing cases); *see also Nken*, 556 U.S. at 435 (“There is always a public interest in
7 prompt execution of removal orders[.]”). This public interest outweighs Bui's private interest
8 here. Bui asks the Court to declare his detention unlawful, despite the Government's valid reasons
9 and statutory basis for detaining him to effectuate his removal pursuant to valid final removal
10 order that he does not challenge.

11 **CONCLUSION**

12 For these reasons, Bui has not satisfied the high burden of establishing entitlement to
13 injunctive relief, and Federal Respondents request this Court deny Bui's emergency motion.

14 Dated: November 18, 2025

15 Respectfully submitted,

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*I certify that this memorandum contains 5,468
words, in compliance with the Local Civil Rules.*