District Judge Tana Lin
Magistrate Judge Brian A. Tsuchida

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

BASEL SALAMA HILS,

Plaintiff,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 2:25-cv-02336-TL-BAT

FEDERAL RESPONDENTS'[1] RETURN

Noted for Consideration:
January 12, 2026

[1] Respondent Bruce Scott is not a federal employee and is not represented by undersigned counsel.

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES III

I. INTRODUCTION 1

II. BACKGROUND 1

A. Legal Background 1

1. Post-Order Detention 1

2. Third Country Removal 2

3. D.V.D. v. Dep't of Homeland Security 4

4. DHS Policy on Third-Country Removals 5

B. Petitioner Basel Salama Hils 7

III. LEGAL STANDARD 8

IV. ARGUMENT 9

A. Petitioner is lawfully detained pending his removal. 9

B. Petitioner's claim of fear of removal to a third country is already protected under existing DHS policy. 11

C. Petitioner is a member of the Plaintiff Class in *D.V.D. v. Dep't of Homeland Sec.* and is bound by the proceedings in that case. 12

D. Petitioner's punitive banishment argument does not demonstrate that DHS third country removal policy is unconstitutional. 14

V. CONCLUSION 15

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

TABLE OF AUTHORITIES

CASES

Crawford, 599 F.2d at 893 13
D.V.D v. U.S. Dep't of Homeland Sec., 786 F. Supp. 3d 223 (D. Mass. 2025). 5
D.V.D. v. U.S. Dep't of Homeland Sec., No. CV 25-10676-BEM, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025), *appeal dismissed*, No. 25-1311, 2025 WL 2720812 (1st Cir. June 30, 2025) 4, 5, 12
Dep't of Homeland Sec. v. D.V.D., 145 S. Ct. 2153 (2025) 5
Diouf v. Mukasey, 542 F. 3d 1222, 1233 (9th Cir. 2008) 10
Frost v. Symington, 197 F.3d 348, 359 (9th Cir. 1999) 13
Goff v. Menke, 672 F.2d 702, 704 (8th Cir. 1982). 13
Johnson v. Guzman Chavez, 594 U.S. 523, 527-29 (2021) 1
Johnson v. Guzman Chavez, 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004) 4
Kumar v. Wamsley, No. C25-2055-KKE, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025) 3
Lewis v. Cont'l Bank Corp., 494 U.S. at 477 14
Nat'l Endowment for the Arts v. Finley, 524 U.S. 569, 580 (1998) 14
Nguyen v. Scott 15
Nken v. Holder, 556 U.S. 418, 435 (2009) 11
Pacesetter Systems, Inc. v. Medtronic, Inc., 678 F.2d 93, 94-95 (9th Cir. 1982) 13
Pride v. Correa, 719 F.3d 1130, 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)) 13
Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494 n.5 (1982) 14
Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 450 (2008) 14
Wynn v. Vilsack, No. 3:21-cv-514, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) 13
Y.T.D. v. Andrews 15
Zadvydas v. Davis, 533 U.S. 678, 689 (2001) 2, 11

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

STATUTES

8 U.S.C. § 1229a 2
18 U.S.C. § 1001(a)(2) 7
8 C.F.R. § 1003.23(b)(4)(i) 7, 12
8 C.F.R. § 1208.16(f) 4
8 C.F.R. § 1240.10(f) 2
8 C.F.R. § 241.13(h) 2
8 C.F.R. § 241.2(b) 2
8 C.F.R. §§ 208.16, 1208.16 3
8 U.S.C. § 1226 1
8 U.S.C. § 1231(a) 1
8 U.S.C. § 1231(a)(2) 1
8 U.S.C. § 1231(a)(6) 11
8 U.S.C. § 1231(b)(2) 2
8 U.S.C. § 1231(b)(2)(A) 2
8 U.S.C. § 1231(b)(2)(C)-(D) 2
8 U.S.C. § 1231(b)(2)(D) 3
8 U.S.C. § 1231(b)(2)(E) 3
8 U.S.C. § 1231(b)(2)(E)(vii) 3
8 U.S.C. § 1231(b)(3)(A) 3, 4
Section 1231(b)(2)(E)(vii) 3

OTHER AUTHORITIES

"Guidance Regarding Third Country Removals 6
"Third Country Removals Following the Supreme Court's Order in *Department of* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA") 3

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

I. INTRODUCTION

This Court should deny Petitioner Basel Salama Hils's petition for a writ of habeas corpus. Dkt. No. 1 ("Pet." or "Petition"). Petitioner has been subject to an *in absentia* removal order since 1995. U.S. Department of Homeland Security ("DHS") detained Petitioner in September 2025 pursuant to 8 U.S.C. § 1231(a) for the purposes of his removal. U.S. Immigration and Customs Enforcement ("ICE") is actively working to obtain travel documents for his removal to Jordan. If removal to Jordan or the United Arab Emirates is not possible, ICE anticipates third country removal to Palestine. However, Petitioner will receive prior notice and an opportunity to submit a fear claim if removal to Palestine is planned in the future.

II. BACKGROUND

A. Legal Background

1. Post-Order Detention

The Immigration and Nationality Act ("INA") governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527-29 (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 mandated detention during the "removal period," which is the 90-day period following the issuance of a final order of removal. 8 U.S.C. § 1231(a)(2). During the removal period, ICE is

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

charged with attempting to effectuate removal of a noncitizen from the United States. 8 C.F.R. § 241.2(b); 8 U.S.C. § 1231(a)(1).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision. 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 v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has further identified six months as a presumptively reasonable time necessary to bring about a noncitizen's removal. *Id.*, at 701. Once it is determined that there is no significant likelihood of removal in the reasonably foreseeable future, noncitizens may be released on an Order of Supervision ("OSUP"). 8 C.F.R. § 241.13(h).

2. Third Country Removal

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

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

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

1231(b)(2)(D). If removal to that country is impossible, the IJ may remove the alien to "any of the following countries" listed in 8 U.S.C. § 1231(b)(2)(E):

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

Lastly, Section 1231(b)(2)(E)(vii) provides that "[i]f impracticable, inadvisable, or impossible to remove the alien to each country" described above, the statute permits removal to any "country whose government will accept the" noncitizen. 8 U.S.C. § 1231(b)(2)(E)(vii).

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

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

of risk." *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004).

3. 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. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025), *appeal dismissed*, No. 25-1311, 2025 WL 2720812 (1st Cir. June 30, 2025). On March 28, 2025, the district 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 country, *i.e.*, a country other than the country designated for removal in immigration proceedings" unless certain conditions were met. *Id.*

On April 18, 2025, the court granted the plaintiffs' motion for class certification and motion for preliminary injunction. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 394 (D. Mass. 2025). A class was certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure without a provision for an opt out. *See id.*, at 386. The Preliminary Injunction was national in effect and established certain procedures that DHS was required to follow before removing an alien with a final order of removal to a third country. Specifically, the certified class is defined as:

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) who DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

Id., at 378.

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

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

> 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., No. 25-cv-10676, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep't of Homeland Sec.*, 786 F. Supp. 3d 223 (D. Mass. 2025). The *D.V.D.* court indicated that the Order applied "to the Defendants, including the Department of Homeland Security, as well as their officers, agents, servants, employees, attorneys, any person acting in concert, and any person with notice of the Preliminary Injunction." *Id.*

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

4. DHS Policy on Third-Country Removals

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

On March 30, 2025, and then later, on July 9, 2025, DHS issued a guidance regarding third country removals. *See* U.S. Department of Homeland Security, "Guidance Regarding Third Country Removals," Kristi Noem, March 30, 2025, *available at* https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1_1.pdf (last visited Dec. 4, 2025) ("DHS Memo"); U.S. Immigration and Customs Enforcement, "Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)," Todd M. Lyons, July 9, 2025, *available* at https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf (last visited Dec. 4, 2025) (hereinafter "July 9 Memo"); *see also Kumar*, 2025 WL 3204724, at *2-3 (describing contents of these memos and the distinction between the two).

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

After the interview is conducted, USCIS will determine whether the individual would more likely than not be persecuted or tortured in the country of removal. *Id.* If USCIS finds that the individual has met this standard, if the person was previously in removal proceedings, USCIS will inform ICE, and ICE can then file a motion to reopen with the Immigration Court. *Id.* Alternatively, ICE can also choose to designate another country of removal. If USCIS finds that

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

the person has not met the standard, according to DHS policy, they will be removed. *Id.* There is nothing in the memo or in ICE policy that prevents an individual from filing a motion to reopen their prior removal proceedings at any time they 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).

B. Petitioner Basel Salama Hils

Petitioner is a native of the United Arab Emirates ("UAE") and a citizen of Jordan. Carnevale Decl., ¶ 3. Petitioner initially entered the United States in 1993 on a visitor visa, but Petitioner overstayed his visa. *Id.*, ¶ 4. In 1994, Petitioner was served with an Order to Show Cause and Notice of Hearing, placing Petitioner into removal proceedings. *Id.*, ¶ 5; Dkt. No. 1-2, at 39-43. On October 18, 1995, an IJ ordered Petitioner removed *in absentia*. Carnevale Decl., ¶ 8; Dkt. No. 1-2, at 44-45. The IJ designated Jordan as the country of removal with the UAE as an alternate country of removal. Carnevale Decl., ¶ 8; Dkt. No. 1-2, at 44-45.

In 2004, Petitioner falsely informed Border Patrol agents that he was a U.S. Citizen when encountered in Montana. Carnevale Decl., ¶¶ 9-10. Later that year, the U.S. Marshals arrested Petitioner for fraud; Petitioner subsequently pled guilty to making false statements in violation of 18 U.S.C. § 1001(a)(2) and sentenced to 8 months incarceration. *Id.*, ¶¶ 9-12; Lambert Decl., Ex. A, Plea Agreement. Upon his release, ICE took Petitioner into custody for removal purposes. Pet., ¶ 26. In May 2005, ICE released Petitioner on an order of supervision ("OSUP"), imposing reporting requirements, requiring cooperation in acquiring travel documents and other conditions on release. Carnevale Decl., ¶ 14. Later that month, the Jordanian Embassy denied ICE's request for a travel document for Petitioner. Carnevale Decl., ¶ 15.

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

In 2021, Petitioner's OSUP was cancelled pursuant to DHS guidance applicable at that time. Carnevale Decl., ¶ 20; Dkt. No. 1-2, at 46-48. However, Petitioner was still required to keep ICE informed of any future address or phone number changes. Carnevale Decl., ¶ 20.

In 2023, USCIS approved a Form I-130, Petition for Alien Relative, filed by Petitioner's U.S. citizen daughter on his behalf. Carnevale Decl., ¶ 21; Pet., ¶ 19. In April 2025, USCIS denied Petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status. Carnevale Decl., ¶ 22; Lambert Decl., Ex. B, Decision. On September 23, 2025, USCIS revoked the approval of the Form I-130. Lambert Decl., Ex. C, Decision.

On October 10, 2025, Border Patrol agents arrested Petitioner. Carnevale Decl., ¶ 23; Lambert Decl., Ex. D, Form I-213. He was transferred to ICE custody at the Northwest ICE Processing Center later that day. Carnevale Decl., ¶ 25. Petitioner completed a travel document request for Jordan on December 18, 2025. *Id.*, ¶ 29. ICE sent the request to the Jordanian Embassy on December 26, 2025. *Id.*, ¶ 30. Jordan is cooperating with the United States and is repatriating individuals ordered removed. *Id.*, ¶ 31. ICE expects that a Jordanian travel document will issue. *Id.*, ¶ 32. ICE also intends to submit a travel document request to the UAE within one week. *Id.*, ¶ 30.

If Jordan and the UAE decline to issue travel documents for Petitioner, ICE intends to attempt Petitioner's removal to Palestine, where his parents were born. *Id.*, ¶¶ 29, 33. In that event, ICE will issue a third country removal notice for Palestine to Petitioner, and he will be provided the required screening should he make a fear claim. *Id.*, ¶ 33.

III. LEGAL STANDARD

"The district courts of the United States … are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been

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

tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n. 20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

A. Petitioner is lawfully detained pending his removal.

To succeed on a habeas petition, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. However, his claim that his detention is unlawful lacks merit. Petitioner has not demonstrated that his detention has become "indefinite" or unconstitutional. In *Zadvydas*, the Supreme Court analyzed whether the potentially open-ended duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an implicit limitation of post-removal detention "to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. It was further specified that Section 1231(a)(6) does not permit indefinite detention. *Id.* Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.*, at 699.

The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* (stating that "for detention to remain reasonable, as the period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink"). However, the Supreme Court determined that it is "presumptively reasonable" for the Government to detain a noncitizen for six months following entry of a final removal order, while it worked to remove

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

the noncitizen from the United States. *Id.*, at 701. Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen's detention could raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption "does not mean that every [noncitizen] not removed must be released after six months. To the contrary, [a noncitizen] may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

ICE exercised its discretion to arrest and detain Petitioner under 8 U.S.C. § 1231(a)(6) to effectuate his removal. ICE detained Petitioner less than three months ago. His detention is not indefinite nor potentially permanent. During that time, Petitioner has completed a travel document request for Jordan, which has recently been submitted to the Jordanian Embassy. That Petitioner does not yet have a specific date of anticipated removal does not make his detention indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008). Detention becomes indefinite in situations where the country of removal refuses to accept the noncitizen or if removal is legally barred. *Id.* There is no reason to believe that is the situation here. ICE anticipates receiving a Jordanian travel document for Petitioner's removal based on Jordan's cooperation with the United States. Carnevale Decl., ¶ 31.

Furthermore, ICE did not violate regulations concerning OSUP revocations when arresting Petitioner. Pet., ¶ 74. As Petitioner concedes, ICE canceled his OSUP in 2021. Pet., ¶ 73. Thus, there was no OSUP to revoke in this instance. Even if there had been an active OSUP, neither the statute nor the regulations require a pre-deprivation hearing before revoking an OSUP for the purposes of executing a removal order. *Id.* This would be impracticable and unworkable as a noncitizen released on an OSUP is not in removal proceedings. That means that the noncitizen is subject to a final order of removal and no longer before the immigration court or the BIA. Thus, a pre-deprivation hearing would provide a significant delay in executing a removal order in conflict

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

with the Government's interest in executing removal orders. *Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders).

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

Petitioner is subject to a final *in absentia* order of removal. ICE anticipates that a travel document will issue allowing for Petitioner's removal. Thus, his detention is lawful pursuant to 8 U.S.C. § 1231(a)(6) pending his removal. At this stage, the burden remains on Petitioner to present good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, and he has not done so. *Zadvydas*, 533 U.S. at 701.

B. Petitioner's claim of fear of removal to a third country is already protected under existing DHS policy.

Petitioner asks this Court to enjoin his removal to a third country "without notice and meaningful opportunity to respond." Pet., Prayer for Relief, ¶ 4. Petitioner's claim fails because it seeks prospective injunctive relief for procedures that DHS already provides as a matter of policy. While ICE may seek third country removal to Palestine if Petitioner cannot be removed to Jordan or the UAE, ICE will provide him with notice of his removal, and he will be able to assert a claim of fear. Thus, the main protection he seeks is already addressed by existing DHS policy. While this policy does not require that proceedings be reopened automatically as his request for

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

relief seeks, he has the power to move to reopen his removal proceedings on his own. *See* 8 C.F.R. § 1003.23(b)(4)(i). Thus far, he has not chosen to do so.

Because the alleged injury is contingent on a future, discretionary decision that may never occur, and because DHS policy already provides the process Petitioner requests, his claim is not ripe for habeas relief. 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 him with a notice of its intent to remove him and notice as to which country. *See* DHS Memo; Carnevale Decl., ¶ 33. This notice would allow Petitioner to claim fear of removal to that country. If Petitioner were to claim a fear of removal to a third country, ICE would refer him 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.*

C. Petitioner is a member of the Plaintiff Class in *D.V.D. v. Dep't of Homeland Sec.* and is bound by the proceedings in that case.

The relief Petitioner seeks here—notice and an opportunity to raise fear-based claims prior to third-country removal—is the same relief at issue in *D.V.D.* 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.* As a member of the plaintiff class in *D.V.D.*, he is bound by the proceedings in that case the same as all other class members. The plaintiff class in *D.V.D.* sought an injunction precluding their removal to a third country unless they were first afforded essentially the same process that Petitioner asks the Court to order here. The Supreme Court's stay of the preliminary injunction entered in that case is both precedent and the result is binding on Petitioner here by virtue of his status as a member of the *D.V.D.* plaintiff class.

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

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

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

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

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

D. Petitioner's punitive banishment argument does not demonstrate that DHS third country removal policy is unconstitutional.

Petitioner's "punitive third country banishment" argument fails because it lacks any factual basis demonstrating that the third-country removal policy is unconstitutional either on its face or as applied to the facts here. *See* Pet., ¶¶ 82-88.

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

Second, Petitioner pleads no facts supporting an as-applied claim. While he alleges that ICE informed him that South Sudan may be an option for third country removal (Pet., ¶ 34), he does not assert that he has completed any paperwork for removal to that country and has already lodged a fear claim through counsel for removal to South Sudan. *Id.* He concedes that "ICE Officer Joseph Carnevale confirmed [Petitioner] would be referred to USCIS if ICE sought to remove him to South Sudan." *Id.* Furthermore, Petitioner has not sought to reopen his removal proceedings based on the purported comments. Other than South Sudan, he does not allege which third country he fears removal 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

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

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). Without factual allegations establishing a realistic danger of punitive treatment, Petitioner's theory remains purely conjectural and nonjusticiable. Therefore, Petitioner is unlikely to succeed on his third country removal claims.

V. CONCLUSION

For these reasons, this Court should deny the Petition.

DATED this 30th day of December, 2025.

Respectfully submitted,

CHARLES NEIL FLOYD
United States Attorney

s/ Michelle R. Lambert
MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
1201 Pacific Avenue, Suite 700
Tacoma, Washington 98402
Phone: (206) 553-7970
Fax: (206) 553-4067
Email: michelle.lambert@usdoj.gov

Attorneys for Federal Respondents

I certify that this memorandum contains 4,763 words, in compliance with the Local Civil Rules.