

District Judge Ricardo S. Martinez
Magistrate Judge Grady J. Leupold

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

JIANMEI CAO,

Petitioner,

v.

BRUCE SCOTT, *et al.*,¹

Respondents.

Case No. 2:25-cv-02373-RSM-GJL

FEDERAL RESPONDENTS'²
RETURN

I. INTRODUCTION

This Court should deny Petitioner Jianmei Cao's habeas petition. Dkt. No. 4-1, Corrected Complaint and Petition for Writ of Habeas Corpus and Injunctive Relief ("Petition" or "Pet."). Petitioner is a Chinese national who is in U.S. Immigration and Customs Enforcement ("ICE") custody pending her removal. She asserts that her detention is unlawful because her removal to China is not reasonably foreseeable. But Petitioner is a noncitizen subject to an administratively final order of removal, and she is lawfully detained under Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner's detention also is not indefinite under

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

² Bruce Scott is not a Federal Respondent.

1 *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In fact, she is responsible for her prolonged
2 detention by failing to cooperate with ICE to effectuate her removal. 8 U.S.C. § 1231(a)(1)(C).
3 Once Petitioner cooperates with ICE's efforts to complete passport request documents, it is
4 anticipated that China will issue her a passport and she will be removed in the reasonably
5 foreseeable future. While the Petition speculates that she may be removed to a third country, she
6 presents *no evidence* of any intention for her removal to a country other than China.

7 Accordingly, Federal Respondents respectfully request that this Court deny the Petition.

8 **II. BACKGROUND**

9 **A. Detention Authorities and Removal Procedures**

10 The INA governs the detention and release of noncitizens during and following their
11 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general
12 detention periods are generally referred to as “pre-order” (meaning before the entry of a final order
13 of removal) and, relevant here, “post-order” (meaning after the entry of a final order of removal).
14 *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order
15 detention).

16 When a final order of removal has been entered, a noncitizen enters a 90-day “removal
17 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
18 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen's presence for
19 removal and to protect the community from noncitizens who may present a danger, Congress has
20 mandated detention while removal is being effectuated:

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1 During the removal period, the [Secretary of Homeland Security]³ shall detain the
2 [noncitizen]. Under no circumstance during the removal period shall the [Secretary]
3 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.

4 8 U.S.C. § 1231(a)(2).

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

8 [A noncitizen] ordered removed who is inadmissible under section 1182,
9 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
10 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).

11
12 8 U.S.C. § 1231(a)(6) (emphasis added).

13 Pertinent to this case, the removal period may also be extended if a noncitizen “fails or
14 refuses to make timely application in good faith for travel or other documents necessary to the
15 [noncitizen’s] departure or conspires or acts to prevent the [noncitizen’s] removal subject to an
16 order of removal.” 8 U.S.C. § 1231(a)(1)(C). In that instance, the removal period is extended
17 until the noncitizen complies with his statutory obligations to cooperate. 8 C.F.R.
18 § 241.4(g)(1)(ii). Once the noncitizen has complied, ICE “shall have a reasonable period of time
19 in order to affect the [noncitizen’s] removal.” *Id.*

20 During the removal period, ICE⁴ is charged with attempting to effect removal of a
21 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time

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23 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 DHS, of which ICE is a component. *See also* 6 U.S.C. § 251.

24 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.

1 limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen
2 may be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal
3 from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified
4 six months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.*, at 701.

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

6 In March 2025, three plaintiffs instituted a putative class action suit challenging their third
7 country removals in the District of Massachusetts. *D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.).
8 On March 28, 2025, the district court entered a TRO enjoining the DHS and others from
9 “[r]emoving any individual subject to a final order of removal from the United States to a third
10 country, *i.e.*, a country other than the country designated for removal in immigration proceedings”
11 unless certain conditions were met. *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676,
12 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025).

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

20 All individuals who have a final removal order issued in proceedings under Section
21 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) who
22 DHS has deported or will deport on or after February 18, 2025, to a country (a) not
23 previously designated as the country or alternative country of removal, and (b) not
24 identified in writing in the prior proceedings as a country to which the individual
would be removed.

Id., at 378.

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

3 All removals to third countries, *i.e.*, removal to a country other than the country or
4 countries designated during immigration proceedings as the country of removal on
5 the non-citizen's order of removal, *see* 8 U.S.C. § 1231(b)(1)(C), must be preceded
6 by written notice to both the non-citizen and the non-citizen's counsel in a language
7 the non-citizen can understand. Dkt. 64 at 46–47. Following notice, the individual
8 must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-
9 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.*

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

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

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

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

2 On March 30, 2025, and then on July 9, 2025, DHS issued guidance regarding third country
3 removals. U.S. Department of Homeland Security, “Guidance Regarding Third Country
4 Removals,” Kristi Noem, March 30, 2025, *available at*
5 <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1>
6 [1.pdf](#) (last visited Dec. 4, 2025) (“DHS Memo”); U.S. Immigration and Customs Enforcement,
7 “Third Country Removals Following the Supreme Court’s Order in Department of Homeland
8 Security v. D.V.D., No. 24A1153 (U.S. June 23, 2025),” Todd M. Lyons, July 9, 2025, *available*
9 *at*
10 <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1>
11 [.pdf](#) (last visited Dec. 4, 2025).

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

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

1 the person has not met the standard, according to DHS policy, they will be removed. *Id.* There is
 2 nothing in the memo or in ICE policy that prevents an individual from filing a motion to reopen
 3 their prior removal proceedings at any time they so choose, based on a request for asylum,
 4 withholding of removal, or protection under the Convention Against Torture. *See id.*; *see also* 8
 5 C.F.R. § 1003.23(b)(4)(i).

6 **D. Petitioner Jianmei Cao**

7 Petitioner is a native and citizen of China. *See* Pet., at 4. She was last entered the United
 8 States in 1999 on a B2 visitor visa. Melendez Diaz Decl., ¶ 4. In 2000, Petitioner plead guilty to
 9 alien smuggling and was sentenced to six months incarceration. Lambert Decl., Ex. A, Criminal
 10 Judgment. That same year, Petitioner was placed into removal proceedings, and she was released
 11 on her own recognizance. Melendez Diaz Decl., ¶ 5; Lambert Decl., Ex. B, [REDACTED]; Ex.
 12 C, [REDACTED]. In 2007, an immigration judge denied Petitioner's
 13 applications for relief from removal and ordered her removed to China. Lambert Decl., Ex. D,
 14 [REDACTED]; Ex. E, [REDACTED]. In 2010, the Board of
 15 Immigration Appeals ("BIA") dismissed the appeal. Lambert Decl., Ex. F, [REDACTED]. The
 16 Ninth Circuit affirmed the BIA's decision and denied Petitioner's petition for review in 2014. *Cao*
 17 *v. Holder*, No. 10-70557 (9th Cir. June 16, 2014).

18 On May 20, 2025, Petitioner attended a USCIS interview concerning her Form I-485,
 19 Application to Register Permanent Residence or Adjust Status.⁵ Melendez Diaz Decl., ¶ 9. ICE
 20 took Petitioner into custody at the interview location. Lambert Decl., Ex. G, [REDACTED]; Ex. H,
 21 [REDACTED]. She has been in ICE detention at the Northwest ICE Processing Center since
 22 May 23, 2025. Pet., at 2; Melendez Diaz Decl., ¶ 10.

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 24 ⁵ On May 21, 2025, USCIS denied Petitioner's application due to a lack of USCIS Jurisdiction. Lambert Decl., Ex. I, [REDACTED].

1 ICE is working to secure Petitioner's passport from the Chinese government to execute her
2 removal order. Melendez Diaz Decl., ¶¶ 12-19. Most recently, ICE provided passport request
3 documents to Petitioner for completion on October 31, 2025. *Id.*, ¶ 17. She stated that she was
4 unable to complete the paperwork because she was ill. *Id.* A few days later, Petitioner again
5 informed ICE that she was feeling ill and was unable to fill out the paperwork. *Id.*, ¶ 18. ICE
6 instructed her to complete the documents by November 7th. *Id.* But Petitioner failed to complete
7 her paperwork by November 7th, again claiming that she was ill. *Id.*, ¶ 19. On November 11th,
8 ICE served Petitioner with a Notice of Failure to Comply Pursuant to 8 C.F.R. § 241.4(g). Lambert
9 Decl., Ex. J, Notice of Failure to Comply.

10 ICE believes that China will issue a passport Petitioner. ICE has verified that Petitioner is
11 a Chinese citizen and is in possession of her former Chinese passports. Melendez Diaz Decl., ¶ 21.
12 Once a passport application is submitted, Deportation Officer Melendez Diaz states that China
13 usually issues a passport within a month or two. *Id.* Depending on Petitioner's compliance with
14 the completion of the passport application, ICE believes that there is a significant likelihood that
15 Petitioner will be removed in the reasonably foreseeable future. *Id.*

16 Petitioner filed the instant habeas litigation on November 24, 2025. Petitioner asks this
17 Court to order: (1) her immediate release from ICE custody; (2) an order enjoining ICE from
18 redetaining her without a travel document and securing a travel date; (3) an order enjoining ICE
19 from third country removal without reopened removal proceedings; and (4) an order enjoining her
20 removal to any third country under the U.S. Department of Homeland Security's ("DHS") alleged
21 "punitive banishment policy and practices." Pet., Prayer for Relief.

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III. ARGUMENT

A. Petitioner's detention is lawful pending her removal.

Petitioner cannot show that she is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241. She has not demonstrated that her 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 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.*

1 Petitioner's detention is not indefinite under *Zadvydas*. Prior to her May 2025 detention,
2 Petitioner had not been subject to post-order detention. She had been released from immigration
3 custody days after the issuance of her notice to appear and remained out of custody. Melendez
4 Diaz Decl., ¶ 5. As Petitioner remained unlawfully in the United States while subject to a final
5 order of removal, ICE recently exercised its discretion to arrest and detain Petitioner under 8
6 U.S.C. § 1231(a) to effectuate her removal. Once Petitioner cooperates with the completion of her
7 passport application, DHS believes that China will issue her passport shortly after, allowing for
8 her removal. See Melendez Decl., ¶ 21. However, Petitioner's "recalcitrant refusal to cooperate
9 in effectuating [her] removal" is the reason why she remains in detention. *Pelich v. INS*, 329 F.3d
10 1057, 1062 (9th Cir. 2003).

11 Implicit in the removal process, ICE must take steps, along with the noncitizen's efforts,
12 to effectuate removal, including working with the appropriate foreign countries. To the extent that
13 Petitioner's removal has been delayed, this Court should recognize Petitioner's refusal to cooperate
14 with ICE's efforts to complete her passport application. See Melendez Diaz Decl., ¶¶ 17-19.
15 Because she has not complied in good faith with ICE's removal efforts, she "cannot meet [her]
16 burden to show that there is no significant likelihood of removal in the foreseeable future." *Lema*
17 *v. INS*, 341 F.3d 853, 856 (9th Cir. 2003).

18 Lastly, Petitioner asks this Court to enjoin ICE from redetaining her "without first
19 obtaining agreement from China to repatriate her, obtaining her travel documents, and securing a
20 travel date." Pet., Prayer for Relief. But this does not comport with the law. Because Petitioner
21 is subject to an order of removal, ICE's legal authority to detain her is clear. 8 U.S.C. § 1231(a)(6);
22 *Zadvydas*, 533 U.S. at 683. While it may be necessary under certain circumstances to release a
23 detainee on supervision to avoid having the detainee's detention become "indefinite," no statutory
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1 or regulatory authority cited by Petitioner requires ICE to have a travel document in-hand before
2 detaining or re-detaining an individual who is subject to a removal order.

3 **B. Petitioner's claim of fear of removal to a third country is both premature and**
4 **already protected under existing DHS policy.**

5 The relief Petitioner requests regarding a third country removal is (1) currently speculative
6 and (2) already addressed by existing DHS policy, which provides the protection she seeks.

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

13 First, Petitioner unreasonably requests that the Court order DHS to "not remove or seek to
14 remove Petitioner to a third country without notice and meaningful opportunity to respond." Pet.,
15 Prayer for Relief. However, foundationally, Petitioner's request is speculative. Petitioner does
16 not allege any specific threat of third country removal and the only rationale provided by Federal
17 Respondents here for her detention is that Petitioner's deportation to *China* is reasonably
18 foreseeable. Courts in similar positions have declined to address relief in similar circumstances
19 due to the speculative nature of the request. *See e.g., Khamba v. Albarran*, No. 1:25-CV-01227
20 JLT SKO, 2025 WL 2959276, at *10 (E.D. Cal. Oct. 17, 2025) ("The Court declines to address
21 Petitioner's other claims at this time. For example, he requests an injunction against third country
22 removal without certain procedural protections (Doc. 4 at 28), but any such fear is speculative.").

23 Additionally, as noted above, there is nothing preventing Petitioner from going straight to
24 the immigration court herself and requesting that her prior proceedings be reopened based on a

1 new fear or removal to any other country than China. *See* 8 C.F.R. § 1003.23(b)(4)(i). Thus far,
2 she has not chosen to do so.

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

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

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

17 Furthermore, to the extent Petitioner alleges that she is an individual subject to a final order
18 of removal who fears removal to a third country that was not previously described as an alternative
19 country of removal, Petitioner would undisputedly be a member of the plaintiff class in *D.V.D.* As
20 a member of the plaintiff class in *D.V.D.*, she is bound by the proceedings in that case the same as
21 all other class members. The plaintiff class in *D.V.D.* sought an injunction precluding their
22 removal to a third country unless they were first afforded essentially the same process that
23 Petitioner asks the Court to order here. The Supreme Court’s stay of the preliminary injunction
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1 entered in that case is both precedent and the result is binding on Petitioner here by virtue of her
2 status as a member of the *D.V.D.* plaintiff class.

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

10 This is also the rule in this Circuit. A district court may properly dismiss an individual
11 complaint where the plaintiff is a member in a class action, to the extent the individual action
12 duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d 1130,
13 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)). Such a
14 dismissal is within the court’s discretion based on its inherent power to control its own docket.
15 *Crawford*, 599 F.2d at 893. But it is “imperative to avoid concurrent litigation in more than one
16 forum whenever consistent with the rights of the parties.” *Id.*; *see Frost v. Symington*, 197 F.3d
17 348, 359 (9th Cir. 1999) (“To the extent that a class action involving the same issues raised by
18 [plaintiff] is currently pending . . . [he] may have to bring all of his related claims for equitable
19 relief . . . through . . . class counsel.”).

20 This Court should decline to exercise jurisdiction over Petitioner’s third country removal
21 claim as a matter of comity because the District of Massachusetts has certified a class action that
22 includes the same claim Petitioner is pursuing here. *Pacesetter Systems, Inc. v. Medtronic, Inc.*,
23 678 F.2d 93, 94-95 (9th Cir. 1982) (“There is a generally recognized doctrine of federal comity
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1 which permits a district court to decline jurisdiction over an action when a complaint involving
2 the same parties and issues has already been filed in another district.”).

3 **D. Petitioner’s “punitive third country banishment” claim does not demonstrate**
4 **that the policy is unconstitutional.**

5 Petitioner’s “punitive third country banishment” claim fails because it lacks any factual
6 basis demonstrating that the third-country removal policy is unconstitutional either on its face or
7 as applied to the facts here. *See* Pet., Claims for Relief, ¶¶ 10-16.

8 Petitioner cannot meet the heavy burden required for a facial challenge. A facial challenge
9 demands a showing that a law “is invalid in toto—and therefore incapable of any valid
10 application.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5
11 (1982). Such challenges are “strong medicine” and are disfavored because they “often rest on
12 speculation” and risk “premature interpretation of statutes on the basis of factually barebones
13 records.” *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998); *Wash. State Grange*
14 *v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008). Petitioner’s broad assertions that the
15 program imposes punishment on its subjects are precisely the type of speculative allegations that
16 these cases reject.

17 Furthermore, Petitioner pleads no facts supporting an as-applied claim. She does not allege
18 which third country she might be removed to, what harm she personally faces, or any
19 circumstances that would make removal to any specific country punitive in her case. A claim
20 resting on an imaginary injury does not satisfy Article III’s case-or-controversy requirement.
21 *Lewis v. Cont’l Bank Corp.*, 494 U.S. at 477. Unlike in *Y.T.D. v. Andrews* or *Nguyen v. Scott*,
22 Petitioner provides no evidence that her speculative removal to a third country would result in
23 imprisonment or harm. *Y.T.D. v. Andrews*, No. 1:25-cv-01100, 2025 WL 2675760, at *4 (E.D.
24 Cal. Sept. 18, 2025); *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *25 (W.D. Wash.

1 Aug. 21, 2025). Without factual allegations establishing a realistic danger of punitive treatment,
2 Petitioner's theory remains purely conjectural and nonjusticiable.

3 **IV. CONCLUSION**

4 For these reasons, Federal Respondents request this Court deny the Petition.

5 DATED this 5th day of December, 2025.

6 Respectfully submitted,

7 CHARLES NEIL FLOYD
8 United States Attorney

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20 *I certify that this memorandum contains 4,345*
21 *words, in compliance with the Local Civil Rules.*