District Judge Tana Lin

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

VICTOR ARGENIS REA-HERNANDEZ,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02609-TL

FEDERAL RESPONDENTS'[1] RETURN MEMORANDUM

Noted for Consideration:
January 7, 2026.

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

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I. INTRODUCTION

This Court should deny Petitioner Victor Argenis Rea-Hernandez's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet."). The U.S. Department of Homeland Security ("DHS") detained Petitioner in January 2025 following his criminal arrest. Petitioner has been subject to a removal order since May 12, 2025. The immigration judge granted him Convention against Torture ("CAT") protections against removal to his home country of Venezuela. U.S. Immigration and Customs Enforcement ("ICE") is actively working to effectuate his removal to Mexico and has provided Petitioner notice. Petitioner has expressed fear of removal to Mexico, and ICE has referred him to U.S. Citizenship and Immigration Services ("USCIS") to conduct a credible fear interview to determine whether it is more likely than not that he will be persecuted or tortured in Mexico. If removal to Mexico is not possible, ICE may seek removal to another third country. However, Petitioner will receive prior notice and an opportunity to submit a fear claim if Petitioner is found to have a credible fear of removal to Mexico.

II. FACTUAL AND PROCEDURAL 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 commonly 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

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"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 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 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.

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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. § 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.

Finally, 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*,

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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 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.

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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., 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

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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

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.282404.19.0.1.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

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the individual has met this standard, if the person was previously in removal proceedings, USCIS will inform ICE, and ICE can then file a motion to reopen with the Immigration Court. *Id.* Alternatively, ICE can also choose to designate another country of removal. If USCIS finds that the person has not met the standard, according to DHS policy, they will be removed. *Id.* There is nothing in the memo or in ICE policy that prevents an individual from filing a motion to 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 Victor Argenis Rea-Hernandez

Petitioner is a native and citizen of Venezuela. Pet., pg. 3; Declaration of Deportation Officer Paul Correa ("Correa Decl.") ¶ 3. On July 2, 2022, Petitioner entered the United States at or near Eagle Pass, Texas, at a place other than designated by the Attorney General. *Id.* ¶ 4. On July 3, 2022, Petitioner was paroled pursuant to INA § 212(d)(5), codified at 8 U.S.C. § 1182(d)(5), by Border Patrol and was enrolled in Alternatives to Detention. *Id.* ¶ 5. He was given a Call-In Letter directing him to report to an ERO office in Dallas, Texas on August 2, 2022. *Id.*

On January 1, 2025, Petitioner was charged in Utah for Driving under the Influence in violation of UCA 41-6A-502(1)+(2A), a Class B Misdemeanor, and four other traffic violations. *Id.* ¶ 8; Declaration of Alixandria K. Morris ("Morris Decl."), Ex. 1 (I-213). On January 8, 2025, Petitioner failed to report to ERO in Utah as directed. Correa Decl. ¶ 6. On January 10, 2025, ERO served, via regular mail, a Notice to Appear ("NTA") on Petitioner that charged him under INA § 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i), INA § 212(a)(7)(A)(i)(I); 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* ¶ 7; Morris Decl., Ex. 2 (NTA).

On January 27, 2025, Petitioner was stopped in a vehicle on I-15 southbound in Utah and was taken into custody after determining he was arrested on January 1st and in violation of

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immigration laws. Correa Decl. ¶ 8; Morris Decl., Ex. 3 (Arrest Warrant). On February 4, 2025, Petitioner was transferred into NWIPC. Correa Decl. ¶ 9. On March 31, 2025, Petitioner filed United State Citizenship and Immigration Services ("USCIS") form I589, Application for Asylum and Withholding of Removal with EOIR. *Id.* ¶ 10. On May 12, 2025, Petitioner was ordered removed from the United States to Venezuela but granted Withholding of Removal under the Convention Against Torture to Venezuela. *Id.* ¶ 11.

Since May 2025, ICE has sought request for acceptance forms for Petitioner to approximately twenty-four countries. *Id.* ¶¶ 12-21. On June 26, 2025, Petitioner was served with a Notice of Intent to remove to Mexico; he refused to sign the document. *Id.* ¶ 20. On August 13, 2025, Petitioner informed ERO he was afraid to return to Mexico. *Id.* ¶ 22. On December 28, 2025, ICE served a Notice of Removal for Mexico on Petitioner; he refused to sign the form. *Id.* ¶ 23. On December 29, 2025, ERO notified USCIS of Petitioner's fear claim for Mexico. *Id.* ¶ 24. Because Petitioner expressed a fear of return to Mexico, USCIS will conduct a credible fear interview to determine whether it is more likely than not that he will be persecuted or tortured in Mexico. *Id.* ¶ 25. If removal to Mexico is not possible, ICE may seek removal to another third country. *Id.* ¶¶ 26-30. However, Petitioner will receive prior notice and an opportunity to submit a fear claim if Petitioner is found to have a credible fear of removal to Mexico. *Id.*

III. 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

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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.*

Here, Petitioner was taken into custody following a criminal arrest for a DUI. ICE detained Petitioner in January 2025. His final order of removal became administratively final on May 12, 2025. While he was granted withholding of removal under CAT for Venezuela, he is subject to a final order of removal and can be removed—pursuant to receiving proper notice of removal to a third country and the opportunity to express fear of removal.

His detention is not indefinite nor potentially permanent. During that time, Petitioner was given notice of removal to Mexico. Petitioner's fear claim was referred to USCIS for a

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credible fear interview on December 29, 2025. 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 is pursuing removal to a country that will accept Petitioner, consistent with statutory and regulatory requirements. Correa Decl., ¶¶ 12-23.

Furthermore, ICE did not violate regulations concerning OSUP revocations when arresting Petitioner. 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 noncitizens are subject to final orders 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 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). Further, Petitioner was detained here following his criminal arrest for a DUI. Correa Decl. ¶ 8.

Finally, Petitioner asks this Court to enjoin ICE from redetaining him without first obtaining a travel document and scheduling his removal. Pet., Prayer for Relief, ¶ (d). This does not comport with *Zadvydas* 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.

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Petitioner is subject to a final order of removal. ICE anticipates that they will be able to find a suitable third country allowing for Petitioner's removal, if his fear claim for Mexico is found credible. 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, Ground Four, pg. 24. Here, Petitioner identifies no country, no policy, and no factual circumstance demonstrating that third-country removal would operate as punishment rather than lawful execution of a removal order. Petitioner's claim further fails because it seeks prospective injunctive relief for procedures that DHS already provides as a matter of policy. ICE has given Petitioner notice of removal to a third country—Mexico. Petitioner has expressed fear of removal to that country. ICE referred him to USCIS on December 29, 2025, and USCIS will schedule Petitioner for an interview to determine whether it is more likely than not that he will be persecuted or tortured in Mexico. *Id.*

Because DHS policy already provides the process Petitioner requests, and because Petitioner is already being afforded the benefits under that policy, his claim is not ripe for habeas relief. Petitioner was afforded the opportunity to express fear of removal to Mexico. He did express fear. Then, Petitioner was referred to USCIS for a credible fear interview to determine whether it is more likely than not that Petitioner would be persecuted or tortured if removed to Mexico. If Petitioner's fear claim for Mexico is found to be credible, ICE may seek third country removal to another third country. In that scenario, ICE will provide Petitioner with notice of his

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removal, and he will be able to assert a claim of fear to that country. 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 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.

The relief Petitioner seeks—namely, notice and a meaningful opportunity to respond—are already DHS policy. And ICE has already demonstrated that they followed these procedures in Petitioner's case by providing him this notice and opportunity. If ICE were to seek Petitioner's removal to a different third country, ICE would provide him with a notice of its intent to remove him and notice as to which country. *See* DHS Memo; Correa Decl., ¶¶ 25-30. This notice would allow Petitioner to claim fear of removal to that country. If Petitioner were to claim a fear of removal to that third country as well, ICE would refer him to USCIS (as they did for Mexico), 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.* Because Petitioner is a member of the certified *D.V.D.* class and seeks the same injunctive relief at issue there, principles of comity and docket control counsel against parallel litigation of identical claims. 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

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entered in that case is both precedent and the result is binding on Petitioner here by virtue of his status as a member of the *D.V.D.* plaintiff class.

Additionally, courts recognize that members of class action lawsuits should not be permitted to bring separate actions where they seek to re-litigate individually issues that were raised in the class action. *See Wynn v. Vilsack*, 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

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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.").

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 Mexico may be an option for third country removal (Pet., pgs. 24-25), 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 Mexico. *Id.* Furthermore, Petitioner has not sought to reopen his removal proceedings based on the purported comments. Other than Mexico, 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 speculative and unsupported injury does not satisfy Article III's case-or-controversy requirement. *Lewis v.*

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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). 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.

E. Petitioner is not entitled to a pre-detention hearing in the post-order context, and his detention was lawful and comported with Due Process

The authorities Petitioner relies upon to argue that due process requires a pre-detention hearing are inapposite. Pet. at 10–13 (Section VIII). Petitioner cites cases such as *E.A. T.-B. v. Wamsley*, No. CV25-1192-KKE, 2025 WL 2402130, and *Ledesma Gonzalez v. Bostock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, among other recent out-of-district decisions. None applies to detention governed by 8 U.S.C. § 1231. *See* Pet. at 10–13. Petitioner does not dispute that he is subject to an administratively final order of removal. Each of the cases cited arose in the context of pre-order detention or under regulatory schemes materially distinct from the post-order detention framework at issue here. As such, they provide no meaningful guidance on whether due process requires a hearing before detention under § 1231.

To the extent Petitioner also asserts that ICE violated its own regulations or failed to provide sufficient notice of revocation, these assertions are boilerplate and unsupported by facts specific to this case. *See* Pet. at 13–15 (Section IX). The Petition recites generalized legal arguments without alleging conduct particular to Petitioner. *Id.* Indeed, Petitioner identifies no regulation that was violated and no notice requirement applicable to his circumstances that was not satisfied.

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In any event, those arguments are irrelevant under the circumstances presented by this particular Petitioner. Here, Petitioner was detained following a criminal arrest for driving under the influence, failed to report for required check-ins on multiple occasions in multiple states, and has pending criminal charges in Utah. Correa Decl. ¶¶ 5-6, 8; *see also* Morris Decl., Ex. 1. Under these circumstances, ICE acted well within its statutory authority in detaining Petitioner.

IV. CONCLUSION

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

Dated this 2nd day of January, 2026.

Respectfully submitted,

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I certify that this memorandum contains 5,125 words, in compliance with the Local Civil Rules.

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