District Judge James L. Robart

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

YOONIS AHMED, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Case No. 2:25-cv-02718-JLR FEDERAL RESPONDENTS'[1] RETURN MEMORANDUM Noted for Consideration: January 20, 2026.

I. INTRODUCTION

This Court should deny Petitioner Yoonis Ahmed's Petition for Writ of Habeas Corpus. Dkt. 5 (Pet.). Petitioner challenges his post-order detention at the Northwest ICE Processing Center (NWIPC) as unconstitutional and unlawful while he awaits removal from the United States. Petitioner is a native and citizen of Somalia who entered the United States as a refugee in 2006. In 2009, Petitioner was convicted of theft by deception in Utah. In 2011, Petitioner was convicted of aggravated robbery in the first degree in Utah. Based on these convictions, he was ordered removed in 2012, and that order has since become administratively final. Petitioner was

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

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later granted withholding of removal for Somalia based under the Convention Against Torture.

In 2013, Petitioner was released from detention. He was not placed on an order of supervision. On May 28, 2025, Petitioner was encountered by the United States Customs and Border Protection (CBP) near Blaine, Washington. At the conclusion of that encounter, Petitioner was taken into custody and booked into the NWIPC.

Petitioner's detention is lawful. He is a noncitizen subject to an administratively final order of removal, and he is lawfully detained under Section 241 of the Immigration and Nationality Act (INA). *See* 8 U.S.C. § 1231. Petitioner's detention is not indefinite under *Zadvydas*, 533 U.S. 678 at 701. The only necessary determination ICE must make under the *Zadvydas* framework is whether there is a significant likelihood of removal in the reasonably foreseeable future. ICE is actively working to obtain travel documents for his removal to a third country. However, Petitioner's "recalcitrant refusal to cooperate in effectuating his removal" is the reason why he remains in detention. *Pelich v. INS*, 329 F.3d 1057, 1062 (9th Cir. 2003). As a result, the length of Petitioner's detention "triggers no constitutional concerns." *Id.*

Petitioner's claim of fear of removal to a third country is already protected under existing DHS policy. Once a third country is designated, Petitioner will receive prior notice and an opportunity to submit a fear claim. If Petitioner submits a fear claim, ICE will refer him to U.S. Citizenship and Immigration Services (USCIS) for a reasonable fear interview to screen him for protection against removal to that country. After a post-interview review, USCIS determines whether an individual is more likely than not to face persecution or torture if removed. A favorable finding may lead ICE to reopen proceedings or designate a different country of removal, while an unfavorable finding results in removal, though individuals may still move to reopen their case to seek asylum, withholding of removal, or CAT protection. Thus, the relief Petitioner seeks—namely, notice and a meaningful opportunity to respond—are already DHS policy.

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Finally, 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. 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). 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.

Accordingly, Federal Respondents respectfully request the Court deny the Petition. Federal Respondents do not believe an evidentiary hearing is necessary.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Legal Background

1. Post-Order Detention

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

When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence

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for removal and to protect the community from dangerous noncitizens while removal is being effected, Congress mandated detention:

> During the removal period, the [Secretary of Homeland Security] shall detain the [noncitizen]. Under no circumstance during the removal period shall the [Secretary] release [a noncitizen] who has been found inadmissible under section 212(a)(2) or 212(a)(3)(B) of this title or deportable under section 237(a)(2) or 237(a)(4)(B) of this title.

8 U.S.C. § 1231(a)(2).

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

> [A noncitizen] ordered removed who is inadmissible under section 212, removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

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

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

During the removal period, ICE is charged with attempting to effectuate removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen

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may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six months as a presumptively reasonable time necessary to bring about a noncitizen's removal. *Id.*, at 701.

2. OSUP and Revocation

Once it is determined that there is no significant likelihood of removal in the reasonably foreseeable future, DHS may release noncitizens on an Order of Supervision (OSUP). 8 C.F.R. § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the noncitizen "violates any of the conditions of release," *id.* §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined "that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." *Id.* § 241.13(i)(2). Whether there is a significant likelihood that the alien may be removed in the reasonably foreseeable future is determined by assessing a series of factors, including "the history of the alien's efforts to comply with the order of removal, the history of the Service's efforts to remove aliens to the country in question or to third countries ... and the views of the Department of State regarding the prospects for removal of aliens to the country or countries in question." *Id.* § 241.13(f). Alternatively, certain designated officials may also revoke an OSUP as an act of discretion when revocation is in the public interest. *Id.* § 241.4(l)(2).

Section 241.13(i)(3) provides that upon revocation, the alien "will be notified of the reasons for revocation of his or her release" and will receive an "initial informal interview promptly" after being detained, to "afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* § 241.13(i)(3). During such an interview, the noncitizen "may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not

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violated the order of supervision." *Id.* "The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.* Then, if the alien's request for release is denied, he or she "may submit a request for review of his or her detention . . . six months after [DHS's] last denial of release[.]" *Id.* § 241.13(j).

3. 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.

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.

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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*, 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).

4. *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.*

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

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

Id., at 378.

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

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

D.V.D. v. U.S. Dep't of Homeland Sec., 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,

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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.

5. 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.282404.190.1.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).

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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 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 Yoonis Ahmed

Petitioner Yoonis Ahmed is a native and citizen of Somalia. *See* Declaration of Deportation Officer Javier Delgado (Delgado Decl.) ¶ 3. On or about October 24, 2006, Petitioner was admitted to the United States as a refugee. *Id.* On March 30, 2009, Petitioner was convicted of the offense of theft by deception in violation of Utah Criminal Code (Utah Code) § 76-6-405.

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Id. ¶ 4. On June 3, 2011, Petitioner was convicted of the offense of aggravated robbery in the first degree, in violation of Utah Code § 76-6-302. *Id.*

A Notice to Appear (NTA), Form I-862, was filed by DHS on May 9, 2012, charging Petitioner with removability for violating Section 237(a)(2)(A)(ii) of the INA for being an alien who, at any time after admission, has been convicted of two crimes involving moral turpitude. *Id.* ¶ 5; Declaration of Alixandria K. Morris (Morris Decl.), Exs. 1-2 (Notice to Appear; I-213). On May 1, 2012, Petitioner was transferred from the Multnomah County Parole and Probation office and booked into the NWIPC. Delgado Decl. ¶ 6. On May 29, 2012, Petitioner appeared before an Immigration Judge after requesting a bond hearing. *Id.* ¶ 7. The Immigration Judge denied bond. *Id.* Petitioner appeared for his merits, while in detention, on March 18, 2013. *Id.*

On May 7, 2013, the Immigration Judge denied the majority of Petitioner's requested relief, given his criminal history. *Id.* ¶ 8; Morris Decl., Ex. 4 (IJ Order). However, the Immigration Judge granted Deferral Under the Convention Against Torture (DCAT), subject to 8 C.F.R. § 1208.17. Delgado Decl. ¶ 8; Morris Decl., Ex. 4. Petitioner was released from detention at NWIPC on May 16, 2013 (nine days following his final removal order). Delgado Decl. ¶ 8; Morris Decl., Ex. 3 (Release from Detention – No OSUP Indicated). He was not placed on an order of supervision. Delgado Decl. ¶ 8; Morris Decl., Ex. 3.

On May 28, 2025, Petitioner was encountered by a United States Customs and Border Protection (CBP) officer near Peace Arch Park in Blaine, Washington. *Id.* ¶ 9. He provided a State of Oregon identification document, but no other form of identification. At the conclusion of this encounter, Petitioner was taken into custody and booked into the NWIPC. *Id.*

Between December 1, 2025, and December 27, 2025, Deportation Officer Delgado met with Petitioner twice to discuss additional countries for removal. *Id.* ¶ 11. On each occasion,

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Petitioner refused to assist or provide any information, stating he would live in Oregon or the United States. *Id.*

On December 19, 2025, a request was submitted to Costa Rica and Australia regarding third country removal possibility. *Id.* ¶ 12. On December 27, 2025, third country removal requests for Costa Rica and Australia were denied. *Id.* ¶ 13. On January 13, 2026, third country removal requests were submitted to Panama and El Salvador. *Id.* ¶ 14.

III. ARGUMENT

A. Petitioner's Administrative Procedure Act claims must be dismissed for lack of Subject Matter Jurisdiction

Petitioner seeks to challenge his detention on grounds that it violates Sections 706(2)(A), (B) and (C) of the Administrative Procedure Act (APA). The Court has no subject matter jurisdiction to hear these claims.

Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C. § 704 ("Agency action made reviewable by statute and final agency action *for which there is no other adequate remedy in a court* are subject to judicial review.") (emphasis added). Simply put, "federal courts lack jurisdiction over APA challenges whenever Congress has provided another 'adequate remedy.'" *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See Trump v. J. G. G.,* 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs' claims necessarily implied the invalidity of the Plaintiffs' confinement and removal under the "Alien Enemies Act" and so had to be brought as habeas corpus claims in the jurisdiction of their confinement). As Justice Kavanaugh stated in his concurring opinion, "[e]specially given the history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704,

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which states that claims under the APA are not available when there is another 'adequate remedy in a court,' I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 674; *cf. O'Banion v. Matevousian,* 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that "habeas actions" provide an "adequate remedy" displacing APA review under Section 704); *and see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018) ("Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.").

Moreover, to be reviewable under the APA an action must be a "final agency action," which is to say that it is the "consummation of the agency's decision making process." *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of executing a removal order is not within that category because it is only an intermediary step in the process. *See Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025). Accordingly, Petitioner's claims based on alleged APA should be denied.

B. 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.

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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.[2] *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.*

CBP exercised its discretion to arrest and detain Petitioner when he was encountered near the Canada-United States border near Blaine, Washington. Delgado Decl. ¶ 9. Since Petitioner cannot be removed to his home country of Somalia, ICE is working to effectuate his removal to a third country. *Id.* ¶¶ 11-13. Petitioner has refused to cooperate in this process. *Id.* ¶ 11. Petitioner's "recalcitrant refusal to cooperate in effectuating his removal" is the reason why he remains in detention. *Pelich v. INS*, 329 F.3d 1057, 1062 (9th Cir. 2003). As a result, the length of Petitioner's detention "triggers no constitutional concerns." *Id.* Denial is appropriate here because Petitioner is responsible for his prolonged detention by failing to cooperate with U.S.

[2] Federal Respondents acknowledge that this Court has held that the presumptively reasonable period expires six months after a final order, regardless of detention. *See Tran v. Bondi*, No. CV-25-01897-JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025); *but see Thach Wana v. Bondi, et al.*, No. 2:25-CV-02321-RSL, 2025 WL 3628634, at *3, n.2 (W.D. Wash. Dec. 15, 2025). For the reasons set forth in their briefing in the *Tran* case, Federal Respondents do not agree with this decision. In any event, Petitioner's detention is still lawful even past the presumptively reasonable period for the reasons stated herein.

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ICE to effectuate his removal. 8 U.S.C. § 1231(a)(1)(C). And his refusals have made his detention prolonged.

To the extent that Petitioner's removal has been delayed, this Court should recognize Petitioner's refusal to cooperate with ICE's efforts. Because he refuses to comply in good faith with ICE's removal efforts, he "cannot meet his burden to show that there is no significant likelihood of removal in the foreseeable future." *Lema v. INS*, 341 F.3d 853, 856 (9th Cir. 2003).

Furthermore, ICE did not violate any regulations governing the revocation of an Order of Supervision (OSUP) when arresting Petitioner. Pet., pp. 7–12 (Sections VIII–IX). Although Petitioner recites the general law and regulations related to OSUP revocations—language that appears in substantially similar form across counsel's habeas petitions—he fails to apply those authorities to the specific facts of this case. *Id.* A petition for habeas corpus requires more than a rote recitation of statutes and regulations; it requires factual allegations demonstrating that the petitioner is entitled to relief. Here, Petitioner was *not* released under an Order of Supervision when he was released from custody in 2013. Delgado Decl. ¶ 8; Morris Decl., Ex. 3. Indeed, Petitioner offers no evidence demonstrating that he *was* placed on an Order of Supervision. Accordingly, there was no OSUP in effect and, therefore, nothing for ICE to revoke.

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 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).

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Petitioner is subject to a final 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 pending his removal.

C. Petitioner is not Entitled to a Pre-Detention Hearing in the Post-Order Context

The cases Petitioner invokes in arguing that due process requires a hearing prior to Petitioner's being re-detained are inapposite. Pet., pgs. 9-11 (Section VIII). Petitioner cites *E.A. T.-B. v. Wamsley*, No. CV25-1192-KKE, 2025 WL 2402130, *Ledesma Gonzalez v. Bostock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, and other recent out-of-district cases, which are all not applicable under post-removal §1231 detention. *See* Pet., pgs. 9-11. Petitioner does not dispute that he is subject to an administratively final order of removal. Each of the cases cited by Petitioner to support that a pre-detention hearing is warranted are decided in the context of pre-order detention or under regulatory schemes wholly distinct from the post-order detention framework at issue here.[3] As such, the authorities cited in this section to argue a requirement for a hearing prior to being detained provide little meaningful guidance.

D. 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 ¶ (e), pg. 23.

DHS policy already provides the process Petitioner requests. Once a third country is identified, Petitioner will be afforded the opportunity to express fear of removal to that country.

[3] Federal Respondents acknowledge that some opinions in this District have recently found that the Due Process Clause requires a pre-deprivation hearing before revocation of an OSUP. *See, e.g.*, *Thach Wana v. Bondi, et al.*, No. 2:25-CV-02321-RSL, 2025 WL 3628634, at *5 (W.D. Wash. Dec. 15, 2025); *Sieng Kim Khim v. Bondi, et al.*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at *4 (W.D. Wash. Dec. 17, 2025). Federal Respondents respectfully submit, however, that in the context of a noncitizen with a final order of removal already in place, pre-deprivation hearings are not mandated by the Due Process Clause where the rationale for the detention is to effectuate the order of removal. In any event, there was no OSUP in place in this case. Therefore, this caselaw does not pertain to the particular facts relevant to *this* Petitioner for the reasons stated herein.

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Then, Petitioner would be 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 that country. If Petitioner's fear claim 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 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 and no third country has yet been designated.

Thus, the relief Petitioner seeks—namely, notice and a meaningful opportunity to respond—are already DHS policy. Once ICE is able to remove him to a third country, ICE will provide him with a notice of its intent to remove him and notice as to which country. *See* DHS Memo. This notice will allow Petitioner to claim fear of removal to that country. *Id.* If Petitioner were to claim a fear of removal to that third country as well, ICE will refer him to USCIS, 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 that third country. *Id.*

E. 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

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country unless they were first afforded essentially the same process that Petitioner asks the Court to order here. The Supreme Court's stay of the preliminary injunction entered in that case is both precedent and the result is binding on Petitioner here by virtue of his status as a member of the *D.V.D.* plaintiff class.

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

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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.").

F. 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., pgs. 18-19, 21-22, Prayer for Relief ¶ (f).

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. Petitioner 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. 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);

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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.

IV. CONCLUSION

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

DATED this 14th day of January, 2026.

Respectfully submitted,

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I certify that this memorandum contains 6,335 words, in compliance with the Local Civil Rules.