

District Judge Tana Lin

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

CAGDAS KESKIN,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02737-TL

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
January 26, 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 Cagdas Keskin Petition for Writ of Habeas Corpus. Dkt. 6 (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 Turkiye who entered the United States from Mexico in on October 18, 2024. He was ordered removed from the United States on May 30, 2025, but granted withholding from removal. Thus, Keskin, a noncitizen subject to an administratively final order of removal, is detained under Section 241 of the Immigration and Nationality Act (INA). *See* 8 U.S.C. § 1231.

Petitioner's claim of fear of removal to a third country is already addressed by 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.

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

1 certified *D.V.D.* class and seeks the same injunctive relief at issue there, principles of comity and
2 docket control counsel against parallel litigation of identical claims. As a member of the plaintiff
3 class in *D.V.D.*, he is bound by the proceedings in that case the same as all other class members.

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

6 II. FACTUAL AND PROCEDURAL BACKGROUND

7 A. Legal Background

8 1. Post-Order Detention

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

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

20 During the removal period, the [Secretary of Homeland Security] shall detain the
21 [noncitizen]. Under no circumstance during the removal period shall the
22 [Secretary] release [a noncitizen] who has been found inadmissible under section
[1182(a)(2) or 1182(a)(3)(B)] of this title or deportable under section [1227(a)(2)
or 1227(a)(4)(B)] of this title.

23 8 U.S.C. § 1231(a)(2).

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

4 [A noncitizen] ordered removed who is inadmissible under section 212, removable
5 under section [1227(a)(1)(C), 1227(a)(2), or 1227(a)(4)] of this title or who has
6 been determined by the [the Secretary of Homeland Security] to be a risk to the
7 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 8 U.S.C. § 1231(a)(6) (emphasis added).

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

16 2. OSUP and Revocation

17 Once it is determined that there is no significant likelihood of removal in the reasonably
18 foreseeable future, DHS may release noncitizens on an Order of Supervision (OSUP). 8 C.F.R.
19 § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is
20 governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the noncitizen “violates
21 any of the conditions of release,” *id.* §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined “that
22 there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.”
23 *Id.* § 241.13(i)(2). Whether there is a significant likelihood that the alien may be removed in the
24 reasonably foreseeable future is determined by assessing a series of factors, including “the history

1 of the alien's efforts to comply with the order of removal, the history of the Service's efforts to
2 remove aliens to the country in question or to third countries ... and the views of the Department
3 of State regarding the prospects for removal of aliens to the country or countries in question.” *Id.*
4 § 241.13(f). Alternatively, certain designated officials may also revoke an OSUP as an act of
5 discretion when revocation is in the public interest. *Id.* § 241.4(l)(2).

6 Section 241.13(i)(3) provides that upon revocation, the alien “will be notified of the reasons
7 for revocation of his or her release” and will receive an “initial informal interview promptly” after
8 being detained, to “afford the alien an opportunity to respond to the reasons for revocation stated
9 in the notification.” *Id.* § 241.13(i)(3). During such an interview, the noncitizen “may submit any
10 evidence or information that he or she believes shows there is no significant likelihood he or she
11 be removed in the reasonably foreseeable future, or that he or she has not violated the order of
12 supervision.” *Id.* “The revocation custody review will include an evaluation of any contested facts
13 relevant to the revocation and a determination whether the facts as determined warrant revocation
14 and further denial of release.” *Id.* Then, if the alien’s request for release is denied, he or she “may
15 submit a request for review of his or her detention . . . six months after [DHS’s] last denial of
16 release[.]” *Id.* § 241.13(j).

17 3. Third Country Removal

18 When the government seeks to remove an individual, it may do so through removal
19 proceedings involving an evidentiary hearing before an Immigration Judge (IJ). 8 U.S.C. § 1229a.
20 In removal proceedings, the IJ determines both whether the individual may be removed from the
21 United States designates a country or countries to which they will be removed, subject to DHS’s
22 statutory authority under 8 U.S.C. § 1231(b)(2). *Id.*; 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. §
23 1240.10(f). The INA sets out the process for determining the country of removal.

24 //

1 First, the alien may select a country. 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). If
 2 the alien declines, the IJ will designate one and may also designate alternative countries. 8 U.S.C.
 3 § 1231(b)(2)(C)-(D); 8 C.F.R. § 1240.10(f). In selecting an alternative country of removal, the IJ
 4 must first select the “country of which the alien is a subject, national, or citizen[.]” 8 U.S.C. §
 5 1231(b)(2)(D). If removal to that country is impossible, the IJ may remove the alien to “any of
 6 the following countries” listed in 8 U.S.C. § 1231(b)(2)(E):

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

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

18 The government is prohibited from removing a person to a third country where they may
 19 be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. §
 20 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the government cannot remove a
 21 person to a country where they would be tortured, a form of protection known as protection under
 22 the Convention Against Torture (CAT). *See* Foreign Affairs Reform and Restructuring Act of
 23 1998 (FARRA), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. §
 24 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. Withholding of removal and

1 CAT protection are mandatory, but “only restrict *where* the Government may remove a noncitizen
2 to, not *whether* the noncitizen is subject to removal.” *Kumar v. Wamsley*, No. C25-2055-KKE,
3 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). “Thus, even if the IJ grants such protection,
4 the removal order remains valid and enforceable, albeit not to the identified country or countries
5 of risk.” *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson v. Guzman Chavez*,
6 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004).

7 **4. D.V.D. v. Dep’t of Homeland Security**

8 In March 2025, three plaintiffs instituted a putative class action suit challenging their third
9 country removals in the District of Massachusetts. *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No.
10 CV 25-10676-BEM, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025), *appeal dismissed*, No. 25-
11 1311, 2025 WL 2720812 (1st Cir. June 30, 2025). On March 28, 2025, the district court entered
12 a TRO enjoining DHS and others from “[r]emoving any individual subject to a final order of
13 removal from the United States to a third country, *i.e.*, a country other than the country designated
14 for removal in immigration proceedings” unless certain conditions were met. *Id.*

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

22 All individuals who have a final removal order issued in proceedings under Section
23 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) who
24 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

1 identified in writing in the prior proceedings as a country to which the individual
2 would be removed.

3 *Id.*, at 378.

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

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

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

24 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

1 Supreme Court granted the motion, allowing the eight individual aliens to be removed to South
2 Sudan. *D.V.D.*, 145 S. Ct. 2627, 2629 (2025). The class certification in *D.V.D.* remains in effect
3 notwithstanding the Supreme Court's stay.

4 **5. DHS Policy on Third-Country Removals**

5 On March 30, 2025, and then later, on July 9, 2025, DHS issued a guidance regarding third
6 country removals. See U.S. Department of Homeland Security, "Guidance Regarding Third
7 Country Removals," Kristi Noem, March 30, 2025,
8 available at <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1.1.pdf> (last visited January 14, 2026) (DHS Memo); U.S. Immigration and Customs
9 Enforcement, "Third Country Removals Following the Supreme Court's Order in *Department of*
10 *Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)," Todd M. Lyons, July 9, 2025,
11 available
12 at [https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.19](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.19.0.1.pdf)
13 [0.1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.19.0.1.pdf) (last visited January 14, 2026) (hereinafter "July 9 Memo"); see also *Kumar*, 2025 WL
14 3204724, at *2-3 (describing contents of these memos and the distinction between the two).
15

16 The July 9 Memo discusses DHS's policies and procedures regarding the removal of
17 individuals with final orders of removals to countries other than those designated for removal in
18 those orders (referred to as "third country removals"). According to the guidance outlined in the
19 July 9 Memo, if DHS has not received diplomatic reassurances from the designated country, DHS
20 will first inform the individual that DHS seeks removal to that country. *Id.*, at 2. If the individual
21 expresses that they are afraid of being removed to that country, DHS will refer them to USCIS for
22 a reasonable fear interview, to screen that person for protection against removal to that country.
23 *Id.*
24

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 CAT. *See id.*; *see also* 8 C.F.R. § 1003.23(b)(4)(i).

B. Petitioner Cagdas Keskin

Petitioner Cagdas Keskin is a native and citizen of Turkiye. *See* Declaration of Deportation Officer Hubbard (Hubbard Decl.) ¶ 3. On or about October 18, 2024, Keskin was encountered by United States Border Patrol near Sasabe, Arizona, who determined that he had unlawfully entered the United States from Mexico. Hubbard Decl., ¶ 5; Declaration of Jordan C. Steveson (Steveson Decl.) Exh. A, Form I-213.

A Notice to Appear (NTA), Form I-862, was issued by DHS on February 10, 2025, charging Petitioner with removability for being inadmissible under Sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). Hubbard Decl., ¶ 8; Steveson Decl., Exh. B, NTA.

On May 30, 2025, the IJ denied the majority of Petitioner's requested relief. Hubbard Decl., ¶ 12; Steveson Decl., Ex. C, IJ Order. However, the IJ granted withholding of removal under INA § 1231(b)(3). *Id.*

On September 25, 2025, Keskin was interviewed by ERO regarding third country options. Hubbard Decl., ¶ 13. Keskin reported that he does not have other options and does not want to be sent to another country. *Id.*

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 the Administrative Procedure Act (APA). Pet., at 15. 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, 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 not entitled to a pre-detention hearing in the post-order context.

Petitioner’s request for a pre-detention hearing should be denied. Pet., Prayer for Relief ¶ (d). Petitioner admits he is subject to an administratively final order of removal. Pet. at 14; see also Steveson Decl., Exh. C., IJ Order. Keskin is an inadmissible alien and ICE is only authorized by statute to release him on an OSUP. 8 U.S.C. § 1231(a)(6).

There is already a process for revoking OSUP. Congress established a clear statutory framework in 8 C.F.R. § 241.13(i) that sets forth the requirements and process for affecting an OSUP revocation, which is the process due to an alien released on OSUP. When an alien has violated any condition of their release, or ICE determines that there is a “significant likelihood” an alien can be removed from the United States within the “reasonably foreseeable future,” ICE is clearly permitted to revoke the OSUP and take the alien into custody; nothing else is required for revocation under these circumstances. *Id.* § 241.13(i)(1) and (2). This Court should examine ICE’s compliance with the procedures set forth for revocation of OSUP – not create new procedures.

It is particularly premature in this case to include additional impediments to revocation where Keskin has never had OSUP revoked. As a practical matter, travel documents are often only temporary, pre-detention hearings will cause delays and missed travel deadlines. Additionally, execution of a removal order is not contingent on danger or flight risk. OSUP may be revoked if an individual is likely to be removed. 8 C.F.R. § 241.13(i)(2).

1 More importantly, the decision to execute a removal order is outside the scope of habeas
2 jurisdiction. 8 U.S.C. § 1252(g). Requiring pre-detention hearings with additional findings of
3 danger or flight risk when the ICE is prepared to execute a removal order is a de facto stay of
4 removal.

5 **C. Petitioner’s claim of fear of removal to a third country is already protected under**
6 **existing DHS policy**

7 Petitioner asks this Court to enjoin his removal to a third country “without notice and
8 meaningful opportunity to respond.” Pet., Prayer for Relief ¶ (e). DHS policy already provides
9 the process Petitioner requests. Once a third country is identified, Petitioner will be afforded the
10 opportunity to express fear of removal to that country. Then, Petitioner would be referred to USCIS
11 for a credible fear interview to determine whether it is more likely than not that Petitioner would
12 be persecuted or tortured if removed to that country. If Petitioner’s fear claim is found to be
13 credible, ICE may seek third country removal to another third country. In that scenario, ICE will
14 provide Petitioner with notice of his removal, and he will be able to assert a claim of fear to that
15 country. Thus, the main protection he seeks is already addressed by existing DHS policy. While
16 this policy does not require that proceedings be reopened automatically as his request for relief
17 seeks, he has the power to move to reopen his removal proceedings on his own. *See* 8 C.F.R. §
18 1003.23(b)(4)(i). Thus far, he has not chosen to do so and no third country has yet been designated.

19 Accordingly, the relief Petitioner seeks—namely, notice and a meaningful opportunity to
20 respond—are already DHS policy. Once ICE can remove him to a third country, ICE will provide
21 him with a notice of its intent to remove him and notice as to which country. *See* DHS Memo. This
22 notice will allow Petitioner to claim fear of removal to that country. *Id.* If Petitioner were to claim
23 a fear of removal to that third country as well, ICE will refer him to USCIS, and USCIS will
24

1 schedule Petitioner for an interview to determine whether it is more likely than not that he will be
2 persecuted or tortured in that third country. *Id.*

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4 **D. 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.**

5 The relief Petitioner seeks here—notice and an opportunity to raise fear-based claims prior
6 to third-country removal—is the same relief at issue in *D.V.D.* Because Petitioner is a member of
7 the certified *D.V.D.* class and seeks the same injunctive relief at issue there, principles of comity
8 and docket control counsel against parallel litigation of identical claims. As a member of the
9 plaintiff class in *D.V.D.*, he is bound by the proceedings in that case the same as all other class
10 members. The plaintiff class in *D.V.D.* sought an injunction precluding their removal to a third
11 country unless they were first afforded essentially the same process that Petitioner asks the Court
12 to order here. The Supreme Court's stay of the preliminary injunction entered in that case is both
13 precedent and the result is binding on Petitioner here by virtue of his status as a member of the
14 *D.V.D.* plaintiff class.

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

22 This is also the rule in this Circuit. A district court may properly dismiss an individual
23 complaint where the plaintiff is a member in a class action, to the extent the individual action
24 duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d 1130,

1 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)). Such a
 2 dismissal is within the court’s discretion based on its inherent power to control its own docket.
 3 *Crawford*, 599 F.2d at 893. But it is “imperative to avoid concurrent litigation in more than one
 4 forum whenever consistent with the rights of the parties.” *Id.*; see *Frost v. Symington*, 197 F.3d
 5 348, 359 (9th Cir. 1999) (“To the extent that a class action involving the same issues raised by
 6 [plaintiff] is currently pending . . . [he] may have to bring all of his related claims for equitable
 7 relief . . . through . . . class counsel.”).

8 This Court should decline to exercise jurisdiction over Petitioner’s third country removal
 9 claim as a matter of comity because the District of Massachusetts has certified a class action that
 10 includes the same claim Petitioner is pursuing here. *Pacesetter Systems, Inc. v. Medtronic, Inc.*,
 11 678 F.2d 93, 94-95 (9th Cir. 1982) (“There is a generally recognized doctrine of federal comity
 12 which permits a district court to decline jurisdiction over an action when a complaint involving
 13 the same parties and issues has already been filed in another district.”).

14 **E. Petitioner’s punitive banishment argument does not demonstrate that DHS third**
 15 **country removal policy is unconstitutional.**

16 Petitioner’s “punitive third country banishment” argument fails because it lacks any factual
 17 basis demonstrating that the third-country removal policy is unconstitutional either on its face or
 18 as applied to the facts here. See Pet., pgs. 11-13, 16-17, Prayer for Relief ¶ (f).

19 First, Petitioner cannot meet the heavy burden required for a facial challenge. A facial
 20 challenge demands a showing that a law “is invalid in toto—and therefore incapable of any valid
 21 application.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5
 22 (1982). Such challenges are “strong medicine” and are disfavored because they “often rest on
 23 speculation” and risk “premature interpretation of statutes on the basis of factually barebones
 24 records.” *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998); *Wash. State Grange*

1 *v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008). Petitioner's broad assertions that the
2 program imposes punishment on its subjects are precisely the type of speculative allegations that
3 these cases reject.

4 Second, Petitioner pleads no facts supporting an as-applied claim. Petitioner does not
5 allege which third country he fears removal to, what harm he personally faces, or any
6 circumstances that would make removal punitive in his case. A claim resting on speculative and
7 unsupported injury does not satisfy Article III's case-or-controversy requirement. *Lewis v. Cont'l*
8 *Bank Corp.*, 494 U.S. at 477. Unlike in *Y.T.D. v. Andrews* or *Nguyen v. Scott*, Petitioner provides
9 no evidence that his speculative removal to a third country would result in imprisonment or harm.
10 *Y.T.D. v. Andrews*, No. 1:25-cv-01100, 2025 WL 2675760, at *4 (E.D. Cal. Sept. 18, 2025);
11 *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *25 (W.D. Wash. Aug. 21, 2025).
12 Without factual allegations establishing a realistic danger of punitive treatment, Petitioner's theory
13 remains purely conjectural and nonjusticiable. Therefore, Petitioner's third country removal claim
14 fails.

15 IV. CONCLUSION

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

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1 DATED this 20th day of January, 2026.

2 Respectfully submitted,

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15 *I certify that this memorandum contains 4,844*
16 *words, in compliance with the Local Civil Rules.*