District Judge Jamal N. Whitehead

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

SERGEY SINYAYEV, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Case No. 2:25-cv-02746-JNW FEDERAL RESPONDENTS'[1] RETURN MEMORANDUM Noted for Consideration: January 20, 2026.

Pursuant to this Court's Order (Dkt. 3), Federal Respondents submit the following factual background as contained in the records of Petitioner Sergey Sinyayev's immigration case and as set forth in the Declaration of Gennadiy Baz ("Baz Decl."), as well as the relevant legal authority for the relief requested be Petitioner.

I. FACTUAL BACKGROUND

A. Legal Background

1. Post Order Detention

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

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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 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and, relevant here, "post-order" (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention). When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for removal and to protect the community from noncitizens who may present a danger, Congress has mandated detention while removal is being effectuated. 8 U.S.C. § 1231(a)(2).

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:

> [A noncitizen] ordered removed who is inadmissible under section 1182, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] to be a risk 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).

During the removal period, the U.S. Department of Homeland Security ("DHS") is charged with attempting to effect 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 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

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(2001). 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 post-order detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.*, at 701 (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 noncitizens' detention could raise constitutional issues. *Id.*

B. 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 noncitizen 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.*

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§ 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 noncitizen "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 violated the order of supervision." *Id.* Then, if the noncitizen's request for release is denied, he or she "may submit a request for review of his or her … six months after [DHS's] last denial of release[.]" *Id.* § 241.13(j).

C. 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):

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(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*, 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).

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

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

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

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

Id., at 378.

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

> 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-

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> based claim for CAT protection prior to removal. *See id.* If the non-citizen demonstrates "reasonable fear" of removal to the third country, Defendants must move to reopen the non-citizen's immigration proceedings. *Id.* If the non-citizen is not found to have demonstrated a "reasonable fear" of removal to the third country, Defendants must provide a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings. *Id.*

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

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

E. 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.2

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82404.43.1_1.pdf (last visited Dec. 4, 2025) ("DHS Memo"); U.S. Immigration and Customs Enforcement, "Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)," Todd M. Lyons, July 9, 2025, *available* at https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf (last visited Dec. 4, 2025) (hereinafter "July 9 Memo"); *see also Kumar*, 2025 WL 3204724, at *2-3 (describing contents of these memos and the distinction between the two).

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

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

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withholding of removal, or protection under the Convention Against Torture. *See id.*; *see also* 8 C.F.R. § 1003.23(b)(4)(i).

B. Factual Background

On August 27, 1993, Petitioner was adjusted to a lawful permanent status in the United States. On August 23, 1992, Petitioner had been admitted to United States as a Refugee. Baz Decl., ¶ 3. Petitioner's FBI RAP sheet reflects the following criminal history:

a. Arrest for 4 counts of Sexual Abuse in 1st degree by the Clackamas County Sherriff on February 09, 2005. Petitioner then is convicted by Clackamas County Circuit Court for two counts of Attempt to commit Sexual abuse and 2 counts of sexual abuse in 1st degree to a reduced offense on August 02, 2005. Petitioner sentenced 36 months in aggregate for his convictions.

b. Arrest for parole violation by Clackamas County Sheriff's Office on April 25, 2008. No disposition found.

c. Arrest for failure to register as sex offender by Gladstone Police Department on October 06, 2008, and a felony conviction for the same on December 03, 2008, by Clackamas Circuit Court. Petitioner received probation for 24 months and a fine of $577.00.

Id., ¶ 4(a)-(c).

On August 11, 2006, Petitioner was charged under INA § 237(a)(2)(iii) for being convicted of an aggravated felony as defined in section 101(a)(43)(A) of the act, a law relating to murder, rape, or sexual abuse of a minor. *Id.* Thereafter, on August 28, 2006, an immigration judge ordered Petitioner removed from the United States. *Id.*

On or about June 16, 2009, Petitioner was released on an Order of Supervision ("OSUP") due to the inability to obtain travel documents to Russia. *Id.*, ¶ 5; *see also* Declaration of Kristen R. Vogel, Exh. A (OSUP). However, Petitioner violated the terms of the OSUP by failing to register as a sex offender and by attacking a Border Patrol agent when the agents met with him on November 17, 2025. Baz Decl., ¶¶ 5-6; *see also* Exh. C to Vogel Decl. (I-213). Petitioner was thereafter processed by ICE for detention. *Id.*

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On November 18, 2025, the OSUP revocation was approved by the ICE Acting Field Officer Director. Baz Decl., ¶ 7. On December 1, Enforcement and Removal Operations ("ERO") issued the OSUP revocation letter because the Petitioner assaulted Border Patrol agents and because it determined that Petitioner could be removed from the United States expeditiously pursuant to an outstanding removal order against him. *Id.*, *see also* Exh. B to Vogel Decl. (OSUP Revocation Notice). ERO further determined that Petitioner's case was under review by DHS for removal to a third safe country. *Id.* Accordingly, OSUP was revoked and the revocation notice was given to Petitioner on December 2, 2025. *Id.* An informal interview was conducted that same day. *Id.*

On December 13, 2025, a travel document request for Russia was sent to a Detention and Deportation Officer ("DDO") for review. *Id.*, ¶ 8. On January 14, 2026, a follow-up email was sent to the DDO to request status of travel document request. *Id.*, ¶ 9.

II. ARGUMENT

A. Petitioner's detention complies with applicable regulations.

Petitioner argues that Respondents did not comply with their obligations under 8 C.F.R. § 241.13, including a list of six alleged regulatory failures. Pet., pgs. 24-25. ICE notified Petitioner that his OSUP was revoked, including his altercation with federal agents, and provided him with the initial informal interview regarding the determination, as required by the regulations. Petitioner has not alleged facts sufficient to show how ICE failed to comply with any specific regulation.

B. Petitioner is not entitled to a pre-detention hearing in the post-order context.

The authorities Petitioner relies upon to argue that due process requires a pre-detention hearing are inapposite. *See* Pet., pgs. 9-13 (Section VIII); *see also id.*, Prayer for Relief, ¶ (e). 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. But these cases

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do not apply to detention governed by 8 U.S.C. § 1231 where, as here, Petitioner is subject to an administratively final order of removal. 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. Nor is there a regulatory mechanism to request one. Petitioner has failed to show that he is entitled to a pre-detention hearing and his request should be denied.

C. Petitioner's request that he not be re-detained without a valid travel document, etc., should be denied.

Petitioner asks this Court to enjoin ICE from re-detaining him without first obtaining a travel document and scheduling his removal. Pet., Prayer for Relief, ¶ (f). This does not comport with *Zadvydas* and is not required by any statute or regulation. Because Petitioner is subject to a final 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 final removal order. His request should be denied.

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

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Petitioner also asks this Court to enjoin his removal to a third country "without notice and meaningful opportunity to respond." Pet., Prayer for Relief, ¶ (g). 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.

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. 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).

The relief Petitioner seeks—namely, notice and a meaningful opportunity to respond—are already DHS policy. If ICE were to seek Petitioner's removal to a 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. 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, 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.*

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

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

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.").

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

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. 27-28; *see also id.*, Prayer for Relief, ¶ (h).

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. 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

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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.

III. 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 4,512 words, in compliance with the Local Civil Rules.