District Judge Thomas S. Zilly

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

YURY NIKOLAY KOROTKIKH, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Case No. 2:25-cv-02750-TSZ FEDERAL RESPONDENTS' RETURN MEMORANDUM Noted for Consideration: January 20, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Yury Nikolay Korotkikh, a noncitizen subject to an administratively final order of removal, pursuant to Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. Petitioner brings this habeas litigation pursuant to 28 U.S.C. § 2241 to challenge the lawfulness of his immigration detention. In response, Federal Respondents submit the following factual background as contained in the records of Petitioner's immigration case and as set forth in the Declaration of Deportation Officer Andron ("Andron Decl."), as well as the relevant legal authorities.

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Petitioner additionally requests this Court to order Federal Respondents to provide additional process as it relates third country removal, and simultaneously prohibit Petitioner's removal to any third country. Pet. at 29-30. The U.S. Department of Homeland Security's ("DHS") policy addresses protections concerning third country removals, and to the extent that Petitioner seeks additional process, Petitioner should be required to seek that relief as a plaintiff class member in *D.V.D. v. U.S. Dep't of Homeland Sec.*, CV 25-10676-BEM, 2025 WL 942948 (D. Mass. Mar. 28, 2025). Accordingly, these requests must be denied.

II. LEGAL STANDARD

To succeed on a habeas petition, Petitioner "must show [he] is in custody in violation of the Constitution or laws or treaties of the United States." *Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 WL 3291033, at *5 (W.D. Wash. Mar. 29, 2024), report and recommendation adopted, No. C24-0326JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6, 2024) (citing 28 U.S.C. § 2241). Because habeas proceedings are civil in nature, the "[p]etitioner 'bears the burden of proving that he is being held contrary to law, . . . [and] he must satisfy his burden of proof by a preponderance of the evidence.'" *Aditya W. H. v. Trump*, No. 25-cv-1976, 2025 WL 1420131, at *7 (D. Minn. May 14, 2025) (quoting *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (citations omitted))

III. DETENTION AND REMOVAL AUTHORITY

A. 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, 527-29 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and "post-order" (meaning after the entry of a final order of removal). *Compare*

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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 mandated detention during the "removal period," which is the 90-day period following the issuance of a final order of removal. 8 U.S.C. § 1231(a)(2).

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, ICE is charged with attempting to effectuate removal of a noncitizen from the United States. 8 C.F.R. § 241.2(b); 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has further identified six months as a presumptively reasonable time necessary to bring about a noncitizen's removal. *Id.*, at 701. Once it is determined that there is no

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significant likelihood of removal in the reasonably foreseeable future, noncitizens may be released on an Order of Supervision ("OSUP"). 8 C.F.R. § 241.13(h).

B. 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 and also the country to which they will be removed. *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.

Lastly, 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. *Id.* § 1231(b)(2)(E)(vii).

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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)).

If the government has a removal order but no country to which an IJ has authorized removal, it can remove the noncitizen to a third country, meaning any country not designated on the removal order. *D.V.D.*, 2025 WL 942948, at *1. It remains the case that the government cannot remove an alien to any third country where they would face persecution or torture. 8 U.S.C. § 1231(b)(3)(A); 28 C.F.R. § 200.1; 8 C.F.R. §§ 208.16–18, 1208.16–18.

C. 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.*, 2025 WL 942948, at *1. On March 28, 2025, the district court entered a TRO enjoining the 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

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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-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.*

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D.V.D. v. U.S. Dep't of Homeland Sec., No. 25-CV-10676-BEM 2025 WL 1453640, at *1 (D. Mass. May 21, 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. at 2629. The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay. *See id.*

D. 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 January 13, 2026) ("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

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https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf (last visited January 13, 2026) (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 DHS 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"). July 9 Memo. 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 is seeking 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 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 CAT. *See id.*; *see also* 8 C.F.R. § 1003.23(b)(4)(i).

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IV. FACTUAL BACKGROUND

Petitioner was born in Kazakhstan, which was previously in the Union of Soviet Socialist Republics[1] ("U.S.S.R."). Steveson Decl., Exh. A, 1994 Form I-213; Exh. B, 1998 Form I-213; Exh. C, 2025 Form I-213. He entered the United States on November 7, 1989, and eventually became a lawful permanent resident retroactive to that date. *Id.*

In 1994, Korotkikh was convicted of Attempted Use/Carry Dangerous Weapon. Steveson Decl., Exh. B, 1998 Form I-213. On August 13, 1998, Korotkikh was returned by Canada to the United States Border Patrol, which issued Korotkikh Notice to Appear that same date. Steveson Decl., Exh B, D. Although Korotkikh was initially detained, he was released on bond on August 17, 1998. Andron Decl., ¶ 3.

Ultimately, Korotkikh was ordered removed to Kazakhstan, which became final on October 10, 2003. Steveson Decl., Exh. C, Form I-213. Korotkikh was placed on multiple Orders of Supervision ("OSUP"), with the most recent being in 2009. Steveson Decl., Exh. E-G, OSUP. The 2006 and 2009 OSUP included a provision to "not commit any crimes" and to make efforts to obtain a travel document. *Id.*

On October 27, 2025, ICE detained Korotkikh and revoked his OSUP due to a 2018 arrest and 2019 conviction for Driving Under the Influence. Steveson Decl., Exh. H, Notice of Revocation of Release. Korotkikh was also given an informal interview. *Id.*

Documentation for a travel document was sent to Kazakh authorities on December 18, 2025. Andron Decl., ¶ 11. On December 19, 2025, an email from the Consulate of the Republic of Kazakhstan advised that Korotkikh did not have valid identity documents to confirm citizenship, but that an official request was sent to the Ministry of Internal Affairs of the

[1] Some of the prior documents refer generally to Russia rather than Kazakhstan or the U.S.S.R.

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Republic of Kazakhstan to verify citizenship. Decl. Andron ¶ 11. The Consular Official advised that if citizenship is confirmed, then a travel document will be promptly issued. Andron Decl., ¶ 12.

V. ARGUMENT

ICE detains Petitioner subject to 8 U.S.C. § 1231(a)(6). During this time, ICE is taking steps to execute Petitioner's removal from the United States to Kazakhstan. The OSUP revocation regulations provided petitioner with sufficient process, including notice and an opportunity to be heard. Petitioner's arguments concerning third country removal are premature. ICE has not designated a country and is seeking his removal to a designated county. However, even if ICE were seeking a third country removal, this Court should deny Petitioner's request to limit ICE from doing so as this is permitted by statute. Petitioner's requests for injunctive relief limiting future detention should also be denied as they are premature and seek relief that due process does not require.

A. Petitioner's OSUP Revocation comported with due process and was consistent with its own procedural regulations.

Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that Petitioner's detention is consistent with his due process rights. Under *Mathews*, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.*, at 333 (internal quotation marks omitted). This calls for an analysis of (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards," and (3) the Government's interest. *Id.*, at 334-35.

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Federal Respondents recognize the "weighty liberty interests implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). However, Petitioner's interest in his liberty *generally* does not mean that he possesses a separate or heightened liberty interest in the continuation of his conditional release on OSUP.[2] The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.'" *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976).

Petitioner's release on OSUP was subject to many conditions, including that he not commit any crimes. Petitioner cannot now claim that the Federal Respondents promised him ongoing, limitless freedom from detention. Petitioner wants to use the habeas to write in additional terms for OSUP. Pet., Prayer for Relief.

The existing procedures for OSUP revocation are constitutionally sufficient and Petitioner's detention does not violate ICE's regulations. The risk of a constitutionally significant deprivation of Petitioner's liberty here is minimal as ICE has complied with all procedural safeguards in this case.

DHS established a clear regulatory framework in 8 C.F.R. § 241.13(i) that sets forth the requirements and process for affecting an OSUP revocation. When an alien has violated any condition of their release, as Petitioner did here, or ICE determines that there is a "significant

[2] Federal Respondents acknowledge that courts in this District have found that noncitizens have a liberty interest in their release on OSUP but respectfully disagree with those decisions.

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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. 8 C.F.R. §§ 241.13(i)(1) & (2); *see also Nizar Esmail v. Noem*, No. 2:25-cv-08325, 2025 WL 3030590, at *2 (C.D. Cal. Sept. 12, 2025).[3]

Section 241.13(i)(3) further outlines OSUP revocation procedures and provides that "upon revocation," i.e., not before revocation, "the alien will be notified of the reasons for the revocation" and to conduct an "initial interview promptly after his or return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(3). These are precisely the procedures ICE followed when the agency revoked Petitioner's OSUP.

Here, ICE properly took custody of Petitioner based on its determination that Petitioner violated the conditions of his release. Upon revocation, ICE provided Petitioner with written notice of the specific reasons for its determination, which included a list of Petitioner's many violations. An ICE Officer conducted an informal interview with Petitioner, giving him an opportunity to respond to ICE's determination. In revoking Petitioner's OSUP, ICE adhered to the requirements outline in 8 C.F.R. § 241.13(i), consistent with foundational principals of procedural due process. *Mathews*, 424 U.S. at 333.

Invoking the Supreme Court's 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). The government likewise has an interest in enforcing

[3]While ICE may also revoke an OSUP as an act of discretion if revocation is in the public interest, pursuant to 8 C.F.R. § 241.4(l)(2), this is not what ICE has chosen to do in this case.

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compliance with its orders of release and returning individuals to custody who violate their terms. This is especially the case when such violations involve putting public safety at risk.

B. Petitioner's request for additional process as it relates to third country removal should be denied.

While his Petition discusses removal to a third country, Petitioner presents no evidence of any intention by ICE to do so. Furthermore, Petitioner goes beyond the bounds of habeas and requests prohibition on any third country removal. Pet. at 29-30. Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies. *Deakins v. Monaghan*, 484 U.S. 193, 199, 108 S.Ct. 523, 528, 98 L.Ed.2d 529 (1988). "To invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477, 110 S. Ct. 1249, 1253, 108 L. Ed. 2d 400 (1990). Petitioner requests this Court to require Federal Respondents to provide him with notice and an opportunity to respond. Pet. at 26.

The relief Petitioner requests regarding third country removal is already addressed by existing DHS policy. If ICE seeks Petitioner's removal to a third country, ICE will provide him with a notice of its intent to remove her and notice as to which country. *See* July 9 Memo. This notice will allow Petitioner to claim fear of removal to that country. *Id.* If Petitioner claims a fear of removal, ICE will refer him to USCIS, and USCIS would schedule him for an interview to determine whether it is more likely than not that he will be persecuted or tortured in that third country. *Id.*

Petitioner has suffered no injury at this time and any allegation that he is likely to face an injury in the future is speculative. Accordingly, Petitioner has failed meet the case-or-controversy requirement, and his petition must be denied. *Cf. Spencer v. Kemna*, 523 U.S. 1, 16 (1998)

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(rejecting the petitioner's alleged consequences as "a possibility rather than a certainty or even a probability" and as "purely a matter of speculation").

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

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

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

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

D. Petitioner's punitive banishment argument restates his due process challenge and does not demonstrate that the policy is unconstitutional.

Petitioner's "punitive third country banishment" argument fails because it merely restates his due process objections and lacks any factual basis demonstrating that the third-country removal policy is unconstitutional either on its face or as applied. *See* Pet. at 27-28.

First, Petitioner's allegations of punishment rest entirely on the asserted absence of notice and an opportunity to be heard – matters governed by the Due Process Clause. *See id.* This claim is therefore duplicative of his due process argument and does not identify any distinct punitive conduct by the Federal Respondents.

Second, 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

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(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.

Third, Petitioner pleads no facts supporting an as-applied claim. He does not allege which third country he might be removed to, what harm he personally faces, or any circumstances that would make removal punitive in his case. A claim resting on imaginary injury does not satisfy Article III's case-or-controversy requirement. *Lewis v. Cont'l Bank Corp.*, 494 U.S. at 477. Without factual allegations establishing a realistic danger of punitive treatment, Petitioner's theory remains purely conjectural and nonjusticiable. Therefore, the Court should deny the writ to the extent it seeks to bar third-country removal.

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VI. CONCLUSION

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

DATED this 14th day of January, 2025

Respectfully submitted,

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I certify that this memorandum contains 4683 words, in compliance with Local Civil Rules