Magistrate Judge Michelle L. Peterson

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

JAVEIN JUMEL COKE, Petitioner, v. PAMELA BONDI, *et al.*,[1] Respondents.	Case No. 2:26-cv-00071-MLP FEDERAL RESPONDENTS' RETURN AND OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER Noted for Consideration: January 22, 2026

Federal Respondents, by and through their attorneys, submit their Return to Petitioner's habeas corpus petition ("Petition") and Opposition to Petitioner's motion for a temporary restraining order ("TRO"). Dkt. No. 1, Petition for Writ of Habeas Corpus ("Petition" or "Pet."); Dkt. No. 10, TRO Motion ("Motion" or "Mot.").

Petitioner is lawfully detained under 8 U.S.C. § 1231(a) to facilitate execution efforts of a final order of removal. There is no doubt that there is significant likelihood of removal in this case. Petitioner's detention is lawful, has not become indefinite, and his removal is significantly

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

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likely in the reasonably foreseeable future. Further, Petitioner fails to make a clear showing that he is entitled to the extraordinary remedy of a TRO.

For these reasons, Federal Respondents respectfully request that the Court deny Petitioner Javein Jumel Coke's motion for a temporary restraining order and deny the habeas petition in its entirety. This return and opposition are supported by the pleadings and documents on file in this case, the Declaration of Sheldon Benjamin ("Benjamin Decl.") and the Declaration of Jennifer Wong ("Wong Decl."), with accompanying exhibits. Federal Respondents do not believe any hearing is necessary.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Legal Background

1. Post-Order Detention

The Immigration and Nationality Act ("INA") governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527-29 (2021). The general detention periods are commonly referred to as "pre-order" (meaning before the entry of a final order of removal) and, relevant here, "post-order" (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for removal and to protect the community from noncitizens who may present a danger, Congress mandated detention during the "removal period," which is the 90-day period following the issuance of a final order of removal. 8 U.S.C. § 1231(a)(2). During the removal period, ICE is charged with attempting to effectuate removal of a noncitizen from the United States. 8 C.F.R. § 241.2(b); 8 U.S.C. § 1231(a)(1).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision. Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has further identified six months as a presumptively reasonable time necessary to bring about a noncitizen's removal. *Id.* at 701.

2. Third Country Removal

When the government seeks to remove an individual, it may do so through removal proceedings involving an evidentiary hearing before an Immigration Judge ("IJ"). 8 U.S.C. § 1229a. In removal proceedings, the IJ determines both whether the individual may be removed from the United States and, if so, designates a country or countries to which they will be removed, subject to DHS's statutory authority under 8 U.S.C. § 1231(b)(2). *Id.*; 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). The INA sets out the process for determining the country of removal. First, the alien may select a country. 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). If the alien declines, the IJ will designate one and may also designate alternative countries. 8 U.S.C. § 1231(b)(2)(C)-(D); 8 C.F.R. § 1240.10(f). In selecting an alternative country of removal, the IJ must first select the "country of which the alien is a subject, national, or citizen[.]" 8 U.S.C. § 1231(b)(2)(D). If removal to that country is impossible, the IJ may remove the alien to "any of the following countries" listed in 8 U.S.C. § 1231(b)(2)(E):

(i) The country from which the alien was admitted to the United States.

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(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. 2:25-cv-02055-KKE, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). "Thus, even if the IJ grants such protection, the removal order remains valid and enforceable, albeit not to the identified country or countries of risk." *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004).

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

In March 2025, three plaintiffs instituted a putative class action suit challenging their third country removals in the District of Massachusetts. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No.

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25-cv-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-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

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> 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.

4. DHS Policy on Third-Country Removals

On March 30, 2025, and then later, on July 9, 2025, DHS issued a guidance regarding third country removals. *See* U.S. Department of Homeland Security, "Guidance Regarding Third Country Removals," Kristi Noem, March 30, 2025, *available at* https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1_1.pdf (last visited Dec. 4, 2025) ("DHS Memo"); U.S. Immigration and Customs Enforcement, "Third Country Removals Following the Supreme Court's Order in *Department of Homeland*

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

B. Petitioner Javein Jumel Coke

Petitioner is a native and citizen of Jamaica. Benjamin Decl. ¶ 4. He was admitted into

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the United States on July 23, 2008, under a B2 visitor's visa, for a temporary period not to exceed January 23, 2009. *Id.* He did not depart the United States as required by his nonimmigrant visa and has remained in the United States without authorization since that time. *Id.* ¶ 5.

On January 6, 2023, Petitioner was convicted of Aggravated Identity Theft, in violation of 18 U.S.C. § 1028A, in the United States District Court for the Southern District of Florida, and sentenced to 24 months incarceration. *Id.* ¶ 7.

Following his release from federal custody, he was taken into ICE custody and served with a Notice to Appear ("NTA") charging him as removable under INA § 237(a)(1)(B) as a nonimmigrant overstay. Benjamin Decl. ¶ 8; Wong Decl. at Exs. 1 & 2 (I-213; Notice to Appear). He has remained continuously detained in ICE custody since that date and is currently held at NWIPC in Tacoma, Washington. Benjamin Decl. ¶ 8.

On October 23, 2024, Petitioner was ordered removed from the United States by an Immigration Judge ("IJ"), who found that the Petitioner's conviction was a particularly serious crime and barred Petitioner from most forms of relief from removal, but granted deferral under the Convention Against Torture ("CAT"). Benjamin Decl. ¶ 9; Wong Decl. at Ex. 3 (Order of Removal). The order of removal became administratively final on June 23, 2025, when DHS' appeal of the IJ's decision was dismissed by an IJ. *Id.* ¶ 10.

The Petition was filed on January 7, 2026. Dkt. No. 1. On January 8, 2026, the Court entered a scheduling order, with language directing that "Respondents shall provide the Petitioner(s) and Petitioner(s)' counsel in this habeas action at least 48 hours' notice (or 72 hours' notice if the period extends into a weekend, holiday, or date the Court is closed) prior to any action to move or transfer any Petitioner(s) from the Western District of Washington or to remove them from the United States." Dkt. No. 6.

On January 13, 2026, Petitioner was served with notice of Third Country Removal to Mexico, and Petitioner declined to sign but did not express any fear of being removed to Mexico. Benjamin Decl. ¶ 11; Wong Decl. at Ex. 4 (Notice of Removal). On the same day, Federal Respondents notified this Court and Petitioner's counsel of ICE's intention to remove Petitioner to Mexico. Dkt. No. 9.

Petitioner filed a Motion for a TRO on January 14, 2026. Dkt. No. 10. This Court provisionally granted the TRO in part pending Federal Respondents' response to the motion, prohibiting Federal Respondents from removing Petitioner from this jurisdiction without further notice of the Court. *See* Dkt. No. 12.

Pursuant to this Court's order (Dkt. No. 12), ICE has not rescheduled Petitioner's travel. Benjamin Decl. ¶ 14. Upon a lifting of the extraordinary temporary relief provided by this Court, ICE will expeditiously seek to remove Petitioner. *Id.* He remains detained under INA § 241. *Id.* ¶ 15.

II. **LEGAL STANDARD**

"The district courts of the United States … are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

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The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, ***by a clear showing,*** carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

A plaintiff seeking a preliminary injunction must show that: (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter*, 555 U.S. at 20. Alternatively, a plaintiff can show that there are "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation omitted).

"A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (internal quotation omitted). Where a plaintiff seeks mandatory injunctive relief, "courts should be extremely cautious." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). Thus, in a mandatory injunction request, the moving party "must establish that the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis in original).

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III. ARGUMENT

A. The Petition should be denied because Petitioner's detention is lawful.

1. Petitioner's detention is not indefinite or unconstitutionally prolonged.

Petitioner has not demonstrated that his detention has become "indefinite" or unconstitutional. In *Zadvydas*, the Supreme Court analyzed whether the potentially open-ended duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an implicit limitation of post-removal detention "to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. It was further specified that Section 1231(a)(6) does not permit indefinite detention. *Id.* Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* (stating that "for detention to remain reasonable, as the period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink"). However, the Supreme Court determined that it is "presumptively reasonable" for the Government to detain a noncitizen for six months following entry of a final removal order, while it worked to remove the noncitizen from the United States. *Id.* at 701. Thus, the Supreme Court implicitly recognized that six months is the earliest point at which a noncitizen's detention could raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption "does not mean that every [noncitizen] not removed must be released after six months. To the contrary, [a noncitizen] may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

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Petitioner has been detained for about seven months since his removal order has become administratively final.[2] *See* Benjamin Decl. ¶ 10. Federal Respondents acknowledge that Courts in this district disagree as to whether the presumptively reasonable period expires six months after a final order, regardless of detention. *See Tran v. Bondi*, No. CV-25-01897-JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025); *but see Thach Wana v. Bondi, et al.*, No. 2:25-CV-02321-RSL, 2025 WL 3628634, at *3, n.2 (W.D. Wash. Dec. 15, 2025). For the reasons set forth in their briefing in the *Tran* case, Federal Respondents do not agree with this decision. In any event, Petitioner's detention is still lawful even if the presumptively reasonable period in this case has passed for the reasons stated herein.

While Petitioner was granted withholding of removal under CAT for Jamaica, he is subject to a final order of removal and can be removed to a country other than Jamaica—pursuant to receiving proper notice of removal to a third country and the opportunity to express fear of removal. As stated above, Petitioner had been provided notice. A travel document is not required for individuals to be removed by land to Mexico. Benjamin Decl. ¶ 12. ERO intends to remove Petitioner by land to Mexico. *Id.* If Petitioner claims fear of return to Mexico, Petitioner's case will be referred to USCIS for a third country fear screening. *Id.* ¶ 13. If USCIS finds that Petitioner has a fear of return to Mexico, DHS will file a motion to reopen Petitioner's immigration proceedings for Petitioner to apply for deferral of removal to Mexico under the CAT. *Id.* If Petitioner receives a negative fear screening, Petitioner will then be removed to Mexico. *Id.* Based on the record, there is no doubt that there is a significant likelihood of Petitioner's removal to Mexico in the reasonably foreseeable future. Further, the fact that Petitioner does not yet have a

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[2] Prior to his removal order becoming administratively final, Petitioner had previously filed a habeas petition on April 17, 2025, and a motion for a temporary restraining order in this Court on June 12, 2025. Dkt. Nos. 1, 12, Ct. No. 25-cv-00694. The Court denied both the habeas petition and the motion for a temporary restraining order on July 28, 2025. Dkt. No. 24, Ct. No. 25-cv-00694.

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specific date of anticipated removal does not make his detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008). Detention becomes indefinite in situations where the country of removal refuses to accept the noncitizen or if removal is legally barred. *Id.* There is no reason to believe that is the situation here. Consequently, Petitioner has failed to demonstrate a good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

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

Petitioner asks this Court to enjoin his removal to a third country "without notice and meaning opportunity to respond." Pet. at 22. DHS policy already provides this relief, and ICE has complied with those procedures in this case. 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. *Id.* at 28-21. Petitioner mentions that he cannot be removed to Jamaica due to the granting of withholding of removal to Jamaica, *id.* at 7, and ICE does not intend to remove him to Jamaica.

The relief Petitioner seeks—namely, notice and a meaningful opportunity to respond—are already DHS policy. And ICE has already demonstrated that they followed these procedures in Petitioner's case by providing him this notice and opportunity. This notice would allow Petitioner to claim fear of removal to that country, and if Petitioner were to claim a fear of removal to that third country, 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. *See* DHS Memo.

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3. 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.

Further, the relief Petitioner seeks here—notice and an opportunity to raise fear-based claims prior to third-country removal—is the same relief at issue in *D.V.D.* Because Petitioner is a member of the certified *D.V.D.* class and seeks the same injunctive relief at issue there, principles of comity and docket control counsel against parallel litigation of identical claims. As a member of the plaintiff class in *D.V.D.*, he is bound by the proceedings in that case the same as all other class members. The plaintiff class in *D.V.D.* sought an injunction precluding their removal to a third country unless they were first afforded essentially the same process that Petitioner asks the Court to order here. The Supreme Court's stay of the preliminary injunction 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.

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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.").

B. The TRO should be denied in its entirety because Petitioner has not established that the law and facts clearly favor injunctive relief.

1. Petitioner is unlikely to succeed on the merits of his claims.

Petitioner's claim that that ICE does not have travel documents or "any other proof that Mexico had accepted [Petitioner]" in order to facilitate his removal is without merit. Mot. at 2. Federal Respondents had informed Petitioner's counsel that "a travel document is not necessary for individuals to be removed by land to Mexico." Mot. at Ex. 1. The declaration of Deportation Officer Benjamin Sheldon confirms this. Benjamin Decl. ¶ 12 ("A travel document is not required for individuals to be removed by land to Mexico."). ERO intends to remove Petitioner by land to Mexico. *Id.* Upon a lifting of the extraordinary temporary relief provided by this Court, ICE will expeditiously seek to remove Petitioner. *Id.* ¶ 14.

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Further, for the reasons discussed above, Petitioner's detention is lawful, and he is not entitled to release from detention under *Zadvydas*. Accordingly, Petitioner has not demonstrated that he is likely to succeed on the merits.

2. Petitioner is unlikely to suffer irreparable harm in the absence of preliminary relief.

Petitioner has not demonstrated that he will suffer irreparable injury absent the mandatory injunctive relief he seeks. To do so, he must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League,* 634 F.2d 1197, 1201 (9th Cir.1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

Here, Petitioner has not established that "irreparable injury is likely in the absence of an injunction." *Winter*, 555 U.S. at 22. As declared by Deportation Officer Sheldon Benjamin, Petitioner does not need a travel document to be removed to Mexico as he would be transferred by land. Benjamin Decl. ¶ 14.

Accordingly, Petitioner has not demonstrated that he will be subject to immediate irreparable injury if not released.

3. The balance of the equities and public interests favor the Government.

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. It is well-settled that the public interest in enforcement of United States immigration laws is significant.

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See United States v. Martinez-Fuerte, 428 U.S. 543, 556-58 (1976); *Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permit[s] and prolong[s] a continuing violation of United States law."). Petitioner is subject to a final order of removal, and the government may detain him as a result, and it has an interest in enforcing U.S. immigration laws. The government has a legitimate interest in the continued detention of immigration detainees that is authorized by Congress and recognized by the Supreme Court. Petitioner remains under mandatory detention pursuant to 8 U.S.C. § 1231(a) pending his removal. Currently, the only bar to Petitioner's removal is this habeas litigation. Because Petitioner cannot show that the balance of hardships and public interest tips in his favor, the Court should deny Petitioner's TRO Motion.

IV. **CONCLUSION**

For all of the foregoing reasons, Petitioner has not satisfied his high burden of establishing entitlement to mandatory injunctive relief, and his TRO Motion should be denied. Further, Petitioner's detention has not become "indefinite," and his removal is significantly likely in the reasonably foreseeable future. This Court should not order that he be released and deny the Petition.

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Respectfully submitted,

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I certify that this memorandum contains 5,192 words, in compliance with the Local Civil Rules.