District Judge John H. Chun

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

TAYFUN KARA, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Case No. 2:26-cv-00105-JHC FEDERAL RESPONDENTS'[1] RETURN MEMORANDUM Noted for Consideration: February 2, 2026.

I. INTRODUCTION

This Court should deny Petitioner Tayfun Kara's Petition for Writ of Habeas Corpus. Dkt. 1 ("Pet."). Petitioner challenges the constitutionality and lawfulness of his post-order detention at the Northwest ICE Processing Center ("NWIPC") while he awaits removal from the United States.

Although the Petition discusses issues surrounding re-detention, those arguments are inapplicable here. There is no evidence that Petitioner was ever released on an order of supervision ("OSUP"), and therefore no basis to claim that such an order was revoked.

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

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Petitioner is responsible for his prolonged detention by failing to cooperate with ICE to effectuate his removal. 8 U.S.C. § 1231(a)(1)(C). On April 17, 2025, an immigration judge sustained the charges of removability and Turkey was designated as the country of removal. On July 3, 2025, a Tacoma Immigration Judge denied Petitioner's application for Asylum and granted his application for Withholding of Removal under INA § 241(b)(3) and ordered him removed to Turkey. Both the Petitioner and the DHS waived appeal, resulting in the order becoming administratively final that day.

On December 10, 2025, Petitioner was interviewed and refused to comply with ICE's requests to provide any third countries he would be willing to go to. On January 13, 2026, Petitioner was served with a Warning for Failure to depart, and he refused to sign the document to acknowledge personal service or comply with any requests to assist in any way to accomplish a third country removal. Despite this warning, Petitioner has continued to refuse to comply. As a result, Petitioner was served with a Failure to Comply Notice on December 12, 2025. As a result of his own refusal to cooperate, he has not met his burden here by providing a good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003) (citing *Zadvydas*). Petitioner's own refusals cannot serve as justification for relief in this context.

Because no third country has been designated, there is no issue or controversy for this Court to consider regarding punitive third country removal.

Accordingly, Federal Respondents respectfully request that the Court deny the Petition. This Return is supported by the pleadings and documents on file in this case, as well as the Declaration of Deportation Officer Gennadiy Baz ("Baz Decl.") and the Declaration of Alixandria K. Morris ("Morris Decl."), with accompanying exhibits. No evidentiary hearing is necessary.

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II. LEGAL STANDARD

It is axiomatic that "[t]he 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." *Thuraissigiam*, 591 U.S. at 125 n. 20. 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); *Morris v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

III. 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

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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. Once it is determined that there is no 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).

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 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. §

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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.

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).

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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. 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

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> language the non-citizen can understand. Dkt. 64 at 46– 47. Following notice, the individual must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal. *See id.* If the non-citizen demonstrates "reasonable fear" of removal to the third country, Defendants must move to reopen the non-citizen's immigration proceedings. *Id.* If the non-citizen is not found to have demonstrated a "reasonable fear" of removal to the third country, Defendants must provide a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings. *Id.*

D.V.D. v. U.S. Dep't of Homeland Sec., No. 25-cv-10676, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep't of Homeland Sec.*, 786 F. Supp. 3d 223 (D. Mass. 2025). The *D.V.D.* court indicated that the Order applied "to the Defendants, including the Department of Homeland Security, as well as their officers, agents, 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 January 26, 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 https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf (last visited January 26, 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 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. Petitioner Tayfun Kara

The Petitioner is a native and citizen of Turkey (a/k/a "Turkiye"). Baz Decl. ¶ 4. On December 22, 2024, Border Patrol encountered Petitioner near Campo, California, and determined that he had entered without inspection or admission. *Id.* ¶ 5. He was taken into custody and placed in Expedited Removal proceedings per INA§ 235(b)(l); 8 U.S.C. § 1225(b)(l); 8 C.F.R. 235.15. *Id.* On January 7, 2025, Petitioner was transferred to NWIPC. *Id.* ¶ 6.

On March 17, 2025, United States Citizenship and Immigration Services ("USCIS"), issued a Notice to Appear ("NTA'') charging INA§ 212(a)(6)(A)(i); 8 U.S.C. § l 182(a)(6)(A)(i); and INA§ 212(a)(7)(A)(i)(l); 8 U.S.C. § 1182(a)(7)(A)(i)(I), of the Immigration and Nationality Act. *Id.* ¶ 7; Morris Decl., Exs. 1-2 (NTA; I-213). The NTA notes it was issued after an asylum officer found a credible fear of persecution or torture and that the Section 235(b)(l) order was vacated pursuant to 8 C.F.R. 208.30. Baz Decl. ¶ 7. On March 20, 2025, the NTA was filed with the Executive Office for Immigration Review ("EOIR"). *Id.* ¶ 8. On April 10, 2025, Petitioner filed an application for relief from removal with EOIR. *Id.* ¶ 9.

On April 17, 2025, an immigration judge ("IJ") sustained the charges of removability and Turkey was designated as the country of removal. *Id.* ¶ 10. On July 3, 2025, a Tacoma Immigration Judge denied Petitioner's application for Asylum and granted his application for Withholding of Removal under INA § 241(b)(3) and ordered him removed to Turkey. *Id.* ¶11; Morris Decl., Ex. 3 (IJ Order). Both the Petitioner and the DHS waived appeal. Baz Decl. ¶ 11.

On December 10, 2025, Petitioner informed ERO that he had no ties in any other county, he wants to stay in the United States and refused to provide any third countries he would be willing to go to. *Id.* ¶ 12. On January 13, 2026, ERO served on Petitioner form 1229a, Warning

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for Failme to Depart. *Id.* ¶ 13. He refused to sign the document to acknowledge personal service or comply with any requests to assist in any way to accomplish a third country removal. *Id.*

IV. ARGUMENT

A. Petitioner's detention is not indefinite

Petitioner argues that his detention is unlawful in violation of *Zadvydas*. The burden is on Petitioner to show that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Pelich*, 329 F.3d at 1059. If a petitioner meets his evidentiary burden, the government must then introduce evidence to refute the petitioner's assertion. *Id.*

In *Zadvydas*, the Supreme Court noted the six-month "presumptively reasonable" post-order detention period "does not mean that every [noncitizen] not removed must be released after six months. 533 U.S. at 701. 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.* 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

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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.*

It is undisputed that Petitioner is subject to an administratively final removal order as of July 3, 2025. Baz Decl. ¶¶ 10-11; Morris Decl., Ex. 3; Pet., pg. 7. However, following his removal order, Petitioner has refused to cooperate with ICE's attempts to identify a third country. Baz Decl. ¶¶ 12-13. "An alien cannot assert a viable constitutional claim when his indefinite detention is due to his failure to cooperate with the INS's efforts to remove him. *Pelich*, 329 F.3d at 1061.

Here, Petitioner's own refusal to cooperate in obtaining a travel document extends the reasonable timeframe by which ICE can detain him. *Id.* at 1060. Implicit in the removal process, ICE must take steps, along with the noncitizen's efforts, to effectuate removal, including working with the appropriate foreign countries. *Id.* Like *Pelich*, this Court should recognize Petitioner's continued refusal to cooperate with ICE's efforts. Because he continues to refuse to comply in good faith with ICE's removal efforts, he "cannot meet his burden to show that there is no significant likelihood of removal in the foreseeable future." *Lema v. INS*, 341 F.3d 853, 856 (9th Cir. 2003); *see also Pelich*, 329 F.3d at 1061 ("Since Pelich falls within the category of non-cooperative detainee, he cannot legitimately object to his continued detention when that very detention is caused by his own conduct.").

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. Accordingly, Petitioner's detention does not violate principals of substantive due process.

B. Petitioner's Re-detention and Regulatory Claims are Without Merit

Petitioner argues that he has a regulatory and due process right not to be re-detained following the revocation of an order of supervision ("OSUP"). Pet., pgs. 10–11. However, Petitioner presents no evidence that he was ever released on an OSUP or that any such order was

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revoked. *See* Pet., pgs. 6-7. Indeed, Federal Respondents are unaware of Petitioner ever having been released on an OSUP. *See generally* Baz Decl. Accordingly, no OSUP could have been revoked, and Petitioner's arguments concerning revocation of an OSUP are inapplicable here.

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

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

The main protection he seeks is already addressed by existing DHS policy. Once Petitioner cooperates and ICE is able to designate a third country, ICE will provide Petitioner 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 he so chooses. 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. *Id.*

While this policy does not require that proceedings be reopened automatically as his request for relief seeks, Petitioner also has the power to move to reopen his removal proceedings on his own. *See* 8 C.F.R. § 1003.23(b)(4)(i).

Thus, the relief Petitioner seeks—namely, notice and a meaningful opportunity to respond—are already DHS policy.

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

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.").

E. Petitioner's punitive banishment argument does not demonstrate that DHS's 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. 14-18.

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

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program imposes punishment on its subjects are precisely the type of speculative allegations that these cases reject.

Second, Petitioner pleads no facts supporting an as-applied claim. Petitioner does not allege that any third country has been designated, and the record demonstrates no third country has been designated due to Petitioner's failure to cooperate. *See generally* Dkt. 1; Baz Decl. A claim resting on speculative and unsupported injury does not satisfy Article III's case-or-controversy requirement. *Lewis v. Cont'l Bank Corp.*, 494 U.S. at 477. Unlike in *Y.T.D. v. Andrews* or *Nguyen v. Scott*, Petitioner provides no evidence that his speculative removal to a third country would result in imprisonment or harm. *Y.T.D. v. Andrews*, No. 1:25-cv-01100, 2025 WL 2675760, at *4 (E.D. Cal. Sept. 18, 2025); *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 in a specific third country, Petitioner's theory remains purely conjectural and nonjusticiable. Therefore, Petitioner is unlikely to succeed on his third country removal claims.

V. CONCLUSION

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

Dated this 26th day of January, 2026.

Respectfully submitted,

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I certify that this memorandum contains 4,592 words, in compliance with the Local Civil Rules.