

District Judge Kymberly K. Evanson

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

WILFREDO CASTILLO RIVAS,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:26-cv-00134

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
February 2, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Wilfredo Castillo Rivas, 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 Rita Soraghan as well as the relevant legal authorities.

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

Petitioner additionally requests this Court to order Federal Respondents to provide additional process as it relates any third country removal, and simultaneously prohibit Petitioner's removal to any third country. Dkt. 5 Petition ("Pet.") at 26-29. Petitioner also requests an order preventing re-detention and that he cannot be removed to a third country. Pet., Prayer for Relief, ¶¶ (d)-(e), (g). 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

1 order of removal) and “post-order” (meaning after the entry of a final order of removal). *Compare*
2 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order
3 detention).

4 When a final order of removal has been entered, a noncitizen enters a 90-day “removal
5 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security
6 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for
7 removal and to protect the community from noncitizens who may present a danger, Congress
8 mandated detention during the “removal period,” which is the 90-day period following the
9 issuance of a final order of removal. 8 U.S.C. § 1231(a)(2). During the removal period, ICE is
10 charged with attempting to effectuate removal of a noncitizen from the United States. 8 C.F.R.
11 § 241.2(b); 8 U.S.C. § 1231(a)(1).

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

15 [A noncitizen] ordered removed who is inadmissible under section 1182,
16 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or
17 who has been determined by the [the Secretary of Homeland Security] to be a risk
18 to the community or unlikely to comply with the order of removal, *may* be detained
19 *beyond the removal period* and, if released, shall be subject to the terms of
20 supervision in paragraph (3).

21 8 U.S.C. § 1231(a)(6) (emphasis added).

22 Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the
23 Supreme Court has held that a noncitizen may be detained only “for a period reasonably necessary
24 to bring about that [noncitizen’s] removal from the United States.” *Zadvydas v. Davis*, 533 U.S.
678, 689 (2001). The Supreme Court has 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

1 is no significant likelihood of removal in the reasonably foreseeable future, noncitizens may be
2 released on an Order of Supervision (“OSUP”). 8 C.F.R. § 241.13(h).

3 **B. Third Country Removal**

4 When the Government seeks to remove an individual, it may do so through removal
5 proceedings involving an evidentiary hearing before an Immigration Judge (“IJ”). 8 U.S.C. §
6 1229a. In removal proceedings, the IJ determines both whether the individual may be removed
7 from the United States and the country to which they will be removed. *Id.*; 8 U.S.C. §
8 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). The INA sets out the process for determining the country
9 of removal.

10 First, the alien may select a country. 8 U.S.C. § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f). If
11 the alien declines, the IJ will designate one and may also designate alternative countries. 8 U.S.C.
12 § 1231(b)(2)(C)-(D); 8 C.F.R. § 1240.10(f). In selecting an alternative country of removal, the IJ
13 must first select the “country of which the alien is a subject, national, or citizen[.]” 8 U.S.C. §
14 1231(b)(2)(D). If removal to that country is impossible, the IJ may remove the alien to “any of
15 the following countries” listed in 8 U.S.C. § 1231(b)(2)(E):

- 16 (i) The country from which the alien was admitted to the United States.
- 17 (ii) The country in which is located the foreign port from which the alien left for the United
18 States or for a foreign territory contiguous to the United States.
- 19 (iii) A country in which the alien resided before the alien entered the country from which
20 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.

21 Lastly, Section 1231(b)(2)(E)(vii) provides that “[i]f impracticable, inadvisable, or impossible to
22 remove the alien to each country” described above, the statute permits removal to any “country
23 whose government will accept the” noncitizen. *Id.* § 1231(b)(2)(E)(vii).

1 The government is prohibited from removing a person to a third country where they may
 2 be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. §
 3 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the government cannot remove
 4 a person to a country where they would be tortured, a form of protection known as protection
 5 under the Convention Against Torture (“CAT”). *See* Foreign Affairs Reform and Restructuring
 6 Act of 1998 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8
 7 U.S.C. § 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. Withholding of
 8 removal and CAT protection are mandatory, but “only restrict *where* the Government may remove
 9 a noncitizen to, not *whether* the noncitizen is subject to removal.” *Kumar v. Wamsley*, No. C25-
 10 2055-KKE, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025). “Thus, even if the IJ grants
 11 such protection, the removal order remains valid and enforceable, albeit not to the identified
 12 country or countries of risk.” *Id.* (citing 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(f); *Johnson*
 13 *v. Guzman Chavez*, 594 U.S. 523, 536 (2021); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir.
 14 2004).

15 If the government has a removal order but no country to which an IJ has authorized
 16 removal, it can remove the noncitizen to a third country, meaning any country not designated on
 17 the removal order. *D.V.D.*, 2025 WL 942948, at *1. It remains the case that the government cannot
 18 remove an alien to any third country where they would face persecution or torture. 8 U.S.C. §
 19 1231(b)(3)(A); 28 C.F.R. § 200.1; 8 C.F.R. §§ 208.16–18, 1208.16–18.

20 **C. D.V.D. v. Dep’t of Homeland Security**

21 In March 2025, three plaintiffs instituted a putative class action suit challenging their third
 22 country removals in the District of Massachusetts. *D.V.D.*, 2025 WL 942948, at *1. On March
 23 28, 2025, the district court entered a TRO enjoining the DHS and others from “[r]emoving any
 24 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 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., 2025 WL 1453640, at *1 (D. Mass. May 21, 2025).

1 The *D.V.D.* court indicated that the Order applied “to the Defendants, including the
2 Department of Homeland Security, as well as their officers, agents, servants, employees,
3 attorneys, any person acting in concert, and any person with notice of the Preliminary Injunction.”
4 *Id.*

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

14 **D. DHS Policy on Third-Country Removals**

15 On March 30, 2025, and then later, on July 9, 2025, DHS issued guidance regarding third
16 country removals. *See* U.S. Department of Homeland Security, “Guidance Regarding Third
17 Country Removals,” Kristi Noem, March 30, 2025, *available at*
18 <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1>
19 [1.pdf](#) (last visited January 14, 2026) (“DHS Memo”); U.S. Immigration and Customs
20 Enforcement, “Third Country Removals Following the Supreme Court’s Order in *Department of*
21 *Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025),” Todd M. Lyons, July 9, 2025,
22 *available at*
23 <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190>.

1 1.pdf (last visited January 14, 2026) (hereinafter “July 9 Memo”); *see also* Kumar, 2025 WL
2 3204724, at *2-3 (describing contents of these memos and the distinction between the two);

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

11 After the interview is conducted, USCIS will determine whether the individual would
12 more likely than not be persecuted or tortured in the country of removal. *Id.* If USCIS finds that
13 the individual has met this standard, if the person was previously in removal proceedings, USCIS
14 will inform ICE, and ICE can then file a motion to reopen with the Immigration Court. *Id.*
15 Alternatively, ICE can also choose to designate another country of removal. If USCIS finds that
16 the person has not met the standard, according to DHS policy, they will be removed. *Id.* There is
17 nothing in the memo or in ICE policy that prevents an individual from filing a motion to reopen
18 their prior removal proceedings at any time they choose, based on a request for asylum,
19 withholding of removal, or protection under CAT. *See id.*; *see also* 8 C.F.R. § 1003.23(b)(4)(i).

20 IV. FACTUAL BACKGROUND

21 Petitioner is a native and citizen of Venezuela. Declaration of Jordan Steveson (“Steveson
22 Decl.”), Exh. A, 2024 I-213. He entered the United States from Mexico on or about April 15,
23 2024. *Id.* An asylum officer found that Petitioner demonstrated credible fear and on April 29,
24 2024, United States Border Patrol issued a Notice to Appear (“NTA”). Steveson Decl., Exh. B,

1 NTA. The NTA charges Petitioner with removal due to being inadmissible under INA §
2 212(a)(6)(A)(i) [8 U.S.C. § 1181(a)(6)(A)(i)]. *Id.* Petitioner was released from detention at that
3 time. Steveson Decl., Exh. A, 2024 I-213. Petitioner had approximately eight violations related
4 to his release. Exh. C, 2025 I-213. On March 25, 2025, Petitioner was redetained by ICE due to
5 those violations. Steveson Decl., Exh. C, 2025 I-213; Declaration of Deportation Officer Rita
6 Soraghan (“Soraghan Decl.”), ¶ 19. On July 18, 2025, an immigration judge ordered Petitioner
7 removed but granted Petitioner Withholding of Removal under CAT. Steveson Decl., Exh. D, IJ
8 Order. All parties waived appeal, making this a final order. *Id.*; 8 U.S.C. § 1231(a)(1)(B)(i).

9 On December 12, 2025, ICE provided Petitioner with a notice of DHS intent to remove
10 him to Mexico. Soraghan Decl., ¶ 23; Steveson Decl., Exh. E, Notice of Removal (Mexico).
11 Petitioner claimed fear of removal to Mexico. *Id.* On January 5, 2026, an asylum officer
12 interviewed Petitioner. Steveson Decl., Exh. F, Third Country Screening Notice. The asylum
13 officer assessed whether Petitioner would be tortured in Mexico and determined that he would
14 not be. *Id.*

15 Mexico is willing to take citizens of Venezuela, and ICE believes Mexico will accept
16 Petitioner. Soraghan Decl., ¶ 25. Petitioner has not filed a motion to reopen with the immigration
17 court. Soraghan Decl., ¶ 22.

18 V. ARGUMENT

19 Petitioner is detained under 8 U.S.C. § 1231(a)(6). ICE is lawfully pursuing Petitioner’s
20 removal to Mexico, and Petitioner’s request to limit ICE from doing so should be denied.
21 Petitioner’s request for a pre-detention hearing should be denied.

1 **A. Rivas is lawfully detained under 8 U.S.C. § 1231(a)(6) because his detention has not**
2 **become indefinite or permanent.**

3 Petitioner's first ground of relief relies on *Zadvydas* to assert that there is no significant
4 likelihood of removal in the reasonably foreseeable future. Pet. at 23-24. Rivas cannot
5 demonstrate that his detention has become "indefinite" or unconstitutional. In *Zadvydas*, the
6 Supreme Court found that post-order detention could potentially become indefinite as authorized
7 under the open-ended terms of Section 1231(a)(6). Finding the possibility of indefinite detention
8 troublesome, the Supreme Court clarified that there is a point at which Congress's interest in
9 detaining an alien to facilitate his removal may eventually give way to the alien's liberty interest.
10 *Zadvydas*, 533 at 690 ("A statute permitting indefinite detention of an alien would raise a serious
11 constitutional problem."). Detention becomes indefinite if, for example, the country designated
12 in the removal order refuses to accept the alien, or if removal is barred by the laws of this country.
13 *Diouf v. Mukasey* ("*Diouf I*"), 542 F.3d 1222, 1233 (9th Cir. 2008).

14 The Supreme Court in *Zadvydas* recognized that as detention becomes prolonged, an
15 alien's liberty interest grows and may eventually outweigh Congress's interest in detaining an
16 alien to facilitate his removal. The six-month period established in *Zadvydas* reflects the earliest
17 moment at which these conflicting interests might raise serious constitutional issues. *See*
18 *Zadvydas*, 533 U.S. at 701. As the length of detention grows, a sliding scale of burdens is applied
19 to assess the continuing lawfulness of an alien's post-order detention. *Id.* (stating that "for
20 detention to remain reasonable, as the period of post-removal confinement grows, what counts as
21 the 'reasonably foreseeable future' conversely would have to shrink"). But as the Supreme Court
22 has noted, the six-month presumption "does not mean that every alien not removed must be
23 released after six months. To the contrary, an alien may be held in confinement until it has been
24

1 determined that there is no significant likelihood of removal in the reasonably foreseeable future.”

2 *Id.*

3 Here, Rivas’ current detention is neither indefinite nor permanent. Mexico has indicated
4 a willingness take citizens of Venezuela and ICE believes that Petitioner will be accepted.
5 Soraghan Decl., ¶ 24. ICE notified Petitioner of its intent to remove him to Mexico. Soraghan
6 Decl., ¶ 23.

7 Accordingly, Rivas’ detention has not become “indefinite,” and this Court should not
8 order that he be released.

9 **B. Petitioner’s Administrative Procedure Act claims must be dismissed for lack of**
10 **Subject Matter Jurisdiction.**

11 Petitioner seeks to challenge his detention on grounds that it violates Sections 706(2)(A),
12 (B) and (C) of the Administrative Procedure Act (“APA”). Pet. at 26-27. The Court has no subject
13 matter jurisdiction to hear these claims.

14 Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C.
15 § 704 (“Agency action made reviewable by statute and final agency action *for which there is no*
16 *other adequate remedy in a court* are subject to judicial review.”) (emphasis added). Simply put,
17 “federal courts lack jurisdiction over APA challenges whenever Congress has provided another
18 ‘adequate remedy.’” *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

19 Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial
20 detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See*
21 *Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating temporary restraining orders based on the
22 APA because Plaintiffs’ claims necessarily implied the invalidity of the Plaintiffs’ confinement
23 and removal under the “Alien Enemies Act” and so had to be brought as habeas corpus claims in
24 the jurisdiction of their confinement). As Justice Kavanaugh stated in his concurring opinion,

1 “[e]specially given the history and precedent of using habeas corpus to review transfer claims,
2 and given 5 U.S.C. § 704, which states that claims under the APA are not available when there is
3 another ‘adequate remedy in a court,’ I agree with the Court that habeas corpus, not the APA, is
4 the proper vehicle here.” *Id.* at 674; *cf. O’Banion v. Matevousian*, 835 Fed. Appx. 347, 350
5 (10th Cir. 2020) (holding that “habeas actions” provide an “adequate remedy” displacing APA
6 review under Section 704); *and see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2
7 (S.D.N.Y. June 19, 2018) (“Accordingly, because plaintiff could adequately remedy his
8 conditions of confinement claim in a habeas corpus petition, the Court does not have jurisdiction
9 to decide his APA claim.”).

10 Moreover, to be reviewable under the APA an action must be a “final agency action,”
11 which is to say that it is the “consummation of the agency’s decision making process.” *See Bennett*
12 *v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of executing a
13 removal order is not within that category because it is only an intermediary step in the process.
14 *See Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025). Accordingly,
15 Petitioner’s claims based on alleged APA should be denied.

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

18 To the extent Petitioner alleges that he is an individual subject to a final order of removal
19 who fears removal to a third country that was not previously described as an alternative country
20 of removal, Petitioner would undisputedly be a member of the plaintiff class in *D.V.D.* As a
21 member of the plaintiff class in *D.V.D.*, he is bound by the proceedings in that case the same as
22 all other class members. The plaintiff class in *D.V.D.* sought an injunction precluding their
23 removal to a third country unless they were first afforded essentially the same process that
24 Petitioner asks the Court to order here. The Supreme Court’s stay of the preliminary injunction

1 entered in that case is both precedent and the result is binding on Petitioner here by virtue of his
2 status as a member of the *D.V.D.* plaintiff class.

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

10 This is also the rule in this Circuit. A district court may properly dismiss an individual
11 complaint where the plaintiff is a member in a class action, to the extent the individual action
12 duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d 1130,
13 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)). Such a
14 dismissal is within the court’s discretion based on its inherent power to control its own docket.
15 *Crawford*, 599 F.2d at 893. But it is “imperative to avoid concurrent litigation in more than one
16 forum whenever consistent with the rights of the parties.” *Id.*; *see Frost v. Symington*, 197 F.3d
17 348, 359 (9th Cir. 1999) (“To the extent that a class action involving the same issues raised by
18 [plaintiff] is currently pending . . . [he] may have to bring all of his related claims for equitable
19 relief . . . through . . . class counsel.”).

20 This Court should decline to exercise jurisdiction over Petitioner’s third country removal
21 claim as a matter of comity because the District of Massachusetts has certified a class action that
22 includes the same claim Petitioner is pursuing here. *Pacesetter Systems, Inc. v. Medtronic, Inc.*,
23 678 F.2d 93, 94-95 (9th Cir. 1982) (“There is a generally recognized doctrine of federal comity
24

1 which permits a district court to decline jurisdiction over an action when a complaint involving
2 the same parties and issues has already been filed in another district.

3 **D. Petitioner’s Punitive Banishment Argument Restates his Due Process Challenge**
4 **and does not Demonstrate that the Policy is Unconstitutional.**

5 Petitioner’s “punitive” third country banishment argument fails because it merely restates
6 his due process objections and lacks any factual basis demonstrating that the third-country
7 removal policy is unconstitutional on its face. *See* Pet. at 20-22, 27-28.

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

12 Second, Petitioner cannot meet the heavy burden required for a facial challenge. A facial
13 challenge demands a showing that a law “is invalid in toto –and therefore incapable of any valid
14 application.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5
15 (1982). Such challenges are “strong medicine” and are disfavored because they “often rest on
16 speculation” and risk “premature interpretation of statutes on the basis of factually barebones
17 records.” *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998); *Wash. State Grange*
18 *v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008). Petitioner’s broad assertions that the
19 program imposes punishment on its subjects are precisely the type of speculative allegations that
20 these cases reject.

21 **E. Petitioner is not Entitled to a Pre-Detention Hearing in the Post-Order Context.**

22 This Court should deny Petitioner’s request for a pre-detention hearing, requiring the
23 government to establish danger or flight risk. Pet. at 24, 29. Petitioner incorrectly alleges that
24 regulations were not followed when OSUP was revoked. Pet. at 25-26. Federal Respondent’s

1 acknowledge that Petitioner was released on April 30, 2024, on alternatives to detention and ICE
2 redetained Petitioner on March 25, 2025. Steveson Decl., Exh. C, 2025 I-213; Soraghan Decl., ¶
3 20. Petitioner was not released on an OSUP, as an OSUP is used for noncitizens with final orders
4 of removal. 8 U.S.C. § 1231(a)(3). Petitioner did not have a final order of removal when he was
5 detained on March 25, 2025. Thus, his claims concerning OSUP regulations are irrelevant to the
6 facts of this case. Furthermore, any claims that he will be redetained if this Court were to release
7 him are speculative and not ripe for review in this habeas litigation.

8 **F. The conditions of Rivas' confinement are not properly brought pursuant to habeas.**

9 Petitioner makes allegations regarding the conditions of his confinement, although he does
10 not make a plea for relief based on those conditions. Pet. at 7-8. More specifically, Petitioner
11 alleges being assaulted by another detainee, having a request for medical assistance outside the
12 detention center denied, and not being able to report the assault to local law enforcement. *Id.* This
13 Court should not consider the conditions of confinement as part of a 28 U.S.C. § 2241 habeas
14 corpus petition. *See Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023). The “appropriate remedy
15 for such constitutional violations, if proven, would be a judicially mandated change in conditions
16 and/or an award of damages, but not release from confinement.” *Crawford v. Bell*, 599 F.2d 890,
17 891 (9th Cir. 1979); *see also Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (challenges to
18 conditions of confinement are pursued in a civil rights action).

19 While courts in this District have adjudicated conditions of confinement claims related to
20 the COVID-19 pandemic, those cases were decided under unique circumstances not present here.
21 *See, e.g., Dawson v. Asher*, No. 20-cv-0409, 2020 WL 1704324, at *8-9 (W.D. Wash. Apr. 8,
22 2020) (explaining the circumstances under which the Court undertook consideration of COVID-
23 19-related conditions of confinement claims in petitions brought under 28 U.S.C. § 2241).
24 Accordingly, this Court should decline to extend such consideration to the claims in this case.

1 VI. CONCLUSION

2 For the foregoing reasons, Federal Respondents respectfully requests that this Court
3 deny the Petition.

4 DATED this 28th day of January, 2026

5 Respectfully submitted,

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18 *I certify that this memorandum contains 4.652*
19 *words, in compliance with Local Civil Rules*