

District Judge Robert S. Lasnik

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

ISA ABUBAKA,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-01889-RSL

FEDERAL RESPONDENTS'  
RETURN MEMORANDUM

Noted: October 28, 2025

**I. INTRODUCTION**

Petitioner Isa Abubaka, a Vietnamese citizen who is unlawfully present in the United States and is subject to a final removal order, has been lawfully detained by U.S. Immigration and Customs Enforcement (“ICE”) to facilitate his removal to Vietnam. Petitioner’s habeas petition seeks to obtain release from custody and to preclude his possible removal to a third country. His petition should be denied.

First, Abubaka’s detention is lawful. He is a noncitizen subject to an administratively final order of removal, and he is lawfully detained under Section 241 of the Immigration and Nationality Act (“INA”). *See* 8 U.S.C. § 1231. His detention also is not indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). He has been detained approximately eight months, since February 27, 2025. With increased cooperation from the government of Vietnam, ICE is working

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1 to effectuate Abubaka’s removal to Vietnam and has initiated a travel document request. It is  
2 likely Abubaka will be removed to Vietnam in the reasonably foreseeable future. Thus, his  
3 detention is not unconstitutionally indefinite. *See Zadvydas*, 533 U.S. at 701.

4 Second, it is unnecessary for the Court to issue an order precluding ICE from removing  
5 Abubaka to a third country now because Respondents have no plans to do so and will not consider  
6 doing so unless and until Vietnam refuses to issue a travel document. Furthermore, the Court may  
7 not issue the relief sought by Abubaka because he is a member of the plaintiff class in *D.V.D. v.*  
8 *Dep’t of Homeland Sec.*, Civ. A. No. 25-10676 (D. Mass.). The plaintiff class in *D.V.D.* sought  
9 and received an injunction barring ICE from removing members of the class to third countries.  
10 That injunction was stayed by two orders of the Supreme Court. Abubaka cannot end-run the  
11 Supreme Court’s stay of an injunction barring his removal to a third country by seeking the same  
12 relief in a different court.

13 Accordingly, Respondents respectfully request the Court deny Abubaka’s habeas petition  
14 and grant this motion to dismiss. This motion is supported by the pleadings and documents on  
15 file in this case, the Declaration of Supervisory Detention and Deportation Officer Brett T. Booth  
16 (“Booth Decl.”), and the Declaration of Kristin B. Johnson (“Johnson Decl.”) with accompanying  
17 exhibits. Respondents do not believe an evidentiary hearing is necessary.

## 18 II. FACTUAL AND PROCEDURAL BACKGROUND

### 19 A. Detention Authorities and Removal Procedures

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

1 post-order detention).

2 When a final order of removal has been entered, a noncitizen enters a 90-day “removal  
3 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security  
4 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for  
5 removal and to protect the community from noncitizens who may present a danger, Congress has  
6 mandated detention while removal is being effectuated:

7 During the removal period, the [Secretary of Homeland Security]<sup>1</sup> shall detain the  
8 [noncitizen]. Under no circumstance during the removal period shall the  
9 [Secretary] release [a noncitizen] who has been found inadmissible under section  
10 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or  
11 1227(a)(4)(B) of this title.

12 8 U.S.C. § 1231(a)(2).

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

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

22 8 U.S.C. § 1231(a)(6) (emphasis added).

23 During the removal period, ICE<sup>2</sup> is charged with attempting to effect removal of a  
24 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit

<sup>1</sup> Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining noncitizens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this authority to the Secretary of the Department of Homeland Security, of which ICE is a component. *See also* 6 U.S.C. § 251.

<sup>2</sup> Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

1 on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may  
2 be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal  
3 from the United States.” *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six  
4 months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.* at 701.

5 Here, Abubaka is the subject of an administrative order of removal that became final on  
6 September 8, 2016. Booth Decl. ¶ 8; Johnson Decl. Exs. B & C. After completing a sentence in  
7 California, he entered ICE custody on February 27, 2025. Booth Decl. ¶ 15. He has been in ICE  
8 custody approximately eight months – just two months more than the “presumptively reasonable”  
9 six-month custody period. *Zadvydas*, 533 U.S. at 701.

10 **B. Petitioner Abubaka**

11 Abubaka is a native and citizen of Vietnam. Johnson Decl. Ex. A, pg. 3. He was admitted  
12 into the United States on or about June 21, 1989, as a child of a refugee. *Id.*; Booth Decl. ¶ 4.  
13 Abubaka never adjusted his status to that of lawful permanent resident. Booth Decl. ¶ 4. In June  
14 2015, Abubaka was convicted of Robbery in the Second Degree and was sentenced to two years’  
15 incarceration. *Id.* at ¶ 5.

16 On June 27, 2016, ICE initiated removal proceedings against Abubaka by issuing a Notice  
17 to Appear, charging him with deportability under INA § 237(a)(2)(A)(iii) (8 U.S.C. §  
18 1227(a)(2)(A)(iii)) for having been convicted of an aggravated felony. *Id.* at ¶ 6; Johnson Decl.  
19 Ex. A. Abubaka was first taken into ICE custody on July 12, 2016. Booth Decl. ¶ 7.

20 An immigration judge ordered Abubaka removed on August 26, 2016, and terminated his  
21 refugee status. *Id.* at ¶ 8; Johnson Decl. Ex. B. The immigration judge granted Abubaka’s motion  
22 to waive appeal on September 8, 2016, making the removal order final. *Id.* at ¶ 8; Johnson Decl.  
23 Ex. C. Shortly thereafter, on September 13, 2016, ICE released Abubaka on an Order of  
24 Supervision (“OSUP”). Booth Decl. ¶ 9.

1 On March 15, 2018, while on the OSUP, Abubaka was arrested for possession of  
2 Cannabis. *Id.* at ¶ 10. This case was dismissed on or about February 8, 2019. *Id.* Two months  
3 later, on May 30, 2018, Abubaka was arrested for assault. *Id.* at ¶ 11. He was convicted of Assault  
4 by Means of Force Likely to Produce Great Bodily Injury and was sentenced to six years'  
5 incarceration. *Id.* Abubaka was taken into ICE custody for the second time on April 27, 2021. *Id.*  
6 at ¶ 12. He was released on the same day on another OSUP. *Id.*

7 One year later, on March 18, 2022, Abubaka was arrested for unlawful possession of a  
8 stun gun or tear gas. *Id.* at ¶ 13. It is unclear whether he was convicted of anything in relation to  
9 this arrest, but it appears he was convicted of an unknown charge on or about December 18, 2023,  
10 and sentenced to 120 days incarceration. *Id.*

11 Shortly thereafter, on June 6, 2022, Abubaka was arrested again for arson, making a  
12 destructive device, and possessing or using explosives. *Id.* at ¶ 14. He was convicted of Possession  
13 of an Explosive Device and sentenced to six years' incarceration. *Id.*

14 Abubaka was taken into ICE custody for the third time on February 27, 2025. *Id.* at ¶ 15.  
15 Since Abubaka has been detained, ICE has been working toward securing travel documents to  
16 effectuate his removal to Vietnam. *Id.* at ¶ 17. Abubaka completed the necessary travel document  
17 forms and his documents are being translated into Vietnamese for submission to the government  
18 of Vietnam. *Id.* They are due back on October 24, 2025. *Id.* It is likely Abubaka's removal to  
19 Vietnam will occur in the reasonably foreseeable future because Vietnam has increased  
20 cooperation in the repatriation of its citizens and has agreed to issue travel documents within 30  
21 days. *Id.* at ¶¶ 18-21 In Fiscal Year 2025, as of September 11, 2025, ICE has removed 569  
22 Vietnamese nationals to Vietnam. *Id.* at ¶ 20.

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1 **III. ARGUMENT**

2 **A. Abubaka’s detention is not indefinite or unconstitutionally prolonged**

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

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

22 Here, ICE has detained Abubaka for approximately eight months since his order of  
23 removal became administratively final. Booth Decl. ¶ 15. This is just two months more than the  
24 six-month presumptively reasonable period under *Zadvydas*, 533 U.S. at 701. By contrast, another

1 section of this Court recently granted relief to a Vietnamese national who had spent approximately  
2 twenty months in ICE custody over three periods of detention. *Nguyen v. Scott*, No. 2:25-cv-  
3 01398, 2025 WL 2419288, at \*13 (W.D. Wash. Aug. 21, 2025) (Cartwright, J.). Abubaka’s eight-  
4 month detention (along with many other factors)<sup>3</sup> distinguishes him from the petitioner in *Nguyen*.

5 While Abubaka claims that Vietnam has rarely issued travel documents in the past and  
6 likely will not issue one for him now, ICE has undertaken several negotiations with the  
7 Government of Vietnam to establish a process for regularized removals of final order Vietnamese  
8 citizens who entered the United States on or prior to July 12, 1995. Booth Decl. ¶¶ 18-21. The  
9 Government of Vietnam has agreed to increase cooperation with the United States and issue travel  
10 documents in less than 30 days. *Id.* at ¶ 19. In Fiscal Year 2024, ICE removed 58 final order  
11 Vietnamese citizens to Vietnam. *Id.* at ¶ 20. In Fiscal Year 2025, as of September 11, 2025, ICE  
12 has removed 569 Vietnamese nationals to Vietnam. *Id.* The Government of Vietnam has not taken  
13 more than 30 days to issue a travel document pursuant to any of ICE’s requests since mid-  
14 February 2025. *Id.* at ¶ 21.

15 Since Abubaka has been detained, ICE has been working toward securing travel  
16 documents to effectuate his removal to Vietnam. *Id.* at ¶ 17. Abubaka completed the necessary  
17 travel document forms and his documents are being translated into Vietnamese for submission to  
18 the government of Vietnam. *Id.* They are due back on October 24, 2025. *Id.*

19 Once complete, it is likely that ICE will receive travel documents expeditiously because  
20 the government of Vietnam has agreed to issue travel documents within 30 days. *Id.* at ¶ 19.  
21 Indeed, it has issued travel documents in hundreds of cases just this fiscal year. *Id.* ¶ 20. This

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23 <sup>3</sup> Aside from his long tenure in the United States, Abubaka cites none of the special factors relevant in *Nguyen*. See  
24 *Nguyen*, 2025 WL 2419288, at \*18 (noting the petitioner alleged he had no family ties in Vietnam, no place to live,  
and no identification documents from Vietnam). Even if Abubaka were to add those allegations in a subsequent brief,  
they do not undermine the likelihood that he will receive travel documents from Vietnam given the country’s recent  
increased cooperation.

1 includes 154 Vietnamese citizens who entered the United States before July 12, 1995. *Nguyen*,  
2 2025 WL 2419288, at \*17. Because of this increased cooperation with the government of  
3 Vietnam, Tang's removal will likely occur in the reasonably foreseeable future.

4 The fact that Abubaka does not yet have a specific date of anticipated removal does not  
5 make his detention indefinite. *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008). Detention  
6 becomes indefinite in situations where the country of removal refuses to accept the noncitizen or  
7 if removal is legally barred. *Id.* There is no reason to believe that is the situation here.  
8 Consequently, Abubaka has failed to demonstrate a good reason to believe that there is no  
9 significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at  
10 701.

11 With his removal pending, the government has significant legitimate interests in  
12 Abubaka's continued detention to ensure he will appear for removal. Abubaka poses a risk of  
13 flight because he alleges no avenue to seek relief from removal. Moreover, his detention has not  
14 become "indefinite," and his removal is significantly likely in the reasonably foreseeable future.  
15 This Court should deny Abubaka's request for immediate release.

16 **B. The government has the legal authority to remove Abubaka to a third country.**

17 The Court should deny Abubaka's request for an order barring his removal to a third  
18 country. First and foremost, ICE is currently seeking to remove Abubaka solely to Vietnam and  
19 will not attempt a third country removal unless and until Vietnam denies the pending travel  
20 document request." Booth Decl. ¶ 22. Further, should ICE decide to remove Abubaka to a third  
21 country, ICE will provide Petitioner's counsel 24 hours advance notice. *Id.* at ¶ 23.<sup>4</sup> With these

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23 <sup>4</sup> As noted in Abubaka's habeas petition, ICE issued a memo dated July 9, 2025, regarding third country removals  
24 following the Supreme Court's order in *D.V.D.* Dkt. 1, pg. 10. The July 9 memo sets forth Respondents' current  
policy on third country removals both nationwide and in the Western District of Washington where Respondents  
are no longer fully following the process discussed in *Aden v. Nielsen, et al.*, WDWA Case No. C18-1441-RSL, at  
Dkt. 16. The memo applies to Abubaka except to the extent set forth in the Booth Declaration (i.e., ICE will not

1 assurances, it is unnecessary for the Court to issue the requested relief to Abubaka as the issue is  
2 not ripe for review.

3         Moreover, Abubaka is not entitled to the relief he seeks. Abubaka is a member of the non-  
4 opt out *D.V.D.* certified class. He is an individual subject to a final order of removal who fears  
5 removal to a third country if ICE is unsuccessful in removing him to Vietnam. Because Abubaka  
6 is bound as a member of the non-opt out class of individuals governed by the *D.V.D.* nationwide  
7 preliminary injunction, which the Supreme Court has now stayed finding that the government is  
8 likely to prevail on the merits of its appeal, this Court should dismiss the action. Simply put,  
9 Abubaka is not entitled to another bite at the apple before this Court to obtain relief that has  
10 already been stayed by the Supreme Court.

11         As explained above, the District of Massachusetts entered a preliminary injunction  
12 prescribing the process to which *D.V.D.* class members were entitled before removal to a third  
13 country and certified a non-opt out class. Abubaka is undisputedly a member of that class. Dkt. 1.  
14 The Supreme Court stayed the preliminary injunction but left certification of the non-opt out class  
15 intact, signaling that the *D.V.D.* class members would not succeed on the merits of their claims  
16 and the Government would ultimately prevail.

17         First, this Court should avoid providing Abubaka with relief that eventually may conflict  
18 with the relief, if any, ultimately provided to the *D.V.D.* class. Abubaka's habeas petition, seeking  
19 an order preventing his removal to a third country challenges how Respondents should implement  
20 a decision to remove him to a third country should that occur. Dkt. 1. That is precisely the  
21 challenge brought by the *D.V.D.* class. This Court, therefore, should not wade into Abubaka's  
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24 attempt to remove Abubaka unless and until Vietnam denies the request for a travel document, and ICE would give  
24 24-hour notice before doing so).

1 claims because such claims are being actively litigated in the *D.V.D.* class action, which is  
2 currently before the First Circuit. To do otherwise would cut against the entire purpose of a Rule  
3 23(b)(2) non-opt out class action and risk an order that will conflict with not only the relief, if  
4 any, eventually provided to the *D.V.D.* class, but also the Supreme Court's rejection of the relief  
5 initially temporarily provided to class members by the District of Massachusetts.

6 Second, this Court should avoid providing Abubaka with relief that is likely to be rejected  
7 and overturned by the Supreme Court. The District of Massachusetts attempted to set parameters  
8 around third country removals, but the Supreme Court, in staying the *D.V.D.* preliminary  
9 injunction, effectively rejected those parameters and signaled that ultimately the class members  
10 would not succeed on the merits of the case and the Government would prevail. The Supreme  
11 Court confirmed that its stay applied to individual class members by granting the government's  
12 motion for clarification on July 3, 2025. Abubaka cannot now make an end run around the  
13 Supreme Court's stay in *D.V.D.* by seeking relief in this Court. The Supreme Court has already  
14 found that Respondents are likely to succeed on the legal arguments presented in response to the  
15 instant habeas petition. Limiting Respondents' ability to remove Abubaka to a third country  
16 would therefore be directly contrary to the Supreme Court's decision to stay the preliminary  
17 injunction in *D.V.D.*

18 Additionally, courts recognize that members of class action lawsuits should not be  
19 permitted to bring separate actions that litigate issues raised in the class action. *See Wynn v.*  
20 *Vilsack*, 2021 WL 7501821, at \*3 (M.D. Fla. Dec. 7, 2021) (collecting cases) ("Multiple courts  
21 of appeal have approved the practice of staying a case, or dismissing it without prejudice, on the  
22 ground that the plaintiff is a member of a parallel class action.") (internal quotations omitted).  
23 This prevents class members from avoiding the binding results of the class action. *Goff v. Menke*,  
24 672 F.2d 702, 704 (8th Cir. 1982).

1 This is also the rule in this Circuit. A district court may properly dismiss an individual  
2 complaint where the plaintiff is a member in a class action, to the extent the individual action  
3 duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d 1130,  
4 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)). Such a  
5 dismissal is up to the court's discretion based on its inherent power to control its own docket.  
6 *Crawford*, 599 F.2d at 893. But it is "imperative to avoid concurrent litigation in more than one  
7 forum whenever consistent with the rights of the parties." *Id.*; see *Frost v. Symington*, 197 F.3d  
8 348, 359 (9th Cir. 1999) ("To the extent that a class action involving the same issues raised by  
9 [plaintiff] is currently pending . . . [he] may have to bring all of this related claims for equitable  
10 relief . . . through . . . class counsel.").

11 This Court should decline to exercise jurisdiction over Abubaka's third country removal  
12 claims as a matter of comity because the District of Massachusetts has certified a class action that  
13 includes the same claim Abubaka is pursuing here. *Pacesetter Systems, Inc. v. Medtronic, Inc.*,  
14 678 F.2d 93, 94-95 (9th Cir. 1982) ("There is a generally recognized doctrine of federal comity  
15 which permits a district court to decline jurisdiction over an action when a complaint involving  
16 the same parties and issues has already been filed in another district.").

17 Consequently, in light of *D.V.D.*, federal district courts in other jurisdictions have denied  
18 claimants the same relief that Abubaka is seeking here. See *Ghamelian v. Baker*, 2025 WL  
19 2049981, at \*3 (D. Md. July 22, 2025), *reconsideration denied*, 2025 WL 2074155 (D. Md. July  
20 23, 2025) ("In light of Plaintiff's apparent class membership, claims relating to his potential third  
21 country removal are more appropriately resolved in the *D.V.D.* case and will not be addressed in  
22 this Court.") (footnote omitted); *Tanha v. Warden*, 2025 WL 2062181, at \*5 (D. Md. July 22,  
23 2025) (matters pertaining to Petitioner's removal destination are more properly addressed by the  
24 District of Massachusetts); *but see Nguyen*, 2025 WL 2419288, at \*20-23.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Respondents respectfully request that this Court deny  
3 Abubaka's habeas petition and dismiss this matter.

4 Dated this 21st day of October, 2025.

5 Respectfully submitted,

6 **CHARLES NEIL FLOYD**  
7 United States Attorney

8 *s/ Kristin B. Johnson*

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17 Attorneys for Federal Respondents

18 I certify that this memorandum contains 3,609  
19 words, in compliance with the Local Civil Rules.  
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