The Honorable Judge Martinez
The Honorable Magistrate Judge Tsuchida

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

MEHRAD GHASEDI,

Petitioner,

v.

CAMMILLA WAMSLEY, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"), TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"), U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"), U.S. DEPARTMENT OF HOMELAND SECURITY, PAMELA BONDI, Attorney General of the United States, and BRUCE SCOTT[1], Warden, Northwest ICE Processing Center,

Respondents.

Case No. C25-1984-RSM-BAT

FEDERAL RESPONDENTS' RETURN MEMORANDUM

Noted for Consideration:
November 7, 2025

[1] Bruce Scott is not a federal employee and is not represented by the undersigned in these proceedings. All other respondents, which are represented by the undersigned, are referred to as "Federal Respondents."

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

I. INTRODUCTION

This Court should deny Petitioner Mehrad Ghasedi's Petition for a Writ of Habeas Corpus. Dkt. 1 ("Pet."). Ghasedi challenges the lawfulness of his present post-order detention at the Northwest ICE Processing Center ("NWIPC") as unlawful while he awaits the execution of a removal order whereby he will be returned to his home country of Iran. However, Ghasedi's Petition fails to demonstrate that his present detention by U.S. Immigration and Customs Enforcement ("ICE") has become "indefinite" and therefore unconstitutional. And, notwithstanding Ghasedi's arguments to the contrary, the abstract possibility that USCIS might someday exercise its legal authority to remove him to a country other than Iran does not make his present detention unlawful. USCIS has no present plans to remove the Ghasedi to any country other than Iran and the Petitioner presents no evidence to the contrary. Ghasedi cannot show that his present detention is unlawful based on the purely hypothetical possibility that USCIS might someday decide to deport him to some third country and that he would have reasonable grounds and the incentive to administratively or judicially challenge that decision.

Accordingly, as supported by the Declaration of USCIS Deportation Officer Cristhian De Castro, the Government hereby submits this return to the Petition on file in this case. The Government does not believe that an evidentiary hearing is necessary.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Detention Authorities and Removal Procedures

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 (2021). The general detention periods are generally 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 8 U.S.C. § 1231(a)

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

(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 alien from the United States." *Id.* To ensure a noncitizen's presence for removal and to protect the community from dangerous noncitizens while removal is being effectuated, Congress mandated detention:

> During the removal period, the [Secretary of Homeland Security] shall detain the alien. Under no circumstance during the removal period shall the [Secretary] release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

8 U.S.C. § 1231(a)(2).

8 U.S.C. § 1231(a)(6) authorizes DHS 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:

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

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

During the removal period, ICE is charged with attempting to effect removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

Court has further identified six months as a presumptively reasonable time to bring about a noncitizen's removal. *Id.* at 701.

In this case, Ghasedi is the subject of an administrative order of removal that became final on March 24, 2021. Decl. of De Castro, ¶ 7. Accordingly, the removal period expired on June 22, 2021. 8 U.S.C. § 1231(a)(1)(B)(i). The "presumptively reasonable" six-month period would have expired on September 24, 2021. *Zadvydas*, 533 U.S. at 701. However, ICE released Ghasedi on an Order of Supervision on July 29, 2021. Decl. of De Castro, ¶ 10. From July 29, 2021, until July 17, 2025, Ghasedi was not physically detained. However, on July 17, 2025, Ghasedi was re-detained and, thereafter, his Order of Supervision was revoked. *Id.* at ¶¶ 13-14. He is currently being detained at NWIPC while ICE is seeking to obtain a travel document from the Republic of Iran for Ghasedi's return to that country. *Id.* at ¶¶ 14-17.

B. Petitioner Ghasedi[2]

Ghasedi is a native and citizen of Iran. Decl. of De Castro, ¶ 3. He was admitted to the United States on March 6, 2001, as a conditional lawful permanent resident. *Id.* On May 5, 2005, Ghasedi's status was adjusted to a lawful permanent resident, retroactive to March 6, 2001. *Id.*

On February 25, 2021, Ghasedi was arrested by ICE Enforcement and Removal Operations ("ERO") in Portland, Oregon, and served with a Notice to Appear in removal proceedings before an immigration judge following his felony convictions in Lane County, Oregon, for Delivery of Heroin and Possession of Methamphetamine. *Id.* at ¶¶ 5-6.

[2] While Ghasedi self-servingly asserts that he has fully cooperated with ICE and "reported to ICE as required," dkt. # 1, ¶ 51, the record reflects that while on supervised release Ghasedi repeatedly violated the conditions of his release. Decl. of De Castro, ¶¶ 11-12. Indeed, when instructed to report on July 9, 2025, the Petitioner did not appear and multiple attempts to locate the Petitioner and make telephone contact with him were unsuccessful. *Id.* at ¶ 13. Ghasedi only reported after ICE contacted his mother. *Id.* In addition, the Petitioner has not been fully cooperative in ICE's efforts to obtain a travel document. *Id.* at ¶ 12.

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5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

On March 24, 2021, an Immigration Judge ("IJ"), sustaining the INA Section 237(a)(2)(B)(1) charge[3], ordered Ghasedi removed to Iran, and Ghasedi waived appeal.[4] *Id.* at ¶ 7. Ghasedi was detained for purposes of removal until July 29, 2021, when he was released pursuant to an Order of Supervision. *Id.* at ¶ 10.

Based on a change of circumstances making the likelihood of Ghasedi's removal to Iran reasonably foreseeable, the Petitioner was detained by ICE following a July 17, 2025 check in, and he remains detained while ICE is in the process of obtaining a travel document from the Republic of Iran in order to return him to that Country. *Id.* at ¶¶ 14-19. ICE has no present plan to remove the Petitioner to any country other than Iran. *Id.* at ¶ 20.

III. ARGUMENT

I. Ghasedi's Administrative Procedure Act claim must be dismissed for lack of Subject Matter Jurisdiction.

Ghasedi seeks to challenge his re-detention on grounds that this was an "arbitrary and capricious" final agency action by Federal Respondents within the meaning of 5 U.S.C. § 706(2)(A) of the Administrative Procedure Act ("APA"). The Court has no subject matter jurisdiction to hear this claim.

Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C. § 704 ("Agency action made reviewable by statute and final agency action *for which there is no*

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[3] INA § 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i) provides:

> Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

[4] Petitioner decries the fact that he is being "punish[ed]" a second time for violating the criminal laws of the United States relating to controlled substances "by stripping away his lawful permanent resident status and deporting him to Iran, a country he had left more than 20 years ago, where he has not maintained any meaningful ties." Dkt. # 1, ¶ 46. While the Petitioner may view this as an unjust consequence of his actions, it is entirely consistent with the will of Congress. (See footnote 3, *supra.*)

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

other adequate remedy in a court are subject to judicial review.") (emphasis added). Simply put, "federal courts lack jurisdiction over APA challenges whenever Congress has provided another 'adequate remedy.'" *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs' claims necessarily implied the invalidity of the Plaintiffs' confinement and removal under the "Alien Enemies Act" and so had to be brought as habeas corpus claims in the jurisdiction of their confinement). As Justice Kavanaugh stated in his concurring opinion, "[e]specially given the history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 674; *cf. O'Banion v. Matevousian,* 835 Fed. App'x 347, 350 (10th Cir. 2020) (holding that "habeas actions" provide an "adequate remedy" displacing APA review under Section 704); *and see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018) ("Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.").[5]

II. Ghasedi's present detention is not unlawful

Posed correctly, the question is not whether the decision to re-detain Ghasedi was an "irrational" final agency action. Rather, the question for purposes of habeas corpus is whether

[5] Moreover, to be reviewable under the APA an action must be a "final agency action," which is to say that it is the "consummation of the agency's decisionmaking process." *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of executing a removal order is not within that category because it is only an intermediary step in the process. *See Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sep. 5, 2025).

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

Ghasedi's re-detention was a lawful federal action. Ghasedi's argument that he is being unlawfully detained rests on two premises. First, that "on information and belief," Federal Respondents decided to re-detain him based on "a blanket detention policy," and without any "individualized determination" of changed circumstances. Dkt. # 1, ¶¶ 70-72. In this respect, Ghasedi contends that the decision to detain him was unlawful because he does not pose a danger to the community. *Id.* at ¶¶ 82-86. Second, that he is *possibly* being detained for purposes of removal to an as yet unidentified third country where he would "have no family ties and would be at direct risk of torture." *Id.* at ¶¶ 73.[6]

The second ground is addressed later in this memorandum. As to the first ground, Ghasedi's arguments concentrate on self-serving representations that he poses no threat to the community. His memorandum makes only passing reference to the other recognized legitimate purpose for post-removal period detention, *i.e.*, to secure his removal.[7]

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.

Zadvydas recognized that as the length of post-order detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.*

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[6] The Petitioner also expresses an unsubstantiated concern that he will be victimized by "chain refoulment" whereby he will be first sent to some random third country and that third country will deport him to Iran. Dkt. # 1 at ¶¶ 73-74. Because the Petitioners' hypothetical concern in this regard does not change the analysis, it is not separately addressed in this memorandum.

[7] *See* Dkt. # 1, p. 25, n.20.

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

at 701 (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, as the Supreme Court has noted, the six-month presumption "does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

While Ghasedi's cumulative months in detention have exceeded the presumptively reasonable time period, this does not make his *present* detention indefinite. *Zadvydas* places the burden on a petitioner to come forward with evidence that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Pelich v. I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003) (*citing Zadvydas*). If the petitioner meets his evidentiary burden, the government must then introduce evidence to refute the petitioner's assertion. *Id.*

Ghasedi has not carried his initial burden under *Zadvydas.* Petitioner's showing consists only of a series of representations made on "information and belief" and a mistaken assumption of law. As relevant here, the Petitioner states that he is "informed and believes" that Federal Respondents have not obtained a valid travel document to deport him to Iran. Dkt. # 1, ¶ 71. Proceeding on that basis, he argues that "[w]ithout a valid travel document, it is not reasonably foreseeable to actually remove him to Iran at the present time." *Id.*

Ghasedi does not cite any legal authority to support his argument that unless ICE has a

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

travel document "in hand," removal is not substantially likely to occur in the reasonably foreseeable future as a matter of law. To the contrary, because Ghasedi is subject to an order of removal, ICE's legal authority to detain him is clear. 8 U.S.C. § 1231(a)(6); *Zadvydas*, 533 U.S. at 683. Federal Respondents acknowledge that it may sometimes be necessary to release a detainee on supervision while attempting to procure a travel document. However, no authority cited by Petitioner *requires* ICE to have a travel document in-hand before detaining or re-detaining an individual who is subject to a removal order. To the contrary, "[i]n order to shift the burden to the Government, an alien must demonstrate that the circumstances of his status or the existence of the particular individual barriers to his repatriation to his country of origin are such that there is no significant likelihood of removal in the foreseeable future." *Galtogbah v. Sessions*, 2019 WL 3766280, at *2 (W.D. La. June 18, 2019), *report and recommendation adopted*, 2019 WL 3761637 (W.D. La. Aug. 8, 2019). Indeed, it is quite appropriate for USCIS to detain Ghasedi while in the process of obtaining a travel document, even if the process will take time. "[S]low progress in [the] removal process does not meet the burden under *Zadvydas*." *Walcott v. Homeland Sec. (BICE)*, 2005 WL 3544342, at *2 (D.N.J. Dec. 28, 2005) (*citing Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137 (S.D. Cal. 2001); *and see Nasr v. Larocca*, 2016 WL 3710200, at *4 (C.D. Cal. June 1, 2016), *report and recommendation adopted*, 2016 WL 3704675 (C.D. Cal. July 11, 2016) (*and cases cited*) ("Although Petitioner complains of delay, mere delay in the issuance of a travel document is insufficient to show that there is 'no significant likelihood of removal in the reasonably foreseeable future,' particularly where, as here, efforts to obtain the travel document are ongoing."). While Ghasedi speculates that the time it will take to obtain a travel document for his removal from Iran will make his detention unlawful, such speculation is not sufficient to carry his burden under *Zadvydas*.

The fact that USCIS does not yet have a specific date for Ghasedi's anticipated removal

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

also does not make his detention indefinite. *Diouf v. Mukasey* ("*Diouf I*"), 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.* Ghasedi does not show that that is the situation here.

More to the point, while Iran may not move with sufficient alacrity for Ghasedi's purposes in acting on ICE's request for a travel document, that also is not the measure of indefinite detention. *Estenor v. Holder*, 2011 WL 5572596, at *3 (W.D. Mich. Oct. 24, 2011), *adopted*, 2011 WL 5589279 (W.D. Mich. Nov. 16, 2011) ("Mere delay by the foreign government in issuing travel documents, despite reasonable efforts by United States authorities to secure them, does not satisfy a detainee's burden under *Zadvydas* to provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.") (citation omitted).

In summary, the Government has a significant legitimate interest in Ghasedi's continued detention to ensure that he will be present at the time of removal. Petitioner has come forward with no evidence establishing that there is "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 771 (*emphasis added*). Thus, under *Zadvydas*, the burden has not shifted to Federal Respondents to show otherwise. *Barenboy v. Att'y Gen. of U.S.*, 160 F. App'x 258, 261 n.3 (3d Cir. 2005) ("Only then does the burden shift to the Government, which 'must respond with evidence sufficient to rebut that showing.'") (*quoting Zadvydas*). Because Ghasedi fails to show that there is no substantial likelihood that ICE will be able to remove him to Iran in the reasonably foreseeable future, it cannot be said that his detention has become indefinite and unlawful. Accordingly, an order requiring his release from custody is not justified and Ghasedi's petition should be denied.

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

III. Ghasedi's speculation that ICE might remove him to a third country does not make his present detention unlawful

Although there is no evidence that Federal Respondents have any present interest in removing Ghasedi to any country aside from Iran, and, indeed, the opposite is true, he asserts that his present detention is unlawful because he fears that ICE might be planning to remove him to a third country. This unsubstantiated concern is the basis for a number of Petitioner's arguments. However, because the only evidence in the record is that ICE has no present intention of removing the Petitioner to any country other than Iran, and he concedes that removal to Iran would be lawful, Petitioner's arguments concerning third country removal provide no basis for an order releasing him from detention pursuant to his habeas corpus petition.

Ghasedi's numerous arguments regarding third country removal are addressed here even though he has not shown that ICE intends to remove him to a third country. Ghasedi does not contest that it is within the authority of Federal Respondents to remove him to a third country under the conditions set forth in 8 U.S.C. § 1231(b)(2)(E)(vii). However, he asserts that a third country can only be designated by an IJ in "reopened removal proceedings." *Id.* at ¶ 77 (*citing Himri v. Ashcroft*, 378 F.3d 932, 939 (9th Cir. 2004)). The point of this contention seems to be that the necessity for such proceedings will engender delay in his eventual removal making his removal not "reasonably foreseeable." *Id.* at ¶ 100.

Ghasedi is incorrect. Nowhere in *Himri* does the Court hold that a third country designation can only be made by an IJ in removal proceedings and, indeed, the contrary is true. "After immigration court proceedings have ended, 'DHS retains the authority to remove the alien to any other country authorized by the statute.'" *Ibarra-Perez v. United States*, 2025 WL 2461663, at *5 (9th Cir. Aug. 27, 2025) (*quoting Johnson v. Guzman Chavez,* 594 U.S. 523, 536 (2021)). Thus. "[i]f DHS is unable to remove the alien to the specified or alternative country or

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

countries, the order of the [IJ] does not limit the authority of [DHS] to remove the alien to any other country as permitted by [§ 1231(b)]." *Id.* (internal quotation omitted).

Second, the Petitioner argues that *if* removal to a third country is contemplated, "his Section 240 proceedings must be reopened so that he may present his CAT case to the IJ." Dkt. # 78. This also is not accurate under current USCIS policy. To reiterate, Federal Respondents are not presently planning to remove the Petitioner to any other country besides Iran. Decl. of De Castro, ¶ 20. That said, under USCIS' current removal policy, removal to a third country that is willing to accept the Petitioner could occur relatively quickly. In normal cases, removal should occur within 24 hours after the third country agrees to accept the alien and a Notice of Removal is served on the alien. *See Y.T.D. v. Andrews*, 2025 WL 2675760, at **9-10 (E.D. Cal. Sept. 18, 2025) (outlining USCIS's current third country removal policy). However, because Federal Respondents are not presently contemplating removal to any other country than Iran and thus have not designated a third country for removal, the issue simply is not ripe for adjudication. *See Johnson,* 594 U.S. at 536 (noting that the question of withholding removal is "country specific.")

Additionally, the Petitioner claims that as a member of the plaintiff class certified in *D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.), he is entitled to benefit from the elaborate structure of due process set forth in the preliminary injunction in that case. Dkt. #1, ¶ 63. He is incorrect.

In *D.V.D.,* three plaintiffs instituted a putative class action suit in the U.S. District Court for the District of Massachusetts challenging their third country removals. *D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.). On March 28, 2025, that 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. *D.V.D. v. U.S. Dep't of Homeland Sec.*,

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025). On April 18, 2025, the District Court in *D.V.D.* issued an order granting the plaintiffs' motions for class certification and a 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 class in *D.V.D.* 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 an order containing 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).

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*

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

Sec. v. D.V.D., __ U.S. __, 145 S. Ct. 2153 (2025).[8]

Because the Supreme Court stayed the preliminary injunction issued by the District Court in *D.V.D.*, thereby allowing USCIS' current procedures to remain in effect, the preliminary relief granted by the District Court in *D.V.D.*, and specifically the due process procedures to which Ghasedi claims to be entitled, and that are the basis for his second argument that his present detention in ICE custody is unlawful, do not apply. To the extent, that the Petitioner seeks to compel an entitlement to such due process in the event of a removal to a third country, as a *D.V.D.* class member, he must seek such relief through the proceeding in the District of Massachusetts as he is bound by the proceedings that have already occurred in that case. He is not entitled to take a second bite of the apple here. *See, e.g. Sanchez v. Bondi,* 2025 WL 2550646, at *2 (D. Colo. Aug. 20, 2025) (petitioners' claims were foreclosed from individual assertion based on *D.V.D.*'s class certification order); *Ghamelian v. Baker*, 2025 WL 2049981, at *3 (D. Md. July 22, 2025), *reconsideration denied*, 2025 WL 2074155 (D. Md. July 23, 2025) ("In light of Plaintiff's apparent class membership, claims relating to his potential third country removal are more appropriately resolved in the *D.V.D.* case and will not be addressed in this Court.") (footnote omitted); *Tanha v. Warden*, 2025 WL 2062181, at *5 (D. Md. July 22, 2025) (matters pertaining to Petitioner's removal destination are more properly addressed by the District of Massachusetts) *compare Nguyen v. Scott*, 2025 WL 2419288, at *25 (W.D. Wash. Aug. 21, 2025) (claim for stay of removal to third country on ground that Administration's third country removal policy was unconstitutionally punitive was not precluded by Supreme Court's stay in *D.V.D.* because that specific claim was not before the district court in *D.V.D.*).

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[8] Later that same day, the District Court ordered that, notwithstanding the Supreme Court's stay, its remedial order granting relief to the eight individual class members DHS sought to remove to South Sudan remained in effect. Order, *D.V.D.* (Dkt. # 176). On the Government's subsequent motion to the Supreme Court for clarification of its prior order, the Supreme Court held that its prior order applied to the eight individual aliens, clearing the way for their removal to South Sudan. *Dep't of Homeland Sec. v. D. V. D.*, ___ U.S. ___, 145 S. Ct. 2627, 2629 (2025).

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5220 UNITED STATES COURTHOUSE
700 Stewart Street
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Accordingly, the Petitioner's efforts to secure his release by relying on the preliminary injunction issued in *D.V.D.* should be rejected. The Supreme Court stayed that preliminary injunction and, as a *D.V.D.* plaintiff class member, he is bound by the Supreme Court's ruling. He may not have a second bite of the apple by seeking the same relief individually in this action.

IV. Ghasedi has not demonstrated an entitlement to injunctive relief

Ghasedi's petition requests that Federal Respondents be ordered to release him from custody. That is the ordinary form of relief available in habeas proceedings. But Ghasedi's Petition here seeks injunctive relief well in excess of a straightforward release from custody. The Petitioner asks the Court to "[e]njoin Respondents from designating a third country for Petitioner's removal without reopening Petitioner's removal proceedings so that an Immigration Judge can make the designation in the first instance and adjudicate Petitioner's application under the Convention Against Torture as to that country, if any." Pet. at pp. 31-32.[9]

While immediate physical release is not the only remedy available under the federal writ of habeas corpus, Ghasedi is still required to demonstrate an entitlement to a preliminary injunction under the standards set forth in *Winter v. Natural Resources Defense Council,* 555 U.S. 7, 20 (2008). First, 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.*, of which Ghasedi is a member, sought an injunction precluding their removal to a third country unless they were first afforded essentially the same process that Ghasedi 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 Ghasedi here by virtue of his status as a member of the

[9] The Petitioner also asks for essentially the same thing in the form of declaratory relief. *Id.*

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

D.V.D. plaintiff class.[10] Following *D.V.D.*, this Court should not grant Ghasedi the same relief that was already denied him as a member of the plaintiff class in *D.V.D.*

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*, 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. *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

[10] This is true even though the two orders in *D.V.D* were entered on requests for interim relief. A grant of interim relief "squarely control[s]" like cases and binds lower courts as a matter of vertical *stare decisis*. *Trump v. Boyle*, ___ U. S. ___, 145 S. Ct. 2653, 2654 (2025). Even though a decision regarding interim relief is not necessarily "conclusive as to the merits," *id.* at 2654, its "'reasoning—its *ratio decidendi*'"—carries precedential weight, *Nat'l Institutes of Health v. Am. Pub. Health Ass'n*, ___ U.S. ___, 145 S. Ct. 2658, 2663-2664 (2025) (Gorsuch, J., and Kavanaugh, J., concurring in part and dissenting in part) (quoting *Ramos v. Louisiana*, 590 U.S. 83, 104 (2020)). *See also Bucklew v. Precythe*, 587 U.S. 119, 136 (2019) ("[J]ust as binding as [a] holding is the reasoning underlying it."). "[E]ven probabilistic holdings—such as *California*'s top-line conclusion that 'the Government is likely to succeed in showing the District Court lacked jurisdiction to order the payment of money under the APA,' must 'inform how a [lower] court' proceeds 'in like cases.'" 2025 WL 2415669, at *4 (Gorsuch, J., and Kavanaugh, J., concurring in part and dissenting in part) (internal citations omitted).

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

equitable relief . . . through . . . class counsel.").

This Court should decline to exercise jurisdiction over Ghasedi'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.").

Those problems aside, Ghasedi's request should be denied because he makes no effort to meet the standards required of him to obtain preliminary relief. It is not sufficient for a party seeking a preliminary injunction to show that irreparable harm is merely "possible." *Winter*, 555 U.S. 22. A showing of speculative injury is not sufficient for a preliminary injunction -- there must be more than an unfounded fear on the part of the applicant. *See Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011). Here, Ghasedi seeks an injunction based only on his unfounded fear that ICE will try to remove him to an unknown third country that will torture him under circumstances and not afford him proper due process before doing so. This speculation does not establish the necessary likelihood necessary for the Court to grant the extraordinary remedy of a preliminary injunction. Ghasedi has not shown that the irreparable injury he fears is "likely in the absence of an injunction." *Winter*, 555 U.S. 22. His request for injunctive relief should be denied.[11]

[11] Ghasedi's request for declaratory relief should also be denied. The Declaratory Judgment Act does not grant litigants an absolute right to a legal determination. *United States v. State of Wash.*, 759 F.2d 1353, 1356 (9th Cir. 1985). And a court may exercise its discretion to refuse to grant declaratory relief because the state of the record is inadequate to support the extent of relief sought. *Id.* Declaratory relief should be denied when it will neither serve a useful purpose in clarifying and settling the legal relations in issue nor terminate the proceedings and afford relief from the uncertainty and controversy faced by the parties. *Id.* at 1357. Here, because Ghasedi's prayer for declaratory relief rest on a host of unknowns, not the least of which is whether third country removal will occur at all, the relief should be denied.

UNITED STATES ATTORNEY
5220 UNITED STATES COURTHOUSE
700 Stewart Street
Seattle, Washington 98101-1271
(206)-553-7970

CONCLUSION

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

CERTIFICATION

I certify that this memorandum contains 5,848 words, in compliance with Local Civil Rule LCR 7(e)(2).

DATED this 29th day of October, 2025.

Respectfully submitted,

CHARLES NEIL FLOYD
United States Attorney

s/ Brian C. Kipnis
BRIAN C. KIPNIS
Assistant United States Attorney
Office of the United States Attorney
5220 United States Courthouse
700 Stewart Street
Seattle, Washington 98101-1271
Phone: 206 553 7970
brian.kipnis@usdoj.gov

Attorneys for Federal Respondents