

District Judge David G. Estudillo
Magistrate Judge Theresa L. Fricke

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

DAOUD MEHRABI,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02227-DGE-TLF

FEDERAL RESPONDENTS'¹
RETURN

Noted for Consideration:
November 21, 2025

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") has lawfully detained Petitioner Daoud Mehrabi, an Afghanistan citizen, for approximately 9.5 months pursuant to Section 235(b) of the Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1225(b). He is subject to an expedited removal order that mandates detention until his removal. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Petitioner seeks his immediate release, alleging that there is no likelihood of his removal in the reasonably foreseeable future. Yet, ICE is actively working on effectuating his removal to France – his requested country and residency status. Petitioner

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

1 recently had an in-person interview with the French consulate on October 15, 2025, and on
2 November 17, 2025, France confirmed to ERO that they will issue a travel document and a visa
3 for Petitioner. Therefore, Petitioner's detention has not become "indefinite" and his request for
4 release is not appropriate.

5 Petitioner's removal could not be effectuated shortly after his apprehension because of
6 procedures designed to protect his interests. Due to Petitioner's claim that he feared persecution
7 if returned to Afghanistan, the expedited removal order was stayed as a matter of law until an
8 Immigration Judge ("IJ") returned his administrative case to ICE for his removal approximately
9 seven months ago on April 16, 2025. This decision is not at issue here as this Court does not
10 have jurisdiction to review the Government's credible fear determination. *Dep't of Homeland*
11 *Sec. v. Thuraissigiam*, 591 U.S. 103, 112 (2020).

12 In addition to the credible fear process, ICE has been working with the government of
13 France to honor Petitioner's request that he be removed to France and not to another third
14 country. He has recently had an in-person interview with the French consulate and on
15 November 17, 2025, France confirmed to ERO that they will issue a travel document and a visa
16 for Petitioner. Therefore, the length of Petitioner's detention does not support his claim that it
17 has become unlawful.

18 Petitioner has failed to demonstrate that his mandatory immigration detention pursuant
19 to INA § 235(b); 8 U.S.C. § 1225(b) is unlawful. Without such a showing, this Court should
20 deny his request for release from detention and dismiss his Petition for Writ of Habeas Corpus
21 Pursuant to 28 U.S.C. § 2241 in its entirety without an evidentiary hearing.

II. FACTUAL BACKGROUND

On December 19, 2024, Petitioner was detained pending removal proceedings under the expedited removal process per Section 235(b)(1) of the INA (8 U.S.C. § 1225(b)(1)); 8 C.F.R. § 235.15. *See* Declaration of Deportation Officer Enrique Rodriguez (“Rodriguez Decl.”) ¶ 5.² He was subsequently served Form I-860, Notice and Order of Expedited Removal, pursuant to Section 235(b) of the INA, 8 U.S.C. § 1225(b), he was found inadmissible to the United States under Section 212(a)(7)(A) of the INA, 8 U.S.C. § 1182(a)(7)(A). *Id.* While in detention following his encounter at the border, Petitioner did not manifest a fear of return to his country, express an intention to apply for asylum, withholding of removal, or protection under the Convention Against Torture (“CAT”), nor did he express a fear of persecution or torture, or any fear of return to Afghanistan or another potential country of removal. *Id.*

Petitioner was released on parole from ERO custody on January 24, 2025, pursuant to Section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A). *Id.* at ¶ 6. He was instructed to report to the ERO office on February 24, 2025, as a condition of his parole. *Id.*

On February 5, 2025, Form I-200, Warrant for Arrest of Alien, Form I-203, Order to Detain or Release Alien, and Form I-205, Warrant of Removal/Deportation, were issued for Petitioner, to facilitate the execution of the removal order. *Id.* at ¶ 7. While in custody, Petitioner requested asylum, initiating a process to assess any claims for protection prior to removal. *Id.*

² Due to the compressed schedule set by the Court, only those materials that could reasonably be gathered and reviewed on such short notice are available for this filing. Petitioner’s complete immigration Alien file “A-file,” which is ordinarily essential to understanding the factual and procedural history in habeas matters, could not be obtained despite diligent efforts. The return is therefore submitted on the basis of the limited information presently accessible.

1 On March 18, 2025, Petitioner provided a statement indicating that he had a fear of
2 returning to his birth country of Afghanistan due to potential persecution or harm, and he
3 specifically requested to be removed instead to France, where he had obtained residency.
4 *Id.* at ¶ 8.

5 On April 11, 2025, Petitioner underwent a reasonable fear interview. *Id.* at ¶ 9.
6 During this interview, he admitted to having received asylum in France and holding current
7 permanent resident status there. *Id.* The asylum officer determined that Petitioner had not
8 established a reasonable possibility of persecution or torture in a country to which he may be
9 removed, based on the evidence and statements provided. *Id.* Petitioner requested review of the
10 asylum officer's negative reasonable fear determination by an Immigration Judge. *Id.*

11 On April 16, 2025, an Immigration Judge conducted a de novo review of the decision
12 pursuant to 8 C.F.R. § 208.31(g) and affirmed the asylum officer's negative reasonable fear
13 finding, thereby allowing the removal process to proceed without further asylum-related relief.
14 *Id.* at ¶ 10.

15 On August 5, 2025, as part of ERO's efforts to effectuate removal to France in
16 accordance with the Petitioner's request and his residency status, Petitioner's travel document
17 application packet was sent to the deputy consul of France via email for acceptance and review.
18 *Id.* at ¶ 11. On the same day, ERO received confirmation from the French consulate that they
19 would request internal authorization to issue a travel document and any necessary visa. *Id.*

20 On September 12, 2025, the French consulate contacted ERO to confirm that clearance
21 had been granted to issue the travel documents but advised that Petitioner would need to
22 complete a visa application and attend an interview as a prerequisite for final issuance, in line
23 with French consular procedures. *Id.* at ¶ 12.

1 On October 15, 2025, to advance the travel document process, Petitioner was
2 transported by ERO officers to complete the required visa application and interview necessary
3 for the issuance of the travel documents. *Id.* at ¶ 13. On November 17, 2025, France confirmed
4 to ERO that they will issue a travel document and a visa for Petitioner. *Id.* at ¶ 14. As of today,
5 ERO continues to await the issuance of the visa and travel documents from the French
6 Consulate and is actively monitoring the status while the Petitioner remains in detention
7 pending removal. *Id.* at ¶ 15.

8 III. LEGAL STANDARD

9 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited
10 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon*
11 *Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted).
12 “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to
13 the present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n. 20 (2020).
14 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.
15 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her
16 custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
17 § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

18 IV. ARGUMENT

19 A. ICE’s continued detention of Petitioner is lawful pursuant to 8 U.S.C. § 1225(b).

20 Petitioner’s detention prior to his removal is statutorily mandated as he is subject to
21 expedited removal procedures under the procedures set forth in 8 U.S.C. § 1225(b)(1). A
22 noncitizen who “arrives in the United States,” or “is present” in this country but “has not been
23 admitted,” or “who is brought to the United States after having been interdicted in international
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1 or United States waters” is treated as “an applicant for admission.” 8 U.S.C. § 1225(a)(1).
2 Noncitizens who are apprehended almost immediately after illegally crossing the border and
3 who are determined to be inadmissible due to lacking a visa or valid entry documentation,
4 8 U.S.C. § 1182(a)(7)(A), may be removed pursuant to an expedited removal order unless they
5 express an intention to apply for asylum or a fear of persecution in their home country.
6 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(II). “The purpose of these provisions is to expedite the
7 removal from the United States of aliens who indisputably have no authorization to be admitted
8 to the United States, while providing an opportunity for such an alien who claims asylum to
9 have the merits of his or her claim promptly assessed by officers with full professional training
10 in adjudicating asylum claims.” H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 209 (1996).

11 Applicants for admission fall into one of two categories. Section 1225(b)(1) covers
12 noncitizens initially determined to be inadmissible due to fraud, misrepresentation, or lack of
13 valid documentation, and certain other noncitizens designated by the Attorney General in her
14 discretion. Separately, Section 1225(b)(2) serves as a catchall provision that applies to all
15 applicants for admission not covered by Section 1225(b)(1) (with specific exceptions not
16 relevant here). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

17 Congress has determined that all noncitizens subject to Section 1225(b) must be
18 detained. Regardless of whether a noncitizen falls under Section 1225(b)(1) or (b)(2), the sole
19 means of release is “temporary parole from § 1225(b) detention ‘for urgent humanitarian
20 reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583 U.S. at 283.

21 If a noncitizen subject to Section 1225(b)(1) asserts a credible fear of persecution, the
22 noncitizen “shall be detained for further consideration of the application for asylum.” 8 U.S.C.
23 § 1225(b)(1)(B)(ii). “Any alien subject to the procedures under this clause shall be detained
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1 pending a final determination of credible fear of persecution and, if found not to have such a
2 fear, until removed.” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); *see also* 62 Fed. Reg. 10,312, 10,315
3 (Mar. 6, 1997) (“[t]he provisions of § 235.3(b)(2)(iii) require[e] detention of all aliens subject
4 to the expedited removal provisions and issued a removal order”); *Matter of M-S-*, 27 I. & N.
5 Dec. 509, 509 (A.G. 2019) (“Generally, aliens placed in expedited proceedings must be
6 detained until removed. INA § 235(b)(1)(B)(iii)(IV).”).

7 Here, Petitioner was apprehended and processed as an arriving alien subject to
8 expedited removal. Rodriguez Decl. ¶ 5; 8 U.S.C. § 1225(b)(1)(A)(i). Although he did not
9 claim fear of return to Afghanistan at the time of apprehension, Petitioner later expressed a fear
10 of persecution, which triggered his referral for a credible fear interview. *Id.* ¶¶ 7-8; 8 U.S.C. §
11 1225(b)(1)(A)(ii). After the interview, the asylum officer determined that Petitioner did not
12 have a credible fear of persecution and ordered him removed from the United States without
13 further hearing or review. *Id.* ¶ 9; 8 U.S.C. § 1225(b)(1)(B)(iii). At Petitioner’s request, an IJ
14 reviewed and affirmed these findings. *Id.* ¶ 10; 8 U.S.C. § 1225(b)(1)(B)(iii)(III). Because he
15 was found not to have a credible fear of persecution, the IJ returned his case to DHS for his
16 removal. *Id.* Petitioner must be detained until his removal. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

17 In this case, the interpretation of the statutory authority which Petitioner is detained
18 under does not provide for the relief requested in the habeas petition. *See Jennings*, 583 U.S. at
19 297-303. As the detention authority does not afford Petitioner a right to release or any of the
20 relief requested, the Court should thereby reject his habeas claim and dismiss the habeas
21 petition in its entirety.

1 **B. Petitioner's detention is not "indefinite."**

2 Petitioner mistakenly relies on a six-month presumptive time limitation applicable to
3 8 U.S.C. § 1231(a)(6) to allege that his detention has become indefinite or otherwise violates
4 due process. But Petitioner is subject to expedited removal under 8 U.S.C.
5 § 1225(b)(1)(B)(iii)(IV). Unlike Section 1231(a)(6), Section 1225(b) cannot "reasonably be
6 read to limit detention to six months." *Jennings*, 583 U.S. at 301. Therefore, the length of
7 Petitioner's detention does not implicate the time limitation raised in *Zadvydas v. Davis*, 533
8 U.S. 678 (2001).

9 The Supreme Court has considered whether 8 U.S.C. § 1225(b) imposes a time-limit on
10 the length of detention and whether such noncitizens detained under this statutory authority
11 have a statutory right to a bond hearing. *See Jennings*, 583 U.S. at 297-303. The Supreme Court
12 held that "nothing in the statutory text [of 8 U.S.C. § 1225(b)] imposes any limit on the length
13 of detention" nor "says anything whatsoever about bond hearings." *Id.* at 297. The Court
14 proceeded to add that the *sole* means of release for noncitizens detained pursuant to 8 U.S.C.
15 § 1225(b) is temporary parole *at the discretion of the Attorney General* under 8 U.S.C.
16 § 1182(d)(5). *Id.* at 300 ("That express exception to detention implies that there are no other
17 circumstances under which aliens detained under [8 U.S.C.] § 1225(b) may be released.").

18 The Supreme Court's decision in *Thuraissigiam* reinforced this holding. Therein, the
19 Supreme Court "reiterated th[e] important rule" that a noncitizen seeking initial entry to the
20 United States "has no entitlement" to *any* legal rights, constitutional or otherwise, other than
21 those expressly provided by statute. *See* 591 U.S. at 107, 138-39; *see also id.* at 107 ("Congress
22 is entitled to set the conditions for an alien's lawful entry into this country and that, as a result,
23 an alien at the threshold of initial entry cannot claim any greater rights under the Due Process
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1 Clause.”). Furthermore, the fact that Petitioner succeeded in illegally crossing the border does
2 not alter this rule. *Id.*, at 140 (“An alien who is detained shortly after unlawful entry cannot be
3 said to have ‘effected an entry.’”).

4 Since *Thuraissigiam*, the Ninth Circuit has issued multiple published decisions
5 discussing the ramifications of the Supreme Court’s decision for noncitizens seeking initial
6 entry who fall within the ambit of 8 U.S.C. § 1225(b) and has expressly held that such
7 noncitizens’ due process rights are expressly limited to those set forth by statute. In 2021, the
8 Ninth Circuit stated that “Congress has already balanced the amount of due process available to
9 petitioners with the executive’s prerogative to remove individuals, and we decline to expand
10 judicial review beyond the parameters set by Congress.” *Rauda v. Jennings*, 8 F.4th 1050, 1058
11 (9th Cir. 2021). Later that same year, the Ninth Circuit repeated its decision that “in the
12 expedited removal context, a petitioner’s due process rights are coextensive with the statutory
13 rights Congress provides.” *Guerrier v. Garland*, 18 F.4th 304, 310 (9th Cir. 2021).

14 In *Mendoza-Linares v. Garland*, the Ninth Circuit explicitly noted the Supreme Court’s
15 decision in *Thuraissigiam* and held that “any rights [a noncitizen seeking initial entry] may
16 have in regard to removal or admission are purely statutory in nature and are not derived from,
17 or protected by, the Constitution’s Due Process Clause.” 51 F.4th 1146, 1167 (9th Cir. 2022).
18 Ultimately, “[t]he recognized liberty interests of U.S. citizens and aliens are not coextensive:
19 the Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress may
20 make rules as to aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz v.*
21 *Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522
22 (2003)).

1 To claim an alleged due process violation based on the length of his detention,
2 Petitioner mistakenly relies on the Supreme Court's constitutional analysis of detention
3 pursuant to 8 U.S.C. § 1231(a)(6) in *Zadvydas*. In *Zadvydas*, the Supreme Court found that
4 post-order detention could potentially become indefinite as authorized under the open-ended
5 terms of Section 1231(a)(6). Finding the possibility of indefinite detention troublesome, the
6 Supreme Court clarified that there is a point at which Congress's interest in detaining a
7 noncitizen to facilitate his removal may eventually give way to the noncitizen's liberty interest.
8 This shift occurs when detention becomes potentially indefinite. *Zadvydas*, 533 U.S. at 690 ("A
9 statute permitting indefinite detention of an alien would raise a serious constitutional
10 problem."). The Court construed Section 1231 as having an implicit six-month reasonableness
11 limitation, after which the noncitizen may be released if he can demonstrate there is no
12 foreseeable likelihood of his removal, and the Government fails to rebut that showing. *Id.* at
13 701.

14 However, Petitioner has never been detained under Section 1231(a), and so *Zadvydas* is
15 irrelevant to his case. *See, e.g., Singh v. Holder*, 2013 U.S. Dist. LEXIS 169715, *2 ((D. Ariz.
16 Aug. 28, 2013) (stating that "*Zadvydas* is inapplicable because Petitioner is an arriving alien
17 who was issued an expedited order of removal, and is mandatorily detained under 8 U.S.C.
18 § 1225(b)(1)(B)(iii)(IV), not § 1231(a)(6)"). Rather, as the relevant statutory provision makes
19 abundantly clear, "[a]ny alien subject to the [expedited removal] procedures under this clause
20 shall be detained pending a final determination of credible fear of persecution and, if found not
21 to have such a fear, *until removed*." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (emphasis added); *see*
22 also 8 C.F.R. § 235.3(b)(2)(iii). That express and plain statutory command is both the
23 beginning and the end of the statutory analysis.

1 The Supreme Court “has long held that an alien seeking initial admission to the United
2 States requests a privilege and has no constitutional rights regarding his application.” *Landon v.*
3 *Plasencia*, 459 U.S. 21, 32 (1982); *see also Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972)
4 (“[T]hat the formulation of these policies is entrusted exclusively to Congress has become
5 about as firmly embedded in the legislative and judicial tissues of our *body politic* as any aspect
6 of our government.”) (quoting *Galvan v. Press*, 347 U.S. 522, 531 (1954)); *Shaughnessy v.*
7 *United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Harisiades v. Shaughnessy*, 342 U.S.
8 580, 591 (1952); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950); *Nishimura Ekiu*
9 *v. United States*, 142 U.S. 651, 659–60 (1892).

10 Moreover, Congress may “entrust[]” the “supervision of the admission of aliens into the
11 United States” to the Executive Branch. *Nishimura Ekiu*, 142 U.S. at 659-60. If it does so, “the
12 decisions of executive or administrative officers, acting within powers expressly conferred by
13 Congress, are due process of law,” and it “is not within the province of the judiciary” to disturb
14 them. *Id.* at 660. The Supreme Court recently reaffirmed this principle. *See Thuraissigiam*, 591
15 U.S. at 138-39.

16 Thus, the critical inquiry in ascertaining due process rights available to a noncitizen is
17 whether the noncitizen has entered under the law, even if he is physically present in the United
18 States. *See Kaplan v. Tod*, 267 U.S. 228, 230 (1925) (finding that, even though an excluded
19 noncitizen was present in the United States for nine years, she “was still in theory of law at the
20 boundary line and had gained no foothold in the United States”); *Leng May Ma v. Barber*, 357
21 U.S. 185, 188-90 (1958) (holding that a noncitizen paroled into the United States pending
22 admissibility had not effected an “entry”). Those well-established principles govern here as
23 Petitioner has not entered the United States under the law. Congress and the Executive Branch
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1 unequivocally determined that noncitizens subject to expedited removal shall be detained until
2 removed — unless they are granted discretionary parole. Therefore, Section 1225(b)(1)
3 detention is lawful and not susceptible to the due process claims Petitioner raises.³

4 Even if this Court were to reach the merits of Petitioner’s indefinite detention claim, his
5 removal is reasonably foreseeable. Petitioner’s detention began approximately 9.5 months ago
6 on February 5, 2025. However, ICE could not execute the expedited removal order until after
7 his credible fear process concluded and the case was returned to ICE for Petitioner’s removal,
8 which occurred on April 16, 2025. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). During the last 7 months,
9 ICE has been working to obtain a travel document to France where Petitioner has requested and
10 has residency. ICE facilitated an in-person interview with the French consulate and they have
11 agreed to issue a travel document and visa for Petitioner.

12 **C. Petitioner’s detention is not “unreasonable.”**

13 In *Banda v. McAleenan*, a court in this judicial district found that the petitioner’s 17-
14 month immigration detention pursuant to 8 U.S.C. § 1225(b) had become unreasonable. *Banda*,
15 385 F. Supp. 3d 1099, 1117-121 (W.D. Wash. 2019). To conduct this analysis, the court
16 analyzed six factors: (1) length of detention; (2) how long detention is likely to continue absent
17 judicial intervention; (3) conditions of detention; (4) the nature and extent of any delays in the
18 removal caused by the petitioner; (5) the nature and extent of any delays caused by the
19 government; and (6) the likelihood that the final proceedings will culminate in a final order of
20 removal. *See id.* An analysis of these factors demonstrates that Petitioner’s detention, while
21 prolonged, has not become unreasonable.

22
23
24 ³ The government believes that *Banda* is inapplicable to this case because it involves detainees with ongoing removal proceedings while Petitioner has a final order of removal, and his credible fear review has concluded.

1 First, Petitioner's approximate 9.5-month detention should not favor granting him
2 release. Due to Petitioner's claim that he feared persecution if returned to Afghanistan, the
3 expedited removal order was stayed as a matter of law until an IJ returned Petitioner's
4 administrative case to ICE for his removal on April 16, 2025. As a result, ICE's ability to
5 remove Petitioner, and thus, the applicable detention period should start at that time, which
6 would account for approximately seven months of detention while waiting for removal. The
7 first factor should favor the Government.

8 Second, ICE is in the process of obtaining a travel document for Petitioner to return to
9 France, where he has requested to go and where he has residency. Rodriguez Decl. ¶¶ 11-15.
10 ERO has submitted a completed travel document application package to the deputy consul of
11 France. *Id.* ERO has also received confirmation from the French consulate that they would
12 request internal authority to issue a travel document and any necessary visa. *Id.* They also
13 advised Petitioner would need to complete a visa application and attend an interview as a
14 prerequisite for final issuance of the travel document. *Id.* ERO transported Petitioner on
15 October 15, 2025 to complete the interview and is awaiting the issuance of a travel document.
16 *Id.* On November 17, 2025, the French Embassy confirmed to ERO that they would issue a
17 travel document and visa for Petitioner. *Id.* While a specific date of removal has not been set,
18 this factor should be neutral at worst.

19 Third, ICE detains Petitioner at the Northwest ICE Processing Center in Tacoma,
20 Washington.

21 Fourth, it does not appear Petitioner intentionally delayed the removal process.

22 Fifth, the facts do not support any intentional delays on the part of the Government.

23 While there has been some delay as part of the reasonable fear process and ICE's submission of
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1 the travel document, there is no showing that these delays were intentional. Thus, at worst, this
2 factor should be neutral.

3 The last factor heavily weighs in favor of the Government. This factor requires the
4 district court to consider the likelihood that the final proceedings will culminate in a final order
5 of removal. *Banda*, 385 F. Supp. 3d at 1120. This is a straightforward answer as Petitioner is
6 subject to a final expedited order of removal.

7 In total, at least two of the factors favor the Government, including the first factor.
8 Accordingly, this Court should find that Petitioner's continued mandatory detention under
9 Section 1225(b) has not become unreasonable. *Id.*

10 **D. The government has the legal authority to remove Petitioner to a third country.**

11 The Court should deny Petitioner's request for an order barring his removal to a third
12 country other than France. First and foremost, ICE is currently seeking to remove Petitioner
13 solely to France, has completed the final steps of the travel document process, and is just
14 waiting for the consul to issue the travel document. Thus, it is unnecessary for the Court to
15 issue the requested relief to Petitioner as the issue is not ripe for review.

16 Furthermore, the Court may not issue the relief sought by Petitioner because he is a
17 member of the plaintiff class in *D.V.D. v. Dep't of Homeland Sec.*, Civ. A. No. 25-10676 (D.
18 Mass.). The plaintiff class in *D.V.D.* sought and received an injunction barring ICE from
19 removing members of the class to third countries. That injunction was stayed by two orders of
20 the Supreme Court. Petitioner cannot end-run the Supreme Court's stay of an injunction barring
21 his removal to a third country by seeking the same relief in a different court.

22 Petitioner is a member of the non-opt out *D.V.D.* certified class. He is an individual
23 subject to a final order of removal who fears removal to a third country (other than France) if
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1 ICE is unsuccessful in removing him to Afghanistan. Because Petitioner is bound as a member
2 of the non-opt out class of individuals governed by the *D.V.D.* nationwide preliminary
3 injunction, which the Supreme Court has now stayed finding that the government is likely to
4 prevail on the merits of its appeal, this Court should dismiss the action. Simply put, Petitioner
5 is not entitled to another bite at the apple before this Court to obtain relief that has already been
6 stayed by the Supreme Court.

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

13 First, this Court should avoid providing Petitioner with relief that eventually may
14 conflict with the relief, if any, ultimately provided to the *D.V.D.* class. Petitioner's habeas
15 petition, seeking an order preventing his removal to a third country (other than France)
16 challenges how Respondents should implement a decision to remove him to a third country
17 should that occur. Dkt. 1. That is precisely the challenge brought by the *D.V.D.* class. This
18 Court, therefore, should not wade into Petitioner's claims because such claims are being
19 actively litigated in the *D.V.D.* class action, which is currently before the First Circuit. To do
20 otherwise would cut against the entire purpose of a Rule 23(b)(2) non-opt out class action and
21 risk an order that will conflict with not only the relief, if any, eventually provided to the *D.V.D.*
22 class, but also the Supreme Court's rejection of the relief initially temporarily provided to class
23 members by the District of Massachusetts.

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

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

20 This is also the rule in this Circuit. A district court may properly dismiss an individual
21 complaint where the plaintiff is a member in a class action, to the extent the individual action
22 duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d
23 1130, 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)).
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1 Such a dismissal is up to the court's discretion based on its inherent power to control its own
2 docket. *Crawford*, 599 F.2d at 893. But it is "imperative to avoid concurrent litigation in more
3 than one forum whenever consistent with the rights of the parties." *Id.*; see *Frost v. Symington*,
4 197 F.3d 348, 359 (9th Cir. 1999) ("To the extent that a class action involving the same issues
5 raised by [plaintiff] is currently pending . . . [he] may have to bring all of this related claims for
6 equitable relief . . . through . . . class counsel.").

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

13 Consequently, in light of *D.V.D.*, federal district courts in other jurisdictions have
14 denied claimants the same relief that Petitioner is seeking here. See *Ghamelian v. Baker*, 2025
15 WL 2049981, at *3 (D. Md. July 22, 2025), *reconsideration denied*, 2025 WL 2074155
16 (D. Md. July 23, 2025) ("In light of Plaintiff's apparent class membership, claims relating to
17 his potential third country removal are more appropriately resolved in the *D.V.D.* case and will
18 not be addressed in this Court.") (footnote omitted); *Tanha v. Warden*, 2025 WL 2062181, at
19 *5 (D. Md. July 22, 2025) (matters pertaining to Petitioner's removal destination are more
20 properly addressed by the District of Massachusetts); *but see Nguyen v. Scott*, 2025 WL
21 2419288, *20-23 (W.D. Wash. Aug. 21, 2025); *Abubaka v. Bondi*, W.D. Wash. 25-cv-01889-
22 RSL, Dkt. 15; *Baltodano v. Bondi*, W.D. Wash. 25-cv-01889-RSL, Dkts. 14, 22.

1 **V. CONCLUSION**

2 For the foregoing reasons, Petitioner's habeas petition should be denied and dismissed
3 without an evidentiary hearing.

4 DATED this 19th day of November, 2025.

5 Respectfully submitted,

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14 I certify that this memorandum contains 5,076 words,
15 in compliance with the Local Civil Rules.