

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAOUD MEHRABI,

Petitioner,

vs.

PAMELA BONDI, Attorney General of
the United States; KRISTI NOEM,
Secretary, United States Department of
Homeland Security; CAMMILLA
WAMSLEY, Seattle Field Office
Director, United States Citizenship and
Immigration Services; BRUCE SCOTT,
Warden of Immigration Detention
Facility; and the United States
Immigration and Customs Enforcement,

Respondents.

No. CV25-2227-DGE-TLF

REPLY TO FEDERAL
RESPONDENT'S RETURN
MEMORANDUM

The Respondents argue in their response that they can hold Mr. Mehrabi indefinitely because “he is subject to expedited removal procedures under the procedures set forth in 8 U.S.C. § 1225(b)(1).” Dkt. 10 at 5:20-21. But the Respondents misunderstand *Jennings v. Rodriguez*, which applies only to petitioners with pending immigration cases. *See Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (“In this case we are asked to interpret three provisions of U.S. immigration law that authorize the Government to detain aliens *in the course of immigration proceedings*.”) (emphasis added). Since a removal order was entered and finalized on April 16, 2025, Mr. Mehrabi is no longer being held for expedited removal proceedings under 8 U.S.C. § 1225(b)(1). Mr. Mehrabi is in the same procedural posture as *Zadvydas*, and he should be ordered released immediately.

1 **I. JENNINGS DOES NOT APPLY TO MR. MEHRABI'S CASE, AND HE**
 2 **CANNOT BE HELD INDEFINITELY.**

3 The Respondents claim that Mr. Mehrabi's case falls under 8 U.S.C. § 1225(b)
 4 instead of 8 U.S.C. § 1231(a). While their analysis begins correctly, they reach the
 5 wrong conclusion by failing to recognize that the deportation order finalized the
 6 proceedings.

7 The immigration statutes delineate the proper procedures in incremental steps,
 8 depending where in the removal process a case stands. Section 1225 applies when a
 9 person is initially detained and has a pending immigration case. *Jennings v. Rodriguez*,
 10 583 U.S. 281, 297 (2018) ("Read most naturally, §§ 1225(b)(1) and (b)(2)... mandate
 11 detention of applicants for admission **until certain proceedings have concluded.**")
 12 (emphasis added). The *Jennings* court explicitly cabined its ruling to the period before
 13 the expedited removal order became final. *See id.* at 297 ("Section 1225(b)(1) aliens are
 14 detained for further consideration of the application for asylum, and § 1225(b)(2) aliens
 15 are in turn detained for removal proceedings. **Once those proceedings end, detention**
 16 **under § 1225(b) must end as well.**") (internal quotations omitted, emphasis added).

17 The facts of *Jennings* highlight the difference in posture compared to Mr.
 18 Mehrabi's case. In 2004, Mr. Rodriguez was ordered removed, after which he appealed
 19 to the Board of Immigration Appeals and the Ninth Circuit. *Id.* at 289-90. In 2007,
 20 while his case remained pending in the Ninth Circuit, he filed a habeas petition for a
 21 bond hearing. *Id.* The Supreme Court rejected this argument, holding that detention was
 22 mandated "throughout the completion of applicable proceedings," and that § 1225(b)
 23 and § 1226 do not "limit the length of the detention it authorizes." *Id.* at 302, 303.

24 Here, if Mr. Mehrabi's asylum case were still pending, the Respondents would
 25 be correct to rely on *Jennings* because Mr. Mehrabi would remain detained under 8
 26 U.S.C. § 1225(b). Since his immigration case closed on April 16, 2025, however,
 "detention under § 1225(b)" has ended also.

Respondents are also incorrect to rely on *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), which does not address detention. Mr. Thuraissigiam sought asylum in the United States and an asylum officer determined that he lacked credible fear of persecution. *Id.* at 114. An Immigration Judge affirmed on *de novo* review and ordered him removed. Mr. Thuraissigiam then filed a habeas petition. *Id.* “In this case, however, [Thuraissigiam] did not ask to be released. Instead, he sought entirely different relief: vacatur of his ‘removal order’ and ‘an order directing [the Department] to provide him with a new ... opportunity to apply for asylum and other relief from removal.’” *Id.* at 117-118. Throughout the opinion, Justice Alito reiterated that Mr. Thuraissigiam “does not claim an entitlement to release[.]” *Id.* at 115, 117, 118, 119. *Thuraissigiam* does not address release. It decided only whether a habeas petition may be used to challenge a substantive asylum decision. That is not at issue here.

II. *ZADVYDAS* REQUIRES MR. MEHRABI’S RELEASE.

Once a removal order is entered and finalized (i.e., not appealed), the case no longer falls under § 1225(b) or § 1226. Instead, the case falls under 8 U.S.C. § 1231(a), which applies to individuals who have been ordered removed. “Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days[.]” 8 U.S.C. § 1231(a)(1)(A).

When Congress enacted § 1231(a) in 1996, it explicitly rejected the six-month period that existed at the time, shortening it to 90 days, and ordered that it “shall” be done within that time. *Id.* at 698. Here, because Mr. Mehrabi’s removal order became final on April 16, 2025, the Attorney General was required to deport Mr. Mehrabi by July 15, 2025. Yet, according to the Respondents, the ERO waited until August 5, 2025, to send Mr. Mehrabi’s travel document application packet “to the deputy consul of

1 France via email for acceptance and review,” which the French consulate replied to the
2 same day. Dkt. 10 at 4:15-19. This means that the Attorney General did not even
3 *request* travel documents or permission from France until 111 days had passed since he
4 was ordered removed. Mr. Mehrabi’s statutory rights have been violated each day of
5 detention since.

6 Contrary to the Respondents’ claim, the Supreme Court believed that the
7 indefinite detention of noncitizens posed a “serious constitutional threat” under the
8 Fifth Amendment and “held that the Due Process Clause protects an alien subject to a
9 final order of deportation.” *Zadvydas*, 533 U.S. at 699, 693-94. The Court emphasized
10 that it had never countenanced “civil confinement” without strong procedural
11 protections. *Id.* at 691. The presumptive period during which the detention is reasonably
12 necessary to effectuate a noncitizen’s removal is six months. Continued detention is
13 permissible only if removal is likely to happen “in the reasonably foreseeable future.”
14 *Id.* at 701. This inquiry places a time limit on ICE’s removal efforts. The Court further
15 cautioned courts not to accept ICE’s representations unquestioningly. *Id.* at 700
16 (admonishing district courts not to “abdicat[e] their legal responsibility to review the
17 lawfulness of an alien’s continued detention”). And the Supreme Court specifically
18 rejected the argument that ICE may detain a person so long as it is “actively working”
19 on his removal. *Id.* at 702 (rejecting argument that detention is lawful so long as “good
20 faith efforts to effectuate removal continue”). If the Court has “no idea of when it might
21 reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude
22 that his removal is likely to occur—or even that it might occur—in the reasonably
23 foreseeable future.” *Palma v. Gillis*, No. CV19-112-DCB-MTP, 2020 WL 4880158, at
24 *3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859
25 (S.D. Miss. Aug. 19, 2020) (*quoting Singh v. Whitaker*, 362 F. Supp. 3d 93, 102
26 (W.D.N.Y. 2019)).

1 Here, the Respondents provide no information on how much longer they
 2 anticipate Mr. Mehrabi will be detained. Allowing Mr. Mehrabi's continued detention
 3 would provide incentive for the Attorney General to continue to ignore its statutory
 4 obligation by taking no action during the 90 days, when the entire removal should have
 5 been accomplished in that time. By slow-walking the process, the Respondents can
 6 effectively detain Mr. Mehrabi indefinitely while simultaneously claiming to be making
 7 progress.

8 **III. THE COURT SHOULD ORDER RESPONDENTS TO SET CONDITIONS**
 9 **OF RELEASE.**

10 Mr. Mehrabi has now been detained for over seven months since he was ordered
 11 removed. The Court should order him released from detention. Unlike the detainees in
 12 *Zadvydass* who had extensive criminal histories involving gang violence and drug
 13 offenses, the Respondents in this case have raised no safety concerns about Mr.
 14 Mehrabi and have not suggested he has any criminal history in the United States or
 15 elsewhere. Once released, "aliens ordered released must comply with the stringent
 16 supervision requirements set out in 8 U.S.C. § 1231(a)(3)," including appearing before
 17 an immigration officer periodically. *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1115 (9th
 18 Cir. 2001). While released, Mr. Mehrabi can stay with family in the United States. If his
 19 return to France is approved and the appropriate documentation is secured by ERO, Mr.
 20 Mehrabi will appear for deportation as ordered. Mr. Mehrabi's detention is
 21 unnecessary, unreasonable, and caused by the Attorney General's failure to even try
 22 adhering to the statute.

23 DATED this 21st day of November, 2025.

24 Respectfully submitted,

25 s/ *Lindsay McCaslin*
 26 Assistant Federal Public Defender
 Attorney for Daoud Mehrabi