

THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE MIGUEL ARENADO-BORGES,

Petitioner,

v.

PAMELA BONDI, Attorney General of
the United States, et al.,

Respondents.

No. 2:25-CV-2193-JNW

RESPONSE TO GOVERNMENT'S
RETURN

Mr. Arenado-Borges, through undersigned counsel, hereby responds to the government's return. Dkt. 12.

**I. THE COURT POSSESSES THE AUTHORITY TO ADDRESS
MR. ARENADO-BORGES'S RE-DETENTION.**

By asking for a wide interpretation of 8 U.S.C. 1252(g) barring the Court's review of Mr. Arenado-Borges's re-detention, the government recycles and advances a previously rejected argument. With minimal changes, this argument was largely raised by the government in a motion to dismiss in *M-S-L v. Bostock*, 6:25-cv-1204-AA, Dkt. 13 at 3–6 (D. Or. July 14, 2025) (attached as Exhibit 1). The district court rejected this argument there for the same reason this Court should reject it here—the 2241 petition here is directed toward the fact and legality of Mr. Arenado-Borges's present detention, the lack of process surrounding it, and that the revocation of his OSUP was done without regard for his due process rights and in an arbitrary and capricious manner. *M-S-L v. Bostock*, 6:25-cv-1204-AA, Dkt. 32 at 3-6 (D. Or. Aug. 21, 2025) (attached as Exhibit 2).

1 As in *M-S-L*, several cases are instructive and dispositive of the issues re-raised
2 by the government in its return. First, *Singh v. Gonzales* holds that “By virtue of their
3 explicit language, both §§ 1252(a)(5) and 1252(b)(9) apply only to those claims seeking
4 judicial review of orders of removal. Section 1252(a)(5) is prominently directed to
5 ‘judicial review of an order of removal.’” 499 F.3d 969, 978 (9th Cir. 2007) (quoting
6 8 U.S.C. § 1252(a)(5)). When a habeas claim does not seek judicial review of an order
7 of removal—Mr. Arenado-Borges acknowledges that he has an order of removal, and
8 his entire claim begins with the premise that this is a valid and final order—
9 §§ 1252(a)(5) and 1252(b)(9) do not bar the Court from adjudicating it.

10 Secondly, the Supreme Court has rejected the argument that 8 U.S.C.
11 § 1259(b)(9) should be read expansively to bar federal courts from jurisdiction over any
12 actions beyond the three listed in 8 U.S.C. 1252(g), which bars claims arising from “the
13 decision or action by the Attorney General to commence proceedings, adjudicate cases,
14 or execute removal orders against any alien under this chapter.” *Jennings v. Rodriguez*,
15 583 U.S. 281, 294 (2018). The Court stated that it “did not interpret this language to
16 sweep in any claim that can technically be said to ‘arise from’ the three listed actions of
17 the Attorney General. Instead, we read the language to refer to just those three specific
18 actions themselves.” *Id. citing Reno v. American-Arab Anti-Discrimination Comm.*, 525
19 U.S. 471, 482–83 (2018) (“*AADC*”). The Court cautioned against the “uncritical
20 literalism” while interpreting phrases like “arising from” of the sort again advanced by
21 the government that would lead to results “no sensible person could have intended.” *Id.*
22 at 294 (*quoting Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S.C. 312, 319 (2016)
23 (collecting cases, other citations omitted)).

24 And thirdly, in another context, this Court rejected the broad jurisdiction-
25 stripping argument advanced by the government. *See Ayala v. Bondi*, 2025 U.S. Dist.
26 LEXIS 142123 at *8–12, 2:25-cv-1063-JNW-TLF Dkt. 18 at 6–10 (W.D. Wash.

1 July 24, 2025) (Findings of Fact, Conclusions of Law, and Preliminary Injunction
2 Order). This Court identified the impacts of *AADC* and *Jennings* as narrowly limiting
3 the impact of 8 U.S.C. § 1252(g), while also identifying constitutional avoidance as a
4 separate reason to read 1252(g) narrowly. *Id.* at *13 (“While Congress may modify the
5 right to seek the writ under certain circumstances, it may not do so without providing a
6 collateral remedy which is neither inadequate nor ineffective to test the legality of a
7 person’s detention.”) (cleaned up). As in *Ayala*, accepting the government’s arguments
8 about the expansive reach of the jurisdiction-stripping provisions of 1252(g) would
9 raise serious constitutional issues because the Suspension Clause of the Constitution
10 requires that “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended,
11 unless when in Cases of Rebellion or Invasion the public Safety may require it” and
12 here no alternative remedy exists for Mr. Arenado-Borges to test the legality of his
13 detention. *See Ayala*, 2025 U.S. Dist. LEXIS 142123 at *13 (quoting U.S. Const. art. 1
14 § 9, cl. 2). Because the government’s expansive reading of 1252(g) implicates serious
15 constitutional questions that can easily be avoided through a narrow reading of 1252(g),
16 this provides another reason for the Court to reject the government’s arguments.

17 Because Mr. Arenado-Borges only challenges the legality of his present
18 detention and not the commencement, adjudication, or execution of removal against
19 him, this Court has jurisdiction to adjudicate his habeas petition.

20 **II. MR. ARENADO-BORGES IS UNLIKELY TO BE REMOVED IN THE**
21 **REASONABLY FORESEEABLE FUTURE.**

22 The government claims that Mr. Arenado-Borges is likely to be removed in the
23 foreseeable future because it recently, after the filing of the habeas petition, served him
24 with notice of its intent to remove him to Mexico. Dkt. 12 at 8. It notes that ICE “has
25 had success in removing Cuban nationals to Mexico.” *Id.* The declaration from Agent
26 Benjamin reiterates this, stating, “If Petitioner does not claim fear of removal to

1 Mexico, ICE will attempt to remove him expeditiously. ICE has had success in
2 removing Cuban nationals to Mexico.” Dkt. 14 at ¶ 13. This representation ignores and
3 fails to inform the Court of the fact that Mexico apparently only accepts third-country
4 deportees willing to be deported to Mexico.

5 As a government deportation officer recently stated in a sworn declaration in the
6 Southern District of California, in another case involving a Cuban national, “On
7 October 1, 2025, ICE drove Petitioner to the Mexican border to effectuate his third
8 country resettlement, but Petitioner refused to willingly go to Mexico. Petitioner did not
9 express a fear of removal to Mexico. The Mexican government was ready to accept
10 Petitioner only if he would willingly go to Mexico. ICE cannot, and did not, force
11 Petitioner to depart to Mexico, nor did it threaten Petitioner with removal to Africa.”
12 Declaration of Martin Parsons ¶ 11, *Rios v. Noem*, 25-cv-2866-JES-VET, Dkt. 13-1
13 (Nov. 5, 2025) (attached as Exhibit 3). In the instant case, the government has provided
14 no evidence that Mr. Arenado-Borges intends to consent to removal to Mexico—he, in
15 fact, refused to sign the notice of removal served on him a few days before the
16 government filed its return. Dkt. 13-4. The government also carefully avoids
17 elaborating on its actual success rate in removing Cuban nationals to Mexico who do
18 not consent to said removal. The government has shown no reasonable likelihood that
19 the government will succeed in removing Mr. Arenado-Borges to Mexico.

20 There is likewise no evidence of Mr. Arenado-Borges’s likely removal to Cuba
21 in the foreseeable future. Agent Sheldon Benjamin stated on November 24, 2025, that a
22 nomination was submitted to the government of Cuba on June 25, 2025, and no
23 response has yet been received. Dkt. 14. This fails to inspire any confidence that
24 Mr. Arenado-Borges will ever be removed to Cuba, much less in the reasonably
25 foreseeable future. To its credit, the government does not attempt to argue that removal
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1 to Cuba is reasonably foreseeable and instead devotes the bulk of its argument on the
2 likelihood of removal to Mexico.

3 Because removal is unlikely to occur in the reasonably foreseeable future, this
4 Court should grant the petition and release Mr. Arenado-Borges.

5 **III. D.V.D. CLASS STATUS DOES NOT PRECLUDE RELIEF.**

6 The government is advancing almost identical arguments that have been
7 previously rejected by district courts. *Abubaka v. Bondi*, 2:25-cv-1889-RSL, Dkt. 15 at
8 4–5 (collecting cases and noting the “same argument” being raised in *Nguyen v. Scott*,
9 No. 2:25-cv-01398-TMC, 2025 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025),
10 and *Baltodano v. Bondi*, No. 2:25-cv-01958-RSL (W.D. Wash. Nov. 7, 2025), and that
11 the briefing in *Abubaka* was “almost word-for-word identical to the Government's
12 briefing on this topic in the *Nguyen* and *Baltodano* cases.”). A large part of the
13 government’s briefing on this topic is largely identical to that submitted in *Abubaka*.
14 *Abubaka*, 2:25-CV-1889-RSL, Dkt. 11 at 8–11 (raising largely identical arguments).
15 The court in *Abubaka* dispensed with this argument through adoption of the findings
16 and reasoning of the district court in *Nguyen*:

17 As in *Baltodano*, this Court adopts the *Nguyen* court’s detailed and
18 thoughtful analysis of this issue and the *Nguyen* court's findings that (1)
19 “The class certification order in D.V.D. does not prevent this Court from
20 adjudicating Petitioner’s claims regarding third-country removal” and
21 (2) absent “clear guidance from the Supreme Court,” which the
emergency docket order in D.V.D. does not provide, this Court must
follow well-established precedent.

22 *Abubaka*, 2025 WL 3204369, at *23.

23 As the court explained in *Nguyen*, the Supreme Court in *D.V.D.* provided no
24 reasoning for its entry of the stay and whether it came to that determination based on
25 the merits or the procedural posture of the case. *See Nguyen*, 2025 WL 2419288, at *22
26 (citing *Merrill v. Milligan*, -- U.S. --, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J.,

1 concurring) (“The Court’s stay order is not a decision on the merits.”)); *see also Cruz-*
 2 *Medina v. Noem*, -- F.Supp.3d --, 2025 WL 2841488 (D. Md. Oct. 7, 2025) (rejecting
 3 government’s argument that the stay order in *D.V.D.* means that petitioner cannot
 4 prevail, stating “[a]ll this Court can do is apply existing precedent and due process
 5 standards, and, under those standards, the Court can discern no rational basis for
 6 stripping Mr. Cruz Medina of the opportunity to appear before an immigration
 7 judge”); *Santamaria Orellana v. Maker*, No. 25-1788-TDC, 2025 WL 2841886
 8 (D. Md. Oct. 7, 2025) (citing to *Nguyen*, 2025 WL 2419288, at *22) (“This Court
 9 agrees that based on the presently available guidance from the Supreme Court, there is
 10 an insufficient basis upon which to reach a conclusion on which aspects of *D.V.D.* the
 11 Supreme Court has rejected, whether they relate to the class certification, the due
 12 process claim, or otherwise.”).

13 The *D.V.D.* litigation concerned an earlier version of the ICE guidance, and a
 14 primary argument made by the government to the Supreme Court was an objection
 15 based on the nationwide scale of the injunction rather than its merits. *See* Gov’t
 16 Application for a Stay, *D.H.S. v. D.V.D.*, No. 24A1153 (May 27, 2025), at 19,
 17 [https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_](https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf)
 18 [DHS_v._DVD_et_al-app_stay.pdf](https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf) [<https://perma.cc/8NTN-TQ5D>] (“First, under
 19 8 U.S.C. 1252(f)(1), lower federal courts lack jurisdiction to issue *classwide*
 20 *injunctions* that restrain the operation of third-country removals pursuant to 8 U.S.C.
 21 1231(b)”) (emphasis added). In other words, it is likely that the unreasoned Supreme
 22 Court order was not forbidding injunctive relief to Mr. Abubaka because he is one of
 23 many people who has no right to relief, but rather forbidding *mass* relief because
 24 Mr. Abubaka and others should have proceeded individually in cases just like this one.
 25 *See Nguyen*, 2025 WL 2419288, at *21. *See also Sagastizado v. Noem*, No. 5:25-cv-
 26 00104, – F.3d --, 2025 WL 2957002, *13 (S.D. Tex. Octo. 2, 2025) (“Notably, the

1 class-wide nature of the *D.V.D.* injunction alone could have justified the stay, and that
2 justification would not undermine the merits of an individual claim for relief.”).

3 For the reasons stated by the courts in *Abubaka*, *Baltodano*, and *Nguyen*, this
4 court should reject the government’s arguments and adjudicate Mr. Arenado-Borges’s
5 claim regarding third country removal.

6 **IV. CONCLUSION**

7 For the reasons presented above and in Mr. Arenado-Borges’s habeas petition,
8 Mr. Arenado-Borges respectfully requests that this Court (1) order Respondents to
9 immediately release Mr. Arenado-Borges from custody; (2) order that they not remove
10 or seek to remove him to a third country without notice and meaningful opportunity to
11 respond in compliance with the statute and due process in reopened removal
12 proceedings; (3) order that Respondents may not remove Mr. Arenado-Borges to any
13 third country because Respondents’ third-country removal program seeks to impose
14 unconstitutional punishment on its subjects; and (4) order all other relief this Court
15 deems just and proper.

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17 DATED this 1st day of December 2025.

18 Respectfully submitted,

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20 s/ *J. Leonardo Costales*
21 Assistant Federal Public Defender
22 Attorney for Jose Miguel Arenado-Borges
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