

THE HONORABLE TANA LIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAMY KAMAL ELSHOUBAGY,

Petitioner,

v.

PAMELA BONDI, Attorney General of
the United States; KRISTI NOEM,
Secretary, United States Department of
Homeland Security; LAURA
HERMOSILLO, Acting 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. CV25-02432-TL

REPLY TO RETURN

I. INTRODUCTION

The government's return in this case, somewhat remarkably, cites *Zadvydas v. Davis*, 533 U.S. 678 (2001), only once in its recitation of the law, and does not address its burden-shifting framework in its argument. Petitioner has met his burden to show that he has been held for longer than the presumptively reasonable six months, *see* Gov't Return, Dkt. 8 at 10 (stating that Mr. Elshourbagy has been detained 225 days as of December 17, 2025), and that his removal is not reasonably foreseeable. Indeed, the government admits that he may not be removed to his country of origin, Egypt, and that it has failed to persuade what appears to be a random and extensive laundry list of third-country removal candidates—Mauritania, El Salvador, Panama, Costa Rica, the

Philippines, United Kingdom, Australia, Chile, Denmark, Mongolia, Netherlands, Peru, the United Arab Emirates, Belgium, Bolivia, Kazakhstan, Canada, Switzerland, Thailand, Belize, Portugal, Qatar, France, Guyana, and Papua New Guinea—to accept him despite his lack of criminal history. Gov’t Return, Dkt. 8 at 9. With these admissions, the government has shown that it cannot meet its burden under *Zadvydas*, and Petitioner must be ordered released on bond.

The Court should also enjoin third-country removal without the due process guarantees ordered by many other courts in this district. Mr. Elshourbagy does not speak English fluently and the government’s baseless threats to swiftly remove him to countries from which it has not obtained permission or travel documents (including, most recently, Mauritania) are traumatic and unconstitutional.

Finally, the Government’s third-country removal program is unconstitutionally punitive and it should be permanently enjoined. *See Baltodano v. Bondi*, No. CV25-1958-RSL, 2025 WL 3484769, at *10 (W.D. Wash. Dec. 4, 2025) (“[T]his Court holds that the Government’s practice of third-country removal paired with imprisonment is intended to be punitive and thus violates due process under *Wong Wing [v. United States]*, 163 U.S. 228[,] 236–38 (1896), and *Zadvydas*, 533 U.S. [] at 693–94. . . .”).

The Court should grant Petitioner’s habeas petition on all three grounds.

II. THE COURT SHOULD GRANT PETITIONER’S HABEAS PETITION BY ORDERING HIM RELEASED ON BOND.

Respondents offer almost no argument as to why Petitioner may be detained for 225 days and counting even though they concede he may not be removed to Egypt and no third country has agreed to accept him. Gov’t Return, Dkt. 8 at 10. “Active pursuit of removal,” *id.*, does not make it foreseeable under *Zadvydas*. *See, e.g., Tran v. Noem*, No. 1:25-cv-01523-TLN-CKD, 2025 WL 3268491, at *3 (E.D. Cal. Nov. 24, 2025) (assertion that government was “actively working on obtaining a travel document for

1 Petitioner to Vietnam” was insufficient to show removal was reasonably foreseeable);
2 *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *5 (E.D. Cal.
3 July 16, 2025) (“Respondents’ intent to complete a travel document request for
4 Petitioner does not make it significantly likely he will be removed in the foreseeable
5 future”); *Hambarsonpour v. Bondi*, No. CV25-1802-RSM, 2025 WL 3251155, at *2–*3
6 (W.D. Wash. Nov. 21, 2025) (holding that a government argument that it was “actively
7 working to effectuate his removal to France” was insufficient to render petitioner’s
8 removal reasonably foreseeable in the absence of travel documents).

9 Under *Zadvydas*, the Supreme Court has made clear that the purpose of detention
10 under the statute must be tied to the goal of removing the person from the United States,
11 and if the detention is prolonged beyond the time necessary to complete that goal, the
12 Due Process Clause places further limits on the detention. *Zadvydas*, 533 U.S. at 699.
13 *Zadvydas* determined that detention becomes “indefinite” when there is “good reason to
14 believe that there is no significant likelihood of removal in the reasonably foreseeable
15 future.” *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533
16 U.S. at 701).

17 Even though the burden has shifted to Respondents to “respond with evidence
18 sufficient to rebut” Petitioner’s showing that there is no significant likelihood of
19 removal in the reasonably foreseeable future, *Zadvydas*, 533 U.S. at 701, they offer
20 nothing in response. The Return provides no evidence that travel documents have been
21 obtained for Mauritania, Uganda, or any of the other seemingly random countries it has
22 selected for Petitioner’s removal. Indeed, it admits that only four of the 25 countries it
23 has asked even responded to their scattershot request, and each of those four
24 (Costa Rica, Denmark, Mongolia, and Australia) responded in the negative. Dkt. 8 at 9
25 (citing Arambula Decl., Dkt. 10 at ¶¶ 11–12). General statements of intent to remove
26 Petitioner to Mauritania or Uganda or any other country fail to prove that his removal is

1 reasonably foreseeable. “The fact that Respondents intend to complete a travel
2 document request for Petitioner does not make it significantly likely he will be removed
3 in the foreseeable future.” *Hoac v. Becerra*, No. CV25-01740-DC-JDP, 2025 WL
4 1993771, at *4 (E.D. Cal. July 16, 2025). In a similar Convention Against Torture
5 (CAT) case in which a petitioner was granted withholding of removal to Colombia, the
6 government sought permission from the consulates of Peru, Argentina, Chile, and
7 Mexico to remove him to those countries, and was denied three times and received no
8 answer from Mexico. *See Aguila v. Rivas*, No. CV25-1662-PHX-DLR (ESW), Dkt. 51
9 at 4 (D. Ariz. Oct. 30, 2025) (“[T]here is no evidence in the record that removal is
10 likely to occur at all, much less in the reasonably foreseeable future.”). Here,
11 Respondents have sent requests to even more countries, and none have agreed.

12 Furthermore, Petitioner has a reasonable fear of being sent to a country that may
13 forward him to the country he has obtained CAT protections against (a practice known
14 as *refoulement* under international law). As Petitioner describes *infra* at 6–7, the law
15 allows him to be able to argue his fear before an immigration judge (not, as the
16 government is doing now, shifting the burden to him to make a claim of fear in
17 response to a notice of removal). For example, Supreme Court justices have described
18 examples of people being sent on to their country of origin by Mexico despite CAT
19 protections. *See DHS v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J.,
20 dissenting) (describing deportation without notice to Mexico of a man granted CAT
21 deferral against removal to Guatemala; Mexico promptly sent him on to Guatemala
22 without regard to the CAT decision of a United States immigration judge). And
23 Mauritania, the most recent third-country candidate ICE has threatened to remove
24 Mr. Elshourbagy to, has a documented history of abusing migrants and asylum seekers,
25 including by expelling them:
26

1 Racial and ethnic profiling, extortion, mass arrests, detention for days or
 2 weeks with little to no food, collective expulsions, beatings and torture:
 3 these are just some of the violations migrants, asylum seekers, and others
 4 have experienced over the past several years at the hands of security
 5 forces in the context of border and migration control in Mauritania.

6 “*They Accused Me of Trying to Go to Europe*”: Migration Control Abuses and EU
 7 Externalization in Mauritania, Human Rights Watch (Aug. 27, 2025),
 8 [https://www.hrw.org/report/2025/08/27/they-accused-me-of-trying-to-go-to-](https://www.hrw.org/report/2025/08/27/they-accused-me-of-trying-to-go-to-europe/migration-control-abuses-and-eu)
 9 [europe/migration-control-abuses-and-eu](https://www.hrw.org/report/2025/08/27/they-accused-me-of-trying-to-go-to-europe/migration-control-abuses-and-eu) [<https://perma.cc/D2FG-5GAP>]. Thus, even if
 10 the government succeeds in coercing a third country to accept Mr. Elshourbagy, the
 11 removal may not proceed if Mr. Elshourbagy has grounds to object and he is able to
 12 exercise his legal right to do so.

13 Mr. Elshourbagy should be released on bond to his uncle Hossny Alshourbagy
 14 (tel.: (646) 644-7069), a United States citizen living in New York City, under
 15 reasonable conditions of supervision. *See* Ex. 1 (passport); *Kamyab v. Bondi*, No.
 16 CV25-389-RSL, 2025 WL 2917522, at *5 (W.D. Wash. Oct. 14, 2025) (citing 8 U.S.C.
 § 241.4(j), 241.5, 241.13(h)).

17 **III. PETITIONER IS ENTITLED TO AN INJUNCTION BARRING**
 18 **DEPORTATION TO A THIRD COUNTRY WITHOUT NOTICE AND A**
 19 **MEANINGFUL OPPORTUNITY TO BE HEARD.**

20 The government, ignoring many instances in which petitioners have successfully
 21 petitioned the courts for release from detention and orders barring them from being
 22 removed to third countries without additional due process protections, insists that “there
 23 is no controversy in this case” sufficient to invoke federal jurisdiction. Dkt. 8 at 10. But
 24 courts in this district have already held that ICE’s current third country removal policy
 25 “contravenes Ninth Circuit law,” *Baltodano*, 2025 WL 3484769, at *6 (quoting *Nguyen*
 26 *v. Scott*, 796 F.Supp.3d 703, 728 (W.D. Wash. 2025)), and the government makes no
 attempt to reconcile the two. There is a grave controversy concerning the process that is

1 required before Mr. Elshourbagy can be removed to a country where he may not have
 2 status allowing him to work and may not have domestic legal protections against being
 3 forwarded to Egypt, where a United States immigration judge held that he faced a more
 4 than 50% chance of being tortured. *See Al-Saher v. I.N.S.*, 268 F.3d 1143, 1147 (9th
 5 Cir. 2001) (withholding of removal under the CAT requires noncitizen to prove “it is
 6 more likely than not that he. . . would be tortured if removed to the proposed country of
 7 removal.”). There exist many documented instances in which the government has failed
 8 to adhere to the due-process requirements of Ninth Circuit law. *See, e.g., D.V.D.*, 145 S.
 9 Ct. at 2154 (Sotomayor, J., dissenting); *see also id.* at 2155–58; Dkt. 1 at 12–14.

10 Specifically, courts in the Ninth Circuit have held that the ICE policy of shifting
 11 the burden to petitioners—particularly those like Mr. Elshourbagy, who is not fluent in
 12 English and was not represented by counsel in immigration court—to move to reopen
 13 removal proceedings themselves any time ICE threatens them with removal to one or,
 14 as here, up to 25 different third-country candidates, is not “giv[ing] sufficient notice of
 15 a country of deportation that, given his capacities and circumstances, he would have a
 16 reasonable opportunity to raise and pursue his claim for withholding of deportation.”
 17 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019) (qtd. in *Nguyen v.*
 18 *Scott*, 796 F.Supp.3d at 727).

19 Following *Aden*, the *Nguyen* and *Baltodano* courts, among others, have held that
 20 “[g]iving petitioner an opportunity to file a motion to reopen [his removal proceedings]
 21 . . . is not an adequate substitute for the process that is due process in these
 22 circumstances.” *Baltodano*, 2025 WL 3484769, at *6 (quoting *Aden*, 409 F. Supp. 3d
 23 998 at 1009–11). “Rather, a petitioner must be able to pursue his claim for withholding
 24 of deportation in reopened removal proceedings before an immigration judge.” *Id.*; *see*
 25 *also Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *11 (E.D.
 26 Cal. Sept. 18, 2025); *Abubaka v. Bondi*, No. CV25-1889-RSL, 2025 WL 3204369, at *6

(W.D. Wash. Nov. 17, 2025); *A.A.M. v. Tonya Andrews, et al.*, No. 1:25-cv-01514-DC-DMC (HC), 2025 WL 3485219, at *8 (E.D. Cal. Dec. 4, 2025).

Because there is a large gap between the process accorded by the July 9 ICE memo and the law, including as reflected in Respondents' claim that the Mr. Elshourbagy has not *independently* raised fear in response to a notice of removal to Uganda, Mr. Elshourbagy also has already suffered injury in fact on this claim for standing purposes. *See* Dkt. 8 at 9 (citing Arambula Decl., Dkt. 10 at ¶ 13). In addition, Respondents claim additional actions pursuant to the memo (and attendant deprivations of process) are forthcoming. As another court in this circuit described, threatened or impending actions suffice to establish Article III injury:

A party seeking injunctive relief to prevent future injury must "establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the threatened injury is certainly impending." *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000) (citation omitted). It is readily apparent that the threatened injury is impending. In their Opposition, Respondents affirmatively state that "[Petitioner] has no connection to the United States and may not stay here ..." and that because "[Petitioner]'s removal to El Salvador is deferred, ... immigration authorities must remove him to another country." (Opp'n at 1–2 (emphasis added).) Petitioner also alleges that ICE officials told him that they were seeking to remove him to a third country. Thus, Petitioner's future injury is not simply theoretical but impending, and Petitioner has standing.

Escobar v. Chestnut, No. 1:25-cv-01801-DJC-EFB, 2025 WL 3687639, at *2 (E.D. Cal., Dec. 19, 2025).

IV. PETITIONER IS NOT BARRED FROM RELIEF BECAUSE HE MAY BE A MEMBER OF THE D.V.D. CLASS

Respondents also argue that this Court may not issue the relief sought by Mr. Elshourbagy on his due process claim because he is a member of the plaintiff class bound by the Supreme Court's stay in *DHS v. D.V.D.*, 145 S. Ct. 2153 (2025). Dkt. 8 at

11–12. It further argues that he *must* seek any relief through the class action. Dkt. 8 at 12. This argument has been rejected by many courts, not least because the second argument contradicts the argument the government made to the Supreme Court, and the likely basis of its stay order.

As the court explained in *Nguyen*, the Supreme Court in *D.V.D.* provided no reasoning for its entry of the stay and whether it came to that determination based on the merits or the procedural posture of the case. *See Nguyen*, 2025 WL 2419288, at *22 (citing *Merrill v. Milligan*, __ U.S. __, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (“The Court’s stay order is not a decision on the merits.”)); *see also Cruz-Medina v. Noem*, -- F.Supp.3d --, 2025 WL 2841488 (D. Md. Oct. 7, 2025) (rejecting government’s argument that the stay order in *D.V.D.* means that petitioner cannot prevail, stating, “[a]ll this Court can do is apply existing precedent and due process standards, and, under those standards, the Court can discern no rational basis for stripping Mr. Cruz Medina of the opportunity to appear before an immigration judge”); *Santamaria Orellana v. Maker*, No. CV25-1788-TDC, 2025 WL 2841886, at *11 (D. Md. Oct. 7, 2025) (citing to *Nguyen*, 2025 WL 2419288, at *22) (“This Court agrees that based on the presently available guidance from the Supreme Court, there is an insufficient basis upon which to reach a conclusion on which aspects of *D.V.D.* the Supreme Court has rejected, whether they relate to the class certification, the due process claim, or otherwise.”).

The *D.V.D.* litigation concerned an earlier version of the ICE guidance, and a primary argument made by the government to the Supreme Court was an objection based on the nationwide scale of the injunction rather than its merits. *See Gov’t Application for a Stay, D.H.S. v. D.V.D.*, No. 24A1153 (May 27, 2025), at 19, https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf [<https://perma.cc/VNR5-SS7D>] (“First, under 8

U.S.C. 1252(f)(1), lower federal courts lack jurisdiction to issue *classwide injunctions* that restrain the operation of third-country removals pursuant to 8 U.S.C. 1231(b).”) (emphasis added). In other words, it is likely that the unreasoned Supreme Court order was not forbidding injunctive relief to Mr. Elshourbagy because he is one of many people who has no right to relief, but rather forbidding *mass* relief because Mr. Elshourbagy and others should have proceeded individually in cases just like this one. *See Nguyen*, 2025 WL 2419288, at *21. *See also Abubaka*, 2025 WL 3204369, at *2; *Sagastizado v. Noem*, No. CV25-00104, – F.3d --, 2025 WL 2957002, *13 (S.D. Tex. Octo. 2, 2025) (“Notably, the class-wide nature of the *D.V.D.* injunction alone could have justified the stay, and that justification would not undermine the merits of an individual claim for relief.”).

The *D.V.D.* class action makes claims about a different policy, seeks distinct relief, and may have been stayed specifically because the Supreme Court prefers cases to proceed individually rather than pursuant to nationwide injunctions. There is no reason to require Mr. Elshourbagy to seek relief in that litigation rather than here.

V. PETITIONER IS ENTITLED TO AN INJUNCTION BARRING DEPORTATION TO A THIRD COUNTRY PURSUANT TO RESPONDENTS’ PUNITIVE POLICY.

Finally, the courts in *Abubaka*, *Nguyen*, *Hambarsonpour*, and *Baltodano* have all held that the government’s practice of third-country removal is punitive as a matter of policy and thus violates due process under *Wong Wing v. United States*, 163 U.S. 228, 236–38 (1896), and *Zadvydas*, 533 U.S. at 693–94. *Abubaka*, 2025 WL 3204369, at *8; *Nguyen*, 796 F.Supp.3d at 739; *Hambarsonpour*, 2025 WL 3251155, at *1, *4–5; *Baltodano*, 2025 WL 3484769, at *10.

These courts have particularly taken note of the descriptions of punitive treatment that deviate from the government’s promises in individual cases before the court. *See, e.g., Rivera-Trigueros v. Bondi*, No. 24-3764, 2025 WL 1189561, at *2 (9th

1 Cir. Apr. 24, 2025) (finding individual had shown that, if detained in El Salvador, he
 2 would “confront a prison environment in which torture is pervasive” and that “the
 3 squalid conditions in Salvadoran prisons—which include extreme overcrowding,
 4 inadequate sanitation, and a lack of food—are deliberately inflicted by government
 5 officials as a form of punishment.”) (citation omitted); *Abrego Garcia v. Noem*, 777 F.
 6 Supp. 3d 501, 509 (D. Md. 2025) (“ICE forcibly transported Abrego Garcia to the
 7 Terrorism Confinement Center (‘CECOT’) in El Salvador, a notorious supermax prison
 8 known for widespread human rights violations.”); *DHS v. D.V.D.*, 145 S. Ct. at 2154–
 9 55 (2025) (Sotomayor, J., dissenting) (describing deportation to Mexico of a gay man
 10 from Guatemala who had obtained withholding of removal to Guatemala under the
 11 Convention Against Torture; Mexico promptly forwarded him on to Guatemala, where
 12 he was forced into hiding); *D.A. v. Noem*, No. 25-CV-3135 (TSC), 2025 WL 2646888,
 13 at *1–*3) (D.D.C. Sept. 15, 2025) (describing punitive deportation to prison-like setting
 14 in Ghana). This Court should similarly recognize that ICE’s third-country deportation
 15 policy is punitive in intent and practice and therefore violates due process.

16 Furthermore, given that Petitioner was granted a CAT deferral based on credible
 17 evidence that he had been tortured by officials in his home country because he owned
 18 property that an influential person wanted, the entire practice of using “bridge
 19 countries” to effectuate eventual return to a barred home country represents an end run
 20 around prohibitions against torture: punitive by any definition. *See* Matias Delacroix &
 21 Megan Janetsky, *Isolated in ‘Harsh Conditions:’ Deportee from US Details Legal*
 22 *Limbo in Panama Camp Near Darien Gap*, AP World News (Feb. 22, 2025),
 23 [https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86)
 24 [bba8c3dc33fd38efd569a5b51e481a86](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86) [<https://perma.cc/7FL8-KNXT>] (quoting U.S.
 25 State Department’s statement on social media that the countries were “safely returning
 26 third-country nationals to their countries of origin”); *see also D.V.D.*, 145 S. Ct. at 2154

1 (Sotomayor, J., dissenting). Such an end run around prohibitions on torture could thus
2 be accomplished without any specific punitive intent in individual decisionmakers'
3 minds.

4 This Court should grant the habeas petition on the ground that the third-country
5 removal program is punitive insofar as it involves imprisonment for a civil immigration
6 issue, *see Abubaka*, 2025 WL 3204369, at *8, and as applied to Mr. Elshourbagy, is
7 punitive insofar as any third-country candidate is not bound by the United States CAT
8 decision indefinitely withholding his deportation to the country that tortured him.

9 **VI. CONCLUSION**

10 This Court should grant the habeas petition on all three grounds.

11 DATED this 22nd day of December 2025.

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13 Respectfully submitted,

14 *s/ Ann K. Wagner*
15 Assistant Federal Public Defender
16 Attorney for Ramy Elshourbagy
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