

HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILLIAM PANTOJA,	)	No. CV25-2440-JLR
Petitioner,	)	
v.	)	RESPONSE TO RESPONDENT'S
	)	RETURN
PAMELA BONDI, Attorney General of	)	
the United States, et al.,	)	
Respondents.	)	

I. INTRODUCTION

Petitioner William Pantoja presents this Response to the Government's (Respondents') Return. In summary, Mr. Pantoja was ordered removed on January 13, 2011, and has been in ICE custody continuously since May 27, 2025. While this length of time would appear to exceed the presumptively reasonable time to bring about a non-citizen's removal, Respondents claim ICE is now prepared to remove Mr. Pantoja to Mexico. Mr. Pantoja is a Cuban national with no ties to or residency status with Mexico. Additionally, Mr. Pantoja is unwilling to be removed to Mexico and has claimed a fear of removal to Mexico.

Respondents' Return includes a declaration from deportation officer Sheldon Benjamin stating that the expectation is for Mr. Pantoja to be removed to Mexico as early as December 20, 2025.¹ The Government therefore argues that Petitioner's

¹ In response, counsel for Petitioner filed a motion for a temporary restraining order on December 18, 2025, Dkt. 10, which this Court provisionally granted that same day. Dkt. 11. The parties subsequently filed a stipulated motion prohibiting transfer or

1 detention is not indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).
2 However, there is no evidence that travel documents have been prepared to
3 accommodate removal to Mexico, nor is there any evidence that Mexico would accept a
4 non-Mexican who is unwilling to be removed to that country. Relatedly, the
5 Government argues that Mr. Pantoja has undergone a reasonable fear interview with
6 U.S. Citizenship and Immigration Services with negative results. However, Mr. Pantoja
7 has not been given an opportunity to contest his removal to Mexico before an
8 immigration judge, and the standard applied for finding reasonable fear of persecution,
9 as set forth in the referenced DHS memorandum, is a higher standard of proof than
10 what would otherwise be required under the Code of Federal Regulations. Therefore,
11 the USCIS interview does not moot the due process arguments in Petitioner's § 2241
12 petition. For these reasons, including the lack of evidence that Mexico will accept
13 Mr. Pantoja, Petitioner is entitled to immediate habeas relief.

14 Next, the Government claims that Petitioner is not entitled to relief concerning
15 the third-country removal process because he is a member of the plaintiff class in
16 *D.V.D. v. Dep't of Homeland Security*. Respondents also argue that Petitioner's
17 procedural due process rights were not violated when ICE re-detained Petitioner
18 because he is not entitled to a pre-OSUP revocation hearing. Additionally, Respondents
19 rely on existing DHS policy in addressing Petitioner's claims of fear if removed to
20 Mexico.

21 Finally, Respondents contend that the removing Petitioner to Mexico would not
22 result in punitive third-country banishment and that the third-country removal policy is
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25 removal during the pendency of proceedings and withdrawing the motion for a
26 temporary restraining order. Dkt. 12. On December 19, 2025, the Court granted the
stipulated motion and ordered that "Petitioner shall not be transferred or removed
during the pendency of the proceedings." Dkt. 13 at 2.

1 not unconstitutionally punitive. As many courts in this district have already held, these
2 arguments are unavailing and habeas relief is merited.

3 **II. REPLY ARGUMENT**

4 **A. There is no dispute that the presumptively reasonable period for 5 detention has expired.**

6 There appears to be no dispute from Respondents that Mr. Pantoja's current
7 detention exceeds the six-month presumptive period set forth in *Zadvydas v. Davis*, 533
8 U.S. 678, 701 (2001). *Zadvydas* made clear, "After this 6-month period, once the
9 [noncitizen] provides good reason to believe that there is no significant likelihood of
10 removal in the reasonably foreseeable future, the Government must respond with
11 evidence sufficient to rebut that showing." *Id.* at 690. If the Government fails to rebut
12 the noncitizen's showing, the noncitizen petitioner is entitled to habeas relief. *See also*
13 *Hieu Tri Nguyen v. Bondi*, No. 2:25-cv-02024-TL, 2025 WL 3534168, at *4 (W.D.
14 Wash. Dec. 10, 2025). Mr. Pantoja has met his burden where "more than six months"
15 have elapsed since the entry of the removal order. Now that Mr. Pantoja has met this
16 burden, the burden then shifts to the Government to show that removal is likely in the
17 reasonably foreseeable future. Respondents fail to meet this burden.

18 **B. The Government has failed to meet its burden that Mr. Pantoja will be 19 removed to Cuba in the reasonably foreseeable future.**

20 The final order of removal was entered in 2011. The Government has failed to
21 remove Mr. Pantoja to Cuba because Cuba will not cooperate with the removal process.
22 In fact, Mr. Pantoja has been in the continuous custody of ICE since May 27, 2025,
23 because Cuba will not accept him.

24 As noted in the record, ICE has attempted to remove Mr. Pantoja to Mexico.
25 However, Mr. Pantoja is unwilling to be removed to Mexico. As a result, Petitioner
26 submitted an exhibit supporting the claim that Mexico will likely not accept
Mr. Pantoja since he is not a Mexican national *and* because he is unwilling to be

1 removed to Mexico. In response, the Government provided a declaration from
2 deportation officer Sheldon Benjamin. Dkt. 8. The declaration indicates that on June 25,
3 2025, Petitioner refused to sign a Notice of Removal to Mexico. Additionally, the
4 declaration states that USCIS made the determination that Petitioner did not establish
5 that it was more likely than not he would be persecuted or tortured in Mexico.

6 However, there is nothing in the record, including the declaration, to support the
7 claim that Petitioner “did not establish that it was more likely than not he would be
8 persecuted or tortured in Mexico.” Benjamin Decl., Dkt. 8 at ¶ 19. Moreover, this is not
9 the correct standard to be applied at a credible fear interview, which is only a screening
10 stage before a determination by an immigration judge makes the final, preponderance-
11 based determination of withholding or deferral of removal. *See* Congressional Research
12 Service, *Credible Fear and Defensive Asylum Processes: Frequently Asked Questions*
13 at 12, <https://www.congress.gov/crs-product/R48078#ifn91> (Sept. 25, 2024) (citing
14 DHS, USCIS, *Asylum Division Officer Training Course: Reasonable Fear of*
15 *Persecution and Torture Determinations* (Feb. 13, 2017),
16 [https://www.uscis.gov/sites/default/files/document/lesson-](https://www.uscis.gov/sites/default/files/document/lesson-plans/Reasonable_Fear_Asylum_Lesson_Plan.pdf)
17 [plans/Reasonable_Fear_Asylum_Lesson_Plan.pdf](https://www.uscis.gov/sites/default/files/document/lesson-plans/Reasonable_Fear_Asylum_Lesson_Plan.pdf); 8 C.F.R. §208.31(c)) (“In expedited
18 removal proceedings, a person must show a “significant possibility” of establishing
19 eligibility for asylum, withholding of removal, or CAT protection. To establish
20 reasonable fear in reinstated removal proceedings, an alien must show a “reasonable
21 possibility” that he or she would be persecuted or tortured in the country of removal.”).
22 These are more forgiving and less stringent standards than what is represented in
23 Benjamin’s declaration—requiring that Petitioner establish that it is “more likely than
24 not” he would be persecuted or tortured, a standard that applies when seeking ultimate
25 relief under the Convention Against Torture before an immigration judge. *See* 8 C.F.R.

§ 208.16(c)(2). Accordingly, the declaration fails to support that Respondents have complied with existing law when attempting to remove a noncitizen to a third country.

Equally important, the record is clear that Mr. Pantoja is unwilling to be removed to Mexico. Respondents have failed to show that Mexico will nevertheless accept non-Mexicans who continue to refuse Mexico as a designated country.

Before removing Mr. Pantoja to a third country, such as Mexico, ICE and the Government must show that they have followed the law on that process of third-country removals. The declaration provided by deportation officer Sheldon Benjamin is inadequate. The declaration references a different standard than what is required by the applicable regulations as the decision to deny Petitioner’s persecution claim seems to be prematurely based on the ultimate standard for relief rather than “the reasonable fear” screening standard required by law. In addition, the declaration fails to affirm that Mexico will continue to accept Petitioner notwithstanding his unwillingness to be removed to Mexico. The evidence of Mexico’s acceptance policy casts doubt on the Government’s ability to remove Petitioner to Mexico in the reasonably foreseeable future, especially when Government fails to explain why it believes Mexico will accept Mr. Pantoja specifically. *See Arenado v. Bondi*, No. CV25-2193-JNW, Dkt. 16 at 10 (W.D. Wash. Dec. 19, 2025).

Accordingly, Respondent has failed to meet its burden. *See, e.g., Nguyen v. Scott*, 796 F.Supp.3d 703, 722–23, 726 (W.D. Wash. 2025) (finding respondents failed to meet their burden where they have “not provided any evidence of Vietnam’s eligibility criteria or why it believes Petitioner now meets it” after refusing to accept him for 20 years); *Hambarsonpour v. Bondi*, No. C25-1802-RSM, 2025 WL 3251155, at *3 (W.D. Wash. Nov. 21, 2025) (finding government failed to meet its burden where government asserted ICE had received assurances from French Consulate that a travel document would be issued but provided “no evidence or substantive indication

1 regarding how or when it expects to obtain the necessary travel document from the
 2 [French] government.”); *Abubaka v. Bondi*, No. C25-1889-RSL, 2025 WL 3204369, at
 3 *5 (W.D. Wash. Nov. 17, 2025) (finding government failed to meet burden where
 4 government provided no evidence of Vietnam’s eligibility criteria or why Petitioner
 5 now meets it”); *Pena-Gil v. Lyons*, 2025 WL 3268333, at *4 (D. Colo. Nov. 24, 2025)
 6 (“Unsubstantiated assertions that the government will pursue removal are insufficient to
 7 satisfy its burden.”). *See also Arenado-Borges v. Bondi*, No. CV25-2193-JNW, 2025
 8 WL 3687518, slip copy at 10 (W.D. Wash. Dec. 19, 2025) (government’s
 9 representation that Cuban Petitioner will be removed to Mexico where Petitioner
 10 refuses Mexico is insufficient to satisfy standard of reasonable foreseeability).

11 **C. The Government must follow the law governing third-country removal.**

12 The Government argues that Petitioner is a member of the Plaintiff Class in
 13 *D.V.D. v. Dep’t of Homeland Sec.* and is bound by the proceedings in that case.
 14 However, this argument has been rejected in this District. Most recently, the opinion in
 15 *Arenado* pointed out that “numerous courts have rejected the Government’s argument,
 16 concluding that the Supreme Court’s unexplained emergency-docket decision in *D.V.D.*
 17 warrants no precedential weight. *Arenado-Borges*, slip copy at 12. The Court in
 18 *Arenado* agreed with the other courts that have examined the issue that the Supreme
 19 Court’s emergency stay of the *D.V.D.* injunction is neither binding nor persuasive, as it
 20 provides no reasoning and is thus too vague to apply here. *Id.*

21 Additionally, Mr. Pantoja is entitled to seek individual relief in accordance with
 22 Ninth Circuit precedent. *Arenado-Borges*, slip copy at 13 (citing *Nguyen v. Scott*, 796
 23 F. Supp. 3d 703, 732 (W.D. Wash. 2025) (holding whether the court may grant a
 24 nationwide injunction is immaterial to *Arenado-Borges*’s requested, individualized
 25 relief). Here, Mr. Pantoja’s due process claims are not identical to the claims in the
 26 *D.V.D.* class action. For example, Mr. Pantoja asserts that he must have a meaningful

1 opportunity to seek withholding of removal to Mexico, a claim not addressed in *D.V.D.*
2 Additionally, Mr. Pantoja does not seek systemic relief but rather individual habeas
3 relief. More important, if the Government’s arguments were accepted, Mr. Pantoja
4 would be unable to address his due process claims until the relevant class action
5 resolved—potentially years from now. *Arenado-Borges*, slip copy at 14. Accordingly,
6 the Supreme Court’s emergency stay of and the district court’s class certification in
7 *D.V.D.* should not bar habeas relief here.

8 Aside from *D.V.D.*, due process requires notice and an opportunity to be heard
9 before Respondents can remove Mr. Pantoja to a third country. Specifically, Petitioner
10 must have an opportunity to apply for asylum, withholding of removal, or protection
11 under the Convention Against Torture. *Arenado-Borges*, slip copy at 15. Title 8 U.S.C.
12 § 1231(b)(3)(A) precludes ICE from removing a noncitizen to any country where their
13 “life or freedom would be threatened in that country because of the [noncitizen’s] race,
14 religion, nationality, membership in a particular social group, or political opinion.”
15 There is no evidence that this was followed in Mr. Pantoja’s case, particularly knowing
16 that the legal standard at a screening interview is a showing of “reasonable fear” under
17 the statute and not “more likely than not” as stated in the DHS memorandum. There is
18 also no evidence in the record that Mr. Pantoja was given an opportunity to reopen
19 removal proceedings before an immigration judge. *See Baltodano v. Bondi*, No. 25-cv-
20 1958 RSL, 2025 WL 2987766, at *3, *4 (W.D. Wash. Oct. 23, 2025) (providing
21 preliminary relief); *see also Arenado-Borges*, slip copy at 16 (simply allowing the
22 petitioner to move to reopen their immigration proceedings is not enough to satisfy due
23 process—the government must actually reopen proceedings so that the petitioner has a
24 fair and adequate opportunity to be heard).

D. Mr. Pantoja is also constitutionally entitled to a hearing before being re-detained.

The Government argues that Petitioner is not entitled to a pre-detention hearing prior to an OSUP revocation referencing the factors set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). But numerous cases, including ones involving re-detention of petitioners with final removal orders, as here, have held that due process requires more than what Respondents say the regulations provide.

Indeed, this Court held that, “[b]ased on [its] review of the *Mathews* factors,” that a “Petitioner has a protected liberty interest in his continuing release from custody, and that due process requires that Petitioner receive proper notice and an opportunity to respond before he can be re-detained.” *Jimenez v. Bondi*, No. C25-2167RSM, 2025 WL 3466925, at *2 (W.D. Wash. Dec. 3, 2025). This Court granted the petition and ordered Mr. Jimenez’s immediate release, barring re-detention “without providing adequate notice of the reasons for his re-detention and a meaningful opportunity to respond.” *Id.* at *3. The Government does not address this Court’s decision nor the many others coming to the same conclusion. *See, e.g., P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL 3294988, at *3 (W.D. Wash. Nov. 26, 2025); *Perez v. Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at *5 (M.D. Fla. Dec. 3, 2025); *S-M-J v. Bostock*, No. 6:25-CV-01425-MTK, 2025 WL 3137296, at *5 (D. Or. Nov. 10, 2025).

The Government’s argument also states that it is unclear what relevance a pre-detention hearing would have concerning Petitioner’s dangerousness or flight risk on the overall question of likelihood of removal in the reasonably foreseeable future. However, this argument ignores the Petitioner’s “protected liberty interest in his continuing release from custody” and the due process protections that must be afforded before that liberty interest can be taken away—particularly for someone like Mr. Pantoja who has been in the community on supervision since January of 2011.

As argued above, the Government has failed to show that Mr. Pantoja will be removed to Cuba in the reasonably foreseeable future. The Government has also failed to show that due process protections are being adhered to as the Respondents seek removal to a third country, specifically Mexico. Because Mr. Pantoja was not given a hearing on whether removal was reasonably foreseeable before being re-detained, and because the Government never reopened his immigration case to afford him the opportunity to seek asylum or withholding of removal from Mexico, he must be released and Respondents must be ordered to afford Petitioner the due process required prior to any third-country removal.

E. Multiple courts have also already found that the Government’s practice of third-country removal is intended to be punitive and thus violates due process.

The Government argues that Mr. Pantoja’s “punitive third country banishment” claim does not demonstrate that the policy is unconstitutional. However, multiple courts have found that this practice is intended to be punitive and has punitive effects regardless of whether Respondents will succeed in punishing Petitioner in this manner. In other words, several courts have all held that the Government’s practice of third-party removal is intended to be punitive as a matter of policy and, accordingly, violates due process under *Wong Wing v. United States*, 163 U.S. 228, 236–38 (1896). *See Abubaka v. Bondi*, No. CV25-1889-RSL, 2025 WL 3204369, at *8 (W.D. Wash. Nov. 17, 2025); *Nguyen*, 796 F.Supp.3d at 739; *Hambarsonpour v. Bondi*, No. CV25-1802-RSM, 2025 WL 3251155, at *1, *4–*5 (W.D. Wash. Nov. 21, 2025); and *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 Cir. Apr. 24, 2025) (finding individual had shown that, if detained in El Salvador, he

1 would “confront a prison environment in which torture is pervasive” and that “the
2 squalid conditions in Salvadoran prisons—which include extreme overcrowding,
3 inadequate sanitation, and a lack of food—are deliberately inflicted by government
4 officials as a form of punishment.”) (citation omitted); *Abrego Garcia v. Noem*, 777
5 F. Supp. 3d 501, 509 (D. Md. 2025) (“ICE forcibly transported Abrego Garcia to the
6 Terrorism Confinement Center (‘CECOT’) in El Salvador, a notorious supermax prison
7 known for widespread human rights violations.”); *Department of Homeland Security v.*
8 *D.V.D.*, 145 S. Ct. 2153, 2154–55 (2025) (Sotomayor, J., dissenting) (describing
9 deportation to Mexico of a gay man from Guatemala who had obtained withholding of
10 removal to Guatemala under the Convention Against Torture; Mexico promptly
11 forwarded him on to Guatemala, where he was forced into hiding); *D.A. v. Noem*,
12 No. 25-CV-3135 (TSC), 2025 WL 2646888, at *1–*3 (D.D.C. Sept. 15, 2025)
13 (describing punitive deportation to prison-like setting in Ghana). This Court should
14 similarly recognize that ICE’s third-country deportation policy is punitive as a matter of
15 policy and therefore violates due process.

16 Furthermore, to the extent Respondents attempt to restrict their discussion of the
17 punitive nature of third-country removal to Mexico, that country is not necessarily the
18 final destination for any removals there as illustrated by Justice Sotomayor’s dissent in
19 *D.V.D.* See *DHS v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J., dissenting).
20 For these reasons, this Court should hold that the third-party removal policy is punitive
21 and in violation of Mr. Pantoja’s due process rights, and should permanently enjoin the
22 removal of Mr. Pantoja to any third country in which he is likely to face imprisonment
23 or harm.

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1 **III. CONCLUSION**

2 This Court should grant the habeas petition on all six grounds.

3 DATED this 22nd day of December 2025.

4 Respectfully submitted,

5 *s/ Jesse Cantor*

6 Assistant Federal Public Defender

7 Attorney for William Pantoja

8 I certify this response complies with the page limits specified in LCR 7(e)(3).
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