

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CARL TODD,

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. CV25-02519-JHC

REPLY TO RETURN

I. INTRODUCTION

Petitioner has met his burden to show that he has been held for far longer than the presumptively reasonable six months, *see* Gov't Return, Dkt. 15 at 6 (stating that Mr. Todd was detained from September 15, 2008, to December 6, 2009, and since August 9, 2025, to the present), and that his removal to a country that will accept him is not reasonably foreseeable. The government admits it gave up on trying to establish his Jamaican citizenship in 2009, Dkt. 15 at 5; Ruby Decl., Dkt. 16 at ¶ 8; Dkt. 17-4, and it has not produced any credible evidence establishing his citizenship, Jamaica's acceptance of him, or proof of travel documents. Although an ICE officer claims to have established his citizenship through his father, Dkt. 16, Mr. Todd has been told his

1 father is from Belize and it is unclear how a United States visa *application* from a
2 citizen of Belize could establish Mr. Todd's citizenship in Jamaica. The declaration
3 does not explain this issue or even state the name of this supposed Jamaican parent.
4 Moreover, the Federal Public Defender's Office contacted the Jamaican consulate after
5 the government's return was filed and was told no travel documents have been issued
6 for Mr. Todd and that he is not recognized as a citizen. *See* Valencia Decl. (Ex. 1). ICE
7 declarations have been deemed not credible by many judges in this district, and this
8 appears to be another example of false or misleading assertions not backed by any
9 concrete evidence. Without proof of Mr. Todd's citizenship or proof that travel
10 documents have been issued, the government cannot meet its burden under *Zadvydas*,
11 and Petitioner must be ordered released on bond.

12 The Court should also enjoin third-country removal without the due process
13 guarantees ordered by many other courts in this district. The fact that ICE disclaims any
14 intent to remove him to a third country is insufficient to obviate Mr. Todd's need for
15 relief on this ground. It is unclear what ICE plans to do with Mr. Todd after Jamaica
16 rejects his entry on a charter flight (assuming any such flight is actually scheduled). The
17 government's stated desire to transfer Mr. Todd in the absence of any proof that his
18 alleged home country will accept him means that third-country removal pursuant to the
19 government's widely publicized policies remains an imminent threat.

20 Finally, the Government's third-country removal program is unconstitutionally
21 punitive and it should be permanently enjoined. *See Baltodano v. Bondi*, No. CV25-
22 1958-RSL, 2025 WL 3484769, at *10 (W.D. Wash. Dec. 4, 2025) ("[T]his Court holds
23 that the Government's practice of third-country removal paired with imprisonment is
24 intended to be punitive and thus violates due process under *Wong Wing v. United*
25 *States*, 163 U.S. 228[,], 236–38 (1896), and *Zadvydas v. Davis*, 533 U.S. [678,] 693–
26 94 (2001).").

1 The Court should grant Petitioner's habeas petition on all three grounds. To the
 2 extent that the motion to prevent transfer is decided before the Court issues an order on
 3 the merits, the Court should order that Petitioner is not transferred from this jurisdiction
 4 while his habeas petition is pending because of the Court's interest in maintaining
 5 jurisdiction over this petition; Petitioner's need to communicate with counsel; and the
 6 risk that transfer will jeopardize Petitioner's health, including diabetes requiring
 7 continual blood-sugar monitoring.

8 **II. THE COURT SHOULD GRANT PETITIONER'S HABEAS PETITION**
 9 **BY ORDERING HIM RELEASED ON BOND.**

10 Respondent's entire argument for why Mr. Todd's removal is reasonably
 11 foreseeable is based on unsubstantiated claims by ICE that directly conflict with
 12 information the Federal Public Defender has obtained from the Jamaican consulate.
 13 Gov't Return, Dkt. 8 at 10; *but see* Valencia Decl., Ex. 1.

14 First, ICE Supervising Detention and Deportation Officer Paul Ruby avers that
 15 ICE gave "documents establishing Petitioner's Jamaican citizenship to the Jamaican
 16 embassy." Ruby Decl., Dkt. 16 at ¶ 17. Mr. Ruby does not provide those documents to
 17 the Court. However, the Federal Public Defender's Office contacted the Jamaican
 18 embassy on January 5, 2026, and was told by a Mr. Simms, assistant to Tanisha Ellison,
 19 Security Attaché, that Jamaica still does not recognize Mr. Todd as a citizen. Valencia
 20 Decl., Ex. 1. It is unclear how this information can be reconciled with Mr. Ruby's
 21 assertion that "the government of Jamaica confirmed that Petitioner would be accepted
 22 into Jamaica since citizenship is established." Ruby Decl., Dkt. 16 at ¶ 17. Perhaps the
 23 most charitable interpretation is that Mr. Ruby meant Jamaica "would" accept Mr. Todd
 24 "[i]f citizenship is established." As of the filing of this reply brief, it has not been.

25 The fact that Mr. Ruby did not provide any documents to the Court is perhaps
 26 telling. Mr. Ruby claims citizenship was established through a visa application by

1 Mr. Todd's father, Dkt. 16 at ¶ 17, but Mr. Todd has been told (by a maternal aunt, now
2 deceased) that his father was from Belize, not Jamaica. Mr. Todd has also been told his
3 father's name is Barry Hussy, but without the document, neither he nor the Court can
4 compare this name with the person who allegedly submitted the visa application.

5 Importantly, Mr. Ruby does *not* claim that travel documents have been issued.
6 The Jamaican embassy states that they have not been. Ex. 1. It is unclear what the point
7 of booking Mr. Todd on a charter flight is if he has no permission to enter or live in
8 Jamaica, but to the extent such a flight would take Mr. Todd somewhere other than
9 Jamaica, such a removal without advance notice of the destination should be enjoined
10 (see Parts III and IV, *infra*).

11 Because there exists no travel document for Mr. Todd, his case is much like
12 those where ICE is merely claiming to be actively pursuing removal without the means
13 to effect it. "Active pursuit of removal" does not make it foreseeable under *Zadvydas*.
14 *See, e.g., Tran v. Noem*, No. 1:25-cv-01523-TLN-CKD, 2025 WL 3268491, at *3 (E.D.
15 Cal. Nov. 24, 2025) (assertion that government was "actively working on obtaining a
16 travel document for Petitioner to Vietnam" was insufficient to show removal was
17 reasonably foreseeable); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL
18 1993735, at *5 (E.D. Cal. July 16, 2025) ("Respondents' intent to complete a travel
19 document request for Petitioner does not make it significantly likely he will be removed
20 in the foreseeable future"); *Hambarsonpour v. Bondi*, No. CV25-1802-RSM, 2025 WL
21 3251155, at *2–*3 (W.D. Wash. Nov. 21, 2025) (holding that a government argument
22 that it was "actively working to effectuate his removal to France" was insufficient to
23 render petitioner's removal reasonably foreseeable in the absence of travel documents).

24 Under *Zadvydas*, the Supreme Court has made clear that the purpose of detention
25 under the statute must be tied to the goal of removing the person from the United States,
26 and if the detention is prolonged beyond the time necessary to complete that goal, the

1 Due Process Clause places further limits on the detention. *Zadvydas*, 533 U.S. at 699.
 2 *Zadvydas* determined that detention becomes “indefinite” when there is “good reason to
 3 believe that there is no significant likelihood of removal in the reasonably foreseeable
 4 future.” *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533
 5 U.S. at 701).

6 Even though the burden has shifted to Respondents to “respond with evidence
 7 sufficient to rebut” Petitioner’s showing that there is no significant likelihood of
 8 removal in the reasonably foreseeable future, *Zadvydas*, 533 U.S. at 701, they offer no
 9 hard evidence in response. The Return provides no evidence that travel documents have
 10 been obtained for Jamaica, and they have not been. Ex. 1. “The fact that Respondents
 11 intend to complete a travel document request for Petitioner does not make it
 12 significantly likely he will be removed in the foreseeable future.” *Hoac v. Becerra*, No.
 13 CV25-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025).

14 Mr. Todd should be released on bond under reasonable conditions of
 15 supervision. *See Kamyab v. Bondi*, No. CV25-389-RSL, 2025 WL 2917522, at *5
 16 (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 orders barring them from being removed to third countries
 22 without additional due process protections, insists that “there is no controversy in this
 23 case” sufficient to invoke federal jurisdiction. Dkt. 15 at 11. But if Mr. Todd is booked
 24 onto a charter flight, there is a high risk it will not land in Jamaica, because Jamaica
 25 denies that he has permission to go there. Ex. 1. Courts in this district have already held
 26 that ICE’s current third-country removal policy “contravenes Ninth Circuit law,”
Baltodano, 2025 WL 3484769, at *6 (quoting *Nguyen v. Scott*, 796 F.Supp.3d 703, 728

1 (W.D. Wash. 2025)), and the government makes no attempt to reconcile the two. There
2 is a grave controversy concerning the process that is required before Mr. Todd can be
3 removed to a country where he may not have status allowing him to work. There exist
4 many documented instances in which the government has failed to adhere to the due-
5 process requirements of Ninth Circuit law. *See, e.g., D.V.D.*, 145 S. Ct. at 2154
6 (Sotomayor, J., dissenting); *see also id.* at 2155–58.

7 Specifically, courts in the Ninth Circuit have held that the ICE policy of shifting
8 the burden to petitioners to move to reopen removal proceedings themselves any time
9 ICE threatens them with removal, is not “giv[ing] sufficient notice of a country of
10 deportation that, given his capacities and circumstances, he would have a reasonable
11 opportunity to raise and pursue his claim for withholding of deportation.” *Aden v.*
12 *Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019) (qtd. in *Nguyen v. Scott*, 796
13 F.Supp.3d at 727). Here, ICE is not even telling Mr. Todd where it might send him if
14 the effort to remove him to Jamaica fails (as the consulate says it will).

15 Following *Aden*, the *Nguyen* and *Baltodano* courts, among others, have held that
16 “[g]iving petitioner an opportunity to file a motion to reopen [his removal proceedings]
17 . . . is not an adequate substitute for the process that is due process in these
18 circumstances.” *Baltodano*, 2025 WL 3484769, at *6 (quoting *Aden*, 409 F. Supp. 3d
19 998 at 1009–11). “Rather, a petitioner must be able to pursue his claim for withholding
20 of deportation in reopened removal proceedings before an immigration judge.” *Id.*; *see*
21 *also Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *11 (E.D.
22 Cal. Sept. 18, 2025); *Abubaka v. Bondi*, No. CV25-1889-RSL, 2025 WL 3204369, at *6
23 (W.D. Wash. Nov. 17, 2025); *A.A.M. v. Tonya Andrews, et al.*, No. 1:25-cv-01514-DC-
24 DMC (HC), 2025 WL 3485219, at *8 (E.D. Cal. Dec. 4, 2025).

25 Because there is a large gap between the process accorded by the July 9 ICE
26 memo and the law, Mr. Todd also has already suffered sufficient injury on this claim

1 for standing purposes. As another court in this circuit described, threatened or
 2 impending actions suffice to establish Article III injury:

3 A party seeking injunctive relief to prevent future injury must “establish
 4 standing by demonstrating that, if unchecked by the litigation, the
 5 defendant’s allegedly wrongful behavior will likely occur or continue, and
 6 that the threatened injury is certainly impending.” *Friends of the Earth,*
 7 *Inc. v. Laidlaw Envt’l Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000)
 8 (citation omitted). It is readily apparent that the threatened injury is
 9 impending. In their Opposition, Respondents affirmatively state that
 10 “[Petitioner] has no connection to the United States and may not stay here
 11 ...” 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.

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

14 **IV. PETITIONER IS ENTITLED TO AN INJUNCTION BARRING**
 15 **DEPORTATION TO A THIRD COUNTRY PURSUANT TO**
 16 **RESPONDENTS’ PUNITIVE POLICY.**

17 Finally, the courts in *Abubaka*, *Nguyen*, *Hambarsonpour*, and *Baltodano* have all
 18 held that the government’s practice of third-country removal is punitive as a matter of
 19 policy and thus violates due process under *Wong Wing v. United States*, 163 U.S. 228,
 20 236–38 (1896), and *Zadvydas*, 533 U.S. at 693–94. *Abubaka*, 2025 WL 3204369, at *8;
 21 *Nguyen*, 796 F.Supp.3d at 739; *Hambarsonpour*, 2025 WL 3251155, at *1, *4–5;
 22 *Baltodano*, 2025 WL 3484769, at *10.

23 These courts have particularly taken note of the descriptions of punitive
 24 treatment that deviate from the government’s promises in individual cases before the
 25 court. *See, e.g., Rivera-Trigueros v. Bondi*, No. 24-3764, 2025 WL 1189561, at *2 (9th
 26 Cir. Apr. 24, 2025) (finding individual had shown that, if detained in El Salvador, he
 would “confront a prison environment in which torture is pervasive” and that “the

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

This Court should grant the habeas petition on the ground that the third-country removal program is punitive insofar as it involves imprisonment for a civil immigration issue. *See Abubaka*, 2025 WL 3204369, at *8.

V. PETITIONER IS 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. 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. *See Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

Another court in this district recently held in the “postremoval” context, “[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

1 receive proper notice and an opportunity to respond before he can be re-detained.”
 2 *Jimenez v. Bondi*, No. C25-2167RSM, 2025 WL 3466925, at *2 (W.D. Wash. Dec. 3,
 3 2025). The court granted the petition and ordered Mr. Jimenez’s immediate release,
 4 barring re-detention “without providing adequate notice of the reasons for his re-
 5 detention and a meaningful opportunity to respond.” *Id.* at *3. The Government does
 6 not address that decision nor the many others coming to the same conclusion. *See, e.g.,*
 7 *P.T. v. Hermosillo*, No. CV25-2249-KKE, 2025 WL 3294988, at *3 (W.D. Wash. Nov.
 8 26, 2025); *Perez v. Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at *5
 9 (M.D. Fla. Dec. 3, 2025); *S-M-J v. Bostock*, No. 6:25-CV-01425-MTK, 2025 WL
 10 3137296, at *5 (D. Or. Nov. 10, 2025).

11 As argued above, the Government has failed to show that Mr. Todd will be
 12 removed to Jamaica in the reasonably foreseeable future. Because Mr. Todd was not
 13 given a hearing on whether removal was reasonably foreseeable before being re-
 14 detained, he must be released and Respondents must be ordered to afford Petitioner the
 15 due process required prior to any re-detention or third-country removal.

16 **VI. PETITIONER’S EMERGENCY MOTION TO PREVENT TRANSFER IS**
 17 **AN ORDINARY REQUEST FOR THE COURT TO MAINTAIN ITS**
 18 **JURISDICTION UPON THE FILING OF A HABEAS PETITION, NOT A**
 19 **REQUEST FOR A TRO OR A PRELIMINARY INJUNCTION; TO THE**
 20 **EXTENT IT IS CHARACTERIZED AS SUCH, IT WILL BE MOOT BY**
 21 **THE TIME THE PETITION IS RIPE.**

22 The government calls the emergency motion preventing transfer a “TRO,” and
 23 then recites the standards for a preliminary injunction, but by the time the emergency
 24 motion is ripe for decision, the petition can be decided on the merits and no temporary
 25 relief is needed.

26 In fact, the emergency motion to prevent transfer asked this Court to adopt a
 standard order in aid of its jurisdiction in habeas cases: that the Court take action to
 prevent the government from depriving it of jurisdiction in a pending case, as other

1 courts in this district have done *sua sponte*. See *Tran v. Bondi, et al.*, No. CV25-1897-
2 JLR-BAT, Dkt. 6 at 3 (W.D. Wash. Oct. 7, 2025).

3 This relief was especially necessary in this case, because it was critically
4 important for the Federal Public Defender's Office to conduct its own investigation and
5 make contact with the consulate before trusting the government to present accurate
6 information. The government's argument on the merits of the motion, Dkt. 15 at 12, is
7 replete with false information. Jamaica *has not* confirmed Petitioner's acceptance into
8 Jamaica, as the government would know if it had bothered to contact the consulate
9 rather than relying on the word of an ICE officer. And Petitioner's citizenship has *not*
10 been confirmed by the government of Jamaica. None of this information is true. The
11 government's entire argument on this motion makes no sense once the facts are known:
12 Mr. Todd will not be successfully removed to Jamaica because it continues to deny that
13 he is a citizen and refuses to issue travel documents, so his removal is not reasonably
14 foreseeable; because it is unclear where else he would be sent, the harm is hard to
15 quantify but very serious; and so on.

16 But the Court need not decide this motion if it decides the petition on the merits
17 first because the entire point, *see* Dkt. 11 at 1–2, was to allow the Court to decide the
18 petition while it had certain jurisdiction (i.e., before Mr. Todd was transferred out of the
19 district or country) and to allow Mr. Todd to conduct a reasonable investigation into the
20 government's hard-to-credit claims. Both goals have been met.

21 **VII. CONCLUSION**

22 This Court should grant the habeas petition on all three grounds.
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1 DATED this 5th day of January 2026.

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3 Respectfully submitted,

4 *s/ Ann K. Wagner*
5 Assistant Federal Public Defender
6 Attorney for Carl Todd

7 I certify this reply contains 3,075 words in compliance with the Local Civil Rules.
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