

THE HONORABLE JOHN H. CHUN
THE HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MUBASHAR HASSAN,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

No. CV25-2559-JHC-MLP

REPLY TO RESPONDENTS'
RETURN MEMORANDUM

I. INTRODUCTION

Petitioner Mubashar Hassan seeks release from his indefinite immigration detention at the Northwest Immigration Processing Center (“NWIPC”) and to prevent his removal to an unknown third country without due process required by law. Dkt. 1. Respondents make no effort to dispute that the “presumptively reasonable” six-month period of detention has expired or that his continued detention is unlawful under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Respondents likewise make no claim in their Return Memorandum that Mr. Hassan’s removal to a third country is reasonably foreseeable.

Respondents’ primary contention—that the class litigation in *Dep’t of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025), and the Supreme Court’s stay of a class-wide preliminary injunction in that case, prevents this Court from providing an order barring Mr. Hassan’s removal to a third country without due process—is

unpersuasive.¹ Respondents argue that Mr. Hassan is bound as a member of the class of individuals governed by the *D.V.D.* nationwide preliminary injunction. Dkt. 10 at 9.

In part because the Supreme Court stayed the nationwide preliminary injunction with no discussion of the merits, this same argument was rejected by another court in this district in granting a TRO. *Nguyen v. Scott*, 796 F.3d 703, 732-35 (W.D. Wash. Aug. 21, 2025). It was also rejected in *Abubaka v. Bondi, et al.*, No. CV25-01889-RSL, 2025 WL 3204369, at *2-3 (W.D. Wash. Nov. 17, 2025). Recently, following the reasoning in *Nguyen*, the court granted a TRO prohibiting the government from removing a petitioner to a third country without notice and a meaningful opportunity to respond, contrary to the same arguments presented here. *See Baltodano v. Bondi, et al.*, No. CV25-1958-RSL, 2025 WL 2987766, at *20–21 (W.D. Wash. Oct. 23, 2025) (citing *Nguyen* and finding “petitioner is likely to succeed on merits of his claim that he is entitled to ‘legally required multistep procedures set out in 8 U.S.C. § 1231(b) and required due process’ before ICE can remove him to a third country”).

II. ARGUMENT

A. Mr. Hassan’s continued detention is unlawful under *Zadvydas*.

The Respondents do not dispute that Mr. Hassan has met his burden to show a good reason to believe that “there is no significant likelihood of removal in the reasonably foreseeable future.” *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1077 (9th

¹ The district court in *D.V.D.* granted a preliminary injunction that established procedures DHS and ICE were required to follow before removing a noncitizen to a third country, including written notice and an opportunity to raise a fear-based claim for protection under the Convention Against Torture treaty before removal. *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 25, 2025), *reconsideration denied sub nom.* No. CV25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26, 2025). On June 23, 2025, the United States Supreme Court stayed the district court’s preliminary injunction pending appeal in the First Circuit, with no member of the majority offering analysis. *Dep’t of Homeland Sec. v. D.V.D.*, -- U.S. ___, 145 S. Ct. 2153 (2025).

1 Cir. 2006); *see also Zadvydas*, 553 U.S. at 701 (After the presumptively reasonable
2 period of detention of six months, “once the alien provides good reason to believe that
3 there is no significant likelihood of removal in the reasonably foreseeable future, the
4 Government must respond with evidence sufficient to rebut that showing.”).
5 Mr. Hassan’s final removal order was issued on May 22, 2025, now more than seven
6 months ago. Dkt. 11 at ¶ 9.

7 The burden thus shifts to the government to “respond with evidence sufficient to
8 rebut that showing.” *Zadvydas*, 553 U.S. at 70. Respondents provide no evidence that
9 removal is likely in the reasonably foreseeable future.

10 Officer Andron offers only that Mr. Hassan has declined to select a country for
11 third country removal. Dkt. 11 at ¶ 11. Officer Andron does not even suggest that ICE
12 is attempting to remove Mr. Hassan to any third country, does not offer whether any
13 country has indicated a willingness to receive Mr. Hassan, and does not even offer the
14 typical hopeful, yet unsupported, belief that removal is likely at any time in the
15 foreseeable future. *Id.*

16 **B. Due Process precludes Mr. Hassan’s removal to a third country**
17 **without adequate notice and an opportunity to be heard.**

18 Respondents argue that this Court may not issue the relief sought by Mr. Hassan
19 on his due process claim because he is a member of the plaintiff class bound by the
20 Supreme Court’s stay in *D.V.D. v. Dep’t of Homeland Sec.*, *supra*. Dkt. 11 at 9–11.
21 This argument similarly has been rejected by the court in *Baltodano v. Bondi, et al.*, No.
22 CV25-1958-RSL, 2025 WL 2987766, at *2 (W.D. Wash. Oct. 23, 2025).

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*, 796 F. Supp. 3d 703, 731
26 (W.D. Wash. 2025) (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. 25-1788-TDC, 2025 WL 2841886 (D. Maryland 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/8NTN-TQ5D>] (“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. Hassan because he is one of many people who has no right to relief, but rather forbidding *mass* relief because Mr. Hassan and others should have proceeded individually in cases just like this one. *See Nguyen*, 796 F. Supp. 3d 703, 732 (W.D. Wash. 2025). *See also Sagastizado v. Noem*, No. CV25-00104, -- 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 Finally, as to the substantive question, the *Nguyen* court made clear that ICE’s
 4 current policy “contravenes Ninth Circuit law,” rendering it “impossible to comply both
 5 with Ninth Circuit precedent and the policy.” 796 F. Supp. 3d at 728.² The court
 6 explained that under Ninth Circuit precedent, “[f]ailing to notify individuals who are
 7 subject to deportation that they have the right to apply . . . for withholding of
 8 deportation to the country to which they will be deported violates both INS regulations
 9 and the constitutional right to due process.” *Id.* at 727 (citing to *Andriasian v. I.N.S.*,
 10 180 F.3d 1033, 1041 (9th Cir. 1999) (in turn citing *Kossov v. I.N.S.*, 132 F.3d 405, 408
 11 (7th Cir. 1998))). Applying this binding precedent, the court concluded that “Petitioner
 12 is likely to succeed on his claim that removal to a third country under ICE’s current
 13 policy, without meaningful notice and reopening of his removal proceedings for a
 14 hearing, would violate due process.” *Nguyen*, 796 F. Supp. 3d 703, 728–29. And in
 15 *Baltodano*, the court, citing to the reasoning in *Nguyen*, concluded that “petitioner is
 16 likely to succeed on the merits of his claim that he is entitled to ‘legally required
 17 multistep procedures set out in 8 U.S.C. § 1231(b) and required by due process’ before
 18 ICE can remove him to a third country.” 2025 WL 2987766, at *3.

19 **C. Mr. Hassan has demonstrated the Respondents’ third-country**
 20 **removal policy is punitive and unconstitutional.**

21 Respondents argue that the only evidence of the punitive third-country-removal
 22 practice is his say so. Dkt. 10 at 15. This assertion ignores the evidence. In Panama,
 23 immigrants are forced to choose between repatriation to their country of origin or
 24 detention under conditions that has “sparked backlash from human rights

25 ² Although the government does not set forth the policy, this Court discussed ICE’s
 26 current policy allowing the removal of aliens to third countries “without the need for
 further procedures” under certain conditions in *Baltodano*, 2025 WL 2987766, at *2.

organizations.” Castano, Danielle, *The U.S. ’s Illegal Migrant Deportations to Panama*, Human rights Research Center (June 5, 2025), available at <https://www.humanrightsresearch.org/post/the-u-s-s-illegal-migrant-deportations-to-panama>. According to multiple human rights organizations, migrants expelled to Costa Rica face conditions that constitute human rights violations. *Costa Rica: New report exposes human rights violations against migrants expelled from the U.S. and warns: “This cannot happen again.”*, Centro Por La Justicia y El Derecho International, (May 22, 2025), available at <https://cejil.org/en/press-releases/costa-rica-new-report-exposes-human-rights-violations-against-migrants-expelled-from-the-u-s-and-warns-this-cannot-happen-again/>

Courts in this district have found that Respondents’ practice and policy of third-country removal are both intended to be punitive and are in fact punitive, thus violating due process. *See Abubaka v. Bondi, et al.*, No. CV25-01889-RSL, 2025 WL 3204369, at *7-8 (W.D. Wash. Nov. 17, 2025); *Nguyen*, 796 F.3d at 732-35. In these cases, the district court ordered Respondents not to remove the petitioner to any third country where he is likely to face imprisonment upon arrival. *Id.* This Court should do the same.

III. CONCLUSION

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

1 DATED this 5th day of January 2027.

2 Respectfully submitted,

3 *s/ Corey Endo*
4 First Assistant Defender
5 Attorney for Mubashar Hassan
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