

THE HONORABLE KYMBERLY K. EVANSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PHUONG DONG NGUYEN,

Petitioner,

v.

PAMELA BONDI, et al.,

Respondents.

No. CV26-917-KKE

**REPLY TO FEDERAL
RESPONDENTS' RETURN
MEMORANDUM**

I. INTRODUCTION

Petitioner Phuong Dong Nguyen is a citizen of Vietnam. He has no criminal history in Vietnam or the United States. He fled Vietnam to escape political persecution and entered the United States without being admitted or paroled in January 2025. Dkt. 8, ¶ 4. He was arrested and processed for expedited removal two weeks after his entry on January 16, 2025. *Id.*, ¶ 5. ICE thereafter transported him to the Northwest ICE Processing Center on February 11, 2025, where he has been held since.

The government agrees that on August 6, 2025, an immigration judge ordered Mr. Nguyen removed to Vietnam while simultaneously granting his request for withholding of removal to Vietnam after finding he established credible fear of political persecution under INA § 241(b)(3). Dkt. 7 at 4. Because both parties waived appeal, the removal order became final on that date. *Id.* The government does not dispute that Mr. Nguyen has been detained in ICE detention for over a year since his arrest and that almost eight months have passed since his removal order became administratively final.

1 Because the government acknowledges it “does not have [a] travel document to execute
2 his removal at this time,” dkt. 7 at 2, nor any concrete plans to remove Mr. Nguyen in
3 the reasonably foreseeable future, his continued detention violates *Zadvydas v. Davis*,
4 533 U.S. 678 (2001). This Court should order his immediate release on reasonable
5 conditions of supervision.

6 Further, the Court should enjoin third-country removal without due process
7 guarantees ordered by many other courts in this district. Additionally, the government’s
8 third-country removal program is unconstitutionally punitive, and removal to a country
9 where imprisonment or harm is likely should be permanently enjoined. Finally, this
10 Court should prohibit Mr. Nguyen’s re-detention absent notice, an opportunity to be
11 heard, and findings that the regulatory standards for re-detention have been met.

12 Petitioner Nguyen’s habeas petition should be granted in full.

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

15 Detention of noncitizens following a final order of removal is governed by the
16 INA. The Supreme Court in *Zadvydas* made clear that the purpose of detention under
17 the INA must be tied to the goal of removing the person from the United States, and
18 “once removal is no longer reasonably foreseeable, continued detention is no longer
19 authorized by statute.” 533 U.S. at 699. The government acknowledges that the
20 presumptively reasonable period following a removal order is six months. Dkt. 7 at 2.

21 The government does not dispute that an immigration court granted Mr. Nguyen
22 withholding of removal to Vietnam and that no third country has agreed to accept him.
23 Having been detained for almost eight months since his final removal order became
24 administratively final (and 13 months since his arrest), Mr. Nguyen has met his initial
25 burden to show that there is no significant likelihood of removal in the reasonably
26 foreseeable future.

1 The burden then shifts to the government to justify continued detention by
2 showing that removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. Here, the
3 government fails to make that showing. It concedes that “ICE does not have [a] travel
4 document to execute [Mr. Nguyen’s] removal at this time.” Dkt. 7 at 2. By its own
5 account, the government has made little effort to identify a third country for removal.
6 Deportation Officer Yralees Melendez represents only that ICE has served Mr. Nguyen
7 with a notice of intent to remove him to Uganda. Notwithstanding that Mr. Nguyen has
8 never been to Uganda and has no connections to the country, the government provides
9 no evidence that a request was ever made and, if so, whether the Ugandan authorities
10 have responded. Officer Melendez also states that ICE “*intends* to investigate” removal
11 to Japan or Australia because ERO “has reason to believe that Petitioner has a sister in
12 Japan and an uncle in Australia.” Dkt. 8, ¶ 10 (emphasis added). But a mere intent to
13 pursue a third-country removal does not make it foreseeable under *Zadvydas*. *See, e.g.,*
14 *Nguyen v. Field Office Director*, No. C26-394, 2026 WL 538487, at *3 (W.D. Wash.
15 Feb. 26, 2026) (finding petitioner satisfied his burden of demonstrating that removal
16 was not reasonably foreseeable because he had been in detention for seven months, had
17 been granted withholding of removal prohibiting removal to his home country, and
18 there had been no indication from third-country consulates they would accept
19 petitioner); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *5
20 (E.D. Cal. July 16, 2025) (“Respondents’ intent to complete a travel document request
21 for Petitioner does not make it significantly likely he will be removed in the foreseeable
22 future.”).

23 Under these circumstances, Mr. Nguyen’s continued detention is unlawful, and
24 he should be released on bond to his family in the United States under reasonable
25 conditions of supervision. *See Kamyab v. Bondi*, CV25-389-RSL, 2025 WL 2917522,
26 at *5 (W.D. Wash. Oct. 14, 2025) (citing 8 U.S.C. §§ 241.4(j), 241.5, 241.13(h)).

III. PETITIONER IS ENTITLED TO AN INJUNCTION BARRING REMOVAL TO A THIRD COUNTRY WITHOUT NOTICE AND A MEANINGFUL OPPORTUNITY TO BE HEARD.

Without acknowledging that courts in this district, including this Court, have issued orders barring detainees from being removed to third countries without additional due process protections, the government asserts that Mr. Nguyen is not entitled to an order enjoining the government from removing him to a third country without notice and a meaningful opportunity to be heard in reopened removal proceedings because he is “already protected under existing law and Petitioner’s request is speculative without any substantiated claim that he has been denied due process.”¹ Dkt. 7 at 9.

Multiple courts in this district have held that ICE’s current third-country removal policy is unconstitutional and “contravenes Ninth Circuit law.” *See Baltodano v. Bondi*, No. C25-1958RSL, 2025 WL 3484769, at *6 (W.D. Wash. Oct. 23, 2025) (quoting *Nguyen v. Scott*, 796 F.Supp.3d 703, 728 (W.D. Wash. Aug. 21, 2025)); *Arenado-Borges v. Bondi*, No. 2:25-cv-02193-JNW, 2025 WL 3687518, at (W.D. Wash. Dec. 19, 2025) (“Simply allowing the petitioner to move to reopen their immigration

¹ The government posits that under 8 U.S.C. § 1252(g), to the “extent Petitioner seeks an order restricting the Government’s execution of the removal order or dictating the manner in which it may occur, this Court lack jurisdiction to grant such relief.” Dkt. 7 at 8. But the jurisdiction-stripping provision of 8 U.S.C. § 1252(g) prohibits habeas courts from “hear[ing] any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” It does not forbid the imposition of constitutional due process requirements that do not fall under these narrowly construed categories. *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025) (“[W]e have been clear that § 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders”). Section 1252(g) also does not bar due process claims. *Id.* (citing *Walters v. Reno*, 145 F.3d 1032, 1052–53 (9th Cir. 1998)) (finding that the petitioners’ objective was not to review the merits of their proceeding, but rather “to enforce their constitutional rights to due process in the context of those proceedings”).

1 proceedings is not enough to satisfy Due Process—the Government must actually
2 reopen proceedings so that the petitioner has a fair and adequate opportunity to be
3 heard.”).

4 And because Mr. Nguyen cannot be removed to Vietnam, removal to a third
5 country is not speculative. In *Chen, supra*, this Court granted Petitioner the exact same
6 requested relief, issuing an order enjoining the government from removing her to a third
7 country without notice and a meaningful opportunity to be heard in reopened removal
8 proceedings. This Court explained that “[w]here the Government cannot remove a
9 noncitizen to the country specified in their removal order, it may attempt to remove that
10 person to a third country, but in doing so, it must comply with the INA, 8 U.S.C.
11 § 1231(b), and the Due Process Clause.” 2026 WL 914807, at *5 (citing to *Aden v.*
12 *Nielsen*, 409 F.Supp.3d 998, 1019 (W.D. Wash. 2019), and *Kumar v. Wamsley*,
13 No. C25-2055-KKE, 2025 WL 3204724, at *2 (W.D. Wash. Nov. 17, 2025)). The
14 Court should provide the same relief here.

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

18 In addition to an order that the government not remove or seek to remove him to
19 a third country without notice and meaningful opportunity to respond in reopened
20 removal proceedings, dkt. 1 at 25, ¶ (f), Petitioner also seeks an order that the
21 government “not remove Petitioner to any third country where he is likely to face
22 imprisonment or other punishment upon arrival[.]” Dkt. 1 at 25, ¶ (g). The government
23 argues such relief is not warranted because “the governing statutory and regulatory
24 framework provides a specific process for addressing such concerns.” Dkt. 7 at 9.

25 This same argument has also been rejected by multiple courts. *See, e.g.,*
26 *Baltodano*, 2025 WL 3484769, at *10 (“[The] Court holds that the government’s
practice of third-country removal paired with imprisonment is intended to be punitive

1 and thus violates due process under *Wong Wing*” and therefore orders “respondents not
2 to remove petitioner to any third country where he is likely to face imprisonment or
3 harm.”); *Abubaka*, 2025 WL 3204369, at *8 (ordering that the government not remove
4 petitioner to any third country where he is likely to face imprisonment upon arrival). In
5 *Chen v. Blanche, et al.*, No. C26-832-KKE, 2026 WL 914807 (W.D. Wash. Apr. 3,
6 2026), this Court noted that the government “does not address this growing body of
7 legal authority nor does it dispute the underlying factual allegations supporting it.” *Id.*
8 at *6. This Court nonetheless denied “Petitioner’s request for a broad permanent
9 injunction against *any* third-country removal” since the Court’s order already “requires
10 the government to provide Petitioner with due process in effectuating any future third-
11 country removal.” *Id.* (emphasis added).

12 But Mr. Nguyen’s second request for relief related to his potential removal to a
13 third country does not seek a “broad permanent injunction against *any* third-country
14 removal.” *Id.* Rather, he seeks a narrower order enjoining the government from
15 removing him to a third country “where he is likely to face imprisonment or other
16 punishment upon arrival[.]” Dkt. 1 at 25, ¶ (g). The government does not deny the
17 allegations made in Mr. Nguyen’s petition that it “has arranged for third countries to
18 receive deportees and imprison them on arrival, possibly indefinitely, and often in
19 abhorrent conditions.” Dkt. 1 at 23. Further, “courts in this district and across the
20 country have recognized that Petitioner is correct: the government is intentionally
21 removing individuals to countries where they will be imprisoned.” *Hieu Tri Nguyen v.*
22 *Bondi*, No. 2:25-cv-02024-TL, 2025 WL 3534168, at *9 (W.D. Wash. Dec. 10, 2025)
23 (citing *Nguyen v. Scott*, 796 F.Supp.3d 734 (collecting cases)).

24 Mr. Nguyen’s claim does not seek an order enjoining the government from
25 removing him to *any* third country. Rather, his claim focuses on the punitive payment-
26 and-imprisonment scheme the government has been pursuing for individuals in his

1 position. Petitioner thus asks that the Court order that he not be removed to a third
2 country where he is likely to face imprisonment or harm—not impose a categorical bar
3 on all third-country removals. *See Nguyen*, 796 F.Supp.3d at 739 (granting preliminary
4 injunction against “removing Petitioner to any country where he is likely to face
5 imprisonment upon arrival”).

6 **V. PETITIONER IS ENTITLED TO DUE PROCESS BEFORE ANY**
7 **FUTURE RE-DETENTION.**

8 The government asserts that Mr. Nguyen’s claim that he is entitled to due
9 process before any future re-detention “fails because the record contains no evidence
10 that he was ever released from custody.” Dkt. 7 at 5–6. But this Court recently ordered,
11 in a similar case where the Petitioner had been arrested soon after entering the U.S.
12 without inspection, that “if Petitioner is re-detained [in the future] after she is released
13 consistent with this order, the Government must provide notice and an opportunity to
14 respond that comports with 8 C.F.R. § 241.13(i).” *Chen*, 2026 WL 914807, at *4
15 (rejecting government’s argument that although 8 C.F.R. § 241.13(i) governs any future
16 revocation of Petitioner’s release, that Court “should not prescribe any additional
17 procedures at this time, when Petitioner’s future release has not yet been revoked.”).

18 Other judges in this district have granted similar injunctive relief even where the
19 person was not previously re-detained. *See, e.g., Chicas v. Bondi, et al.*, No. CV26-451-
20 RSM, 2026 WL 775635, at *4 (W.D. Wash. Mar. 19, 2026); *see also Kumas v. Bondi*,
21 No. CV26-00721-RAJ, 2026 WL 847846, at *2 (W.D. Wash. Mar. 26, 2026) (“The
22 Court finds that imposing conditions on any future re-detention of Mr. Kumas is
23 necessary to fully effectuate the intent of this order.”); *Updety v. Bondi*, No. CV25-
24 2443-JNW, 2026 WL 194227, at *4 (W.D. Wash. Jan. 26, 2026) (“Without any re-
25 detention standard, the Government could theoretically re-detain [petitioner]
26

1 immediately after release, which would render the Court's order meaningless."). The
 2 government addresses none of these cases.

3 **VI. HABEAS IS A FLEXIBLE REMEDY, AND THE RELIEF REQUESTED**
 4 **IS GROUNDED IN LAW.**

5 Finally, the government asserts, with little citation to supporting authority, that
 6 "Subsections (d)-(g) in Petitioner's Prayer for Relief exceed the narrow scope of habeas
 7 review." Dkt. 7 at 7. The government ignores the principle that "Federal courts can
 8 resolve habeas matters 'as law and justice require.'" *Yousufi v. Hermosillo*, No. 2:25-
 9 cv-2098, 2026 WL 482416, at *1 (W.D. Wash. Feb. 20, 2026) (citing 28 U.S.C.
 10 § 2243). District courts also "enjoy broad discretion in fashioning remedies for habeas
 11 relief." *Id.* (cleaned up). The Supreme Court has made clear that the habeas statute is
 12 aimed at providing petitioners with "a swift, flexible, and summary determination of his
 13 claim." *Pretser v. Rodriguez*, 411 U.S. 475, 495 (1973). The relief requested by
 14 Petitioner is grounded in law and within the Court's equitable powers to grant.

15 **A. "Clear and convincing" is the appropriate standard for a detention**
 16 **hearing in the Ninth Circuit.**

17 The government also takes issue with Petitioner's request that this Court order
 18 that the government may not re-detain Petitioner without a hearing "at which the
 19 government bears the burden of establishing flight risk or danger to the community by
 20 clear and convincing evidence[.]" Dkt. 7 at 7. Multiple courts have rejected the
 21 government's position that it does not bear the burden to justify such detention by clear
 22 and convincing evidence. Rather, at a civil detention hearing, the government must
 23 prove by clear and convincing evidence that the detainee is a risk of flight. *Petrov v.*
 24 *Hermosillo*, No. CV25-2647-KKE, 2026 WL 98761, at *4 (W.D. Wash. Jan. 14, 2026)
 25 (citing *Doe v. Becerra*, 787 F.Supp.3d 1083, 1089 (E.D. Cal. 2025)); *see also*
 26 *Toktosunov v. Wamsley*, No. CV25-1724-TL, 2025 WL 3492858, at *6 (W.D. Wash.

1 Dec. 5, 2025) (citing *Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011), *abrogated*
 2 *on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018)).

3 The government further asserts that, if a remedy is granted, it should be a
 4 hearing with the burden on the petitioner not the government. Dkt. 7 at 7. In support, it
 5 cites to *Demore v. Kim*, 538 U.S. 510, 522, 532 (2003), without elaborating how those
 6 portions of *Demore* support its position. And, in fact, it does not. Nor does *Zadvydas*,
 7 where release decisions do not concern risk, and where the burden eventually shifts to
 8 the government. The government's reliance on *Rodriguez v. Garland*, 53 F.4th 1189,
 9 1211 (9th Cir. 2022), is likewise misplaced. In that case, "the Ninth Circuit declined to
 10 extend the procedural requirements [that the government bear the burden of proof at
 11 any ordered bond hearing by clear and convincing evidence] to individuals detained
 12 under § 1226(a) seeking a second bond hearing, a distinct detention statute not at issue
 13 [in § 1226(c) detentions], finding 'existing agency procedures' provided them sufficient
 14 protection." *Odumara v. Bostock*, No. 2:24-cv-01412-MJP-TLF, 2025 WL 1490395,
 15 at *10 (W.D. Wash. Mar. 27, 2025) (quoting *Rodriguez Diaz*, 53 F.4th 1189).

16 **B. Requiring a travel document in hand is a necessary remedial remedy.**

17 The request that ICE obtain a travel document in hand before re-detention is a
 18 remedial measure, necessitated by ICE's clear pattern of detaining individuals such as
 19 Mr. Nguyen, who have orders prohibiting removal to their home countries, without any
 20 prospect of sending them to a third country they have no connection to. The equitable
 21 power to order such remedial measures flows from the habeas statute's authorization
 22 that courts "dispose of the matter as law and justice require." 28 U.S.C. § 2243; *Hilton*
 23 *v. Braunskill*, 481 U.S. 770, 775 (1987). Federal courts thus have broad authority, in the
 24 context of the unique facts and circumstances of each case, to fashion a remedy tailored
 25 to the injury suffered from the constitutional violation. *See Braunskill*, 481 U.S. at 775.

1 **VII. CONCLUSION**

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

3 DATED this 7th day of April 2026.

4 Respectfully submitted,

5 *s/ Vicki W.W. Lai*

6 Assistant Federal Public Defender

7 Attorney for Phuong Dong Nguyen