

David Szeles, SBN 279244
Global Law Group San Diego, P.C.
1455 Frazee Road, Suite 500
San Diego, CA 92108
Telephone: (858) 833-2020
Facsimile: (619) 839-3152

Attorney for Petitioner Zareth RUEDA PENA

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RUEDA PENA, Zareth

CASE NO.: 3:26-CV-02804-JES-DDL

Petitioner-Plaintiff,

TRAVERSE

vs.

**CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and MARKWAYNE MULLIN,
Secretary, U.S.
Department of Homeland Security,**

Respondents-Defendants.

1 **ARGUMENT**

2
3 **A. The Government's Return fails to refute the deliberate delays of Respondents**
4 **and of the Immigration Judge which have contributed to the unlawful prolonged**
5 **detention of Petitioner.**

- 6 1. The government's "background" information conveniently leaves out any
7 mention of the late filed motion to pretermitt, or any other delays caused by
8 DHS counsel or the immigration judge.
- 9 2. The government does not refute that Petitioner was detained for 50 days past
10 her merits date due to delays not attributed to petitioner, as claimed in the Writ.
11 Nor do they provide any reasoning as to why these days should not be counted
12 or considered in this courts determination if her detention has been
13 unreasonably prolonged.
- 14 3. This writ is not premature when taken into account the lengthy delays
15 attributed to DHS counsel and the Immigration Judge Robinson, which caused
16 petitioner to continue to be detained.

17
18 **B. The government's argument that Petitioner is akin to *Pelich* fails entirely as**
19 **none of the facts in *Pelich* equate to Ms. Rueda Pena's actions.**

- 20
21 4. The government fails when it compares Petitioner to *Pelich*. The Government
22 Return' quotes the case stating, "that when an alien refuses to cooperate fully
23 and honestly with officials to secure travel documents from a foreign
24 government, the alien cannot meet his or her burden to show there is no
25 significant likelihood of removal in the reasonably foreseeable future." See
26 Return page 5-7.
- 27 5. The Government attempts to paint Petitioner as a "non-cooperative Detainee"
28 by comparing her to *Pelich*, and quoting caselaw that only defines a "non-

1 cooperative detainee” as one who refuses to secure travel documents. Under
2 *Pelich*, he “steadfastly refused to fill out a Polish passport application... which
3 directly impedes Poland’s ability to determine whether Pelich qualifies for
4 Polish travel documents... Pelich has provided the INS with conflicting
5 information regarding his name, his parents’ names, his parents’ birthplaces
6 and residences, his birthplace and his nationality. Id.

7 6. The government however makes no argument that Ms. Rueda Pena has refused
8 to secure travel documents. The government does not even directly allege that
9 petitioner has refused to get a passport or cooperate with any Colombian or
10 other foreign embassy/consular authority to secure appropriate travel
11 documents.

12 7. The government makes no argument that Ms. Rueda Pena provided conflicting
13 information regarding her name, her parent’s names, her parent’s birth places
14 and residences, her birthplace and her nationality, as did *Pelich*. In fact, Ms.
15 Rueda Pena freely and voluntarily provided all such information in her I-589
16 application. Her mother even provided a witness letter.

17 8. The government return also provides no information, evidence, or testimony
18 from the DO David Townsend that Petitioner refused to secure travel
19 documents.

20 9. On the contrary, the Government’s Return, Exhibit 4, paragraph 16 provides
21 information that she was on a manifesto for ICE Operations Charter Jet to
22 Ghana. DHS had transferred her to Louisiana for the flight. Petitioner
23 therefore had sufficient travel documents to be sent to another state and to be
24 on a manifesto en route to Ghana.

25 10. The government’s argument that petitioner is akin to *Pelich* therefore fails
26 entirely as none of the facts in *Pelich* equate to Ms. Rueda Pena’s actions. She
27 therefore must not be classified as a “non-cooperative detainee.”
28

C. Government's return is lacking documentation to back their claims of notice.

11. In the Government's return, Exhibit 4, Declaration of David Townsend, paragraph 21, Respondents confirm that it is in fact DHS policy and procedure to provide written notice to petitioners who are manifested for removal to a third country. "Once Petitioner is manifested for a removal mission to a third country, she will be provided with written notice of the proposed country for removal consistent with DHS policies and procedures concerning third country removals."

12. The Government Return's Exhibit 4, Declaration of David Townsend, the DO states in paragraphs 1-2 that 1. "[he] has access to the files and records of DHS", and 2. "[He] ha[s] reviewed official files and records maintained by DHS relating to Petitioner Zereth Rueda Pena."

13. Notwithstanding his access to the files, and notwithstanding the aforementioned policy and procedure of DHS to provide written notice, DO Townsend and Respondents have failed to produce any physical proof of these alleged *written* notices provided to Petitioner.

14. It would seem that Respondents have therefore violated their own policy and procedure by not providing written notice to petitioner of her potential third country removals.

15. There are several questions that remain unanswered with the Government's return regarding the alleged notice provided.

16. Are there any actual notices? Are the notices not in the files? Did the DO Townsend not see the notices and therefore couldn't provide copies? Did he really review the entire file then? If the notices do exist and were for some valid reason not provided to the court, were the alleged notices in Petitioner's native language or in English? If they were in English, was it orally read to her in her native language, as is required? Was there an interpreter signature? Are the alleged notices authenticated? What are the dates of the alleged notices?

1 Who signed the alleged notices? Did petitioner sign the notices? Were they a
2 “meaningful notice” as described by caselaw? How much time was afforded
3 petitioner between alleged service of the notice and boarding onto a plane or
4 being named on a manifesto for travel?

5 17. Why has the government not provided the court with an authenticated, true and
6 correct copy of the alleged Notice provided to petitioner of her third country
7 removal to Congo?

8 18. Why has that government not provided the court with an authenticated, true
9 and correct copy of the alleged Notice provided to petitioner of her third
10 country removal to Ghana?

11 19. Why has that government not provided the court with an authenticated, true
12 and correct copy of the alleged Notice provided to petitioner of her third
13 country removal to Mexico?

14 20. Page 8 of the Return, Respondents state “Any suggestion by Petitioner that
15 once a third country is identified, ICE will immediately deport him there
16 without being given adequate time to investigate whether he could be
17 persecuted in that country is not supported by the evidence.” I would ask that
18 the court order Respondents to provide said “evidence” aside from a simple
19 declaration of a DO Townsend.

20 21. Page 9 of the Return, Respondents state, “This is also supported by the fact that
21 ICE provided Petitioner with notice prior to her removal to Mexico and Congo
22 which allowed her to refuse her removal.” The absence of the word “written”
23 before notice begs the question what kind of adequate notice was given. Why
24 not describe the alleged notice as a *written* notice? Later, Respondent *does* use
25 the word “written” in their claim that *in the future*, they will provide petitioner
26 with written notice “ICE attests, however, that once a third country is
27 identified, it will again provide Petitioner with *written notice* of third country
28 removal consistent with DHS policy and procedures. Townsend Decl. at ¶ 21.

1 22. Furthermore, DO Townsend in his declaration in paragraphs 13-16 when he
2 discusses removal efforts, he does not even argue or allege that they provided
3 notice to Petitioner, in writing or otherwise, of their attempts to remove her to
4 Mexico and Ghana as the Return itself claims. The only evidence Respondents
5 have provided as to removal efforts is the DO Declaration, yet he does not
6 mention notice to Mexico or Ghana.

7 23. In Paragraph 13 of DO Townsends declaration, there is no discussion,
8 statement or claim, of notice given to petitioner about her removal to Mexico.
9 Why not include that in the declaration unless there was in fact no notice given.

10 24. In Paragraph 14 of DO Townsends declaration, he claims notification was
11 served on Petitioner as to removal to Congo: "On March 26, 2026, Petitioner
12 was served with a third country removal notification. That notification
13 proposed the Democratic Republic of the Congo (DRC) as a third country for
14 removal." When he discusses the removal efforts and notice, why claim notice
15 to Congo in one paragraph but leave out any claim of notice to Mexico. Also,
16 why not use the word "written" notice?

17 25. In Paragraph 16 of DO Townsends declaration, he claims "On April 7, 2026,
18 ERO tentatively scheduled Petitioner for a third country removal mission to
19 Ghana via an ICE Air Operations charter jet that was scheduled to depart the
20 United States on April 15, 2026. ERO removed Petitioner from the manifest for
21 the Ghana mission after it concluded that her removal order could not be
22 executed while DHS's interlocutory appeal was pending.

23 26. Nowhere in paragraph 16 or the entire declaration, does DO Townsend discuss,
24 state or claim that they provided notice to petitioner of her imminent removal
25 to Ghana.

26 27. Furthermore, undersigned counsel respectfully questions the veracity of the
27 facts here. When petitioner called our office on April 15, 2026, she was frantic
28 telling us she was getting on a plane to Congo with other Colombians. She was

1 very emphatic she was being sent to Congo on April 15, 2026. There was no
2 mention of Ghana, as DO Townsend has described. See Exhibit A- emails with
3 OPLA counsel.

4 28. When undersigned counsel was told of the phone call, he immediately emailed
5 the OPLA duty attorney and specifically Attorney Patricia Paredes, asking why
6 petitioner was being sent to Congo when an automatic stay was in place. In
7 DHS response they in no point clarified that she was being sent to Ghana and
8 NOT being sent to Congo, as DO Townsend described. These facts need
9 verification and/or an evidentiary hearing.

10 29. When Petitioner called our office worrying about being sent to Congo on April
11 15, 2026, either she was mistaken and that goes toward the question if
12 sufficient and adequate notice in her native language was provided, or DO
13 Townsend is mistaken in his declaration, which begs the question how reliable
14 his declaration is, especially when it is the ONLY evidence Respondent's have
15 provided as to their removal efforts.

16
17 **D. The Government wrongly places blame on Petitioner for their failed attempts**
18 **to remove her, when in fact any such removal prior to April 24, 2026 would have**
19 **been entirely against the law due to DHS's appeal and automatic stay of**
20 **removal.**

21 30. In the Government Return, Respondents state and claim "ICE ERO has worked
22 expeditiously to effectuate her resettlement in a third country to include their
23 efforts to remove Petitioner to Mexico, Congo and Ghana. These efforts would
24 have been successful, but for the Petitioners refusal to cooperate with his
25 removal to Mexico or Congo." See Return page 8, line 2-3. Here the
26 government is placing blame on petitioner, stating their removal of petitioner
27 would have been successful but for the petitioner's refusal. The government is
28

1 therefore stating that, but for the petitioner, the government would have been
2 successful in violating the law.

3 31.DHS filed an interlocutory appeal, which caused an automatic stay of removal,
4 on December 12, 2025. By law, DHS therefore could NOT remove petitioner,
5 no matter what they claim she said or did, as long as that appeal and stay were
6 still at the BIA. DHS did not withdraw their appeal until April 16, 2026 and the
7 BIA did not make their final order until April 24, 2026.

8 32.All of DHS' alleged attempts to remove Petitioner before April 24, 2026, were
9 therefore contrary to law. According to DO Townsend, they therefore made
10 three unlawful attempts to remove her. As he states in Exhibit 4, paragraph 19,
11 "Prior to the dismissal of its appeal on April 24, 2026, DHS was unable to
12 lawfully effectuate Petitioner's removal order."

13 33.**How can this court trust that DHS is acting lawfully when its Return**
14 **confirms that it has attempted unlawful action on 3 separate occasions,**
15 **and boasts that it would have been successful in doing so, but for**
16 **petitioner's actions, when it tried to remove petitioner despite knowing**
17 **there was an automatic stay in place?**

18 34.Also, the Government's Return acknowledges that Mexico does not accept
19 Non-Mexicans who refuse to go there. See Exhibit 4, para. 13. The
20 Government is confirming the policy of the country of Mexico therefore, and
21 petitioner cannot be at fault for their policy.

22 35.Furthermore, Petitioner already claimed fear of returning to Mexico in her
23 written declaration filed with the Immigration court and in her oral testimony at
24 the merits hearing. She was attacked and robbed by an armed man, and feared
25 

1 **E. The Government violated the law, and its own policy and procedures when it**
2 **provided no opportunity to be heard and no mechanism to present any claims of**
3 **fear to third countries.**

4 36.The Government return does not refute that it provided no mechanism for
5 petitioner to present any claims of fear to the third countries they attempted to
6 remove her, as is required.

7 37.Again, the government return uses the word “notice” when it claims it provided
8 notice to petitioner, and absent actual copies of the authenticated true and
9 correct copies of the alleged notices, there is no actual evidence to support
10 these contentions.

11 38.Petitioner’s counsel never received any notice of these alleged attempts at
12 removal either.

13 39.The Government return does not explain, describe or attest to the mechanisms
14 they provided to petitioner to claim her fear to any third countries, as is
15 required and claimed in the Writ page 5, paragraph 6.

16 a. “The Due Process Clause of the Fifth Amendment also requires that,
17 prior to a third-country removal, Petitioner receive meaningful notice
18 and opportunity to access these mandatory statutory protections. As the
19 Supreme Court recently held in *A.A.R.P. v. Trump*, this means a person
20 “must receive notice” that “they are subject to removal” (here, to a third
21 country), and such notice must be provided “within a reasonable time
22 and in such a manner as will allow the[] [noncitizen] to actually seek . . .
23 relief.” 605 U.S. 91, 95 (2025) (per curiam) (quoting *Trump v. J.G.G.*,
24 604 U.S. 670, 673 (2025)).”

25 40.Respondents are claiming notice, but what about the mechanism and
26 opportunity for petitioner to seek relief, as described in *Trump v J.G.G.* above?

27 41.Respondents do not make clear for the court if they provided instructions to
28 petitioner on whether she could contest the intended removals and how to do

1 so, much less provide her with any timeline for submitting a request for
2 protection, as required by caselaw. *See Aden v. Nielsen*, 409 F. Supp. 3d 998,
3 1010 (W.D. Wash. 2019) (explaining that “Ninth Circuit case law suggests
4 that” government’s failure to “notif[y] petitioner that he had a right to apply for
5 asylum or withholding of deportation to Somalia despite his earlier objections
6 to deportation to that country” “in and of itself, is also a violation of the
7 constitutional right to due process”)

8 42. This seems to be a pattern and practice of Respondents to send immigrants
9 with Grants of Withholding to third countries without notice and mechanisms
10 to seek relief and claim fear. *See Y.T.D. v. Andrews*, No. 1:25-CV-01100-JLT-
11 SKO, 2025 WL 2675760, at *11 (E.D. Cal. Sept. 18, 2025) (acknowledging
12 “numerous examples of cases involving individuals who DHS has attempted to
13 remove to third countries with little or no notice or opportunity to be heard”
14 before concluding petitioner had demonstrated “a sufficiently imminent risk [of
15 being] subjected to improper process in relation to any third country removal”).

16 43. Respondents do not challenge Ms. Rueda Pena’s argument that their third-
17 country removal policy violates his rights under the INA, the Foreign Affairs
18 Reform Restructuring Act of 1998 (FARRA), and the Fifth Amendment’s Due
19 Process Clause. *Compare* Dkt. 1 ¶¶ 82–107, *with* Dkt. 10. And, in fact, courts
20 around the country have recently found that challenges to [Respondents’]
21 policy on third country removals are likely to succeed on the merits.”
22 *Baltodano*, 2025 WL 2987766, at *2 (citing *Nguyen*, 2025 WL 2419288 at
23 *19; *J.R.*, 2025 WL 1810210, at *3; *Phetsadakone v. Scott*, No. 2:25-CV-
24 01678-JNW, 2025 WL 2579569, at *4 (W.D. Wash. Sept. 5, 2025); and
25 *Phaymany v. Northwest Immigration and Customs Enforcement Processing*
26 *Center*, 2:25-cv-00854-RAJ-MLP (W.D. Wash. Sept. 25, 2025), Dkt. 22 at *5);
27 *cf. Aden*, 409 F. Supp. 3d at 1009–11 (declaring “[a] noncitizen must be given
28 sufficient notice of a country of deportation that, given his capacities and

1 circumstances, he would have a reasonable opportunity to raise and pursue his
2 claim for withholding of deportation” and ordering that noncitizen be permitted
3 to apply for asylum, withholding of removal, and CAT protection before the
4 immigration court prior to third-country removal).

5 44. In the 9th circuit, where this court sits, Courts have also agreed. *See, e.g., Salim*
6 *Nizar Esmail*, 2025 WL 3030589, at *6–7 (explaining, inter alia, that “[i]n the
7 context of country of removal designations, last minute orders of removal to a
8 country may violate due process if an immigrant was not provided an
9 opportunity to address his fear of persecution in that country” and
10 Respondents’ third-country removal policy raised due process concerns
11 regardless of whether a third country had offered diplomatic assurances
12 (citation omitted)); *Nadari v. Bondi*, No. 2:25-CV-07893-JLS-BFM, 2025 WL
13 2934514, at *3 (C.D. Cal. Sept. 3, 2025) (concluding that petitioner
14 “established a likelihood of success on the merits, or at least the presence of
15 ‘serious questions going to the merits’ as to th[e] claim” that a third-country
16 removal “without notice and an opportunity to be heard would be unlawful”);
17 *Y.T.D.*, 2025 WL 2675760, at *8–11 (similar).

18 45. Respondents’ removal of Petitioner to any other third country, without
19 meaningful notice or an opportunity to be heard on a claim of fear of
20 persecution or torture there would violate the INA and FARRA’s protections
21 against removal to a country where a noncitizen would face persecution or
22 torture. *See* 8 U.S.C. § 1231(b)(3)(A); Pub. L. 105-277 Div. G, Title XXII, §
23 2242(a), 112 Stat. 2681, 2681–822 (1999) (codified as § 1231 statutory note);
24 *see also* 8 C.F.R. §§ 208.16–208.18, 1208.16–1208.18. It would also violate
25 his due process rights, for “[t]he fundamental requisite of due process of law is
26 the opportunity to be heard,” which includes “timely and adequate notice.”
27 *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (citation modified). In the
28 immigration context, that means “no person shall be removed from the United

1 States without opportunity, at some time, to be heard.” *A.A.R.P.*, 605 U.S. at 94
2 (citation modified). It also means that failing to timely inform a noncitizen that
3 they may need to seek protection from removal to a country different than the
4 designated one “violate[s] a basic tenet of constitutional due process: that
5 individuals whose rights are being determined are entitled to notice of the
6 issues to be adjudicated, so that they will have the opportunity to prepare and
7 present relevant arguments and evidence.” *Andriasian v. INS*, 180 F.3d 1033,
8 1041 (9th Cir. 1999). Accordingly, Respondents’ third-country removal policy
9 is unlawful and Ms. Rueda Pena is entitled to procedural protections ensuring
10 she will have both meaningful notice *and* an opportunity to be heard as to any
11 fear of persecution or torture in any other third country which DHS presents.

12 46. Furthermore, the fear of removal to a third country without notice and
13 opportunity to be heard is very real. The prospect of removal to a country
14 where Ms. Rueda Pena’s life or freedom would be threatened is not at all
15 speculative. A quick search of the US Dept of State Human Rights Practices
16 for Congo, for example, the country that Respondents attempted to remove
17 petitioner, has “significant societal discrimination, official harassment, and
18 localized violence” towards LGBT individuals. See US DOJ Human Rights
19 Practices Congo.

20 21 **Conclusion and Prayer for relief**

- 22
- 23 1. There is no guarantee that respondents will provide sufficient and adequate
24 notice with an opportunity to be heard and seek relief, as is required by law.
25 There is also no guarantee that petitioner will not be given a similarly deficient
26 notice in the future, if true that she was even provided notice to begin with. This
27 Court’s involvement is therefore crucial to ensuring any notice is provided with
28 enough time and includes sufficient information to afford her a meaningful

1 opportunity to be heard as to any fear of removal and time to present evidence of
2 her fear.

- 3 2. Petitioner requests an evidentiary hearing to 1. address the lack of written
4 notices to petitioner and her counsel, and afford Respondent's opportunity to
5 present the alleged authenticated written notices to each of the three countries
6 respondent allege in the return, namely Mexico, Ghana and Congo; 2. Address
7 why Petitioner would think she was being removed to Congo on April 15, 2026
8 and not Ghana as DO Townsend claims, 3. Address the delays caused by DHS
9 and the Immigration Judge, mentioned in the Writ, and articulate why those
10 delays should not be counted against the 90 day mandatory detention and 6
11 month reasonable detention period, 4. Address why Respondents violated the
12 law and did not provide any mechanism for petitioner to present her claims of
13 fear to these third countries; 5. Address why Respondents attempted to
14 unlawfully remove petitioner 3 times, and now blame her for their failed
15 unlawful attempts; 6. Address how the court can trust that Respondents will act
16 lawfully in their handling of this case, when the evidence in DO Townsend's
17 declaration prove they have acted unlawfully 3 times already.
- 18 3. Given the prolonged detention that Ms. Rueda Pena has been subjected to,
19 namely the 93 days she waited to get a merits hearing after requesting one, the
20 current count of 168 days since her Withholding Grant, and the 50 days she
21 waited due to the delays by DHS and the Immigration Court after the sealing of
22 all evidence and after all testimony had been taken, prior to her getting a final
23 decision (despite her request for a written decision), totaling 311 days, the
24 appropriate relief is outright release. The amount of time in detention is well
25 beyond 6 months and has become unreasonable. Given DHS unlawful activity,
26 and inability to secure removal thus far, removal is not significantly likely in the
27 reasonably foreseeable future.
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2 Dated: May 08, 2026

Respectfully submitted,

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4 _____//s// David Szeles_____
5 DAVID SZELES, SBN 279244
6 Global Law Group San Diego, P.C.
7 1455 Frazee Road, Suite 500
8 San Diego, CA 92108
9 Telephone: (858) 833-2020
10 Facsimile: (619) 839-3152

11 Attorney for Petitioner
12 Zareth Rueda Pena
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