

DISTRICT JUDGE ROBERT S. LASNIK
MAGISTRATE JUDGE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALEJANDRO BALTODANO,

Petitioner,

v.

PAMELA BONDI, Attorney General of
the United States; KRISTI NOEM,
Secretary, United States Department of
Homeland Security; CAMMILLA
WAMSLEY, 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. CV25-1958-RSL-MLP

MOTION TO STRIKE RESPONSE
AND/OR REPLY IN SUPPORT OF
PRELIMINARY INJUNCTION

Note on Motion Calendar:
November 6, 2025
(see Briefing Schedule, Dkt. 14 at 9)

Expedited Hearing Requested

Oral Argument Requested

I. INTRODUCTION

Despite the Court’s briefing schedule making clear the urgency of this matter, the Government, without seeking leave, filed its response to the preliminary injunction motion over four hours past the noon deadline. *See* Dkt. 14 at 9 (setting Response deadline at Monday, November 3, at noon), Dkt. 16 (filed at 4:21 pm). The Court should strike the Response because it did not comply with the briefing schedule and grant the preliminary injunction motion on a summary basis. *See* Fed. R. Civ. P. 65 (requiring “notice” but not briefing from the opposing party); *see also Pierson v. Miniati*, No. CV21-1317-SKV, 2022 WL 43520, at *1 (W.D. Wash. Jan. 5, 2022) (striking untimely opposition to motion to dismiss).

1 In the alternative, the Court should consider the following Reply to the
2 Government's unpersuasive arguments. The timeline in this case suggests that after 20
3 months, the haste with which the Government says it is seeking to deport
4 Mr. Baltodano—to countries he has never lived in and where he knows no one—was
5 triggered not by any newfound imperative arising over one year into his detention and
6 eight months since he was granted deferral of removal under the Convention Against
7 Torture, but an apparent attempt to retaliate for the filing of the instant habeas petition
8 seeking his release.

9 The Government has provided Mr. Baltodano's order of removal to Nicaragua.
10 Dkt. 17-1 (Order of the Immigration Judge). No other country is listed on his removal
11 order, and removal to Nicaragua has been forbidden by the order of another
12 immigration judge. Dkt. 7-1 (unredacted). The Government has not provided evidence
13 that any country has issued travel documents for Mr. Baltodano and, given its
14 characterization of Mr. Baltodano as dangerous (a characterization that does not take
15 account of his history of serious mental illness, currently controlled by medication) and
16 Mr. Baltodano's credible fears regarding other repressive governments, the prospects of
17 successful removal to a third country remain dim. The preliminary injunction should be
18 issued on his claim under *Zadvydas v. Davis*, 553 U.S. 678 (2001).

19 The Government's contention that the class action litigation in *Department of*
20 *Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025) and the Supreme
21 Court's stay of a class-wide preliminary injunction in that case prevents this Court from
22 providing an order barring Mr. Baltodano's removal to a third country without due
23 process is also unpersuasive.¹ The Government argues that "[b]ecause Baltodano is

24 _____
25 ¹ The district court in *D.V.D.* granted a preliminary injunction that established
26 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 before removal. *D.V.D. v. U.S. Dep't*

1 bound as a member of the non-opt out class of individuals governed by the *D.V.D.*
2 nationwide preliminary injunction, which the Supreme Court has now stayed finding
3 that the government is likely to prevail on the merits of its appeal, this Court should
4 deny the motion for a preliminary injunction.” Dkt. 16 at 14.

5 Notwithstanding that the Supreme Court stayed the nationwide preliminary
6 injunction with no discussion of the merits, this same argument made against a TRO
7 was rejected by another court in this district in *Nguyen v. Scott*, No. CV25-01398, --
8 F.3d --, 2025 WL 2419288, at *20–21 (W.D. Wash. Aug. 21, 2025). And at Docket 14,
9 this Court relied upon *Nguyen* and its reasoning to grant Mr. Baltodano’s TRO
10 prohibiting the Government from removing Petitioner to a third country without notice
11 and a meaningful opportunity to respond. *See id.* at 3 (citing *Nguyen* and finding
12 “petitioner is likely to succeed merits of his claim that he is entitled to ‘legally required
13 multistep procedures set out in 8 U.S.C. § 1231(b) and required due process’ before
14 ICE can remove him to a third country.”). Both decisions were correct: the Supreme
15 Court may have issued the stay because such claims should be pursued individually
16 rather than as a class, and the only class Mr. Baltodano is arguably a member of is
17 stayed for possible class-certification reasons.

18 Mr. Baltodano is indigent and security should not be required for this
19 nonfinancial case. *See Gorbach v. Reno*, 219 F.3d 1087, 1092 (9th Cir. 2000) (“[T]he
20 purpose of such a bond is to cover any costs or damages suffered by the government,
21 arising from a wrongful injunction, and the government did not show that there would

22 _____
23 *of Homeland Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 25,
24 2025), *reconsideration denied sub nom.* No. CV25-10676-BEM, 2025 WL 1495517 (D.
25 Mass. May 26, 2025). On June 23, 2025, the United States Supreme Court stayed the
26 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 be any.”). It would be far less expensive for the Government to release Mr. Baltodano
 2 according to the Supreme Court’s analysis in *Zadvydas* and to desist in attempting to
 3 remove him to third countries that may require payment to detain him. *See* Felicia
 4 Schwartz & Myah Ward, *South Sudan Took 8 Migrants from the United States. It*
 5 *Wants Something in Return.*, [https://www.politico.com/news/2025/07/30/south-sudan-](https://www.politico.com/news/2025/07/30/south-sudan-might-take-more-us-migrant-deportees-it-has-a-few-asks-00482793)
 6 [might-take-more-us-migrant-deportees-it-has-a-few-asks-00482793](https://www.politico.com/news/2025/07/30/south-sudan-might-take-more-us-migrant-deportees-it-has-a-few-asks-00482793) [[https://perma.cc/](https://perma.cc/8MGN-8YAF)
 7 [8MGN-8YAF](https://perma.cc/8MGN-8YAF)] (July 30, 2025) (quoting Muzaffar Chishti, senior fellow at the
 8 Migration Policy Institute, explaining, “These are countries that are keen to appease the
 9 administration . . . because they want something back . . . So whether it is tariff
 10 concessions—or in the case of African countries, many of them are under the threat of
 11 being placed under a travel ban or their diplomats will be prevented from coming from
 12 the U.S.—these are the stakes that are all being used to get these agreements, to get
 13 these countries to accept the nationals. And they also get paid.”). Mr. Baltodano has
 14 already been detained far longer than the presumptively reasonable six months and a
 15 stay pending appeal would contravene the need to “preserve the writ of habeas corpus
 16 as a ‘swift and imperative remedy in all cases of illegal restraint or confinement.’”
 17 *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 490 (1973).

18 **II. PETITIONER IS ENTITLED TO A PRELIMINARY INJUNCTION**
 19 **BARRING DEPORTATION TO A THIRD COUNTRY WITHOUT**
 20 **NOTICE AND A MEANINGFUL OPPORTUNITY TO BE HEARD.**

21 The Government does not attempt to reconcile ICE’s current third-country
 22 removal policy and Ninth Circuit law. As this Court previously observed (Dkt. 14),
 23 courts in this district have already held “that ICE’s current third country removal policy
 24 ‘contravenes Ninth Circuit law.’” Dkt. 14 at 5 (quoting *Nguyen*, 2025 WL 2419288 at
 25 *19).

26 It is impossible to tell from the Respondents’ briefing and declarations whether
 the written notice they say they have provided is sufficient to comply with due process

1 requirements; first, because they have not produced the alleged notices; second, because
2 they have not averred that they have obtained permission from the relevant countries or
3 travel documents for those countries; and third, because it cannot be known in advance
4 whether they are affording sufficient time to respond with any credible fear claim. The
5 fact that some notice has been provided does not mean this Court should trust (in the
6 absence of any evidence) that sufficient process will be afforded with respect to any and
7 all third countries to which they may attempt to remove Mr. Baltodano. There exist
8 many documented instances in which the Government has failed to adhere to the
9 requirements of Ninth Circuit law. *See, e.g.*, Dkt. 15 at 6–9; *DHS v. D.V.D.*, 145 S. Ct.
10 2153, 2154 (2025) (Sotomayor, J., dissenting) (describing deportation without notice to
11 Mexico of a man granted CAT deferral against removal to Guatemala; Mexico
12 promptly sent him on to Guatemala without regard to the CAT decision of a
13 United States immigration judge); *see also id.* at 2155–58.

14 Though Respondents attempt to deny it, Dkt. 16 at 17, irreparable harm
15 obviously flows from being removed to a third country to which a person has no ties.
16 This aspect of the proposed preliminary injunction also maintains rather than changes
17 the status quo: Petitioner has not yet been removed to a country he has never lived in
18 and where he knows no one, nor has he been imprisoned in a third country pursuant to
19 an unconstitutional agreement with a foreign government to exact punishment for civil
20 immigration violations that have ceased.

21 Respondents fail to answer the Court’s concern about retaining jurisdiction over
22 the underlying petition in light of the Government’s actions in other case to circumvent
23 the adjudication of pending cases via sudden deportations without due process, but
24 there is a strong public interest in securing process guaranteed by the Constitution and
25 Ninth Circuit law. Dkt. 14 at 7–8.

1 The Respondents also argue that this Court may not issue the relief sought by
2 Mr. Baltodano on his due process claim because he is a member of the plaintiff class
3 bound by the Supreme Court’s stay in *D.V.D. v. Dep’t of Homeland Sec., supra*.
4 Specifically, Respondents argues that “Baltodano is not entitled to another bite at the
5 apple before this Court to obtain relief that has already been stayed by the Supreme
6 Court.” Dkt. 16 at 14. This argument has been rejected by this Court but Petitioner
7 addresses it in further detail here.

8 As the court explained in *Nguyen*, the Supreme Court in *D.V.D.* provided no
9 reasoning for its entry of the stay and whether it came to that determination based on
10 the merits or the procedural posture of the case. *See Nguyen*, 2025 WL 2419288, at *22
11 (citing *Merrill v. Milligan*, -- U.S. ___, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J.,
12 concurring) (“The Court’s stay order is not a decision on the merits.”)); *see also Cruz-*
13 *Medina v. Noem*, -- F.Supp.3d --, 2025 WL 2841488 (D. Md. Oct. 7, 2025) (rejecting
14 government’s argument that the stay order in *D.V.D.* means that petitioner cannot
15 prevail, stating “[a]ll this Court can do is apply existing precedent and due process
16 standards, and, under those standards, the Court can discern no rational basis for
17 stripping Mr. Cruz Medina of the opportunity to appear before an immigration judge . .
18 . .”); *Santamaria Orellana v. Maker*, No. CV25-1788-TDC, 2025 WL 2841886 (D. Md.
19 Oct. 7, 2025) (citing to *Nguyen*, 2025 WL 2419288, at *22) (“This Court agrees that
20 based on the presently available guidance from the Supreme Court, there is an
21 insufficient basis upon which to reach a conclusion on which aspects of *D.V.D.* the
22 Supreme Court has rejected, whether they relate to the class certification, the due
23 process claim, or otherwise.”).

24 The *D.V.D.* litigation concerned an earlier version of the ICE guidance, and a
25 primary argument made by the government to the Supreme Court was an objection
26 based on the nationwide scale of the injunction rather than its merits. *See Gov’t*

1 Application for a Stay, *D.H.S. v. D.V.D.*, No. 24A1153 (May 27, 2025), at 19,
2 [https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_](https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf)
3 [DHS_v._DVD_et_al-app_stay.pdf](https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf) (“First, under 8 U.S.C. 1252(f)(1), lower federal
4 courts lack jurisdiction to issue *classwide injunctions* that restrain the operation of
5 third-country removals pursuant to 8 U.S.C. 1231(b).”) (emphasis added). In other
6 words, it is likely that the unreasoned Supreme Court order was not forbidding
7 injunctive relief to Mr. Baltodano because he is one of many people who has no right to
8 relief, but rather forbidding *mass* relief because Mr. Baltodano and others should have
9 proceeded individually in cases just like this one. *See Nguyen*, 2025 WL 2419288, at
10 *21. *See also Sagastizado v. Noem*, No. CV25-00104, – F.3d --, 2025 WL 2957002,
11 *13 (S.D. Tex. Octo. 2, 2025) (“Notably, the class-wide nature of the *D.V.D.* injunction
12 alone could have justified the stay, and that justification would not undermine the
13 merits of an individual claim for relief.”).

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

17 Respondents have no answer for Mr. Baltodano’s arguments based on punitive
18 third-country deportation and do not deny that it violates the Constitution. The Court
19 should issue a preliminary injunction barring Mr. Baltodano’s removal altogether
20 pursuant to the Government’s current punitive deportation policy. *See Sciacca v. Apple*,
21 362 F. Supp. 3d 787, 801–02 (N.D. Cal. 2019) (granting motion to dismiss because
22 opposing party waived an issue by failing to respond to it).

23 **IV. PETITIONER IS ENTITLED TO A PRELIMINARY INJUNCTION**
24 **ORDERING RELEASE.**

25 Respondents deny that Petitioner’s removal is indefinite, but *Zadvyd*
26 determined that detention becomes “indefinite” when there is “good reason to believe
that there is no significant likelihood of removal in the reasonably foreseeable future.”

1 *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533 U.S. at
2 701).

3 Respondents fail to “respond with evidence sufficient to rebut” Petitioner’s
4 showing that there is no significant likelihood of removal in the reasonably foreseeable
5 future. *Zadvydas*, 533 U.S. at 701. The Response provides no evidence that travel
6 documents have been requested or obtained for either Honduras or Mexico. General
7 statements of intent to remove Petitioner to those countries fail to prove that his
8 removal is reasonably foreseeable. “The fact that Respondents intend to complete a
9 travel document request for Petitioner does not make it significantly likely he will be
10 removed in the foreseeable future.” *Hoac v. Becerra*, No. CV25-01740-DC-JDP, 2025
11 WL 1993771, at *4 (E.D. Cal. July 16, 2025). In a similar CAT case (albeit with less
12 extensive criminal history and no documented mental illness) in which a petitioner was
13 granted withholding of removal to Colombia, the Government sought permission from
14 the consulates of Peru, Argentina, Chile, and Mexico to remove him to those countries,
15 and was denied three times and received no answer from Mexico. *See Aguila v. Rivas*,
16 No. CV25-1662-PHX-DLR (ESW), Dkt. 51 at 4 (D. Ariz. Oct. 30, 2025) (“[T]here is
17 no evidence in the record that removal is likely to occur at all, much less in the
18 reasonably foreseeable future.”). Here, Respondents do not even offer evidence that
19 they have asked.

20 The cases cited by Respondent are readily distinguishable. In *Nicia*, removal was
21 still reasonably foreseeable because the petitioner had failed to obtain CAT deferral and
22 there was no barrier to removal to his home country of El Salvador. It is far less certain
23 that the Government would be able to remove Petitioner, who has been granted CAT
24 deferral as to Nicaragua, to a third country which would have to actively assent to the
25 removal. *See Nicia v. ICE Field Off. Dir.*, No. CV13–0092–RSM, 2013 WL 2319402,
26 at *3 (W.D. Wash. May 28, 2013). In *YTD v. Andrews*, the court granted the temporary

1 restraining order to require a new bond hearing for the petitioner and wanted more
2 briefing before granting release under *Zadvydas* because the existing briefing was
3 “generic.” *Y.T.D. v. Andrews*, No. CV25-01100-JLT-SKO, 2025 WL 2675760, at *8
4 (E.D. Cal., Sept. 18, 2025). And in *Malkandi*, the Government had obtained travel
5 documents. *Malkandi v. Mukasey*, No. CV07-1858-RSM, 2008 WL 916974, at *1
6 (W.D. Wash. Apr. 2, 2008) (“[T]he Deportation Officer assigned to Petitioner’s
7 case[. . .] indicated that he ‘received a travel document for [Petitioner] titled ONE
8 WAY LAISSEZ PASSER’ from the petitioner’s home country of Iraq.”).

9 **V. CONCLUSION**

10 This Court should grant the preliminary injunction on all three grounds.

11 DATED this 5th day of November 2025.

12 Respectfully submitted,

13
14 *s/ Ann K. Wagner*
15 Assistant Federal Public Defender
Attorney for Alejandro Baltodano

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