

THE HONORABLE ROBERT S. LASNIK

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; LAURA  
HERMOSILLO,<sup>1</sup> 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

REPLY IN SUPPORT OF HABEAS  
PETITION

Note on Motion Calendar:  
November 21, 2025

**Expedited Hearing Requested**

**Oral Argument Requested**

**I. INTRODUCTION**

This Court deferred ruling on Petitioner Baltodano’s *Zadvydas* claim for release largely on the basis that the parties disagreed on the amount of time he has been in custody for the *Zadvydas* analysis. Dkt. 22 at 10. This dispute has now been resolved in Petitioner’s favor: The Government agrees that the start date for *Zadvydas* purposes is the day he entered ICE custody on January 24, 2024, Dkt. 23 at 9 & n.2. (“The government was previously incorrect in representing that the removal period began when the Immigration Judge granted the application for deferral.”). He has therefore

<sup>1</sup> Laura Hermosillo, Seattle Acting Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement, is substituted for Camilla Wamsley under Federal Rule of Civil Procedure 25(d).

1 been in custody for more than 21 months. Under the Supreme Court’s decision in  
2 *Zadvydas* and a new declaration filed by the government in other litigation showing that  
3 Mexico will affirmatively refuse to accept Petitioner, there is good reason to believe  
4 that there is no significant likelihood of removal in the reasonably foreseeable future.  
5 Petitioner must be released.

6 The Court should also permanently enjoin third-country removal without due  
7 process. The Court has twice ruled that Petitioner is likely to succeed on the merits of  
8 his claim that due process is required for third-country removal, Dkt. 14 at 4–6, Dkt. 22  
9 at 7–9, and nothing the Government has argued should lead the Court to reconsider that  
10 reasoning.

11 Finally, the Government’s third-country removal program is unconstitutionally  
12 punitive and it should be permanently enjoined. *See Abubaka v. Bondi*, CV25-1889-  
13 RSL, 2025 WL 3204369, at \*8 (W.D. Wash. Nov. 17, 2025). The Court can take  
14 judicial notice of public statements by government officials and proceedings before  
15 other courts, and the same declarations regarding specific examples of punitive third-  
16 country removals that were filed in *Nguyen v. Scott*, No. CV25-01398-TMC-SKY, 2025  
17 WL 2419288 (W.D. Wash. Aug. 21, 2025), have been entered into the record in this  
18 court. *See* Dkt. 15-1 (Declaration of Glenda M. Aldana regarding personal knowledge  
19 of deportations to South Sudan), Dkt. 15-2 at 6–7 (Declaration of Tin Thanh Nguyen  
20 regarding personal knowledge of deportations to Eswatini and South Sudan).

21 The Court should grant Petitioner’s habeas petition on all three grounds.

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

24 Respondents insist that although Petitioner’s detention is prolonged, it is justified  
25 under the statutory scheme discussed in *Zadvydas*. Gov’t Return, Dkt. 23 at 7–8. But  
26 *Zadvydas* read constitutional limits into that statutory scheme, and whether

1 Mr. Baltodano is permissibly detained under the literal terms of the statute or his last  
2 bond hearing is not at issue. Despite Respondents dwelling on Mr. Baltodano's alleged  
3 dangerousness, Gov't Return, Dkt. 23 at 9–10, both petitioners in *Zadvydas*,  
4 Mr. Zadvydas and Mr. Ma, had been deemed dangerous and/or a flight risk, so the fact  
5 that Mr. Baltodano has been deemed dangerous puts him in the exact same posture. *See*  
6 *Zadvydas v. Underdown*, 185 F.3d 279, 288 (5th Cir. 1999), *vacated and remanded sub*  
7 *nom. Zadvydas v. Davis*, 533 U.S. at 702 (“The district court found that the INS did not  
8 err in determining that Zadvydas posed a danger to the community and a flight risk.”).  
9 Furthermore, cases in which the petitioners, lacking a colorable *Zadvydas* claim, were  
10 exclusively pursuing their rights under the statutory scheme can shed no light on the  
11 *Zadvydas* claim here. *See, e.g., Castaneda v. Aitken*, 2015 WL 3882755, at \*9 (N.D.  
12 Cal. June 23, 2015) (distinguishing a *Zadvydas* claim from the claim for a second bond  
13 hearing by a petitioner with no basis for contending that his removal was not reasonably  
14 foreseeable).

15 Under *Zadvydas*, the Supreme Court has made clear that the purpose of detention  
16 under the statute must be tied to the goal of removing the person from the United States,  
17 and if the detention is prolonged beyond the time necessary to complete that goal, the  
18 Due Process Clause places further limits on the detention. *Zadvydas*, 533 U.S. at 699.  
19 *Zadvydas* determined that detention becomes “indefinite” when there is “good reason to  
20 believe that there is no significant likelihood of removal in the reasonably foreseeable  
21 future.” *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533  
22 U.S. at 701).

23 Even though the burden has shifted to Respondents to “respond with evidence  
24 sufficient to rebut” Petitioner’s showing that there is no significant likelihood of  
25 removal in the reasonably foreseeable future, *Zadvydas*, 533 U.S. at 701, they offer  
26 nothing in response. The Return provides no evidence that travel documents have been

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

15 Furthermore, Petitioner has learned that Mexico will not accept any noncitizen  
16 who is not willing to go there. *See* Ex. 1 at ¶ 11 (Declaration of Martin Parsons, filed by  
17 the Federal Respondents in *Rios v. Noem*, Case No. CV25-02866-JES-VET (S.D. Cal.  
18 Nov. 5, 2025)). Mr. Baltodano is not willing to go to Mexico; Supreme Court justices  
19 have described examples of people being sent on by Mexico to the very country that  
20 they had obtained CAT protections against. *See DHS v. D.V.D.*, 145 S. Ct. 2153, 2154  
21 (2025) (Sotomayor, J., dissenting) (describing deportation without notice to Mexico of  
22 a man granted CAT deferral against removal to Guatemala; Mexico promptly sent him  
23 on to Guatemala without regard to the CAT decision of a United States immigration  
24 judge).

25 Though Respondents offer no *Zadvydas* case citations here, the cases cited by  
26 Respondents in opposition to the preliminary injunction briefing were readily

1 distinguishable. In *Nicia*, removal was still reasonably foreseeable because the  
2 petitioner had failed to obtain CAT deferral and there was no barrier to removal to his  
3 home country of El Salvador. It is far less certain that Petitioner, who has been granted  
4 CAT deferral as to Nicaragua, can be removed to a third country which would have to  
5 actively assent to the removal. *See Nicia v. ICE Field Off. Dir.*, No. CV13-0092-RSM,  
6 2013 WL 2319402, at \*3 (W.D. Wash. May 28, 2013). In *YTD v. Andrews*, the court  
7 granted a temporary restraining order to require a new bond hearing for the petitioner.  
8 The court asked for more briefing before granting release under *Zadvydas* because the  
9 existing briefing was too “generic.” *Y.T.D. v. Andrews*, No. CV25-01100-JLT-SKO,  
10 2025 WL 2675760, at \*8 (E.D. Cal., Sept. 18, 2025). And in *Malkandi*, the Government  
11 had obtained travel documents. *Malkandi v. Mukasey*, No. CV07-1858-RSM, 2008 WL  
12 916974, at \*1 (W.D. Wash. Apr. 2, 2008) (“[T]he Deportation Officer assigned to  
13 Petitioner’s case[ . . . ] indicated that he ‘received a travel document for [Petitioner]  
14 titled ONE WAY LAISSEZ PASSER’ from the petitioner’s home country of Iraq.”).

15 Mr. Baltodano should be released on bond with reasonable conditions of  
16 supervision. *See Kamyab v. Bondi*, No. CV25-389-RSL, 2025 WL 2917522, at \*5  
17 (W.D. Wash. Oct. 14, 2025) (citing 8 U.S.C. § 241.4(j), 241.5, 241.13(h)).

18 **III. PETITIONER IS ENTITLED TO AN INJUNCTION BARRING**  
19 **DEPORTATION TO A THIRD COUNTRY WITHOUT NOTICE AND A**  
20 **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 whether the written notice  
they say they have provided is sufficient to comply with due process requirements; first,

1 because they have not averred that they have obtained permission from the relevant  
2 countries or travel documents for those countries; and second, because it cannot be  
3 known in advance whether they are affording sufficient time to respond with any  
4 credible fear claim. The fact that some notice has been provided does not mean this  
5 Court should trust (in the absence of any evidence) that sufficient process will be  
6 afforded with respect to any and all third countries to which they may attempt to  
7 remove Mr. Baltodano in the future. There exist many documented instances in which  
8 the Government has failed to adhere to the requirements of Ninth Circuit law. *See, e.g.*,  
9 Dkt. 15 at 6–9; *D.V.D.*, 145 S. Ct. at 2154 (Sotomayor, J., dissenting); *see also id.* at  
10 2155–58.

11 **IV. PETITIONER IS ENTITLED TO AN INJUNCTION BARRING**  
12 **DEPORTATION TO A THIRD COUNTRY PURSUANT TO**  
13 **RESPONDENTS’ PUNITIVE POLICY.**

14 The Respondents argue that even if the third-country removal procedure is  
15 punitive as a general matter, it is not punitive as applied to Petitioner. Dkt. 23 at 12.  
16 This is a nonsensical claim, because no third-country removal has yet been carried out  
17 with respect to Petitioner. Because Petitioner doubts that Respondents will succeed in  
18 removing him to any third country, they may fail in punishing him in this manner.

19 And even if Respondents manage to coerce a third country into accepting  
20 someone they have continually characterized as “dangerous,” it is likely Petitioner will  
21 be imprisoned or forwarded to Nicaragua, where he is likely to be tortured. Third  
22 countries including El Salvador, Costa Rica, Panama, and South Sudan have been paid  
23 by the United States government to imprison individuals who are deemed dangerous.  
24 *See* Dkt. 15 at 4 & n.4 (citing Stefano Pozzebon, et al., *El Salvador Offers to House*  
25 *Violent US Criminals and Deportees of Any Nationality in Unprecedented Deal*, CNN  
26 World (Feb. 4, 2025), <https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk> [<https://perma.cc/68A8-R6R3>]); *id.* at 6 & n.16 (citing The

1 Associated Press, *Group of Mostly Asian Migrants Deported from U.S. Arrive in Costa*  
2 *Rica*, NBC News (Feb. 21, 2025), [https://www.nbcnews.com/news/asian-](https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148)  
3 [america/asian-migrants-deported-arrive-costa-rica-rcna193148](https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148)  
4 [<https://perma.cc/R6MT-HK9F>]; *id.* at 6 & n.14 (citing Matias Delacroix & Megan  
5 Janetsky, *Isolated in 'Harsh Conditions:' Deportee from US Details Legal Limbo in*  
6 *Panama Camp Near Darien Gap*, AP World News (Feb. 22, 2025),  
7 [https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86)  
8 [bba8c3dc33fd38efd569a5b51e481a86](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86) [<https://perma.cc/7FL8-KNXT>]); *id.* at 8 & n.8  
9 (citing Mattathias Schwartz, *Trump Administration Poised to Ramp Up Deportations to*  
10 *Distant Countries*, N.Y. Times (July 13, 2025), [https://www.nytimes.com/2025/07/13/](https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html)  
11 [us/politics/south-sudan-third-country-deportations.html](https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html) [[https://perma.cc/7MXJ-](https://perma.cc/7MXJ-QWY9)  
12 [QWY9](https://perma.cc/7MXJ-QWY9)]).

13 Respondents fail to rebut the evidence that such imprisonment agreements exist  
14 or show why Petitioner would not be treated the same manner as others with criminal  
15 histories who have been deemed dangerous.

16 Furthermore, given that Petitioner was granted a CAT deferral based on credible  
17 evidence that he had been tortured by his home country, the entire practice of using  
18 “bridge countries” to effectuate eventual return to his home country represents an end  
19 run around prohibitions against torture: punitive by any definition. *See* Matias  
20 Delacroix & Megan Janetsky, *supra* (quoting U.S. State Department’s statement on  
21 social media that the countries were “safely returning third-country nationals to their  
22 countries of origin”); *see also* *D.V.D.*, 145 S. Ct. at 2154 (Sotomayor, J., dissenting)  
23 (describing deportation without notice to Mexico of a man granted CAT deferral  
24 against removal to Guatemala; Mexico promptly sent him on to Guatemala without  
25 regard to the CAT decision of a United States immigration judge). Such an end run  
26 around prohibitions on torture could thus be accomplished without any specific punitive

1 intent in individual decisionmakers' minds. *Cf.* Gov't Return, Dkt. 23 at 12 ("There is  
2 no evidence the government's decision to pursue third country removal is punitive  
3 toward Baltodano.").

4 Petitioner also incorporates by reference prior reply arguments responding to the  
5 Respondents' responses, which Respondents have requested be incorporated by  
6 reference. *See* Gov't Return at 12 n.3; Reply in Support of Preliminary Injunction  
7 Motion, Dkt. 18.

8 This Court should grant the habeas petition on the ground that the third-country  
9 removal program is punitive insofar as it involves imprisonment for a civil immigration  
10 issue, *see Abubaka*, 2025 WL 3204369, at \*8, and as applied to Mr. Baltodano, is  
11 punitive insofar as any third-country candidate is not bound by the United States CAT  
12 decision indefinitely deferring his deportation to the country that tortured him.

13 **V. CONCLUSION**

14 This Court should grant the habeas petition on all three grounds.

15 DATED this 21st day of November 2025.

16 Respectfully submitted,

17  
18 *s/ Ann K. Wagner*  
19 Assistant Federal Public Defender  
Attorney for Alejandro Baltodano

20 I certify this motion complies with the page limits specified in LCR 7(e)(3).  
21  
22  
23  
24  
25  
26