

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SAMAN ESHAGHPOUR,
Petitioner,
v.
PAMELA BONDI, *et al.*,
Respondents.

No. CV25-02322-RAJ

SAMAN ESHAGHPOUR'S REPLY TO
RESPONDENTS' RETURN
MEMORANDUM

L INTRODUCTION

Petitioner Saman Eshaghpour 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 concede that the "presumptively reasonable" six-month period has expired under *Zadvydus v. Davis*, 533 U.S. 678, 701 (2001). Dkt. 10 at 3.

Respondents' response provides little evidence to support its bald assertion that Mr. Eshaghpour's removal is reasonably foreseeable. In support, the Respondents submit the declaration of ICE Deportation Officer Javier Delgado. But most of Officer Delgado's statements are vague, conclusory, and speculative. Indeed, Officer Delgado admits that previous attempts in 2014 to obtain travel documents from Iran failed and recent attempts to obtain travel documents have also failed.

Respondents' other 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

1 barring Mr. Eshaghpour's removal to a third country without due process is also
2 unpersuasive.¹ Respondents argue that "[b]ecause Eshaghpour is bound as a member of
3 the non-opt out class of individuals governed by the *D.V.D.* nationwide preliminary
4 injunction, which the Supreme Court has now stayed finding that the government is
5 likely to prevail on the merits of its appeal, this Court should dismiss the action." *Id.* at
6 12.

7 Notwithstanding that the Supreme Court stayed the nationwide preliminary
8 injunction with no discussion of the merits, this same argument made against a TRO
9 was rejected by another court in this district in *Nguyen v. Scott*, No. CV25-01398, --
10 F.3d --, 2025 WL 2419288, at *14 (W.D. Wash. Aug. 21, 2025), and *Abubaka v. Bondi*,
11 *et al.*, No. CV25-01889-RSL, 2025 WL 3204369, at *2-3 (W.D. Wash. Nov. 17, 2025).
12 Recently, following the reasoning in *Nguyen*, the court granted a TRO prohibiting the
13 government from removing petitioner to a third country without notice and a
14 meaningful opportunity to respond. *See Baltodano v. Bondi, et al.*, No. CV25-1958-
15 RSL, 2025 WL 2987766, at *20-21 (W.D. Wash. Oct. 23, 2025) (citing *Nguyen* and
16 finding "petitioner is likely to succeed on merits of his claim that he is entitled to
17 'legally required multistep procedures set out in 8 U.S.C. § 1231(b) and required due
18 process' before ICE can remove him to a third country.").

19
20
21 ¹ The district court in *D.V.D.* granted a preliminary injunction that established
22 procedures DHS and ICE were required to follow before removing a noncitizen to a
23 third country, including written notice and an opportunity to raise a fear-based claim for
24 protection under the Convention Against Torture treaty before removal. *D.V.D. v. U.S.*
25 *Dep't of Homeland Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass.
26 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 Because Respondents have failed to meet their burden of showing a significant
2 likelihood of Mr. Eshaghpour's removal to Iran in the reasonably foreseeable future, the
3 petition should be granted.

4 **II. ARGUMENT**

5 **A. Mr. Eshaghpour has met his burden under *Zadvydas*.**

6 Mr. Eshaghpour has met his burden to show a good reason to believe that "there
7 is no significant likelihood of removal in the reasonably foreseeable future." *Nadarajah*
8 *v. Gonzales*, 443 F.3d 1069, 1077 (9th Cir. 2006"); *see Zadvydas*, 553 U.S. at 701
9 (After the presumptively reasonable period of detention of six months, "once the alien
10 provides good reason to believe that there is no significant likelihood of removal in the
11 reasonably foreseeable future, the Government must respond with evidence sufficient to
12 rebut that showing.").

13 Mr. Eshaghpour's final removal order was issued more than a decade ago on
14 September 11, 2014. Dkt. 11 at 2. Officer Delgado's declaration does not state how
15 long Mr. Eshaghpour was in custody in 2014, but instead notes he was ordered deported
16 on September 11, 2014, and released on December 11, 2014, after a period of 92 days.
17 Dkt. 11 at ¶¶ 7–8. Mr. Eshaghpour was recently arrested more than 153 days ago on
18 July 9, 2025. Dkt. 11 at ¶ 9. Thus, he has been in custody well over 180 days.
19 Furthermore, ICE has had more than ten years to obtain travel documents and, as
20 Respondents concede, "the 'presumptively reasonable' six-month custody period has
21 expired." Dkt. 10 at 3. *See also Tran v. Bondi*, No. CV25-01897-JLR, 2025 WL
22 3140462 (W.D. Wash. Nov. 10, 2025) (stating presumptively reasonable period expires
23 six months after a final order, regardless of detention).

24 The only evidence Respondents present is a declaration from Deportation
25 Officer Javier Delgado. But he concedes that ICE has not received a response from Iran
26 regarding ICE's request for travel documents since its first request in 2014, nor from its

1 more recent requests in July and November of 2025. Dkt. 11 at ¶¶ 8, 10, 11. Officer
2 Delgado further confirms that the government released Mr. Eshaghpour in December
3 2014 because it was also unable to obtain travel documents from a third country.
4 Dkt. 10 at ¶ 8. Thus, while Respondents have had more than five months to obtain
5 travel documents since Petitioner's re-detention in July 2025, they have provided no
6 evidence that they are any closer to obtaining travel documents for Mr. Eshaghpour.
7 Iran's complete failure to respond to repeated requests for travel documents shows that
8 removal will not take place in the reasonably foreseeable future.

9 Respondents cite to *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008), for
10 the uncontroversial proposition that detention is only "indefinite" if there is "good
11 reason to believe that there is no significant likelihood of removal in the reasonably
12 foreseeable future." Dkt. 10 at 7–8. Notably, *Diouf* involved a highly unusual fact
13 pattern. ICE arrested the petitioner after he failed to depart voluntarily. 542 F.3d at
14 1226. ICE then "made arrangements for Diouf to depart for Senegal, on May 26, 2005,
15 but, after Diouf refused to leave on that date, continued to detain him." *Id.* Diouf fought
16 off deportation by filing two motions to reopen and by obtaining a series of stays of
17 removal from the Ninth Circuit. *Id.*

18 The reason for Diouf's prolonged detention, therefore, and the only obstacle to
19 his removal, was his own actions, including his pending petition before the Ninth
20 Circuit and the attendant stay order. Diouf's detention was thus not open-ended (or
21 indefinite), since it would naturally terminate upon a decision by the Ninth Circuit. The
22 import of *Diouf*, instead, is that a petitioner objecting to his removal cannot obtain
23 release under *Zadvydas* unless he shows he would be "unremovable even if the
24 government defeated his petition for review." *Id.* at 1233. Since Senegal had already
25 issued travel documents, Diouf could not meet that burden. The court cited to *Prieto-*
26 *Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008), where, similarly, "repatriations

1 to Prieto-Romero's country of origin, Mexico, are routine and . . . the government
2 stands ready to remove Prieto-Romero as soon as judicial review is complete." It is in
3 situations such as those, when the delay is caused by judicial review, that removal is
4 unforeseeable only if the removal country will not accept the detainee.

5 There is no basis for reading *Diouf* as applying to situations such as
6 Mr. Eshaghpour's. If Respondents' position were accepted, it would mean that the
7 numerous recent decisions in this district, and the scores or hundreds of decisions
8 elsewhere throughout the Circuit, all erred in finding a *Zadvydas* violation based on
9 delay of removal, without also requiring a showing that removal could not occur.

10 **B. Respondents have not met their burden under *Zadvydas*.**

11 The burden thus shifts to the government to "respond with evidence sufficient to
12 rebut that showing." *Zadvydas*, 553 U.S. at 70. But other than conclusory and
13 speculative statements in Officer Delgado's declaration, Respondents provide no
14 evidence that removal is likely in the reasonably foreseeable future.

15 Officer Delgado asserts, without elaboration, that on July 9, 2025, Enforcement
16 and Removal Operations ("ERO") "determined there was a significant likelihood of
17 removal in the foreseeable future." Dkt. 11 at ¶ 9. But nothing in the declaration states
18 "who" in ERO made that determination or on what basis it was made. This omission is
19 striking given that it has been more than ten years since ICE released Mr. Eshaghpour
20 because it was unable to obtain travel documents from Iran or a third country. Dkt. 11
21 at ¶ 8.

22 Indeed, publicly available documents establish that Iran does not "conduct[]
23 interviews, issu[e] travel documents in a timely manner, [or] accept[] the physical
24 return of their nationals by scheduled commercial or charter flights consistent with ICE
25 and/or foreign government removal guidelines." Dkt. 1-1. ICE's declaration does not
26 disclose that that the U.S. Department of State has designated Iran as one of only 15

1 “uncooperative” countries because it does not facilitate the return of its nationals. *Id.*
2 Iran is on this list because it does not “conduct[] interviews, issu[e] travel documents in
3 a timely manner, [or] accept[] the physical return of their nationals by scheduled
4 commercial or charter flights consistent with ICE and/or foreign government removal
5 guidelines.” *Id.*

6 *Zadvydas* rejected the government’s insistence that courts should accept the
7 government’s belief about whether removal was “significantly likely in the reasonably
8 foreseeable future” unquestioningly. 533 U.S. at 701 (“The Government seems to argue
9 that . . . a federal habeas court would have to accept the Government’s view about
10 whether the implicit statutory limitation is satisfied in a particular case, conducting little
11 or no independent review of the matter. In our view, that is not so.”). Indeed, the Court
12 admonished district courts not to “abdicat[e] their legal responsibility to review the
13 lawfulness of an alien’s continued detention.” *Id.* Courts exercising that “legal
14 responsibility” should consider whether the government has credibly explained the
15 delay. *See Lema v. U.S. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002) (“The
16 continuing failure of a destination country to respond to a request for travel documents
17 may provide the Court with ‘good reason to believe’ that deportation is not
18 [significantly] likely in the reasonably foreseeable future . . . where the destination
19 country’s lack of response is combined with the INS’ inability to explain the silence
20 and the absence of any indication that the situation may change.”).

21 The government’s inability to remove Mr. Eshaghpour in 2014 and the
22 thousands of deportable Iranians who live in the United States on the non-detained
23 docket, Dkt. 1-1, and the official recognition that Iran does not cooperate with
24 deportations of its citizens demonstrates that removal is not likely in the reasonably
25 foreseeable future. Although Respondents claim that Mr. Eshaghpour’s re-detention is
26 legal because of “changed circumstances,” this Court should consider that the

1 government's response fails to show that there is a "significant likelihood of
2 [Mr. Eshaghpour's] removal in the reasonably foreseeable future." Dkt. 10 at 3. *See*
3 *Singh v. Whitaker*, 362 F. Supp. 3d 93, 101–02 (W.D.N.Y. 2019) ("[I]f DHS has no
4 idea of when it might reasonably expect Singh to be repatriated, this Court certainly
5 cannot conclude that his removal is likely to occur—or even that it might occur—in the
6 reasonably foreseeable future.") (internal citations omitted).

7 Officer Delgado also provides no information about the protocol for removal to
8 Iran, Iran's eligibility criteria for obtaining a travel document, or whether
9 Mr. Eshaghpour can meet that criteria. He does not say whether Mr. Eshaghpour has a
10 passport or an Iranian birth certificate. Nor does he say whether Mr. Eshaghpour has
11 any remaining family or connections in Iran. *See, e.g., Kamyab v. Bondi*, No. CV25-
12 389-RSL, 2025 WL 2917522, at *3 (W.D. Wash. Oct. 14, 2025) (This Court notes that
13 "Iran requires 'original documents' to move the [travel document] process forward,"
14 such as an original passport or original birth certificate, but the "Government has been
15 'unclear' as to whether it is in possession of any original documents that could
16 satisfactorily prove to Iranian authorities that petitioner is an Iranian national.").

17 In *Kamyab*, a recent similar case from the district involving an Iranian citizen,
18 the court ordered the petitioner's immediate release after noting several reasons to find
19 there is "good reason to believe that there is no significant likelihood of removal in the
20 reasonably foreseeable future[.]"

21 The first is the lack of evidence that the Government has submitted the
22 required "original documents" to Iranian authorities. The second is the
23 Government's own decision to seek third-country removal without any
24 evidence in the record that petitioner has a legally meaningful connection
25 to the relevant third-countries under 8 U.S.C. § 1231(b)(2)(E)(i-iii). The
26 third is the Government's statement that "[t]here is currently no estimate
when a response may be received by these third countries."

1 *Kamyab*, 2025 WL 2917522, at *3. The court found the government failed to meet its
2 burden after noting its conflicting and “sparse information” regarding the likelihood
3 that any travel document would be satisfactory. *Id.* Here, Officer Delgado’s declaration
4 similarly provides no information about the timing for receipt of the travel documents
5 or the process for removal to Iran. Instead, we have the bare history that removal was
6 not available in 2014 to Iran or a third country, and that Iran has not responded to
7 requests in July and November of this year.

8 On this record, there is insufficient evidence to support Respondents’ assertion
9 that Iran or a third country will repatriate Mr. Eshaghpour in the reasonably foreseeable
10 future. Given that Iran has refused to repatriate him for the past eleven years, there is
11 “good reason to believe that there is no significant likelihood” that Iran will accept him
12 now. *Zachvydas*, 553 U.S. at 701. Because removal to Iran or a third country is not
13 reasonably foreseeable, Mr. Eshaghpour’s continued detention violates *Zachvydas*,
14 warranting his release on an order of supervision.

15 **C. Due Process precludes Mr. Eshaghpour’s removal to a third country**
16 **without adequate notice and an opportunity to be heard.**

17 Respondents assert that removal is likely in the foreseeable future “to either Iran
18 or a third country.” Dkt. 11 at ¶ 9. In *Nguyen*, the government represented that it was
19 seeking only to remove the petitioner to his home country of Vietnam and stipulated
20 that it would not attempt to remove him to any other country unless Vietnam rejected
21 him. *Nguyen v. Scott*, 796 F. Supp. 3d 703, 737 (W.D. Wash. 2025). The court was
22 unpersuaded, explaining that “the Ninth Circuit has found such voluntary promises
23 insufficient” to eliminate the potential irreparable injury that petitioner could face if the
24 promise was withdrawn, particularly given the underlying allegations that third-party
25 removals were being conducted rapidly and without an opportunity for process. *Id.* See
26 also *Louangmility v. Noem, et al.*, No. CV25-2502-JES-MSB, 2025 WL 2881578, *4

1 (S.D. Cal. Oct. 9, 2025) (citing to *Nguyen*, 2025 WL 2419288, at *27) (agreeing with
2 petitioner's claim that ICE should be prevented from removing him to a third country
3 without adequate notice and an opportunity to be heard and rejecting government's
4 argument that the claim was not ripe because ICE was not seeking to remove him to a
5 third country).

6 Respondents also argue that this Court may not issue the relief sought by
7 Mr. Eshaghpour on his due process claim because he is a member of the plaintiff class
8 bound by the Supreme Court's stay in *D.V.D. v. Dep't of Homeland Sec.*, *supra*.
9 Specifically, the government argues that "this Court should avoid providing
10 Eshaghpour with relief that eventually may conflict with the relief, if any, ultimately
11 provided to the *D.V.D.* class." Dkt. 10 at 9. This argument similarly has been rejected
12 by the court in *Baltodano*, 2025 WL 2987766, at *2.

13 As the court explained in *Nguyen*, the Supreme Court in *D.V.D.* provided no
14 reasoning for its entry of the stay and whether it came to that determination based on
15 the merits or the procedural posture of the case. *See Nguyen*, 796 F. Supp. 3d 703, 731
16 (W.D. Wash. 2025) (citing *Merrill v. Milligan*, – U.S. ___, 142 S. Ct. 879, 879 (2022))
17 (Kavanaugh, J., concurring) ("The Court's stay order is not a decision on the merits.");
18 *see also Cruz-Medina v. Noem*, – F.Supp.3d –, 2025 WL 2841488 (D. Md. Oct. 7,
19 2025) (rejecting government's argument that the stay order in *D.V.D.* means that
20 petitioner cannot prevail, stating "[a]ll this Court can do is apply existing precedent and
21 due process standards, and, under those standards, the Court can discern no rational
22 basis for stripping Mr. Cruz Medina of the opportunity to appear before an immigration
23 judge"); *Santamaria Orellana v. Maker*, No. 25-1788-TDC, 2025 WL 2841886
24 (D. Maryland Oct. 7, 2025) (citing to *Nguyen*, 2025 WL 2419288, at *22) ("This Court
25 agrees that based on the presently available guidance from the Supreme Court, there is
26 an insufficient basis upon which to reach a conclusion on which aspects of *D.V.D.* the

1 Supreme Court has rejected, whether they relate to the class certification, the due
2 process claim, or otherwise.”).

3 The *D.V.D.* litigation concerned an earlier version of the ICE guidance, and a
4 primary argument made by the government to the Supreme Court was an objection
5 based on the nationwide scale of the injunction rather than its merits. *See* Gov’t
6 Application for a Stay, *D.H.S. v. D.V.D.*, No. 24A1153 (May 27, 2025), at 19,
7 [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)
8 [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) [<https://perma.cc/8NTN-TQ5D>] (“First, under
9 8 U.S.C. 1252(f)(1), lower federal courts lack jurisdiction to issue *classwide injunctions*
10 that restrain the operation of third-country removals pursuant to 8 U.S.C. 1231(b)”)
11 (emphasis added). In other words, it is likely that the unreasoned Supreme Court order
12 was not forbidding injunctive relief to Mr. Eshaghpour because he is one of many
13 people who has no right to relief, but rather forbidding *mass* relief because
14 Mr. Eshaghpour and others should have proceeded individually in cases just like this
15 one. *See Nguyen*, 796 F. Supp. 3d 703, 732 (W.D. Wash. 2025). *See also Sagastizado v.*
16 *Noem*, No. CV25-00104, – F.3d –, 2025 WL 2957002, *13 (S.D. Tex. Octo. 2, 2025)
17 (“Notably, the class-wide nature of the *D.V.D.* injunction alone could have justified the
18 stay, and that justification would not undermine the merits of an individual claim for
19 relief.”).

20 Finally, the *Nguyen* court made clear that ICE’s current policy “contravenes
21 Ninth Circuit law,” rendering it “impossible to comply both with Ninth Circuit
22 precedent and the policy.” 796 F. Supp. 3d at 728.² The court explained that under
23 Ninth Circuit precedent, “[f]ailing to notify individuals who are subject to deportation
24 that they have the right to apply . . . for withholding of deportation to the country to

25 ² Although the government does not set forth the policy, this Court discussed the 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.

1 which they will be deported violates both INS regulations and the constitutional right to
2 due process." *Id.* at 727 (citing to *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir.
3 1999) (in turn citing *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998))). Applying
4 this binding precedent, the court concluded that "Petitioner is likely to succeed on his
5 claim that removal to a third country under ICE's current policy, without meaningful
6 notice and reopening of his removal proceedings for a hearing, would violate due
7 process." *Nguyen*, 796 F. Supp. 3d 703, 728–29. And in *Baltodano*, the court citing to
8 the reasoning in *Nguyen*, concluded that "petitioner is likely to succeed on the merits of
9 his claim that he is entitled to 'legally required multistep procedures set out in 8 U.S.C.
10 § 1231(b) and required by due process' before ICE can remove him to a third country."
11 2025 WL 2987766, at *3.

12 III. CONCLUSION

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

22 DATED this 10th day of December 2025.

23 Respectfully submitted,

24 *s/ Dennis Carroll*
25 Senior Litigator
26 Attorney for Saman Eshaghpour