

THE HONORABLE LAUREN KING

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RUBIN TEMAHAGARI,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

No. CV25-02484-LK

MR. RUBIN TEMAHAGARI'S REPLY
TO RESPONDENTS' RETURN

Petitioner Rubin Temahagari has been in immigration custody since August 30, 2021, including more than eight months since an Immigration Judge ordered both removal and Deferral of Removal to the Democratic Republic of the Congo (DRC) pursuant to the Convention Against Torture. *See* Dkt. 13 at 6-7. He petitioned this Court to order his release from unlawfully prolonged detention and for protection from unlawful third-country removal without constitutionally adequate procedures. Dkt 1.

Respondents oppose those requests, arguing (1) that Mr. Temahagari's continued detention remains lawful because he poses a danger to the community, Dkt 12 at 5; (2) that Mr. Temahagari has not shown "good reason to believe" that removal to a third country is not "significantly likely" in the "reasonably foreseeable future," *id.* at 6, and (3) that the litigation in *D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.) precludes this Court from issuing injunctive relief to protect Mr. Temahagari's rights to procedural due process, *id.* at 10-12. Respondents' also appear to claim (4) that the Homeland Security Secretary Noem's memorandum on third country removals contains the force

1 of law and satisfies due process. Dkt. 12-17. Last, Respondents argue that this Court
2 should not consider evidence of its other misconduct when deciding whether to protect
3 Mr. Temahagari from third-country removal. Dkt. 12 at 18.

4 Each response is meritless. First, the Supreme Court has held—and the U.S.
5 Attorney’s office repeatedly has conceded—that risk of danger cannot justify detention
6 when there is no significant likelihood of removal in the reasonably foreseeable future.
7 Respondents’ contrary argument relies on a misconstruction of a single line in an
8 opinion that holds the exact opposite of the point for which it is being cited.
9 Respondents also err by relying on the fact that an immigration judge earlier denied
10 bond.

11 Second, Mr. Temahagari meets his burden to show no “good reason to believe”
12 that that removal to a third country is “significantly likely” in the “reasonably
13 foreseeable future” because it is undisputed that the presumptively reasonable period
14 has passed, that he cannot be deported to the DRC, that no third country has been
15 identified, and that no application for return to a third country has even been started.

16 Third, *D.V.D.* does not prevent this Court from protecting Mr. Temahagari’s
17 rights because the Supreme Court did not clearly decide any legal issue relevant here.
18 Furthermore, Secretary Noem’s memorandum has no legal force and, in fact, is
19 inconsistent with the relevant statutes. Binding Ninth Circuit authority requires greater
20 process than Respondents offer.

21 Finally, there is ample and growing evidence that the Government employs
22 third-country removal punitively.

23 For all these reasons and those identified in his petition, Mr. Temahagari
24 respectfully asks the Court to order his immediate release subject to appropriate
25 conditions.

1 **I. DISCUSSION**

2 **A. *Zadvydas* does not authorize detention based on perceived**
3 **dangerousness.**

4 Respondents assert the authority to detain Mr. Temahagari so long as DHS
5 believes that he presents a danger to the community. *See* Dkt 12 at 5-6. In support of
6 this proposition, Respondents cite *Zadvydas* for the proposition that a detained person's
7 dangerousness "does not necessarily diminish over time." *Id.* (Citing *Zadvydas v.*
8 *Davis*, 533 U.S. 678, 690 (2001)). Respondents then criticize Mr. Temahagari for not
9 addressing why an immigration judge's detention decision may be "disregarded" or
10 how the immigration judge's decision not to grant bond "affect[s] the constitutional
11 analysis under *Zadvydas*." *Id.* at 6.

12 These arguments reflect a profound misreading *Zadvydas*, which does *not* allow
13 detention based on dangerousness. Indeed, the sentence from *Zadvydas* upon which
14 respondents rely begins a three-paragraph discussion about why Respondents may *not*
15 assert the authority they now claim:

16 "The second justification—protecting the community—does not
17 necessarily diminish in force over time. But we have upheld preventive
18 detention based on dangerousness only when limited to specially
19 dangerous individuals and subject to strong procedural protections.
20 Compare *Hendricks, supra*, at 368, 117 S.Ct. 2072 (upholding scheme
21 that imposes detention upon "a small segment of particularly dangerous
22 individuals" and provides "strict procedural safeguards"), and *Salerno,*
23 *supra*, at 747, 750–752, 107 S.Ct. 2095 (in upholding pretrial detention,
24 stressing "stringent time limitations," the fact that detention is reserved
25 for the "most serious of crimes," the requirement of proof of
26 dangerousness by clear and convincing evidence, and the presence of
judicial safeguards), with *Foucha, supra*, at 81–83, 112 S.Ct. 1780
(striking down insanity-related detention system that placed burden on
detainee to prove nondangerousness). In cases in which preventive
detention is of potentially *indefinite* duration, we have also demanded that
the dangerousness rationale be accompanied by some other special
circumstance, such as mental illness, that helps to create the danger. *See*
Hendricks, supra, at 358, 368, 117 S.Ct. 2072.

1 The civil confinement here at issue is not limited, but potentially
2 permanent. Cf. *Salerno, supra*, at 747, 107 S.Ct. 2095 (noting that
3 “maximum length of pretrial detention is limited” by “stringent”
4 requirements); *Carlson v. Landon*, 342 U.S. 524, 545–546, 72 S.Ct. 525,
5 96 L.Ed. 547 (1952) (upholding temporary detention of alien during
6 deportation proceeding while noting that “problem of ... unusual delay”
7 was not present). The provision authorizing detention does not apply
8 narrowly to “a small segment of particularly dangerous individuals,”
9 *Hendricks, supra*, at 368, 117 S.Ct. 2072, say, suspected terrorists, but
10 broadly to aliens ordered removed for many and various reasons,
11 including tourist visa violations. See 8 U.S.C. § 1231(a)(6) (1994 ed.,
12 Supp. V) (referencing § 1227(a)(1)(C)); cf. *Hendricks*, 521 U.S., at 357–
13 358, 117 S.Ct. 2072 (only individuals with “past sexually violent behavior
14 and a present mental condition that creates a likelihood of such conduct in
15 the future” may be detained). And, once the flight risk justification
16 evaporates, the only special circumstance present is the alien's removable
17 status itself, which bears no relation to a detainee's dangerousness. Cf. *id.*,
18 at 358, 117 S.Ct. 2072; *Foucha, supra*, at 82, 112 S.Ct. 1780.

19 **Moreover, the sole procedural protections available to the alien are
20 found in administrative proceedings, where the alien bears the burden
21 of proving he is not dangerous, without (in the Government's view)
22 significant later judicial review. Compare 8 C.F.R. § 241.4(d)(1)
23 (2001) (imposing burden of proving nondangerousness upon alien)
24 with *Foucha, supra*, at 82, 112 S.Ct. 1780 (striking down insanity-related
25 detention for that very reason). This Court has suggested, however, that
26 the Constitution may well preclude granting “an administrative body the
unreviewable authority to make determinations implicating fundamental
rights.” *Superintendent, Mass. Correctional Institution at Walpole v. Hill*,
472 U.S. 445, 450, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985) (O'CONNOR,
J.); see also *Crowell*, 285 U.S., at 87, 52 S.Ct. 285 (Brandeis, J.,
dissenting) (“[U]nder certain circumstances, the constitutional
requirement of due process is a requirement of judicial process”). The
Constitution demands greater procedural protection even for property. See
South Carolina v. Regan, 465 U.S. 367, 393, 104 S.Ct. 1107, 79 L.Ed.2d
372 (1984) (O'Connor, J., concurring in judgment); *Phillips v.
Commissioner*, 283 U.S. 589, 595–597, 51 S.Ct. 608, 75 L.Ed. 1289
(1931) (Brandeis, J.). **The serious constitutional problem arising out of
a statute that, in these circumstances, permits an indefinite, perhaps
permanent, deprivation of human liberty without any such protection
is obvious.****

1 *Zadvydas*, 533 U.S. at 690–92 (emphasis added). In brief, Respondents have urged this
2 Court to permit them to continue to detain Mr. Temahagari by quoting a single line out
3 of context, when the binding Supreme Court authority they cite stands for the exact
4 opposite proposition.

5 *Zadvydas* involved two petitioners with significant criminal histories.
6 Mr. *Zadvydas* had “a long criminal record, involving drug crimes, attempted robbery,
7 attempted burglary, and theft,” as well as “a history of flight, from both criminal and
8 deportation proceedings.” 533 U.S. at 684. The other petitioner, Kim Ho Ma, was
9 “involved in a gang-related shooting [and] convicted of manslaughter[.]” *Id.* at 685.
10 There, as here, the government argued that both men could be detained regardless of
11 their likelihood of removal, because they posed too great a risk of danger or flight. *Id.* at
12 690–91.

13 But, as noted above, the Supreme Court rejected that argument. The Court
14 appreciated the seriousness of the government’s concerns. *Id.* at 691. But it found that
15 the immigrants’ liberty interests were weightier. *Id.* The Court had never countenanced
16 “potentially permanent” “civil confinement,” based only on the government’s belief
17 that the person would misbehave in the future. *Id.* And, importantly, the Court noted
18 that the government was free to use the many tools at its disposal to mitigate risk: “[O]f
19 course, the [noncitizen]’s release may and should be conditioned on any of the various
20 forms of supervised release that are appropriate in the circumstances, and the
21 [noncitizen] may no doubt be returned to custody upon a violation of those conditions.”
22 *Id.* at 700.

23 Because *Zadvydas* is clear that potential dangerousness cannot justify detention,
24 it is not surprising that Respondents’ assertions here directly conflict with their
25 concessions in other litigation in this district. *See, e.g.*, Federal Respondents’ Return
26 Memorandum, *Kuot v. Bondi*, No. 2:25-cv-02313-RAJ-BAT, dkt. 14 at 10 n.5 (W.D.

1 Wash. Dec. 3, 2025) (emphasis added) (“Whether [petitioner] poses a flight risk or a
2 danger to the community [is] *completely irrelevant*. The *only proper consideration*
3 under *Zadvydas* is whether there is a significant likelihood of removal in the reasonably
4 foreseeable future[.]”) *See also Hieu Tri Nguyen*, No. 2:25-CV-02024-TL, 2025 WL
5 3534168, at *5 (W.D. Wash. Dec. 10, 2025) (“*Hieu Tri Nguyen*”) (discussing how
6 *Zadvydas* requires court to reject argument that petitioner’s criminal history is relevant
7 to *Zadvydas* issue). Respondents’ concessions in *Kuot* and *Hieu Tri* reflect a complete
8 reading of *Zadvydas*. Respondents’ arguments here do not.

9 Respondents are wrong also to criticize Mr. Temahagari for not addressing how
10 an immigration judge’s denial of bond “affects the constitutional analysis under
11 *Zadvydas*.” To begin with, *Zadvydas* is a statutory construction case, not a
12 constitutional case, though its holding is informed by the doctrine of constitutional
13 avoidance. *Zadvydas* construes 8 U.S.C. § 1231, the statute under which
14 Mr. Temahagari is currently detained. A different statute applies during proceedings
15 before an immigration judge. *See* 8 U.S.C. § 1226. Mr. Temahagari “disregard[ed],” dkt
16 12 at 6, bond decisions because they are irrelevant.

17 **B. Because Mr. Temahagari has shown that his removal is not**
18 **“significantly likely” in the reasonably foreseeable future, and**
19 **because Respondents make no effort to rebut that showing,**
20 **Respondents have no statutory authority to detain him.**

21 Because the six-month grace period has passed, this Court must evaluate
22 Mr. Temagari’s claim using the burden-shifting framework set forth in *Zadvydas*. At
23 the first stage of the framework, Mr. Temahagari must “provide[] good reason to
24 believe that there is no significant likelihood of removal in the reasonably foreseeable
25 future.” *Zadvydas*, 533 U.S. at 701.
26

1 This standard can be broken down into three parts:

2 **“Good reason to believe.”** The “good reason to believe” standard is a relatively
3 forgiving one. “A petitioner need not establish that there exists no possibility of
4 removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL 10714999, at *3 (S.D.
5 Tex. Dec. 22, 2009). Nor does “[g]ood reason to believe” . . . place a burden upon the
6 detainee to demonstrate no reasonably foreseeable, significant likelihood of removal or
7 show that his detention is indefinite; it is something less than that.” *Rual v. Barr*, No.
8 CV20-06215 EAW, 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor*
9 *v. Barr*, 401 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what
10 it says: petitioners need only give a “good reason.”

11 **“Significant likelihood of removal.”** This component focuses on whether
12 Mr. Temahagari will likely be removed: Continued detention is permissible only if it is
13 “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydus*, 533 U.S. at
14 701. This inquiry targets “not only the existence of untapped possibilities, but also [the]
15 probability of success in such possibilities.” *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506
16 (M.D. Pa. 2010) (second emphasis added). In other words, even if “there remains some
17 possibility of removal,” a petitioner still meets his preliminary burden by providing a
18 good reason to believe that successful removal is not “significantly likely.” *Kacanic v.*
19 *Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002)
20 (emphasis added).

21 **“In the reasonably foreseeable future.”** This component of the test focuses on
22 *when* Mr. Temahagari will likely be removed: Continued detention is permissible only
23 if removal is likely to happen “in the reasonably foreseeable future.” *Zadvydus*, 533
24 U.S. at 701. This inquiry places a time limit on ICE’s removal efforts. If the Court has
25 “no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court
26 certainly cannot conclude that his removal is likely to occur—or even that it might

1 occur—in the reasonably foreseeable future.” *Palma v. Gillis*, No. CV19-112-DCB-
2 MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and recommendation*
3 *adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*,
4 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that
5 Mr. Temahagari “would eventually receive” a travel document, he meets his burden by
6 giving good reason to anticipate lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at
7 *2 (E.D. Mich. Nov. 14, 2016). Mr. Temahagari’s burden under this factor diminishes
8 as the length of his detention increases.

9 Mr. Temahagari readily satisfies his burden. It is undisputed that he cannot be
10 removed to his country of citizenship and that he has no meaningful ties to any other
11 country. Furthermore, because Respondents have not yet identified a country to which
12 he can be removed, submitted an application to that (or any other country) country, or
13 provided Mr. Temahagari an opportunity to present fear-based objections, there is no
14 basis on which to conclude—and certainly no good reason to believe—that he will be
15 removed *anywhere* in the reasonably foreseeable future. “Courts routinely find that
16 noncitizens under such circumstances have met their initial burden under *Zadvydus*.”
17 *Elshourbagy v. Bondi*, No. 2:25-CV-02432-TL, 2025 WL 3718993, at *4 (W.D. Wash.
18 Dec. 23, 2025) (citing *Shadalo v. Mattos*, No. C25-2076, 2025 WL 3568234, at *6 (D.
19 Nev. Dec. 14, 2025); *Vishal v. Chestnut*, No. C25-1469, 2025 WL 3511815, at *3 (E.D.
20 Cal. Dec. 8, 2025); *Gomez v. Mattos*, No. C25-975, 2025 WL 3101994, at *5 (D. Nev.
21 Nov. 6, 2025); *Hmung v. Bondi*, No. C-25-1303, 2025 WL 3657221, at *3 (W.D. Okla.
22 Dec. 9, 2025), *report and recommendation adopted*, 2025 WL 3670499 (Dec. 17,
23 2025); *Sukhyani v. Bondi et al.*, Case No. C-25-1243 (W.D. Okla. Nov. 18,
24 2025), *report and recommendation adopted*, 2025 WL 3283274 (Nov. 25, 2025); *Trejo*
25 *v. Warden of ERO El Paso East Mont.*, No. C25-401, 2025 WL 2992187, at *5 (W.D.
26 Tex. Oct. 24, 2025); *Misirbekov v. Venegas*, No. C25-168, 2025 WL 2450991, *1 (S.D.

1 Tex. Aug. 15, 2025). *See also Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir.
2 2006) (recognizing that a grant of withholding of removal under the Convention
3 Against Torture to a noncitizen “is a powerful indication of the improbability of his
4 foreseeable removal, by any objective measure”); *Cruz Medina v. Noem*, No. 25-CV-
5 1768-ABA, 2025 WL 2841488, at *4 (D. Md. Oct. 7, 2025) (“There is no evidence in
6 the record that [third country] Mexico has agreed to accept Petitioner...so substantial
7 questions remain about whether there is a substantial likelihood of Petitioner’s removal
8 in the reasonably foreseeable future...”). Indeed, the fact that Respondents have not
9 identified any potential country of removal in the eight months since Mr. Temahagari’s
10 removal order creates, at a minimum, “good reason” to doubt that removal will happen
11 in the reasonably foreseeable future.

12 Because Mr. Temahagari has met his initial burden, the burden shifts to the
13 government. *See Khim v. Bondi, et al.*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at
14 *3 (W.D. Wash. Dec. 17, 2025) (“Mr. Khim’s burden is to ‘offer a valid reason why
15 removal is unforeseeable, which the *government* must then *disprove.*”) (quoting *Cesar*
16 *v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008) (emphasis in original)). But
17 respondents’ filing makes no effort to show that Mr. Temahagari’s removal is
18 “significantly likely” in the reasonably foreseeable future. Mr. Temahagari therefore
19 must be released on appropriate conditions. *Zadvydas*, 533 U.S. at 701.

20 **C. D.V.D. does not preclude injunctive relief here.**

21 *D.V.D. v. DHS*, 778 F.Supp.3d 355 (D. Mass. 2025) does not prevent this Court
22 from ordering protection against unconstitutional removal for at least three reasons.
23 First, as Judge Cartwright explained in *Nguyen v. Scott*, 796 F.Supp.3d 703, 731 (W. D.
24 Wash. August 21, 2025), the Supreme Court in *D.V.D.* provided no reasoning for its
25 entry of the stay and did not indicate whether it came to that determination based on the
26 merits or the procedural posture of the case. *Id.* (citing *Merrill v. Milligan*, -- U.S. __,

1 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring)) (“The Court’s stay order is not
2 a decision on the merits.”); *see also Cruz-Medina v. Noem*, -- F.Supp.3d --, 2025 WL
3 2841488 (D. Md. Oct. 7, 2025) (rejecting government’s argument that the stay order in
4 *D.V.D.* means that petitioner cannot prevail, stating “[a]ll this Court can do is apply
5 existing precedent and due process standards, and, under those standards, the Court can
6 discern no rational basis for stripping Mr. Cruz Medina of the opportunity to appear
7 before an immigration judge”); *Santamaria Orellana v. Maker*, No. 25-1788-TDC,
8 2025 WL 2841886 (D. Maryland Oct. 7, 2025) (citing to *Nguyen*, 796 F.Supp.3d at
9 703) (“This Court agrees that based on the presently available guidance from the
10 Supreme Court, there is an insufficient basis upon which to reach a conclusion on
11 which aspects of *D.V.D.* the Supreme Court has rejected, whether they relate to the
12 class certification, the due process claim, or otherwise.”).

13 Second, the *D.V.D.* litigation concerned an earlier version of the ICE guidance,
14 and a primary argument made by the government to the Supreme Court was an
15 objection based on the nationwide scale of the injunction rather than its merits. *See*
16 Gov’t Application for a Stay, *D.H.S. v. D.V.D.*, No. 24A1153 (May 27, 2025), at 19¹
17 (“First, under 8 U.S.C. 1252(f)(1), lower federal courts lack jurisdiction to issue
18 *classwide injunctions* that restrain the operation of third-country removals pursuant to 8
19 U.S.C. 1231(b)”) (emphasis added). In other words, it is likely that the unreasoned
20 Supreme Court order was not forbidding injunctive relief to Mr. Temahagari because he
21 is one of many people who has no right to relief, but rather forbidding *mass* relief
22 because Mr. Temahagari and others should have proceeded individually in cases just
23 like this one. *See Nguyen*, 2025 WL 2419288, at *21. *See also Sagastizado v. Noem*,
24 No. 5:25-CV-00104, – F.3d --, 2025 WL 2957002, *13 (S.D. Tex. Octo. 2, 2025)

25
26 ¹https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf [<https://perma.cc/8NTN-TQ5D>]

1 (“Notably, the class-wide nature of the *D.V.D.* injunction alone could have justified the
2 stay, and that justification would not undermine the merits of an individual claim for
3 relief.”).

4 Finally, the *Nguyen* court made clear that ICE’s current policy “contravenes
5 Ninth Circuit law,” rendering it “impossible to comply both with Ninth Circuit
6 precedent and the policy.” 796 F.Supp.3d at 729. The court explained that under Ninth
7 Circuit precedent, “[f]ailing to notify individuals who are subject to deportation that
8 they have the right to apply . . . for withholding of deportation to the country to which
9 they will be deported violates both INS regulations and the constitutional right to due
10 process.” *Id.* at *728 (citing to *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999)
11 (in turn citing *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998))). Applying this
12 binding precedent, the court concluded that “Petitioner is likely to succeed on his claim
13 that removal to a third country under ICE’s current policy, without meaningful notice
14 and reopening of his removal proceedings for a hearing, would violate due process.”
15 *Nguyen*, 796 F.Supp.3d at 729-30. And in *Baltodano*, this Court citing to the court’s
16 reasoning in *Nguyen*, concluded that “petitioner is likely to succeed on the merits of his
17 claim that he is entitled to ‘legally required multistep procedures set out in 8 U.S.C.
18 § 1231(b) and required by due process’ before ICE can remove him to a third country.”
19 2025 WL 2987766, at *3.

20 **D. Secretary Noem’s internal guidance has no legal force and is**
21 **inconsistent with similar statutes.**

22 Respondents next argue that a non-citizen’s due process rights are coextensive
23 with the procedures set forth in Secretary Noem’s “guidance” on how to effect third-
24 country removals. Dkt. 12 at 16. But Secretary Noem’s memorandum does not have the
25 force of law. Her “guidance” was promulgated without notice and comment and the
26 procedures it describes have never been approved by Congress. While Courts have

1 sometimes deferred to an agency’s persuasive interpretation of a statute, *see Loper*
2 *Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), Secretary Noem’s “policy”
3 memorandum does not purport to interpret any statute, and thus is not due any
4 deference.

5 In fact, in important respects, Secretary Noem’s memorandum conflicts with
6 existing law. For instance, the memorandum provides that a detainee who expresses
7 fear of removal to a third country will not receive a hearing before an immigration
8 judge unless they first prove they would “more likely than not be persecuted on a
9 statutorily protected ground or tortured in the country of removal.” *See* Dkt 12 at 5. The
10 detained person is expected to meet that standard on a shortened time frame, without
11 either guaranteed access to counsel or a meaningful opportunity to provide
12 corroborating evidence. *Id.* But the relevant regulations require much less. Title 8
13 C.F.R. § 208.31, for example, provides that a person with a final removal order who
14 expresses fear of return need only show a “reasonable possibility” of persecution or
15 torture. And the law that applies in expedited removal proceedings—which
16 Respondents describe as “most analogous,” Dkt 12 at 15—impose an even lower
17 burden. *See* 8 U.S.C. §1225(b)(the term “credible fear of persecution” means that there
18 is a significant possibility...that the alien could establish eligibility for asylum”)
19 (emphasis added); 8 C.F.R. § 208.30 (same standard). *See also Kiakombua v. Wolf*, 498
20 F. Supp. 3d 1, 11 (D.D.C. 2020)(Jackson, J) (“credible fear” is a low standard that does
21 not require the applicant to produce evidence at all, and does not require testimony on
22 every element of the potential claim).²

23 _____
24 ² Respondent’s brief states that “Congress treat[s] all aliens who have not been
25 admitted—including unlawful entrants who evade detection for years—as “applicants
26 for admission.” Dkt 12 at 17 (citing 8 U.S.C. § 1225(b)). But, again, respondents rely
on a minority interpretation of caselaw and ignore relevant context. Multiple courts,
reflecting decades of practice, have held that Congress provided greater protections for
people who have entered and live in the United States, even when their initial entry was

1 **E. Due process requires notice and an opportunity to present a case in**
2 **reopened proceedings.**

3 Respondents argue that due process is satisfied because Mr. Temahagari “may
4 voice fears as to any potential countries of removal and may move to reopen past
5 proceedings as new fears arise.” Dkt. 12 at 13. Respondents claim that he “has already
6 successfully obtained protection from removal to his home country of Afghanistan in
7 withholding-only proceedings before an Immigration Judge.” *Id.* That is, of course,
8 incorrect. Mr. Temahagari has obtained deferral of removal to the DRC, not
9 Withholding of Removal to Afghanistan.

10 Many courts disagree with Respondents’ Constitutional analysis. *See, e.g.,*
11 *Nguyen*, 796 F.Supp.3d 703, 722 (W.D. Wash. Aug. 21, 2025) (finding petitioner was
12 “likely to succeed on his claim that removal to a third country under ICE’s current
13 policy, without meaningful notice and reopening of his removal proceedings for a
14 hearing, would violate due process”); *J.R. v. Bostock*, 796 F.Supp.3d 684, 686 (W.D.
15 Wash. June 30, 2025) (finding the first *Winter* factor met where petitioner raised serious
16 questions as to whether his due process rights were violated by the Government’s
17 attempt at third-country removal without adequate notice as to which country petitioner
18 might be removed to); *Phetsadakone v. Scott*, No. 2:25-CV-01678-JNW, 2025 WL
19 2579569, at *4 (W.D. Wash. Sept. 5, 2025); *Phaymany v. Northwest Immigration and*

20 _____
21 unlawful. *See, e.g. Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --
22 - F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (Explaining that
23 entrants at the border are subject to mandatory detention, where people who entered
24 without inspection are not; Entering declaratory relief.); *Rodriguez Vasquez v. Bostock,*
25 *et al.*, 25-cv-05240-TMC --- F. Supp. 3d ----, 2025 WL 2782499 (W.D. Wash. Sept. 30,
26 2025) (Holding that Congress distinguishes between entrants and people stopped
entering at the border). Respondent’s reliance on *Nishimura Ekiu v. United States*, 142
U.S. 651, 660 (1892) is misplaced for the same reason. *See* Dkt. 12 at 18. The
remainder of the paragraph containing Respondents’ citation makes clear that the rule
Respondents urge applies to people seeking admission from outside the United States,
not people like Mr. Temahagari who have resided here.

1 *Customs Enforcement Processing Center*, 2:25-cv-00854-RAJ-MLP (W.D. Wash. Sept.
2 25, 2025); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019) (“a
3 noncitizen must be given sufficient notice of a country of deportation that, given his
4 capacities and circumstances, he would have a reasonable opportunity to raise and
5 pursue his claim for withholding of deportation.”). Most recently, Judge Lasnik held
6 that “giving petitioner an opportunity to file a motion to reopen [his removal
7 proceedings]...is not an adequate substitute for the process that is due process in these
8 circumstances. Rather, a petitioner must be able to pursue his claim for withholding of
9 deportation in reopened removal proceedings before an immigration judge.” *Baltodano*
10 *v. Bondi*, No. C25-1958RSL, 2025 WL 3484769, at *6 (W.D. Wash. Dec. 4, 2025)
11 (internal quotations omitted).

12 Mr. Temahagari respectfully asks the Court to adopt these Courts’ reasoning and
13 reject Respondents’ efforts to diminish his Due Process rights.

14 **F. The Government is punitively deporting people to places it knows**
15 **they will be tortured or mistreated.**

16 Respondents’ brief does not deny that respondents punitively deport people to
17 third countries. *See* Dkt 12 at 18. Rather, they ask the Court not to enjoin the practice
18 with respect to Mr. Temahagari because there is no evidence that Respondents have
19 (yet) tried to punitively banish *him*. *Id.* (The “Court may not assume that the
20 Government is operating out of bad motives, nor may it impute these motives to Federal
21 Respondents here based on media accounts of how that authority may have been
22 applied in other cases.”). Respondents locate no authority for this limitation on the
23 Court’s ability to consider evidence.

24 Respondents are incorrect. First, even if respondents are entitled to a
25 “presumption of regularity,” which Mr. Temahagari does not concede, that
26 “presumption is not to shield [respondents’] action from a thorough, probing, in-depth

1 review.” *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415 (1971),
2 *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977). Any
3 “presumption of regularity” does *not* prevent this Court from considering how
4 respondents have used its third-country removal authority in other cases.

5 Second, the evidence in Mr. Temahagari’s petition plainly shows a practice of
6 punitive banishment, which respondents do not deny. *See* Dkt 1 at 12. *See also Abrego*
7 *Garcia v. Noem, et al.*, 8:25-cv-02780-PX, dkt. 110 (D. Md. December 11, 2025).
8 Courts have considered this pattern when issuing injunctive relief to protect the rights
9 of others potentially vulnerable to this unconstitutional practice. *See Khim v. Bondi, et*
10 *al.*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at *5 (W.D. Wash. Dec. 17, 2025)
11 (The Court “finds that the government is intentionally removing noncitizens to
12 countries with which they have no connection, often in contravention of the governing
13 statute and regulations, and knowing that they will be subject to imprisonment or other
14 punishment. Deportation with the intent to punish is punitive and violates the Due
15 Process Clause.”). Mr. Temahagari respectfully asks the Court to do the same.

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1 **II. CONCLUSION**

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

11 DATED this 26th day of December 2025.

12 Respectfully submitted,

13 *s/ Gregory Murphy*
14 Assistant Federal Public Defender
15 Attorney for Rubin Temahagari
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