CHIEF JUDGE DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TAHA YUKSEK, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	No. CV25-02555-DGE TAHA YUKSEK'S REPLY TO RESPONDENTS' RETURN MEMORANDUM

I. INTRODUCTION

Petitioner Taha Yuksek 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 make no effort to dispute that the "presumptively reasonable" six-month period of detention has expired or that his continued detention is unlawful under *Zadvydas v. Davis,* 533 U.S. 678, 701 (2001). Respondents likewise make no claim in their Return Memorandum that Mr. Yuksek's removal to a third country is reasonably foreseeable. Respondents simply submit the declaration of ICE Deportation Officer Gabriel Arambula, whose statements are vague, conclusory, and speculative.

Respondents' primary 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 barring Mr. Yuksek's removal to a third country without due process—is also

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unpersuasive.[1] Respondents argue that Mr. Yuksek is bound as a member of the class of individuals governed by the *D.V.D.* nationwide preliminary injunction. Dkt. 11 at 10.

In part because the Supreme Court stayed the nationwide preliminary injunction with no discussion of the merits, this same argument was rejected by another court in this district in granting a TRO. *Nguyen v. Scott*, 796 F.3d 703, 732-35 (W.D. Wash. Aug. 21, 2025). It was also rejected in *Abubaka v. Bondi, et al.*, No. CV25-01889-RSL, 2025 WL 3204369, at *2-3 (W.D. Wash. Nov. 17, 2025). Recently, following the reasoning in *Nguyen,* the court granted a TRO prohibiting the government from removing a petitioner to a third country without notice and a meaningful opportunity to respond, contrary to the same arguments presented here. *See Baltodano v. Bondi, et al.*, No. CV25-1958-RSL, 2025 WL 2987766, at *20–21 (W.D. Wash. Oct. 23, 2025) (citing *Nguyen* and finding "petitioner is likely to succeed on merits of his claim that he is entitled to 'legally required multistep procedures set out in 8 U.S.C. § 1231(b) and required due process' before ICE can remove him to a third country").

II. ARGUMENT

A. Mr. Yuksek's continued detention is unlawful under *Zadvydas.*

The Respondents do not dispute that Mr. Yuksek has met his burden to show a good reason to believe that "there is no significant likelihood of removal in the reasonably foreseeable future." *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1077 (9th

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[1] The district court in *D.V.D.* granted a preliminary injunction that established 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 treaty before removal. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. 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).

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Cir. 2006); *see also Zadvydas*, 553 U.S. at 701 (After the presumptively reasonable period of detention of six months, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing."). Mr. Yuksek's final removal order was issued on May 28, 2025, more than six months ago. Dkt. 12 at ¶ 10.

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

Officer Arambula asserts, without elaboration, "ERO HQ is tracking this case for third country removal and was instructed to continue pursuing third country removal" and that "ERO Tacoma sent the consulates of Costa Rica, Panama, and Australia a Request for Acceptance of Alien." Dkt. 12 at ¶¶ 13–14. But nothing in the declaration states "who" in ERO made that request for acceptance, the basis on which it was made, or whether ICE even received a response from any of those countries.

Zadvydas rejected the government's insistence that courts should accept the government's belief about whether removal was "significantly likely in the reasonably foreseeable future" unquestioningly. 533 U.S. at 701 ("The Government seems to argue that . . . a federal habeas court would have to accept the Government's view about whether the implicit statutory limitation is satisfied in a particular case, conducting little or no independent review of the matter. In our view, that is not so."). Indeed, the Court admonished district courts not to "abdicat[e] their legal responsibility to review the lawfulness of an alien's continued detention." *Id.* Courts exercising that "legal responsibility" should consider whether the government has credibly explained the delay. *See Lema v. U.S. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002) ("The

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continuing failure of a destination country to respond to a request for travel documents may provide the Court with 'good reason to believe' that deportation is not [significantly] likely in the reasonably foreseeable future . . . where the destination country's lack of response is combined with the INS' inability to explain the silence and the absence of any indication that the situation may change."). This Court should consider that the government's response fails to show that there is a "significant likelihood of [Mr. Yuksek's] removal in the reasonably foreseeable future." Dkt. 10 at 3. *See Singh v. Whitaker*, 362 F. Supp. 3d 93, 101–02 (W.D.N.Y. 2019) ("[I]f DHS has no idea of when it might reasonably expect Singh to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future.") (internal citations omitted).

B. Due Process precludes Mr. Yuksek's removal to a third country without adequate notice and an opportunity to be heard.

Respondents argue that this Court may not issue the relief sought by Mr. Yuksek on his due process claim because he is a member of the plaintiff class bound by the Supreme Court's stay in *D.V.D. v. Dep't of Homeland Sec.*, *supra*. Dkt. 11 at 9–11. This argument similarly has been rejected by the court in *Baltodano v. Bondi, et al.*, No. CV25-1958-RSL, 2025 WL 2987766, at *2 (W.D. Wash. Oct. 23, 2025).

As the court explained in *Nguyen*, the Supreme Court in *D.V.D.* provided no reasoning for its entry of the stay and whether it came to that determination based on the merits or the procedural posture of the case. *See Nguyen*, 796 F. Supp. 3d 703, 731 (W.D. Wash. 2025) (citing *Merrill v. Milligan*, -- U.S. __, 142 S. Ct. 879, 879 (2022)) (Kavanaugh, J., concurring) ("The Court's stay order is not a decision on the merits."); *see also Cruz-Medina v. Noem*, -- F.Supp.3d --, 2025 WL 2841488 (D. Md. Oct. 7, 2025) (rejecting government's argument that the stay order in *D.V.D.* means that petitioner cannot prevail, stating "[a]ll this Court can do is apply existing precedent and

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due process standards, and, under those standards, the Court can discern no rational basis for stripping Mr. Cruz Medina of the opportunity to appear before an immigration judge . . . ."); *Santamaria Orellana v. Maker*, No. 25-1788-TDC, 2025 WL 2841886 (D. Maryland Oct. 7, 2025) (citing to *Nguyen*, 2025 WL 2419288, at *22) ("This Court agrees that based on the presently available guidance from the Supreme Court, there is an insufficient basis upon which to reach a conclusion on which aspects of *D.V.D.* the Supreme Court has rejected, whether they relate to the class certification, the due process claim, or otherwise.").

The *D.V.D.* litigation concerned an earlier version of the ICE guidance, and a primary argument made by the government to the Supreme Court was an objection based on the nationwide scale of the injunction rather than its merits. *See* Gov't Application for a Stay, *D.H.S. v. D.V.D.*, No. 24A1153 (May 27, 2025), at 19, https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf [https://perma.cc/8NTN-TQ5D] ("First, under 8 U.S.C. 1252(f)(1), lower federal courts lack jurisdiction to issue *classwide injunctions* that restrain the operation of third-country removals pursuant to 8 U.S.C. 1231(b)") (emphasis added). In other words, it is likely that the unreasoned Supreme Court order was not forbidding injunctive relief to Mr. Yuksek because he is one of many people who has no right to relief, but rather forbidding *mass* relief because Mr. Yuksek and others should have proceeded individually in cases just like this one. *See Nguyen*, 796 F. Supp. 3d 703, 732 (W.D. Wash. 2025). *See also Sagastizado v. Noem*, No. CV25-00104, -- F.3d --, 2025 WL 2957002, *13 (S.D. Tex. Octo. 2, 2025) ("Notably, the class-wide nature of the *D.V.D.* injunction alone could have justified the stay, and that justification would not undermine the merits of an individual claim for relief.").

Finally, as to the substantive question, the *Nguyen* court made clear that ICE's current policy "contravenes Ninth Circuit law," rendering it "impossible to comply both

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

C. Mr. Yuksek has demonstrated the Respondents' third-country removal policy is punitive and unconstitutional.

Respondents' argument is directly solely to Mr. Yuksek's claim that the third-party removal policies are punitive. Dkt. 11 at 11.

The Respondents' first claim is that the punitive arguments "rest entirely" on the asserted absence of notice and opportunity to be heard. *Id.* This is incorrect. In his petition, Mr. Yuksek also alleged the third-party removal policies amounted to punishment. Dkt. 1 at 17. The petition alleges the Respondents "selected countries notorious for human rights abuses and instability for third-country removal arrangements." *Id.*

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[2] Although the government does not set forth the policy, this Court discussed ICE's 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.

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The Respondents next argue that insufficient facts have been alleged to meet a facial or as-applied challenge, arguing, "[h]e does not allege which country he would be removed to, which harm he personally faces, or any circumstances that would make removal punitive in his case." Dkt. 11 at 11. However, in the petition, Mr. Yuksek alleged, in part, that "Panama[3] and Costa Rica[4] took in hundreds of deportees . . . and imprisoned them in hotels, a jungle camp and a detention center." Dkt. 1 at 12. Notably, the Respondents acknowledge that Costa Rica and Panama are two possible destinations to which the Respondents intend to deport Mr. Yuksek. Dkt. 12 at ¶14. If removed to these countries, Mr. Yuksek would likely be subjected to the punitive conditions outlined in the petition.

Courts in this district have found that Respondents' practice and policy of third-country removal are both intended to be punitive and are in fact punitive, thus violating due process. *See Abubaka v. Bondi, et al.*, No. CV25-01889-RSL, 2025 WL 3204369, at *7-8 (W.D. Wash. Nov. 17, 2025); *Nguyen*, 796 F.3d at 732-35. In each of these cases, the district court ordered Respondents not to remove the petitioner to any third country where he is likely to face imprisonment upon arrival. *Id.*

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[3] In Panama, immigrants are forced to choose between repatriation to their country of origin or detention under conditions that has "sparked backlash from human rights organizations." Castano, Danielle, *The U.S.'s Illegal Migrant Deportations to Panama*, Human Rights Research Center (June 5, 2025), https://www.humanrightsresearch.org/post/the-u-s-s-illegal-migrant-deportations-to-panama [https://perma.cc/7JPL-3YXS]. In this case, even ICE agrees that Mr. Yuksek would likely face persecution if returned to Turkey.

[4] According to multiple human rights organizations, migrants expelled to Costa Rica face conditions that constitute human rights violations. *Costa Rica: New report exposes human rights violations against migrants expelled from the U.S. and warns: "This cannot happen again."*, Centro Por La Justicia y El Derecho International (May 22, 2025), https://cejil.org/en/press-releases/costa-rica-new-report-exposes-human-rights-violations-against-migrants-expelled-from-the-u-s-and-warns-this-cannot-happen-again/ [https://perma.cc/E8C7-72G2].

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III. CONCLUSION

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

DATED this 31st day of December 2025.

Respectfully submitted,

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