HONORABLE KIMBERLY K EVANSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE OLEA SANCHEZ, Petitioner, v. PAMELA BONDI, Attorney General of the United States, et al., Respondents.	No. CV25-2573-KKE RESPONSE TO RESPONDENT'S RETURN

I. INTRODUCTION

Petitioner Jose Olea Sanchez presents this Response to Respondents' Return. In summary, a final order of removal was entered by an immigration judge on August 23, 2019. Mr. Olea Sanchez has remained continuously in ICE custody since March 13, 2025. While this length of time would appear to exceed the presumptively reasonable time to bring about a noncitizen's removal, Respondents claim ICE is now prepared to remove Mr. Olea Sanchez to Mexico. However, according to the declaration of deportation officer Delano Dumo, it remains unclear as to whether Mexico would ultimately accept Petitioner given his repeated refusals to sign the notice of intent to remove him to Mexico.

Furthermore, Respondents acknowledge that third-country removal "has not been executed at this time because Petitioner has been diagnosed with a serious mental disorder." Based on these representations, the record is clear that continuing Petitioner's detention would violate *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), as there is no

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evidence that Mexico would accept a non-Mexican who is unwilling to be removed to that country.

Furthermore, there is no evidence in the record that Mr. Olea Sanchez was afforded a reasonable fear interview with U.S. Citizenship and Immigration Services. As acknowledged by Respondent, the government "is prohibited from removing a person to a third country where they may be persecuted or tortured, a form of protection known as withholding of removal." Dkt. 10 at 4, citing 8 U.S.C. § 1231(b)(3)(A) and 8 C.F.R. §§ 208.16, 1208.16. Respondents also acknowledge that removal to a third country is prohibited if such removal would violate the Convention Against Torture. *Id.* at 5. Here, Mr. Olea Sanchez has refused to accept Mexico as a third country, and the record is devoid of any evidence that removal to Mexico for Mr. Olea Sanchez would comply with the Convention Against Torture in addition to 8 U.S.C. § 1231(b)(3)(A) and 8 C.F.R. §§ 208.16, 1208.16.

Relatedly, the DHS memorandum that Respondents cite to address protections concerning third-country removals is insufficient since DHS's standard of proof for relief is more onerous than what the United States Code and the Code of Federal Regulations require, as discussed in more detail below.

Next, Respondents argue that Petitioner should be required to seek relief as a plaintiff class member in *D.V.D v. Dep't of Homeland Sec.*, 2025 WL 942948 (D. Mass. Mar. 28, 2025). However, this argument has been repeatedly rejected by courts in this district, as explained in further detail below.

Finally, Respondents argue that Petitioner's "banishment" argument relates to his due process challenge and therefore does not demonstrate that the policy is unconstitutional. However, as discussed further below, removal to a third country does not guarantee that the third country will indeed be Petitioner's final destination. For example, removal to Mexico may not necessarily prevent Mexico from then removing

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Petitioner to a different country, and so on. As many courts have already held, these arguments are unavailing and habeas relief is merited.

Accordingly, with Cuba not cooperating with the removal process, failure to grant habeas corpus would amount to unconstitutional indefinite detention.

II. REPLY ARGUMENT

A. There is no dispute that the presumptively reasonable period for detention has expired.

There appears to be no dispute from Respondents that Mr. Olea Sanchez's current detention exceeds the six-month presumptive period set forth in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). *Zadvydas* made clear: "After this 6-month period, once the [noncitizen] 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." *Id.* at 690. If the Government fails to rebut the noncitizen's showing, the noncitizen petitioner is entitled to habeas relief. *See also Hieu Tri Nguyen v. Bondi*, No. 2:25-cv-02024-TL, 2025 WL 3534168, at *4 (W.D. Wash. Dec. 10, 2025). Mr. Olea Sanchez has met his burden where more than six months have elapsed since the entry of the removal order. Now the burden shifts to Respondents to show that removal is likely in the reasonably foreseeable future. Respondents have failed to meet this burden.

B. Respondents have failed to meet the burden that Mr. Olea Sanchez will be removed to Cuba in the reasonably foreseeable future.

The final order of removal was entered August 23, 2019. Respondents have failed to remove Mr. Olea Sanchez to Cuba because Cuba will not cooperate with the removal process. In fact, Mr. Olea Sanchez has been in the continuous custody of ICE since March 13, 2025, because Cuba will not accept him.

As noted in the record, ICE has attempted to remove Mr. Olea Sanchez to Mexico. However, Mr. Olea Sanchez is unwilling to be removed to Mexico. As a result,

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Respondents acknowledge there is no time frame as to when Petitioner would be removed. To complicate the process, Respondents acknowledge that Petitioner has a "serious mental disorder," and accordingly safeguards must be met for the safe release of any individual with a serious mental disorder. Nevertheless, Respondents claim to be "lawfully pursing" Petitioner's removal to "third countries" without confirming that Petitioner has been afforded any opportunity to seek asylum, or withholding of removal relief, or relief under the Convention Against Torture *before* initiating the removal process. In fact, there is nothing in the record showing that Mr. Olea Sanchez has participated in any fear of persecution interview with USCIS.

Mr. Olea Sanchez submitted an exhibit supporting the claim that Mexico will likely not accept him since he is not a Mexican national *and* because he is unwilling to be removed to Mexico. In response, Respondents provide no information that Petitioner's representations about Mexico, and its policy to only accept those who do not refuse, is in any way inaccurate.

Furthermore, Respondents assert that the DHS protocol for third-country removal is to first conduct "a reasonable fear interview, to screen that person for protection against removal to that country." Dkt. 10 at 8. Respondents' return indicates that the standard for relief is "whether the individual would more likely than not be persecuted or tortured in the country of removal." *Id.* Setting aside that Petitioner has yet to participate in any such interview, the fact remains that the "more likely than not" standard for relief is not the correct standard. The correct standard to be applied at a credible fear interview is whether Petitioner can present a reasonable fear of persecution, which is only a screening stage before an immigration judge makes the final, preponderance-based determination of withholding or deferral of removal. *See* Congressional Research Service, *Credible Fear and Defensive Asylum Processes: Frequently Asked Questions*, at 12, https://www.congress.gov/crs-

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product/R48078#ifn91 (Sept. 25, 2024) (citing DHS, USCIS, *Asylum Division Officer Training Course: Reasonable Fear of Persecution and Torture Determinations* (Feb. 13, 2017), https://www.uscis.gov/sites/default/files/document/lesson-plans/Reasonable_Fear_Asylum_Lesson_Plan.pdf; 8 C.F.R. §208.31(c)) ("In expedited removal proceedings, a person must show a 'significant possibility' of establishing eligibility for asylum, withholding of removal, or CAT protection. To establish reasonable fear in reinstated removal proceedings, [a noncitizen] must show a 'reasonable possibility' that he or she would be persecuted or tortured in the country of removal."). These are more forgiving and less stringent standards than what is represented in Respondents' return requiring that Petitioner establish it is "more likely than not" he would be persecuted or tortured, which is a standard that applies when seeking ultimate relief under the Convention Against Torture before an immigration judge. *See* 8 C.F.R. § 208.16(c)(2). Accordingly, the record fails to support that Respondents have complied with existing law when attempting to remove a noncitizen to a third country.

Finally, as mentioned above, Respondents have failed to show that Mexico will nevertheless accept non-Mexicans who continue to refuse Mexico as a designated country. The evidence of Mexico's acceptance policy casts doubt on Respondents' ability to remove Petitioner to Mexico in the reasonably foreseeable future, especially when Respondents fail to explain why they believe Mexico will accept Mr. Olea Sanchez. *See Arenado v. Bondi*, No. CV25-2193-JNW, Dkt. 16 at 10 (W.D. Wash. Dec. 19, 2025).

Accordingly, Respondents have failed to meet their burden. *See, e.g.*, *Nguyen v. Scott*, 796 F.Supp.3d 703, 722–23, 726 (W.D. Wash. 2025) (finding respondents failed to meet their burden where they have "not provided any evidence of Vietnam's eligibility criteria or why it believes Petitioner now meets it" after refusing to accept

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him for 20 years); *Hambarsonpour v. Bondi*, No. C25-1802-RSM, 2025 WL 3251155, at *3 (W.D. Wash. Nov. 21, 2025) (finding government failed to meet its burden where government asserted ICE had received assurances from French Consulate that a travel document would be issued but provided "no evidence or substantive indication regarding how or when it expects to obtain the necessary travel document from the [French] government."); *Abubaka v. Bondi*, No. C25-1889-RSL, 2025 WL 3204369, at *5 (W.D. Wash. Nov. 17, 2025) (finding government failed to meet burden where government provided no evidence of Vietnam's eligibility criteria or why Petitioner now meets it"); *Pena-Gil v. Lyons*, 2025 WL 3268333, at *4 (D. Colo. Nov. 24, 2025) ("Unsubstantiated assertions that the government will pursue removal are insufficient to satisfy its burden."). *See also Arenado-Borges v. Bondi*, No. CV25-2193-JNW, 2025 WL 3687518, slip copy at 10 (W.D. Wash. Dec. 19, 2025) (government's representation that Cuban petitioner will be removed to Mexico where petitioner refuses Mexico is insufficient to satisfy standard of reasonable foreseeability).

C. Respondents must follow the law governing third-country removal.

Respondents argue that Petitioner should seek relief as a member of the Plaintiff Class in *D.V.D. v. Dep't of Homeland Sec.* and is bound by the proceedings in that case. However, this argument has been rejected in this district. Most recently, the opinion in *Arenado-Borges* pointed out that "numerous courts have rejected the Government's argument, concluding that the Supreme Court's unexplained emergency-docket decision in *D.V.D.* warrants no precedential weight." *Arenado-Borges*, slip copy at 12. The Court in *Arenado-Borges* agreed with the other courts that have examined the issue that the Supreme Court's emergency stay of the *D.V.D.* injunction is neither binding nor persuasive, as it provides no reasoning and is thus too vague to apply here. *Id.*

Additionally, Mr. Olea Sanchez is entitled to seek individual relief in accordance with Ninth Circuit precedent. *Arenado-Borges*, slip copy at 13 (citing *Nguyen v. Scott*,

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796 F.Supp.3d 703, 732 (W.D. Wash. 2025) (holding whether the court may grant a nationwide injunction is immaterial to Arenado-Borges's requested, individualized relief). Here, Mr. Olea Sanchez's due process claims are not identical to the claims in the *D.V.D.* class action. For example, Mr. Olea Sanchez asserts that he must have a meaningful opportunity to seek withholding of removal to Mexico, a claim not addressed in *D.V.D.* Additionally, Mr. Olea Sanchez does not seek systemic relief but rather individual habeas relief. More important, if Respondents' arguments were accepted, Mr. Olea Sanchez would be unable to address his due process claims until the relevant class action resolved—potentially years from now. *Arenado-Borges,* slip copy at 14. Accordingly, the Supreme Court's emergency stay and the district court's class certification in *D.V.D.* should not bar habeas relief here.

Aside from *D.V.D.*, due process requires notice and an opportunity to be heard before Respondents can remove Mr. Olea Sanchez to a third country. Specifically, Petitioner must have an opportunity to apply for asylum, withholding of removal, or protection under the Convention Against Torture. *Arenado-Borges*, slip copy at 15. Title 8 U.S.C. § 1231(b)(3)(A) precludes ICE from removing a noncitizen to any country where their "life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." There is no evidence that this was followed in Mr. Olea Sanchez's case, particularly knowing that the legal standard at a screening interview is a showing of "reasonable fear" under the statute and not "more likely than not" as stated in the DHS memorandum. There is also no evidence in the record that Mr. Olea Sanchez was given an opportunity to reopen removal proceedings before an immigration judge. *See Baltodano v. Bondi*, No. 25-cv-1958 RSL, 2025 WL 2987766, at *3, *4 (W.D. Wash. Oct. 23, 2025) (providing preliminary relief); *see also Arenado-Borges*, slip copy at 16 (simply allowing the petitioner to move to reopen immigration proceedings is not

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enough to satisfy due process—the government must actually reopen proceedings so that the petitioner has a fair and adequate opportunity to be heard).

D. Mr. Olea Sanchez is also constitutionally entitled to a hearing before being re-detained.

Respondents do not address Petitioner's claim that he is also constitutionally entitled to a hearing before being re-detained. Indeed, a court in this district has held that, "[b]ased on [its] review of the *Mathews* factors," a "Petitioner has a protected liberty interest in his continuing release from custody, and that due process requires that Petitioner receive proper notice and an opportunity to respond before he can be re-detained." *Jimenez v. Bondi*, No. C25-2167RSM, 2025 WL 3466925, at *2 (W.D. Wash. Dec. 3, 2025). The court granted the petition and ordered petitioner's immediate release, barring re-detention "without providing adequate notice of the reasons for his re-detention and a meaningful opportunity to respond." *Id.* at *3. Respondents do not address the court's decision nor the many others that arrived at the same conclusion. *See, e.g.*, *P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL 3294988, at *3 (W.D. Wash. Nov. 26, 2025); *Perez v. Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at *5 (M.D. Fla. Dec. 3, 2025); *S-M-J v. Bostock*, No. 6:25-CV-01425-MTK, 2025 WL 3137296, at *5 (D. Or. Nov. 10, 2025).

As argued above, Respondents have failed to show that Mr. Olea Sanchez will be removed to Cuba in the reasonably foreseeable future. Respondents have also failed to show that due process protections are being adhered to as they seek removal to a third country, specifically Mexico. Because Mr. Olea Sanchez was not given a hearing on whether removal was reasonably foreseeable before being re-detained, and because Respondents never reopened his immigration case to afford him the opportunity to seek asylum or withholding of removal to Mexico, he must be released and Respondents

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must be ordered to afford Petitioner the due process required prior to any third-country removal.

E. Multiple courts have also already found that Respondents' practice of third-country removal is intended to be punitive and thus violates due process.

Respondents argue that Mr. Olea Sanchez's "punitive banishment" claim does not demonstrate that the policy is unconstitutional. Dkt. 10 at 11. However, multiple courts have found that this practice is intended to be punitive and has punitive effects regardless of whether Respondents will succeed in punishing Petitioner in this manner. In other words, several courts have all held that Respondents' practice of third-party removal is intended to be punitive as a matter of policy and, accordingly, violates due process under *Wong Wing v. United States*, 163 U.S. 228, 236–38 (1896). *See Abubaka v. Bondi*, No. CV25-1889-RSL, 2025 WL 3204369, at *8 (W.D. Wash. Nov. 17, 2025); *Nguyen*, 796 F.Supp.3d at 739; *Hambarsonpour v. Bondi*, No. CV25-1802-RSM, 2025 WL 3251155, at *1, *4–*5 (W.D. Wash. Nov. 21, 2025); and *Baltodano*, 2025 WL 3484769, at *10.

These courts have particularly taken note of the descriptions of punitive treatment that deviate from Respondents' promises in individual cases before the court. *See, e.g.*, *Rivera-Trigueros v. Bondi*, No. 24-3764, 2025 WL 1189561, at *2 (9th Cir. Apr. 24, 2025) (finding individual had shown that, if detained in El Salvador, he would "confront a prison environment in which torture is pervasive" and that "the squalid conditions in Salvadoran prisons—which include extreme overcrowding, inadequate sanitation, and a lack of food—are deliberately inflicted by government officials as a form of punishment.") (citation omitted); *Abrego Garcia v. Noem*, 777 F.Supp.3d 501, 509 (D. Md. 2025) ("ICE forcibly transported Abrego Garcia to the Terrorism Confinement Center ('CECOT') in El Salvador, a notorious supermax prison known for widespread human rights violations."); *Department of Homeland Security v. D.V.D.*,

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145 S. Ct. 2153, 2154–55 (2025) (Sotomayor, J., dissenting) (describing deportation to Mexico of a gay man from Guatemala who had obtained withholding of removal to Guatemala under the Convention Against Torture; Mexico promptly forwarded him on to Guatemala, where he was forced into hiding); *D.A. v. Noem*, No. 25-CV-3135 (TSC), 2025 WL 2646888, at *1–*3) (D.D.C. Sept. 15, 2025) (describing punitive deportation to prison-like setting in Ghana). This Court should similarly recognize that ICE's third-country deportation policy is punitive as a matter of policy and therefore violates due process.

Furthermore, to the extent Respondents attempt to restrict their discussion of the punitive nature of third-country removal to Mexico, that country is not necessarily the final destination for any removals there as illustrated by Justice Sotomayor's dissent in *D.V.D. See DHS v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J., dissenting). For these reasons, this Court should hold that the third-party removal policy is punitive and in violation of Mr. Olea Sanchez's due process rights, and should permanently enjoin the removal of Mr. Olea Sanchez to any third country in which he is likely to face imprisonment or harm.

Finally, Respondents assert that Mr. Olea Sanchez has not demonstrated that he would personally face harm if removed to Mexico. Dkt. 10 at 11. However, Respondents point out that Mr. Olea Sanchez has been diagnosed with a serious mental disorder. This fact alone calls into question Petitioner's safety should he be removed to a third country where he has no ties and no resources available to address the diagnosed serious mental disorder.

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III. CONCLUSION

This Court should grant the habeas petition on all presented grounds.

DATED this 5th day of January 2026.

Respectfully submitted,

s/ *Jesse Cantor*
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I certify this response complies with the page limits specified in LCR 7(e)(3).

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