

THE HONORABLE TANA LIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VICTOR REA-HERNANDEZ,

Petitioner,

v.

PAMELA BONDI, Attorney General of
the United States; KRISTI NOEM,
Secretary, United States Department of
Homeland Security; LAURA
HERMOSILLO, Acting 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. CV25-02432-TL

REPLY TO RETURN

I. INTRODUCTION

The government's return in this case is indifferent to Mr. Rea-Hernandez's critically ill health, which undersigned counsel has learned includes HIV/AIDS and continuing symptoms related to a rare, very serious fungal meningitis that only severely immunocompromised people are likely to contract. *See* Weber Decl., Ex. 1 (medical report evaluating Mr. Rea-Hernandez's medical records, at Ex. 2). Respondents also insist that Mr. Rea-Hernandez's removal is reasonably foreseeable even though it has disclaimed any present effort to try to remove him to Mexico or Venezuela and no other country has agreed to accept him. Gov't Return, Dkt. 6 at 13. Petitioner has met his burden to show that he has been held for longer than the presumptively reasonable six

1 months, *see* Gov't Return, Dkt. 6 at 12 (stating that he has been detained since January
2 27, 2025), and that his removal is not reasonably foreseeable. Indeed, the government
3 admits that he may not be removed to his country of origin, Venezuela, and that it has
4 failed to persuade an extensive list¹ of third-country removal candidates—Mexico,
5 El Salvador, Panama, Costa Rica, the Philippines, United Kingdom, Australia, Chile,
6 Denmark, Mongolia, Netherlands, Peru, the United Arab Emirates, Belgium, Bolivia,
7 Kazakhstan, Canada, Switzerland, Thailand, Belize, France, Guyana, Papua New
8 Guinea, Portugal, and Qatar—to accept him given his lack of ties in any of those
9 countries. Gov't Return, Dkt. 6 at 13 (citing Correa Decl., Dkt. 7 at ¶¶ 12–21). With
10 these admissions, the government has shown that it cannot meet its burden under
11 *Zadvydas*, and Petitioner must be ordered released on bond, where he can receive
12 appropriate care for his HIV/AIDS diagnosis and continuing symptoms related to
13 meningitis in the community. *See* Ex. 1 at ¶¶ 11–13.

14 The Court should also enjoin third-country removal without the due process
15 guarantees ordered by this Court and other courts in the Ninth Circuit. As it attempts to
16 remove him to a random list of two dozen different countries, the government
17 forthrightly admits it has shifted the burden to Petitioner to research these countries and
18 claim fear of removal to a specified country, contrary to the law in this Circuit and
19 extremely inappropriate for a decision that may involve hard-to-research information
20 about medical infrastructure and HIV stigma.

21 Finally, the government's third-country removal program is unconstitutionally
22 punitive and it should be permanently enjoined. *See Baltodano v. Bondi*, No. CV25-
23 1958-RSL, 2025 WL 3484769, at *10 (W.D. Wash. Dec. 4, 2025) (“[T]his Court holds

24
25 ¹ This list is nearly verbatim the list that a different declarant provided in another case
26 before this Court, raising some questions about the veracity of the list and/or the
earnestness of the requests in this case. *Compare Elshourbagy v. Bondi*, Case No.
CV25-02432-TL, Dkt. 10 at ¶ 11.

1 that the Government’s practice of third-country removal paired with imprisonment is
2 intended to be punitive and thus violates due process under *Wong Wing* [*v. United*
3 *States*], 163 U.S. 228[,] 236–38 (1896), and *Zadvydas*, 533 U.S. [] at 693–94. . . .”).

4 The Court should grant Petitioner’s habeas petition on all four grounds.

5 **II. MR. REA-HERNANDEZ IS IN EXTREMELY ILL HEALTH AND HIS**
6 **NEED TO BE TREATED OUTSIDE A CARCERAL SETTING IS**
7 **URGENT.**

8 Undersigned counsel was not able to obtain Mr. Rea-Hernandez’s medical
9 records prior to filing his petition. After it was filed, his ill health came to the attention
10 of the University of Washington’s Center for Human Rights, *see*
11 <https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/>, which
12 is investigating conditions at the Northwest Immigrant Processing Center, *see*
13 [https://jsis.washington.edu/humanrights/projects/immigrant-rights-](https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/)
14 [observatory/conditions-at-the-northwest-detention-center/](https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/), and with the Center’s help,
15 Mr. Rea-Hernandez was able to obtain the assistance of the Medical Justice Alliance,
16 which provided an expert to analyze his records pro bono on a quick timeline.

17 The analysis of Dr. William Weber, MD, MPH, is attached as Exhibit 1. In short,
18 Mr. Rea-Hernandez is severely immunocompromised due to HIV, and his white blood
19 cell count upon being diagnosed was low enough that he qualified for an immediate
20 AIDS diagnosis. Ex. 1 at ¶ 5. While at the NWIPC, he contracted an extremely rare and
21 life-threatening fungal infection, cryptococcal meningitis, that typically only affects
22 severely immunocompromised people. *Id.* ¶ 7. NWIPC delayed for almost a day in
23 recognizing the severity of his symptoms, and Dr. Weber explains that “[f]or a patient
24 like Mr. Rea-Hernandez, even minor infections can quickly become life-threatening.
25 Gaps in care like this raise concerns that the detention setting cannot provide adequate
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1 monitoring and timely support for someone with his complex medical needs.” *Id.* ¶ 8.

2 Mr. Rea-Hernandez went into sepsis and required a monthlong hospitalization. *Id.* ¶ 7.

3 In the wake of his hospitalization, his health issues remain very serious. Because
4 NWIPC has not been providing consistent translation services in violation of ICE’s own
5 National Detention Standards, Mr. Rea-Hernandez may have had difficulty
6 understanding the reasons for his treatment and has been refusing medications. *Id.* at
7 ¶ 10. Furthermore, there are significant medical risks to Mr. Rea-Hernandez of both
8 continued detention and deportation. *Id.* at ¶ 11 (“Many infectious diseases that AIDS
9 patients are at risk of catching such as Methicillin-Resistant Staphylococcus aureus
10 (MRSA) are more common in carceral settings. This combination is uniquely
11 dangerous to Mr. Rea-Hernandez. Extended detention places him at significantly
12 increased risk of acquiring these infections.”); *id.* at ¶ 12 (“Travel, especially to
13 developing countries, can increase the risk of contracting opportunistic infections in
14 immuno-compromised patients with low white blood cell counts. In developing
15 countries, access to specific antiretroviral regimens and mental health medications may
16 be limited by systemic barriers including inconsistent medication supply (especially due
17 to foreign aid cuts that affected HIV medication supplies), lack of coverage for non-
18 citizens, limited specialty health services, and significant financial and logistical
19 obstacles. Removal could therefore place Mr. Rea-Hernandez at substantial risk due to
20 interruption of life-saving treatment.”).

21 While Mr. Rea-Hernandez’s tenuous state of health is not directly pertinent to
22 many of the legal issues that require his habeas petition to be granted, it underscores the
23 urgent need for relief in this case, as well as the severe consequences of the
24 government’s mass deportation efforts without regard to individual circumstances and
25 defiance of long-established Supreme Court precedent in *Zadvydas*. It also illustrates in
26

1 stark terms the punitive nature of the government’s third-country removal program as
2 applied to Mr. Rea-Hernandez.

3 **III. THE COURT SHOULD GRANT PETITIONER’S HABEAS PETITION**
4 **BY ORDERING HIM RELEASED ON BOND.**

5 Respondents offer almost no argument as to why Petitioner may be detained for
6 nearly a year even though they concede he may not be removed to Venezuela and no
7 third country has agreed to accept him. Gov’t Return, Dkt. 6 at 14–15. “Pursuing
8 removal,” *id.*, does not make it foreseeable under *Zadvydas*. *See, e.g., Tran v. Noem*,
9 No. 1:25-cv-01523-TLN-CKD, 2025 WL 3268491, at *3 (E.D. Cal. Nov. 24, 2025)
10 (assertion that government was “actively working on obtaining a travel document for
11 Petitioner to Vietnam” was insufficient to show removal was reasonably foreseeable);
12 *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *5 (E.D. Cal.
13 July 16, 2025) (“Respondents’ intent to complete a travel document request for
14 Petitioner does not make it significantly likely he will be removed in the foreseeable
15 future”); *Hambarsonpour v. Bondi*, No. CV25-1802-RSM, 2025 WL 3251155, at *2–*3
16 (W.D. Wash. Nov. 21, 2025) (holding that a government argument that it was “actively
17 working to effectuate his removal to France” was insufficient to render petitioner’s
18 removal reasonably foreseeable in the absence of travel documents).

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

1 Respondents misread *Diouf* to suggest removal is always reasonably foreseeable,
2 unless removal is impossible. Dkt. 6 at 15 (“Detention becomes indefinite in situations
3 where the country of removal refuses to accept the noncitizen or if removal is legally
4 barred,” citing to *Diouf*, 542 F. 3d at 1233). Of course, removal to Venezuela, the
5 country designated on his removal order, *is* legally barred for Mr. Rea-Hernandez, so
6 *Diouf* has little relevance here. *See* Dkt.1-1. Furthermore, Mexico is likely to refuse to
7 accept him because he does not want to be removed there, regardless of whether he is
8 ultimately able to obtain relief from an immigration judge following a credible fear
9 interview. *See* Dkt. 1-3; Dkt. 6 at 13. These are exactly the scenarios in which *Diouf*
10 suggested detention *would* become indefinite. *Cf. Diouf*, 542 F.3d at 1233 (emphasis
11 added) (“There is no evidence, *for example*, that Senegal would refuse to accept him, or
12 that his removal is barred by our own laws.”).

13 But in addition, *Diouf* did not say those were the only scenarios in which
14 detention could become indefinite. The holding involved a pending judicial review of
15 the removal order itself. The reason for *Diouf*’s prolonged detention, and the only
16 obstacle to his removal, was his own actions, including his pending petition before the
17 Ninth Circuit and the attendant stay order. *Id.* at 1233. *Diouf*’s detention was thus not
18 open-ended (or indefinite), since it would terminate upon his withdrawal of legal
19 challenges to the removal order or a decision by the Ninth Circuit. The import of *Diouf*,
20 therefore, is that a petitioner cannot obtain release under *Zadvydas* if the reason for his
21 detention is his own attempt to obtain review of the removal order. Since Mr. Rea-
22 Hernandez has no pending legal challenge to the removal order, *Diouf* has no
23 application here.²

24 _____
25 ² Courts in this district have rejected Respondents’ position regarding *Diouf* even in
26 closer cases. *See Ghasedi v. Wamsley*, No. CV25-01984-RSM-BAT, 2025 WL 3699705
(W.D. Wash. Dec. 1, 2025), *report and recommendation adopted*, 2025 WL 3697208
(W.D. Wash. Dec. 19, 2025); *Khim v. Bondi*, No. CV25-02383-RSL, 2025 WL

1 Even though the burden has shifted to Respondents to “respond with evidence
2 sufficient to rebut” Petitioner’s showing that there is no significant likelihood of
3 removal in the reasonably foreseeable future, *Zadvydas*, 533 U.S. at 701, they offer
4 nothing in response. The Return provides no evidence that travel documents have been
5 obtained for any of the seemingly random countries it has selected for Petitioner’s
6 removal. Indeed, it admits that only five of the 25 countries it has asked even responded
7 to their scattershot request, and each of those five (Costa Rica, Denmark, Australia,
8 Mongolia, and Thailand) responded in the negative. Dkt. 7 at 3. General statements of
9 intent to remove Petitioner to a third country fail to prove that his removal is reasonably
10 foreseeable. “The fact that Respondents intend to complete a travel document request
11 for Petitioner does not make it significantly likely he will be removed in the foreseeable
12 future.” *Hoac v. Becerra*, No. CV25-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D.
13 Cal. July 16, 2025). In a similar Convention Against Torture (CAT) case in which a
14 petitioner was granted withholding of removal to Colombia, the Government sought
15 permission from the consulates of Peru, Argentina, Chile, and Mexico to remove him to
16 those countries, and was denied three times and received no answer from Mexico. *See*
17 *Aguila v. Rivas*, No. CV25-1662-PHX-DLR (ESW), Dkt. 51 at 4 (D. Ariz. Oct. 30,
18 2025) (“[T]here is no evidence in the record that removal is likely to occur at all, much
19 less in the reasonably foreseeable future.”). Here, Respondents have sent requests to
20 even more countries, and none have agreed.

21 Furthermore, Petitioner has a reasonable fear of being sent to a country that may
22 forward him to the country he has obtained CAT protections against (a practice known
23 as *refoulement* under international law). As Petitioner describes *infra* at 8–10, the law
24 allows him to be able to argue his fear before an immigration judge (not, as the

25 _____
26 3653724 (W.D. Wash. Dec. 17, 2025) (granting petition despite Respondents’ reliance
on *Diouf*; *see* Federal Respondents’ Return Memorandum, Dkt. 11 at 9 (W.D. Wash.
Dec. 9, 2025)).

1 government is doing now, shifting the burden to him to make a claim of fear in
2 response to a notice of removal). For example, Supreme Court justices have described
3 examples of people being sent on to their country of origin by Mexico despite CAT
4 protections. *See DHS v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J.,
5 dissenting) (describing deportation without notice to Mexico of a man granted CAT
6 deferral against removal to Guatemala; Mexico promptly sent him on to Guatemala
7 without regard to the CAT decision of a United States immigration judge). Thus, even
8 if the government succeeds in coercing a third country to accept Mr. Rea-Hernandez,
9 the removal may not proceed if Mr. Rea-Hernandez has grounds to object and he is able
10 to exercise his legal right to do so.

11 Mr. Rea-Hernandez should be released on bond to his wife and children in
12 Ogden, Utah, under reasonable conditions of supervision. *Kamyab v. Bondi*, No. CV25-
13 389-RSL, 2025 WL 2917522, at *5 (W.D. Wash. Oct. 14, 2025) (citing 8 U.S.C.
14 § 241.4(j), 241.5, 241.13(h)).

15 **IV. PETITIONER IS ENTITLED TO AN INJUNCTION BARRING**
16 **DEPORTATION TO A THIRD COUNTRY WITHOUT NOTICE AND A**
17 **MEANINGFUL OPPORTUNITY TO BE HEARD.**

18 The government, ignoring many instances in which petitioners have successfully
19 petitioned the courts for release from detention and orders barring them from being
20 removed to third countries without additional due process protections, insists that “DHS
21 already provides [procedures required by due process] as a matter of policy.” Dkt. 6 at
22 16. But courts in this district have already held that ICE’s current third country removal
23 policy “contravenes Ninth Circuit law,” *Baltodano*, 2025 WL 3484769, at *6 (quoting
24 *Nguyen v. Scott*, 796 F.Supp.3d 703, 728 (W.D. Wash. 2025)), and the government
25 makes no attempt to reconcile the two. There is a large gap between ICE’s current
26 policy and the process that is required before Mr. Rea-Hernandez can be removed to a

1 country where he may not have status allowing him to work and may not have domestic
2 legal protections against being forwarded to Venezuela, where a United States
3 immigration judge held that he faced a more than 50% chance of being tortured.³ *See*
4 *Al-Safer v. I.N.S.*, 268 F.3d 1143, 1147 (9th Cir. 2001) (withholding of removal under
5 the CAT requires noncitizen to prove “it is more likely than not that he . . . would be
6 tortured if removed to the proposed country of removal”). There exist many
7 documented instances in which the government has failed to adhere to the due-process
8 requirements of Ninth Circuit law. *See, e.g., D.V.D.*, 145 S. Ct. at 2154 (Sotomayor, J.,
9 dissenting); *see also id.* at 2155–58; Dkt. 1 at 18–21.

10 Specifically, courts in the Ninth Circuit have held that the ICE policy of shifting
11 the burden to petitioners—particularly those like Mr. Rea-Hernandez, who is not fluent
12 in English and was not represented by counsel in immigration court—to move to reopen
13 removal proceedings themselves any time ICE threatens them with removal to one or,
14 as here, up to 25 different third-country candidates, is not “giv[ing] sufficient notice of
15 a country of deportation that, given his capacities and circumstances, he would have a
16 reasonable opportunity to raise and pursue his claim for withholding of deportation.”
17 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019) (qtd. in *Nguyen v.*
18 *Scott*, 796 F.Supp.3d at 727).

19 Following *Aden*, the *Nguyen* and *Baltodano* courts, among others, have held that
20 “[g]iving petitioner an opportunity to file a motion to reopen [his removal proceedings]
21 . . . is not an adequate substitute for the process that is due process in these
22 circumstances.” *Baltodano*, 2025 WL 3484769, at *6 (quoting *Aden*, 409 F. Supp. 3d
23 998 at 1009–11). “Rather, a petitioner must be able to pursue his claim for withholding
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25 ³ Mr. Rea-Hernandez’s issues with Venezuela stemmed from interactions with the
26 police, not the president or a particular ruling party, so the removal of former
Venezuelan president Nicolás Maduro will not affect his withholding status. *See* Dkt. 1
at 7.

1 of deportation in reopened removal proceedings before an immigration judge.” *Id.*; *see*
2 *also Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *11 (E.D.
3 Cal. Sept. 18, 2025); *Abubaka v. Bondi*, No. CV25-1889RSL, 2025 WL 3204369, at *6
4 (W.D. Wash. Nov. 17, 2025); *A.A.M. v. Tonya Andrews, et al.*, No. 1:25-cv-01514-DC-
5 DMC (HC), 2025 WL 3485219, at *8 (E.D. Cal. Dec. 4, 2025); *Elshourbagy v. Bondi*,
6 No. CV25-02432-TL, 2025 WL 3718993, at *8 (W.D. Wash. Dec. 23, 2025).

7 **V. PETITIONER IS NOT BARRED FROM RELIEF BECAUSE HE MAY BE**
8 **A MEMBER OF THE D.V.D. CLASS**

9 Respondents also argue that this Court may not issue the relief sought by
10 Mr. Rea-Hernandez on his due process claim because he is a member of the plaintiff
11 class bound by the Supreme Court’s stay in *DHS v. D.V.D.*, 145 S. Ct. 2153 (2025).
12 Dkt. 6 at 17–18. It further argues that he *must* seek any relief through the class action.
13 Dkt. 6 at 18. This argument has been rejected by many courts, not least because the
14 second argument contradicts the argument the government made to the Supreme Court,
15 and the likely basis of its stay order.

16 As the court explained in *Nguyen*, the Supreme Court in *D.V.D.* provided no
17 reasoning for its entry of the stay and whether it came to that determination based on
18 the merits or the procedural posture of the case. *See Nguyen*, 2025 WL 2419288, at *22
19 (citing *Merrill v. Milligan*, __ U.S. __, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J.,
20 concurring) (“The Court’s stay order is not a decision on the merits.”)); *see also Cruz-*
21 *Medina v. Noem*, -- F.Supp.3d --, 2025 WL 2841488 (D. Md. Oct. 7, 2025) (rejecting
22 government’s argument that the stay order in *D.V.D.* means that petitioner cannot
23 prevail, stating “[a]ll this Court can do is apply existing precedent and due process
24 standards, and, under those standards, the Court can discern no rational basis for
25 stripping Mr. Cruz Medina of the opportunity to appear before an immigration judge . .
26 . .”); *Santamaria Orellana v. Maker*, No. CV25-1788-TDC, 2025 WL 2841886, at *11

1 (D. Md. Oct. 7, 2025) (citing to *Nguyen*, 2025 WL 2419288, at *22) (“This Court
2 agrees that based on the presently available guidance from the Supreme Court, there is
3 an insufficient basis upon which to reach a conclusion on which aspects of *D.V.D.* the
4 Supreme Court has rejected, whether they relate to the class certification, the due
5 process claim, or otherwise.”); *Elshourbagy*, 2025 WL 3718993, at *7.

6 The *D.V.D.* litigation concerned an earlier version of the ICE guidance, and a
7 primary argument made by the government to the Supreme Court was an objection
8 based on the nationwide scale of the injunction rather than its merits. *See* Gov’t
9 Application for a Stay, *D.H.S. v. D.V.D.*, No. 24A1153 (May 27, 2025), at 19,
10 [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)
11 [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/VNR5-SS7D>] (“First, under 8
12 U.S.C. 1252(f)(1), lower federal courts lack jurisdiction to issue *classwide injunctions*
13 that restrain the operation of third-country removals pursuant to 8 U.S.C. 1231(b).”)
14 (emphasis added). In other words, it is likely that the unreasoned Supreme Court order
15 was not forbidding injunctive relief to Mr. Rea-Hernandez because he is one of many
16 people who has no right to relief, but rather forbidding *mass* relief because Mr. Rea-
17 Hernandez and others should have proceeded individually in cases just like this one. *See*
18 *Nguyen*, 2025 WL 2419288, at *21. *See also* *Abubaka*, 2025 WL 3204369, at *2;
19 *Sagastizado v. Noem*, No. CV25-00104, – F.3d --, 2025 WL 2957002, *13 (S.D. Tex.
20 Octo. 2, 2025) (“Notably, the class-wide nature of the *D.V.D.* injunction alone could
21 have justified the stay, and that justification would not undermine the merits of an
22 individual claim for relief.”).

23 The *D.V.D.* class action makes claims about a different policy, seeks distinct
24 relief, and may have been stayed specifically because the Supreme Court prefers cases
25 to proceed individually rather than pursuant to nationwide injunctions. There is no
26 reason to require Mr. Rea-Hernandez to seek relief in that litigation rather than here.

1 **VI. PETITIONER IS ENTITLED TO A HEARING BEFORE BEING RE-**
2 **DETAINED.**

3 The government argues that Petitioner is not entitled to a pre-detention hearing
4 prior to an OSUP revocation. But numerous cases, including ones involving re-
5 detention of petitioners with final removal orders, as here, have held that due process
6 requires more than what Respondents say the regulations provide. *See Mathews v.*
7 *Eldridge*, 424 U.S. 319, 334 (1976). Respondent also complains that Mr. Rea-
8 Hernandez’s prayer for relief on this ground “does not comport with *Zadvydas*.” But
9 that is irrelevant, because the re-detention ground is based on the Fifth Amendment’s
10 due process guarantee, which can override statutes or regulations, and the Supreme
11 Court’s procedural due process holding in *Mathews* and its progeny, not *Zadvydas*.

12 Another court in this district recently held in the “postremoval” context, “[b]ased
13 on [its] review of the *Mathews* factors,” that a “Petitioner has a protected liberty interest
14 in his continuing release from custody, and that due process requires that Petitioner
15 receive proper notice and an opportunity to respond before he can be re-detained.”
16 *Jimenez v. Bondi*, No. CV25-2167-RSM, 2025 WL 3466925, at *2 (W.D. Wash. Dec.
17 3, 2025). The court granted the petition and ordered Mr. Jimenez’s immediate release,
18 barring re-detention “without providing adequate notice of the reasons for his re-
19 detention and a meaningful opportunity to respond.” *Id.* at *3. The government does not
20 address that decision nor the many others coming to the same conclusion. *See, e.g., P.T.*
21 *v. Hermosillo*, No. CV25-2249-KKE, 2025 WL 3294988, at *3 (W.D. Wash. Nov. 26,
22 2025); *Perez v. Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at *5
23 (M.D. Fla. Dec. 3, 2025); *S-M-J v. Bostock*, No. 6:25-CV-01425-MTK, 2025 WL
24 3137296, at *5 (D. Or. Nov. 10, 2025).

25 As argued above, the government has failed to show that Mr. Rea-Hernandez
26 will be removed the reasonably foreseeable future. Because Respondents admit in their

1 return that they do not intend to give him a hearing before any re-detention,
2 Respondents must be ordered to afford Petitioner the due process required prior to any
3 re-detention or third-country removal.

4 **VII. PETITIONER IS ENTITLED TO AN INJUNCTION BARRING**
5 **DEPORTATION TO A THIRD COUNTRY PURSUANT TO**
6 **RESPONDENTS' PUNITIVE POLICY.**

7 Finally, the courts in *Abubaka, Nguyen, Hambarsonpour*, and *Baltodano* have all
8 held that the government's practice of third-country removal punitive as a matter of
9 policy and thus violates due process under *Wong Wing v. United States*, 163 U.S. 228,
10 236–38 (1896), and *Zadvydas*, 533 U.S. at 693–94. *Abubaka*, 2025 WL 3204369, at *8;
11 *Nguyen*, 796 F.Supp.3d at 739; *Hambarsonpour*, No. 2025 WL 3251155, at *1, *4–5;
12 *Baltodano*, 2025 WL 3484769, at *10.

13 These courts have particularly taken note of the descriptions of punitive
14 treatment that deviate from the government's promises in individual cases before the
15 court. *See, e.g., Rivera-Trigueros v. Bondi*, No. 24-3764, 2025 WL 1189561, at *2 (9th
16 Cir. Apr. 24, 2025) (finding individual had shown that, if detained in El Salvador, he
17 would “confront a prison environment in which torture is pervasive” and that “the
18 squalid conditions in Salvadoran prisons—which include extreme overcrowding,
19 inadequate sanitation, and a lack of food—are deliberately inflicted by government
20 officials as a form of punishment.”) (citation omitted); *Abrego Garcia v. Noem*, 777 F.
21 Supp. 3d 501, 509 (D. Md. 2025) (“ICE forcibly transported Abrego Garcia to the
22 Terrorism Confinement Center (‘CECOT’) in El Salvador, a notorious supermax prison
23 known for widespread human rights violations.”); *DHS v. D.V.D.*, 145 S. Ct. at 2154–
24 55 (2025) (Sotomayor, J., dissenting) (describing deportation to Mexico of a gay man
25 from Guatemala who had obtained withholding of removal to Guatemala under the
26 Convention Against Torture; Mexico promptly forwarded him on to Guatemala, where

1 he was forced into hiding); *D.A. v. Noem*, No. 25-CV-3135 (TSC), 2025 WL 2646888,
2 at *1–*3) (D.D.C. Sept. 15, 2025) (describing punitive deportation to prison-like setting
3 in Ghana). This Court should similarly recognize that ICE’s third-country deportation
4 policy is punitive in intent and practice and therefore violates due process.

5 Furthermore, given that Petitioner was granted CAT withholding based on
6 credible evidence that he had been tortured by officials in his home country, the entire
7 practice of using “bridge countries” to effectuate eventual return to a barred home
8 country represents an end run around prohibitions against torture: punitive by any
9 definition. *See* Matias Delacroix & Megan Janetsky, *Isolated in ‘Harsh Conditions:’*
10 *Deportee from US Details Legal Limbo in Panama Camp Near Darien Gap*, AP World
11 News (Feb. 22, 2025), [https://apnews.com/article/panama-deportees-trump-hotel-](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86)
12 [darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86 \[https://perma.cc/7FL8-KNXT\]](https://perma.cc/7FL8-KNXT)
13 (quoting U.S. State Department’s statement on social media that the countries were
14 “safely returning third-country nationals to their countries of origin”); *see also D.V.D.*,
15 145 S. Ct. at 2154 (Sotomayor, J., dissenting). Such an end run around prohibitions on
16 torture could thus be accomplished without any specific punitive intent in individual
17 decisionmakers’ minds.

18 Also as applied to Mr. Rea-Hernandez, his HIV/AIDS diagnosis carries
19 significant stigma in many countries, including some of those Respondents have
20 already asked to accept him. *See* Anna Mendez-Lopez, et al., *Prevalence and*
21 *Sociodemographic Determinants of Public Stigma Towards People with HIV and its*
22 *Impact on HIV Testing Uptake: A Cross-Sectional Study in 64 Low- and Middle-Income*
23 *Countries*, HIV Medicine (Sept. 23, 2023), [https://onlinelibrary.wiley.com/doi/10.1111/](https://onlinelibrary.wiley.com/doi/10.1111/hiv.13536)
24 [hiv.13536](https://onlinelibrary.wiley.com/doi/10.1111/hiv.13536) [(“The weighted prevalence of stigmatized and discriminatory attitudes
25 towards people with HIV varied substantially across countries (Figure 1), with a
26 difference of up to 77.71 percentage points between the countries with the highest and

1 lowest prevalence rates (Figure 2).”). As noted by Dr. Weber, even in the absence of
2 overt discrimination, there are barriers to appropriate treatment of HIV/AIDS in many
3 developing countries:

4 Travel, especially to developing countries, can increase the risk of
5 contracting opportunistic infections in immuno-compromised patients
6 with low white blood cell counts. In developing countries, access to
7 specific antiretroviral regimens and mental health medications may be
8 limited by systemic barriers including inconsistent medication supply
9 (especially due to foreign aid cuts that affected HIV medication supplies),
10 lack of coverage for non-citizens, limited specialty health services, and
11 significant financial and logistical obstacles. Removal could therefore
12 place Mr. Rea-Hernandez at substantial risk due to interruption of life-
13 saving treatment.

14 Ex. 1 at ¶ 12.

15 This Court should grant the habeas petition on the ground that the third-country
16 removal program is punitive insofar as it involves imprisonment for a civil immigration
17 issue, *see Abubaka*, 2025 WL 3204369, at *8, and as applied to Mr. Rea-Hernandez, is
18 punitive insofar as his access to life-saving HIV/AIDS treatment may be disrupted and
19 insofar as any third-country candidate is not bound by the United States CAT decision
20 indefinitely withholding his deportation to the country that tortured him.

21 **VIII. CONCLUSION**

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

23 DATED this 7th day of January 2025.

24 Respectfully submitted,

25 *s/ Ann K. Wagner*
26 Assistant Federal Public Defender
Attorney for Victor Rea-Hernandez