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THE HONORABLE THERESA L. FRICKE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DELADDO FERNANDO LECKY,

Petitioner,

vs.

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. CV25-02637-TLF

**REPLY TO RESPONDENT'S  
RETURN MEMORANDUM**

**I. INTRODUCTION**

Petitioner Lecky has been detained for a combined 171 days awaiting removal to somewhere unknown and unidentified. His removal order and granting of withholding of removal to Jamaica, based on the Immigration Judge's finding that he is more likely than not to be harmed if returned there, became final over ten years ago. ICE released Mr. Lecky on an Order of Supervision in 2015 because it recognized it could not remove him. For ten years, Mr. Lecky was on an Order of Supervision. ICE made no progress in removing him during those ten years. As such, Mr. Lecky's continued detention is unreasonable; his removal is not reasonably foreseeable. The government admits that Petitioner Lecky may not be removed to his country of origin, Jamaica, and

1 that it has still failed to identify any country<sup>1</sup> that it seeks to remove him to. Gov't  
2 Return, Dkt. 11 at 11. With these admissions, the government has shown that it cannot  
3 meet its burden under *Zadvydas*, and Mr. Lecky must be ordered released.

4 Moreover, Petitioner Lecky was constitutionally entitled to a hearing prior to  
5 being re-detained, yet none occurred. On September 17, 2025, without any progress or  
6 identified country to remove Mr. Lecky to, he was re-arrested by ICE and then served  
7 with a “notice of revocation of release” stating he will be detained indefinitely “based  
8 on a review of your official alien file and a determination that there are changed  
9 circumstances in your case.” Dkt. 2-2 (Exh. B). The notice claims that “ICE has  
10 determined that you can be expeditiously removed to the United States” but then states  
11 “[a]t this time, ICE is taking steps to remove you to \_\_\_\_\_.” *Id.* In addition to  
12 violating Mr. Lecky’s due process rights, Respondents have not demonstrated that they  
13 complied with the regulations regarding re-detention. 8 C.F.R. § 241.13(i)(2). Mr.  
14 Lecky must thus be released on due process and regulatory grounds as well.

15 The Court should also enjoin third-country removal without the due process  
16 guarantees ordered by many other courts in this district. The government’s baseless  
17 threats to remove Mr. Lecky to countries from which it has not obtained permission or  
18 travel documents are unconstitutional.

19 Finally, the Government’s third-country removal program is unconstitutionally  
20 punitive and it should be permanently enjoined. *See Baltodano v. Bondi*, No. CV25-  
21 1958-RSL, 2025 WL 3484769, at \*10 (W.D. Wash. Dec. 4, 2025) (“[T] his Court holds  
22 that the Government’s practice of third-country removal paired with imprisonment is  
23

24 \_\_\_\_\_  
25 <sup>1</sup> Other than when, apparently, Respondents looked into sending Mr. Lecky to Mexico  
26 in November 2025, two months after his unlawful retention, only to “receive guidance”  
three days later that he would not be removed to Mexico. *See* Gov’t Return, Dkt. 11 at  
11.

1 intended to be punitive and thus violates due process under *Wong Wing* [*v. United*  
2 *States*], 163 U.S. 228[,] 236–38 (1896), and *Zadvydas*, 533 U.S. [ ] at 693–94. . . .”)

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

4 **II. MR. LECKY’S DETENTION HAS BECOME UNCONSTITUTIONALLY**  
5 **PROLONGUED UNDER *ZADVYDAS*.**

6 **A. The *Zavydas* presumptively reasonable period has long expired.**

7 Mr. Lecky has been detained for 171 days and counting awaiting removal to an  
8 unspecified location, as he cannot be removed to Jamaica. He was initially detained  
9 approximately two months (53 days) after being granted withholding of removal in  
10 2015 before being released on an Order of Supervision. Since being arrested on  
11 September 17, 2025, he has been detained for approximately four months and counting  
12 (118 days). There is no dispute that it has been over ten years since the order of  
13 deportation but grant of withholding of removal to Jamaica became final.<sup>2</sup>

14 Respondents concede that “as the period of post-removal confinement grows,  
15 what counts as the ‘reasonably foreseeable future’ conversely would have to shrink[.]”  
16 Dkt. 11 at 10 (quoting *Zadvydas*, 533 U.S. at 701). Respondents contend that  
17 Mr. Lecky’s detention is lawful “even if the presumptively reasonable period in this

18 <sup>2</sup> The Ninth Circuit has recognized that the six-month grace period is pegged to the start  
19 of the removal period. *See Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (“[I]n *Zadvydas*,  
20 121 S.Ct. at 2505, the Supreme Court read the statute to permit a ‘presumptively  
21 reasonable’ detention period of *six months* after a final order of removal—that is, *three*  
22 *months* after the statutory removal period has ended.”); *Rodriguez v. Hayes*, 591 F.3d  
23 1105, 1115 (9th Cir. 2010), *overruled in other part by Jennings v. Rodriguez*, 583 U.S.  
24 281 (2018) (“The [*Zadvydas*] Court determined that for six months following the  
25 beginning of the removal period [a non-citizens] detention was presumptively  
26 authorized.”). Accordingly, the grace period is not calculated based on the length of  
detention. *See also Bailey v. Lynch*, No. 16-2600-JLL, 2016 WL 5791407 (D.N.J. Oct.  
3, 2016), at \*2. Having had over a decade to remove Mr. Lecky, there is no principled  
reason to give ICE an additional grace period.

Alternatively, if the Court decides that Mr. Lecky’s petition was premature, the  
Court can enter an order now for his release on January 21, 2026 (the 180th day of  
detention) or continue the noting date to that date.

1 case has passed,” even though, as demonstrated below, they cannot show that removal  
2 is likely in a short period of time as he cannot be removed to Jamaica and no third  
3 country has agreed to accept him. Dkt. 11. at 11.

4 **B. Mr. Lecky’s removal is not likely in the reasonably foreseeable**  
5 **future.**

6 Respondents assert that Mr. Lecky has not met his burden under *Zadvydas*. Dkt.  
7 11 at 12. In making that argument, they rely on the few vague facts and claims they  
8 have presented in rebuttal to his petition. However, their rebuttal evidence goes not to  
9 whether Mr. Lecky has met his burden, but only to whether, *if* Mr. Lecky has met his  
10 burden, they have satisfactorily rebutted it. Those are two quite different questions. *See,*  
11 *e.g., Deqa M. Y. v. Barr*, No. 20-CV-1091 (ECT/DTS), 2020 WL 4928321, at \*4 (D.  
12 Minn. June 16, 2020), *report and recommendation adopted*, No. 20-CV-1091  
13 (ECT/DTS), 2020 WL 4926618 (D. Minn. Aug. 21, 2020) (concluding that, “[a]lthough  
14 Deqa has made a sufficient showing that her removal is not significantly likely to occur  
15 in the reasonably foreseeable future, Respondents have now rebutted that showing”).

16 In Mr. Lecky’s petition, he established that it has been over ten years since his  
17 final order of removal and granting of withholding of removal to Jamaica. He was  
18 detained for 53 days before being released on an Order of Supervision on June 12,  
19 2015. During the ten plus years since the order of deportation and granting of  
20 withholding of removal became final, Respondents have been unable to find a third  
21 country to remove Mr. Lecky to. And as he submitted with his habeas petition, when  
22 Mr. Lecky was re-detained on September 17, 2025, Respondents had not identified any  
23 potential country to send him to – in fact, the Notice of Revocation of Release they  
24 gave him during the arrest included a “blank” space, “\_\_\_\_\_,” for where he  
25 would be sent. *See* dkt. 2-2 (Exh. B). These facts are sufficient to meet Mr. Lecky’s  
26 initial burden under *Zadvydas*. Respondents did not identify any potential country to

1 send Mr. Lecky to for ten years, had no identified country at the time of his  
2 unconstitutional arrest in September, and almost four months later still have no  
3 identified country they are actively trying to send him to. Respondents only argue that  
4 “ICE *anticipates* that they will be able to find a suitable third country allowing for  
5 Petitioner’s removal.” Dkt. 11 at 12 (emphasis added) and that “ERO Tacoma *intends*  
6 to pursue available third country removal options” but also admits that none have thus  
7 far been identified. Benjamin Decl., dkt. 12 (¶ 24). Intention to pursue removal does not  
8 make it foreseeable under *Zadvydas*. See, e.g., *Tran v. Noem*, No. 1:25-cv-01523-TLN-  
9 CKD, 2025 WL 3268491, at \*3 (E.D. Cal. Nov. 24, 2025) (assertion that government  
10 was “actively working on obtaining a travel document for Petitioner to Vietnam” was  
11 insufficient to show removal was reasonably foreseeable); *Phan v. Beccerra*, No. 2:25-  
12 CV-01757-DC-JDP, 2025 WL 1993735, at \*5 (E.D. Cal. July 16, 2025) (“Respondents’  
13 intent to complete a travel document request for Petitioner does not make it  
14 significantly likely he will be removed in the foreseeable future”); *Hambarsonpour v.*  
15 *Bondi*, No. CV25-1802-RSM, 2025 WL 3251155, at \*2–\*3 (W.D. Wash. Nov. 21,  
16 2025) (holding that a government argument that it was “actively working to effectuate  
17 his removal to France” was insufficient to render petitioner’s removal reasonably  
18 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 The burden thus shifts to Respondents to show that removal is nevertheless  
2 likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. But  
3 Respondents offer nothing in response to make that showing. In fact, the Return admits  
4 that *no* country has been selected for Petitioner’s removal. Without additional  
5 information, the Return claims that they “prepared a third country removal notice for  
6 Mexico” on November 17, 2025, only to “receive guidance” three days later that  
7 Mr. Lecky would not be removed to Mexico. *See* (citing Benjamin Decl., Dkt. 12, ¶¶  
8 22-23). The Return provides no information it had done anything to effectuate removal  
9 to Mexico except identify it as a country and days later learn it was not an option. The  
10 Return does not specify *any* country it is currently taking steps to remove Mr. Lecky to,  
11 just vaguely and generally that “ERO Tacoma now continues to pursue other available  
12 third country removal options.” Dkt. 11 at 11-12 (citing Benjamin Decl., Dkt. 12, ¶ 24).  
13 But as discussed previously, this declaration does not say ERO Tacoma “continues to  
14 pursue” – it says ERO Tacoma “*intends* to pursue.” Benjamin Dec., Dkt. 12, ¶ 24)  
15 (emphasis added). General statements of intent to remove Petitioner to an unidentified  
16 country fail to prove that his removal is reasonably foreseeable. “The fact that  
17 Respondents intend to complete a travel document request for Petitioner does not make  
18 it significantly likely he will be removed in the foreseeable future.” *Hoac v. Becerra*,  
19 No. CV25-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July 16, 2025). In a  
20 similar Convention Against Torture (CAT) case in which a petitioner was granted  
21 withholding of removal to Colombia, the government sought permission from the  
22 consulates of Peru, Argentina, Chile, and Mexico to remove him to those countries, and  
23 was denied three times and received no answer from Mexico. *See Aguila v. Rivas*, No.  
24 CV25-1662-PHX-DLR (ESW), Dkt. 51 at 4 (D. Ariz. Oct. 30, 2025) (“[T]here is no  
25 evidence in the record that removal is likely to occur at all, much less in the reasonably  
26 foreseeable future.”). Here, Respondents provide no evidence they have sent requests to

1 any countries (just that, almost two months ago, they internally came up with the idea  
2 of Mexico before “receiving guidance” three days later he would not be removed there),  
3 let alone that any countries have agreed to accept Mr. Lecky.

4 Respondents’ only other response is to suggest, almost as an afterthought, that  
5 removal is *always* reasonably foreseeable, unless removal to the specified country is  
6 *impossible*. Dkt. 11 at 7 (citing to *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir.  
7 2008)). But *Diouf* involved a pending judicial review of the removal order itself, and  
8 the petitioner’s detention was prolonged solely because the Ninth Circuit had issued a  
9 stay.

10 Courts in this district have rejected Respondents’ position regarding *Diouf*. *See*  
11 *Ghasedi v. Wamsley*, No. 2:25-CV-01984-RSM-BAT, 2025 WL 3699705 (W.D. Wash.  
12 Dec. 1, 2025), *report and recommendation adopted*, 2025 WL 3697208 (W.D. Wash.  
13 Dec. 19, 2025); *Khim v. Bondi*, No. 2:25-CV-02383-RSL, 2025 WL 3653724 (W.D.  
14 Wash. Dec. 17, 2025) (granting petition despite Respondents’ reliance on *Diouf*; *see*  
15 Federal Respondents’ Return Memorandum, dkt. 11 at 9 (W.D. Wash. Dec. 9, 2025)).

16 In *Diouf*, ICE arrested the petitioner after he failed to depart voluntarily. 542  
17 F.3d at 1226. ICE then “made arrangements for Diouf to depart for Senegal on May 26,  
18 2005, but, after Diouf refused to leave on that date, continued to detain him.” *Id.* Diouf  
19 fought off deportation by filing two motions to reopen and by obtaining a series of stays  
20 of removal from the Ninth Circuit. *Id.*

21 The reason for Diouf’s prolonged detention, therefore, and the only obstacle to  
22 his removal, was his own actions, including his pending petition before the Ninth  
23 Circuit and the attendant stay order. Diouf’s detention was thus not open-ended (or  
24 indefinite), since it would terminate upon his withdrawal of legal challenges to the  
25 removal order or a decision by the Ninth Circuit. The import of *Diouf*, therefore, is that  
26 a petitioner cannot obtain release under *Zadvydas* if the reason for his detention is his

1 own attempt to obtain review of the removal order. The court’s holding is that he could  
2 not obtain *Zadvydas* relief unless he shows he would be “unremovable even if the  
3 government defeated his petition for review.” *Id.* at 1233. Since Mr. Lecky has no  
4 pending legal challenge to the removal order, *Diouf* has no application here.

5 The court also cited to *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir.  
6 2008), where, similarly, “repatriations to Prieto–Romero’s country of origin, Mexico,  
7 are routine and . . . the government stands ready to remove Prieto–Romero as soon as  
8 judicial review is complete.” It is in situations such as those, when the delay is caused  
9 only by a petitioner’s seeking judicial review, that removal is deemed unforeseeable  
10 only when “he would be unremovable even if the government defeated his petition for  
11 review.” *Diouf*, 542 F. 3d at 1233.

12 There is no basis for reading these cases as applying to situations such as  
13 Mr. Lecky’s where the delay is Respondents’ inability to remove him in the reasonably  
14 foreseeable future, not a challenge to removal. If Respondents’ position were accepted,  
15 it would mean that the numerous recent decisions in this district granting *Zadvydas*  
16 petitions, and the scores or hundreds of decisions elsewhere throughout the Circuit, all  
17 erred in finding a *Zadvydas* violation based on delay of removal, without also requiring  
18 a showing that removal was impossible.<sup>3</sup>

19 Since Respondents have not met their burden of showing that removal will occur  
20 in the reasonably foreseeable future, and their brief citation to *Diouf* is inapplicable, it is  
21 clear Mr. Lecky’s rights under *Zadvydas* have been violated, warranting his immediate  
22 release.

23  
24 <sup>3</sup> Counsel is aware of one decision by this Court accepting Respondents’ view of *Diouf*,  
25 *Revenko v. Bondi*, No. 2:25-CV-00549-TL, 2025 WL 2592243, at \*3 (W.D. Wash.  
26 Sept. 8, 2025). But in that case, “Petitioner [did] not address *Diouf* at all in his  
objections” to the Report and Recommendation, effectively waiving the issue. And the  
court thus did not have the benefit of briefing such as Mr. Lecky has submitted.

1 Furthermore, Petitioner has a reasonable fear of being sent to a country that may  
2 forward him to the country he has obtained withholding of removal protections against  
3 (a practice known as *refoulement* under international law). As Petitioner describes *infra*  
4 at 11-12, the law allows him to be able to argue his fear before an immigration judge  
5 (not, as the government is doing now, shifting the burden to him to make a claim of fear  
6 in response to a notice of removal). For example, Supreme Court justices have  
7 described examples of people being sent on to their country of origin by Mexico despite  
8 CAT protections. *See DHS v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J.,  
9 dissenting) (describing deportation without notice to Mexico of a man granted CAT  
10 deferral against removal to Guatemala; Mexico promptly sent him on to Guatemala  
11 without regard to the CAT decision of a United States immigration judge).

12 Thus, even if the government succeeds in coercing a third country to accept  
13 Mr. Lecky, the removal may not proceed if Mr. Lecky has grounds to object and he is  
14 able to exercise his legal right to do so.

15 **III. MR. LECKY WAS CONSTITUTIONALLY ENTITLED TO A HEARING**  
16 **PRIOR TO BEING RE-DETAINED.**

17 Respondents' discussion of the due process issue fares them no better. They  
18 point out that none of the cases cited in the constitutional due process portion of  
19 Mr. Lecky's petition, dkt. 2 at 10-13, involved a detainee with a final order of removal.  
20 Dkt. 11 at 15-16. While that is correct, numerous other cases, ones involving re-  
21 detention of petitioners with final orders of removal, have applied the same due process  
22 analysis as the cases Mr. Lecky cited and held that due process requires more than what  
23 Respondents say the regulations provide. *See Mathews v. Eldridge*, 424 U.S. 319, 334  
24 (1976).

25 Another court in this district recently held in the "post-removal" context,  
26 "[b]ased on [its] review of the *Mathews* factors," that a "Petitioner has a protected

1 liberty interest in his continuing release from custody, and that due process requires that  
2 Petitioner receive proper notice and an opportunity to respond before he can be re-  
3 detained.” *Jimenez v. Bondi*, No. C25-2167RSM, 2025 WL 3466925, at \*2 (W.D.  
4 Wash. Dec. 3, 2025) The court granted the petition and ordered Mr. Jimenez’s  
5 immediate release, barring re-detention “without providing adequate notice of the  
6 reasons for his re-detention and a meaningful opportunity to respond.” *Id.* at 3. In its  
7 Return for Petitioner Lecky, the Government does not address that decision nor the  
8 many others coming to the same conclusion. *See also, e.g., P.T. v. Hermosillo*, No.  
9 C25-2249-KKE, 2025 WL 3294988, at \*3 (W.D. Wash. Nov. 26, 2025); *Perez v.*  
10 *Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at \*5 (M.D. Fla. Dec. 3,  
11 2025); *S-M-J v. Bostock*, No. 6:25-CV-01425-MTK, 2025 WL 3137296, at \*5 (D. Or.  
12 Nov. 10, 2025).

13 Respondents argue that Mr. Lecky was re-detained “in order for ERO to  
14 effectuate his removal and following ERO’s knowledge of his arrest for assault on or  
15 about February 22, 2016, and traffic citations and probation violations on or about July  
16 27, 2018, as well as Petitioner’s failure to report for required check-ins on multiple  
17 occasions.” Dkt. 11 at 16 (citing Benjamin Decl., dkt. 12 ¶¶ 12-17). As such,  
18 Respondents argue they acted “well within its statutory authority in detaining”  
19 Mr. Lecky. *Id.* But these alleged assertions are misleading and serve as a distraction.  
20 Mr. Lecky was not arrested in September 2025 because of a purported assault arrest  
21 nine years earlier, or “traffic citations and probation violations” seven years earlier.  
22 And even if Mr. Lecky “failed to report” to a kiosk for a check-in three times (May 24,  
23 2023, August 2, 2024, and September 6, 2024) in the ten years he was on an Order of  
24 Supervision, that means he *did* report all the other times – including during the year  
25 leading up to his arrest by ICE on September 17, 2025. It is telling that Deportation  
26 Officer Benjamin’s declaration suggests Mr. Lecky was “located and arrested” by ICE,

1 *see* dkt. 12 (¶ 18), as if he was evading ICE. In fact, Mr. Lecky was arrested at  
2 Baltimore ISAP (ICE supervision office) “without incident” when *he* reported for a  
3 check in. *See* Wong Decl. (Exh. 2), dkt. 13-2, at 4.

4 Mr. Lecky’s notice of re-detention, that he only received on September 17, 2025,  
5 the date he was arrested, made clear he was being detained to deport him, even though  
6 Respondents at that time, as demonstrated by their own document, sought to deport him  
7 to literally nowhere: “\_\_\_\_\_.” *See* dkt. 2-2 (Exh. B). The cases cited in Mr.  
8 Lecky’s petition and above, along with numerous other decisions, all hold that there  
9 must be notice, a hearing before a neutral decisionmaker, and an opportunity to respond  
10 *before* someone can be re-detained. Thus, Respondents do not get to make that decision  
11 about foreseeability on their own, with no hearing and no requirement for evidence.

12 Mr. Lecky had a right to this hearing before being re-detained, yet none  
13 occurred. Because he was denied that hearing, he must be released on this ground as  
14 well.

15 **IV. RESPONDENTS HAVE NOT SHOWN COMPLIANCE WITH THEIR**  
16 **REGULATIONS REGARDING RE-DETENTION.**

17 As discussed in Mr. Lecky’s petition, dkt. 2 at 14-15, various regulations also  
18 govern re-detention. Respondents have not addressed that requirement at all in their  
19 Return, but instead only argue that Mr. Lecky’s arguments are “boilerplate and  
20 unsupported by facts specific to this case.” Dkt. 11 at 16. But the “regulations appear to  
21 require an individualized determination about the likelihood of removal based on  
22 changed circumstances, followed by notice and an opportunity to respond.”

23 *Phetsadakone v. Scott*, No. 2:25-CV-01678-JNW, 2025 WL 2579569, at \*3 (W.D.  
24 Wash. Sept. 5, 2025). Although Respondents conclusively argue “Petitioner identifies  
25 no regulation that was violated and no notice requirement applicable to his  
26 circumstance that was not satisfied” and that the arguments are “irrelevant”, this does

1 not change the fact that there is nothing in the record attesting that Respondents  
2 provided Mr. Lecky with notice or an opportunity to respond *prior* to his re-detention  
3 on September 17, 2025.

4 These regulations also require Respondents to establish that, based on “changed  
5 circumstances,” there is “a significant likelihood that the [noncitizen] may be removed  
6 in the reasonably foreseeable future,” 8 C.F.R. § 241.13(i)(2); *see also, e.g.,*  
7 *Hernandez-Escalante v. Noem, et al.*, No. CV25-182-MJT, 2025 WL 2206113, at \*3  
8 (E.D. Tex. Aug. 2, 2025) (“These regulations clearly indicate, upon revocation of  
9 supervised release, it is the [Government’s] burden to show a significant likelihood that  
10 the [noncitizen] may be removed.”) (collecting cases). As discussed in Part II,  
11 Respondents have not met that burden. *See Tran v. Bondi*, No. C25-01897-JLR, 2025  
12 WL 3140462, at \*3 (W.D. Wash. Nov. 10, 2025) (finding that Respondents had “not  
13 met [their] burden to present evidence supporting” their claim of removal within  
14 reasonably foreseeable future and therefore did “not comply with the requirements set  
15 forth by 8 C.F.R. § 241.13(i) and 8 C.F.R. § 241.13(f)”).

16 On two separate regulatory grounds then (failure to provide notice and  
17 opportunity to respond; failure to meet Respondents’ burden), Mr. Lecky’s re-detention  
18 was unlawful, providing a third ground requiring his release, in addition to his  
19 *Zadvydas* and due process claims.

20 **V. PETITIONER IS ENTITLED TO AN INJUNCTION BARRING**  
21 **DEPORTATION TO A THIRD COUNTRY WITHOUT NOTICE AND A**  
22 **MEANINGFUL OPPORTUNITY TO BE HEARD.**

23 Mr. Lecky requested an order precluding ICE from removing him to a third  
24 country pursuant to its punitive removal policies and an order precluding removing him  
25 to a third country absent notice and a meaningful opportunity to respond. Respondents  
26 assert, without citation to any on-point legal authority, that this Court should deny  
Mr. Lecky’s request as not being ripe. Dkt. 11 at 13. But courts in this district have

1 already held that ICE’s current third country removal policy “contravenes Ninth Circuit  
2 law,” *Baltodano*, 2025 WL 3484769, at \*6 (quoting *Nguyen v. Scott*, 796 F.Supp.3d  
3 703, 728 (W.D. Wash. 2025)), and the government makes no attempt to reconcile the  
4 two. There is a grave controversy concerning the process that is required before  
5 Mr. Lecky can be removed to a country where he may not have status allowing him to  
6 work and may not have domestic legal protections against being forwarded to Jamaica,  
7 where a United States immigration judge held that he faced a more than 50% chance of  
8 being tortured. *See Al-Safer v. I.N.S.*, 268 F.3d 1143, 1147 (9th Cir. 2001) (withholding  
9 of removal under the CAT requires noncitizen to prove “it is more likely than not that  
10 he . . . would be tortured if removed to the proposed country of removal.”). There exist  
11 many documented instances in which the government has failed to adhere to the due-  
12 process requirements of Ninth Circuit law. *See, e.g., D.V.D.*, 145 S. Ct. at 2154  
13 (Sotomayor, J., dissenting); *see also id.* at 2155–58; Dkt. 1 at 12–14.

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

23 Following *Aden*, the *Nguyen* and *Baltodano* courts, among others, have held that  
24 “[g]iving petitioner an opportunity to file a motion to reopen [his removal proceedings]  
25 . . . is not an adequate substitute for the process that is due process in these  
26 circumstances.” *Baltodano*, 2025 WL 3484769, at \*6 (quoting *Aden*, 409 F. Supp. 3d

1 998 at 1009–11). “Rather, a petitioner must be able to pursue his claim for withholding  
2 of deportation in reopened removal proceedings before an immigration judge.” *Id.*; see  
3 also *Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at \*11 (E.D.  
4 Cal. Sept. 18, 2025); *Abubaka v. Bondi*, No. CV25-1889-RSL, 2025 WL 3204369, at \*6  
5 (W.D. Wash. Nov. 17, 2025); *A.A.M. v. Tonya Andrews, et al.*, No. 1:25-cv-01514-DC-  
6 DMC (HC), 2025 WL 3485219, at \*8 (E.D. Cal. Dec. 4, 2025).

7 Because there is a large gap between the process accorded by the July 9 ICE  
8 memo and the law, as there is no indication that Mr. Lecky was given the opportunity to  
9 express fear regarding removal to Mexico (the sole third country briefly identified to  
10 date, which ICE quickly apparently “received guidance he would not be removed to)  
11 Mr. Lecky also has already suffered injury in fact on this claim for standing purposes.  
12 See Dkt. 11 at 9 (citing Benjamin Decl., Dkt. 12 at ¶ 23). Additionally, Respondents  
13 have said they intend to seek to remove him to a third country, as he cannot be deported  
14 to Jamaica. As another court in this circuit described, threatened or impending actions  
15 suffice to establish Article III injury:

16 A party seeking injunctive relief to prevent future injury must “establish  
17 standing by demonstrating that, if unchecked by the litigation, the  
18 defendant’s allegedly wrongful behavior will likely occur or continue, and  
19 that the threatened injury is certainly impending.” *Friends of the Earth,*  
20 *Inc. v. Laidlaw Env’tl Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000)  
21 (citation omitted). It is readily apparent that the threatened injury is  
22 impending. In their Opposition, Respondents affirmatively state that  
23 “[Petitioner] has no connection to the United States and may not stay here  
24 ...” and that because “[Petitioner]’s removal to El Salvador is deferred, ...  
immigration authorities must remove him to another country.” (Opp’n at  
25 1–2 (emphasis added).) Petitioner also alleges that ICE officials told him  
26 that they were seeking to remove him to a third country. Thus,  
Petitioner’s future injury is not simply theoretical but impending, and  
Petitioner has standing.

25 *Escobar v. Chestnut*, No. 1:25-cv-01801-DJC-EFB, 2025 WL 3687639, at \*2 (E.D.  
26 Cal., Dec. 19, 2025).

1 **VI. PETITIONER IS NOT BARRED FROM RELIEF BECAUSE HE MAY BE**  
2 **A MEMBER OF THE *D.V.D.* CLASS**

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

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

26 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

1 based on the nationwide scale of the injunction rather than its merits. *See* Gov't  
2 Application for a Stay, *D.H.S. v. D.V.D.*, No. 24A1153 (May 27, 2025), at 19,  
3 [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)  
4 [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  
5 U.S.C. 1252(f)(1), lower federal courts lack jurisdiction to issue *classwide injunctions*  
6 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  
7 was not forbidding injunctive relief to Mr. Lecky because he is one of many people  
8 who has no right to relief, but rather forbidding *mass* relief because Mr. Lecky and  
9 others should have proceeded individually in cases just like this one. *See Nguyen*, 2025  
10 WL 2419288, at \*21. *See also Abubaka*, 2025 WL 3204369, at \*2; *Sagastizado v.*  
11 *Noem*, No. CV25-00104, – F.3d --, 2025 WL 2957002, \*13 (S.D. Tex. Octo. 2, 2025)  
12 (“Notably, the class-wide nature of the *D.V.D.* injunction alone could have justified the  
13 stay, and that justification would not undermine the merits of an individual claim for  
14 relief.”).

15  
16 The *D.V.D.* class action makes claims about a different policy, seeks distinct  
17 relief, and may have been stayed specifically because the Supreme Court prefers cases  
18 to proceed individually rather than pursuant to nationwide injunctions. There is no  
19 reason to require Mr. Lecky to seek relief in that litigation rather than here.

20 **VII. PETITIONER IS ENTITLED TO AN INJUNCTION BARRING**  
21 **DEPORTATION TO A THIRD COUNTRY PURSUANT TO**  
22 **RESPONDENTS' PUNITIVE POLICY.**

23 Finally, the courts in *Abubaka*, *Nguyen*, *Hambarsonpour*, and *Baltodano* have all  
24 held that the government's practice of third-country removal is punitive as a matter of  
25 policy and thus violates due process under *Wong Wing v. United States*, 163 U.S. 228,  
26 236–38 (1896), and *Zadvydas*, 533 U.S. at 693–94. *Abubaka*, 2025 WL 3204369, at \*8;

1 *Nguyen*, 796 F.Supp.3d at 739; *Hambarsonpour*, 2025 WL 3251155, at \*1, \*4–5;  
2 *Baltodano*, 2025 WL 3484769, at \*10.

3         These courts have particularly taken note of the descriptions of punitive  
4 treatment that deviate from the government’s promises in individual cases before the  
5 court. *See, e.g., Rivera-Trigueros v. Bondi*, No. 24-3764, 2025 WL 1189561, at \*2 (9th  
6 Cir. Apr. 24, 2025) (finding individual had shown that, if detained in El Salvador, he  
7 would “confront a prison environment in which torture is pervasive” and that “the  
8 squalid conditions in Salvadoran prisons—which include extreme overcrowding,  
9 inadequate sanitation, and a lack of food—are deliberately inflicted by government  
10 officials as a form of punishment.”) (citation omitted); *Abrego Garcia v. Noem*, 777 F.  
11 Supp. 3d 501, 509 (D. Md. 2025) (“ICE forcibly transported Abrego Garcia to the  
12 Terrorism Confinement Center (‘CECOT’) in El Salvador, a notorious supermax prison  
13 known for widespread human rights violations.”); *DHS v. D.V.D.*, 145 S. Ct. at 2154–  
14 55 (2025) (Sotomayor, J., dissenting) (describing deportation to Mexico of a gay man  
15 from Guatemala who had obtained withholding of removal to Guatemala under the  
16 Convention Against Torture; Mexico promptly forwarded him on to Guatemala, where  
17 he was forced into hiding); *D.A. v. Noem*, No. 25-CV-3135 (TSC), 2025 WL 2646888,  
18 at \*1–\*3) (D.D.C. Sept. 15, 2025) (describing punitive deportation to prison-like setting  
19 in Ghana). This Court should similarly recognize that ICE’s third-country deportation  
20 policy is punitive in intent and practice and therefore violates due process.

21         Furthermore, given that Petitioner was granted withholding of removal based on  
22 credible evidence that he was more likely than not to be persecuted or tortured if  
23 deported to Jamaica, the entire practice of using “bridge countries” to effectuate  
24 eventual return to a barred home country represents an end run around prohibitions  
25 against torture: punitive by any definition. *See* Matias Delacroix & Megan Janetsky,  
26 *Isolated in ‘Harsh Conditions:’ Deportee from US Details Legal Limbo in Panama*

1 *Camp Near Darien Gap*, AP World News (Feb. 22, 2025),  
2 [https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86)  
3 [bba8c3dc33fd38efd569a5b51e481a86](https://perma.cc/7FL8-KNXT) [<https://perma.cc/7FL8-KNXT>] (quoting U.S.  
4 State Department’s statement on social media that the countries were “safely returning  
5 third-country nationals to their countries of origin”); *see also D.V.D.*, 145 S. Ct. at 2154  
6 (Sotomayor, J., dissenting). Such an end run around prohibitions on torture could thus  
7 be accomplished without any specific punitive intent in individual decisionmakers’  
8 minds.

9 This Court should grant the habeas petition on the ground that the third-country  
10 removal program is punitive insofar as it involves imprisonment for a civil immigration  
11 issue, *see Abubaka*, 2025 WL 3204369, at \*8, and as applied to Mr. Lecky, is punitive  
12 insofar as any third-country candidate is not bound by the United States decision  
13 indefinitely withholding his deportation to Jamaica.

#### 14 **VIII. CONCLUSION**

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

16 DATED this 12th day of January 2026.

17 Respectfully submitted,

18 *s/ Elizabeth Sher*  
19 Assistant Federal Public Defender  
20 Attorney for Deladdo Lecky