

THE HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ABDINAJIB ALI,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

No. CV26-073-MLP

REPLY TO RESPONDENTS' RETURN
MEMORANDUM

**I. THE FACTS RESPONDENTS SET FORTH ARE WITHOUT AN
EVIDENTIARY BASIS.**

Respondents rely for their facts primarily on the Declaration of Joseph Carnevale, dkt. 12-1. However, that document is not to be credited. As discussed in another recent immigration habeas case in this district, *Huynh v. Bondi*, No. C25-2371-KKE, 2025 WL 3718991 (W.D. Wash. Dec. 23, 2025), “for declarations executed within the United States, 28 U.S.C. § 1746(2) requires a perjury statement ‘in substantially’ the following form: ‘I declare under penalty of perjury that the foregoing is true and correct.’” *Id.* at *4. As the *Huynh* court continued, “Courts have explained that ‘two statements are essential to a proper verification under § 1746: (i) an assertion that the facts are true and correct; and (ii) an averment that the first assertion is made under penalty of perjury.’” *Id.* (cleaned up).

Just as in the declaration in *Huynh*, although Officer Carnevale “cites the statute, his filing includes neither of the above ‘essential’ statements.” *Id.* Instead, Officer Carnevale’s ¶ 3 is virtually identical to the averment that the *Huynh* court found

1 inadequate. As in *Huynh*, Officer Carnevale does not declare that his statements are
 2 true, only that they “are based on information he received from other ICE systems and
 3 officers. Nor does he aver that he made his declaration under penalty of perjury.” *Id.*
 4 *See also Kuot v. Bondi*, No. 2:25-CV-02313-BAT, 2025 WL 3763930, at *3 (W.D.
 5 Wash. Dec. 30, 2025) (because declaration was not under penalty of perjury,
 6 “Respondents rely upon an invalid ‘declaration’ [and thus] they have failed to rebut
 7 Petitioner’s contention his due process rights have been violated”); *Wana v. Bondi*, No.
 8 2:25-CV-02321-RSL, 2025 WL 3628634, at *4 (W.D. Wash. Dec. 15, 2025) (as
 9 declaration was neither asserted to be true nor under penalty of perjury, it “is therefore
 10 inadmissible and cannot be considered”).

11 Accordingly, the Court should, as it recently held, “not credit his statements.”
 12 *Somsanuk v. Bondi*, No. C26-48-MLP, 2026 WL 221139, at *2 (W.D. Wash. Jan. 28,
 13 2026). However, as detailed below, even crediting all those statements, Mr. Ali’s
 14 petition succeeds on each of the grounds set forth in his petition and below.

15 **II. MR. ALI’S DETENTION IS IN VIOLATION OF *ZADVYDAS*.**

16 **A. Mr. Ali’s alleged non-cooperation does not impact his *Zadvydas*** 17 **claim.**

18 **1. Even crediting the claim that Mr. Ali refused to sign a** 19 **document, there is no showing that he has caused any delay,** 20 **making that claim irrelevant to his *Zadvydas* claim.**

21 Even if this Court were to conclude that Mr. Ali refused to sign a document (*but*
 22 *see* Part II.A.2, *infra*), that is not the end of the matter. Where the issue is not just the
 23 statutory provision of 8 U.S.C. § 1231(a)(1)(C), but the interaction of that statute with
 24 *Zadvydas v. Davis*, 533 U.S. 678 (2001), the non-cooperation must be the cause of the
 25 delay. In *Lema v. I.N.S.*, 341 F.3d 853 (9th Cir. 2003), on which Respondents rely, “the
 26 court held the petitioner could not meet his *Zadvydas* burden where he repeatedly
 obstructed removal efforts by lying about his nationality, refusing to accept a letter

1 requiring him to apply for travel documents, refusing to provide the government with
 2 relevant documents, and refusing to contact the consulate.” *Ghasedi v. Wamsley*, No.
 3 2:25-CV-01984-RSM-BAT, 2025 WL 3699705, at *6 (W.D. Wash. Dec. 1, 2025),
 4 *report and recommendation adopted*, No. 2:25-CV-01984-RSM-BAT, 2025 WL
 5 3697208 (W.D. Wash. Dec. 19, 2025) (concluding that “Ghasedi’s alleged
 6 noncooperation, even if true, does not rise to the level of dooming his *Zadvydas*
 7 claim”).

8 In *Lema*, the court first went into detail about the causal connection between the
 9 non-cooperation and the delay in removal.

10 Here, Ethiopia’s continuing refusal to provide Lema with travel
 11 documents appears to be a result of Lema’s continuing failure to
 12 cooperate. In the two years since Lema first applied for travel documents,
 13 Lema has not furnished the Ethiopian government or the INS with any
 14 new evidence (such as affidavits from family members) to support his
 15 claim of Ethiopian nationality. Lema has not filed a new request for travel
 16 documents. Lema has not attempted to contact the Ethiopian consulate.
 17 Lema has refused to comply with an INS request, made in April 2002,
 18 that he provide the INS with certain documents. If Lema were to
 19 cooperate with the INS to dispel the Ethiopian government’s confusion
 20 over his nationality, the Ethiopian government might issue travel
 21 documents in the reasonably foreseeable future.⁸

18 ⁸As INS District Director George L. Morones opined, “[i]f [Lema] were
 19 to be truthful and cooperative with the Ethiopian consul[ate], his removal
 20 would be highly likely in the reasonably foreseeable future.”
 21 341 F.3d at 857.

21 The court then summed up this lengthy emphasis on the connection between the
 22 non-cooperation and the delay:

23 We conclude that the record contains substantial evidence that Ethiopia’s
 24 reluctance to issue Lema travel documents is *caused by* Lema’s
 25 continuing failure to cooperate with United States and Ethiopian officials
 26 to secure travel documents from Ethiopia. Lema *therefore* cannot meet his
 burden to show there is no significant likelihood of removal in the
 reasonably foreseeable future.

1 *Id.* (emphasis added). Possibly, if this detailed discussion had stood alone, without the
2 final sentence, one could conclude the court's recitation of these facts was simply an
3 incredibly lengthy, and utterly unnecessary, aside. But the court's "therefore" clearly
4 shows the requirement of a link between the non-cooperation and the non-removal.

5 Further support for that conclusion comes from Respondents' other case, *Pelich*
6 *v. I.N.S.*, 329 F.3d 1057 (9th Cir. 2003). As Respondents state, the *Pelich* court held
7 that "*Zadvydas* does not apply where an alien holds the keys [to his freedom] in his
8 pocket and could likely effectuate his removal by providing the information requested
9 by the INS." Dkt 9 at 8 (quoting *Pelich*, 329 F.3d at 1060) (internal quotation marks
10 omitted; bracketing in dkt. 9). Using a second metaphor, *Pelich* held that a "detainee
11 cannot convincingly argue that there is no significant likelihood of removal in the
12 reasonably foreseeable future if the detainee controls the clock." *Id.* Similarly, *Pelich*
13 explained that *Zadvydas* concerns do not exist "when an alien is the cause of his own
14 detention." *Id.* The court yet again spoke of causality, stating that "an alien cannot
15 assert a viable constitutional claim when his indefinite detention *is due to* his failure to
16 cooperate with the INS's efforts to remove him." *Id.* at 1061 (emphasis added.)

17 But here, there is no showing that Mr. Ali held the keys to his freedom, or that,
18 by signing the document, he could likely effectuate his removal. They also do not show
19 that he "control[led] the clock." There is nothing to suggest that Mr. Ali's supposed
20 refusal to sign has delayed or hindered the travel document request in any way.
21 Specifically, Respondents do not claim that they were unable or unwilling to proceed
22 with requesting a travel document without Mr. Ali's signature. In fact, they state that
23 they were able to submit the request on October 5, the very day he supposedly refused
24 to cooperate. Nor do they provide any evidence, or even a claim, that Ethiopia would be
25 any less likely to issue a travel document without a signature. Furthermore, on
26 November 26, 2025, Mr. Ali wrote to ICE, asking, "with at most respect sir can I found

1 out on the status of my case, I'm waiting deportation to Ethiopia." His ICE officer
 2 responded, on December 1, 2025, prior to the time when Mr. Ali supposedly ended his
 3 alleged non-cooperation, "we are still waiting for your travel docs to return back to us
 4 so we can remove you. *That is the only thing left for us.* We will update you as soon as
 5 they arrive." Exhibit 1 ¶ 3.¹ In short, ICE confirmed that Mr. Ali's supposed non-
 6 cooperation was not holding them up at all.

7 Thus, there is no support for Respondents' statement that they "were hindered by
 8 Petitioner's initial refusal to cooperate in efforts to obtain a travel document." Dkt. 9 at
 9 3. To the contrary, even with Mr. Ali's supposed refusal to sign, "ICE was able to
 10 submit a signed request for a travel document to the Ethiopian government on October
 11 5, 2025." *Id.* This directly rebuts Respondents' claim that they were "hindered" at all.

12 In sum, even if this Court were to find that Mr. Ali refused to sign the document
 13 (despite the lack of support in the record, *infra*), there is no connection between that
 14 refusal and Respondents' ability to proceed promptly with his removal. It thus has no
 15 effect on his *Zadvydas* claim.

16 **2. Respondents' claim of non-cooperation is without evidentiary**
 17 **support; to the extent it has any evidentiary support, their**
 18 **claims are internally inconsistent.**

19 This Court need not reach the issue of whether Respondents have demonstrated a
 20 failure to cooperate because, as demonstrated above, they have not shown any causal
 21 connection between the alleged non-cooperation and the delay in removing Mr. Ali.
 22 Nevertheless, Mr. Ali will address the issue briefly.

23 Officer Carnevale's statement provides no support for Respondents' claim of
 24 non-cooperation, because it did not include either of the essential components of a

25 ¹ Mr. Ali has approved the content of his declaration. Because of logistical problems, it
 26 is currently unsigned. Counsel has mailed a copy to him and, as soon as it is returned,
 will file the signed copy.

1 declaration, as discussed in Part I, *supra*. But beyond that, Respondents' own recitation
2 of facts contradicts the claim that Mr. Ali failed to cooperate.

3 In their return response, Respondents state that "ICE was eventually able to
4 obtain completed documentation from Petitioner and submit a request for a travel
5 document to the Ministry of Foreign Affairs of the Federal Democratic Republic of
6 Ethiopia on October 5, 2025." Dkt. 9 at 6 (emphasis added). *See also id.* at 9 (stating
7 that it has been "less than four months since the completed request was submitted").
8 They thus concede that they obtained completed documentation from Mr. Ali by
9 October 5. But October 5 is the date on which Mr. Ali supposedly refused to sign
10 documents. Dkt. 12-1 ¶ 17. This contradiction, combined with the fact that Officer
11 Carnevale's statement is not admissible, makes any claim of non-cooperation
12 unsupported and inconsistent with Respondents' own assertions.

13 **3. Even if this Court were to find that—due to Mr. Ali's supposed**
14 **non-cooperation—some time should be subtracted from his**
15 **period of detention, his six-month period has nearly expired**
and the Court should defer ruling until it has.

16 Even if this Court concludes that Mr. Ali failed to cooperate and that his failure
17 delays the presumptively reasonable period, his petition should not be denied.

18 Mr. Ali has been in detention, subsequent to his final order of removal on June
19 23, 2025, for over seven months. If one were to subtract the period from October 5 to
20 December 1, the date on which Officer Correa told him that there was nothing
21 further required of him (awaiting travel documents from Somalia is "the only thing left
22 for us"), that would subtract only 57 days. That would mean his six month
23 presumptively reasonable period would expire on February 18, 2025 (adding 57 days to
24 the date that is six months after June 23, namely December 23). That is barely two
25 weeks after the filing of this Reply, less than many courts would take to rule on the
26

1 matter. Mr. Ali requests that, if the Court has reached this point in its analysis, it simply
2 defer ruling for the few days until the six months have passed.

3 **B. Mr. Ali has met his *Zadvydas* burden.**

4 Respondents' main focus is their claim regarding non-cooperation. They do not
5 claim that Mr. Ali has not met his burden of showing "good reason to believe that there
6 is no significant likelihood of removal in the reasonably foreseeable future[.]"
7 *Zadvydas*, 533 U.S. at 701. And in fact, Mr. Ali has met his relatively low burden. The
8 fact that Ethiopia has not responded at all in nearly four months is part of that showing.
9 Dkt. 9 at 9. Furthermore, Ethiopia bases nationality not on birth but on the nationality
10 of at least one parent.² And Mr. Ali's parents are not Ethiopian but Somali. Dkt. 10-9
11 item 10.³ Thus, just as Somalia rejected Mr. Ali because he did not appear to be a
12 citizen, dkt. 9 at 6, there is good reason to believe Ethiopia will do the same.

13
14 ² See *Report on Citizenship Law: Ethiopia*, European University Institute, April 2020,
15 available at [https://cadmus.eui.eu/server/api/core/bitstreams/dd01ab97-50c4-5fa1-b493-](https://cadmus.eui.eu/server/api/core/bitstreams/dd01ab97-50c4-5fa1-b493-276d58067973/content)
16 [276d58067973/content \[https://perma.cc/5D8Z-PR3H\]](https://perma.cc/5D8Z-PR3H) (citing "The Proclamation on
17 Ethiopian Nationality of 2003" to conclude that "No general rights to acquire
18 citizenship through birth in the territory (*ius soli*) are applicable in the case of
19 Ethiopia."); *How to Obtain Ethiopian Citizenship: Legal Framework and Application*
20 *Procedures*, CosmosLegal, <https://www.cosmoslegal.com.tr/ethiopia-citizenship/>
21 [\[https://perma.cc/T49U-V64P\]](https://perma.cc/T49U-V64P) (last visited Jan. 26, 2026) ("Ethiopian citizenship by
22 birth is granted to individuals born to at least one Ethiopian parent, regardless of the
23 place of birth. Birth within Ethiopian territory alone does not automatically confer
24 citizenship"); *Ethiopian Nationality Law*, Wikipedia,
25 https://en.wikipedia.org/wiki/Ethiopian_nationality_law [\[https://perma.cc/L8QQ-](https://perma.cc/L8QQ-8GD6)
26 [8GD6\]](https://perma.cc/L8QQ-8GD6) (last visited January 26, 2026) ("Those who acquire nationality at birth include:
Children born anywhere who have at least one parent who is an Ethiopian national").
See also *Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369, at *4 (W.D. Wash.
Nov. 17, 2025) (court can look to facts outside petitioner's submission in determining
whether he has met his *Zadvydas* burden).

³ As with Mr. Ali, the fact that his parents' country of birth was Ethiopia does not make
them Ethiopian nationals unless their parents themselves were also Ethiopian nationals,
and there is nothing in the record showing that to be the case. And whether

C. Respondents have not met their *Zadvydas* burden.

Even crediting Officer Carnevale's statement, Respondents cannot establish that removal is likely in the reasonably foreseeable future. As to the question of whether Ethiopia would issue a travel document for Mr. Ali, Respondents provide absolutely no information whatsoever relevant to him. Officer Carnevale's statement that "Ethiopia issues travel documents routinely" says nothing about Mr. Ali. Dkt. 12-1 ¶ 19. There is no indication of what criteria Ethiopia applies in determining whether to issue a travel document and no showing of whether Mr. Ali fits those criteria. *See, e.g., Abubaka v. Bondi*, No. C25-1889RSL, 2025 WL 3204369, *5 (W.D. Wash. Nov. 17, 2025) (finding that government cannot meet its burden where, *inter alia*, "[t]he government has not provided any evidence of Vietnam's eligibility criteria or why it believes Petitioner now meets it.") (quoting *Phong Thanh Nguyen v. Scott*, No. 2:25-CV-01398-TMC, 2025 WL 2419288, at *18 (W.D. Wash. Aug. 21, 2025)). And, in fact, as discussed above, Ethiopia is unlikely to consider Mr. Ali a national and thus is unlikely to accept him.

As to the other question, namely when Mr. Ali might be removed, *if* Ethiopia were to issue a travel document, Respondents provide little more. Officer Carnevale states, "ERO is actively pursuing a travel document from Ethiopia." Dkt. 12-1 ¶ 20. But this gives no suggestion of how long Ethiopia typically takes to respond to a travel document request, or how long removal typically takes once a travel document is issued. Indeed, since a travel document "has not yet been procured . . . there is little basis to conclude [Ethiopia] is even considering accepting Petitioner's return." *Kuot*, 2025 WL 3763930, at *3. In short, Respondents gives this Court absolutely no ability to determine whether removal is likely in the reasonably foreseeable future.

Respondents consider him to be an Ethiopian national does not mean that Ethiopia considers him to be such.

D. Respondents' claims of danger and flight risk are not properly part of the *Zadvydas* analysis.

With no citation to authority, Respondents ask this Court to deny Mr. Ali's *Zadvydas* claim based on his supposed dangerousness. Dkt. 9 at 10. They ask the same based on the claim that Mr. Ali is a flight risk because "he alleges no avenue to seek relief from removal[.]" *Id.* But as Respondents themselves put it in their pleading in another case filed in this district: "[w]hether [petitioner] poses a flight risk or a danger to the community [is] *completely irrelevant*. The *only proper consideration* under *Zadvydas* is whether there is a significant likelihood of removal in the reasonably foreseeable future[.]" Federal Respondents' Return Memorandum, *Kuot v. Bondi*, No. 2:25-cv-02313-RAJ-BAT, dkt. 14 at 10 n.5 (W.D. Wash. Dec. 3, 2025) (emphasis added). Respondents were correct in *Kuot* and are wrong here

Both petitioners in *Zadvydas* had serious criminal records and one had a history of flight. 533 U.S. at 684. *Zadvydas* directly addressed this concern and made clear the sort of preventive detention requested by the government there, and by Respondents here, is impermissible. The proper remedy is appropriate conditions of release. *Id.* at 690–91. *See also Baltodano v. Bondi*, No. C25-1958RSL, 2025 WL 3484769, at *5 (W.D. Wash. Dec. 4, 2025) (ordering that Respondents release petitioner "on conditions of supervision that are reasonable in light of respondents' concern that petitioner is 'a danger to the community.'").

E. *United States v. Diouf* is no bar to Mr. Ali's *Zadvydas* claim.

Respondents suggest, almost in passing, that a *Zadvydas* claim is barred unless removal to the specified country is *impossible*, as opposed to the proper question, whether it is likely in the reasonably foreseeable future. Dkt. 9 at 9 (citing to *Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008) and implying that detention is unreasonable *only* "where the country of removal refuses to accept the noncitizen or if removal is legally barred"). But *Diouf* was giving examples based on the particular

facts of that case. In fact, Respondents have acknowledged this point in another case, citing *Diouf* for the principle that “[r]emoval becomes indefinite when, *for example*, the country designated in the removal order refuses to accept the alien or if removal is barred by the laws of that country.” Federal Respondents’ Habeas Return at 7, *Tairov v. Bondi*, No. C25-1558-RSM-MLP, 2025 WL 3538073 (W.D. Wash. Dec. 3, 2025), dkt. 8 (emphasis added).

Courts in this district have consistently rejected Respondents’ position regarding *Diouf*. See *Ghasedi v. Wamsley*, No. 2:25-CV-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). In fact, dozens of petitions in this district have been granted despite Respondents raising this contention.⁴

III. THIS COURT SHOULD ENJOIN RESPONDENTS FROM RE-DETAINING MR. ALI ABSENT NOTICE AND A HEARING.

Independent of Mr. Ali’s *Zadvydas* claim is his request for an injunction barring his re-detention absent notice and opportunity to be heard. Specifically, he requested this Court to:

⁴ As just a few examples, *compare, e.g., Tang v. Bondi*, 2025 WL 3551381 (W.D. Wash. Dec. 11, 2025), *with* Federal Respondents’ Return Memorandum and Motion To Dismiss at 8, No. 2:25-cv-01473-RAJ (W.D. Wash. Aug. 25, 2025), dkt. 12; *Van Huynh v. Bondi*, No. C25-2093-KKE, 2025 WL 3534210 (W.D. Wash. Dec. 10, 2025), *with* Federal Respondents’ Return Memorandum at 8 (W.D. Wash. Nov. 4, 2025), dkt. 7; *Hieu Tri Nguyen v. Bondi*, No. 2:25-CV-02024-TL, 2025 WL 3534168 (W.D. Wash. Dec. 10, 2025), *with* Federal Respondents’ Return Memorandum at 13 (W.D. Wash. Nov. 7, 2025), dkt. 13; *Duong v. Bondi*, No. C25-2095-KKE, 2025 WL 3628631 (W.D. Wash. Dec. 15, 2025), *with* Federal Respondents’ Return Memorandum at 8 (W.D. Wash. Nov. 21, 2025), dkt. 10; *Kuot*, 2025 WL 3763930 *with* Federal Respondents’ Return Memorandum at 8, No. 2:25-CV-02313-BAT (W.D. Wash. Dec. 3, 2025), dkt. 14; *Wana*, 2025 WL 3628634, *with* Federal Respondents’ Return Memorandum at 7, No. 2:25-CV-02321-RSL (W.D. Wash. Dec. 4, 2026), dkt. 8; *Suong v. Bondi*, No. 2:25-CV-02309-LK, 2025 WL 3718644 (W.D. Wash. Dec. 23, 2025), *with* Federal Respondents’ Return Memorandum at 11 (W.D. Wash. Nov. 3, 2025), dkt. 14.

Order that Respondents may not re-detain Petitioner without first holding a hearing before a neutral decisionmaker at which the government bears the burden of establishing flight risk or danger to the community by clear and convincing evidence based on changed circumstances since Petitioner was previously released

Dkt. 1 at 24. *See also id.* at 7-10 (discussing why notice and a hearing are required); 19-20 (discussing the factors relevant to issuing an injunction in this context).

A threshold showing for that request is, of course, that such a hearing is required. Yet Respondents fault Mr. Ali for raising in his petition why a hearing is required. They do so on the theory such briefing is irrelevant because he was not re-detained. Dkt. 9 at 11. But whether he was unconstitutionally re-detained previously is irrelevant to whether any future re-detention requires a hearing.

Respondents raise only their misplaced ripeness contention and do not dispute Mr. Ali's contention that re-detention requires notice and hearing. They "have therefore waived any argument against such relief." *Somsanuk*, 2026 WL 221139, at *4. *See, e.g., Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1023 (9th Cir. 2023) (a party must "specifically and distinctly raise an argument and support it with citations to the record" to avoid forfeiture) (internal quotation marks omitted); *Tibble v. Edison Int'l*, 843 F.3d 1187, 1193 (9th Cir. 2016) (citation omitted) ("[A]n issue will generally be deemed waived . . . if the argument was not raised sufficiently for the trial court to rule on it.") (citation omitted). Given this waiver, Mr. Ali will not brief the issue of the requirement for notice and a hearing prior to re-detention, beyond what is in his petition, other than to note that numerous courts in this district have confirmed this requirement.⁵

⁵ For just a sampling, *see, e.g., Todd v. Bondi*, No. 25-CV-02519-JHC, 2026 WL 145725, at *3-5 (W.D. Wash. Jan. 20, 2026); *Rodriguez v. Bondi*, No. C25-2167RSM, 2025 WL 3466925, at *1-2 (W.D. Wash. Dec. 3, 2025); *Tran v. Bondi*, No. 2:25-CV-02335-DGE-TLF, 2025 WL 3725677, at *4*7 (W.D. Wash. Dec. 24, 2025); *Tzafir v. Bondi*, No. 25-CV-2070-JHC-GJL, 2025 WL 3724708, at *2-4 (W.D. Wash. Dec. 24, 2025); *Khim v. Bondi*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at *4 (W.D. Wash. Dec. 17, 2025).

1 The true issue of ripeness in this case is not whether Mr. Ali has previously been
2 re-detained, but whether he faces a real risk of unlawful re-detention subsequent to any
3 release ordered by this Court. The answer is that he does, just as this Court held in
4 *Somsanuk*, 2026 WL 221139, at *4-5. Unlike Mr. Somsanuk, Mr. Ali has not been
5 unlawfully re-detained. But the other facts pointed to in *Somsanuk* and a similar
6 decision, *Phuc Huu Nguyen v. Bondi*, No. 2:25-CV-02723-RAJ, 2026 WL 183819, at
7 *6 (W.D. Wash. Jan. 23, 2026), all apply. He “falls within a group that ICE has treated
8 as a priority for enforcement: noncitizens with prior criminal convictions.” *Somsanuk*,
9 2026 WL 221139, at *4 (citing *Phuc Huu Nguyen*, 2026 WL 183819, at *6).
10 Respondents “provide no assurance that they will refrain from redetaining him[.]” *Id.* at
11 *4. And the right he seeks is one he “can enforce that right only by bringing a challenge
12 now, prior to being re-arrested.” *Id.* at *4 (quoting *Ortega v. Bonnar*, 415 F. Supp. 3d
13 963, 969 (N.D. Cal. 2019)).

14 In addition, Respondents continue to insist in case after case that re-detention
15 does not require pre-deprivation notice and a hearing, despite the numerous cases in this
16 district holding to the contrary. It is their right to do so, at least until there is binding
17 precedent consistent with the district court decisions cited in n.5. But their position
18 shows that they will continue to re-detain without pre-deprivation notice and a hearing,
19 absent an injunction. Further evidence that Mr. Ali, if released, faces a risk of unlawful
20 re-detention is seen in the policies cited in his petition, dkt. 1 at 21 (to round up as
21 many noncitizens as possible), 16 (to deny notice and opportunity to be heard in certain
22 circumstances).

23 Besides *Somsanuk*, decisions in this district that have granted relief comparable
24 to that sought here include, *Castaneda Aponte v. Washington Immigration and Customs*
25 *Enforcement*, No. C25-2144JLR, 2025 WL 4051991, at *2 (W.D. Wash. Dec. 29,

2025), *report and recommendation adopted*, 2026 WL 105038 (W.D. Wash. Jan. 14, 2026); *Vo v. Bondi*, No. 2:25-CV-02244-DGE-GJL, 2025 WL 3653722, at *6 (W.D. Wash. Dec. 17, 2025); *Wana*, 2025 WL 3628634, *6; *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025); and *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025).

IV. THE COURT SHOULD ENJOIN THIRD COUNTRY REMOVAL WITHOUT NOTICE AND A HEARING AND SIMILARLY ENJOIN PUNITIVE THIRD-COUNTRY REMOVAL.

Mr. Ali seeks an order preventing respondents from removing him to a third country where he would be subject to imprisonment or other harms (the “punitive removal” claim), and also from removing him to a third country without notice and meaningful opportunity to respond in reopened removal proceedings, in compliance with the statute and due process (the “due process” claim). Dkt. 1 at 25. *See also* dkt. 1 at 23-24 (discussing how the criteria for an injunction are met).

Respondents contend that this issue is not ripe. Dkt. 9 at 14-15. They are wrong, as numerous cases in this district have held (some as to both claims, some as to only one). *See, e.g., Khim*, 2025 WL 3653724, at *4-5 (both granted); *Wana*, 2025 WL 3628634, at *5-6 (both granted); *Hieu Tri Nguyen*, 2025 WL 3534168, at *6- 10 (both granted); *Baltodano*, 2025 WL 3484769, at *7-10 (both granted); *Hambarsonpour v. Bondi*, No. C25-1802-RSM, 2025 WL 3251155, at *4-5 (W.D. Wash. Nov. 21, 2025) (both granted); *Abubaka*, 2025 WL 3204369, at *6-8 (both granted); *Somsanuk*, 2026 WL 221139, at *6 (due process claim granted); *Lapshin v. Bondi*, No. C25-2245-KKE, 2026 WL 71407, at *4-5 (W.D. Wash. Jan. 9, 2026) (due process claim granted); *Kuot*, 2025 WL 3763930, at *5 (due process claim granted); *Elshourbagy v. Bondi*, No. 2:25-CV-02432-TL, 2025 WL 3718993, at *5-10 (W.D. Wash. Dec. 23, 2025) (due process claim granted; punitive claim ripe but denied)); *Arenado-Borges v. Bondi*, No. 2:25-

CV-02193-JNW, 2025 WL 3687518, at *4-7 (W.D. Wash. Dec. 19, 2025) (due process claim granted).

As to the due process claim, the issue is ripe because “Respondents have taken the position ‘DHS has the authority to effect third country removal without the involvement of an immigration judge, without reopening removal proceedings and without giving a noncitizen an opportunity to present a CAT claim within 24 hours after the third country agrees to accept [him] and a Notice of Removal is served.’” *Kuot*, 2025 WL 3763930, at *5 (some internal quotation marks removed). Given the potential that Respondents can never remove Mr. Ali to Ethiopia, and given the quotas that Respondents are imposing on themselves to remove a high volume of non-citizens (dkt. 1 at 20), there is every likelihood that they will seek to remove him to a third country.⁶ As stated in *Hieu Tri Nguyen*, 2025 WL 3534168, at *9, referring to the policy cited in dkt. 1 at 16-17, “This policy alone could make Petitioner’s removal to a third country an imminent threat given the low likelihood of his removal to Vietnam.” (Citation omitted.) And given that policy, there is every likelihood that if they seek third country removal for Mr. Ali, they will deny him his statutory and constitutional due process rights.

As to the punitive removal claim, Mr. Ali acknowledges that this Court recently found the relief sought in *Somsanuk* to be overly broad, at least based on the “present record,” and that any risk was at least partially ameliorated by the other relief the Court

⁶ Respondents’ statement that “No third country for removal is being sought *at this time*,” dkt. 12-1 ¶ 21 (emphasis added), does not alter this conclusion. *See, e.g., Hieu Tri Nguyen*, 2025 WL 3534168, at *7 (“that Officer Strzelczyk chose to qualify his statement with the phrase ‘at this time’ is significant: it clearly indicates that the decision could be changed at any moment. And should Respondents change their position, ‘irreparable harm could easily occur before Petitioner’s counsel could seek relief or obtain a ruling from the Court.’”) (quoting *Nguyen v. Scott*, 796 F. Supp. 3d at 730).

provided regarding the due process claim. *Somsanuk*, 2026 WL 221139, at *6. Mr. Ali's Prayer for Relief did seek a bar on removal to any third country, dkt. 1 at 25, but he accepts that this is too broad. The appropriate order would be one that bars Respondents from "removing [him] to any country where he is likely to face imprisonment or other punishment upon arrival." See *Wana*, 2025 WL 3628634, at *6.

Although the procedural protections order in *Somsanuk* would be some protection against punitive removal, they would still leave Mr. Ali at risk of consequences he submits he should not face. See *Hieu Tri Nguyen*, 2025 WL 3534168, at *9 ("But courts in this district and across the country have recognized that Petitioner is correct: the government is intentionally removing individuals to countries where they will be imprisoned.") (citing *Phong Thanh Nguyen*, 796 F. Supp. 3d at 734) (collecting cases). He therefore asks the Court to impose the relief ordered in *Wana*.

Beyond their ripeness argument, Respondents do not address any of the substantive questions: 1) whether their removal policy is unconstitutionally punitive, 2) whether notice and opportunity to respond is required either constitutionally or statutorily, or 3) whether injunctive relief is warranted. They have therefore waived or forfeited the issue. See p. 11, *supra*. Because Mr. Ali briefed the substantive issues fully in his petition, dkt. 1 at 12-19, 21-24, he will rest on his pleadings.

V. IN RELEASING MR. ALI, THIS COURT SHOULD IMPOSE THE CONDITIONS ON RESPONDENTS THAT WERE IMPOSED IN *DO V. SCOTT* AND *TANG V. BONDI*.

In Mr. Ali's prayer for relief, he not only requested immediate relief, but also requirements similar to those imposed in *Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at *6 (W.D. Wash. Dec. 5, 2025). Specifically, he requested the Court order:

that the government may not otherwise [referring to the injunction discussed in Part III, regarding notice and a hearing before any re-detention] re-detain Petitioner unless the government:
(1) obtains a valid travel document to Ethiopia or Somalia for him,

(2) provides the valid travel document to him and his counsel,
(3) offers Petitioner the opportunity to leave on his own within two months, and
(4) Petitioner does not leave. Under such circumstances, the government may be permitted to re-detain Petitioner provided it has already made concrete arrangements for him to be put on a flight to Ethiopia or Somalia in the reasonably foreseeable future.

Dkt. 1 at 24. *See also Tang*, 2025 WL 3551381 (imposing similar conditions).⁷

Respondents have not addressed this part of Mr. Ali's petition and have therefore waived or forfeited the issue *See* p. 11, *supra*. Nevertheless, Mr. Ali will briefly explain why such an order is warranted.

Counsel is aware of one recent case where a detainee was ordered released, then shortly afterwards was re-detained and held for a lengthy period before being removed, as well as another where a detainee was ordered released, shortly afterwards re-detained, and is currently being held, apparently for a lengthy time, before supposedly being removed.

In *Bernik v. Bondi*, No. C25-957-RSM-SKV, 2025 WL 2638625 (W.D. Wash. Aug. 15, 2025), *report and recommendation adopted*, No. C25-957-RSM, 2025 WL 2637678 (W.D. Wash. Sept. 12, 2025), Mr. Bernik was released on September 12, 2025, re-detained on October 21, and not removed until November 17 (just under four weeks). In *Jaranow*, 2026 WL 35864, Mr. Jaranow was released on January 6, re-detained on January 13, and has been told that his estimated date of removal is approximately February 11 (more than four weeks after re-detention). There may well be many other instances in this district alone that counsel is not aware of.

If Mr. Ali is compliant with the conditions imposed upon his release, and should Respondents subsequently manage to arrange to remove him at some time in the future,

⁷ Mr. Ali's proposal omits one provision from the orders in *Do* and *Tang*, namely the provision allowing re-detention if petitioner "violates a condition of her Order of Supervision." That provision would be inconsistent with Mr. Ali's proposed injunction requiring a hearing before any re-detention.

1 there is no reason why he should languish in detention for weeks or months, when he
2 could instead present himself for removal at the appropriate time. Accordingly, the
3 Court should order as requested.

4 Furthermore, the conditions for an injunction are met. The above facts make it
5 significantly likely that, absent the injunction, Mr. Ali would unnecessarily incur a
6 significant loss of liberty. That unnecessary loss of liberty would be an irreparable
7 injury that is a hardship to him, while the injunction would pose no hardship for
8 Respondents, meaning the public interest is served by granting the injunction.

9 DATED this 2nd day of February, 2026.

10 Respectfully submitted,

11 *s/ Alan Zarky*
12 Staff Attorney
13 Attorney for Abdinajib Ali
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