

THE HONORABLE KYMBERLY K. EVANSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MOHAMED SOLIMAN MAHMOUD
SOLIMAN EMARA,

Petitioner,

v.

PAMELA BONDI, et al.,

Respondents.

No. CV26-116-KKE

PETITIONER'S REPLY TO
RESPONDENTS' RETURN
MEMORANDUM

I. INTRODUCTION

Mohamed Emara seeks his immediate release from his indefinite immigration detention at the Northwest Immigration Processing Center ("NWIPC") and to prevent his removal to an unknown third country without due process required by law. Dkt. 1. Mr. Emara, a man with no criminal history, came to this nation seeking asylum and freedom from persecution based on [REDACTED] Although immigration authorities denied him asylum, they recognized the danger he would face if returned to his native Egypt and granted him withholding of removal. Nevertheless, the Respondents have kept him detained, in limbo, for more than fourteen months, with no indication of when, if ever, he will be deported and what the circumstances of that deportation would be. Based on that situation and the Supreme Court's holding that immigrants with final orders of deportation may not be detained indefinitely, he filed a petition for a writ of habeas corpus, Dkt. 1, asking to be released on bond and for precautions to be put in place to ensure he is not deported to a third country where he

1 will face additional strife, torture, or the threat of a return to his home country. The
 2 Respondents do not refute the factual arguments or rebut Mr. Emara’s legal arguments
 3 about the propriety of indefinite detention, but instead argue that some (but not all) of
 4 the remedies he has requested or the means he seeks to obtain those remedies are
 5 legally inappropriate. The Respondents are mistaken as to those points as illustrated
 6 below. However, even if this Court agrees with *everything* argued in the Respondents’
 7 pleading, Mr. Emara would still be entitled to immediate release. Mr. Emara is
 8 deserving of habeas relief and should be released with the utmost urgency and with
 9 precautions in place to ensure he is not immediately re-detained or shipped to a third
 10 country where he would be subject to danger, persecution, or repatriation to Egypt.

11 **II. ARGUMENT**

12 **A. The Respondents make no effort to rebut Ground One, namely that** 13 **Mr. Emara’s continued detention is unlawful under the Supreme** 14 **Court’s holding in *Zadvydas v. Davis*.**

15 The Respondents’ return cites *Zadvydas v. Davis*, 533 U.S. 678 (2001), only
 16 once in its recitation of the law and does not address *Zadvydas*’s burden-shifting
 17 framework in its argument or offer any reason why *Zadvydas* should not control here.
 18 See Dkt. 8 at 3. Rather, the Respondents’ arguments all relate to third-country removal
 19 rather than detention. Thus, Respondents have either waived or forfeited any arguments
 20 related to Mr. Emara’s detention. See, e.g., *Rodriguez-Zuniga v. Garland*, 69 F.4th
 21 1012, 1023 (9th Cir. 2023) (internal quotation marks omitted) (a party must
 22 “specifically and distinctly raise and argument and support it with citations to the
 23 record” to avoid forfeiture) (internal quotation marks omitted); *Tibble v. Edison Int’l*,
 24 843 F.3d 1187, 1193 (9th Cir. 2016) (citation omitted) (“[A]n issue will generally be
 25 deemed waived . . . if the argument was not raised sufficiently for the trial court to rule
 26 on it.”).

1 In any event, Mr. Emara has met his burden to show that he has been held for
2 longer than the presumptively reasonable six months and that “there is no significant
3 likelihood of removal in the reasonably foreseeable future.” *See Zadvydas*, 533 U.S. at
4 701. The Respondents have submitted the Declaration of Deportation Officer Jiarong
5 Du, who confirms that Mr. Emara has been at the NWIPC since November 12, 2024.
6 Dkt. 9 at ¶ 5. An immigration judge ordered him removed to Egypt but granted him
7 withholding of removal on June 16, 2025. Dkt. 9 at ¶ 6. Even if this Court does not
8 count the seven-month period that Mr. Emara spent in custody before the immigration
9 court issued its final removal order, he has been detained for over seven months since
10 the final removal order was issued.

11 Mr. Emara has also shown that there is no significant likelihood of removal in
12 the reasonably foreseeable future given that he may not be removed to Egypt, and no
13 third country has agreed to accept him. *See* Dkt. 9 at ¶ 9 (Officer Du acknowledging
14 that “[a]t the present time, there is no update on the status of his removal to a third
15 country.”). The officer also notes that Mr. Emara told an ICE officer that he had no
16 “other country to go to.” *Id.* at ¶ 7. And while ICE appears to have randomly chosen
17 Uganda as a possible third country for removal, the Respondents provide no evidence
18 that Uganda or any other country is willing to accept Mr. Emara’s third-country
19 removal under 8 U.S.C. § 1231(b)(2)(E). Courts have “routinely [found] that
20 noncitizens under such circumstances have met their initial burden under *Zadvydas*.”
21 *Elshourbagy v. Bondi*, No. CV25-02432-TL, 2025 WL 3718993, at *4 (Dec. 23, 2025)
22 (collecting cases). The burden thus shifts to the Respondents to “respond with evidence
23 sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701. Again, because the
24 Respondents do not argue that there is a significant likelihood that Mr. Emara can be
25 removed in the foreseeable future, Respondents have forfeited or waived that argument.
26 More importantly, there is no evidence in the record supporting a finding in the

1 Respondents' favor. In *Elshourbagy*, the court found that the Respondents had failed to
2 meet the government's burden where, as here, ICE had provided Petitioner, an Egyptian
3 national like Mr. Emara, with notice of its intent to remove him to Uganda but produced
4 no evidence that it had taken any steps to remove the Petitioner to Uganda. Specifically,
5 Judge Lin found that the Respondents had failed to show that there was a significant
6 likelihood that Petitioner could be removed to Uganda in the foreseeable future given
7 that there was "no evidence that steps have been taken to obtain a Ugandan travel
8 document"; "that Uganda has any interest in accepting Petitioner or even that there has
9 been any communication with Uganda regarding Petitioner at all." *Elshourbagy*, 2025
10 WL 31718993, at *4. Similarly here, Officer Du provides none of the evidence
11 Judge Lin found wanting in *Elshourbagy*. He not only admits there are "no update[s] on
12 the status of [Mr. Emara's] removal to a third country", Dkt. 9 at ¶ 7, but also that
13 Mr. Emara's claim of fear of removal to Uganda has been forward for a "credible fear
14 interview referral." *Id.* at ¶ 9. Thus, even if the Respondents succeed in coercing a third
15 country to accept Mr. Emara, the removal may not proceed if he has grounds to object
16 and is able to exercise his legal right to do so.

17 **B. The Respondents' remaining arguments are misplaced and**
18 **irrelevant.**

19 As demonstrated above, nothing in the Respondents' pleading argues that
20 Mr. Emara should not be granted the principal relief he requests—namely, to be
21 released from custody due to his indefinite detention, and, therefore, his petition should
22 be summarily granted as to that issue. However, the Respondents make arguments
23 about the types of additional remedies Mr. Emara requested. He will address them in
24 turn.
25
26

1. This Court unquestionably has subject matter jurisdiction over Mr. Emara's claims.

In his second ground for relief, Mr. Emara highlighted the fact that his continued detention violates not one but a constellation of laws, arguing it is a “violation of the Fifth Amendment, 8 U.S.C. § 1231, Convention Against Torture, implementing regulations, and the Administrative Procedure Act.” Dkt. 1 at 15. The Respondents argue that Mr. Emara’s “Administrative Procedure Act claims must be dismissed for lack of Subject Matter Jurisdiction.” Dkt. 8 at 9–10. The Respondents’ arguments are misplaced. First, it bears noting that this argument responds only to a claim regarding notice of prospective third-country removal, not to the basic argument that Mr. Emara’s continued detention is unlawful. Second, Mr. Emara alleged that deporting him to a third country without notice would violate not only the Administrative Procedure Act but also, *inter alia*, the Convention Against Torture and 8 U.S.C. § 1231. Dkt. 6 at 15–16. So even if the Court agrees with the Respondents that the Administrative Procedure Act is not the proper vehicle through which to assert that notice is required before deportation to a third country, that does not negate the remaining reasons why notice is required.

Despite the Respondents’ assertion that Mr. Emara’s claims can only be brought through habeas corpus, Dkt. 8 at 9, courts have held that “APA and habeas review may coexist.” *See Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *14, *judgment entered sub nom. Maldonado Bautista v. Noem*, 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025) (*citing R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 185 (D.D.C. 2015)). *See also J.G.G. v. Trump*, 772 F. Supp. 3d 18, 31 (D.D.C. 2025) (noting the APA has “long been available to plaintiffs . . . even in immigration challenges where habeas is also available”); *Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 510 n.10 (D. Md. 2025) (indicating that habeas claims need not be brought to the exclusion of all other claims in certain contexts); *Valez-Chavez v.*

1 *McHenry*, 549 F. Supp. 3d 300, 305 (S.D.N.Y. 2021) (recognizing the same); *Aracely*
 2 *R. v. Nielsen*, 319 F. Supp. 3d 110, 140 (D.D.C. 2018) (permitting plaintiffs to proceed
 3 with their APA claim alleging DHS's violations of the INA); *cf. Castaneda v. Garland*,
 4 562 F.Supp.3d 545, 559–61 (C.D. Cal. 2021) (finding subject-matter jurisdiction and
 5 permitting a detained noncitizen to proceed with APA claims).

6 The Court in *Valez-Chavez* held that APA and habeas corpus claims may coexist
 7 because “[n]othing in the text of the writ of habeas corpus, or the legislative history
 8 relied on by the government, demonstrates the customization or exclusivity needed to
 9 prove, by clear and convincing evidence, that Congress created the writ as a special and
 10 adequate review procedure within the meaning of § 704.” *Valez-Chavez*, 549 F. Supp.
 11 at 306; *see also Citizens for Resp. & Ethics in Washington v. United States Dep’t of*
 12 *Just.*, 846 F.3d 1235, 1244 (D.C. Cir. 2017) (requiring clear and convincing evidence of
 13 legislative intent to create a special, alternative remedy to bar APA review).

14 This Court thus has jurisdiction to review Mr. Emara’s APA claim.

15 **2. Arbitrary re-detention is a very real possibility and must be**
 16 **prohibited.**

17 The Respondents next argue that there is no reason to restrict them from re-
 18 detaining Mr. Emara if he is ordered released because the procedures in place already
 19 are sufficient and any request would be premature. Dkt. 8 at 13. However, as
 20 Judge Whitehead noted in a recent ruling, “[w]ithout any re-detention standard, the
 21 Government could theoretically re-detain [the petitioner] after release, which would
 22 render the Court’s order meaningless.” *Upety v. Bondi*, No. CV25-02443-JNW,
 23 Dkt. 15 at 8 (Jan. 26, 2026). Given that the courts have “broad discretion” in granting
 24 habeas relief “as law and justice require” it should fashion an order that ensures its
 25 order cannot be thwarted as soon as it is carried out. *Hilton v. Braunskill*, 481 U.S. 770,
 26 775 (1987). Mr. Emara is not asking for a premature ruling on future conduct. Rather,

1 he is asking for a prohibition on the direct violation of the order this Court will issue
 2 releasing him, absent some intervening change in circumstances. That is entirely
 3 reasonable and appropriate.

4 **3. Due Process precludes Mr. Emara's removal to a third country**
 5 **without adequate notice and an opportunity to be heard.**

6 The Respondents also argue that this Court may not issue the relief sought by
 7 Mr. Emara on his due process claim because he is a member of the plaintiff class bound
 8 by the Supreme Court's stay in *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153
 9 (2025).¹ Dkt. 8 at 10–12. Specifically, the Respondents argue that the Supreme Court's
 10 stay of a class-wide preliminary injunction in that case prevents this Court from
 11 providing an order barring Mr. Emara's removal to a third country without due process.

12 First, it again bears noting that this argument also only pertains to the forward-
 13 looking relief Mr. Emara has requested regarding what would happen before he can be
 14 deported to a third country, not his request for release on bond due to the impropriety of
 15 his continued indefinite detention. Second, notwithstanding that the Supreme Court
 16 stayed the nationwide preliminary injunction with no discussion of the merits, this same
 17 argument made against a TRO was rejected by other courts in this district in *Nguyen v.*
 18 *Scott*, 796 F. Supp. 3d 703, 732–35 (W.D. Wash. Aug. 21, 2025), and *Abubaka v.*
 19 *Bondi, et al.*, No. CV25-01889-RSL, 2025 WL 3204369, at *2–3 (W.D. Wash. Nov. 17,
 20 2025). Recently, following the reasoning in *Nguyen*, the court granted a TRO

21 ¹ The district court in *D.V.D.* granted a preliminary injunction that established
 22 procedures DHS and ICE were required to follow before removing a noncitizen to a
 23 third country, including written notice and an opportunity to raise a fear-based claim for
 24 protection under the Convention Against Torture treaty before removal. *D.V.D. v. U.S.*
 25 *Dep't of Homeland Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass.
 26 May 25, 2025), *reconsideration denied sub nom.* No. CV25-10676-BEM, 2025 WL
 1495517 (D. Mass. May 26, 2025). On June 23, 2025, the United States Supreme Court
 stayed the district court's preliminary injunction pending appeal in the First Circuit,
 with no member of the majority offering analysis. *Dep't of Homeland Sec. v. D.V.D.*, --
 U.S. ___, 145 S. Ct. 2153 (2025).

1 prohibiting the Respondents from removing petitioner to a third country without notice
 2 and a meaningful opportunity to respond. *See Baltodano v. Bondi, et al.*, No. CV25-
 3 1958-RSL, 2025 WL 2987766, at *20–21 (W.D. Wash. Oct. 23, 2025) (citing *Nguyen*
 4 and finding “petitioner is likely to succeed on merits of his claim that he is entitled to
 5 ‘legally required multistep procedures set out in 8 U.S.C. § 1231(b) and required due
 6 process’ before ICE can remove him to a third country.”).

7 As the court explained in *Nguyen*, the Supreme Court in *D.V.D.* provided no
 8 reasoning for its entry of the stay and whether it came to that determination based on
 9 the merits or the procedural posture of the case. *See Nguyen*, 796 F. Supp. 3d 703, 731
 10 (W.D. Wash. 2025) (citing *Merrill v. Milligan*, -- U.S. ___, 142 S. Ct. 879, 879 (2022))
 11 (Kavanaugh, J., concurring) (“The Court’s stay order is not a decision on the merits.”);
 12 *see also Cruz-Medina v. Noem*, -- F.Supp.3d --, 2025 WL 2841488 (D. Md. Oct. 7,
 13 2025) (rejecting Respondents’ argument that the stay order in *D.V.D.* means that
 14 petitioner cannot prevail, stating “[a]ll this Court can do is apply existing precedent and
 15 due process standards, and, under those standards, the Court can discern no rational
 16 basis for stripping Mr. Cruz Medina of the opportunity to appear before an immigration
 17 judge”); *Santamaria Orellana v. Maker*, No. 25-1788-TDC, 2025 WL 2841886
 18 (D. Maryland Oct. 7, 2025) (citing to *Nguyen*, 2025 WL 2419288, at *22) (“This Court
 19 agrees that based on the presently available guidance from the Supreme Court, there is
 20 an insufficient basis upon which to reach a conclusion on which aspects of *D.V.D.* the
 21 Supreme Court has rejected, whether they relate to the class certification, the due
 22 process claim, or otherwise.”).

23 The *D.V.D.* litigation concerned an earlier version of the ICE guidance, and a
 24 primary argument made by the government to the Supreme Court was an objection
 25 based on the nationwide scale of the injunction rather than its merits. *See Gov’t*
 26 *Application for a Stay, D.H.S. v. D.V.D.*, No. 24A1153 (May 27, 2025), at 19,

https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf [https://perma.cc/8NTN-TQ5D] (“First, under 8 U.S.C. 1252(f)(1), lower federal courts lack jurisdiction to issue *classwide injunctions* that restrain the operation of third-country removals pursuant to 8 U.S.C. 1231(b)”) (emphasis added). In other words, it is likely that the unreasoned Supreme Court order was not forbidding injunctive relief to Mr. Emara because he is one of many people who has no right to relief, but rather forbidding *mass* relief because Mr. Emara and others should have proceeded individually in cases just like this one. *See Nguyen*, 796 F. Supp. 3d at 732. *See also Sagastizado v. Noem*, No. CV25-00104, -- F.3d --, 2025 WL 2957002, *13 (S.D. Tex. Oct. 2, 2025) (“Notably, the class-wide nature of the *D.V.D.* injunction alone could have justified the stay, and that justification would not undermine the merits of an individual claim for relief.”).

Finally, the *Nguyen* court made clear that ICE’s current policy “contravenes Ninth Circuit law,” rendering it “impossible to comply both with Ninth Circuit precedent and the policy.” 796 F. Supp. 3d at 728.² The court explained that under Ninth Circuit precedent, “[f]ailing to notify individuals who are subject to deportation that they have the right to apply . . . for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process.” *Id.* at 727 (citing to *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (in turn citing *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998))). Applying this binding precedent, the court concluded that “Petitioner is likely to succeed on his claim that removal to a third country under ICE’s current policy, without meaningful notice and reopening of his removal proceedings for a hearing, would violate due process.” *Nguyen*, 796 F. Supp. 3d at 728–29. And in *Baltodano*, the court citing to the

² Although the Respondents do not set forth the policy, this Court discussed ICE’s current policy allowing the removal of aliens to third countries “without the need for further procedures” under certain conditions in *Baltodano*, 2025 WL 2987766, at *2.

1 reasoning in *Nguyen*, concluded that “petitioner is likely to succeed on the merits of his
 2 claim that he is entitled to ‘legally required multistep procedures set out in 8 U.S.C.
 3 § 1231(b) and required by due process’ before ICE can remove him to a third country.”
 4 2025 WL 2987766, at *3.

5 **C. Mr. Emara has demonstrated that the Respondents’ third-country**
 6 **removal policy is punitive and unconstitutional.**

7 The Respondents’ next argument again fails to address the arguments regarding
 8 the propriety of his continued indefinite detention but is directed solely at its claim that
 9 the third-party removal policies are punitive. Dkt. 8 at 12.

10 The Respondents first argue that the punitive arguments “rest entirely” on the
 11 asserted absence of notice and opportunity to be heard. *Id.* This is incorrect. In his
 12 petition, Mr. Emara also alleged the third-party removal policies amounted to
 13 punishment. Dkt. 1 at 17. The petition alleges that the Respondents “selected countries
 14 notorious for human rights abuses and instability for third-country removal
 15 arrangements.” *Id.*

16 The Respondents next argue that insufficient facts have been alleged to meet a
 17 facial or as-applied challenge. Dkt. 8 at 13. However, in the petition, Mr. Emara
 18 alleged, in part, that “Panama³ and Costa Rica⁴ took in hundreds of deportees . . . and

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

24 ⁴ According to multiple human rights organizations, migrants expelled to Costa Rica
 25 face conditions that constitute human rights violations. *Costa Rica: New report exposes*
 26 *human rights violations against migrants expelled from the U.S. and warns: “This*
cannot happen again.”, Centro Por La Justicia y El Derecho International (May 22,
 2025), <https://cejil.org/en/press-releases/costa-rica-new-report-exposes-human-rights->

1 imprisoned them in hotels, a jungle camp and a detention center.” Dkt. 1 at 11. Notably,
 2 the Respondents’ only attempt for third-country removal in this case was an attempt to
 3 send Mr. Emara to Uganda, [REDACTED].⁵ This
 4 demonstrates the third-country removal process is punitive here, where Mr. Emara was
 5 granted withholding of removal to Egypt based on persecution for his sexual
 6 orientation.

7 Courts in this district have held that the Respondents’ practice of third-country
 8 removal is punitive as a matter of police and thus violates due process under *Wong*
 9 *Wing v. United States*, 163 U.S. 228, 236–38 (1986), and *Zadvydas*, 533 U.S. at 693–
 10 94. *See Abubaka*, 2025 WL 3204369, at *7–8; *Nguyen*, 796 F.3d at 732–35;
 11 *Hambarsonpour v. Bondi*, No. CV25-1802-RSM, 2025 WL 3251155, at *1, *4–5
 12 (W.D. Wash. Nov. 21, 2025); *Baltodano*, 2025 WL 3484769, at *10. In each of these
 13 cases, the district court ordered the Respondents not to remove the petitioner to any
 14 third country where he is likely to face imprisonment upon arrival. *Id.* Mr. Emara only
 15 requests the same protections—the assurance that he will not be swooped up and sent to
 16 whatever country will accept him without first having an opportunity to argue against
 17 such action.

18 **III. CONCLUSION**

19 For the reasons presented above and in Mr. Emara’s habeas petition, Mr. Emara
 20 respectfully requests that this Court (1) order Respondents to release Mr. Emara and,

21 _____
 22 violations-against-migrants-expelled-from-the-u-s-and-warns-this-cannot-happen-
 again/ [https://perma.cc/E8C7-72G2].

23 ⁵ *See* Human Rights Watch, “Uganda: Anti-LGBT Law Unleashed Abuse,”
 24 <https://www.hrw.org/news/2025/05/26/uganda-anti-lgbt-law-unleashed-abuse-0>
 25 [https://perma.cc/9HL6-NJ2J] (May 26, 2025); The Guardian, “Exiles from Uganda’s
 26 harsh anti-gay laws now fear ‘moral panic’ legislation could follow them,”
<https://www.theguardian.com/global-development/2025/jul/07/refugees-fled-uganda-anti-gay-laws-nairobi-kenya> [https://perma.cc/D2WL-XXRB] (July 7, 2025).

1 within 24 hours of his release, provide the Court with a declaration confirming that
2 Mr. Emara has been released from custody; (2) order that Respondents may not re-
3 detain Mr. Emara without first holding a hearing before a neutral decisionmaker at
4 which the Respondents bears the burden of establishing flight risk or danger to the
5 community by clear and convincing evidence based on changed circumstances since
6 Mr. Emara was previously released; (3) order that Respondents may not remove or seek
7 to remove Mr. Emara to a third country without notice and meaningful opportunity to
8 respond in compliance with the statute and due process in reopened removal
9 proceedings; and (4) order that Respondents may not remove Mr. Emara to any third
10 country because Respondents' third-country removal program seeks to impose
11 unconstitutional punishment on its subjects, including imprisonment and other forms of
12 harm.

13 DATED this 29th day of January 2026.

14 Respectfully submitted,

15 *s/ Dennis Carroll*
16 Senior Litigator
17 Attorney for Mohamed Emara
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