

THE HONORABLE KYMBERLY K. EVANSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILFREDO CASTILLO RIVAS,

Petitioner,

v.

PAMELA BONDI, et al.,

Respondents.

No. CV26-134-KKE

**REPLY TO RETURN AND REPLY
IN SUPPORT OF EMERGENCY
MOTION**

I. INTRODUCTION

The government's return in this case acknowledges Mr. Castillo Rivas has been held in ICE detention since March 25, 2025, but insists that his detention has not become indefinite under *Zadvydas v. Davis*, 533 U.S. 678 (2001). As many judges in this district have held in similar cases in which the petitioner has obtained relief under the Convention Against Torture, the Federal Respondents' vague assurances of "intent to remove him" to a third country despite having failed to secure travel documents from any country are not sufficient to show that his removal is reasonably foreseeable. Gov't Return, Dkt. 13 at 11; *see, e.g., Baltodano v. Bondi*, No. CV25-1958RSL, 2025 WL 3484769, at *4 (W.D. Wash. Dec. 4, 2025), *Elshourbagy v. Bondi*, No. CV25-2432-TL2025 WL 3718993, at *4 (W.D. Wash. Dec. 23, 2025). Recently a court in this district specifically rejected the assertion it is reasonably foreseeable that a detainee will be removed to Mexico when he is unwilling to go there. *Coke v. Bondi*, No. CV26-71-MLP, 2026 WL 221514, at *2-3 (W.D. Wash. Jan. 28, 2026). The government has

1 shown that it cannot meet its burden under *Zadvydas*, and Petitioner must be ordered
2 released on bond.

3 The Court should also enjoin third-country removal without the due process
4 guarantees ordered by many other courts in this district. The government's baseless
5 threats to swiftly remove Mr. Castillo Rivas to a country from which it has not obtained
6 travel documents or a promise of status are traumatic and unconstitutional.

7 Finally, the government's third-country removal program is unconstitutionally
8 punitive and it should be permanently enjoined. *See Baltodano v. Bondi*, No. CV25-
9 1958-RSL, 2025 WL 3484769, at *10 (W.D. Wash. Dec. 4, 2025) (“[T]his Court holds
10 that the Government's practice of third-country removal paired with imprisonment is
11 intended to be punitive and thus violates due process under *Wong Wing* [*v. United*
12 *States*], 163 U.S. 228[,] 236–38 (1896), and *Zadvydas*, 533 U.S. [] at 693–94. . .”).

13 The Court should grant Petitioner's habeas petition on all grounds.

14 **II. THE COURT SHOULD GRANT PETITIONER'S HABEAS PETITION**
15 **BY ORDERING HIM RELEASED ON BOND.**

16 Respondents offer almost no argument as to why Petitioner may be detained for
17 eight months and counting even though they concede he may not be removed to
18 Venezuela and no third country has agreed to accept him. Gov't Return, Dkt. 13 at 11
19 (“Mexico has indicated a willingness take citizens of Venezuela and ICE *believes* that
20 Petitioner will be accepted.”) (emphasis added). Merely pursuing a third country
21 removal—or believing it is possible—does not make it foreseeable under *Zadvydas*.
22 *See, e.g., Tran v. Noem*, No. 1:25-cv-01523-TLN-CKD, 2025 WL 3268491, at *3 (E.D.
23 Cal. Nov. 24, 2025) (assertion that government was “actively working on obtaining a
24 travel document for Petitioner to Vietnam” was insufficient to show removal was
25 reasonably foreseeable); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL
26 1993735, at *5 (E.D. Cal. July 16, 2025) (“Respondents' intent to complete a travel

1 document request for Petitioner does not make it significantly likely he will be removed
2 in the foreseeable future.”); *Hambarsonpour v. Bondi*, No. CV25-1802-RSM, 2025 WL
3 3251155, at *2–*3 (W.D. Wash. Nov. 21, 2025) (holding that a government argument
4 that it was “actively working to effectuate his removal to France” was insufficient to
5 render petitioner’s removal reasonably foreseeable in the absence of travel documents).

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

14 Even though the burden has shifted to Respondents to “respond with evidence
15 sufficient to rebut” Petitioner’s showing that there is no significant likelihood of
16 removal in the reasonably foreseeable future, *Zadvydas*, 533 U.S. at 701, they offer
17 nothing in response. The Return provides no evidence that travel documents have been
18 obtained for Mexico. See Soraghan Decl., Dkt. 14 at ¶ 25 (“Mexico has been accepting
19 Venezuelan citizens, and ICE believes there is a significant likelihood of removal in the
20 reasonably foreseeable future *that Petitioner will be accepted.*”) [*sic*] (emphasis added).

21 Respondents do not even state that ICE has asked Mexico to accept Mr. Castillo
22 Rivas; evidence from other districts indicates that this is because ICE simply drives to
23 the Mexican border and dumps detainees at the border fence; if they express
24 unwillingness to go to Mexico, they are returned to detention in the United States. As
25 the Honorable Michelle L. Peterson described evidence also submitted in this case:
26

Petitioner asserts removal is not reasonably foreseeable. There is no dispute that he cannot be removed to Jamaica because he has been granted deferral of removal. (*See* dkt. # 13 at 13.) Petitioner contends there is no likelihood of removal to Mexico, the only other country ICE has identified, because Mexico does not accept non-Mexican deportees who, like him, are unwilling to go. (Dkt. # 16 at 4-5, 13.) Petitioner provides a declaration from an ICE officer, filed in another case, stating that Mexico will not accept deportees against their will. (Ruiz Decl. (dkt. # 10-4), ¶ 7.) In another declaration, an ICE officer describes an unsuccessful attempt to remove a deportee to Mexico even though Mexico previously confirmed its acceptance of the individual. (Parsons Decl. (dkt. # 102), ¶¶ 8, 12.) The deportee was driven to the Mexican border but was not removed because he refused to go willingly. (*Id.*, ¶ 11.) Petitioner also provides a declaration from a federal defender in San Diego who has spoken with “dozens” of deportees who were driven to the Mexican border and, after expressing unwillingness to enter Mexico, were returned to ICE detention. (Lopez Decl. (dkt. # 10-3), ¶¶ 2-4.) In short, Petitioner has shown good reason to believe that there is no significant likelihood of removal to Mexico in the reasonably foreseeable future. No other country has been identified for removal.

Accordingly, the burden shifts to Respondents to rebut Petitioner's showing with evidence. Respondents assert that Petitioner will be removed to Mexico, but they do not respond to or acknowledge the evidence he has provided. (Dkt. # 13 at 12-13.) “Courts in this circuit have regularly refused to find Respondents’ burden met where Respondents have offered little more than generalizations regarding the likelihood that removal will occur.” *Nguyen v. Scott*, 796 F. Supp. 3d 703, 725 (W.D. Wash. 2025). Respondents have not rebutted Petitioner's evidence, and habeas relief is thus warranted with respect to his indefinite detention claim.

Coke v. Bondi, No. CV26-71-MLP, 2026 WL 221514, at *2–3 (W.D. Wash. Jan 28, 2026). The Federal Respondents in this case similarly do not respond to the evidence Mr. Castillo Rivas has submitted, *see* Dkts. 3-2–8, about land-based “removals” to Mexico that are never completed because the detainee is unwilling to go.

If it is not fruitless, it will likely be the result of government-sanctioned torture or psychological coercion intended to effect a *self*-deportation and thus not count as a “removal” under *Zadvydas* and the INA. The ACLU has written a letter to ICE officials

1 and members of Congress describing the unconstitutional coercion that is used to force
2 people to cross the border into Mexico during the ground transportation operations
3 Federal Respondents allude to. *See* Exs. 1, 2. These punitive methods include:

- 4 • beatings;
- 5 • “grabb[ing] and crush[ing] [a detainee’s] testicles between [officers’]
6 fingers”;
- 7 • threatening detainees with being sent to jail cells in El Salvador or Africa;
- 8 • threatening detainee with handcuffing him, putting a bag over his head,
9 and sending him to Mexico; and
- 10 • threatening that detainees would be charged with federal crimes.

11 Ex. 1 at 4–5. Driving a van to the border and instructing detainees to “jump over the
12 wall,” Ex. 1 at 5, is not a “removal” as the term is understood in *Zadvydas* and may be
13 an illegal act on the part of any such jumpers in Mexico. *See* Guestavo Guerra, *Mexico:*
14 *Selected Immigration Law Issues Concerning Unauthorized Aliens* (Law Library of
15 Congress August 2013), [https://tile.loc.gov/storage-services/service/l1/l1glrd/](https://tile.loc.gov/storage-services/service/l1/l1glrd/2019669985/2019669985.pdf)
16 [2019669985/2019669985.pdf](https://tile.loc.gov/storage-services/service/l1/l1glrd/2019669985/2019669985.pdf) [<https://perma.cc/5GMY-8U3D>] (“Mexico’s [2011]
17 Migration Law provides that aliens who enter the country without authorization may be
18 deported and prohibited from entering the country for a period of time determined by
19 Mexico’s National Institute of Migration (part of Mexico’s Department of
20 Governance).”).

21 Ultimately, according to the declarations submitted in this case and gathered by
22 the ACLU, the Federal Respondents are not actually transporting detainees out of the
23 United States; they are merely bringing them to the border and demanding that they
24 self-deport. If beating non-Mexicans until they “jump” into Mexico qualified as a
25 removal, then the existence of “aliens that the Government finds itself unable to
26 remove”—the class to which the holding of *Zadvydas* applies—would be illusory.

1 *Zadvydas*, 533 U.S. at 695. But this sort of conduct does not amount to an orderly
2 “removal” as it understood in the case law, and this Court should not accept
3 Respondents’ assertions that they can effect Mr. Castillo Rivas’s “removal” through
4 ground transportation to the United States side of the border and unconstitutional
5 coercion to force him to cross to Mexico.

6 ICE’s “belie[f],” Dkt. 14 at ¶ 25, that it will be possible send Mr. Castillo Rivas
7 to Mexico does not mean his removal is reasonably foreseeable. General statements of
8 intent to remove Petitioner to any country fail to prove that his removal is reasonably
9 foreseeable. “The fact that Respondents intend to complete a travel document request
10 for Petitioner does not make it significantly likely he will be removed in the foreseeable
11 future.” *Hoac v. Becerra*, No. CV25-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D.
12 Cal. July 16, 2025). In a similar Convention Against Torture (“CAT”) case in which a
13 petitioner was granted withholding of removal to Colombia, the government sought
14 permission from the consulates of Peru, Argentina, Chile, and Mexico to remove him to
15 those countries, and was denied three times and received no answer from Mexico. *See*
16 *Aguila v. Rivas*, No. CV25-1662-PHX-DLR (ESW), Dkt. 51 at 4 (D. Ariz. Oct. 30,
17 2025) (“[T]here is no evidence in the record that removal is likely to occur at all, much
18 less in the reasonably foreseeable future.”). Here, Respondents have not even asked
19 Mexico to accept Petitioner.

20 Furthermore, Petitioner has a reasonable fear of being sent to a country that may
21 forward him to the country he has obtained CAT protections against (a practice known
22 as *refoulement* under international law). As Petitioner describes *infra* at 6–7, the law
23 allows him to be able to argue his fear before an immigration judge (not, as the
24 government is doing now, asking him to meet the final determination standard at a
25 screening interview). Mr. Castillo Rivas fears Mexico, *see* Dkt. 3-9 at 2, and his fear
26 has basis in fact. For example, Supreme Court justices have described examples of

1 people being sent on to their country of origin by Mexico despite CAT protections. *See*
 2 *DHS v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J., dissenting) (describing
 3 deportation without notice to Mexico of a man granted CAT deferral against removal to
 4 Guatemala; Mexico promptly sent him on to Guatemala without regard to the CAT
 5 decision of a United States immigration judge).

6 Mr. Castillo Rivas should be released on bond under reasonable conditions of
 7 supervision. *See Kamyab v. Bondi*, No. CV25-389-RSL, 2025 WL 2917522, at *5
 8 (W.D. Wash. Oct. 14, 2025) (citing 8 U.S.C. § 241.4(j), 241.5, 241.13(h)).

9 **III. PETITIONER IS ENTITLED TO AN INJUNCTION BARRING**
 10 **DEPORTATION TO A THIRD COUNTRY WITHOUT NOTICE AND A**
 11 **MEANINGFUL OPPORTUNITY TO BE HEARD.**

12 The Federal Respondents only oppose Mr. Castillo Rivas's request for
 13 procedural due process in the third-country removal context on the basis that he is
 14 purportedly bound by the Supreme Court's stay in *DVD* (*see infra*, at 9–11). But it is
 15 worth noting that some of the evidence they have submitted further undercuts any
 16 notion that the process they have afforded with respect to Mexico conforms to the
 17 relevant regulations, much less the Constitution.

18 Secretary Noem's memorandum, Dkt. 13 at 7, does not have the force of law.
 19 Her "guidance" was promulgated without notice and comment and the procedures it
 20 describes have never been approved by Congress. While Courts have sometimes
 21 deferred to an agency's persuasive interpretation of a statute, *see Loper Bright*
 22 *Enterprises v. Raimondo*, 603 U.S. 369 (2024), Secretary Noem's "policy"
 23 memorandum does not purport to interpret any statute, and thus is not due any
 24 deference.

25 In fact, in important respects, Secretary Noem's memorandum conflicts with
 26 existing law. Particularly relevant to Mr. Castillo Rivas's case, the memorandum
 provides that a detainee who expresses fear of removal to a third country will not

1 receive a hearing before an immigration judge unless they first prove they would “more
2 likely than not be persecuted on a statutorily protected ground or tortured in the country
3 of removal.” *See* Dkt. 13 at 8. And indeed, the “Third Country Screening Notice”
4 included in Mr. Castillo Rivas’s A-File makes clear that he was expected to prove, on a
5 shortened time frame, “whether it is more likely than not that you will be tortured in
6 Mexico” in the initial screening interview before a “DHS Asylum Officer,” not an
7 immigration judge. Dkt. 15-6 at 2.

8 The relevant regulations, in contrast, require a much lower showing at the
9 credible-fear stage. Title 8 C.F.R. § 208.31, for example, provides that a person with a
10 final removal order who expresses fear of return need only show a “reasonable
11 possibility” of persecution or torture at a credible fear hearing. And the law that applies
12 in expedited removal proceedings impose an even lower burden. *See* 8 U.S.C. §1225(b)
13 (the term “credible fear of persecution” means that there is *a significant possibility*
14 *. . . that the alien could establish eligibility for asylum*) (emphasis added); 8 C.F.R.
15 § 208.30 (same standard). *See also* *Kiakombua v. Wolf*, 498 F. Supp. 3d 1, 11 (D.D.C.
16 2020) (Jackson, J) (“credible fear” is a low standard that does not require the applicant
17 to produce evidence at all, and does not require testimony on every element of the
18 potential claim).

19 This deficiency, among others, led the *Nguyen* and *Baltodano* courts to hold that
20 “[g]iving petitioner an opportunity to file a motion to reopen [his removal proceedings]
21 . . . is not an adequate substitute for the process that is due process in these
22 circumstances.” *Baltodano*, 2025 WL 3484769, at *6 (quoting *Aden v. Nielsen*, 409 F.
23 Supp. 3d 998, 1009-11 (W.D. Wash. 2019)); *Nguyen v. Scott*, 796 F.Supp.3d 703, 728
24 (W.D. Wash. 2025). “Rather, a petitioner must be able to pursue his claim for
25 withholding of deportation in reopened removal proceedings before an immigration
26 judge.” *Id.*; *see also* *Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL

2675760, at *11 (E.D. Cal. Sep. 18, 2025); *Abubaka v. Bondi*, No. CV25-1889-RSL, 2025 WL 3204369, at *6 (W.D. Wash. Nov. 17, 2025); *A.A.M. v. Tonya Andrews, et al.*, No. 1:25-cv-01514-DC-DMC (HC), 2025 WL 3485219, at *8 (E.D. Cal. Dec. 4, 2025).

Because there is a large gap between the process accorded by the government's policies and the law, Mr. Castillo Rivas is not being accorded sufficient due process regarding threatened third-country removals and habeas relief is merited on this claim.

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

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

As the court explained in *Nguyen*, the Supreme Court in *D.V.D.* provided no reasoning for its entry of the stay and whether it came to that determination based on the merits or the procedural posture of the case. *See Nguyen*, 796 F.Supp.3d at 731–32 (citing *Merrill v. Milligan*, __ U.S. __, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (“The Court’s stay order is not a decision on the merits.”)); *see also Cruz-Medina v. Noem*, -- F.Supp.3d --, 2025 WL 2841488 (D. Md. Oct. 7, 2025) (rejecting government’s argument that the stay order in *D.V.D.* means that petitioner cannot prevail, stating, “All this Court can do is apply existing precedents and due process standards, and, under those standards, the Court can discern no rational basis for stripping Mr. Cruz Medina of the opportunity to appear before an immigration

judge . . .”); *Santamaria Orellana v. Maker*, No. CV25-1788-TDC, 2025 WL 2841886, at *11 (D. Md. Oct. 7, 2025) (citing to *Nguyen*, 796 F.Supp.3d at 732) (“This Court agrees that based on the presently available guidance from the Supreme Court, there is an insufficient basis upon which to reach a conclusion on which aspects of *D.V.D.* the Supreme Court has rejected, whether they relate to the class certification, the due process claim, or otherwise.”).

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 based on the nationwide scale of the injunction rather than its merits. *See* Gov’t 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/VNR5-SS7D>] (“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. Castillo Rivas because he is one of many people who has no right to relief, but rather forbidding *mass* relief because Mr. Castillo Rivas and others should have proceeded individually in cases just like this one. *See Nguyen*, 796 F.Supp.3d at 730–31; *see also Abubaka*, 2025 WL 3204369, at *2; *Sagastizado v. Noem*, No. CV25-00104, – F.3d --, 2025 WL 2957002, *13 (S.D. Tex. Octo. 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.”).

The *D.V.D.* class action makes claims about a different policy, seeks distinct relief, and may have been stayed specifically because the Supreme Court prefers cases

1 to proceed individually rather than pursuant to nationwide injunctions. There is no
 2 reason to require Mr. Castillo Rivas to seek relief in that litigation rather than here.

3 **V. THE COURT HAS SUBJECT MATTER JURISDICTION OVER THE**
 4 **APA CLAIM.**

5 Despite Respondents' assertion that Mr. Castillo Rivas's claims can only be
 6 brought through habeas corpus, Dkt. 13 at 11–12, courts routinely have held that “APA
 7 and habeas review may coexist.” *See Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM,
 8 2025 WL 3713987, at *14, *judgment entered sub nom. Maldonado Bautista v. Noem*,
 9 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025) (citing *R.I.L-*
 10 *R v. Johnson*, 80 F. Supp. 3d 164, 185 (D.D.C. 2015). *See also J.G.G. v. Trump*, 772 F.
 11 Supp. 3d 18, 31 (D.D.C. 2025) (noting the APA has “long been available to plaintiffs
 12 . . . even in immigration challenges where habeas is also available”); *Abrego Garcia v.*
 13 *Noem*, 777 F. Supp. 3d 501, 510 n.10 (D. Md. 2025) (indicating that habeas claims need
 14 not be brought to the exclusion of all other claims in certain contexts); *Valez-Chavez v.*
 15 *McHenry*, 549 F. Supp. 3d 300, 305 (S.D.N.Y. 2021) (recognizing the same); *Aracely,*
 16 *R. v. Nielsen*, 319 F. Supp. 3d 110, 140 (D.D.C. 2018) (permitting plaintiffs to proceed
 17 with their APA claim alleging DHS's violations of the INA); *cf. Castaneda v. Garland*,
 18 562 F.Supp.3d 545, 559–61 (C.D. Cal. 2021) (finding subject-matter jurisdiction and
 19 permitting a detained noncitizen to proceed with APA claims).

20 The Court in *Valez-Chavez* held that APA and habeas corpus claims may coexist
 21 because “[n]othing in the text of the writ of habeas corpus, or the legislative history
 22 relied on by the government, demonstrates the customization or exclusivity needed to
 23 prove, by clear and convincing evidence, that Congress created the writ as a special and
 24 adequate review procedure within the meaning of § 704.” *Valez-Chavez*, 549 F. Supp.
 25 at 306; *see also Citizens for Resp. & Ethics in Washington v. United States Dep't of*
 26

1 *Just.*, 846 F.3d 1235, 1244 (D.C. Cir. 2017) (requiring clear and convincing evidence of
2 legislative intent to create a special, alternative remedy to bar APA review).

3 Furthermore, the decision to re-detain Mr. Castillo Rivas is reviewable because it
4 is an action pursuant to which his right to liberty has been determined:

5 When noncitizens challenge administrative action to revoke their parole
6 or otherwise re-detain them, courts provide judicial review of such
7 decisions pursuant to their authority to review “[a]gency actions made
8 reviewable by statute and final agency action for which there is no other
9 adequate remedy[.]” 5 U.S.C. § 704; *see Norton v. S. Utah Wilderness*
10 *All.*, 542 U.S. 55, 61-62 (2004) (discussing “what limits the APA places
11 upon judicial review”). Reviewable agency action includes “the whole or
12 part of an agency rule, order, license, sanction, relief, or the equivalent or
13 denial thereof, or failure to act.” See 5 U.S.C. § 551(13). Agency action is
14 deemed final if it (1) “impose[s] an obligation, den[ies] a right or fix[es]
15 some legal relationship as a consummation of the administrative
16 process[.]” *Chicago & S. Air Lines v. Waterman S. S. Corp.*, 333 U.S.
103, 113 (1948) (citation omitted), and (2) is an action “by which ‘rights
or obligations have been determined,’ or from which ‘legal consequences
will flow,’ ” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation
omitted). Thus, DHS’s revocation of the release of a noncitizen
previously granted parole is reviewable under the APA because it denies
the noncitizen’s right to liberty and is an action from which rights have
been determined.

17 *Torres v. Noem*, Case No. CV25-2697-JLR, 2026 WL 234076, at *2 (W.D. Wash. Jan.
18 29, 2026).

19 This Court thus has jurisdiction to review Mr. Castillo Rivas’s APA claim.

20 **VI. 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;
Nguyen, 796 F.Supp.3d at 739; *Hambarsonpour*, 2025 WL 3251155, at *1, *4–5;

1 *Baltodano*, 2025 WL 3484769, at *10. Respondents are wrong that this claim restates
2 his due process claim: the *Wong Wing* claim has nothing to do with what process is
3 accorded *prior* to such removals.

4 Rather, courts that have granted relief on this claim have particularly taken note
5 of the descriptions of punitive treatment that deviate from the government’s promises in
6 individual cases before the court. *See, e.g., Rivera-Trigueros v. Bondi*, No. 24-3764,
7 2025 WL 1189561, at *2 (9th Cir. Apr. 24, 2025) (finding individual had shown that, if
8 detained in El Salvador, he would “confront a prison environment in which torture is
9 pervasive” and that “the squalid conditions in Salvadoran prisons—which include
10 extreme overcrowding, inadequate sanitation, and a lack of food—are deliberately
11 inflicted by government officials as a form of punishment”) (citation omitted); *Abrego*
12 *Garcia v. Noem*, 777 F. Supp. 3d 501, 509 (D. Md. 2025) (“ICE forcibly transported
13 Abrego Garcia to the Terrorism Confinement Center (‘CECOT’) in El Salvador, a
14 notorious supermax prison known for widespread human rights violations.”); *DHS v.*
15 *D.V.D.*, 145 S. Ct. at 2154–55 (2025) (Sotomayor, J., dissenting) (describing
16 deportation to Mexico of a gay man from Guatemala who had obtained withholding of
17 removal to Guatemala under the Convention Against Torture; Mexico promptly
18 forwarded him on to Guatemala, where he was forced into hiding); *D.A. v. Noem*, No.
19 25-CV-3135 (TSC), 2025 WL 2646888, at *1–*3 (D.D.C. Sep. 15, 2025) (describing
20 punitive deportation to prison-like setting in Ghana). Even if they are not imprisoned,
21 petitioners lack status in third countries that have not accepted them as citizens and
22 cannot work or access services in the third country. This Court should similarly
23 recognize that ICE’s third-country deportation policy is punitive in intent and practice
24 and therefore violates due process.

25 These courts did not know about the ACLU letter describing the unconstitutional
26 coercion used to force people to self-deport to Mexico, but those horrendous facts make

1 clear that ICE is punishing people as part of the land-based, no-travel-document
2 “removals” ICE is specifically threatening to deploy in Mr. Castillo Rivas’s case. *See*
3 Ex. 1.

4 Contrary to Respondents’ characterization, Petitioner is alleging specific facts
5 regarding Respondents’ threatened removal of Mr. Castillo Rivas to Mexico, the
6 country to which they say they intend to remove him. *See* Dkts. 3-1–3-8; Exs. 1, 2. And
7 given that Petitioner was granted CAT withholding based on credible evidence that he
8 had been tortured in his home country, the entire practice of using “bridge countries” to
9 effectuate eventual return to a barred home country represents an end run around
10 prohibitions against torture: punitive by any definition. *See* Matias Delacroix & Megan
11 Janetsky, *Isolated in ‘Harsh Conditions:’ Deportee from US Details Legal Limbo in*
12 *Panama Camp Near Darien Gap*, AP World News (Feb. 22, 2025),
13 [https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86)
14 [bba8c3dc33fd38efd569a5b51e481a86 \[https://perma.cc/7FL8-KNXT\]](https://perma.cc/7FL8-KNXT)) (quoting U.S.
15 State Department’s statement on social media that the countries were “safely returning
16 third-country nationals to their countries of origin”); *see also* *D.V.D.*, 145 S. Ct. at 2154
17 (Sotomayor, J., dissenting). Such an end run around prohibitions on torture could thus
18 be accomplished without any specific punitive intent in individual decisionmakers’
19 minds.

20 This Court should grant the habeas petition on the ground that the third-country
21 removal program is punitive insofar as it involves imprisonment for a civil immigration
22 issue, *see Abubaka*, 2025 WL 3204369, at *8, and as applied to Mr. Castillo Rivas, is
23 punitive insofar as any third-country candidate is not bound by the United States CAT
24 decision indefinitely withholding his deportation to the country that tortured him.

**VII. THE TRAUMA THAT THE RESPONDENTS HAVE ALREADY
INFLECTED ON MR. CASTILLO RIVAS MAY BE CONSIDERED BY
THE COURT IN DECIDING HOW QUICKLY TO ISSUE RELIEF AND
WHAT REMEDY WOULD RESTORE HIM TO HIS ORIGINAL
POSITION ABSENT THE CONSTITUTIONAL VIOLATIONS.**

Habeas is an equitable remedy. *Munaf v. Geren*, 553 U.S. 674, 693 (2008). And Congress has reiterated the traditional rule that courts enjoy considerable discretion in formulating such relief as “law and justice require.” 28 U.S.C. § 2243.

The equitable considerations the Court may find relevant to its disposition of matters in this case include facts about the trauma that Mr. Castillo Rivas has experienced as a result of being deprived of regulatory, statutory, and constitutional rights by this government. His petition contains no conditions-of-confinement claims, but the grim facts of his civil immigration detention—which according to the Supreme Court cannot be punitive—contribute to the urgent need for habeas relief in this case.

**VIII. THE EMERGENCY MOTION IS NOT A TRO AND SHOULD BE
GRANTED OR DISMISSED AS MOOT.**

Mr. Castillo Rivas’s emergency motion was not a motion for a temporary restraining order, but an invocation of the inherent power of the Court to preserve its jurisdiction. *See Alves v. U.S. Dep’t of Justice*, No. EP-25-CV-306-KC, 2025 WL 2629763, at *5 (W.D. Tex. Sep. 12, 2025) (“[T]his Order is issued under the Court’s inherent authority to preserve and assess its own jurisdiction, not as a TRO, but to the extent a bond may be required, it is waived.”). And it was not a request for “preliminary relief,” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008), in the way a motion for a TRO or preliminary injunction seeks to obtain accelerated relief on a request for a permanent injunction. *See Gon v. First State Ins.*, 871 F.2d 863, 865 (9th Cir. 1989) (defining “injunction” to mean “an order that is . . . designed to accord or protect some or all of the substantive relief sought by a complaint in more than temporary fashion. . . . to be contrasted with an order by a court that regulates the

conduct of the litigation”) (citing 16 C. Wright, A. Miller, E. Cooper, & E. Gressman, *Federal Practice & Procedure: Jurisdiction* § 3922 at 29 (1977)); *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945) (“A preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally.”). Instead, this Emergency Motion sought what the Petition ultimately opposes: retention of Mr. Castillo Rivas at NWIPC (rather than his release).

Mr. Castillo Rivas’s motion did not resemble a TRO because it did not ask for accelerated relief on a claim in his petition. He could not and does not request as one of the grounds of his habeas petition that he not be transferred from the jurisdiction. As Respondents acknowledge, habeas is not the proper forum for contesting a removal order, *see Y.T.D. v. Andrews*, No. 1:25-cv-01100 JLT SKO, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18, 2025), so a TRO considering whether he is likely to success on the merits of a request not to be removed at all would fail at the first step of the analysis.¹ But temporary relief that arguably should be made permanent was not the nature of Mr. Rea-Hernandez’s request. Rather, the relief was itself supposed to be temporary: preserving the court’s jurisdiction only during the pendency of the petition. *See Alves*, No. EP-25-CV-306-KC, 2025 WL 2629763, at *5 (“[T]his Order is issued under the Court’s inherent authority to preserve and assess its own jurisdiction, not as a TRO, but to the extent a bond may be required, it is waived.”).

The Court’s ability to grant this request stems not from Federal Rule of Procedure 65, but its inherent ability to preserve its jurisdiction once the petition is filed. *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 293 (1947) (“[T]he District Court ha[s] the power to preserve existing conditions while

¹ Notably, the Federal Respondents do not argue that the temporary relief of forbidding transfer is not likely to be justified by the merits of a no-transfer ground in the habeas petition. *See* Dkt.16 at 6–7. Rather, they simply argue the merits of the case, which are arguments for *release*, not retention.

1 it . . . determine[s] its own authority to grant injunctive relief.”). *United States v. Shipp*,
2 203 U.S. 563, 573 (1906) (“The fact that the petitioner was entitled to argue his case
3 shows what needs no proof, that the law contemplates the possibility of a decision
4 either way, and therefore must provide for it.”). Unlike a temporary restraining order,
5 this power does not depend on the merits of the case, *id.*, and in fact seeks the opposite
6 relief: retention rather than release.

7 Thus, the provisional grant of this motion could not be extended by a
8 preliminary or permanent injunction—a preliminary injunction is a request to speed up
9 the ultimate relief, which here is release. *See Gon*, 871 F.2d at 865 (defining
10 “injunction” to mean “an order that is . . . designed to accord or protect some or all of
11 the substantive relief sought by a complaint in more than temporary fashion. . . . to be
12 contrasted with an order by a court that regulates the conduct of the litigation”) (citing
13 16 C. Wright, A. Miller, E. Cooper, & E. Gressman, *Federal Practice & Procedure*:
14 *Jurisdiction* § 3922 at 29 (1977)); *De Beers Consol. Mines*, 325 U.S. at 220 (1945) (“A
15 preliminary injunction is always appropriate to grant intermediate relief of the same
16 character as that which may be granted finally.”). Petitioner is not asking here for
17 preliminary relief on his ultimate claim, but an order by a court that regulates the
18 conduct of the litigation. *Cf. Satvir v. Noem, et al.*, No. 1:26-cv-00157-TLN-JDP, 2026
19 WL 194331, at *1 (E.D. Cal. Jan. 26, 2026) (emphasis added) (“Petitioner challenged
20 the lawfulness of his civil detention through a petition for writ of habeas corpus and a
21 motion for TRO. On January 12, 2026, the Court granted a TRO *ordering Petitioner's*
22 *immediate release* from detention. Now the Court determines whether the relief granted
23 in the TRO should continue as a preliminary injunction.”) (citations and footnote
24 omitted).

25 Because the emergency motion was not a motion for a TRO, this Court can grant
26 it without reviewing the *Winter* factors simply based on the Court’s own need to

maintain jurisdiction over a pending habeas claim. But even if it is considered as a motion for a TRO, the Court should grant the motion. First, the purpose of the motion has already been fulfilled and the request is therefore moot. This Court can decide the merits of the petition and dismiss this motion as moot: Mr. Castillo Rivas should be released immediately under *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See Coke v. Bondi*, No. CV26-71-MLP, 2026 WL 221514, at *5 (W.D. Wash. Jan. 28, 2026); *cf. Hagos v. Noem et al.*, No. 3:26-cv-150-JES-DEB, 2026 WL 202873, at *6 (S.D. Cal. Jan 27, 2026) (“Having granted the petition, the Court DENIES AS MOOT the motion for TRO.”). Second, Mr. Castillo Rivas easily meets all of the *Winter* factors and the motion should be granted if it is not dismissed as moot.

A. Petitioner Is Likely to Succeed on the Merits of His Claims.

See argument, *supra*.

B. Petitioner Is Likely to Suffer Irreparable Harm in the Absence of Relief.

Setting aside the fact that Petitioner does not presently need *preliminary* relief, but merely rather a decision on the merits (*see* mootness argument, *supra* at 15–18), he would suffer irreparable harm from being transferred from this district. He has constitutional rights that should be heard by this Court rather than allowing the Respondents to attempt to moot the claims by spiriting him away from the district. “It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

C. The balance of the equities and public interest favors Petitioner.

The Respondents’ position—that the Court should not maintain jurisdiction long enough to decide Mr. Castillo Rivas’s position—is hard to countenance. The Respondents are not remotely prejudiced by being ordered to extend the period that

they have *already* extended beyond the presumptively reasonable six months the Supreme Court has afforded them to effect Mr. Castillo Rivas's removal.

"[T]he [government] cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken v. Holder*, 556 U.S. 418, 436 (2009) (describing public interest in preventing noncitizens "from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (When the government's treatment "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction.").

IX. CONCLUSION

This Court should grant the habeas petition on all grounds and grant the emergency motion or dismiss it as moot.

DATED this 2nd day of February 2026.

Respectfully submitted,

s/ Ann K. Wagner
Assistant Federal Public Defender
Attorney for Wilfredo Castillo Rivas

I certify that this memorandum contains 5,987 words, in compliance with the Local Civil Rules.