

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LAZARO FELIPE NAVARRO-MAURY,
Petitioner,
v.
LAURA HERMOSILLO, *et al.*,
Respondents.

Case No. 2: 26-cv-00333-TMC

REPLY TO FEDERAL RESPONDENTS'
RETURN MEMORANDUM

I. INTRODUCTION

Respondents ask this Court to uphold Petitioner's continued civil detention and dissolve the emergency relief that prevented his imminent transfer and third-country removal. They assert that Petitioner's detention remains lawful, that the six-month presumption recognized in *Zadvydas v. Davis*, 533 U.S. 678 (2001), has not been reached, and that removal is reasonably foreseeable because ICE scheduled his removal to Mexico.

The record demonstrates otherwise. Petitioner has been subject to a final order of removal to Cuba since 2006, yet ICE has been unable to effectuate his removal for nearly two decades. *See* Dkt. 11-2. After years of compliance under an order of supervision ("OSUP"), ICE re-detained

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1 him on October 28, 2025, despite no material change indicating removal is now likely. Dkt. 10
2 ICE acknowledges it is still awaiting a response from Cuba regarding travel documents. Dkt.10.
3 At the same time, ICE attempted to remove Petitioner to Mexico without reopening proceedings
4 or affording the procedural protections required before third-country removal.

5 Because Petitioner's detention has exceeded the presumptively reasonable period and
6 removal is not significantly likely in the reasonably foreseeable future, the burden shifts to
7 Respondents to justify continued detention. They have not met that burden. Moreover, the
8 attempted third-country removal without adequate process presents an ongoing risk of irreparable
9 harm.

10 For these reasons, and as discussed below, continued detention violates due process, and
11 injunctive relief remains necessary.

12 II. FACTUAL BACKGROUND

13 Mr. Navarro-Maury is a native and citizen of Cuba who entered the United States on
14 November 25, 1995, after inspection and parole. He fled political instability in Cuba and has lived
15 in the United States for nearly three decades, establishing family, employment history, and
16 community ties. See Exhibit B: Decl. of Navarro-Maury.

17 On October 29, 1998, Petitioner was convicted in Multnomah County, Oregon. As a result,
18 his parole was revoked. On December 23, 2005, ICE detained him. On January 3, 2006, an
19 immigration judge ordered him removed to Cuba. *See* Dkt. 11-2.

20 On March 27, 2006, DHS released Petitioner under an OSUP because there was no
21 procedure to secure Cuban travel documents. *See* Dkt. 10. Petitioner complied fully with all
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1 reporting requirements for more than a decade. DHS records confirm consistent compliance. *See*
2 Exhibit. A.

3 On October 28, 2025, Petitioner was re-detained from his residence in Portland based on a
4 2020 arrest involving charges that were dismissed and another allegation for which no complaint
5 was filed. *See* Dkt. 10.

6 The issue is not whether ICE may re-detain Petitioner, but whether it may do so without
7 due process.

8 III. ARGUMENTS

9 A. Petitioner's Re-Detention Violates His Due Process

10 Deportation Officer Reed avers that Petitioner was convicted and sentenced on June 1,
11 2015, in the Washington County Circuit Court, Oregon, to two years' probation for misdemeanor
12 Harassing Communication. *See* Dkt. 10, Decl. of Reed at 12. ICE did not determine at that time
13 that Petitioner had violated the conditions of his OSUP, nor did it attempt to detain him. Officer
14 Reed also states that Petitioner was arrested on November 26, 2020, in Portland on charges that
15 were later dismissed, as well as a harassing communication allegation for which no complaint was
16 filed. Once again, ICE did not revoke Petitioner's OSUP at that time. Instead, more than five years
17 after Petitioner's most recent arrest, ICE concluded that he had violated conditions of release and
18 that re-detention was warranted.

19 With respect to the process of re-detention, Officer Reed asserts that Petitioner was
20 provided "an informal interview ... to afford [him] an opportunity to respond to the reasons for
21 revocation of the order of supervision" on October 28, 2025. *See* Dkt.10. However, this assertion
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1 is unsupported by any documentation. Respondents have also provided no evidence that Petitioner
2 was served with a written notice of OSUP revocation.

3 Even assuming ICE complied with applicable regulations, such limited procedures do not
4 satisfy the requirements of the Fifth Amendment, which provides that no person shall be deprived
5 of liberty without due process of law. The right to due process extends to all persons within the
6 United States, including noncitizens, “whether their presence is lawful, unlawful, temporary, or
7 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Courts in this District have recognized
8 that a petitioner has a protected liberty interest in continued release from custody and that due
9 process requires proper notice and an opportunity to respond before re-detention. *Jimenez v. Bondi*,
10 No. C25-2167-RSM, 2025 WL 3466925, at *2 (W.D. Wash. Dec. 3, 2025). In *Jimenez*, the court
11 ordered immediate release and barred re-detention absent adequate notice and a meaningful
12 opportunity to respond. *Id.* at *3.

13 Respondents’ assertion that “any claims regarding the OSUP revocation are inapplicable
14 here due to Petitioner’s criminal history while on release,” *see* Dkt. 9 at 14, should be rejected.
15 Respondents had multiple opportunities to address any alleged violations, yet these incidents
16 occurred years before ICE acted upon them. Petitioner attended numerous reporting appointments
17 during that period, at which any concerns could have been raised but were not. Courts in this
18 District have recently held that due process requires a pre-deprivation hearing before revocation
19 of an OSUP, noting that “the government’s interest in arresting and detaining a noncitizen without
20 a hearing is low where the noncitizen was already released because the government had been
21 persuaded that he would not abscond and would not pose a danger to the community.” *Khim v.*
22 *Bondi*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at *4 (W.D. Wash. Dec. 17, 2025).

1 Accordingly, Petitioner's re-detention violates due process, and he must be released on this
2 ground.

3 **B. The Presumptive Grace Period for Petitioner's Detention Has Ended, and There Is**
4 **a Good Reason to Believe That There Is No Significant Likelihood of His Removal**
5 **to Cuba in The Reasonably Foreseeable Future.**

6 Petitioner and Respondents agree that the Supreme Court's decision in *Zadvydas v. Davis*,
7 533 U.S. 678 (2001), governs this case. In *Zadvydas*, the Court held that 8 U.S.C. § 1231(a)(6)
8 implicitly limits a noncitizen's detention to a period reasonably necessary to effect removal. *Id.* at
9 701. The Court further determined that detention for six months following entry of a final order of
10 removal is "presumptively reasonable." *Id.* After this six-month period, once the noncitizen
11 provides good reason to believe there is no significant likelihood of removal in the reasonably
12 foreseeable future, the government must rebut that showing with sufficient evidence. *Id.* If the
13 government cannot meet that burden, the noncitizen must be released from detention. *Jennings v.*
14 *Rodriguez*, 583 U.S. 281, 299 (2018).

15 Despite Respondents' assertions, the presumptively reasonable detention period under
16 *Zadvydas* expired long ago. Petitioner's final order of removal was entered on January 3, 2006.
17 See Dkt. 11-2. He was released on March 27, 2006, under an OSUP after 83 days of post-order
18 detention. DHS re-detained Petitioner on October 28, 2025, and he remains detained at the
19 Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. See Dkt. 10. As of
20 February 17, 2026, Petitioner has been detained approximately 195 days in total — well beyond
21 the six-month presumptively reasonable period recognized in *Zadvydas*.

22 Moreover, ICE has been unable to remove Petitioner for more than twenty years since his
23 removal order became final and has made little apparent progress in obtaining travel documents

1 from Cuba during the months since his re-detention. Officer Reed testified that ICE is still awaiting
2 a response from the Cuban government, as of February 10, 2026, regarding whether Cuba will
3 accept Petitioner. *See* Dkt. 10. Officer Reed did not provide evidence of when the request was
4 submitted, and Respondents submitted no documentary evidence demonstrating progress toward
5 obtaining travel documents. These facts provide good reason to believe there is no significant
6 likelihood of removal to Cuba in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

7 Respondents argue that Petitioner has failed to demonstrate that removal is not reasonably
8 foreseeable and assert that ICE obtained travel documents and secured a flight for his removal to
9 Mexico, a third country. However, Respondents do not claim that ICE obtained a travel document
10 or flight to Cuba — the designated country of removal. This omission confirms that removal to
11 Cuba is not reasonably foreseeable. Accordingly, Petitioner's continued, and indefinite detention
12 violates due process, and he must be released.

13 **C. The Burden to Show Why Petitioner's Continued Detention Does Not Violate Due**
14 **Process Shifts to Respondents**

15 Because the six-month presumptively reasonable detention period has elapsed, the burden
16 shifts to Respondents to demonstrate that Petitioner's continued detention remains constitutionally
17 permissible. *Moran v. Bondi*, No. C25-2755JLR, 2026 WL 279354 (W.D. Wash. Feb. 3, 2026).
18 Petitioner satisfies his burden by showing that ICE has failed to effectuate his removal for nearly
19 two decades and has made little apparent progress in securing travel documents during the many
20 months since his re-detention. *See Danh Van Nguyen v. Bondi*, No. C25-2674-SKV (W.D. Wash.
21 Feb. 3, 2026), dkt. 16. Courts have found the burden unmet where respondents have been unable
22 to remove a noncitizen to Cuba for more than fifteen years, offered no evidence of obtaining travel
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1 documents from Mexico, and failed to dispute assertions that Mexico will not accept the individual
2 without consent—an assertion supported by ICE officer declarations in similar proceedings.
3 *Pantoja v. Bondi*, No. C25-2718JLR (W.D. Wash. Jan. 30, 2026), dkt. 15. Respondents likewise
4 fail to carry their burden when they provide no explanation as to why Mexico would accept
5 removal. *Id.* Nor is the burden satisfied where the government shows only that it renewed inquiries
6 to Cuban authorities without response, particularly where it fails to explain periods of inaction
7 following re-detention. *Acosta-Ginori v. Bondi*, No. 2:25-CV-02649-RAJ, 2026 WL 221509
8 (W.D. Wash. Jan. 28, 2026). Collectively, these authorities confirm that continued detention under
9 such circumstances violates due process.

10
11 Petitioner has been detained well beyond the six-month presumptively reasonable period
12 following his final order of removal issued on January 3, 2006. For nearly twenty years, ICE has
13 been unable to secure travel documents from Cuba, a circumstance closely analogous to the
14 prolonged removal impasse recognized in *Danh Van Nguyen v. Bondi*. ICE also knew or should
15 have known that Mexico does not accept deportees who refuse consent, and Petitioner
16 unequivocally withheld such consent by refusing to sign the Notice of Intent to Remove to Mexico
17 on three separate occasions within a single month. These facts demonstrate that removal is not
18 reasonably foreseeable. Accordingly, Respondents' contention that Petitioner bears the burden of
19 proving that his detention violates the Constitution is misplaced. Once detention exceeded the six-
20 month period and removal proved impracticable, the burden shifted to Respondents to justify
21 continued detention. Because Respondents have not shown a significant likelihood of removal in
22 the reasonably foreseeable future, they have failed to meet that burden.

D. Respondents Fail to Meet Their Burden of Showing That Petitioner's Removal Is Substantially Likely in The Reasonably Foreseeable Future.

Because Mr. Navarro-Maury has made a preliminary showing of potentially indefinite detention, the burden shifts to Respondents to demonstrate that removal is reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Respondents' generalized representation that Petitioner's removal is "substantially likely" in the "reasonably foreseeable future" is insufficient to satisfy that burden. *Id.* As this Court recently observed, "courts in this circuit have regularly refused to find Respondent's burden met where Respondents have offered little more than generalizations regarding the likelihood that removal will occur." *Eshaghapour v. Bondi*, No. C25-2322-SKV, 2026 WL 100603, at *4 (W.D. Wash. Jan. 14, 2026).

Petitioner has lived in the United States for more than twenty years since his final removal order was issued on January 3, 2006. He was previously in ICE custody from December 23, 2005, to March 27, 2006, and he has been detained again since October 28, 2025. *See* Dkt.10. Respondents have not demonstrated any meaningful progress toward effectuating his removal to Cuba. Indeed, Respondents concede that ICE is still awaiting a response from the Cuban government regarding whether it will accept Petitioner if removed. *See* Dkt. 10, Decl. of Reed. Officer Reed further acknowledged that Petitioner was released on March 27, 2006, because "there was no procedure in place with the government of Cuba at that time to secure travel documents for Cuban citizens." *Id.* at 11. Respondents provide no evidence that such procedures now exist, when any request was submitted to Cuban authorities, how long the process may take, or what efforts—if any—were made during the twenty years since the removal order became final.

Respondents offer no credible assurance that ICE will obtain travel documents in the reasonably foreseeable future. Mere assertions of 'good-faith' efforts to secure removal "do not

1 make removal likely in the reasonably foreseeable future.” *Gilali v. Warden of McHenry Cnty. Jail*,
 2 No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019). Given these facts,
 3 Respondents have failed to meet their burden of showing that Petitioner’s removal is substantially
 4 likely in the reasonably foreseeable future. The Court should therefore order Petitioner’s
 5 immediate release under appropriate conditions.

6 **E. Respondents’ Attempt to Remove Petitioner to a Third Country (Mexico) Violates**
 7 **His Due Process Rights**

8 Respondents concede that the government may not remove a person to a third country
 9 where they may face persecution or torture. *See* Dkt. 9. Respondents further acknowledge that
 10 when the government seeks to remove an individual, removal ordinarily occurs through
 11 proceedings that include an evidentiary hearing before an immigration judge. *Id.* Respondents also
 12 admit that, prior to the filing of this Petition and the issuance of the January 29, 2026, Temporary
 13 Restraining Order (“TRO”), Petitioner was placed on a flight manifest and scheduled for removal
 14 to Mexico. *Id.* An attempt to remove Petitioner to Mexico without notice and a meaningful
 15 opportunity to respond, in compliance with statutory requirements and due process protections in
 16 reopened removal proceedings, is unconstitutional and risks subjecting him to detention and other
 17 forms of harm.

18 Several courts in this District have addressed challenges to ICE’s current third-country
 19 removal policy and concluded that it violates due process. *See Baltodano*, 2025 WL 3484769, at
 20 *6; *Abubaka*, 2025 WL 3204369, at *6; *Nguyen*, 796 F. Supp. 3d at 727–29; *see also Aden v.*
 21 *Nielsen*, 409 F. Supp. 3d 998 (W.D. Wash. 2019). In *Aden*, the court held that a petitioner must be
 22 afforded “a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or
 23 her particular claim.” *Id.* at 1011. The court further held that, in the context of third-country

1 removal, providing an opportunity to file a motion to reopen is not an adequate substitute for the
2 process that is due; rather, removal proceedings must be reopened so that a hearing may be held.
3 *Id.* The court in *Nguyen v. Scott*, 796 F. Supp. 3d 703, 728 (W.D. Wash. 2025), explained that the
4 requirements set forth in *Aden* flow directly from binding Ninth Circuit precedent governing due
5 process protections before removal to a third country and held that ICE's third-country removal
6 policy contravenes Ninth Circuit law.

7 It is apparent here that Petitioner's removal proceedings were not reopened and that no
8 meaningful due process procedures were provided before ICE attempted to remove him to Mexico.
9 Respondents rely on a claim that, during an October 31, 2025, visit, Petitioner "voluntarily stated"
10 that he wished to be removed to Mexico. *See* Dkts. 9 & 10. Petitioner denies making such a
11 statement. *See* Decl. of Navarro-Maury. Respondents further assert that DHS served Notices of
12 Intent to Remove to Mexico on December 23, 2025, January 9, 2026, and January 30, 2026, all of
13 which Petitioner refused to sign while expressing fear of being kidnapped in Mexico. *See* Dkts 9
14 & 10. These facts demonstrate that Petitioner did not consent to removal to a third country.
15 Respondents also claim that USCIS determined on January 28, 2026, that Petitioner lacked a
16 credible fear of removal to Mexico, yet they submitted no Notices of Intent, interview records, or
17 documentation of that determination for the Court's review.

18 Respondents acknowledge that Petitioner would have been removed to Mexico—without
19 his consent and without due process—on January 29, 2026, but for this habeas petition and the
20 TRO issued by this Court. This establishes an ongoing and imminent risk of third-country removal.
21 The Court should therefore order that Respondents not remove Petitioner to Mexico or any other
22 third country without providing notice and a meaningful opportunity to be heard in reopened
23 removal proceedings.

F. Respondents' Third-Country Removal Policy Is Punitive and Unconstitutional

Courts in this District have recently addressed claims that the government's third-country removal policy is punitive and therefore unconstitutional under *Wong Wing v. United States*, 163 U.S. 228 (1896). The court in *Nguyen* observed that "other courts across the country have recognized that the government is intentionally removing individuals to countries where they will be imprisoned." *Nguyen*, 796 F. Supp. 3d at 734. The courts in *Baltodano* and *Abubaka* likewise concluded that Respondents' "practice of third-country removal paired with imprisonment is intended to be punitive and thus violates due process under *Wong Wing*, 163 U.S. 228, 236–38 (1896)." *Baltodano*, 2025 WL 3484769, at *10; *Abubaka*, 2025 WL 3204369, at *8; *Nguyen*, 796 F. Supp. 3d at 733–35.

Petitioner has expressed a well-founded fear of removal to Mexico, including fear of kidnapping and harm. Removing Petitioner to Mexico—or any third country where he is likely to be imprisoned or subjected to harm—without reopening his removal proceedings and providing a meaningful opportunity to be heard violates due process and constitutes punitive action. Accordingly, the Court should order Petitioner's release.

IV. PETITIONER'S TEMPORARY RESTRAINING ORDER SHOULD BE GRANTED

The standards for issuing a temporary restraining order and a preliminary injunction are "substantially identical." *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain preliminary injunctive relief, a petitioner must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

1 Even where a plaintiff cannot demonstrate a likelihood of success on the merits, a
2 preliminary injunction may still issue if there are “serious questions going to the merits” and “the
3 balance of hardships tips sharply in the plaintiff’s favor,” provided the remaining *Winter* factors
4 are satisfied. *All. for the Wild Rockies v. Peña*, 865 F.3d 1211, 1217 (9th Cir. 2017). The Ninth
5 Circuit applies a sliding-scale approach to the *Winter* factors, under which a strong showing on the
6 balance of hardships may compensate for a lesser showing of likelihood of success. *Where Do We*
7 *Go Berkeley v. Cal. Dep’t of Transp.*, 32 F.4th 852, 859 (9th Cir. 2022).

8 **A. Likelihood of Success on the Merits**

9 Petitioner is likely to succeed on the merits of his claim that his detention pursuant to 8
10 U.S.C. § 1231 is unlawful. First, § 1231(a) authorizes detention only during the 90-day removal
11 period following the date on which an order of removal becomes final. Beyond that removal period,
12 the statute does not authorize continued detention. Rather, the statute provides that if the noncitizen
13 “is not removed within the removal period, the [noncitizen], pending removal, shall be subject to
14 supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3).

15 Here, it is undisputed that Petitioner’s removal order became final on January 3, 2006.
16 Respondents re-detained Petitioner on October 28, 2025—nearly twenty years after the removal
17 order became final. Petitioner is therefore well outside the statutory removal period, and his
18 continued detention is not authorized by § 1231.

19 Second, Respondents have failed to meet their burden to demonstrate compliance with the
20 regulations governing revocation of an the OSUP. ICE may revoke release only if “changed
21 circumstances” establish a significant likelihood that the noncitizen may be removed in the
22 reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2). Similarly, detention beyond the removal
23 period is permitted only if the government determines, based on changed circumstances, that

1 removal is significantly likely in the reasonably foreseeable future to the country of removal or a
2 third country. 8 C.F.R. § 241.4(b)(4).

3 These regulations place the burden on the government to demonstrate changed
4 circumstances that make removal reasonably foreseeable. *Vu v. Noem*, No. 1:25-cv-01366-KES-
5 SKO, 2025 WL 3114341, at *5 (E.D. Cal. Nov. 6, 2025). Respondents have not met that burden.
6 They have not shown that removal to Cuba is reasonably foreseeable, nor have they demonstrated
7 lawful grounds for revoking Petitioner's OSUP. Accordingly, Petitioner is likely to succeed on his
8 claims that his re-detention violates due process and that the revocation of his supervised release
9 was unlawful.

10 B. Irreparable Harm

11 Petitioner will suffer irreparable harm in the absence of preliminary relief. The Ninth
12 Circuit has recognized the significant harms inherent in immigration detention, including the
13 economic and personal burdens imposed on detainees and their families. See *Hernandez v.*
14 *Sessions*, 872 F.3d 976, 995 (9th Cir. 2017); *Arshakyan v. Noem*, No. 1:26-cv-00394-DJC-SCR
15 (E.D. Cal. Jan. 28, 2026).

16 Absent injunctive relief, Petitioner faces separation from counsel of his choosing, removal
17 from his family and community, and the severe emotional and psychological harms associated
18 with detention and potential transfer. Courts have repeatedly recognized that forced separation
19 from family during immigration proceedings constitutes irreparable harm. *Leiva-Perez v. Holder*,
20 640 F.3d 962, 969–70 (9th Cir. 2011); *Landon v. Plasencia*, 459 U.S. 21, 34–35 (1982). These
21 harms are immediate and cannot be undone after transfer or removal. Petitioner has therefore
22 established irreparable harm.

C. Balance of the Harms & the Public Interest

When the government is the nonmoving party, the balance of equities and public interest factors merge. *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023); *Arshakyan v. Noem*, No. 1:26-cv-00394-DJC-SCR (E.D. Cal. Jan. 28, 2026). Here, the equities and public interest weigh strongly in Petitioner's favor. Petitioner suffers ongoing harm from unlawful detention, while a temporary restraining order imposes minimal burden on the government. Although Respondents have an interest in enforcing immigration laws, the public has a strong interest in ensuring compliance with constitutional protections and preventing unlawful detention. See *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025). Moreover, the government does not assert that Petitioner poses a danger to the community. Accordingly, the balance of equities and the public interest favor granting injunctive relief.

V. Conclusion

Based on the foregoing, Petitioner request the Court to order as follows;

1. Grant Petitioner's Motion for Temporary Restraining Order in the form of Preliminary Injunction;
2. Grant Petitioner's petition for writ of habeas corpus;
3. Order Respondents to immediately release Petitioner on conditions of supervision;
4. Prohibit Respondents from re-detaining Petitioner without first providing him notice and an opportunity to be heard before an immigration judge;
5. Prohibit Respondents from removing or seeking to remove Petitioner to a third country without providing him notice and a meaningful opportunity to respond in a reopened

1 removal proceeding before an immigration judge, or to any country where he is likely
2 to face imprisonment or harm.

3
4 Respectfully Submitted on this 17th day of February 2026.

5 I certify that this reply contains 3,817 words, in compliance with the Local Rules.

6 /s/Fekadu Shibeshi

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7 Attorney for Petitioner
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