

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMIR HUSSEIN BABAKHANLOU,	)	No. CV26-01012-JHC
Petitioner,	)	
v.	)	MR. BABAKHANLOU'S REPLY TO
TODD BLANCHE, <i>et al.</i> ,	)	RESPONDENTS' RETURN
Respondents.	)	MEMORANDUM

I. INTRODUCTION

Petitioner Amir Babakhanlou seeks 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. Respondents concede the "presumptively reasonable" six-month period of detention has expired on March 15, 2026, under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Dkt. 7 at 8. Respondents' claims that Mr. Babakhanlou's removal will take place in the reasonably foreseeable future are vague, conclusory, and speculative.

II. ARGUMENT

A. Mr. Babakhanlou's continued detention is unlawful under *Zadvydas*.

The Respondents do not dispute that Mr. Babakhanlou has met his burden to show a good reason to believe that "there is no significant likelihood of removal in the reasonably foreseeable future." *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1077 (9th Cir. 2006); *see also Zadvydas*, 533 U.S. at 701 (After the presumptively reasonable

1 period of detention of six months, “once the alien provides good reason to believe that
2 there is no significant likelihood of removal in the reasonably foreseeable future, the
3 Government must respond with evidence sufficient to rebut that showing.”).

4 Mr. Babakhanlou’s order removal of removal became final on September 11, 2025.
5 Dkt. 7 at 8. The Respondents agree the six-month presumptively reasonable period of
6 post-order detention expired on March 11, 2026. *Id.*

7 The burden thus shifts to the government to “respond with evidence sufficient to
8 rebut that showing.” *Zadvydas*, 553 U.S. at 70. But other than conclusory and
9 speculative statements in Officer Carnevale’s declaration, Respondents provide no
10 evidence that removal is likely in the reasonably foreseeable future.

11 Mr. Babakhanlou cannot be removed to Iran because the immigration judge
12 granted his application for deferral of removal under the Convention Against Torture.
13 Dkt. 9 at ¶ 36. As a result, ICE is seeking removal to a third country. According to
14 Deportation Officer Jeon, “ERO is still in the process of seeing” if either Canada,
15 Mexico, or the United Kingdom will accept Mr. Babakhanlou. *Id.* at ¶ 42. There is no
16 indication what specific steps ICE has actually taken to effectuate Mr. Babakhanlou’s
17 removal or how long it will take. The only explanation provided by ICE is that it is
18 “still in the process of seeing” if one of these countries will accept him.

19 *Zadvydas* rejected the government’s insistence that courts should accept the
20 government’s belief about whether removal was “significantly likely in the reasonably
21 foreseeable future” unquestioningly. 533 U.S. at 701 (“The Government seems to argue
22 that . . . a federal habeas court would have to accept the Government’s view about
23 whether the implicit statutory limitation is satisfied in a particular case, conducting little
24 or no independent review of the matter. In our view, that is not so.”). Indeed, the Court
25 admonished district courts not to “abdicat[e] their legal responsibility to review the
26 lawfulness of an alien’s continued detention.” *Id.* Courts exercising that “legal

responsibility” should consider whether the government has credibly explained the delay. *See Lema v. U.S. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002) (“The continuing failure of a destination country to respond to a request for travel documents may provide the Court with ‘good reason to believe’ that deportation is not [significantly] likely in the reasonably foreseeable future . . . where the destination country’s lack of response is combined with the INS’ inability to explain the silence and the absence of any indication that the situation may change.”). This Court should consider that the Respondents’ response fails to show that there is a “significant likelihood of [Mr. Babakhanlou’s] removal in the reasonably foreseeable future.” *See Singh v. Whitaker*, 362 F. Supp. 3d 93, 101–02 (W.D.N.Y. 2019) (“[I]f DHS has no idea of when it might reasonably expect Singh to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future.”) (internal citations omitted).

B. Due Process precludes Mr. Babakhanlou’s removal to a third country without adequate notice and an opportunity to be heard.

Respondents concede they are “in the process of seeing” if Mr. Babakhanlou can be removed to a third country. Dkt. 9 at ¶ 42. Thus, there is a very real risk he will be removed to a third country.

In *Nguyen v. Scott*, the court found 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 703, 728 (W.D. Wash. 2025). 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.

1 1998))). Applying this binding precedent, the court concluded that “Petitioner is likely
2 to succeed on his claim that removal to a third country under ICE’s current policy,
3 without meaningful notice and reopening of his removal proceedings for a hearing,
4 would violate due process.” *Nguyen*, 796 F. Supp. 3d 703, 728–29. And in *Baltodano*,
5 the court, citing to the reasoning in *Nguyen*, concluded that “petitioner is likely to
6 succeed on the merits of his claim that he is entitled to ‘legally required multistep
7 procedures set out in 8 U.S.C. § 1231(b) and required by due process’ before ICE can
8 remove him to a third country.” 2025 WL 2987766, at *3.

9 **C. Mr. Babakhanlou has demonstrated the Respondents’ third-country**
10 **removal policy is punitive and unconstitutional.**

11 In his petition, Mr. Babakhanlou alleged the third-party removal policies
12 amounted to punishment and Respondents “selected countries notorious for human
13 rights abuses and instability for third-country removal arrangements.” Dkt. 1 at 24–25.
14 In response, ICE asserts that there is no likelihood of imprisonment or serious harm if
15 he is removed to Mexico, Canada, or the United Kingdom. Dkt. 7 at 11. However, there
16 is no indication that these countries would accept him. Also, ICE could, at any time,
17 seek removal to any number of countries that would subject Mr. Babakhanlou to human
18 rights violations. As discussed in Mr. Babakhanlou’s petition, ICE has aggressively
19 sought removal to third countries such as El Salvador where detainees are imprisoned
20 and subject to human rights abuses.

21 Courts in this district have found that Respondents’ practice and policy of third-
22 country removal are both intended to be punitive and are in fact punitive, thus violating
23 due process. *See Abubaka v. Bondi, et al.*, No. CV25-01889-RSL, 2025 WL 3204369,
24 at *7–8 (W.D. Wash. Nov. 17, 2025); *Nguyen*, 796 F.3d at 732–35. In each of these
25 cases, the district court ordered Respondents not to remove the petitioner to any third
26 country where he is likely to face imprisonment upon arrival. *Id.*

D. Arbitrary re-detention is a very real possibility and must be prohibited.

Respondents concede that several courts “in this District have recently found that the Due Process Clause requires a pre-deprivation hearing before” ICE may re-detain someone. Dkt. 9 at 12. *See, e.g., Huy Van Tran v. Bondi*, No. CV25-02335-DGE-TLF, 2025 WL 3725677, at *5 (W.D. Wash. Dec. 24, 2025); *Khim v. Bondi*, No. CV25-02383-RSL, 2025 WL 3653724, at *4 (W.D. Wash. Dec. 17, 2025); *Jimenez v. Bondi*, No. CV25-2167-RSM, 2025 WL 3466925, at *2 (W.D. Wash. Dec. 3, 2025). As Judge Whitehead noted in a recent ruling, “[w]ithout any re-detention standard, the Government could theoretically re-detain [the petitioner] after release, which would render the Court’s order meaningless.” *Upreti v. Bondi*, No. CV25-02443-JNW, Dkt. 15 at 8 (Jan. 26, 2026). Given that the courts have “broad discretion” in granting habeas relief “as law and justice require” it should fashion an order that ensures its order cannot be thwarted as soon as it is carried out. *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987). Mr. Babakhanlou is not asking for a premature ruling on future conduct. Rather, he is asking for a prohibition on the direct violation of the order this Court will issue releasing him, absent some intervening change in circumstances. That is entirely reasonable and appropriate.

E. This Court should order release without a GPS monitor.

Respondents agree that Mr. Babakhanlou has previously been found incompetent and suffers from serious mental health challenges. Nonetheless, the Respondents argue that Mr. Babakhanlou cannot establish a threat of irreparable harm from ankle monitoring. Dkt. 7 at 12.

Federal courts in immigration habeas cases have found sufficient harm from ankle monitoring in far less drastic cases. *See Harrington v. Albarran*, No. 26-CV-01889-JST, 2026 WL 800113 (N.D. Cal. March 23, 2026). In *Harrington*, the petitioner had been released from ICE custody with monitoring requirements that included ankle

1 monitoring. He filed a habeas corpus petition asking for a preliminary injunction
 2 relieving him from ankle monitoring and other ISAP monitoring. The court granted the
 3 preliminary injunction, finding irreparable harm caused by ankle monitoring included
 4 physical pain, humiliation, and mental health harm. *Id.* at *10. The court noted the
 5 constitutional injury from ankle monitoring alone is sufficient harm but also that the
 6 ankle monitoring exacerbates Mr. Harrington's PTSD and depression. *Id.* In
 7 Harrington, the court discussed several other cases where courts had found that ICE's
 8 ankle monitoring program violated petitioners' due process rights. *Id.* at *3 (*citing*
 9 *A.B.D. v. Wamsley*, No. 6:25-CV-02014-AA, 2026 WL 178306, at *2 (D. Or. Jan. 22,
 10 2026); *Batz Barreno v. Baltasar*, No. 25-CV-03017-GPG-TPO, 2026 WL 120253, at *1
 11 (D. Colo. Jan. 15, 2026); *N- N- v. McShane*, No. CV 25-5494, 2025 WL 3143594, at *1
 12 (E.D. Pa. Nov. 10, 2025)). The harm identified in these cases was primarily related to
 13 physical pain and inconvenience from the monitor.

14 In this district, The Hon. James L. Robart recently granted similar relief in a
 15 habeas corpus petition for a petitioner who had been arrested after unlawfully entering
 16 Canada while on bond in immigration court. *See Singh v. Noem*, No. CV26-302-JLR,
 17 2026 WL 879247 (W.D. Wash. Mar. 31, 2026). In *Singh*, the court ordered the
 18 petitioner's release from immigration custody without GPS monitoring. *Id.* at *5–6.
 19 Unlike this case, there were no specific concerns about GPS monitoring, such as serious
 20 mental health concern or physical limitations, that warranted the injunction. Other
 21 courts in this district have issued similar orders. *See Kumar v. Noem*, No. CV26-239-
 22 TLF, 2026 WL 411833 (W.D. Wash. Feb. 13, 2026).

23 The undisputed facts regarding Mr. Babakhanlou's severe mental condition
 24 warrant similar relief. Research shows that ankle monitors and similar devices have
 25 documented negative psychological effects for those with mental illness. *The Real*
 26 *Impact of Electronic Monitoring on Mental Health: What Agencies Should Know*,

1 Refine Technology (Mar. 11, 2026), [https://www.ankle-](https://www.ankle-monitor.com/blog/2026/03/11/electronic-monitoring-mental-health-impact)
2 [monitor.com/blog/2026/03/11/electronic-monitoring-mental-health-impact](https://www.ankle-monitor.com/blog/2026/03/11/electronic-monitoring-mental-health-impact)
3 [<https://perma.cc/EGJ8-QBX5>].

4 Officer Jeon states the ERO will recommend an ankle monitor if
5 Mr. Babakhanlou is released. Dkt. 9 at ¶ 46. However, Respondents do not assert why
6 an ankle monitor would be necessary.

7 **III. CONCLUSION**

8 For the reasons presented above and in Mr. Babakhanlou's habeas petition, he
9 respectfully requests that this Court:

10 (a) Assume jurisdiction over this action;

11 (b) Order Respondents to release Mr. Babakhanlou from custody. Given
12 Mr. Babakhanlou's mental health condition and prior finding of incompetency,
13 Mr. Babakhanlou requests the following:

14 (i) Rather than immediate release from custody, Mr. Babakhanlou asks
15 that ICE be ordered to release Mr. Babakhanlou from custody 72 hours after this Court
16 grants the Petition and require ICE to provide counsel 24 hours' notice of the date and
17 time of Mr. Babakhanlou's release so his family can meet him and travel with him back
18 to California; and

19 (ii) Mr. Babakhanlou requests an order that ICE not require
20 Mr. Babakhanlou to wear a GPS monitor as a condition of release. Mr. Babakhanlou's
21 significant mental health issues would make GPS monitoring difficult, if not
22 impossible, and GPS monitoring would exacerbate his mental health symptoms.

23 (c) Order Respondents to, within 24 hours of his release, provide the Court
24 with a declaration confirming that Mr. Babakhanlou has been released from custody;

25 (d) Order that Respondents may not re-detain Mr. Babakhanlou without first
26 holding a hearing before a neutral decisionmaker at which the government bears the

1 burden of establishing flight risk or danger to the community by clear and convincing
2 evidence based on changed circumstances since Mr. Babakhanlou was previously
3 released;

4 (e) Order that the government may not otherwise re-detain Mr. Babakhanlou
5 unless the government:

- 6 (1) obtains a valid travel document to a third country for him,
7 (2) provides the valid travel document to him and his counsel,
8 (3) gives him opportunity to challenge the third country removal as
9 detailed in other grounds.

10 (f) Order that Respondents may not remove or seek to remove
11 Mr. Babakhanlou to a third country without notice and meaningful opportunity to
12 respond in compliance with the statute and due process in reopened removal
13 proceedings;

14 (g) Order that Respondents may not remove Mr. Babakhanlou to any third
15 country where he is likely to face imprisonment or other punishment upon arrival; and

16 (h) Order all other relief that the Court deems just and proper.

17 DATED this 14th day of April 2026.

18 Respectfully submitted,

19 *s/ Dennis Carroll*
20 Senior Litigator
21 Attorney for Amir Babakhanlou
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