

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YOONIS AHMED,	)	No. CV25-02718-JLR
Petitioner,	)	
v.	)	YOONIS AHMED'S REPLY TO
	)	RESPONDENTS' RETURN
PAMELA BONDI, <i>et al.</i> ,	)	MEMORANDUM
Respondents.	)	

Petitioner Yoonis Ahmed respectfully submits this response to Respondents' return memorandum. Dkt. 10.

I. THIS COURT HAS JURISDICTION TO HEAR MR. AHMED'S CLAIM UNDER THE ADMINISTRATIVE PROCEDURES ACT (APA).

Despite Respondents' assertion that Mr. Ahmed's claims can *only* be brought through habeas corpus, Dkt. 10 at 12, courts routinely 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. McHenry*, 549 F. Supp. 3d 300, 305 (S.D.N.Y. 2021) (recognizing the same); *Aracely*,

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

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

13 This Court thus has jurisdiction to review Mr. Ahmed’s APA claim.

14 **II. MR. AHMED’S DETENTION IS UNLAWFUL UNDER *ZADVYDAS*.**

15 Mr. Ahmed has met his burden to show good reason to believe that “there is no
 16 significant likelihood of removal in the reasonably foreseeable future.” *Nadarajah v.*
 17 *Gonzales*, 443 F.3d 1069, 1077 (9th Cir. 2006); *see Zadvydas v. Davis*, 553 U.S. 678,
 18 701 (2001)

19 Mr. Ahmed’s final removal order was issued more than a decade ago, on May 7,
 20 2013. Dkt. 12 at 4. More recently, Mr. Ahmed was arrested on August 28, 2025. *Id.* at
 21 1. Thus, ICE has had more than ten years to remove Mr. Ahmed, and the presumptively
 22 reasonable six-month period has long expired. *See Tran v. Bondi*, No. CV25-01897-
 23 JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025) (stating presumptively reasonable
 24 period expires six months after a final order, regardless of detention).

25 The burden thus shifts to the government to provide evidence that removal is
 26 likely in the reasonably foreseeable future. *Zadvydas*, 553 at 701 (“[O]nce the alien

1 provides good reason to believe that there is no significant likelihood of removal in the
2 reasonably foreseeable future, the Government must respond with evidence sufficient to
3 rebut that showing.”). Respondents offer no such evidence.

4 To support their argument, Respondents rely on an unsworn declaration from a
5 deportation officer. Dkt. 11. Because Officer Delgado’s declaration is neither asserted
6 to be true and correct nor subscribed under penalty of perjury as required by 28 U.S.C.
7 § 1746(2), the declaration is inadmissible and should not be considered. *See Wana v.*
8 *Bondi*, No. CV25-02321-RSL, 2025 WL 3628634, *4 (W.D. Wash. Dec. 15, 2025);
9 *Kuot v. Bondi*, No. CV25-02313-BAT, 2025 WL 3763930, *3 (W.D. Wash. Dec. 30,
10 2025).

11 Even if this Court considers the “declaration,” Respondents fail to meet their
12 burden. Officer Delgado states that requests for travel documents for Mr. Ahmed to
13 Costa Rica and Australia were denied, and that Panama and El Salvador have not
14 responded. Dkt. 11 at ¶¶ 12–14. Thus, while Respondents have had over a decade to
15 obtain travel documents since the removal order became final in 2013, no evidence
16 suggests that they are any closer to being able to remove Mr. Ahmed.

17 *Zadvydas* rejected the government’s insistence that courts should accept the
18 government’s belief about whether removal was “significantly likely in the reasonably
19 foreseeable future” unquestioningly. 533 U.S. at 701 (“The Government seems to argue
20 that . . . a federal habeas court would have to accept the Government’s view about
21 whether the implicit statutory limitation is satisfied in a particular case, conducting little
22 or no independent review of the matter. In our view, that is not so.”). Indeed, the Court
23 admonished district courts not to “abdicat[e] their legal responsibility to review the
24 lawfulness of an alien’s continued detention.” *Id.* Courts exercising that “legal
25 responsibility” should consider whether the government has credibly explained the
26 delay. *See Lema v. U.S. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002) (“The

1 continuing failure of a destination country to respond to a request for travel documents
2 may provide the Court with ‘good reason to believe’ that deportation is not
3 [significantly] likely in the reasonably foreseeable future . . . where the destination
4 country’s lack of response is combined with the INS’ inability to explain the silence
5 and the absence of any indication that the situation may change.”).

6 On this record, there is insufficient evidence to support Respondents’ assertion
7 that Mr. Ahmed will be removed in the reasonably foreseeable future and release is
8 warranted.

9 **III. DUE PROCESS REQUIRES A HEARING PRIOR TO RE-DETENTION.**

10 Respondents acknowledge that courts in this district have found that the Due
11 Process Clause requires a pre-deprivation hearing before re-detention. Dkt. 10 at 16, fn.
12 3; *see also* Dkt. 1 at 9–10. Nevertheless, Respondents argue, first, that the cases cited in
13 the petition, “are all not applicable under post-removal §1231 detention.” Dkt. 10 at 16.
14 That is simply not true. Petitioner cited cases outside the post-removal context on pages
15 8–9, but then noted that cases with final orders of removal applied the same analysis
16 and reached the same result. *See* Dkt. 1-1 at 9:20–10:12 (citing four cases from this
17 district). Numerous other decisions in this district apply the same analysis, and reach
18 the same result, where there was a final order of removal.

19 Respondents then contend, without citation, that because Mr. Ahmed was not
20 subject to an Order of Supervision (OSUP), these cases are inapplicable. Dkt. 10 at 16
21 n. 3. Because Respondents fail to provide any authority for this proposition, their
22 argument should be rejected. *See, e.g., Rodriguez-Zuniga v. Garland*, 69 F4th 1012,
23 1023 (9th Cir. 2023) (a party must “specifically and distinctly raise an argument and
24 support it with citations” to avoid forfeiture (internal quotations omitted)). Furthermore,
25 there is no rational basis for distinguishing these other cases on that basis. The rationale
26 of these cases is that the release into society, where an individual could develop ties to

the community, creates a higher interest in liberty than that held by a detainee who has never been released. *See DeJesus v. Bostock*, 2:25-cv-01427-JHC-TLF, 2025 WL 3268002, at *3, (W.D. Wash. Nov. 24, 2025) (“That the Government allowed Lopez to remain in the community for more than three years after releasing him only strengthened [his liberty] interest. *See Bd. of Pardons v. Allen*, 482 U.S. 369, 377-81 (1987) (Government action can create a liberty interest protected by the Due Process Clause.)”). That rationale does not depend on the existence of an OSUP, only the release into society that, in this case, Mr. Ahmed had for over a decade.

IV. DUE PROCESS PRECLUDES MR. AHMED’S REMOVAL TO A THIRD-PARTY COUNTRY WITHOUT ADEQUATE NOTICE AND AN OPPORTUNITY TO BE HEARD.

Respondents argue that this Court may not issue the relief sought by Mr. Ahmed on his due process claim because he is a member of the plaintiff class bound by the Supreme Court’s stay in *D.V.D. v. Dep’t of Homeland Sec.* Dkt. 10 at 17–19. This same argument has been rejected by many courts in this district. *See, e.g., Baltodano v. Bondi*, No. CV25-1958-RSL, 2025 WL 2987766, at *2 (W.D. Wash. Oct. 23, 2025) (citing cases).

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 v. Scott* 796 F. Supp. 3d 703, 731 (W.D. Wash. 2025) (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 “[a]ll this Court can do is apply existing precedent 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. 25-1788-TDC, 2025 WL 2841886 (D. Maryland Oct. 7, 2025) (citing to *Nguyen*, 2025 WL 2419288, at *22) (“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/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. Ahmed because he is one of many people who has no right to relief, but rather forbidding *mass* relief because Mr. Ahmed and others should have proceeded individually in cases just like this one. *See Nguyen*, 796 F. Supp. 3d 703, 732 (W.D. Wash. 2025). *See also 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.”).

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 728.¹ 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 703, 728–29. And in *Baltodano*, the court citing to the reasoning in *Nguyen*, concluded that “petitioner is likely to succeed on the merits of his claim that he is entitled to ‘legally required multistep procedures set out in 8 U.S.C. § 1231(b) and required by due process’ before ICE can remove him to a third country.” 2025 WL 2987766, at *3.

V. MR. AHMED HAS DEMONSTRATED RESPONDENTS’ THIRD-COUNTRY REMOVAL POLICY IS UNCONSTITUTIONAL.

Respondents argue that Mr. Ahmed’s punitive banishment claim is based on “speculative allegations” and that he offers no evidence that his removal to a third-party country would result in harm. Dkt. 10 at 19. In his petition, Mr. Ahmed alleged his third-party removal would amount to punishment because Respondents “selected countries notorious for human rights abuses and instability for third-country removal arrangements. More specifically, Mr. Ahmed alleged, in part, that El Salvador was paid to indefinitely imprison deportees “in a maximum-security prison notorious for gross

¹ Although the government does not set forth the policy, the court in *Baltodano* discussed ICE’s current policy allowing the removal of aliens to third countries “without the need for further procedures.” *See Baltodano*, 2025 WL 2987766, at *2.

1 human rights abuses” and that Panama² and Costa Rica³ took in hundreds of deportees
 2 . . . and imprisoned them in hotels, a jungle camp and a detention center.” Dkt. 1 at 12.
 3 Notably, the Respondents acknowledge that El Salvador, Costa Rica, and Panama are
 4 all among the destinations to which the Respondents have attempted to send
 5 Mr. Ahmed. Dkt. 11. If removed to these countries, Mr. Ahmed would likely be
 6 subjected to the punitive conditions outlined in his petition.

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

13 The risk of removal to a third country is not speculative, given Respondents’
 14 inability to remove Mr. Ahmed to Somalia and Respondents’ requests for travel
 15 documents to third countries.

18 ² In Panama, immigrants are forced to choose between repatriation to their country of
 19 origin or detention under conditions that has “sparked backlash from human rights
 20 organizations.” Castano, Danielle, *The U.S.’s Illegal Migrant Deportations to Panama*,
 21 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)
 22 [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. Ahmed would likely face persecution if returned
 to Somalia.

23 ³ According to multiple human rights organizations, migrants expelled to Costa Rica
 24 face conditions that constitute human rights violations. *Costa Rica: New report exposes*
 25 *human rights violations against migrants expelled from the U.S. and warns: “This*
 26 *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-](https://cejil.org/en/press-releases/costa-rica-new-report-exposes-human-rights-violations-against-migrants-expelled-from-the-u-s-and-warns-this-cannot-happen-again/)
[violations-against-migrants-expelled-from-the-u-s-and-warns-this-cannot-happen-](https://cejil.org/en/press-releases/costa-rica-new-report-exposes-human-rights-violations-against-migrants-expelled-from-the-u-s-and-warns-this-cannot-happen-again/)
[again/](https://cejil.org/en/press-releases/costa-rica-new-report-exposes-human-rights-violations-against-migrants-expelled-from-the-u-s-and-warns-this-cannot-happen-again/) [<https://perma.cc/E8C7-72G2>].

1 **VI. CONCLUSION**

2 For the reasons presented above and in his habeas petition, Mr. Ahmed
3 respectfully requests that this Court (1) order Respondents to immediately release
4 Mr. Ahmed from custody; (2) order that they not remove or seek to remove him to a
5 third country without notice and meaningful opportunity to respond in compliance with
6 the statute and due process in reopened removal proceedings; (3) order that
7 Respondents may not remove Mr. Ahmed to any third country because Respondents'
8 third-country removal program seeks to impose unconstitutional punishment on its
9 subjects; and (4) order all other relief this Court deems just and proper.

10 DATED this 20th day of January 2026.

11 Respectfully submitted,

12 *s/ Nancy Tenney*
13 Assistant Federal Public Defender
14 Attorney for Yoonis Ahmed
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