

THE HONORABLE TIFFANY M. CARTWRIGHT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STANISLAV RODRIGUEZ-FERNANDEZ,	)	No. CV26-170-TMC
Petitioner,	)	
vs.	)	PETITIONER'S REPLY TO
PAMELA BONDI, Attorney General of the	)	RESPONDENTS' RESPONSE TO
United States, et al.,	)	PETITION FOR WRIT OF HABEAS
Respondents.	)	CORPUS

I. INTRODUCTION

Petitioner Stanislav Rodriguez-Fernandez, through counsel, presents this Reply to the Government's (Respondents') Return. In summary, Petitioner was ordered removed to Cuba, his native country, sometime in 2010. Subsequently, that same year, Petitioner was released on supervision because Immigration was unable to remove him to Cuba due to the fact that Cuba would not accept its own citizens, particularly those with criminal records in the United States. On May 27, 2025, Petitioner was taken into custody upon supervision being revoked. He has remained in ICE custody since May 27, 2025, with no indications that he will be removed to Cuba at any point in the foreseeable future.

With Cuba not accepting Petitioner, Respondents now are attempting to remove him to Mexico. However, the record is clear that Petitioner refuses to be removed to Mexico, a country he has no ties or connection with. For that reason, the record is also clear that Mexico will not accept him—particularly since Respondents have been

1 attempting to remove Petitioner to Mexico, without any success, since June 25, 2025.
 2 The only available relief now is to grant the Petition for Habeas Corpus and release
 3 Mr. Rodriguez-Fernandez immediately.

4 **II. THIS COURT HAS SUBJECT MATTER JURISDICTION.**

5 Despite Respondent's assertion that Petitioner's claims can only be brought
 6 through habeas corpus (Dkt. 8 at 10–11), courts routinely have held that "APA and
 7 habeas review may co-exist." *See Bautista v. Santacruz*, 2025 WL 3713987, at *14
 8 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom; Maldonado Bautista v. Noem*,
 9 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025) (*citing R.I.L.-R v. Johnson*, 80 F. Supp. 3d
 10 164, 185 (D.D.C. 2015)). *See also J.G.G. v. Trump*, 772 F. Supp. 3d 18, 31 (D.D.C.
 11 2025) (noting the APA has "long been available to plaintiffs . . . even in immigration
 12 challenges where habeas is also available"); *Abrego Garcia v. Noem*, 777 F. Supp. 3d
 13 501, 510 n.10 (D. Md. 2025) (indicating that habeas claims need not be brought to the
 14 exclusion of all other claims in certain contexts); *Valez-Chavez v. McHenry*, 549 F.
 15 Supp. 3d 300, 305 (S.D.N.Y. 2021) (recognizing the same); *Aracely, R. v. Nielsen*, 319
 16 F. Supp. 3d 110, 140 (D.D.C. 2018) (permitting plaintiffs to proceed with their APA
 17 claim alleging DHS's violations of the INA); *cf. Castaneda v. Garland*, 562 F. Supp. 3d
 18 545, 559–61 (C.D. Cal. 2021) (finding subject-matter jurisdiction and permitting a
 19 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. Rodriguez-Fernandez is reviewable
4 because it 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.
17 103, 113 (1948) (citation omitted), and (2) is an action “by which ‘rights
18 or obligations have been determined,’ or from which ‘legal consequences
19 will flow,’” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation omitted).
20 Thus, DHS’s revocation of the release of a noncitizen previously granted
21 parole is reviewable under the APA because it denies the noncitizen’s
22 right to liberty and is an action from which rights have been determined.

23 *Torres v. Noem*, No. CV25-2697-JLR, 2026 WL 234076, at *2 (W.D. Wash. Jan. 29,
24 2026).

25 This Court therefore has jurisdiction to review Mr. Rodriguez-Fernandez’s APA
26 claim.

27 **III. PETITIONER IS CONSTITUTIONALLY ENTITLED TO A HEARING 28 PRIOR TO BEING RE-DETAINED.**

29 Respondent’s argument that Petitioner is not entitled to a pre-detention hearing
30 in the post-order context similarly fails. Specifically, they argue that due process does
31 not require a pre-detention hearing before Petitioner’s arrest as there is a process in
32 place for revoking OSUP. However, there is authority involving the re-detention of
33 petitioners with final orders or removal who have applied the same due process analysis

1 that Petitioner cites to and relies upon. *See Mathews v. Eldridge*, 424 U.S. 319, 334
2 (1976). Additionally, principles of due process require more than what Respondents say
3 the Code of Federal Regulations provide. *Id.*

4 Another court in this district recently held in the “post-removal” context,
5 “[b]ased on [its] review of the *Mathews* factors,” that a “Petitioner has a protected
6 liberty interest in his continuing release from custody, and that due process requires that
7 Petitioner receive proper notice and an opportunity to respond before he can be re-
8 detained.” *Jimenez v. Bondi*, No. C25-2167RSM, 2025 WL 3466925, at *2 (W.D.
9 Wash. Dec. 3, 2025) The court granted the petition and ordered Mr. Jimenez’s
10 immediate release, barring re-detention “without providing adequate notice of the
11 reasons for his re-detention and a meaningful opportunity to respond.” *Id.* at 3. In its
12 return pleading, Respondents do not address that decision nor the many others arriving
13 at the same conclusion. *See also, e.g., P.T. v. Hermosillo*, No. C25-2249-KKE, 2025
14 WL 3294988, at *3 (W.D. Wash. Nov. 26, 2025); *Perez v. Mordant*, No. 2:25-CV-
15 00947-SPC-DNF, 2025 WL 3466956, at *5 (M.D. Fla. Dec. 3, 2025); *S-M-J v. Bostock*,
16 No. 6:25-CV-01425-MTK, 2025 WL 3137296, at *5 (D. Or. Nov. 10, 2025).

17 Respondents suggest that Petitioner was re-detained for violating conditions of
18 release. However, the fact remains that Petitioner was not arrested for violating
19 conditions of supervision. He was arrested with the specific intent to have him removed
20 to Cuba. The problem for Respondents is that Cuba will not accept Petitioner. Knowing
21 that, Respondents then began their efforts to remove Petitioner to Mexico beginning in
22 June of 2025. That effort failed as well because Mexico will not accept non-Mexicans
23 who refuse Mexico as a third country for removal. Therefore, there remains, to this day,
24 no significant likelihood that Petitioner can be removed from the United States within
25 the reasonably foreseeable future. Accordingly, the regulations cited by Respondents,
26 specifically 8 C.F.R. §241.13, authorizing re-detention fail to support Respondent’s

1 argument that Petitioner is somehow not entitled to a pre-detention hearing in the post-
2 order context.

3 In conclusion, the case law is clear that there must be proper notice and a hearing
4 before a neutral decision-maker, together with an opportunity to respond, *before*
5 someone can be re-detained. Respondents do not get to make that decision about
6 foreseeability on their own, with no hearing and no requirement for evidence. Petitioner
7 has a right to this hearing before being re-detained. Because Mr. Rodriguez-Fernandez
8 was denied such a hearing, he must be released on this ground as well.

9 **IV. THE CASE OF *D.V.D.* DOES NOT IMPACT THIS PETITION.**

10 The Government argues that Petitioner should seek relief as a member of the
11 plaintiff class in *D.V.D. v. Dep't of Homeland Sec.* and is bound by the proceedings in
12 that case. However, this argument has been rejected in this district. Dkt. 8 at 12–13.

13 Most recently, the opinion in *Pantoja v. Bondi*, No. CV25-2440 JLR (W.D.
14 Wash. Jan. 30, 2026), Dkt. 13 at 8–9, confirmed the consensus in this district that the
15 *D.V.D.* class action does not bar Petitioner's third-country removal claims. The court in
16 *Pantoja* further cited to similar opinions in this district confirming that membership in
17 the *D.V.D.* class does not preclude a Cuban national from asserting third-party removal
18 claims. *Id.*

19 Here, Petitioner is entitled to seek relief in accordance with Ninth Circuit
20 precedent. *See Nguyen v. Scott*, 796 F. Supp. 3d 703, 732 (W.D. Wash. 2025) (holding
21 whether the court may grant a nationwide injunction is immaterial to Petitioner's
22 requested, individualized relief). Petitioner's due process claims are not identical to the
23 claims in the *D.V.D.* class action. For example, Petitioner asserts that he must have a
24 meaningful opportunity to seek withholding of removal to Mexico, a claim not
25 addressed in the *D.V.D.* case. Additionally, Petitioner does not seek systemic relief but
26 rather individual habeas relief. More important, if the government's arguments were

1 accepted, Petitioner would be unable to address his due process claims until the relevant
 2 class action resolved—potentially years from now. Accordingly, the Supreme Court’s
 3 emergency stay and the district court’s class certification in *D.V.D.* should not bar
 4 habeas relief here.

5 Aside from *D.V.D.*, due process requires notice and an opportunity to be heard
 6 before Respondents can remove Petitioner to a third country. Specifically, Petitioner
 7 must have an opportunity to apply for asylum, withholding of removal, or protection
 8 under the Convention Against Torture. Title 8 U.S.C. § 1231(b)(3)(A) precludes ICE
 9 from removing a noncitizen to any country where their “life or freedom would be
 10 threatened in that country because of the [noncitizen’s] race, religion, nationality,
 11 membership in a particular social group, or political opinion.” There is no evidence that
 12 this was followed in the instant case, particularly knowing that the legal standard at a
 13 screening interview is a showing of “reasonable fear” under the statute and not “more
 14 likely than not” as stated in the DHS memorandum. There is also no evidence in the
 15 record that Mr. Rodriguez-Fernandez was given an opportunity to reopen removal
 16 proceedings before an immigration judge. *See Baltodano v. Bondi*, No. 25-cv-1958
 17 RSL, 2025 WL 2987766, at *3, *4 (W.D. Wash. Oct. 23, 2025) (providing preliminary
 18 relief); *see also Arenado-Borges*, No. CV25-2193-JNW, 2025 WL 3687518, slip copy
 19 at 16 (W.D. Wash. Dec. 19, 2025) (simply allowing the petitioner to move to reopen
 20 their immigration proceedings is not enough to satisfy due process—the government
 21 must actually reopen proceedings so that the petitioner has a fair and adequate
 22 opportunity to be heard).

23 **V. THE THIRD-PARTY REMOVAL POLICY IS INTENDED TO BE**
 24 **PUNITIVE.**

25 The government argues that Petitioner’s punitive banishment argument does not
 26 demonstrate that the policy is unconstitutional. Dkt. 8 at 13–14. However, multiple

1 courts have found that this practice is intended to be punitive and has punitive effects
 2 regardless of whether Respondents will succeed in punishing Petitioner in this manner.
 3 In other words, several courts have all held that the Government's practice of third-
 4 party removal is intended to be punitive as a matter of policy and, accordingly, violates
 5 due process under *Wong Wing v. United States*, 163 U.S. 228, 236–38 (1896). *See*
 6 *Abubaka v. Bondi*, No. CV25-1889-RSL, 2025 WL 3204369, at *8 (W.D. Wash.
 7 Nov. 17, 2025); *Nguyen*, 796 F. Supp. 3d at 739; *Hambarsonpour v. Bondi*, No. CV25-
 8 1802-RSM, 2025 WL 3251155, at *1, *4–*5 (W.D. Wash. Nov. 21, 2025); and
 9 *Baltodano v. Bondi*, 2025 WL 3484769, at *10.

10 These courts have particularly taken note of the descriptions of punitive
 11 treatment that deviate from the Government's promises in individual cases before the
 12 court. *See, e.g., Rivera-Trigueros v. Bondi*, No. 24-3764, 2025 WL 1189561, at *2 (9th
 13 Cir. Apr. 24, 2025) (finding individual had shown that, if detained in El Salvador, he
 14 would “confront a prison environment in which torture is pervasive” and that “the
 15 squalid conditions in Salvadoran prisons—which include extreme overcrowding,
 16 inadequate sanitation, and a lack of food—are deliberately inflicted by government
 17 officials as a form of punishment.”) (citation omitted); *Abrego Garcia v. Noem*, 777
 18 F. Supp. 3d 501, 509 (D. Md. 2025) (“ICE forcibly transported Abrego Garcia to the
 19 Terrorism Confinement Center (‘CECOT’) in El Salvador, a notorious supermax prison
 20 known for widespread human rights violations.”); *Department of Homeland Security v.*
 21 *D.V.D.*, 145 S. Ct. 2153, 2154–55 (2025) (Sotomayor, J., dissenting) (describing
 22 deportation to Mexico of a gay man from Guatemala who had obtained withholding of
 23 removal to Guatemala under the Convention Against Torture; Mexico promptly
 24 forwarded him on to Guatemala, where he was forced into hiding); *D.A. v. Noem*,
 25 No. 25-CV-3135 (TSC), 2025 WL 2646888, at *1–*3 (D.D.C. Sept. 15, 2025)
 26 (describing punitive deportation to prison-like setting in Ghana). This Court should

1 similarly recognize that ICE's third-country deportation policy is punitive as a matter of
2 policy and therefore violates due process.

3 Furthermore, to the extent Respondents attempt to restrict their discussion of the
4 punitive nature of third-country removal to Mexico, that country is not necessarily the
5 destination for any removals there as illustrated by Justice Sotomayor's dissent in
6 *D.V.D. See DHS v. D.V.D.*, 145 S. Ct. 2153, 2154 (2025) (Sotomayor, J., dissenting).
7 For these reasons, this Court should hold that the third-party removal policy is punitive
8 and in violation of Mr. Rodriguez-Fernandez's due process rights and should
9 permanently enjoin the removal of Mr. Rodriguez-Fernandez to any third country in
10 which he is likely to face imprisonment or harm.

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12 DATED this 6th day of February 2026.

13 Respectfully submitted,

14 *s/ Jesse Cantor*
15 Assistant Federal Public Defender
16 Attorney for Stanislav Rodriguez-Fernandez
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