

THE HONORABLE MICHLLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MEHAWI YOHANNES MEHARI,

Petitioner,

vs.

PAMELA BONDI, Attorney General of
the United States; KRISTI NOEM,
Secretary, United States Department of
Homeland Security; LAURA
HERMOSILLO, Acting Seattle Field
Office Director, United States
Citizenship and Immigration Services;
BRUCE SCOTT, Warden of Immigration
Detention Facility; and the United States
Immigration and Customs Enforcement,

Respondents.

No. CV26-00175-MLP

**MR. YOHANNES MEHARI'S
REPLY TO RESPONDENTS'
RETURN MEMORANDUM**

I. Introduction

This Court should grant the relief that Mr. Yohannes Mehari requested in his petition for a writ of habeas corpus. In their return memorandum, Respondents do not meaningfully contest, and so concede, Mr. Yohannes Mehari's primary argument and request for relief—that his ongoing detention is unlawful because there is no significant likelihood Respondents will remove him in the reasonably foreseeable future. Respondents' return, and attached exhibits, in fact make clear how implausible Mr. Yohannes Mehari's removal is, and offers no evidence to the contrary.

1 Respondents instead focus their arguments on Mr. Yohannes Mehari's
 2 prospective requests for relief. But Respondents' argument that existing regulations
 3 adequately ensure due process with regard to re-detention of people who are released on
 4 an order of supervision has already been rejected by numerous courts in this district
 5 (something Respondents acknowledge). And Respondents' further jurisdictional or
 6 procedural arguments do not defeat Mr. Yohannes Mehari's arguments, and compelling
 7 need, for injunctive relief against unlawful re-detention or third-country removal.

8 II. Argument

9 Mr. Yohannes Mehari, through counsel, respectfully asks this Court to accept the
 10 Respondents' concessions and order his immediate release because his detention
 11 violates the Immigration and Nationality Act (INA) and due process under *Zadvydas v.*
 12 *Davis*, 533 U.S. 678, 680 (2001). Furthermore, he asks the Court to reject Respondents'
 13 arguments regarding his requested prospective relief to prevent unlawful re-detention or
 14 third-country removal. The Respondents raise an array of arguments against this
 15 requested relief, none of which carry the day.

16 A. Respondents' ongoing detention of Mr. Yohannes Mehari violates due process 17 and the INA because there is no significant likelihood of removal in the 18 reasonably foreseeable future—Respondents have conceded as much.

19 First and foremost, nowhere in their return do Respondents demonstrate nor even
 20 contend that there is a significant likelihood they will be able to lawfully remove Mr.
 21 Yohannes Mehari in the reasonably foreseeable future. *See generally* Dkt. 12-1
 22 (Respondents' Return Memorandum). At most, Respondents argue that they are re-
 23 submitting an application for travel documents that his failed twice before. *See id.* at 2
 24 ("Although Eritrea has previously denied a travel document application, another
 25 application is being submitted."); *see also* Dkt. 10 (Declaration of Gennadiy Baz) at 5–
 26 6 (detailing multiple failed attempts over many years to seek travel documents for Mr.
 Yohannes Mehari). It remains unclear whether Respondents have even re-submitted

1 such an application, which has no apparent hope of success. *See* Dkt. 10 (noting
2 Respondents are “working on” the application).¹

3 Mr. Yohannes Mehari, in his petition, provided “good reason to believe that
4 there is no significant likelihood of removal in the reasonably foreseeable future[.]”
5 *Zadvydas*, 533 U.S. at 680. Indeed, he cited evidence that the government of Eritrea is
6 “uncooperative” in repatriating citizens and that the United States’ diplomatic relations
7 with Eritrea are “strained.” Dkt. 6 (Mr. Yohannes Mehari’s Habeas Petition) at 9–10.
8 Mr. Yohannes Mehari is also likely unable to prove Eritrean citizenship—a task that
9 would require tracing back generations of his family and where relevant documents
10 likely do not exist. *See id.* at 35 (describing Eritrean citizenship law and Mr. Yohannes
11 Mehari’s barriers to proving citizenship).

12 Respondents have not presented evidence to rebut Mr. Yohannes Mehari’s
13 contention that there is no significant likelihood of removal in the reasonably
14 foreseeable future. Nowhere do respondents contest that Eritrea is or has been
15 uncooperative in repatriating citizens or unlikely to repatriate Mr. Yohannes Mehari
16

17 ¹ Respondents also mention that since his re-detention on October 6, 2025, Mr.
18 Yohannes Mehari has not “cooperated” with a new application for travel documents
19 from Eritrea. Dkt. 10 at 6; Dkt. 12-1 at 10. Yet, Respondents also acknowledge that Mr.
20 Yohannes asked for assistance with his mental health in the same period. *See* Dkt. 10 at
21 6. It is undisputed that Mr. Yohannes Mehari cooperated and assisted with applications
22 for travel documents multiple times in the past. *See* Dkt 10 at 5–6 (Mr. Yohannes
23 Mehari assisted with such an application in 2009 and again in 2018. He also tried to in
24 2020 but ICE officials did not move forward with his request to return to Eritrea
25 because Eritrea still had not responded to the 2018 application and was unlikely to grant
26 the request). Mr. Yohannes Mehari’s recent “refusal” to assist with such application
was most likely his best attempt to claim fear of removal to Eritrea at this moment—a
very legitimate fear given current country conditions. *See* Dkt. 6 at 9–13. Respondents
do not claim, and there is no evidence to believe, that Mr. Yohannes Mehari’s declining
to sing forms in October and December has had any impact at all on Eritrea’s decision
about whether to issue travel documents or on the speed of that decision. Indeed it
appears that Eritrea has yet to decide on the 2018 application for travel documents, with
which Mr. Yohannes Mehari assisted, almost 8 years later. *See* Dkt. 10 at 6.

1 specifically. Nor do they contest that Mr. Yohannes Mehari may be unable to
2 sufficiently prove Eritrean citizenship. *See generally* Dkt. 12-1. Rather, Respondents’
3 evidence supports the conclusion that removal is not reasonably foreseeable. *See* Dkt.
4 10 at 5–6 (detailing that Ethiopia made clear the country would not issue travel
5 documents for Mr. Yohannes Mehari, and that Eritrea denied an application for travel
6 documents in 2009, and again did not grant or did not respond to such an application in
7 2018 and indicated “it would be difficult to verify [Mr. Yohannes Mehari]’s identity as
8 he left Eritrea before an ID could be issued for him.”). Respondents point to no changed
9 circumstances that would make it likely, or even more likely, that Eritrea would issue
10 travel documents to Mr. Yohannes Mehari now, when the country has declined to do so,
11 upon multiple requests, for over 15 years. *See generally* Dkt. 12-1.

12 As such, Respondents concede that their ongoing detention of Mr. Yohannes
13 Mehari violates due process and the INA. *See Zadvydas*, 533 U.S. at 699 (“[O]nce
14 removal is no longer reasonably foreseeable, continued detention is no longer
15 authorized by statute.”). Respondents do not either dispute that they have detained Mr.
16 Yohannes Mehari beyond the six-month period during which detention is
17 “presumptively reasonable” to effectuate removal. *Id.* at 701. Nowhere do respondents
18 argue or present evidence that there is a significant likelihood of removal in the
19 reasonably foreseeable future. *See generally* Dkt. 12-1; Dkts. 10–11 (Exhibits to
20 Respondents’ Return Memorandum). Respondents have thus conceded these issues.
21 *See, e.g., Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1023 (9th Cir. 2023) (a party
22 must “specifically and distinctly raise an argument and support it with citations to the
23 record” to avoid forfeiture) (internal quotation marks omitted); *Tibble v. Edison Int’l*,
24 843 F.3d 1187, 1193 (9th Cir. 2016) (citation omitted) (“[A]n issue will generally be
25 deemed waived . . . if the argument was not raised sufficiently for the trial court to rule
26

1 on it.”). As such, Mr. Yohannes Mehari asks this Court to grant his petition and order
2 his immediate release.

3 **B. Violations of an order of supervision do not justify prolonged or indefinite**
4 **detention.**

5 Perhaps because they lack meritorious arguments regarding the likelihood of
6 removal, Respondents instead focus their arguments for detention on Mr. Yohannes
7 Mehari’s violations of his order of supervision. Respondents advance these arguments
8 primarily to contend that the procedure by which they detained Mr. Yohannes Mehari
9 on October 6, 2025, was lawful. *See* Dkt. 12-1 at 13–15 (arguing existing regulations
10 allow Respondents to detain a person who violates the terms of an order of supervision,
11 that the regulations were followed, and that the regulations comport with due process).
12 But they do not and cannot advance sound arguments that violations of an order of
13 supervision justify prolonged or indefinite detention. *See generally* Dkt. 12-1. At most,
14 Respondents suggest (in context of due process analysis, discussed below) that they
15 may detain someone who has violated an order of supervision or whom they view as a
16 danger to the community. *Id.* at 2–3.

17 Mr. Yohannes Mehari does not agree that his criminal history makes him a
18 danger to the community. Rather, much of Mr. Yohannes Mehari’s criminal history
19 relates to struggles to manage his mental conditions. Prior to his arrest in October, he
20 had connected with a community-based program to manage his mental conditions—the
21 best intervention to address concerns about his criminal history. But even if Mr.
22 Yohannes Mehari’s criminal history did indicate a danger to the community, that would
23 not be a basis for Respondents to prolong his detention. Respondents claim only
24 8 U.S.C. § 1231(a)(6) as their authority for detaining Mr. Yohannes Mehari. Dkt. 12-1
25 at 3, 10 (describing § 1231 authority to detain someone post-removal order beyond the
26 mandatory removal period to effectuate removal, and describing detention of Mr.

1 Yohannes Mehari post-removal order). But this does not allow Respondents to hold Mr.
2 Yohannes Mehari—despite violations of a prior order of supervision—if there is not a
3 significant likelihood of removal in the reasonably foreseeable future. The limited
4 authority to detain some immigrants for longer than 90 days in order to effectuate their
5 removal was understood and accounted for by the Court in *Zadvydas*. Yet *Zadvydas*
6 explicitly rejected the argument that ICE may detain an immigrant—even someone ICE
7 views as dangerous—when there is no reasonable likelihood of removal in the
8 reasonably foreseeable future. 533 U.S. at 684–91.

9 The two petitioners in *Zadvydas* both had significant criminal history—with far
10 more serious convictions than those sustained by Mr. Yohannes Mehari. Mr. Zadvydas
11 himself had “a long criminal record, involving drug crimes, attempted robbery,
12 attempted burglary, and theft,” as well as “a history of flight, from both criminal and
13 deportation proceedings.” *Id.* at 684. The other petitioner, Kim Ho Ma, was “involved
14 in a gang-related shooting [and] convicted of manslaughter.” *Id.* at 685. The
15 government argued that both men could be detained regardless of their likelihood of
16 removal, because they posed too great a risk of danger or flight. *Id.* at 690–91.

17 The Supreme Court rejected that argument. The Court appreciated the
18 seriousness of the government’s concerns. *Id.* at 691. But the Court found that the
19 immigrant’s liberty interests were weightier. *Id.* The Court had never countenanced
20 “potentially permanent” “civil confinement,” based only on the government’s belief
21 that the person would misbehave in the future. *Id.*

22 The Court also noted that the government was free to use the many tools at its
23 disposal to mitigate risk: “[O]f course, the [non-citizen]’s release may and should be
24 conditioned on any of the various forms of supervised release that are appropriate in the
25 circumstances, and the [non-citizen] may no doubt be returned to custody upon a
26 violation of those conditions.” *Id.* at 700. The Ninth Circuit later elaborated:

1 All [non-citizens] ordered released must comply with the stringent
2 supervision requirements set out in 8 U.S.C. § 1231(a)(3). [They] will
3 have to appear before an immigration officer periodically, answer certain
4 questions, submit to medical or psychiatric testing as necessary, and
5 accept reasonable restrictions on [their] conduct and activities, including
6 severe travel limitations. More important, *if [they] engage[] in any
criminal activity during this time, including violation of [their]
supervisory release conditions, [they] can be detained and incarcerated
as part of the normal criminal process.*

7 *Ma*, 257 F.3d at 1115 (emphasis added). The Ninth Circuit recognized that the “normal
8 criminal process” is sufficient to address concerns about criminal convictions that also
9 constitute violations of an ICE order of supervision. *Id.*

10 Here, Mr. Yohannes Mehari indeed was convicted of crimes while under a
11 previous order of supervision. However, as Respondents acknowledge, he served his
12 sentences for those convictions. Dkt. 10 at 4–5. Such accountability by the “normal
13 criminal process” is precisely the sanction the Ninth Circuit recognized as appropriate
14 for this situation. *Ma*, 257 F.3d at 1115. Even if violations of an order of supervision
15 allow for brief re-detention (for example, to regain contact with someone who had not
16 reported, to review supervision requirements, etc.) there is no legal authority for
17 Respondents to continue to detain Mr. Yohannes Mehari without a significant
18 likelihood of removal in the reasonably foreseeable future because they view him as
19 dangerous or are concerned about violations of the order of supervision.

20 As detailed in his Petition, Mr. Yohannes Mehari was actually engaged with
21 supportive services to better manage his mental health and prevent recidivism at the
22 time ICE re-detained him. Dkt. 6 at 4–6. The state courts who sentenced Mr. Yohannes
23 Mehari on his criminal convictions in recent years viewed short jail sentences and
24 supervision with recommended treatment as sufficient to ensure community safety. *See*
25 Dkt. 10 at 4–5 (reciting sentences). Respondents’ arrest and now prolonged detention of
26 Mr. Yohannes Mehari is actively interfering with that state supervision and
recommended treatment. And Respondents offer no evidence that their prolonged

1 detention of Mr. Yohannes Mehari will improve compliance with an order of
 2 supervision. Rather, the prolonged detention is likely to impede compliance as it makes
 3 it harder for Mr. Yohannes Mehari to maintain connection with positive community
 4 supports. An accommodation for Mr. Yohannes Mehari's mental health conditions
 5 (such as appointing immigration counsel, involving a social worker to assist, etc.)
 6 would better advance this goal.

7 A person's non-compliance with an order of supervision, or alleged
 8 dangerousness, do not justify lengthy civil detention and are irrelevant to *Zadvydas*
 9 analysis.² The Court in *Zadvydas* plainly rejected the argument that ICE can detain
 10 someone it deems dangerous indefinitely and held that detention must cease when there
 11 is no significant likelihood of removal in the reasonably foreseeable future. 533 U.S. at
 12 684–91. ICE may not extend a criminal sentence beyond that properly decided by a
 13 Judge in a criminal case. ICE may not separately punish a person for a crime. ICE may
 14 not detain someone to prevent some predicted future crime. ICE may detain people for
 15 limited purposes relevant to *immigration* enforcement—here, to effectuate removal in
 16 the reasonably foreseeable future. Because there is no significant likelihood of Mr.
 17 Yohannes Mehari's removal in the reasonably foreseeable future, ICE cannot continue
 18 to detain him.

19 **C. The Court should grant injunctive relief to prevent Respondents from re-**
 20 **detaining Mr. Yohannes Mehari without due process.**

21 While Mr. Yohannes Mehari's primary request for relief—immediate release—
 22 should be granted on the grounds that his detention is unlawful under *Zadvydas*, as

23 ² Respondents correctly recognized as much in their pleading in another case in this
 24 district: “[w]hether [petitioner] poses a flight risk or a danger to the community [is]
 25 completely irrelevant. The *only proper consideration* under *Zadvydas* is whether there
 26 is a significant likelihood of removal in the reasonably foreseeable future[.]” Federal
 Respondents’ Return Memorandum, *Kuot v. Bondi*, No. 2:25-cv-02313-RAJ-BAT, dkt.
 14 at 10 n.5 (W.D. Wash. Dec. 3, 2025) (emphasis added).

1 conceded by Respondents, he nonetheless addresses Respondents' arguments regarding
2 re-detention as they pertain to prospective relief. Mr. Yohannes Mehari asks this Court
3 to enjoin respondents from re-detaining him in violation of due process

4 Respondents focus their argument on their contention that their October 6, 2025,
5 re-detention of Mr. Yohannes Mehari comported with regulations and due process. *See*
6 Dkt. 12-1 at 12–15. As it pertains to Mr. Yohannes Mehari's request for immediate
7 relief, these arguments are largely mooted by Respondents' concession that there is no
8 significant likelihood of removal in the reasonably foreseeable future. However
9 Respondents also argue that Mr. Yohannes Mehari is not entitled to pre-detention notice
10 and an opportunity to be heard. *Id.* at 15. Mr. Yohannes Mehari asks this Court to reject
11 this contention and grant his requested injunctive relief, which would ensure he receives
12 due process prior to any future re-detention.

13 Respondents essentially argue that there is no reason to restrict them from re-
14 detaining Mr. Yohannes Mehari if he is ordered released because the procedures in
15 place already are sufficient. Dkt. 12-1 at 12–15. However, as the Honorable N.
16 Jamal Whitehead noted in a recent ruling, “[w]ithout any re-detention standard, the
17 Government could theoretically re-detain [the petitioner] after release, which would
18 render the Court’s order meaningless.” *Uprety v. Bondi*, No. CV25-02443-JNW,
19 Dkt. 15 at 8 (Jan. 26, 2026). Given that courts have “broad discretion” in granting
20 habeas relief “as law and justice require” they should fashion orders that ensure their
21 orders cannot be thwarted as soon as they are carried out. *Hilton v. Braunskill*, 481 U.S.
22 770, 775 (1987). Mr. Yohannes Mehari is not asking for a premature ruling on future
23 conduct. Rather, he is asking for a prohibition on the direct violation of the order this
24 Court will issue releasing him, absent some intervening change in circumstances. That
25 is entirely reasonable and appropriate.
26

1 Respondents' argument that existing regulations are sufficient to protect due
2 process is made "respectfully disagree[ing]" with the many courts in this district who
3 have held that due process requires notice of revocation of release based on changed
4 circumstances and an opportunity to be heard *prior* to re-detention. Dkt. 12-1 ta 13 n.4.
5 Indeed, multiple courts in this district have held that due process requires notice and an
6 opportunity to be heard prior to re-detention in similar situations, and have granted
7 prospective relief. *See e.g., Tessema v. Bondi*, No. C25-2330-JNW-MLP, 2025 WL
8 4033288, at *1 (W.D. Wash. Dec. 11, 2025), *report and recommendation adopted*, No.
9 C25-2330-JNW-MLP, 2026 WL 84922 (W.D. Wash. Jan. 12, 2026) ("prohibiting
10 Respondents from redetaining [petitioner] without adequate notice of the reasons for
11 redetention and a meaningful opportunity to respond to those reasons"); *Yukse v.*
12 *Bondi*, No. 2:25-cv-02555-DGE-GJL, 2026 WL 60364, at *5 (W.D. Wash. Jan. 8,
13 2026) (ordering that petitioner "shall not be re-detained without notice and an
14 opportunity to be heard unless Respondents have evidence detention is authorized under
15 8 C.F.R. § 241.13(i)(1)"); *Jimenez v. Bondi*, No. C25-2167-RSM, 2025 WL 3466925, at
16 *2 (W.D. Wash. Dec. 3, 2025) (finding that petitioner with final order of removal "has
17 a protected liberty interest in his continuing release from custody, and that due process
18 requires that Petitioner receive proper notice and an opportunity to respond before he
19 can be redetained"; barring re-detention "without providing adequate notice of the
20 reasons for his re-detention and a meaningful opportunity to respond." *Id.* at *3). Mr.
21 Yohannes Mehari asks this Court to reach the same conclusion and to order that the
22 government may not re-detain him without advance notice and an opportunity to be
23 heard.

24 Notably, despite apparent awareness of Mr. Yohannes Mehari's mental health
25 conditions, *see* Dkt. 10 at 6 (noting Mr. Yohannes Mehari discussed these with
26 immigration officials within two weeks of his re-detention and was merely told he

would receive treatment from medical personnel), Respondents offered Mr. Yohannes Mehari no accommodations—such as appointed counsel—to contest his re-detention. As highlighted in Mr. Yohannes Mehari’s original petition, under *Franco-Gonzales v. Holder*, 767 F. Supp. 2d 1034 (C.D. Cal. 2010) (and subsequent settlements, *see Franco-Gonzales v. Holder*, 10-cv-02211-DMG-AGR at Dkt. 818, 821, 860, 866 (C.D. Cal. 2015)), Mr. Yohannes Mehari should likely receive appointed counsel in immigration proceedings. *See* Dkt. 6 at 6. It is now apparent from the record that he received no such appointed counsel during his original removal proceedings. *See* Dkt. 11-3 (2009 Removal Order, listing no counsel for Mr. Yohannes Mehari). This was likely due to those proceedings occurring before the relevant ruling and settlements in *Franco-Gonzales*. An order requiring compliance with due process, and specifically advance notice and opportunity to be heard, will better enable Mr. Yohannes Mehari to receive needed accommodations to effectively be heard regarding any alleged basis for re-detention.

D. The Court should grant injunctive relief to prevent Respondents from unlawfully removing Mr. Yohannes Mehari to a third country.

Respondents devote much of their return to arguing against Mr. Yohannes Mehari’s request for an order prohibiting them from removing him to a country other than Eritrea without sufficient due process protections or pursuant to their punitive policy of third-country removal. Respondents advance multiple unavailing arguments. Yet the government does not dispute, and thus concedes, that Mr. Yohannes Mehari’s requests for relief from improper third-country removal are ripe.

1. This Court has subject matter jurisdiction over Mr. Yohannes Mehari’s claims.

In his fourth ground for relief, Mr. Yohannes Mehari highlighted the fact that Respondents removal of him to a third country without sufficient notice and opportunity to be heard would violate not one but a constellation of laws. He argued

1 that such removal (consistent with Respondents' recent practices) would violate the
 2 Fifth Amendment, 8 U.S.C. § 1231, the Convention Against Torture, implementing
 3 regulations, and the Administrative Procedure Act (APA). Dkt. 6 at 38–39. The
 4 Respondents argue that Mr. Yohannes Mehari's "Administrative Procedure Act claims
 5 must be dismissed for lack of Subject Matter Jurisdiction." Dkt. 12-1 at 11. The
 6 Respondents' arguments are misplaced.

7 First, it bears noting that this argument responds only to a claim regarding notice
 8 of prospective third-country removal, not to the basic argument that Mr. Yohannes
 9 Mehari's continued detention is unlawful. Second, Mr. Yohannes Mehari alleged that
 10 deporting him to a third country without adequate notice and opportunity to be heard
 11 would violate not only the APA but also, *inter alia*, the Convention Against Torture and
 12 8 U.S.C. § 1231. Dkt. 6 at 15–16. So even if the Court agrees with the Respondents that
 13 the Administrative Procedure Act is not the proper vehicle through which to assert this
 14 claim, that does not negate the remaining reasons why sufficient notice and opportunity
 15 to be heard are required.

16 In any event, despite the Respondents' assertion that Mr. Yohannes Mehari's
 17 claims can only be brought through habeas corpus, Dkt. 12-1 at 11–12, courts have held
 18 that "APA and habeas review may coexist." *See Bautista v. Santacruz*, 5:25-CV-01873-
 19 SSS-BFM, 2025 WL 3713987, at *14, *judgment entered sub nom. Maldonado Bautista*
 20 *v. Noem*, 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025)
 21 (*citing R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 185 (D.D.C. 2015)). *See also J.G.G. v.*
 22 *Trump*, 772 F. Supp. 3d 18, 31 (D.D.C. 2025) (noting the APA has "long been available
 23 to plaintiffs . . . even in immigration challenges where habeas is also available");
 24 *Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 510 n.10 (D. Md. 2025) (indicating that
 25 habeas claims need not be brought to the exclusion of all other claims in certain
 26 contexts); *Valez-Chavez v. McHenry*, 549 F. Supp. 3d 300, 305 (S.D.N.Y. 2021)

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

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

This Court thus has jurisdiction to review Mr. Yohannes Mehari’s APA claim.

2. This Court is not bound by an unclear emergency stay in another case, and should grant Mr. Yohannes Mehari’s request for an order preventing third-country removal in violation of due process.

Respondents also argue that this Court may not issue the relief sought by Mr. Yohannes Mehari on his due process claim because he is a member of the plaintiff class bound by the Supreme Court’s stay in *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025).³ Dkt. 12-1 at 16–17. Specifically, the Respondents argue that the Supreme

³ The district court in *D.V.D.* granted a preliminary injunction that established procedures DHS and ICE were required to follow before removing a noncitizen to a third country, including written notice and an opportunity to raise a fear-based claim for protection under the Convention Against Torture before removal. *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 25, 2025), *reconsideration denied sub nom.* No. CV25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26, 2025). On June 23, 2025, the United States Supreme Court stayed the district court’s preliminary injunction pending appeal in the First Circuit, with no

1 Court's stay of a class-wide preliminary injunction in that case prevents this Court from
 2 providing an order barring Mr. Yohannes Mehari's removal to a third country without
 3 due process. *Id.*

4 First, it again bears noting that this argument also only pertains to the forward-
 5 looking relief Mr. Yohannes Mehari has requested regarding what would happen before
 6 he can be deported to a third country, not his request for release due to the impropriety
 7 of his continued indefinite detention.

8 Second, the Supreme Court's emergency docket order in *D.V.D.* is not binding
 9 on this Court, and does not even provide meaningful guidance for the resolution of this
 10 case. The *D.V.D.* litigation concerned an earlier version of the ICE guidance regarding
 11 third-country removals. In seeking a stay of a preliminary injunction during the
 12 pendency of an appeal, the government (DHS) primarily argued to the Supreme Court
 13 that the nationwide scale of the injunction was improper, in addition to raising other
 14 independent arguments for the requested stay. *See* Gov't Application for a Stay, *D.H.S.*
 15 *v. D.V.D.*, No. 24A1153 (May 27, 2025),⁴ at 19 ("First, under 8 U.S.C. 1252(f)(1),
 16 lower federal courts lack jurisdiction to issue *classwide injunctions* that restrain the
 17 operation of third-country removals pursuant to 8 U.S.C. 1231(b)") (emphasis added).
 18 In other words, it is reasonable if not likely that the unreasoned Supreme Court order
 19 staying the preliminary injunction in that case was not forbidding injunctive relief to
 20 Mr. Yohannes Mehari because he is one of many people who has no right to relief, but
 21 rather forbidding *mass* relief because Mr. Yohannes Mehari and others should have
 22 proceeded individually in cases just like this one. *See Nguyen v. Scott*, 796 F. Supp. 3d
 23 703, 732 (W.D. Wash. 2025).

24 _____
 25 member of the majority offering analysis. *Dep't of Homeland Sec. v. D.V.D.*, -- U.S. ___,
 145 S. Ct. 2153 (2025).

26 ⁴[https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499](https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499DHS%20v.%20DVD%20et%20al-app%20stay.pdf)
[DHS v. DVD et al-app stay.pdf](https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499DHS%20v.%20DVD%20et%20al-app%20stay.pdf) [<https://perma.cc/8NTN-TQ5D>].

1 As the Honorable Tiffany M. Cartwright explained in *Nguyen*, the posture of
 2 *D.V.D.* and meaning of the Supreme Court’s stay of injunction on the emergency
 3 docket are far from clear. *See* 796 F. Supp. 3d at 730–31 (W.D. Wash. 2025). Judge
 4 Cartwright recognized that the government appealed the district court ruling in *D.V.D.*
 5 raising multiple independent arguments—including that the INA prohibits lower federal
 6 courts from issuing classwide relief that restricts the statute’s provisions and other
 7 jurisdictional arguments. *Id.* at 731. The Supreme Court ultimately stayed the
 8 preliminary injunction while this appeal was pending. But “[t]he Supreme Court did not
 9 decide *D.V.D.* on the merits, nor did it even necessarily rule on the class’s likelihood of
 10 success on its due process and APA claims.” *Id.*

11 Judge Cartwright found that, given the record in *D.V.D.*, “it is unclear why the
 12 Court determined a stay should be granted or which argument it found likely to prevail
 13 on appeal.” *Id.* at 732. Because of this, *D.V.D.* offers no meaningful guidance in the
 14 resolution of cases like Mr. Yohannes Mehari’s:

15 This Court cannot ascertain from the Supreme Court’s emergency order
 16 whether it found the government likely to succeed on its jurisdictional or
 17 substantive claims. This distinction is especially important in this case,
 18 where one of the government’s primary arguments—that the *D.V.D.* court
 had no power to enter classwide injunctive relief—would have no bearing
 on the merits of individual habeas petitions.

19 *Id.* at 732. As such, Judge Cartwright held that “[t]he emergency docket order in *D.V.D.*
 20 does not preclude the Court from granting a preliminary injunction here.” *Id.* Multiple
 21 courts in this district, including this one, have agreed. *See Coke v. Bondi*, No. C26-71-
 22 MLP, 2026 WL 221514, at *3 (W.D. Wash. Jan. 28, 2026); *Baltodano v. Bondi*, 2025
 23 WL 3484769, at *2-3 (W.D. Wash. Dec. 4, 2025); *Abubaka v. Bondi*, 2025 WL
 24 3204369, at *2 (W. D. Wash. Nov. 17, 2025). *See also Sagastizado v. Noem*, No.
 25 CV25-00104, -- F.3d --, 2025 WL 2957002, *13 (S.D. Tex. Oct. 2, 2025) (court in
 26 another district ruling: “Notably, the class-wide nature of the *D.V.D.* injunction alone

1 could have justified the stay, and that justification would not undermine the merits of an
 2 individual claim for relief.”). Mr. Yohannes Mehari asks this Court to reach the same
 3 conclusion here.

4 Finally, the *Nguyen* court made clear that ICE’s current policy regarding the
 5 process for third-country removals “contravenes Ninth Circuit law,” rendering it
 6 “impossible to comply both with Ninth Circuit precedent and the policy.” 796 F. Supp.
 7 3d at 728.⁵ The court explained that under Ninth Circuit precedent, “[f]ailing to notify
 8 individuals who are subject to deportation that they have the right to apply . . . for
 9 withholding of deportation to the country to which they will be deported violates both
 10 INS regulations and the constitutional right to due process.” *Id.* at 727 (citing to
 11 *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (in turn citing *Kossov v.*
 12 *I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998))). Applying this binding precedent, Judge
 13 Cartwright concluded that “Petitioner is likely to succeed on his claim that removal to a
 14 third country under ICE’s current policy, without meaningful notice and reopening of
 15 his removal proceedings for a hearing, would violate due process.” *Nguyen*, 796 F.
 16 Supp. 3d at 728–29. And in *Baltodano*, the court citing to the reasoning in *Nguyen*,
 17 concluded that “petitioner is likely to succeed on the merits of his claim that he is
 18 entitled to ‘legally required multistep procedures set out in 8 U.S.C. § 1231(b) and
 19 required by due process’ before ICE can remove him to a third country.” 2025 WL
 20 2987766, at *3.

21 Mr. Yohannes Mehari respectfully asks this Court to rule on his request for
 22 injunctive relief against third-country removal in violation of due process, the
 23 Convention Against Torture, and relevant statutes. As the courts above have
 24 recognized, Respondents should be required to provide adequate *advance* notice and a

25 ⁵ Although the Respondents do not set forth the policy, this Court discussed ICE’s
 26 current policy allowing the removal of aliens to third countries “without the need for
 further procedures” under certain conditions in *Baltodano*, 2025 WL 2987766, at *2.

1 meaningful opportunity to be heard prior to removing Mr. Yohannes Mehari to a third
2 country.

3 **3. Mr. Yohannes Mehari has demonstrated that Respondents' third-**
4 **country removal policy is punitive and unconstitutional.**

5 The Respondents' next arguments are equally unsupported. Respondents argue
6 that Mr. Yohannes Mehari's claim that Respondents' third-country removal policy is
7 punitive "rest entirely" on the asserted absence of notice and opportunity to be heard.
8 Dkt. 12-1 at 17–18. This is incorrect. In his petition, Mr. Yohannes Mehari also alleged
9 the third-country removal policies amounted to punishment. Dkt. 6 at 25–31, 40–41.
10 Mr. Yohannes Mehari laid out multiple facts supportive of this argument, including
11 statements evidencing a punitive purpose made by Respondents and their
12 administration, Respondents' selection of countries notorious for human rights abuses
13 and instability for third-country removal, and the actual incarceration, maltreatment,
14 and abuse of deportees upon arrival in those countries. *Id.* Mr. Yohannes Mehari's
15 claims regarding punitive third-country removal are grounded in the punitive purpose,
16 method, and impact of Respondents' policy. Not in the due process violations (lack of
17 adequate notice or meaningful opportunity to be heard regarding fear of removal) that
18 incidentally facilitate such punitive banishments.

19 The Respondents next argue that insufficient facts have been alleged to meet a
20 facial challenge to their punitive banishment policy. Dkt. 12-1 at 18. This is puzzling,
21 because Mr. Yohannes Mehari did not explicitly raise a facial challenge to the policy,
22 but rather sought prospective relief prohibiting Respondents from applying such
23 unconstitutional actions to him. *See* Dkt. 6 at 40–41. Nonetheless, in his petition, Mr.

1 Yohannes Mehari alleged, among other facts, that “Panama⁶ and Costa Rica⁷ took in
 2 hundreds of deportees . . . and imprisoned them in hotels, a jungle camp and a detention
 3 center.” Dkt. 6 at 27. Additionally, “the U.S. paid El Salvador \$5 million to indefinitely
 4 imprison over 200 deported Venezuelans in a maximum-security prison notorious for
 5 gross human rights abuses, known as CECOT.” *Id.* at 28. Similarly, Respondents’
 6 administration deported eight people to South Sudan where they were imprisoned and
 7 held incommunicado. *Id.* at 29. And the administration deported people from multiple
 8 countries to Eswatini, where the Eswatini government have stated they are imprisoning
 9 the deportees for an estimated 12 months, with the U.S. paying for the costs of
 10 imprisonment. *Id.* at 29–30. These facts, which Respondents do not dispute, sufficiently
 11 establish the punitive nature of Respondents’ third-country removal policy and practice.

12 Courts in this district have held that Respondents’ practice of third-country
 13 removal is punitive as a matter of policy and thus violates due process under *Wong*
 14 *Wing v. United States*, 163 U.S. 228, 236–38 (1986), and *Zadvvydas*, 533 U.S. at 693–
 15 94. *See Abubaka*, 2025 WL 3204369, at *7–8; *Nguyen*, 796 F.3d at 732–35;
 16 *Hambarsonpour v. Bondi*, No. CV25-1802-RSM, 2025 WL 3251155, at *1, *4–5

18 ⁶ 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/post/the-u-s-s-illegal-migrant-deportations-to-](https://www.humanrightsresearch.org/post/the-u-s-s-illegal-migrant-deportations-to-panama)
[panama](https://www.humanrightsresearch.org/post/the-u-s-s-illegal-migrant-deportations-to-panama) [<https://perma.cc/7JPL-3YXS>].

22 ⁷ According to multiple human rights organizations, migrants expelled to Costa Rica
 23 face conditions that constitute human rights violations. *Costa Rica: New report exposes*
 24 *human rights violations against migrants expelled from the U.S. and warns: “This*
 25 *cannot happen again.”*, Centro Por La Justicia y El Derecho Internacional (May 22,
 26 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 (W.D. Wash. Nov. 21, 2025); *Baltodano*, 2025 WL 3484769, at *10. In each of these
2 cases, the district court ordered the Respondents not to remove the petitioner to any
3 third country where they are likely to face imprisonment upon arrival. *Id.* Mr. Yohannes
4 Mehari only requests the same protections—the assurance that he will not be swooped
5 up and sent to whatever country will accept him without first having an opportunity to
6 argue against such action.

7 **III. Conclusion**

8 Mr. Yohannes Mehari respectfully asks this Court to grant the relief requested in
9 his petition for habeas corpus for the reasons stated above.

10 DATED this 9th day of February, 2026.

11 Respectfully submitted,

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13 s/ *Rebecca Fish*
14 Assistant Federal Public Defender
15 Attorney for Mehawi Yohannes Mehari
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