

THE HONORABLE _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Phong Thanh Nguyen,

Petitioner,

v.

Bruce SCOTT, Warden, Northwest ICE
Processing Center; Drew BOSTOCK,
Enforcement and Removal Operations,
Seattle Field Office Director, U.S.
Immigration and Customs Enforcement;
Kristi NOEM, Secretary, U.S. Department
of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY;

Respondents.

Civil Case No. 2:25-cv-01398

**COMPLAINT AND PETITION FOR
WRIT OF HABEAS CORPUS AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. Petitioner Phong Thanh Nguyen is a 55-year-old citizen of Vietnam, who has lived in the United States since the age of five. In 1975, Nguyen was one of the first refugees to be resettled in the United States with his parents and siblings following the Vietnam War. In the year 2000, Nguyen was ordered removed to Vietnam based on a criminal conviction that is no longer a valid basis for removal.¹ Since 2000, Nguyen has spent a cumulative year and a half in immigration custody, in unsuccessful efforts by the government to remove him to Vietnam. His first period of

¹ He will be filing a motion to reopen in immigration court because there is no longer any legal basis for his removal order, as charged, and he is eligible for relief in reopened proceedings.

1 detention was indefinite, as Nguyen was one of hundreds of detainees whose habeas petitions were
2 heard by a panel of five judges in this District, in litigation that cumulated in *Zadvydas v. Davis*,
3 533 U.S. 678 (2001). Following two successful habeas petitions, this Court twice ordered
4 Nguyen's release from custody on orders of supervision. Despite more than two decades of
5 compliance with his supervision requirements, on July 16, 2025, Immigration and Customs
6 Enforcement ("ICE") again detained Nguyen at a routine check-in. He is presently detained at the
7 Northwest ICE Processing Center in Tacoma, Washington.

8 2. ICE may only revoke release and re-detain a person who is compliant with the terms
9 of their supervision under governing regulations and due process "if, on account of changed
10 circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be
11 removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). Removal to Vietnam is not
12 reasonably foreseeable. ICE has not obtained a travel document from Vietnam, nor has Vietnam
13 agreed to accept Nguyen. Vietnam has historically accepted very few pre-1995 arrivals for
14 repatriation, and there is no evidence that that policy has changed.

15 3. What has changed, however, is the U.S. government policy and practice of
16 deporting individuals to third countries, including countries where deportees are imprisoned upon
17 arrival, often in abhorrent conditions. The Trump Administration, in its first six months in office,
18 has reportedly negotiated with more than 50 countries to accept deportees from other countries,
19 and it has carried out deportations to El Salvador, South Sudan, Eswatini, Panama, and Costa Rica
20 where deportees have been indefinitely and arbitrarily imprisoned or detained upon arrival, often
21 incommunicado. It has carried out these third country removals without following any of the
22 required statutory, regulatory, and constitutional procedures required before deporting an
23 individual to a third country. Now, as of July 9, 2025, ICE has adopted a new policy to permit
24 removals to third countries with as little as six hours of notice to the individual and without
25 following the statutory procedures and requirements of due process that ensure an individual has
26 a meaningful opportunity to make a fear-based claim against removal to that country.

4. Petitioner Nguyen files this habeas petition to seek his release from custody due to ICE's unlawful revocation of his supervised release and because his removal is not reasonably foreseeable. Petitioner also seeks to enjoin Respondents from removing him to a third country without the notice and opportunity to be heard that is required by the Constitution and the immigration statute in reopened removal proceedings, and to enjoin Respondents from removing him to a third country for a punitive purpose and effect.

JURISDICTION AND VENUE

5. This case arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures Act (“APA”), 5 U.S.C. §§ 500-596, 701-706.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.* (habeas corpus), U.S. Const. art. I, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

7. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because Respondents are agencies or officers of agencies of the United States, Respondents and Petitioner reside in this District, Petitioner is detained in this District, and a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District.

PARTIES

9. Petitioner Phong Thanh Nguyen is a citizen of Vietnam. He has a final order of removal, with Vietnam as the country designated for removal. Nguyen is detained in the control and custody of Respondents at the Northwest ICE Processing Center ("NWIPC"). He is a resident of Seattle, Washington.

1 10. Respondent Drew Bostock is the Field Office Director for ICE Enforcement and
2 Removal Operations (“ERO”) in Seattle, Washington. As the ERO Seattle Field Office Director,
3 he is Petitioner’s immediate custodian, responsible for his detention at NWIPC, and the person
4 with the authority to authorize detention or release. Respondent Bostock is sued in his official
5 capacity.

6 11. Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
7 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant to a contract
8 with ICE to detain noncitizens. Mr. Scott is sued in his official capacity as the Warden of a federal
9 detention facility. *See Juarez v. Asher*, No. C20-700, 2021 WL 1946222, at *3-5 (W.D. Wash.
10 May 14, 2021).

11 12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security
12 (“DHS”). In this capacity, Respondent Noem is the legal custodian of Petitioner. Respondent
13 Noem is sued in her official capacity.

14 13. Respondent DHS is a federal executive agency responsible for, among other things,
15 enforcing federal immigration laws and overseeing lawful immigration to the United States.
16 Respondent DHS is a legal custodian of Petitioner.

17 14. Respondent Todd Lyons is Acting Director and Senior Official Performing the
18 Duties of the Director of ICE. Respondent Lyons is responsible for ICE’s policies, practices, and
19 procedures, including those relating to removal procedures and the detention of immigrants during
20 their removal procedures. Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons
21 is sued in his official capacity.

22 15. Respondent ICE is the federal executive agency responsible for the enforcement of
23 immigration laws, including the arrest, detention, and removal of noncitizens. Respondent ICE is
24 a legal custodian of Petitioner.

1 **STATEMENT OF FACTS**

2 **Petitioner's Facts**

3 16. Petitioner was born on June 6, 1970, in Saigon, Vietnam. Petitioner entered the
4 United States on July 25, 1975, at the age of five, as a refugee from the Vietnam War. He, along
5 with his parents and two younger sisters, obtained permanent resident status in 1978.

6 17. Petitioner was in the first group of refugees from Vietnam to be resettled in the
7 United States. Petitioner and his family settled in the Seattle area.

8 18. Petitioner's family continues to live in the Seattle area. His parents are naturalized
9 citizens. Until his detention, Petitioner lived with and cared for his 81-year-old mother and 95-
10 year-old father. Petitioner's four siblings are U.S. citizens and lawful permanent residents.

11 19. Petitioner has a daughter with a serious medical condition called Prader-Willi
12 Syndrome ("PWS"), a rare and complex genetic disorder. It affects 1 in 15,000 to 30,000
13 individuals worldwide and is recognized as a lifelong, multisystem condition with no cure. It is
14 associated with a combination of medical, cognitive, and behavioral challenges. Petitioner's
15 daughter is 32 years old but her mental and emotional development is equivalent to that of a 10-
16 year-old child. She lives with her mother during the week and, until his detention, with Petitioner
17 on the weekends.

18 20. Petitioner's daughter cannot be left alone for extended periods of time and does not
19 understand complex consequences, making her extremely vulnerable to stress, impulsivity, and
20 emotional dysregulation. The most dangerous aspect of PWS is hyperphagia—a constant and
21 uncontrollable drive to eat, due to damage in the hypothalamus. People with PWS do not feel full
22 and may go to great lengths to obtain food. Consumption of excessive quantities of food can lead
23 to vomiting and choking, severe constipation or bowel obstruction, and gastric rupture. To manage
24 this, all food in his daughter's environment must be restricted and controlled.

25 21. Petitioner has been a consistent and vital caregiver for his daughter since her birth
26 and knows all her care routines, behavior patterns, and dietary restrictions. He plays an essential

1 role in supervising meals and snacks; managing strict portion control; maintaining a secure, food-
2 safe environment with no access to unauthorized items; supporting his daughter emotionally and
3 behaviorally during periods of anxiety or food-seeking behavior; and assisting with diabetes
4 management. His experience and ability to calm and redirect his daughter are irreplaceable, and
5 his presence significantly reduces the risk of food-related emergencies or behavior crises.
6 Petitioner plays a critical role in his daughter's survival and his removal would drastically increase
7 the risk of medical emergencies, emotional trauma, and long-term harm. Petitioner is seen here
8 with his daughter:



20 22. On December 20, 1999, Petitioner was convicted of assault in the second degree
21 for hitting a man with a pool cue during a barroom fight.

22 23. Upon his release from prison in July 2000, the former Immigration and
23 Naturalization Service ("INS") took him into custody. The INS charged him with being removable
24 under 8 U.S.C. § 1227(a)(2)(A)(iii) for having an "aggravated felony" due to the assault in the
25 second degree conviction.

26 24. An immigration judge ordered Petitioner removed on October 4, 2000. He did not

1 appeal.

2 25. Petitioner was not removed because Vietnam would not accept him.

3 26. After six months of detention in immigration custody, in January 2001, Petitioner
4 filed a writ of habeas corpus seeking his release from immigration custody alleging his removal
5 was not reasonably foreseeable. In September 2001, Judge Marsha Pechman ordered him released,
6 by which point Petitioner had been detained in immigration custody for over a year.

7 27. On August 26, 2003, immigration officials again took Petitioner into custody after
8 he was convicted of unlawful possession of a weapon and harassment. After six additional months
9 of immigration custody, Petitioner was again released from immigration custody on January 4,
10 2004, under an order of supervision.

11 28. Petitioner's last criminal conviction was in 2002—23 years ago. He is a
12 hardworking and productive member of society and closely connected to his family.

13 29. Petitioner has been dutifully complying with his supervision requirements ever
14 since his release, including appearing for all his scheduled check-ins.

15 30. Petitioner appeared for his annual check in in June 2025. At that check in, an ICE
16 officer handed Petitioner paperwork and asked him to complete it and bring it back in one month,
17 on July 15, 2025. ICE asked Petitioner to complete the self-declaration form from Vietnam. Upon
18 information and belief, this is the form that Vietnam requires to process an ICE request for
19 repatriation and that Vietnam issue a travel document. The officer did not explain what the forms
20 were for. Petitioner dutifully complied, returning on July 15 with his completed paperwork. At
21 that check in, after some time, an officer told Petitioner that he needed to obtain two passport
22 photos and come back the next day with the photos in hand. When asked, the officer told Petitioner
23 that photos were to send to the Vietnamese Embassy to "see if he was deportable." When Petitioner
24 asked the officer if he was deportable, the officer replied: "Well, it's starting to open up."

25 31. Petitioner complied with the request, returning to the office on July 16, 2025 with
26 the passport photos. At that time, officers did not permit the family to accompany Petitioner inside.

1 Petitioner was handcuffed and detained when he appeared for the check in with his passport photos.

2 32. Upon information and belief, ICE never provided Petitioner any written notice that
3 the conditions of his release were being revoked and that he would again be detained.

4 33. Petitioner's removal to Vietnam is not reasonably foreseeable. Petitioner does not
5 have a Vietnamese passport. ICE did not obtain travel documents from Vietnam for Petitioner
6 before again detaining him. ICE only asked Petitioner to sign the required self-declaration that
7 Vietnam requires to process an ICE request for repatriation at the time of his detention.

8 **Repatriation to Vietnam History**

9 34. Before a Vietnamese immigrant without a passport or other travel document can be
10 repatriated, Vietnam must issue a passport or other travel document in response to a request from
11 ICE. *See Trinh v. Homan*, 466 F.Supp.3d 1077, 1083 (C.D. Cal. 2020).

12 35. Between the end of the Vietnam War and 2008, Vietnam refused to repatriate any
13 Vietnamese immigrant who had been ordered removed from the United States. *See id.*

14 36. In 2008, the United States and Vietnam reached a diplomatic agreement pursuant
15 to which Vietnam agreed to start considering repatriation requests for certain Vietnamese
16 immigrants. *See id.* The agreement obligated Vietnam to consider repatriation requests for
17 Vietnamese immigrants who had arrived in the United States after July 12, 1995. *See id.* The
18 agreement also provided that "Vietnamese citizens are not subject to return to Vietnam under this
19 agreement if they arrived in the United States before July 12, 1995." *Id.* Relying on this provision,
20 Vietnam maintained its policy of non-repatriation for pre-1995 Vietnamese immigrants after
21 signing the 2008 agreement. *See id.*

22 37. Prior to 2017, ICE maintained that the removal of pre-1995 Vietnamese immigrants
23 was unlikely given Vietnam's consistent refusal to repatriate them. *See id.* ICE adopted a policy
24 of detaining pre-1995 Vietnamese immigrants for no longer than ninety days after their removal
25 orders became final. *See id.* After ninety days, ICE generally released them into the community on
26 orders of supervision. *See id.* In 2017, after some negotiations with Vietnam led ICE to believe

1 Vietnamese officials would begin considering travel documents for pre-1995 Vietnamese
2 immigrants, ICE began re-detaining some Vietnamese individuals who had previously been
3 released on supervision and detaining individuals for longer than 90 days based on a possibility
4 that Vietnam would issue the requisite travel documents. *Id.* That possibility did not materialize.

5 38. After renewed discussions with Vietnam in August 2018, ICE reversed its position
6 again and acknowledged that the removal of pre-1995 immigrants to Vietnam was not significantly
7 likely. *Id.* In October 2018, ICE instructed field offices to resume the practice of releasing pre-
8 1995 Vietnamese immigrants within 90 days of a final order of removal. *Id.*

9 39. Between 2017 and 2019, ICE requested travel documents for pre-1995 Vietnamese
10 immigrants 251 times. Vietnam granted those requests only 18 times.

11 40. In November 2020, the United States and Vietnam signed a Memorandum of
12 Understanding that creates a process for deporting pre-1995 immigrants.² Section 4 of the MOU
13 obliges the United States and Vietnam to consider specific factors prior to deciding to remove a
14 Vietnamese citizen and prior to deciding to accept for repatriation a Vietnamese citizen. *Id.* These
15 factors are not publicly known because the U.S. government redacted them in Freedom of
16 Information Act (FOIA) disclosures of the MOU, yet they appear to dictate which categories of
17 people may be deported to Vietnam. *Id.* Under Section 8 of the MOU, if a person meets the
18 designated criteria, ICE is expected to put together a documentation package for Vietnam to
19 include, inter alia, a self-declaration form of the individual to be removed (using a form attached
20 to the MOU), copies of identity and citizenship documents, and copies of the final order of removal
21 and any criminal records. *Id.* The MOU states that Vietnam intends to issue the travel document
22 within 30 calendar days of receiving the information package when the individual meets the
23 eligibility criteria. *Id.*

24
25 ² Memorandum of Understanding Between the Department of Homeland Security of the United States of America and
26 the Ministry of Public Security of the Socialist Republic of Vietnam on the Acceptance of the Return of Vietnamese
Citizens who Arrived in the United States Before July 12, 1995 and Who Have Been Ordered Removed from the
United States, [https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-
FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf](https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/media/ALC-FOIA-Re-Release-MOU-bates-1-8-8-10-21.pdf)

1 41. Between September 2021 to September 2023, the U.S. government deported only
2 four pre-1995 Vietnamese immigrants. *Id.*

3 **Punitive Banishment to Third Countries**

4 42. Since January 2025, Respondents have developed and implemented a policy and
5 practice of removing individuals to third countries, without first following the procedures in the
6 INA for designation and removal to a third country and without providing fair notice and an
7 opportunity to contest the removal in immigration court.

8 43. Respondents reportedly have negotiated with at least 58 countries to accept
9 deportees from other nations. On June 25, 2025, the *New York Times* reported that seven
10 countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had
11 agreed to accept deportees who are not their own citizens.³ Since then, ICE has carried out highly
12 publicized third country deportations to South Sudan and Eswatini.

13 44. Punishment and deterrence appear to be the point of the Administration's third
14 country removal scheme. The Administration has reportedly negotiated with countries to have
15 deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about
16 \$5 million to arbitrarily and indefinitely imprison more than 200 deported Venezuelans in a
17 maximum-security prison notorious for gross human rights abuses, known as CECOT. In
18 February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and
19 Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. On July 4,
20 2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to South Sudan. The
21 men have been detained incommunicado ever since. On July 15, ICE deported five men to the tiny
22 African nation of Eswatini, including one man from Vietnam, where they are reportedly being held
23 in solitary confinement.

24 45. The Administration has hand selected countries known for human rights abuses and
25 instability for these third country deportation agreements to frighten people in the United States
26

³ Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025.

1 into self-deporting or to accept removal to their home countries. Indeed, conditions in South Sudan
2 are so extreme that the U.S. State Department website warns Americans not to travel there, and if
3 they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator
4 first.

5 46. On July 9, 2025, ICE issued a new memo to staff instructing that when seeking to
6 remove an individual to a country not designated on that person's removal order, that ICE may
7 deport that person without any procedures for notice or an opportunity to be heard if the State
8 Department confirms that it has received diplomatic assurances that individuals will not be
9 persecuted or tortured. If no diplomatic assurances are received, the ICE memo instructs officers
10 to serve on the individual a Notice of Removal that includes the intended country of removal. It
11 instructs officers not to ask whether the individual is afraid of removal to that country. It states that
12 officers should "generally wait at least 24 hours following service of the Notice of Removal before
13 effectuating removal" but that "[i]n exigent circumstances, [ICE] may execute a removal order six
14 (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided
15 reasonable means and opportunity to speak with an attorney prior to removal."

16 47. The memo further instructs that if the noncitizen "does not affirmatively state a fear
17 of persecution or torture if removed to the country of removal listed on the Notice of Removal
18 within 24 hours, [ICE] may proceed with removal to the country identified on the notice." If the
19 noncitizen "does affirmatively state a fear if removed to the country of removal" then ICE will
20 refer the case to U.S. Citizenship and Immigration Services ("USCIS") for a screening for
21 eligibility for withholding of removal and protection under the Convention Against Torture
22 ("CAT"). "USCIS will generally screen within 24 hours." If USCIS determines that the noncitizen
23 does not meet the standard, the individual will be removed. If USCIS determines that the
24 noncitizen has met the standard, then the policy directs ICE to either move to reopen removal
25 proceedings "for the sole purpose of determining eligibility for [withholding of removal
26 protection] and CAT" or designate another country for removal.

48. The eight men who were ultimately deported to South Sudan all claimed fear of removal to South Sudan. None of those men were provided a fear screening by a USCIS officer or otherwise, despite the fact that they were held by ICE for six weeks on a U.S. military base in Djibouti before their final removal to South Sudan.

LEGAL FRAMEWORK

Post-Removal Order Detention and Re-Detention

49. The INA provides that after a removal order becomes final, the government “shall remove the alien from the United States within a period of 90 days.” 8 U.S.C. § 1231(a)(1)(A). This 90-day period is often referred to as the “initial removal period,” and during it, the government “shall detain the alien.” *Id.* § 1231(a)(2). In some circumstances, federal immigration authorities can continue to detain an alien beyond the initial removal period. Specifically, section 1231(a)(6) allows the government to detain certain enumerated classes of immigrants—including those ordered removed due to criminal convictions—for more than 90 days. *Id.* § 1231(a)(6). In *Zadvydas*, 533 U.S. 678, the Court addressed the question of how long the government can detain an immigrant pursuant to section 1231(a)(6).

50. The *Zadvydas* Court began by rejecting the government’s position that section 1231(a)(6) permitted indefinite detention following the initial removal period. *See id.* It held that “[a] statute [that] permit[ed] indefinite detention of an alien would raise a serious constitutional problem,” *id.* at 690, and instead determined that section 1231(a)(6) “implicitly limits an alien’s detention to a period reasonably necessary to bring about that alien’s removal,” *id.* at 679. Thus, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by [section 1231(a)(6)].” *Id.* at 699.

51. The Court went on to institute a framework that would govern future challenges to section 1231(a)(6) detention. “[F]or the sake of uniform administration in the federal courts,” the Court found that post-removal detention was “presumptively reasonable” for the first six months. *Id.* at 700-01. When that “presumptively reasonable” six-month period ends, aliens seeking release

1 from custody bear the initial burden of providing “good reason to believe that there is no significant
2 likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. Once that initial showing
3 is made, the burden shifts to the government to respond with evidence sufficient to rebut it. *See id.*

4 52. Upon release from custody, a noncitizen subject to a final order of removal must
5 comply with certain conditions of release. 8 U.S.C. § 1231(a)(3), (6). The revocation of that release
6 is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen’s release for
7 purposes of removal.

8 53. ICE may revoke a noncitizen’s release and return them to ICE custody due to failure
9 to comply with any of the conditions of release, 8 C.F.R. § 241.13(i)(1), or if, “on account of
10 changed circumstances, the Service determines that there is a significant likelihood that the
11 [noncitizen] may be removed in the reasonably foreseeable future,” *id.* § 241.13(i)(2).

12 54. Upon such a determination by ICE to re-detain, “the alien will be notified of the
13 reasons for revocation of his or her release. [ICE] will conduct an initial informal interview
14 promptly after his or her return to [ICE] custody to afford the alien an opportunity to respond to
15 the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or
16 information that he or she believes shows there is no significant likelihood he or she be removed
17 in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The
18 revocation custody review will include an evaluation of any contested facts relevant to the
19 revocation and a determination whether the facts as determined warrant revocation and further
20 denial of release.” *Id.* § 241.13(i)(3).

21 55. ICE’s decision to re-detain is governed by the factors laid out in 8 C.F.R. §
22 241.13(f), including “the history of the [noncitizen’s] efforts to comply with the order of removal,
23 the history of [ICE’s] efforts to remove [noncitizens] to the country in question or to third
24 countries, including the ongoing nature of [ICE’s] efforts to remove [the noncitizen] and the
25 [noncitizen’s] assistance with those efforts, the reasonably foreseeable results of those efforts, and
26 the views of the Department of State regarding the prospects for removal of [noncitizens] to the

country or countries in question.” *See also Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025).

56. A court may not make this determination in the first instance but may review it for compliance with the regulation. *See id.*; *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

Third Country Removals

57. The immigration laws delineate the proper procedures by which a country may be designated for removal. *See* 8 U.S.C. § 1231(b). These procedures move in incremental steps.

58. First, an individual with a removal order may designate the country to which they want to be removed, and the government *shall* remove the alien to that country. *Id.* § 1231(b)(2)(A). The government may disregard that designation if (1) the individual fails to designate a country promptly; (2) the government of that country does not inform the U.S. government finally, within 30 days after the date the U.S. government first inquires, whether the government will accept the individual into that country; (3) the government of the country is not willing to accept the alien into the country; or (4) the government decides that removing the individual to that country is prejudicial to the United States. *Id.* § 1231(b)(2)(C).

59. Second, if the individual is not removed to the country they designated under section 1231(b)(2)(A), the government shall remove the individual to the country of which the individual is a “subject, national, or citizen” unless the government of that country does not inform the U.S. government or the individual within 30 days after first inquiry or within another reasonable period of time whether the government will accept the individual into the country or the country is not willing to accept the individual into the country. *Id.* § 1231(b)(2)(D).

60. Third, if the individual is not removed to either the country of their designation or the country of which they are a subject, national, or citizen then the government shall remove them to any of the following options: (1) the country from which the individual was admitted to the

1 United States; (2) the country in which is located the foreign port from which the individual left
 2 for the United States or for a foreign territory contiguous to the United States; (3) the country in
 3 which the individual resided before the individual entered the United States and from which the
 4 individual entered the United States; (4) the country in which the individual was born; or (5) the
 5 country in which the individual's birthplace is located when the individual was ordered removed.
 6 *Id.* § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to remove the individual
 7 to any of these countries may the government remove the individual to "another country whose
 8 government will accept [them] into that country." *Id.* § 1231(b)(2)(E)(vii).

9 61. Notwithstanding any of these procedures, the statute prohibits removal to a third
 10 country where a person may be persecuted or tortured, a form of protection known as withholding
 11 of removal. *See id.* § 1231(b)(3)(A). The government "may not remove [a noncitizen] to a country
 12 if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that
 13 country because of the [noncitizen's] race, religion, nationality, membership in a particular social
 14 group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is
 15 a mandatory protection.

16 62. Similarly, Congress codified protections enshrined in the CAT prohibiting the
 17 government from removing a person to a country where they would be tortured. *See* FARRA 2681-
 18 822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel,
 19 extradite, or otherwise effect the involuntary return of any person to a country in which there are
 20 substantial grounds for believing the person would be in danger of being subjected to torture,
 21 regardless of whether the person is physically present in the United States."); 28 C.F.R. § 200.1;
 22 *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

23 63. To comport with the requirements of due process, the government must provide
 24 notice of the third country removal and an opportunity to respond. Due process requires "written
 25 notice of the country being designated" and "the statutory basis for the designation, i.e., the
 26 applicable subsection of § 1231(b)(2)." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash.

2019); *see also D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All removals to third countries, *i.e.*, removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen’s order of removal, must be preceded by written notice to both the non-citizen and the non-citizen’s counsel in a language the non-citizen can understand.” (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process requires notice to the noncitizen of the right to apply for asylum and withholding to the country where they will be removed). The government must be able to show evidence that the third country will accept the individual into that country. *See Himri v. Ashcroft*, 378 F.3d 932, 939 (9th Cir. 2004) (when “at the time the government proposes a country of removal pursuant to § 1231(b)(2)(E)(vii), the government must be able to show that the proposed country *will* accept the [individual]”).

64. Due process also demands that the government “ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen’s response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019; *cf. D.V.D.*, 2025 WL 1453640, at *1 (“Following notice, the individual must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal.” (emphasis omitted)).

65. If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. *Cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen the noncitizen’s immigration proceedings if the individual demonstrates “reasonable fear” and to provide “a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings” if the noncitizen is found to not have demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

1 66. Finally, notice of the country to which the noncitizen will be removed must not be
2 “last minute” because that would deprive an individual of a meaningful opportunity to apply for
3 fear-based protection from removal. *Andriasian*, 180 F.3d at 1041. They must have time to prepare
4 and present relevant arguments and evidence and to seek reopening of their removal case.

5 **Punitive Removal Practices**

6 67. It is bedrock law that the U.S. government may not impose or inflict an infamous
7 punishment for violations of civil immigration law. In 1896, the U.S. Supreme Court ruled that
8 while deportation itself was not a punishment, the government could not attach punitive conditions
9 to deportation—in that case, imprisonment at hard labor—absent a criminal charge, trial in a court
10 of law, and the protections of the Fifth, Sixth, and Eighth Amendments. *Wong Wing v. United*
11 *States*, 163 U.S. 228, 237 (1896).

12 68. Importantly, the Court drew a distinction between deportation, which the Court
13 reasoned is “not a ‘banishment,’ in the sense in which that word is often applied to the expulsion
14 of a citizen from his country by way of punishment,” and government actions aimed at punishment,
15 such as imprisonment at hard labor in addition to deportation. *Id.* at 236. The Court explained
16 that deportation “is but a method of enforcing the return to his own country of an alien who has
17 not complied with the conditions upon the performance of which the government of the nation,
18 acting within its constitutional authority and through the proper departments, has determined that
19 his continuing to reside here shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S.
20 730 (1893)). But the Court admonished that the government may not “declare unlawful residence
21 within the country to be an infamous crime, punishable by deprivation of liberty and property . . .
22 unless provision were made that the fact of guilt should first be established by a judicial trial.” *Id.*
23 at 237.

24 69. Deportation of individuals to third countries to be imprisoned or harmed is
25 unquestionably punishment.

PETITIONER'S CLAIMS TO RELIEF FROM REMOVAL

70. Petitioner is no longer removable as charged on his Notice to Appear. Since he was ordered removed, the Ninth Circuit has clarified that the conviction for which he was ordered removed, assault in the second degree, is not an aggravated felony. *United States v. Robinson*, 869 F.3d 933 (9th Cir. 2017); *see also United States v. Door*, 917 F.3d 1146 (9th Cir. 2019).

71. Petitioner will be filing a motion to reopen removal proceedings based on these changed circumstances.

CLAIMS FOR RELIEF

COUNT ONE

Unlawful Re-Detention

Violation of the Fifth Amendment Due Process Clause, Immigration and Nationality Act, 8 U.S.C. § 1231(a), 8 C.F.R. § 241.13, and the Administrative Procedures Act

72. The allegations in the above paragraphs are realleged and incorporated herein.

73. Respondents' re-detention of Petitioner violates his rights guaranteed by the Due Process Clause of the Fifth Amendment of the U.S. Constitution; the INA, 8 U.S.C. § 1231(a); implementing regulations, 8 C.F.R. § 241.13; and the APA.

74. Petitioner was twice previously released by Respondents on orders by this District Court because his removal was not foreseeable and he did not pose a danger or flight risk. "If removal is not reasonably foreseeable"—as is the case here—detention is "unreasonable and no longer authorized by statute." *Zadvydas*, 533 U.S. at 699-700 (citing 8 U.S.C. § 1231(a)(6)).

75. Neither the statute nor the Constitution authorizes Petitioner's continued detention.

76. Respondents violated governing regulations for revoking Petitioner's conditions of release. Petitioner has duly complied with the conditions of his supervised release, including attending check-ins and providing the information and documentation requested of him. His release may be revoked only if changed circumstances make his removal reasonably foreseeable. 8 C.F.R. § 241.13(i)(2). Upon such a determination, several procedural steps are required to revoke

1 release, *id.* § 241.13(i)(3), none of which were followed here. Respondents are required to follow
2 their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

3 77. Petitioner's removal to Vietnam is not significantly likely to occur in the reasonably
4 foreseeable future. Petitioner has already spent cumulatively one year and a half in immigration
5 custody during which time the government was unable to remove him. Upon information and
6 belief, Respondents do not have agreement from Vietnam to repatriate Petitioner and have not
7 secured his travel documents. Indeed, Respondents detained Petitioner at the time he provided his
8 completed Vietnam self-declaration form and his passport photos. There is no evidence that
9 Vietnam has or will issue travel documents for Petitioner or that he is even eligible to be removed
10 to Vietnam under the 2020 MOU. Accordingly, Respondents cannot meet their burden to show
11 that removal is reasonably foreseeable, and this Court should order his immediate release.

12 **COUNT TWO**

13 **Third Country Removal**

14 **Violation of the Fifth Amendment, 8 U.S.C. § 1231, Convention Against Torture,**
15 **Implementing Regulations, and the Administrative Procedure Act**

16 78. The allegations in the above paragraphs are realleged and incorporated herein.

17 79. The Fifth Amendment, the INA, the CAT, and implementing regulations mandate
18 meaningful notice and opportunity to respond to any attempt to remove Petitioner to a third country
19 in reopened removal proceedings. They also require an opportunity for Petitioner to make a fear-
20 based claim against removal to a third country in reopened removal proceedings. Respondents'
21 policy for third country removals violates all of these laws because it directs ICE agents to remove
22 individuals to third countries without any notice or process *at all* where diplomatic assurances are
23 received and, where no diplomatic assurances are received, to provide flagrantly insufficient notice
24 (6-24 hours) and opportunity to respond, in violation of the statute, regulations, and Fifth
25 Amendment.

26 80. Prior to any third country removal, Petitioner must be provided with

1 constitutionally and statutorily compliant notice and an opportunity to respond and contest that
2 removal if he has a fear of persecution or torture in that country in reopened removal proceedings.

3
4 **COUNT THREE**

5 **Punitive Third Country Banishment**

6 **Violation of Fifth and Eighth Amendments**

7 81. The allegations in the above paragraphs are realleged and incorporated herein.

8 82. Under the Fifth Amendment of the U.S. Constitution, no person shall “be held to
9 answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a
10 Grand Jury;” “be subject for the same offence to be twice put in jeopardy of life or limb;” or “be
11 deprived of life, liberty, or property, without due process of law.”

12 83. The Eighth Amendment provides that no “cruel and unusual punishments” may be
13 inflicted.

14 84. The U.S. Supreme Court long ago held that the government may not inflict upon
15 individuals an “infamous punishment” in addition to deportation, as a penalty for an immigration
16 violation, absent criminal charges, a judicial trial, and attendant constitutional protections. *Wong*
17 *Wing*, 163 U.S. at 236-38.

18 85. Petitioner was convicted and completed any sentences for his criminal convictions
19 decades ago. His convictions made him removable from the United States, but his convictions do
20 not authorize the government to inflict, as a matter of executive policy and discretion, additional
21 punishment on him. Respondents’ third country removal program is punitive in nature and
22 execution. The government has arranged for third countries to receive deportees and imprison them
23 on arrival, possibly indefinitely and often in abhorrent conditions. It has selected countries
24 notorious for human rights abuses and instability for third country removal arrangements. It has
25 targeted individuals with criminal convictions for third country removals where they will be
26 imprisoned and harmed and publicly broadcast those removals to demonize and dehumanize the
individuals subjected to these practices and strike fear in the immigrant community to send a

1 message of retribution and deterrence. Respondents' third country removal program is more than
2 a publicity stunt. The hundreds of individuals who have already been subjected to it, have been
3 banished in foreign prisons upon arrival without charge and often without communication with the
4 outside world, including their families and lawyers. Respondents may not subject Petitioner to its
5 third country removal program designed to impose a severe punishment on its subjects. *See id.*
6 Such conduct "shocks the conscience" under Fifth Amendment substantive due process, is cruel
7 and unusual punishment, and may not be imposed without charge and a judicial trial.

8 86. Respondents may not seek to remove Petitioner to a third country under their
9 punitive banishment policy and practices.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Petitioner respectfully requests that this Court:

- 12 a. Assume jurisdiction over this action;
- 13 b. Order Respondents to immediately release Petitioner from custody;
- 14 c. Order that Respondents may not re-detain Petitioner without first following the
15 statutory and regulatory procedures for revocation of release and without first obtaining agreement
16 from Vietnam to repatriate him and obtaining his travel documents;
- 17 d. Order that Respondents may not remove or seek to remove Petitioner to a third
18 country without notice and meaningful opportunity to respond in compliance with the statute and
19 due process in reopened removal proceedings;
- 20 e. Order that Respondents may not remove Petitioner to any third country because
21 Respondents' third country removal program seeks to impose unconstitutional punishment on its
22 subjects, including imprisonment and other forms of harm;
- 23 f. Award costs and reasonable attorney fees under the Equal Access to Justice Act, 28
24 U.S.C. § 2412; and
- 25 g. Order all other relief that the Court deems just and proper.
- 26

1
2 Dated: July 24, 2025

Respectfully submitted,

3 /s/ Jennifer Pasquarella

4 Jennifer Pasquarella (WA Bar No. 62205)
5 Seattle Clemency Project
6 20415 72nd Ave South, Suite 1-415
7 Kent, WA 98032
8 Telephone: 206.682.1114
9 jennie@seattleclemencyproject.org

10 STOEL RIVES LLP

11 /s/ Tiffany Wang

12 Tiffany Wang, WSBA No. 57367
13 600 University Street, Suite 3600
14 Seattle, WA 98101
15 Telephone: 206.624.0900
16 tiffany.wang@stoel.com

17 *Attorneys for Petitioner*

VERIFICATION

Pursuant to Local Court Rule 100(e), I, Jennifer Pasquarella, verify that the facts set forth therein are true and correct to the best of my knowledge. I make this verification on behalf of Petitioner Phong Thanh Ngyuen, who is unable to make this verification himself while he is detained at the Northwest Immigration and Customs Enforcement Processing Center in Tacoma, Washington.

DATED: July 24, 2025

/s/ Jennifer Pasquarella
Jennifer Pasquarella

1
2 Dated: July 24, 2025

Respectfully submitted,

3 /s/ Jennifer Pasquarella

4 Jennifer Pasquarella (WA Bar No. 62205)
5 Seattle Clemency Project
6 20415 72nd Ave South, Suite 1-415
7 Kent, WA 98032
8 Telephone: 206.682.1114
9 jennie@seattleclemencyproject.org

10 STOEEL RIVES LLP

11 /s/ Tiffany Wang

12 Tiffany Wang, WSBA No. 57367
13 600 University Street, Suite 3600
14 Seattle, WA 98101
15 Telephone: 206.624.0900
16 tiffany.wang@stoel.com

17 *Attorneys for Petitioner*
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COMPLAINT AND PETITION FOR WRIT
OF HABEAS CORPUS - 22
Case No. 2:25-cv-01398

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone 206.624.0900