

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT SEATTLE

5 ARTIN HAMBARSONPOUR,

6 Petitioner,

7 vs.

8 PAMELA BONDI, Attorney General of
9 the United States; KRISTI NOEM,
10 Secretary, United States Department of
11 Homeland Security; CAMMILLA
12 WAMSLEY, Seattle Field Office
13 Director, United States Citizenship and
Immigration Services; BRUCE SCOTT,
Warden of Immigration Detention
Facility; and the United States
Immigration and Customs Enforcement,

Respondents.

) No. CV25-1802

) **MOTION FOR PRELIMINARY
INJUNCTION**

) Note on Motion Calendar:
October 15, 2025

) **Expedited Hearing Requested**

) **Oral Argument Requested**

14 **I. INTRODUCTION**

15 Earlier today, Petitioner filed a petition for a writ of habeas corpus under 28
16 U.S.C. § 2241. In the petition, he asserts that continued detention by immigration
17 officials violates the Fifth Amendment’s Due Process Clause and 8 U.S.C. § 1231 as
18 interpreted by *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner also asserts that
19 there is a risk of unconstitutionally punitive deportation to a third country and also of
20 deportation without the due process required by Ninth Circuit precedent. Because
21 Petitioner is almost certain to prevail on these claims, he respectfully asks the Court (a)
22 to order Petitioner’s immediate release from custody while this case is litigated, (b) to
23 bar Respondents from removing Petitioner to any third country because Respondents’
24 third country removal program is punitive, and (c) to bar Respondents from removing
25 Petitioner to a third country without notice and meaningful opportunity to respond in
26 compliance with the statute and due process in reopened removal proceedings.

1 **II. FACTS RELEVANT TO PUNITIVE THIRD COUNTRY DEPORTATION**

2 Since January 2025, Respondents have implemented a policy and practice of
3 removing individuals to third countries, without (1) following the Immigration and
4 Nationality Act (“INA”) procedures for designation and removal to a third county, and
5 (2) providing fair notice and an opportunity to contest the removal in immigration
6 court. These removals are unconstitutional and amount to punitive banishment.

7 Respondents reportedly have negotiated with at least 58 countries to accept
8 deportees from other nations. On June 25, 2025, the New York Times reported that
9 seven countries had agreed to accept deportees who are not their own citizens.¹ Since
10 then, ICE has carried out highly publicized third country deportations to South Sudan
11 and Eswatini.

12 **A. The Administration’s third country removal scheme is designed to
13 punish and deter.**

14 In an official video, President Donald Trump stated, “[I]f illegal aliens choose to
15 remain in America, they’re remaining illegally, and they will face severe
16 consequences,” such as “significant jail time, ... garnishment of all wages,
17 imprisonment and incarceration, and *sudden deportation in a place and manner solely*
18 *of our discretion.*”² In January, President Trump announced a plan to detain immigrants
19 at the Guantanamo Bay prison in Cuba because “it’s a tough place to get out” and “we
20 don’t want them coming back.”³

21 ¹ The seven countries are Costa Rica, El Salvador, Guatemala, Kosovo, Mexico,
22 Panama, and Rwanda. Edward Wong, et al., *Inside the Global Deal-Making Behind*
23 *Trump’s Mass Deportations*, NY Times (June 25, 2025), <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html> [<https://perma.cc/9U5C-BCG6>].

24 ² Roll Call, *Donald Trump Vlog: Self-Deportation Program - May 9, 2025*, at 00:00:55
25 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/> [<https://perma.cc/XBX2-QALT>].

26 ³ Benedict Garman & Matt Murphy, *Migrant Tents Removed from Guantanamo Bay, Satellite Images Show*, BBC News (Apr. 17, 2025), <https://www.bbc.com/news/articles/crm3x27vw70o> [<https://perma.cc/DGM4-JJE9>].

1 Later, Secretary of State Marco Rubio announced that El Salvador had agreed to
2 “accept for deportation any illegal alien in the [U.S.] who is a criminal”⁴ with the
3 explicit understanding that “[President Bukele] will put them in his jails.”⁵ Respondent
4 DHS Secretary Kristi Noem said, “It has been wonderful for us to be able to have
5 somewhere to send the worst of the worst and someone to partner with. And we’d like
6 to continue that partnership because it’s been *a powerful message of consequences*.”⁶
7 President Trump recently spoke about the deterrent effect of the El Salvador
8 banishments: “[W]e bring people there and ... they don’t get out.”⁷ DHS agreed,
9 posting, “Illegal aliens are turning back because they know ... they will ultimately leave
10 in handcuffs.”⁸

11 In April, Secretary of State Rubio stated that the Administration is “working
12 with other countries ... to send [them] some of the most despicable human beings ...
13 and the further away from America, the better, so they can’t come back.”⁹ Secretary

14 ⁴ Stefano Pozzebon, et al., *El Salvador Offers to House Violent US Criminals and*
15 *Deportees of Any Nationality in Unprecedented Deal*, CNN World (Feb. 4, 2025),
16 <https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk>.

17 ⁵ Matthew Lee, *Rubio Says El Salvador Offers to Accept Deportees from US of Any*
18 *Nationality, Including Americans*, AP News (Feb. 4, 2025), <https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396baf9c45a2c0b>.

19 ⁶ Roll Call, *Remarks: Donald Trump Holds a Bilateral Meeting with Nayib Bukele of El*
20 *Salvador - April 14, 2025*, at 00:06:45 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-remarks-bilat-nayib-bukele-el-salvador-april-14-2025/>
[<https://perma.cc/GQ26-ADHG>].

21 ⁷ Roll Call, *Press Conference: Donald Trump Hosts a Press Conference at the White*
22 *House - June 27, 2025*, at 00:20:29, <https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-white-house-june-27-2025/> [<https://perma.cc/326E-5T8L>].

23 ⁸ @DHSgov (Homeland Security), X (June 24, 2025, 4:17 PM), <https://x.com/DHSgov/status/1937651350059327520> [<https://perma.cc/2BRH-UXJ5>].

24 ⁹ Kate Bartlett, *Trump Administration Plans to Deport Migrants to Libya*, NPR (May 7,
25 2025), <https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-trump-deportations> [<https://perma.cc/C9LM-7333>].
26

1 Noem has publicly threatened noncitizens with criminal convictions to “leave America”
2 or “be fined nearly \$1,000 per day, imprisoned, and deported.”¹⁰ She stated, “President
3 Trump and I have a clear message to those in our country illegally: LEAVE NOW. If
4 you do not self-deport, we will hunt you down, arrest you, and deport you.”¹¹

5 **B. The Administration has negotiated with countries to have U.S. deportees**
6 **imprisoned in prisons, camps, or other facilities.**

7 In February, Panama and Costa Rica took in hundreds of deportees from African
8 and Central Asian countries and imprisoned them in hotels, a jungle camp, and a
9 detention center.¹² In Panama, officials confiscated cell phones, denying deportees
10 access to their attorneys.¹³ Deportees were “guarded like prisoners,” sleeping in
11 structures made from plastic sheets and having toilet access only when escorted.¹⁴

12
13 ¹⁰ Press Release, Dep’t of Homeland Sec., *DHS Releases New Nationwide and*
14 *International Ads Warning Illegal Aliens to Self-Deport and Stay Out* (Apr. 21, 2025),
15 [https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-](https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-ads-warning-illegal-aliens-self)
[ads-warning-illegal-aliens-self \[https://perma.cc/2R24-34PA\]](https://perma.cc/2R24-34PA).

16 ¹¹ Press Release, *supra* note 10 (italics omitted).

17 ¹² The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama in a Legal*
18 *‘Black Hole,’* CBC News (Feb. 28, 2025), [https://www.cbc.ca/news/world/costa-rica-](https://www.cbc.ca/news/world/costa-rica-panama-us-migrants-1.7471142)
19 [panama-us-migrants-1.7471142 \[https://perma.cc/CE84-S3Y7\]](https://perma.cc/CE84-S3Y7); Juan Zamorano, *Nearly*
20 *300 Deportees From US Held in Panama Hotel as Officials Try to Return Them to Their*
21 *Countries*, AP World News (Feb. 18, 2025), [https://apnews.com/article/panama-trump-](https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455)
[migrants-darien-d841c33a215c172b8f99d0aeb43b0455](https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home); Manuel Rueda, *Asylum Seekers*
22 *Deported by the U.S. Are Stuck in Panama and Unable to Return Home*, All Things
23 *Considered*, NPR (May 5, 2025), [https://www.npr.org/2025/05/05/nx-s1-](https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home)
24 [5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-](https://perma.cc/T5BW-HL39)
25 [home. \[https://perma.cc/T5BW-HL39\]](https://perma.cc/T5BW-HL39).

22 ¹³ Julie Turkewitz, et al., *Migrants, Deported to Panama Under Trump Plan, Detained*
23 *in Remote Jungle Camp*, N.Y. Times (Feb. 19, 2025), [https://www.nytimes.com/](https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock)
24 [2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login](https://perma.cc/T5BW-HL39)
25 [=smartlock&auth=login-smartlock \[https://perma.cc/T5BW-HL39\]](https://perma.cc/T5BW-HL39).

25 ¹⁴ Matias Delacroix & Megan Janetsky, *Isolated in ‘Harsh Conditions:’ Deportee from*
26 *US Details Legal Limbo in Panama Camp Near Darien Gap*, AP World News (Feb. 22,
2025), [https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86)
[bba8c3dc33fd38efd569a5b51e481a86 \[https://perma.cc/7FL8-KNXT\]](https://perma.cc/7FL8-KNXT).

1 The Costa Rican president announced an agreement to receive up to 200
2 deportees and to hold them for up to six weeks before sending them to their home
3 countries, all paid for by the U.S.¹⁵ The deportees were held at the Temporary Migrant
4 Care Center (CATEM).¹⁶ Migrants held there previously reported sleeping on the
5 ground in tents, being held in cramped quarters like prisoners, and sanitation issues.¹⁷
6 On June 24, a Costa Rican court ordered the release of the deportees due to civil rights
7 violations, finding “they had been deprived of their freedom of movement without a
8 prior individual ruling, that their communications with the outside had been restricted,
9 and that they had not been told about the possibility of applying for refugee status.”¹⁸

10 In March, the U.S. paid El Salvador \$5 million to indefinitely imprison over 200
11 deported Venezuelans in a maximum-security prison notorious for gross human rights
12 abuses, known as CECOT.¹⁹ El Salvador’s justice minister stated the only way out of
13 CECOT is in a coffin.²⁰

14 ¹⁵ Alvaro Murillo, *Costa Rica Could Hold US Deportees for Up to Six Weeks, President*
15 *Says*, Reuters (Feb. 19, 2025), [https://www.reuters.com/world/americas/costa-rica-](https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-2025-02-19/)
16 [could-hold-us-deportees-up-six-weeks-president-says-2025-02-19/](https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-2025-02-19/)
[\[https://perma.cc/8NR4-4F4A\]](https://perma.cc/8NR4-4F4A).

17 ¹⁶ The Associated Press, *Group of Mostly Asian Migrants Deported from U.S. Arrive in*
18 *Costa Rica*, NBC News (Feb. 21, 2025), [https://www.nbcnews.com/news/asian-](https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148)
[america/asian-migrants-deported-arrive-costa-rica-rcna193148](https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148)
19 [\[https://perma.cc/R6MT-HK9F\]](https://perma.cc/R6MT-HK9F).

19 ¹⁷ The Associated Press, *supra* note 16.

20 ¹⁸ Vanessa Buschschlüter, *Costa Rican Court Orders Release of Migrants Deported*
21 *from US*, BBC News (June 25, 2025), [https://www.bbc.com/news/articles/](https://www.bbc.com/news/articles/cwyrn42kp7no)
[cwyrn42kp7no](https://www.bbc.com/news/articles/cwyrn42kp7no) [\[https://perma.cc/45FA-3VCY\]](https://perma.cc/45FA-3VCY).

22 ¹⁹ See, e.g., Wong, et al., *supra* note 1; Michael Rios, *What We Know About the El*
23 *Salvador ‘Mega Prison’ Where Trump Is Sending Alleged Venezuelan Gang Members*,
24 CNN (Mar. 17, 2025), [https://www.cnn.com/2025/03/17/americas/el-salvador-prison-](https://www.cnn.com/2025/03/17/americas/el-salvador-prison-trump-deportations-gangs-intl-latam)
[trump-deportations-gangs-intl-latam](https://www.cnn.com/2025/03/17/americas/el-salvador-prison-trump-deportations-gangs-intl-latam) [\[https://perma.cc/G3CE-M2LB\]](https://perma.cc/G3CE-M2LB).

25 ²⁰ Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison; Documents*
26 *Indicate Most Have No Apparent Criminal Records*, CBS News (Apr. 6, 2025),
[https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-](https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/)
[prison-60-minutes-transcript/](https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/) [\[https://perma.cc/65ZQ-UNXZ\]](https://perma.cc/65ZQ-UNXZ).

1 In May, ICE attempted to deport individuals from Vietnam, Laos, the
2 Philippines, and Mexico to Libya.²¹ The aircraft sat on the runway for hours until the
3 individuals were returned to a detention center after a court ordered the men not to be
4 deported.²²

5 On July 4, ICE deported eight men, including one pre-1995 Vietnamese refugee,
6 to South Sudan.²³ The government of South Sudan euphemistically said in a statement
7 that the deportees were “under the care of the relevant authorities”²⁴—meaning they are
8 imprisoned. They have been held incommunicado since their deportation was
9 completed.²⁵

10 On July 15, ICE deported five men to Eswatini, including one Vietnamese pre-
11 1995 immigrant.²⁶ DHS referred to the men as “so uniquely barbaric that their home
12 countries refused to take them back.”²⁷ Eswatini government officials have said the

13 ²¹ Human Rights Watch, *U.S.: Don't Forcibly Transfer Migrants to Libya* (May 9,
14 2025), <https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya>
[<https://perma.cc/LC6H-4Y6G>].

15 ²² Human Rights Watch, *supra* note 21.

16 ²³ Guardian, *US Judge Clears Path for Eight Immigrants to Be Deported to South*
17 *Sudan* (July 4, 2025), [https://www.theguardian.com/us-news/2025/jul/04/south-sudan-](https://www.theguardian.com/us-news/2025/jul/04/south-sudan-deportations-halted)
[deportations-halted \[https://perma.cc/33XA-N863\]](https://perma.cc/33XA-N863).

18 ²⁴ Mattathias Schwartz, *Trump Administration Poised to Ramp Up Deportations to*
19 *Distant Countries*, N.Y. Times (July 13, 2025), [https://www.nytimes.com/2025/07/13/](https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html)
20 [us/politics/south-sudan-third-country-deportations.html \[https://perma.cc/7MXJ-](https://perma.cc/7MXJ-QWY9)
QWY9]; *see also* Press Statement, Republic of South Sudan, *Official Statement on the*
21 *Arrival of Third-Country Nationals and South Sudanese Deported from the United*
States of America to South Sudan (July 8, 2025), [https://mofaic.gov.ss/official-](https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-of-america-to-south-sudan/)
22 [statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-](https://perma.cc/ML25-BJZM)
[the-united-states-of-america-to-south-sudan/ \[https://perma.cc/ML25-BJZM\]](https://perma.cc/ML25-BJZM).

23 ²⁵ Exhibit 1, ¶ 18 (Declaration of Glenda M. Aldana Madrid, *Nguyen v. Scott*, No. 2:25-
CV-01398, dkt. 29 (W.D. Wash. Aug. 1, 2025)).

24 ²⁶ Exhibit 2, ¶ 19 (Declaration of Tin Thanh Nguyen, *id.* at dkt. 28).

25 ²⁷ @TriciaOhio (Tricia McLaughlin), X (July 15, 2025 at 5:09 PM),
26 <https://x.com/TriciaOhio/status/1945274627976200206> [[https://perma.cc/YV2M-](https://perma.cc/YV2M-4WRL)
[4WRL](https://perma.cc/YV2M-4WRL)].

1 men are imprisoned in solitary confinement and that the U.S. is paying for the costs of
2 their imprisonment.²⁸ An Eswatini government official estimated the men would be
3 held for about 12 months.²⁹

4 It also attempted—and completed—an “end-run” around the protections of the
5 Convention against Torture by deporting a group of migrants to Ghana, which sent
6 them on to their countries of citizenship despite fears of persecution.³⁰

7 **C. The Administration has handpicked countries known for human rights**
8 **abuses for third country deportation agreements to scare people in the**
9 **U.S. into self-deporting or to accept removal to their home countries.**

10 For example, conditions in South Sudan are so extreme that the U.S. State
11 Department website warns Americans not to travel there, or to prepare their will, make
12 funeral arrangements, and appoint a hostage-taker negotiator first.³¹ Eswatini is ruled
13 by a monarch, and many of its citizens live on less than four dollars a day.³² The prison
14 system is overcrowded, with prisoners receiving one meal a day.³³ The U.S. State

15
16 ²⁸ Nimi Princewill, et al., ‘*Not Trump’s Dumping Ground*’: *Outrage Over Arrival of*
17 *Foreign US Deportees in Tiny African Nation*, CNN World (July 18, 2025),
18 <https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl>
19 [<https://perma.cc/8U9T-LVMP>]; Rachel Savage, et al., *Eswatini Opposition Attacks US*
Deal as ‘*Human Trafficking Disguised as Deportation*,’ *The Guardian* (July 23, 2025),
<https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-deportees>
[<https://perma.cc/XV7W-89P4>].

20 ²⁹ Savage, et al., *supra* note 28.

21 ³⁰ Camilo Montoya-Perez, *Judge Says U.S. Trying to Do “End-Run” Around Legal*
22 *Protections with Deportations to Ghana*, CBS News (Sept. 15, 2025),
[https://www.cbsnews.com/news/judge-says-u-s-trying-to-do-end-run-around-legal-](https://www.cbsnews.com/news/judge-says-u-s-trying-to-do-end-run-around-legal-protections-with-deportations-to-ghana/)
23 [protections-with-deportations-to-ghana/ \[https://perma.cc/9RUP-KJQJ\]](https://perma.cc/9RUP-KJQJ).

24 ³¹ U.S. Department of State, Travel.State.Gov, *South Sudan Travel Advisory* (Mar. 8,
2025), [https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-sudan-travel-advisory.html)
[sudan-travel-advisory.html \[https://perma.cc/6NXV-JXCY\]](https://perma.cc/6NXV-JXCY).

25 ³² Princewill, et al., *supra* note 28.

26 ³³ Princewill, et al., *supra* notes 28, 32.

1 Department advises Americans to “exercise increased caution in Eswatini due to crime
2 and civil unrest.”³⁴ And Libya is in the middle of a civil war, with a record of
3 “pervasive long-term arbitrary detention, enforced disappearances of both men and
4 women, killings under torture, and unlawful killings in places of detention.”³⁵ The
5 United Nations has called Libya’s violations of detainees’ rights “crimes against
6 humanity.”³⁶

7 **III. FACTS RELEVANT TO DUE PROCESS AND DEPORTATIONS**

8 A July 9, 2025, ICE memo regarding procedures for third-country deportations
9 states:

10 If the United States has received diplomatic assurances from the country
11 of removal that [noncitizens] removed from the United States will not be
12 persecuted or tortured, and if the Department of State believes those
13 assurances to be credible, the [noncitizen] may be removed without the
14 need for further procedures. ICE will seek written confirmation from the
15 Department of State that such diplomatic assurances were received and
16 determined to be credible. HSI and ERO will be made aware of any such
17 assurances. In all other cases, ICE must comply with the following
18 procedures:

- 19 • An ERO officer will serve on the [noncitizen] the attached Notice of
20 Removal. The notice includes the intended country of removal and will be
21 read to the [noncitizen] in a language he or she understands.
- 22 • ERO will not affirmatively ask whether the [noncitizen] is afraid of
23 being removed to the country of removal.
- 24 • ERO will generally wait at least 24 hours following service of the
25 Notice of Removal before effectuating removal. In exigent circumstances,
26 ERO may execute a removal order six (6) or more hours after service of

23
24 ³⁴ U.S. Department of State, Travel.State.Gov, *Eswatini Travel Advisory* (July 1, 2024),
25 <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/eswatini-travel-advisory.html> [<https://perma.cc/ASY7-2DUF>].

26 ³⁵ Human Rights Watch, *supra* note 21; *see* Bartlett, *supra* note 9.

³⁶ Human Rights Watch, *supra* notes 21, 35.

1 the Notice of Removal as long as the [noncitizen] is provided reasonable
2 means and opportunity to speak with an attorney prior to removal.

3 • Any determination to execute a removal order under exigent
4 circumstances less than 24 hours following service of the Notice of
5 Removal must be approved by the DHS General Counsel, or the Principal
6 Legal Advisor where the DHS General Counsel is not available.

7 • If the [noncitizen] does not affirmatively state a fear of persecution or
8 torture if removed to the country of removal listed on the Notice of
9 Removal within 24 hours, ERO may proceed with removal to the country
10 identified on the notice. ERO should check all systems for motions as
11 close in time as possible to removal.

12 • If the [noncitizen] does affirmatively state a fear if removed to the
13 country of removal listed on the Notice of Removal, ERO will refer the
14 case to U.S. Citizenship and Immigration Services (USCIS) for a
15 screening for eligibility for protection under section 241(b)(3) of the INA
16 and the Convention Against Torture (CAT). USCIS will generally screen
17 the [noncitizen] within 24 hours of referral.

18 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *19 (W.D. Wash. Aug. 21,
19 2025).

20 **IV. LEGAL STANDARD FOR A PRELIMINARY INJUNCTION**

21 A plaintiff seeking a preliminary injunction must show (1) he is likely to succeed
22 on the merits, (2) he is likely to suffer irreparable harm absent preliminary relief, (3) the
23 balance of equities tips in his favor, and (4) the relief sought is in the public interest.

24 *Winters v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The movant must make a
25 showing on each element of the Winter test. *All. for the Wild Rockies v. Cottrell*, 632
26 F.3d 1127, 1135 (9th Cir. 2011). However, “where the ‘balance of hardships ... tips
sharply towards the plaintiff,’ a plaintiff need only show ‘serious questions going to the
merits,’ rather than likelihood of success on the merits[.]” *Roman v. Wolf*, 977 F.3d
935, 941 (9th Cir. 2020) (quoting *All. for the Wild Rockies*, 632 F.3d at 1135).

The Ninth Circuit distinguishes between “mandatory” and “prohibitory”
injunctions, even though that approach is “controversial.” *Hernandez v. Sessions*, 872

1 F.3d 976, 997 (9th Cir. 2017) (noting that other circuits have held the distinction “not
2 meaningful” and that “[t]o worry these questions is merely to fuzz up the legal
3 standard”) (quoting *United Food & Commercial Workers Union, Local 1099 v. Sw.
4 Ohio Reg’l Transit Auth.*, 163 F.3d 341, 348 (6th Cir. 1998), and *Chicago United
5 Indus., Ltd. v. City of Chicago*, 445 F.3d 940, 944 (7th Cir. 2006) (Posner, J.)).
6 Mandatory injunctions order “a responsible party to ‘take action.’” *Marlyn
7 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009)
8 (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996)).

9 Although mandatory injunctions “should not be approved in the absence of a risk
10 of ‘extreme or very serious damage[,]” *Hernandez*, 872 F.3d at 997 (quoting *Marlyn
11 Nutraceuticals, Inc.*, 571 F.3d at 879), they are most likely to be appropriate when “the
12 status quo ... is exactly what will inflict the irreparable injury upon complainant.” *Id.*
13 at 999 (quoting *Friends for All Child., Inc. v. Lockheed Aircraft Corp.*, 746 F.2d 816,
14 830 n.21 (D.C. Cir. 1984)).

15 **V. PETITIONER IS ENTITLED TO A PRELIMINARY INJUNCTION**
16 **ORDERING RELEASE.**

17 **A. Petitioner is likely to succeed on the merits.**

18 Petitioner has met his burden to show that “there is no significant likelihood of
19 removal in the reasonably foreseeable future.” *Nadarajah v. Gonzales*, 443 F.3d 1069,
20 1082 (9th Cir. 2006); *see also Zadvydas*, 533 U.S. at 701.

21 First, Petitioner has already been detained for more than six months. He spent
22 approximately three months in custody, after his final order of removal, in 2014. He has
23 spent over six months in custody since March 13, 2025, meaning he will have spent
24 over ten months in custody by the time this motion is heard.

25 Second, Petitioner has shown that his removal is not reasonably foreseeable.
26 *Zadvydas* determined that detention becomes “indefinite” when there is “good reason to

1 believe that there is no significant likelihood of removal in the reasonably foreseeable
2 future.” *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533
3 U.S. at 701). Petitioner is not the citizen of any country. His country of birth, France,
4 does not consider him a citizen. *See Fitisemanu v. United States*, 1 F.4th 862, 878 (10th
5 Cir. 2021) (citing Graziella Bertocchi & Chiara Strozzi, *The Evolution of Citizenship:
6 Economic and Institutional Determinants*, 53 J. L. & Econ. 95, 99–100 (2010))
7 (“Numerous free countries do not practice birthright citizenship, or practice it with
8 significant restrictions, including Australia, France, and Germany.”) To Petitioner’s
9 knowledge, ICE has made no progress in effectuating his removal to France, He has
10 had only two conversations with his detention officer regarding deportation, neither of
11 which resulted in any action being taken, to the best of his knowledge.

12 The burden thus shifts to the government to “respond with evidence sufficient to
13 rebut that showing.” *Zadvydas*, 533 U.S. at 701. Petitioner anticipates the government
14 cannot meet that burden. *See Nguyen*, 2025 WL 2419288, at *16 (finding that
15 government has not met its burden merely by showing “there is at least some possibility
16 of removal” and observing “[c]ourts in this circuit have regularly refused to find
17 Respondents’ burden met where Respondents have offered little more than
18 generalizations regarding the likelihood that removal will occur”) (citing as examples
19 *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006); *Chun Yat Ma v.*
20 *Asher*, No. 11-CV-1797 MJP, 2012 WL 1432229, at *4–5 (W.D. Wash. Apr. 25, 2012);
21 *Hoac v. Becerra*, No. 25-CV-1740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal.
22 July 16, 2025)).

23 **B. Petitioner will suffer irreparable harm absent an injunction.**

24 Second, illegal confinement is a quintessentially irreparable harm. “It is well
25 established that the deprivation of constitutional rights ‘unquestionably constitutes
26 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting

1 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation of a
2 constitutional right is involved, most courts hold that no further showing of irreparable
3 injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005)
4 (citing 11A Charles Alan Wright, et al., *Federal Practice and Procedure*, § 2948.1
5 (2d ed. 2004)). “Unlawful detention certainly constitutes ‘extreme or very serious’
6 damage, and that damage is not compensable in damages.” *Hernandez v. Sessions*, 872
7 F.3d 976, 999 (9th Cir. 2017).

8 As the *Nguyen* court stated in granting a preliminary injunction under *Zadvydas*:

9 The Ninth Circuit has recognized “the irreparable harms imposed on
10 anyone subject to immigration detention.” *Rodriguez v. Bostock*, 779 F.
11 Supp. 3d 1239, 1253 (W.D. Wash. 2025) (citing *Hernandez*, 872 F.3d
12 at 995) (“For example ... subpar medical and psychiatric care in ICE
13 detention facilities, the economic burdens imposed on detainees and their
14 families as a result of detention, and the collateral harms to children of
15 detainees whose parents are detained.”). “In the absence of an injunction,
16 harms such as these will continue to occur needlessly on a daily basis.”
17 *Hernandez*, 872 F.3d at 995.

18 2025 WL 2419288, at *25.

19 Here, the irreparable harm to Petitioner is severe. Absent relief, Petitioner will
20 remain detained in an indefinite and prolonged state, denied his liberty, and removed
21 from his livelihood.

22 **C. The balance of hardships and public interest weigh heavily in Petitioner’s
23 favor.**

24 The final two factors for a preliminary judgment—the balance of hardships and
25 public interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
26 556 U.S. 418, 435 (2009). Here, the balance of hardships tips in Petitioner’s favor,
given the deprivation of liberty.

“[T]he [government] cannot reasonably assert that it is harmed in any legally
cognizable sense by being enjoined from constitutional violations.” *Zepeda v. I.N.S.*,
753 F.2d 719, 727 (9th Cir. 1983). And it is always in the public interest to prevent

1 violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at 436
2 (describing public interest in preventing noncitizens “from being wrongfully removed,
3 particularly to countries where they are likely to face substantial harm”). Accordingly,
4 the balance of hardships and the public interest overwhelmingly favor emergency relief
5 to ensure Petitioner’s freedom.

6 There is a countervailing “public interest in prompt execution of removal
7 orders,” *Nken*, 556 U.S. at 436, but here there is no likelihood of removal. Furthermore,
8 it is well established that “our system does not permit agencies to act unlawfully even in
9 pursuit of desirable ends.” *Nguyen*, 2025 WL 2419288, at *28 (quoting *Ala. Ass’n of*
10 *Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 766 (2021)).

11 **VI. PETITIONER IS ENTITLED TO A PRELIMINARY INJUNCTION**
12 **BARRING DEPORTATION TO A THIRD COUNTRY PURSUANT TO**
13 **RESPONDENT’S PUNITIVE POLICY.**

14 Essentially the same analysis applies to Petitioner’s second claim. First, as to
15 likelihood on the merits, there can be no reasonable dispute that Respondent’s current
16 deportation policy is punitive. Nor can there be any reasonable dispute that deportation
17 may not be used for punitive purposes. *Wong Wing v. United States*, 163 U.S. 228, 237
18 (1896). *See Nguyen*, 2025 WL 2419288, at *23 (“Petitioner has shown a likelihood of
19 success on his claim that ICE’s practice of removing noncitizens to countries where
20 they face imprisonment violates the Constitution’s prohibition on ‘punitive’ third
21 country removal.”).

22 Petitioner risks irreparable harm in two ways. First, Petitioner may suffer
23 punishment—potentially horrible punishment—at the hands of the third country he is
24 deported to. Second, Petitioner may be irreparably harmed by being deported when he
25 will then have no way to undo the harm by being returned to the United States,
26 although, were the law followed, Petitioner could not lawfully be deported from the
United States. *See Nguyen*, 2025 WL 2419288, at *26 (“It is beyond dispute that

1 Petitioner would face irreparable harm from removal to a third country.”); *A.A.R.P. v.*
2 *Trump*, — U.S. —, 145 S. Ct. at 1364, 1367 (2025) (detainees with pending habeas
3 petitions facing removal under Alien Enemies Act faced “an imminent threat of severe,
4 irreparable harm”).

5 The balance of equities analysis is comparable to that for Petitioner’s first claim.

6 **VII. PETITIONER IS ENTITLED TO A PRELIMINARY INJUNCTION**
7 **BARRING DEPORTATION TO A THIRD COUNTRY WITHOUT**
8 **NOTICE AND A MEANINGFUL OPPORTUNITY TO BE HEARD.**

9 As to Petitioner’s final claim, the analysis starts, of course, with likelihood of
10 success on the merits. As to this issue, the *Nguyen* court walked through the various
11 steps establishing that likelihood.

12 First, a “noncitizen must be given sufficient notice of a country of deportation
13 that, given his capacities and circumstances, he would have a reasonable opportunity to
14 raise and pursue his claim for withholding of deportation.” *Nguyen*, 2025 WL 2419288,
15 at *18 (quoting *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019) (in turn
16 first citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976), and then citing *Kossov v.*
17 *I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)).

18 As the *Aden* court explained, “The guarantee of due process includes the right to
19 a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or
20 her particular claim.” 409 F. Supp. 3d at 1010. “B]oth the due process clause and the
21 governing statute place the burden on the government—regardless of whether the
22 country of deportation is designated during or after the removal hearing—to provide a
23 meaningful opportunity to be heard on asylum and withholding claims.” 409 F. Supp.
24 3d at 1010. *Nguyen* elaborated: “This cannot be satisfied by simply allowing the
25 noncitizen to file a motion to reopen their removal proceedings; rather, the removal
26 proceedings must be reopened so that a hearing can be held.” 2025 WL 2419288, at
*18.

1 As pointed out in *Nguyen*, these requirements “flow directly from binding Ninth
2 Circuit precedent about due process protections before removal to a third country.”

3 2025 WL 2419288, at *18. *Nguyen* explained:

4 “Failing to notify individuals who are subject to deportation that they
5 have the right to apply ... for withholding of deportation to the country to
6 which they will be deported violates both INS regulations and the
7 constitutional right to due process.” *Andriasian v. I.N.S.*, 180 F.3d 1033,
8 1041 (9th Cir. 1999) (citing *Kossov*, 132 F.3d at 408–09); *see also*
9 *Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) (“[S]hould
10 circumstances change such that Azerbaijan is the designated country of
11 removal, the agency must provide Sadychov with notice and an
12 opportunity to reopen his case for full adjudication of his claim of
13 withholding of removal from Azerbaijan.”). “In the context of country of
14 removal designations, last minute orders of removal to a country may
15 violate due process if an immigrant was not provided an opportunity to
16 address his fear of persecution in that country.” *Najjar v. Lynch*, 630 Fed.
17 App'x 724 (9th Cir. 2016) (citing *Andriasian*, 180 F.3d at 1041); *El Himri*
18 *v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004).

19 2025 WL 2419288, at *18.

20 In *Nguyen*, Respondents initially represented that they would continue to follow
21 the procedures set forth in *Aden*. Subsequently, they withdrew that commitment and
22 stated that the July 9 ICE memo ““sets forth Respondents’ current policy on third
23 country removals both nationwide and in the Western District of Washington where
24 Respondents are no longer fully following the process discussed’ in *Aden*.” 2025 WL
25 2419288, at *19. The *Nguyen* court held that “[t]his policy contravenes Ninth Circuit
26 law, as laid out above. It would be impossible to comply both with Ninth Circuit
precedent and the policy.” 2025 WL 2419288, at *19. In fact, Respondents did not even
contest the merits of the petitioner’s claim in *Nguyen*. The *Nguyen* court accordingly
held that “Petitioner is likely to succeed on his claim that removal to a third country
under ICE’s current policy, without meaningful notice and reopening of his removal
proceedings for a hearing, would violate due process.”

1 The other components of the Winter test clearly favor Petitioner as they did in
2 the other two claims. There is a significant risk of irreparable injury, because if
3 Petitioner is removed to a country without due process, he might be removed to a
4 country that would subject him to persecution or torture. Petitioner also would likely be
5 unable to have the harm undone, in that he would be unable to return to the United
6 States to have objections to removal properly considered.

7 The balance of equities favors Petitioner for the reasons discussed in the other
8 two claims.

9 **VIII. CONCLUSION**

10 This Court should grant the preliminary injunction.

11 DATED this 17th day of September, 2025.

12 Respectfully submitted,
13 *s/ Alan Zarkey*
14 Staff Attorney
Attorney for Artin Hambarsonpour

15 I certify this motion complies with the page limits specified in LCR 7(e)(3).
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