UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VU THANH TRAN, Petitioner, vs. PAMELA BONDI, Attorney General of the United States; KRISTI NOEM, Secretary, United States Department of Homeland Security; CAMMILLA WAMSLEY, 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. CV25-1897 **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND REQUEST FOR INJUNCTIVE RELIEF**

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Full name: Vu Thanh Tran

(b) Other names used: Tran Thanh Vu (true name as ordered in Vietnamese)

2. Place of confinement:

(a) Northwest Immigration Processing Center (NWIPC)

(b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a contractual arrangement with my custodian, the Immigration and Customs Enforcement Field Office Director at Seattle, Washington.

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(c) Case number or numbers [ICE file number, if known]: My A# is [redacted]

3. I am currently being held on orders by federal authorities: United States Immigration and Customs Enforcement.

4. I am currently being held on an immigration charge.

Decision or Action You Are Challenging

5. What are you challenging in this petition: immigration detention.

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: United States Immigration and Customs Enforcement

(b) Docket number, case number, or opinion number: My A# is [redacted]

(c) Decision or action you are challenging: I was originally ordered deported on June 28, 2007, though I did not learn of this removal order until later. I was detained by ICE around September 30, 2009, and was released on an order of supervision on November 30, 2009. I have remained under supervision since then and have regularly checked in with ICE as required. On August 21, 2025, I went to the ICE office in Tukwila, Washington, for my regularly scheduled check-in. There, an ICE officer told me he would be arresting me. The only explanation he gave me was that the new administration required it. I had no advance notice of this arrest, have still not received any greater explanation of the reason for it, and have had no opportunity to challenge the basis for the arrest. I have been in ICE custody since that day.

Your Earlier Challenges of the Decision or Action

7–9. First, second, and third appeals: None

10. Motion under 28 U.S.C. § 2255: N/A

11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

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(a) Date you were taken into immigration custody: August 21, 2025

(b) Date of the removal or reinstatement order: June 28, 2007

(c) Did you file an appeal with the Board of Immigration Appeals? No

(d) Did you appeal the decision to the United States Court of Appeals? No

12. Other appeals:

Other than the appeals listed above, have you filed any other petition, application, or motion about the issues raised in this petition? No.

Grounds for Your Challenge in This Petition

I. Introduction

Vu Thanh Tran is presently detained at the Northwest ICE Processing Center (NWIPC). He has been held in immigration custody for over a month. Removal to his country of birth is not reasonably foreseeable. His continued detention is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The government detained him without following the basic requirements of due process or its own regulations. And the government's recent practices raise the risk that it will illegally send Mr. Tran to a third country where he is not a citizen and could face torturous conditions. Mr. Tran seeks (a) release; (b) an order preventing removal to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings; and (c) an order barring removal to any third country pursuant to Respondents' punitive removal policy.

II. Jurisdiction and Venue

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.

This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.* (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States

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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.

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; the Due Process Clause of the Fifth Amendment; and the Court's inherent equitable powers.

Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because Respondents are agencies or officers of agencies of the United States; Respondents Wamsley and Scott reside in this district; and Petitioner is detained in this district. Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district.

Because Petitioner is seeking relief related only to his custody status, which is not inconsistent with an order of deportation, exhaustion of administrative remedies, if any, is not required.

III. Parties

Vu Thanh Tran is a long-time resident of the Western District of Washington. He was previously ordered removed to Vietnam. Currently, Mr. Tran is detained in the control and custody of Respondents at NWIPC. As such, Petitioner is a resident of Tacoma, Washington.

Respondent Pamela Bondi is the Attorney General of the United States. In this capacity, Respondent Bondi is the legal custodian of Petitioner. Respondent Bondi is sued in her official capacity.

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

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Respondent Cammilla Wamsley is the Field Office Director for ICE Enforcement and Removal Operations ("ERO") in Seattle, Washington. As the ERO Seattle Field Office Director, she is Petitioner's immediate custodian, responsible for Mr. Tran's detention at NWIPC, and is the person with the authority to authorize detention or release. Respondent Wamsley is sued in her official capacity.

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

Respondent United States Immigration and Customs Enforcement (hereinafter "ICE") is the federal executive agency responsible for the enforcement of immigration laws, including the arrest, detention, and removal of noncitizens. Respondent ICE is a legal custodian of Petitioner.

IV. Background

Mr. Tran was born in Vietnam. When he was three years old, his family sought admission to the United States as refugees. Mr. Tran and his family were ultimately admitted in 1984, when he was four years old. Mr. Tran grew up in the United States with his parents and siblings. Both of Mr. Tran's parents later naturalized and he has siblings who are US citizens.

When he was 20 years old, Mr. Tran was arrested on a marijuana charge, and later pled guilty in King County Superior Court. Several years later, Mr. Tran pled guilty to conspiracy to distribute marijuana in federal court in 2007. While serving his custodial sentence in that case, Mr. Tran was alerted he would be taken to immigration custody. Indeed, earlier in 2007, an immigration judge had ordered Mr. Tran removed in absentia.

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On approximately September 30, 2009, Mr. Tran was taken from Bureau of Prisons custody—where he was serving his sentence on the federal conviction—to ICE custody. ICE apparently relied on the prior in absentia removal order, ordering Mr. Tran be removed to Vietnam. However, because Vietnam would not accept him, ICE did not remove Mr. Tran. Instead, on approximately November 30, 2009, ICE released Mr. Tran from custody subject to ICE supervision.

For over 15 years, Mr. Tran has regularly checked in with his ICE supervision officers as required. During this time, he has lived here in the Western District of Washington with his family. He has developed a common-law marriage with his wife, and they recently welcomed a daughter who is approximately 20 months old. Mr. Tran's wife has a medical condition that limits her ability to work. Mr. Tran is the primary support for her and their daughter.

On August 21, 2025, Mr. Tran went to the ICE office in Tukwila, Washington, as directed for his regular check-in with ICE supervision. However, when he was called for his appointment, an ICE officer told him ICE would be arresting him. The only explanation that the officer gave was that the new administration required his arrest. ICE did not provide Mr. Tran with any advance notice of this arrest, nor the reason for it. Mr. Tran does not recall receiving any further explanation for the detention or opportunity to challenge it since his arrest. ICE has held Mr. Tran in custody ever since, currently at the NWIPC in Tacoma, Washington.

After a few weeks in detention at the NWIPC, an ICE officer gave Mr. Tran paperwork primarily written in Vietnamese and instructed him to fill it out and stated he would return to collect the paperwork. Mr. Tran is not fluent in Vietnamese. Trying to comply with this directive, he asked other people detained at NWIPC who speak Vietnamese to help him. Mr. Tran has done his best to complete this paperwork, but the ICE officer has yet to return to collect it.

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V. Legal Framework Pertaining to Re-Detention Without Process

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). The government may detain a noncitizen during this period or an extended period in certain cases, but may not detain them longer than is reasonably necessary to effectuate removal and may not detain them when removal is no longer reasonably foreseeable. *See* 8 U.S.C. §§ 1231(a)(1)(A), (a)(2), (a)(6); *Zadvydas*, 533 U.S. at 699. After six months of post-removal order detention, detention is no longer presumptively reasonable, and a noncitizen is entitled to a process to determine whether ongoing detention is authorized. *Zadvydas*, 533 U.S. at 700–01. When it is determined that a noncitizen should be released from detention following entry of a removal order, they are to be released with orders to comply with certain conditions of release. 8 U.S.C. § 1231(a)(3), (6). Here, the government released Mr. Tran from immigration custody in 2009 pursuant to this legal framework. He has been successfully supervised on release for over 15 years.

The revocation of that release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release under § 1231 for purposes of removal or for violation of conditions of release. The government may revoke a noncitizen's release and return them to ICE custody due to failure to comply with any of the conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed circumstances, the [Immigration] Service determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2).

Such revocation of release, even if justified by one of the reasons recognized by regulation, requires notice and an opportunity for the noncitizen to be heard. Upon a

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determination by the government (namely ICE) to re-detain a person previously released following a removal order:

> the alien will be notified of the reasons for revocation of his or her release. [ICE] will conduct an initial informal interview promptly after his or her return to [ICE] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Id. § 241.13(i)(3).

ICE's decision to re-detain also cannot be arbitrary, but instead is governed by the factors laid out in 8 C.F.R. § 241.13(f), including:

> the history of the [noncitizen's] efforts to comply with the order of removal, the history of [ICE's] efforts to remove [noncitizens] to the country in question or to third countries, including the ongoing nature of [ICE's] efforts to remove [the noncitizen] and the [noncitizen's] assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department of State regarding the prospects for removal of [noncitizens] to the country or countries in question.

Id. See also Phan v. Beccerra, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025). While courts do not make these determinations in the first instance, they may review them 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)).

VI. Facts Pertaining to Re-Detention Without Process

Mr. Tran was ordered removed in absentia in 2007 and subsequently taken into ICE custody in September 2009. By November 2009, ICE determined that there was

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not a significant likelihood Mr. Tran could be removed to Vietnam in the reasonably foreseeable future, and released him under supervision pursuant to § 1231(a). Mr. Tran was successfully supervised while released for over 15 years.

On August 21, 2025, with no advance notice or warning, ICE arrested Mr. Tran when he appeared for his regular check-in with supervision officers. ICE provided no explanation for his re-detention except an officer's remark that it was required by the new administration. Mr. Tran does not recall receiving any explanation of the reason for his detention or opportunity to challenge it since. He has now been detained for over a month.

VII. Legal Framework Pertaining to Continued Detention

Petitioner cannot presently be returned to Vietnam. He immigrated to the United States before 1995, and Vietnam has been unwilling to issue travel documents for or repatriate most pre-1995 immigrants to the United States.

Following the Vietnam War, the North Vietnamese government established the Socialist Republic of Vietnam—the official nation-state of Vietnam to this day. Many people from the prior nation-state—the former Republic of Vietnam—fled the newly formed nation-state and sought refuge in the United States. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1083 (C.D. Cal. 2020) (summarizing history). For the next three decades, the Socialist Republic of Vietnam (hereinafter "Vietnam") refused to repatriate people who had left Vietnam for the United States. *See id.*

In 2008, the United States and Vietnam reached a diplomatic agreement under which Vietnam agreed to begin considering some repatriation requests. Under the agreement, Vietnam agreed to consider repatriation requests for Vietnamese immigrants who arrived in the United States after July 12, 1995 (the date on which diplomatic relations between the two countries were established). *See id.* But the agreement also specifically provided that Vietnamese citizens who arrived in the United States before

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that date were not subject to return to Vietnam. Following this agreement, Vietnam maintained its policy that pre-1995 Vietnamese immigrants could not be repatriated. *See id.* ICE, in turn, adopted a policy recognizing that removal of pre-1995 Vietnamese immigrants was unlikely due to Vietnam's policy, and held such immigrants no longer than 90 days following a removal order before releasing them because removal was not reasonably foreseeable. *See id.*

In 2017, ICE again negotiated with Vietnamese officials in hopes of amending the 2008 agreement. Negotiations did not result in any formal amendment to the agreement, but "Vietnamese officials verbally committed to begin considering ICE travel document requests for pre-1995 Vietnamese immigrants on a case-by-case basis, without explicitly committing to accept any of them." *Id.* ICE, in turn, began detaining Vietnamese immigrants who had been ordered removed for more than 90 days in hopes of effectuating their removal, and of re-detaining others who had previously been released. *Id.* at 1083–84. But following a class action lawsuit regarding this new practice, ICE met with Vietnamese officials again in 2018. After this meeting, "ICE conceded that, despite Vietnam's verbal commitment to consider travel document requests for pre-1995 immigrants, in general, the removal of these individuals was still not significantly likely." *Id.* at 1084. ICE returned to its practice of releasing pre-1995 Vietnamese immigrants who had been ordered removed within 90 days of their removal order. *Id.*

In 2020, ICE and Vietnamese officials reached a Memorandum of Understanding ("MOU"). *See* Ex. A. The MOU specifically concerned pre-1995 Vietnamese immigrants to the United States and aimed to facilitate their repatriation to Vietnam if ordered removed. The MOU has been made public via a Freedom of Information Act request, but only in a heavily redacted form. *See id.*; *Nguyen v. Scott,*

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et. al., CV25-01398-TMC, Order Granting Preliminary Injunction at Dkt. 45, at 11 (W.D. Wash. Aug. 21, 2025) (summarizing history).

The government has yet to disclose the entirety of the MOU. But the MOU includes four mandatory criteria for a person to be eligible for repatriation to Vietnam. It is required that the person:

1. Has Vietnamese citizenship and does not have citizenship of any other country at the same time;
2. Has violated U.S. law and has been ordered removed by a U.S. competent authority (and, if sentenced to a prison term, the individual must have completed any term of imprisonment before removal or a U.S. competent authority must have ordered a reduction in the sentence or the individual's release from prison);
3. Resided in Viet Nam prior to arriving to the United States and currently has no right to reside in any other country or territory;
4. [redacted]

Ex. A at § 4 (pp. 2–3). The fourth mandatory criteria for a person to be eligible for repatriation to Vietnam is unpublished and unknown to Mr. Tran or undersigned counsel.

Furthermore, two additional sections of the MOU—sections 5 and 6—are either mostly or entirely redacted. *See* Ex. A at §§ 5, 6 (p. 3). However, later portions of the MOU suggest that these sections pertain to discretionary factors that Vietnamese and American officials are to consider in resolving disputes about a person's eligibility for repatriation, including "humanitarian and family unity" factors. Ex. A at § 8, ¶ 6 (pp. 4–5). Because of these redactions, the discretionary factors utilized for determining whether someone can be repatriated to Vietnam are also unknown to Mr. Tran or undersigned counsel.

An experienced attorney with familiarity with Vietnam's repatriation process and requirements affirms that, while Vietnam has issued more travel documents than it did previously for people ordered removed from the United States, it is still not

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"significantly likely" that such documents will be issued for pre-1995 immigrants to the United States. *See* Ex. B (Declaration of Tin Thanh Nguyen, previously prepared for *Nguyen v. Scott*, CV25-01398-TMC) at 2–3. In the attorney's experience, whether or not Vietnam is willing to issue such documents depends on factors including "whether the individual has any family remaining in Vietnam, whether their Vietnamese identity can be verified, their criminal records, and the manner in which they left Vietnam and came to the United States, among other factors." *Id.* at 3.

On June 9, 2025, ICE abruptly changed its practice of limiting post-removal order detention of pre-1995 Vietnamese immigrants. As one ICE attorney explained, ICE "rescinded its policy of generally finding that pre-1995 Vietnamese immigrants are not likely to be removed in the reasonably foreseeable future and generally releasing them within 90 [sic] of the entry of their final orders of removal." Ex. C (Email notification from Julian Kurz).

Although the 2020 MOU indicates that Vietnamese officials intend to issue travel documents for eligible people within 30 days, *see* Ex. A at § 8 (p.4), this intended timeline only applies once Vietnamese officials have confirmed a person's eligibility for repatriation. *Id.* In practice, however, it has taken many months before pre-1995 Vietnamese immigrants even receive an answer from Vietnam about whether or not travel documents can be issued. *See* Ex. B at 3.

As discussed further below, detention without hope of imminent removal is not allowed. The Supreme Court made clear that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, 533 U.S. at 699, 121 S. Ct. 2491, 2503, 150 L. Ed. 2d 653 (2001).

VIII. Facts Pertaining to Continued Detention

The government arrested Mr. Tran without warning on August 21, 2025, and has held him in custody since that date. The government made no known efforts to seek

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travel documents from Vietnam prior to arresting Mr. Tran. Furthermore, the government waited approximately three weeks before providing Mr. Tran with one of the required forms to apply for travel documents while holding him in custody. And although Mr. Tran diligently did his best to fill out these forms, ICE has yet to return to collect them from him or submit them to relevant Vietnamese officials.

Mr. Tran and counsel are aware of no approval from Vietnamese officials or confirmation that Vietnamese officials will issue travel documents for him. And because the government has not disclosed full eligibility criteria for repatriation of pre-1995 Vietnamese immigrants, Mr. Tran and counsel are not even aware of whether he would be eligible if and when an application is made to Vietnamese officials. Yet, the government has kept Mr. Tran in detention with no meaningful opportunity to challenge his detention or the reason for it.

IX. The Legal Framework for Third Country Removals

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.

First, an individual with a removal order may designate the country to which they want to be removed, and the government *shall* remove the individual to that country. 8 U.S.C. § 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 individual into the country; or (4) the government decides that removing the individual to that country is prejudicial to the United States. 8 U.S.C. § 1231(b)(2)(C).

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Second, if the individual is not removed to the country they designated under § 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. 8 U.S.C. § 1231(b)(2)(D).

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

Notwithstanding any of these procedures, the statute prohibits removal to a third country where a person may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or

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political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

Similarly, Congress codified protections enshrined in the Convention Against Torture (CAT) prohibiting the government from removing a person to a country where they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998 (''FARRA''), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); 28 C.F.R. § 200.1; §§ 208.16–208.18, 1208.16–1208.18. CAT protection is also mandatory.

To comport with the requirements of due process, the government must provide notice of the third country removal and an opportunity to respond. Due process requires "written notice of the country being designated" and "the statutory basis for the designation, i.e., the 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*,

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378 F.3d 932, 939 (9th Cir. 2004) ("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]").

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).

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).

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

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X. The Law Governing Punitive Removal Practices

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

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

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

XI. Facts Pertaining to Punitive Banishment to Third Countries

Since January 2025, Respondents have developed and implemented a policy and practice of removing individuals to third countries, without first following the

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procedures in the INA for designation and removal to a third country and without providing fair notice and an opportunity to contest the removal in immigration court.

Respondents reportedly have negotiated with at least 58 countries to accept deportees from other nations. On June 25, 2025, the *New York Times* reported that seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are not their own citizens.[1] Since then, ICE has carried out highly publicized third country deportations to South Sudan and Eswatini. It also attempted—and completed—an "end-run" around the protections of the Convention Against Torture by deporting a group of migrants to Ghana, which sent them on to their countries of citizenship despite fears of persecution.[2]

Punishment and deterrence appear to be the point of the Administration's third country removal scheme. The Administration has reportedly negotiated with countries to have deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to arbitrarily and indefinitely imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center.[3] On July 4, 2025, ICE deported eight men,

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[1] Edward Wong, et al., *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times (June 25, 2025), https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html [https://perma.cc/64G9-XYGB].

[2] Camilo Montoya-Perez, *Judge Says U.S. Trying to Do "End-Run" Around Legal 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-protections-with-deportations-to-ghana/ [https://perma.cc/9RUP-KJQJ].

[3] Wong, *supra* n.1.

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including one pre-1995 Vietnamese refugee, to South Sudan.[4] The men have been detained incommunicado ever since. *See* Ex. D (Declaration of Glenda M. Aldana Madrid, previously prepared for *Nguyen v. Scott*, CV25-01398-TMC). On July 15, 2025, ICE deported five men to the tiny African nation of Eswatini, including one man from Vietnam, where they are reportedly being held in solitary confinement. *See* Ex. B at 5–6.[5]

The Administration has hand-selected countries known for human rights abuses and instability for these third country deportation agreements to frighten people in the United States into self-deporting or to accept removal to their home countries. Indeed, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first.[6]

On July 9, 2025, ICE issued a new memo to staff instructing that when seeking to remove an individual to a country not designated on that person's removal order, that ICE may deport that person without any procedures for notice or an opportunity to be heard if the State Department confirms that it has received diplomatic assurances that individuals will not be persecuted or tortured. *See* Ex. E (July 9, 2025, Memorandum to

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

[5] *See also* 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].

[6] U.S. Dep't of State, *South Sudan Travel Advisory*, Mar. 8, 2025, https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-sudan-travel-advisory.html.

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ICE Employees). If no diplomatic assurances are received, the ICE memo instructs officers to serve on the individual a Notice of Removal that includes the intended country of removal. It instructs officers not to ask whether the individual is afraid of removal to that country. It states that officers should "generally wait at least 24 hours following service of the Notice of Removal before effectuating removal" but that "[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided reasonable means and opportunity to speak with an attorney prior to removal." *Id.*

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

The eight men who were ultimately deported to South Sudan without a meaningful opportunity to be heard on their claimed fear of deportation to that country. None of those men were provided a fear screening by a USCIS officer or otherwise,

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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.[7]

Mr. Tran fears Respondents will similarly send him to a third country without notice and a meaningful opportunity to be heard. Other pre-1995 Vietnamese immigrants have been rapidly removed to third countries where they face torturous conditions and have been cut off from counsel and family. *See* Ex. B at 6–7: Ex. D at 4–6. Mr. Tran worries the government will use the same tactic in his case.

Grounds for Relief

Ground One: Respondents' Re-Detention of Petitioner Violates the Administrative Procedures Act, 8 U.S.C. § 1231(a), 8 C.F.R. § 241.13(i), and Due Process Because Respondents Arrested Petitioner Without Relevant Changed Circumstances and Without Notice or an Opportunity to Be Heard.

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

Respondents arrested Petitioner on August 21, 2025, without any advance notice or warning. Respondents have yet to explain the reason for the re-detention except to remark that it was required by the new administration, and there is no apparent relevant change in circumstance to justify the re-detention. Furthermore, Respondents afforded Petitioner no meaningful opportunity to be heard regarding the re-detention. In taking these actions, Respondents violated the APA in two separate ways—first by abusing their discretion and second by acting not in accordance with law and in excess of statutory authority. Respondents further violated Petitioner's right to due process.

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[7] *See* Mattathias Schwartz & Hamed Aleaziz, *U.S. Turns Eight Migrants Over to South Sudan, Ending Weeks of Legal Limbo*, N.Y. Times (July 5, 2025), https://www.nytimes.com/2025/07/05/us/politics/migrants-djibouti-south-sudan.html; Guardian, *supra* n.4; Montoya-Perez, *supra* n.2; Adam Liptak, *Supreme Court Lets Trump Deport Migrants to Countries Other Than Their Own* (June 23, 2025), https://www.nytimes.com/2025/06/23/us/politics/supreme-court-south-sudan-migrants.html.

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First, under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted). By revoking Mr. Tran's release without consideration of his individualized facts and circumstances, Respondents have violated the APA. Respondents have abused their discretion in detaining petitioner, because there have been no changes to his facts or circumstances since the agency made its initial custody determinations that support revocation of his release from custody. There is no allegation that Mr. Tran failed to comply with his supervised release. Nor is there evidence that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

Rather, the only explanation that Mr. Tran was provided at the time of his arrest was that it was required by the new administration. Respondents abused their discretion in re-detaining Mr. Tran based on some purported priority of the current presidential administration without any change in facts relevant to Mr. Tran to justify their actions.

Second, Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

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As detailed above, ICE initially detained Mr. Tran pursuant to 8 U.S.C. § 1231(a), which allows for post-removal order detention, but only so long as there is a significant likelihood of removal in the reasonably foreseeable future. 8 U.S.C. §§ 1231(a)(1)(A), (a)(2), (a)(6); *Zadvydas*, 533 U.S. at 699. ICE determined in 2009 that Mr. Tran's removal to Vietnam was not likely and released him pursuant to 8 U.S.C. § 1231(a)(3), (6). The revocation of this release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release under § 1231 only for purposes of removal or for violation of conditions of release. ICE is to further consider factors that include a noncitizen's performance on supervision and cooperation with efforts to obtain authorization to return to their home country. *See* 8 C.F.R. § 241.13(f). The regulation also requires notice and a prompt opportunity to challenge the basis for the revocation of release. *See Id.* § 241.13(i)(3). Yet here, Respondents provided no valid reason for re-detention, no notice, and no opportunity for Petitioner to be heard, violating both the statute and regulation.

It is a well-established administrative principle that "agency action taken without lawful authority is at least voidable, if not void ab initio." *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official). Revocation of Petitioner's release due to enforcement priorities when he is in full compliance with his release conditions is unlawful and exceeds statutory authority.

Third, due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). While the government has discretion to detain or ultimately release individuals under 8 U.S.C. § 1231(a) and to revoke release as detailed in 8 C.F.R. § 241.13(i), this discretion is not "unlimited" and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698. 64. Here,

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Respondents have chosen to revoke Petitioner's release in an arbitrary manner and not based on a rational and individualized determination of whether there is a significant likelihood he can be removed in the reasonably foreseeable future, in violation of due process. Because no individualized custody revocation has been made and no circumstances have changed to make Petitioner likely removable in the reasonably foreseeable future, Respondents' revocation of Petitioner's release violates his right to procedural due process.

Ground Two: Petitioner's Continued Detention in Immigration Custody Violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution Because There Is No Significant Likelihood that Petitioner Will Be Removed in the Reasonably Foreseeable Future.

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

Petitioner expects Respondents will argue his present detention is authorized under 8 U.S.C. § 1231. Detention of noncitizens who have been ordered removed is mandatory during the so-called 90-day "removal period." 8 U.S.C. § 1231(a)(l)(A). This period begins, as relevant here, on the "date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(l)(B)(i). Because Petitioner's removal order became final on December 25, 2007,[8] the removal period has long since expired and detention is no longer required under 8 U.S.C. § 1231.

Not only is detention no longer required, it is no longer allowed under the facts of this case. Given the "serious constitutional threat" the *Zadvydas* Court believed to be

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[8] "A removal order becomes final upon the earlier of (i) a determination by the Board of Immigration Appeals (BIA) affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the BIA. 8 U.S.C.S. § 1101(a)(47)(B); 8 C.F.R. § 1003.39. Because in absentia removal orders may not be appealed to the BIA without first filing a motion to reopen the order before the immigration judge (IJ) within 180 days of the order, 8 U.S.C.S. § 1229a(b)(5)(C)(i); if the petitioner does not timely file such a motion before the IJ the order becomes final at the end of the 180-day period." *Yuzi Cui v. Garland*, 13 F.4th 991, 993 (9th Cir. 2021).

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posed by the indefinite detention of noncitizens who had been admitted to the country under the Fifth Amendment's Due Process Clause, 553 U.S. at 699, the Court interpreted 8 U.S.C. § 1231(a)(6) to permit only detention related to the statute's "basic purpose [of] effectuating an alien's removal[.]" *Id.* at 696-699. The Court further held that the presumptive period during which the detention is reasonably necessary to effectuate a noncitizen's removal is six months; after that, the noncitizen is eligible for conditional release if they can demonstrate that there is "no significant likelihood of removal in the reasonably foreseeable future." *Id* at 701. After the "presumptively reasonable" period of six months' detention, when the noncitizen can "provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," then "the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. "A petitioner's total length of confinement need not be consecutive to reach the six-month presumptively reasonable limit established in *Zadvydas*." *Tang v. Bondi*, No. 2:25-CV-01473-RAJ-TLF, 2025 WL 2637750, at *4 (W.D. Wash. Sept. 11, 2025).

Detention may be unlawful even within the six-month grace period. This is because the six-month grace period is only "*presumptively* reasonable." *Zadvydas*, 533 U.S. at 701 (emphasis added). Several courts have concluded that an immigrant may rebut that presumption with sufficiently compelling evidence that his removal is not foreseeable. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases). Such evidence exists here. ICE previously released Mr. Tran because it recognized that it could not remove him. ICE has indeed made no progress in removing Mr. Tran, despite having a final removal order for over 15 years, including for five years since the latest MOU with Vietnamese officials. ICE rearrested Mr. Tran apparently only to implement an across-the-board policy—not because of any movement in his particular removal or repatriation case. In fact, it is clear that ICE has

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not even yet asked Vietnam to accept Mr. Tran because it has not collected the required forms from him—forms that Mr. Tran completed as quickly as he could. As detailed below, Mr. Tran has compelling evidence that removal is not foreseeable. And the government cannot rebut the conclusion that Mr. Tran's continued detention in ICE custody violates the Due Process Clause of the Fifth Amendment under *Zadvydas*. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *28–29 (W.D. Wash. Aug. 21, 2025) (granting preliminary injunction requiring release under *Zadvydas*); *Tang*, dkt. 26 at 12 (same).

Mr. Tran is a pre-1995 Vietnamese immigrant. As such, he is among a group of people that Vietnam has refused to repatriate at all until relatively recently. Even now, Vietnam will only accept pre-1995 immigrant deportees from the United States if they meet specific criteria, some of which the government has not disclosed. *See generally* Ex. A. Furthermore, it has taken months for people in this group to even receive an answer from Vietnamese officials about whether or not they are approved for travel documents. *See* Ex. B at 3.

Furthermore, the government made no effort to seek travel documents for Mr. Tran, let alone confirm whether he is eligible, before arresting him. And since arresting Mr. Tran, the government has moved slowly to seek repatriation from Vietnam. ICE waited approximately three weeks before even providing Mr. Tran with the form that Vietnamese officials need to begin reviewing an application for repatriation. While Mr. Tran was diligent—despite his detention and lack of meaningful interpretive assistance—ICE was not. It has been over a week and ICE has not returned to retrieve the completed form from Mr. Tran.

Mr. Tran has lived in the United States since he was a toddler. Both of his parents have naturalized, and he has multiple siblings who are also U.S. citizens. His grandparents have passed away, so he no longer has any immediate family in Vietnam.

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Significantly, Mr. Tran's common-law wife and toddler daughter live here in Washington. Until his arrest, Mr. Tran was their primary supporter because his wife has a medical condition that limits her ability to work. Mr. Tran has provided "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and has not been provided evidence from the government to rebut this. *Zadvydas*, 533 U.S. at 701.

Ground Three: Violation of the Fifth Amendment, 8 U.S.C. § 1231, Convention Against Torture, Implementing Regulations, and the Administrative Procedure Act

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

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

Prior to any third country removal, Petitioner must be provided with constitutionally and statutorily compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country in reopened removal proceedings. *See Nguyen*, 2025 WL 2419288, at *29 (granting preliminary injunction against "removing Petitioner to a country other than [home country] without notice and a meaningful opportunity to be heard in reopened removal proceedings with a hearing before an immigration judge").

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Ground Four: Punitive Third Country Banishment; Violation of Fifth and Eighth Amendments

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

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

The Eighth Amendment provides that no "cruel and unusual punishments" may be inflicted.

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

Petitioner was convicted and completed any sentences for his criminal convictions over 15 years ago. While a criminal conviction was used to order him removed from the United States, Mr. Tran's convictions do not authorize the government to inflict, as a matter of executive policy and discretion, additional punishment on him. Respondents' third country removal program is punitive in nature and execution.

The government has arranged for third countries to receive deportees and imprison them on arrival, possibly indefinitely and often in abhorrent conditions. It has selected countries notorious for human rights abuses and instability for third country removal arrangements. It has targeted individuals with criminal convictions for third country removals where they will be imprisoned and harmed and publicly broadcast those removals to demonize and dehumanize the individuals subjected to these practices

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and strike fear in the immigrant community to send a message of retribution and deterrence. *See* Ex. E; Wong, *supra* n.1; Montoya-Perez, *supra* n.2; Liptak, *supra* n.7.

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

Respondents may not seek to remove Petitioner to a third country under their punitive banishment policy and practices. *See Nguyen*, 2025 WL 2419288, at *29 (granting preliminary injunction against "removing Petitioner to any country where he is likely to face imprisonment upon arrival").

Prayer for Relief

Petitioner respectfully requests that this Court:

(a) Assume jurisdiction over this action;

(b) Order Respondents to immediately release Petitioner from custody;

(c) Order that Respondents may not remove or seek to remove Petitioner to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings;

(d) Order that Respondents may not remove Petitioner to any third country because Respondents' third country removal program seeks to impose unconstitutional punishment on its subjects, including imprisonment and other forms of harm; and

(e) Order all other relief that the Court deems just and proper.

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Verification Pursuant to LCR 100(e)

Counsel verifies that this petition is authorized by Petitioner. It does not personally bear Petitioner's signature because of the significant difficulty for counsel in meeting with Petitioner in person and because mailing the petition to Petitioner and having it mailed back would cause delay that would only extend the period of his unlawful detention. Counsel knows the facts asserted above or alleges them on information and belief, based on information obtained from the government and/or Petitioner.

DATED this 1st day of October 2025.

Respectfully submitted,

s/ *Rebecca Fish*
Assistant Federal Public Defender
Attorney for Vu Thanh Tran

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