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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 ALEJANDRO BALTODANO,

7 Petitioner,

8 vs.

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

15 Respondents.

) No.

) **PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241
AND REQUEST FOR INJUNCTIVE
RELIEF**

16 **RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242**

17 **Personal Information**

18 1. (a) Full name: Alejandro Baltodano

19 2. Place of confinement:

20 (a) Northwest Immigration Processing Center (NWIPC)

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

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



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

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

4 **Decision or Action You Are Challenging**

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

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

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

9 (b) Docket number, case number, or opinion number: My A# is 

10 (c) Decision or action you are challenging: I was originally ordered deported
11 on November 14, 2018. I presented myself at the San Ysidro, California Port of Entry
12 on or about January 7, 2024, and filed a Form I-589 application on July 15, 2024. I was
13 appointed a qualified representative as a member of the *Franco* class and I was granted
14 deferral of removal under the Convention Against Torture on March 5, 2025. I was
15 taken back into custody by ICE after that decision. I have been detained in ICE custody
16 for about 20 months.

17 **Your Earlier Challenges of the Decision or Action**

18 7-9. First, second, and third appeals: None

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

20 11. Appeals of immigration proceedings:

21 Does this case concern immigration proceedings? Yes

22 (a) Date you were taken into immigration custody: Jan. 7, 2024

23 (b) Date of the removal or reinstatement order: Nov. 14, 2018

24 (c) Date of the IJ order granting CAT deferral: March 5, 2025

25 (c) Did you or the government file an appeal with the Board of Immigration
26 Appeals? No.

1 (d) Did you or the government appeal the decision to the United States Court
2 of Appeals? No.

3 12. Other appeals:

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

6 **Grounds for Your Challenge in This Petition**

7 **I. Introduction**

8 Alejandro Baltodano is presently detained at the Northwest ICE Processing
9 Center (NWIPC). He has been held in immigration custody for 20 months. Removal to
10 the former country of residence is not reasonably foreseeable because he has been
11 granted deferral of removal under the Convention Against Torture. His continued
12 detention is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). He
13 seeks (a) release; (b) an order preventing removal to a third country without notice and
14 meaningful opportunity to respond in compliance with the statute and due process in
15 reopened removal proceedings; and (c) an order barring removal to any third country
16 pursuant to Respondents' punitive removal policy.

17 **II. Jurisdiction and Venue**

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

21 This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.*
22 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States
23 as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived
24 sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

25 The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et*
26 *seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28

1 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment; and the Court's
2 inherent equitable powers.

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

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

11 **III. Parties**

12 Petitioner Baltodano is a citizen of Nicaragua. He cannot be removed to
13 Nicaragua because he has been granted deferral of removal under the Convention
14 Against Torture, a decision that found "he faces a more than fifty percent likelihood of
15 experiencing torture at the hands of the Nicaraguan government or with its
16 acquiescence upon return." *See* Ex. 1 at 11.

17 Petitioner is detained in the control and custody of Respondents at NWIPC. As
18 such, Petitioner is a resident of Tacoma, Washington.

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

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

25 Respondent Camilla Wamsley is the Field Office Director for ICE
26 Enforcement and Removal Operations ("ERO") in Seattle, Washington. As the ERO

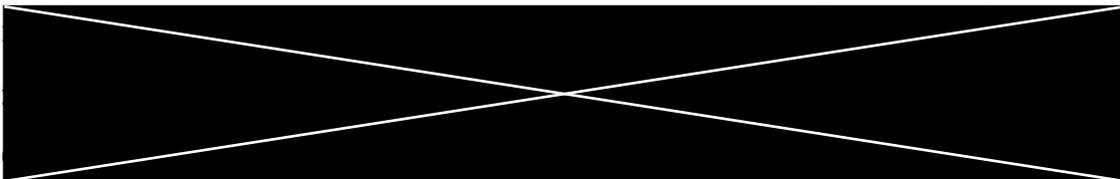
1 Seattle Field Office Director, she is Petitioner’s immediate custodian, responsible for
2 his detention at NWIPC, and is the person with the authority to authorize detention or
3 release. Respondent Wamsley is sued in her official capacity.

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

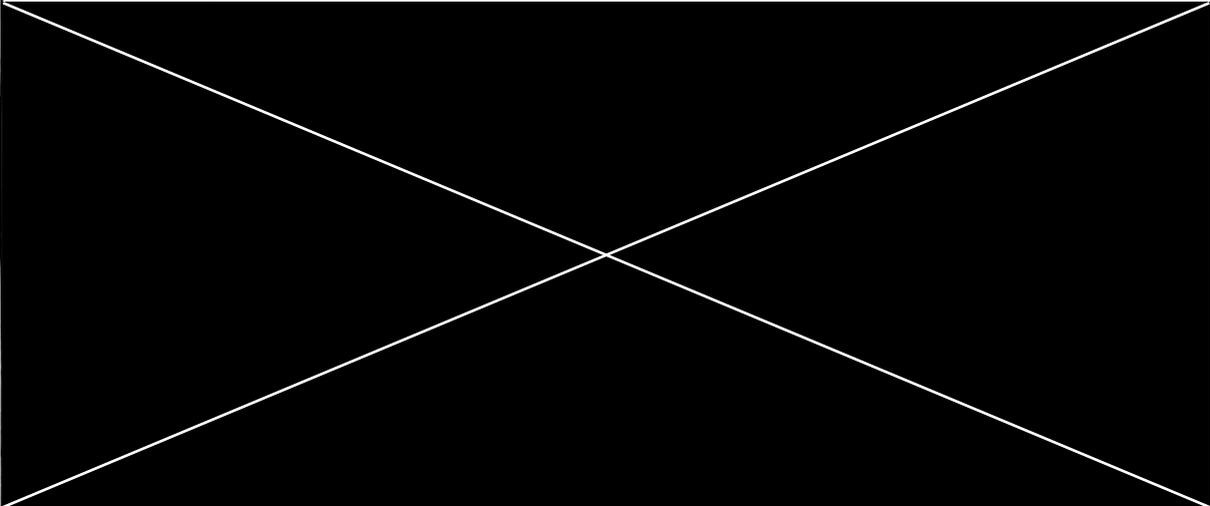
9 Respondent United States Immigration and Customs Enforcement (hereinafter
10 ICE) is the federal executive agency responsible for the enforcement of immigration
11 laws, including the arrest, detention, and removal of noncitizens. Respondent ICE is a
12 legal custodian of Petitioner.

13 **IV. Background**

14 Petitioner Baltodano is a citizen of Nicaragua. He cannot be removed to
15 Nicaragua because he has been granted deferral of removal under the Convention
16 Against Torture, a decision that found “he faces a more than fifty percent likelihood of
17 experiencing torture at the hands of the Nicaraguan government or with its
18 acquiescence upon return.” *See Ex. 1* at 11. This decision of an immigration judge was
19 based on Mr. Baltodano’s political activism 

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21  and chronic mental health disorders including diagnoses of bipolar
22 disorder, schizophrenia, persistent depressive disorder, and posttraumatic stress
23 disorder. *Ex. 1* at 6–11.



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9 Despite the prohibition against deportation to Nicaragua, Mr. Baltodano is being
10 held in prolonged immigration custody with no possibility of deportation to his home
11 country.

12 **V. Facts Pertaining to Continued Detention**

13 Petitioner cannot presently be returned to Nicaragua, because he has been
14 granted deferral of removal by an immigration judge. Removal to Nicaragua is not
15 reasonably foreseeable. ICE has not obtained a travel document from Nicaragua or any
16 other country for Petitioner.

17 **VI. The Legal Framework for Third Country Removals**

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

21 First, an individual with a removal order may designate the country to which
22 they want to be removed, and the government *shall* remove the individual to that
23 country. 8 U.S.C. § 1231(b)(2)(A). The government may disregard that designation if
24 (1) the individual fails to designate a country promptly; (2) the government of that
25 country does not inform the U.S. government finally, within 30 days after the date the
26 U.S. government first inquires, whether the government will accept the individual into

1 that country; (3) the government of the country is not willing to accept the individual
2 into the country; or (4) the government decides that removing the individual to that
3 country is prejudicial to the United States. 8 U.S.C. § 1231(b)(2)(C).

4 Second, if the individual is not removed to the country they designated under
5 § 1231(b)(2)(A), the government shall remove the individual to the country of which
6 the individual is a “subject, national, or citizen” unless the government of that country
7 does not inform the U.S. government or the individual within 30 days after first inquiry
8 or within another reasonable period of time whether the government will accept the
9 individual into the country or the country is not willing to accept the individual into the
10 country. 8 U.S.C. § 1231(b)(2)(D).

11 Third, if the individual is not removed to either the country of their designation
12 or the country of which they are a subject, national, or citizen, then the government
13 shall remove them to any of the following options: (1) the country from which the
14 individual was admitted to the United States; (2) the country in which is located the
15 foreign port from which the individual left for the United States or for a foreign
16 territory contiguous to the United States; (3) the country in which the individual resided
17 before the individual entered the United States and from which the individual entered
18 the United States; (4) the country in which the individual was born; or (5) the country in
19 which the individual’s birthplace is located when the individual was ordered removed.

20 8 U.S.C. § 1231(b)(2)(E). *Only* “[i]f impracticable, inadvisable, or impossible” to
21 remove the individual to any of these countries may the government remove the
22 individual to “another country whose government will accept [them] into that country.”
23 8 U.S.C. § 1231(b)(2)(E)(vii).

24 Notwithstanding any of these procedures, the statute prohibits removal to a third
25 country where a person may be persecuted or tortured, a form of protection known as
26 withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government “may not

1 remove [a noncitizen] to a country if the Attorney General decides that the
2 [noncitizen's] life or freedom would be threatened in that country because of the
3 [noncitizen's] race, religion, nationality, membership in a particular social group, or
4 political opinion.” *Id.*; see also 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is
5 a mandatory protection.

6 Similarly, Congress codified protections enshrined in the Convention Against
7 Torture (“CAT”) prohibiting the government from removing a person to a country
8 where they would be tortured. See Foreign Affairs Reform and Restructuring Act of
9 1998 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8
10 U.S.C. § 1231 note) (“It shall be the policy of the United States not to expel, extradite,
11 or otherwise effect the involuntary return of any person to a country in which there are
12 substantial grounds for believing the person would be in danger of being subjected to
13 torture, regardless of whether the person is physically present in the United States.”); 28
14 C.F.R. § 200.1; §§ 208.16–208.18, 1208.16–1208.18. CAT protection is also
15 mandatory.

16 To comport with the requirements of due process, the government must provide
17 notice of the third country removal and an opportunity to respond. Due process requires
18 “written notice of the country being designated” and “the statutory basis for the
19 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F.
20 Supp. 3d 998, 1019 (W.D. Wash. 2019); see also *D.V.D. v. U.S. Dep’t of Homeland*
21 *Sec.*, No. 25-CV-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All
22 removals to third countries, i.e., removal to a country other than the country or
23 countries designated during immigration proceedings as the country of removal on the
24 non-citizen’s order of removal, must be preceded by written notice to both the non-
25 citizen and the non-citizen’s counsel in a language the non-citizen can understand.”
26 (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process

1 requires notice to the noncitizen of the right to apply for asylum and withholding to the
2 country where they will be removed). The government must be able to show evidence
3 that the third country will accept the individual into that country. *See Himri v. Ashcroft*,
4 378 F.3d 932, 939 (9th Cir. 2004) (“at the time the government proposes a country of
5 removal pursuant to § 1231(b)(2)(E)(vii), the government must be able to show that the
6 proposed country *will* accept the [individual]”).

7 Due process also demands that the government “ask the noncitizen whether he or
8 she fears persecution or harm upon removal to the designated country and memorialize
9 in writing the noncitizen’s response. This requirement ensures DHS will obtain the
10 necessary information from the noncitizen to comply with section 1231(b)(3) and
11 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp. 3d at
12 1019; *cf. D.V.D.*, 2025 WL 1453640, at *1 (“Following notice, the individual must be
13 given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim
14 for CAT protection prior to removal.”) (emphasis omitted).

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

24 Finally, notice of the country to which the noncitizen will be removed must not
25 be “last minute” because that would deprive an individual of a meaningful opportunity
26 to apply for fear-based protection from removal. *Andriasian*, 180 F.3d at 1041. They

1 must have time to prepare and present relevant arguments and evidence and to seek
2 reopening of their removal case.

3 **VII. Facts Pertaining to Punitive Banishment to Third Countries**

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

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

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

25 ¹ Edward Wong, et al., *Inside the Global Deal-Making Behind Trump’s Mass*
26 *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>].

1 detained incommunicado ever since. On July 15, 2025, ICE deported five men to the
2 tiny African nation of Eswatini, including one man from Vietnam, where they are
3 reportedly being held in solitary confinement.

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

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

22 The memo further instructs that if the noncitizen "does not affirmatively state a
23 fear of persecution or torture if removed to the country of removal listed on the Notice
24 of Removal within 24 hours, [ICE] may proceed with removal to the country identified
25 on the notice." If the noncitizen "does affirmatively state a fear if removed to the
26 country of removal," then ICE will refer the case to U.S. Citizenship and Immigration

1 Services (“USCIS”) for a screening for eligibility for withholding of removal and
2 protection under the Convention Against Torture. “USCIS will generally screen within
3 24 hours.” If USCIS determines that the noncitizen does not meet the standard, the
4 individual will be removed. If USCIS determines that the noncitizen has met the
5 standard, then the policy directs ICE to either move to reopen removal proceedings “for
6 the sole purpose of determining eligibility for [withholding of removal protection] and
7 CAT” or designate another country for removal.

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

12 **VIII. The Law Governing Punitive Removal Practices**

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

19 Importantly, the Court drew a distinction between deportation, which the Court
20 reasoned is “not a ‘banishment,’ in the sense in which that word is often applied to the
21 expulsion of a citizen from his country by way of punishment,” and government actions
22 aimed at punishment, such as imprisonment at hard labor in addition to deportation. *Id.*
23 at 236. The Court explained that deportation “is but a method of enforcing the return to
24 his own country of [a non-citizen] who has not complied with the conditions upon the
25 performance of which the government of the nation, acting within its constitutional
26 authority and through the proper departments, has determined that his continuing to

1 reside here shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730
2 (1893)). But the Court admonished that the government may not “declare unlawful
3 residence within the country to be an infamous crime, punishable by deprivation of
4 liberty and property . . . unless provision were made that the fact of guilt should first be
5 established by a judicial trial.” *Id.* at 237.

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

8 **Grounds for Relief**

9 **Ground One: Petitioner’s Continued Detention in Immigration Custody** 10 **Violates the Due Process Clause of the Fifth Amendment to the U.S.** 11 **Constitution Because There Is No Significant Likelihood that Petitioner Will Be** 12 **Removed in the Reasonably Foreseeable Future.**

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

14 Petitioner’s present detention is purportedly authorized under 8 U.S.C. § 1231.
15 Detention of non-citizens who have been ordered removed is mandatory during the so-
16 called 90-day “removal period.” 8 U.S.C. § 1231(a)(1)(A). This period begins, as
17 relevant here, on the “date the order of removal becomes administratively final.” 8
18 U.S.C. § 1231(a)(1)(B)(i). Because Petitioner’s was originally ordered removed on
19 November 14, 2018, and the IJ’s order deferring removal was final on April 4, 2025²,
20 the removal period has long since expired and detention is no longer required under
21 8 U.S.C. § 1231(a)(B)(ii).

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

24 ² A decision by an IJ becomes final “upon waiver of appeal or upon expiration of the
25 time to appeal if no appeal is taken within that time.” 8 C.F.R. § 1003.39. The deadline
26 for filing an appeal to the Board of Immigration Appeals is 30 days from the date of the
decision. See 8 C.F.R. § 1003.38(b). Once final, a grant of deferral of removal prohibits
removal to the country of feared persecution absent formal reopening and termination
of that protection. See 8 CFR § 1208.17.

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

15 Here, the government cannot rebut the conclusion that Petitioner’s continued
 16 detention in ICE custody violates the Due Process Clause of the Fifth Amendment
 17 under *Zadvydas*. See *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *28–
 18 29 (W.D. Wash. Aug. 21, 2025) (granting preliminary injunction requiring release
 19 under *Zadvydas*); *Tang*, dkt. 26 at 12 (same).

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

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

24 The Fifth Amendment, the INA, the CAT, and implementing regulations
 25 mandate meaningful notice and opportunity to respond to any attempt to remove
 26 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

1 in reopened removal proceedings. Respondents' policy for third country removals
2 violates all of these laws because it directs ICE agents to remove individuals to third
3 countries without any notice or process *at all* where diplomatic assurances are received
4 and, where no diplomatic assurances are received, to provide flagrantly insufficient
5 notice (6–24 hours) and opportunity to respond, in violation of the statute, regulations,
6 and Fifth Amendment.

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

14 **Ground Three: Punitive Third Country Banishment; Violation of Fifth and**
15 **Eighth Amendments**

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

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

22 The Eighth Amendment provides that no “cruel and unusual punishments” may
23 be inflicted.

24 The U.S. Supreme Court long ago held that the government may not inflict upon
25 individuals an “infamous punishment” in addition to deportation as a penalty for an
26

1 immigration violation, absent criminal charges, a judicial trial, and attendant
2 constitutional protections. *Wong Wing*, 163 U.S. at 236–38.

3 Petitioner was convicted and completed any sentences for his criminal
4 convictions decades ago. His convictions made him removable from the United States,
5 but the convictions do not authorize the government to inflict, as a matter of executive
6 policy and discretion, additional punishment on him. Respondents’ third country
7 removal program is punitive in nature and execution.

8 The government has arranged for third countries to receive deportees and
9 imprison them on arrival, possibly indefinitely and often in abhorrent conditions. It has
10 selected countries notorious for human rights abuses and instability for third country
11 removal arrangements. It has targeted individuals with criminal convictions for third
12 country removals where they will be imprisoned and harmed and publicly broadcast
13 those removals to demonize and dehumanize the individuals subjected to these practices
14 and strike fear in the immigrant community to send a message of retribution and
15 deterrence.

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

24 Respondents may not seek to remove Petitioner to a third country under their
25 punitive banishment policy and practices. *See Nguyen*, 2025 WL 2419288, at *29
26

1 (granting preliminary injunction against “removing Petitioner to any country where he
2 is likely to face imprisonment upon arrival”).

3 **Prayer for Relief**

4 Petitioner respectfully requests that this Court:

5 (a) Assume jurisdiction over this action;

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

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

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

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

14 **Verification Pursuant to LCR 100(e)**

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

22 DATED this 9th day of October 2025.

23 Respectfully submitted,

24 *s/ Ann K. Wagner*
25 Assistant Federal Public Defender
26 Attorney for Alejandro Baltodano