

DISTRICT JUDGE ROBERT S. LASNIK  
MAGISTRATE JUDGE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALEJANDRO BALTOIANO,

Petitioner,

v.

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. CV25-1958-RSL-MLP

**MOTION FOR PRELIMINARY  
INJUNCTION**

Note on Motion Calendar:  
November 6, 2025  
(see Briefing Schedule, Dkt. 14 at 9)

**Expedited Hearing Requested**

**Oral Argument Requested**

**I. INTRODUCTION**

In the last two weeks, Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 and a motion for a temporary restraining order (“TRO”). Dkts. 1, 9. In the petition and TRO motion, he asserted that continued detention by immigration officials violates the Fifth Amendment’s Due Process Clause and 8 U.S.C. § 1231 as interpreted by *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner also asserts that there is a risk of unconstitutionally punitive deportation to a third country and also of deportation without the due process required by Ninth Circuit precedent. This Court granted the TRO on due process grounds—and the resolution of many of the issues apply equally to this motion—and denied or deferred ruling on the other two grounds.

1 Dkt. 14. Because Petitioner is almost certain to prevail on these claims, he respectfully  
2 asks the Court: (a) to confirm and extend its TRO by entering a preliminary injunction  
3 barring Respondents from removing Petitioner to a third country without notice and  
4 meaningful opportunity to respond in compliance with the statute and due process in  
5 reopened removal proceedings; (b) to order Petitioner's immediate release from custody  
6 while this case is litigated; and (c) to bar Respondents from removing Petitioner to any  
7 third country because Respondents' third-country removal program is punitive.

8 **II. FACTS RELEVANT TO DUE PROCESS AND DEPORTATIONS**

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

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

17 • An ERO officer will serve on the [noncitizen] the attached Notice of  
18 Removal. The notice includes the intended country of removal and will be  
19 read to the [noncitizen] in a language he or she understands.

20 • ERO will not affirmatively ask whether the [noncitizen] is afraid of  
being removed to the country of removal.

21 • ERO will generally wait at least 24 hours following service of the  
22 Notice of Removal before effectuating removal. In exigent circumstances,  
23 ERO may execute a removal order six (6) or more hours after service of  
24 the Notice of Removal as long as the [noncitizen] is provided reasonable  
means and opportunity to speak with an attorney prior to removal.

25 • Any determination to execute a removal order under exigent  
26 circumstances less than 24 hours following service of the Notice of

1 Removal must be approved by the DHS General Counsel, or the Principal  
2 Legal Advisor where the DHS General Counsel is not available.

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

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

14 *Nguyen v. Scott*, No. CV25-01398-TMC, 2025 WL 2419288, at \*19 (W.D. Wash. Aug.  
15 21, 2025); ICE, *Third Country Removals Following the Supreme Court's Order in*  
16 *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025) (July 9,  
17 2025), [https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/  
18 gov.uscourts.mad.282404.190.1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf) [<https://perma.cc/L9Y2-6CYX>].

### 19 **III. FACTS RELEVANT TO PUNITIVE THIRD-COUNTRY DEPORTATION**

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

25 Respondents reportedly have negotiated with at least 58 countries to accept  
26 deportees from other nations. On June 25, 2025, the New York Times reported that  
seven countries had agreed to accept deportees who are not their own citizens.<sup>1</sup> Since

<sup>1</sup> The seven countries are Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda. Edward Wong, et al., *Inside the Global Deal-Making Behind 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>].

1 then, ICE has carried out highly publicized third-country deportations to South Sudan  
2 and Eswatini.

3 **A. The Administration’s third-country removal scheme is designed to**  
4 **punish and deter.**

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

12 Later, Secretary of State Marco Rubio announced that El Salvador had agreed to  
13 “accept for deportation any illegal alien in the [U.S.] who is a criminal”<sup>4</sup> with the  
14 explicit understanding that “[President Bukele] will put them in his jails.”<sup>5</sup> Respondent  
15 DHS Secretary Kristi Noem said, “It has been wonderful for us to be able to have  
16 somewhere to send the worst of the worst and someone to partner with. And we’d like  
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19 <sup>2</sup> Roll Call, *Donald Trump Vlog: Self-Deportation Program - May 9, 2025*, at 00:00:55  
20 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/> [<https://perma.cc/XBX2-QALT>].

21 <sup>3</sup> 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>].

22  
23 <sup>4</sup> Stefano Pozzebon, et al., *El Salvador Offers to House Violent US Criminals and Deportees of Any Nationality in Unprecedented Deal*, CNN World (Feb. 4, 2025),  
24 <https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk>.

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

1 to continue that partnership because it's been *a powerful message of consequences.*"<sup>6</sup>  
2 President Trump recently spoke about the deterrent effect of the El Salvador  
3 banishments: "[W]e bring people there and . . . they don't get out."<sup>7</sup> DHS agreed,  
4 posting, "Illegal aliens are turning back because they know . . . they will ultimately  
5 leave in handcuffs."<sup>8</sup>

6 In April, Secretary of State Rubio stated that the Administration is "working  
7 with other countries . . . to send [them] some of the most despicable human beings . . .  
8 and the further away from America, the better, so they can't come back."<sup>9</sup> Secretary  
9 Noem has publicly threatened noncitizens with criminal convictions to "leave America"  
10 or "be fined nearly \$1,000 per day, imprisoned, and deported."<sup>10</sup> She stated, "President  
11 Trump and I have a clear message to those in our country illegally: LEAVE NOW. If  
12 you do not self-deport, we will hunt you down, arrest you, and deport you."<sup>11</sup>

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

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

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

24 <sup>9</sup> 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-](https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-trump-deportations)  
26 [trump-deportations](https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-trump-deportations) [<https://perma.cc/C9LM-7333>].

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

<sup>11</sup> Press Release, *supra* note 10 (italics omitted).

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

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

8           The Costa Rican president announced an agreement to receive up to 200  
9           deportees and to hold them for up to six weeks before sending them to their home  
10          countries, all paid for by the U.S.<sup>15</sup> The deportees were held at the Temporary Migrant  
11          Care Center (Spanish: *Centro de Atención Temporal a Migrantes*, “CATEM”).<sup>16</sup>

12          <sup>12</sup> The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama in a Legal*  
13          *‘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)  
14          [panama-us-migrants-1.7471142 \[https://perma.cc/CE84-S3Y7\]](https://perma.cc/CE84-S3Y7); Juan Zamorano, *Nearly*  
15          *300 Deportees From US Held in Panama Hotel as Officials Try to Return Them to Their*  
16          *Countries,* AP World News (Feb. 18, 2025), [https://apnews.com/article/panama-trump-](https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455)  
17          [migrants-darien-d841c33a215c172b8f99d0aeb43b0455](https://perma.cc/CE84-S3Y7); Manuel Rueda, *Asylum Seekers*  
18          *Deported by the U.S. Are Stuck in Panama and Unable to Return Home,* All Things  
19          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)  
20          [5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-](https://perma.cc/CE84-S3Y7)  
21          [home.](https://perma.cc/CE84-S3Y7)

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

26          <sup>14</sup> Matias Delacroix & Megan Janetsky, *Isolated in ‘Harsh Conditions:’ Deportee from*  
27          *US Details Legal Limbo in Panama Camp Near Darien Gap,* AP World News (Feb. 22,  
28          2025), [https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86)  
29          [bba8c3dc33fd38efd569a5b51e481a86 \[https://perma.cc/7FL8-KNXT\].](https://perma.cc/7FL8-KNXT)

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

34          <sup>16</sup> The Associated Press, *Group of Mostly Asian Migrants Deported from U.S. Arrive in*  
35          *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)  
36          [america/asian-migrants-deported-arrive-costa-rica-rcna193148](https://perma.cc/R6MT-HK9F)  
37          [\[https://perma.cc/R6MT-HK9F\].](https://perma.cc/R6MT-HK9F)

1 Migrants held there previously reported sleeping on the ground in tents, being held in  
2 cramped quarters like prisoners, and sanitation issues.<sup>17</sup> On June 24, a Costa Rican  
3 court ordered the release of the deportees due to civil rights violations, finding “they  
4 had been deprived of their freedom of movement without a prior individual ruling, that  
5 their communications with the outside had been restricted, and that they had not been  
6 told about the possibility of applying for refugee status.”<sup>18</sup>

7 In March, the U.S. paid El Salvador \$5 million to indefinitely imprison over 200  
8 deported Venezuelans in a maximum-security prison notorious for gross human rights  
9 abuses, known as *Centro de Confinamiento del Terrorismo* (“CECOT”).<sup>19</sup>

10 El Salvador’s justice minister stated the only way out of CECOT is in a coffin.<sup>20</sup>

11 In May, ICE attempted to deport individuals from Vietnam, Laos, the  
12 Philippines, and Mexico to Libya.<sup>21</sup> The aircraft sat on the runway for hours until the  
13 individuals were returned to a detention center after a court ordered the men not to be  
14 deported.<sup>22</sup>

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16 <sup>17</sup> The Associated Press, *supra* note 16.

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

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

22 <sup>20</sup> Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison; Documents*  
23 *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-prison-60-minutes-transcript/> [<https://perma.cc/65ZQ-UNXZ>].

24 <sup>21</sup> Human Rights Watch, *U.S.: Don’t Forcibly Transfer Migrants to Libya* (May 9,  
25 2025), <https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya>  
[<https://perma.cc/LC6H-4Y6G>].

26 <sup>22</sup> Human Rights Watch, *supra* note 21.

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

6 On July 15, ICE deported five men to Eswatini, including one Vietnamese pre-  
7 1995 immigrant.<sup>26</sup> DHS referred to the men as “so uniquely barbaric that their home  
8 countries refused to take them back.”<sup>27</sup> Eswatini government officials have said the  
9 men are imprisoned in solitary confinement and that the U.S. is paying for the costs of  
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14  
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16 <sup>23</sup> 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-deportations-halted> [<https://perma.cc/33XA-N863>].

18 <sup>24</sup> 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/us/politics/south-sudan-third-country-deportations.html> [<https://perma.cc/7MXJ-QWY9>]; see also Press Statement, Republic of South Sudan, *Official Statement on the*  
20 *Arrival of Third-Country Nationals and South Sudanese Deported from the United*  
21 *States of America to South Sudan* (July 8, 2025), <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/> [<https://perma.cc/ML25-BJZM>].

22 <sup>25</sup> Ex. 1, ¶ 18 (Declaration of Glenda M. Aldana Madrid, filed in *Nguyen v. Scott*, No.  
23 CV25-01398, Dkt. 29 (W.D. Wash. Aug. 1, 2025)).

24 <sup>26</sup> Ex. 2, ¶ 19 (Declaration of Tin Thanh Nguyen, filed in *Nguyen*, Dkt. 28).

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

1 their imprisonment.<sup>28</sup> An Eswatini government official estimated the men would be  
2 held for about 12 months.<sup>29</sup>

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

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

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

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

22 <sup>29</sup> Savage, et al., *supra* note 28.

23 <sup>30</sup> Camilo Montoya-Perez, *Judge Says U.S. Trying to Do “End-Run” Around Legal*  
24 *Protections with Deportations to Ghana*, CBS News (Sept. 15, 2025),  
25 [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/)  
26 [protections-with-deportations-to-ghana/](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>].

<sup>31</sup> 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://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-sudan-travel-advisory.html) [<https://perma.cc/6NXV-JXCY>].

<sup>32</sup> Princewill, et al., *supra* note 28.

<sup>33</sup> Princewill, et al., *supra* notes 28, 32.

1 and civil unrest.”<sup>34</sup> And Libya is in the middle of a civil war, with a record of  
2 “pervasive long-term arbitrary detention, enforced disappearances of both men and  
3 women, killings under torture, and unlawful killings in places of detention.”<sup>35</sup>  
4 The United Nations has called Libya’s violations of detainees’ rights “crimes against  
5 humanity.”<sup>36</sup>

#### 6 **IV. LEGAL STANDARD FOR A PRELIMINARY INJUNCTION**

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

10 *Winters v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The movant must make a  
11 showing on each element of the *Winter* test. *All. for the Wild Rockies v. Cottrell*, 632  
12 F.3d 1127, 1135 (9th Cir. 2011). However, “where the ‘balance of hardships . . . tips  
13 sharply towards the plaintiff,’ a plaintiff need only show ‘serious questions going to the  
14 merits,’ rather than likelihood of success on the merits[.]” *Roman v. Wolf*, 977 F.3d  
15 935, 941 (9th Cir. 2020) (quoting *All. for the Wild Rockies*, 632 F.3d at 1135). This  
16 Court has already found that Mr. Baltodano merited a temporary restraining order on at  
17 least one claim in his petition, *see* Dkt. 14 at 9, and a TRO and preliminary injunction  
18 involve “substantially identical” analysis. *Stuhlberg Int’l Sales Co. v. John D. Brush &*  
19 *Co.*, 240 F.3d 832, 839–40 & n.7 (9th Cir. 2001).

20 The Ninth Circuit distinguishes between “mandatory” and “prohibitory”  
21 injunctions, even though that approach is “controversial.” *Hernandez v. Sessions*, 872  
22 F.3d 976, 997 (9th Cir. 2017) (noting that other circuits have held the distinction “not

23 \_\_\_\_\_  
24 <sup>34</sup> 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 <sup>35</sup> Human Rights Watch, *supra* note 21; *see* Bartlett, *supra* note 9.

<sup>36</sup> Human Rights Watch, *supra* notes 21, 35.

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

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

14 **V. PETITIONER IS ENTITLED TO A PRELIMINARY INJUNCTION**  
15 **BARRING DEPORTATION TO A THIRD COUNTRY WITHOUT**  
16 **NOTICE AND A MEANINGFUL OPPORTUNITY TO BE HEARD.**

17 As this Court observed in the order granting a preliminary injunction (Dkt. 14),  
18 courts in this district have already held “that ICE’s current third country removal policy  
19 ‘contravenes Ninth Circuit law.’” Dkt. 14 at 5 (quoting *Nguyen v. Scott*, No. CV25-  
20 01398-TMC, 2025 WL 2419288 at \*19 (W.D. Wash. Aug. 21, 2025)). After an analysis  
21 of the *Winter* factors, the *Nguyen* court granted preliminary injunctive relief on this  
22 claim, emphasizing that under Ninth Circuit law, a “noncitizen must be given sufficient  
23 notice of a country of deportation that, given his capacities and circumstances, he would  
24 have a reasonable opportunity to raise and pursue his claim for withholding of  
25 deportation.” *Nguyen*, 2025 WL 2419288 at \*18, \*25, \*28–29. This Court similarly  
26 found that “petitioner is likely to succeed on the merits of his claim that he is entitled to  
‘legally required multistep procedures set out in 8 U.S.C. § 1231(b) and required by due

1 process” before ICE can remove him to a third country in the TRO context. Dkt. 14 at  
2 6.

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

9 As the *Aden* court explained, “The guarantee of due process includes the right to  
10 a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or  
11 her particular claim.” 409 F. Supp. 3d at 1010. “[B]oth the due process clause and the  
12 governing statute place the burden on the government—regardless of whether the  
13 country of deportation is designated during or after the removal hearing—to provide a  
14 meaningful opportunity to be heard on asylum and withholding claims.” 409 F. Supp.  
15 3d at 1010. *Nguyen* elaborated: “This cannot be satisfied by simply allowing the  
16 noncitizen to file a motion to reopen their removal proceedings; rather, the removal  
17 proceedings must be reopened so that a hearing can be held.” 2025 WL 2419288, at  
18 \*18.

19 As pointed out in *Nguyen*, these requirements “flow directly from binding Ninth  
20 Circuit precedent about due process protections before removal to a third country.”  
21 2025 WL 2419288, at \*18. *Nguyen* explained:

22 “Failing to notify individuals who are subject to deportation that they  
23 have the right to apply ... for withholding of deportation to the country to  
24 which they will be deported violates both INS regulations and the  
25 constitutional right to due process.” *Andriasian v. I.N.S.*, 180 F.3d 1033,  
26 1041 (9th Cir. 1999) (citing *Kossov*, 132 F.3d at 408–09); *see also*  
*Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014) (“[S]hould  
circumstances change such that Azerbaijan is the designated country of  
removal, the agency must provide Sadychov with notice and an

1 opportunity to reopen his case for full adjudication of his claim of  
2 withholding of removal from Azerbaijan.”). “In the context of country of  
3 removal designations, last minute orders of removal to a country may  
4 violate due process if an immigrant was not provided an opportunity to  
5 address his fear of persecution in that country.” *Najjar v. Lynch*, 630 Fed.  
6 App’x 724 (9th Cir. 2016) (citing *Andriasian*, 180 F.3d at 1041); *El Himri*  
7 *v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004).

8 2025 WL 2419288, at \*18.

9 In *Nguyen*, Respondents initially represented that they would continue to follow  
10 the procedures set forth in *Aden*. Subsequently, they withdrew that commitment and  
11 stated that the July 9 ICE memo “‘sets forth Respondents’ current policy on third-  
12 country removals both nationwide and in the Western District of Washington where  
13 Respondents are no longer fully following the process discussed’ in *Aden*.” 2025 WL  
14 2419288, at \*19. The *Nguyen* court held that “[t]his policy contravenes Ninth Circuit  
15 law, as laid out above. It would be impossible to comply both with Ninth Circuit  
16 precedent and the policy.” 2025 WL 2419288, at \*19. In fact, Respondents did not even  
17 contest the merits of the petitioner’s claim in *Nguyen*. The *Nguyen* court accordingly  
18 held that “Petitioner is likely to succeed on his claim that removal to a third country  
19 under ICE’s current policy, without meaningful notice and reopening of his removal  
20 proceedings for a hearing, would violate due process.”

21 As this Court also found in the TRO, other components of the *Winter* test clearly  
22 favor Petitioner. Irreparable harm flows from being removed to a third country. Dkt. 14  
23 at 6 (quoting *Nguyen*, 2025 WL 2419288 at \*26 (quoting *A.A.R.P. v. Trump*, 145 S. Ct.  
24 at 1364, 1367, 221 L.Ed.2d 765 (2025) (detainees with pending habeas petitions facing  
25 removal under Alien Enemies Act faced “an imminent threat of severe, irreparable  
26 harm”)); *id.* at 6 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“It  
is well established that the deprivation of constitutional rights ‘unquestionably  
constitutes irreparable injury.’”)). There is also a significant risk of irreparable injury,  
because if Petitioner is removed to a country without due process, he might be removed

1 to a country that would subject him to indefinite detention, persecution, or torture, a  
2 significant risk in Mr. Baltadano’s case because of his serious mental health diagnoses,  
3 membership in the Catholic Church, and history of political activism against a  
4 repressive government. Dkt. 1 at 6–11. Petitioner also would likely be unable to have  
5 the harm undone, in that he would be unable to return to the United States to have  
6 objections to removal properly considered.

7 As this Court found in the TRO, the balance of equities and the public interest,  
8 which merge in a case where the Government is a party, weigh in favor of Petitioner  
9 because “[t]here is a public interest in preventing [noncitizens] from being wrongfully  
10 removed, particularly to countries where they are likely to face substantial harm.” *Nken*  
11 *v. Holder*, 556 U.S. 418, 436 (2009), *quoted in* Dkt. 14 at 7. In the TRO this Court also  
12 found a public interest in retaining jurisdiction over the underlying petition in light of  
13 the Government’s actions in other case to circumvent the adjudication of pending cases  
14 via sudden deportations without due process. Dkt. 14 at 7–8.

15 **VI. PETITIONER IS ENTITLED TO A PRELIMINARY INJUNCTION**  
16 **BARRING DEPORTATION TO A THIRD COUNTRY PURSUANT TO**  
17 **RESPONDENT’S PUNITIVE POLICY.**

18 Although this Court doubted that the “punitive” claim was necessary to give  
19 Petitioner the relief he sought, Dkt. 14 at 9, this claim goes further than pure due  
20 process claim because it directly prohibits third-country removal under Respondent’s  
21 policies rather than indirectly prohibiting it by requiring more process than those  
22 policies provide. It is necessary to ensure Petitioner is not punished by Respondent’s  
23 unconstitutional third-country removal policy even if he is given more process than the  
24 policy currently provides.

25 As to likelihood on the merits, there can be no reasonable dispute that  
26 Respondent’s current deportation policy is punitive. Nor can there be any reasonable  
dispute that deportation may not be used for punitive purposes. *Wong Wing v.*

1 *United States*, 163 U.S. 228, 237 (1896). *See Nguyen*, 2025 WL 2419288, at \*23  
2 (“Petitioner has shown a likelihood of success on his claim that ICE’s practice of  
3 removing noncitizens to countries where they face imprisonment violates the  
4 Constitution’s prohibition on ‘punitive’ third country removal.”).

5 Petitioner risks irreparable harm in two ways. First, Petitioner may suffer  
6 punishment—potentially horrible punishment—at the hands of the third country he is  
7 deported to. Second, Petitioner may be irreparably harmed by being deported when he  
8 will have no way to undo the harm by being returned to the United States, although,  
9 were the law followed, Petitioner could not lawfully be deported from the United  
10 States. *See Nguyen*, 2025 WL 2419288, at \*26 (“It is beyond dispute that Petitioner  
11 would face irreparable harm from removal to a third country.”); *A.A.R.P.*, 145 S. Ct. at  
12 1367 (detainees with pending habeas petitions facing removal under Alien Enemies Act  
13 faced “an imminent threat of severe, irreparable harm”).

14 The balance of equities analysis is comparable to that for Petitioner’s due  
15 process claim.

16 **VII. PETITIONER IS ENTITLED TO A PRELIMINARY INJUNCTION**  
17 **ORDERING RELEASE.**

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

19 Petitioner has met his burden to show that “there is no significant likelihood of  
20 removal in the reasonably foreseeable future.” *Nadarajah v. Gonzales*, 443 F.3d 1069,  
21 1082 (9th Cir. 2006); *see also Zadvydas*, 533 U.S. at 701.

22 First, Petitioner has already been detained for 20 months, far more than the six  
23 months that *Zadvydas* deemed presumptively reasonable. Although this Court indicated  
24 in the TRO that temporary relief may not ask for the same relief that a habeas petition  
25 seeks, this precept does not apply to a preliminary injunction. *Compare Nguyen v. Scott*,  
26 No. CV25-01398-TMC, 2025 WL 2165995, at \*7 (W.D. Wash. July 30, 2025) (denying

1 release upon issuance of TRO) *with Nguyen*, 2025 WL 2419288, at \*28 (ordering  
2 release in a preliminary injunction). Furthermore, a detailed release plan including  
3 release to Mr. Baltodano’s sister, a United States citizen who lives in Downey, CA, was  
4 proposed during Mr. Baltodano’s immigration proceedings a little over a year ago and  
5 could be followed closely today. *See Ex. 3 at 4–5 (Motion for Bond Determination);*  
6 *Ex. 4 at 25–25 (Release Plan Supporting Motion for Bond Determination).*

7 Second, Petitioner has shown that his removal is not reasonably foreseeable.  
8 *Zadvydas* determined that detention becomes “indefinite” when there is “good reason to  
9 believe that there is no significant likelihood of removal in the reasonably foreseeable  
10 future.” *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533  
11 U.S. at 701). Removal to Nicaragua is legally deferred by the immigration court and  
12 there is no indication the Ortega dictatorship is likely to end. Petitioner has no ties to  
13 any other country and punitive deportation to a third country, which may be requested  
14 by Respondent to imprison him indefinitely and which may not be able to treat his  
15 severe mental illness, would violate the Constitution.

16 The burden thus shifts to the Government to “respond with evidence sufficient to  
17 rebut that showing.” *Zadvydas*, 533 U.S. at 701. Petitioner anticipates the Government  
18 cannot meet that burden. *See Nguyen*, 2025 WL 2419288, at \*16 (finding that  
19 government has not met its burden merely by showing “there is at least some possibility  
20 of removal” and observing “[c]ourts in this circuit have regularly refused to find  
21 Respondents’ burden met where Respondents have offered little more than  
22 generalizations regarding the likelihood that removal will occur”) (citing as examples  
23 *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006); *Chun Yat Ma v.*  
24 *Asher*, No. CV11-1797 MJP, 2012 WL 1432229, at \*4–5 (W.D. Wash. Apr. 25, 2012);  
25 *Hoac v. Becerra*, No. CV25-1740-DC-JDP, 2025 WL 1993771, at \*3 (E.D. Cal.  
26 July 16, 2025)).

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

2           Second, illegal confinement is a quintessentially irreparable harm. As this Court  
3 recognized in the TRO, “[i]t is well established that the deprivation of constitutional  
4 rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d  
5 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)), *quoted in*  
6 Dkt. 14 at 6. Where the “alleged deprivation of a constitutional right is involved, most  
7 courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v.*  
8 *Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (citing 11A Charles Alan Wright, et  
9 al., *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). “Unlawful detention  
10 certainly constitutes ‘extreme or very serious’ damage, and that damage is not  
11 compensable in damages.” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

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

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

17           “[T]he [government] cannot reasonably assert that it is harmed in any legally  
18 cognizable sense by being enjoined from constitutional violations.” *Zepeda v. I.N.S.*,  
19 753 F.2d 719, 727 (9th Cir. 1983). And it is always in the public interest to prevent  
20 violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at 436  
21 (describing public interest in preventing noncitizens “from being wrongfully removed,  
22 particularly to countries where they are likely to face substantial harm”). Accordingly,  
23 the balance of hardships and the public interest overwhelmingly favor emergency relief  
24 to ensure Petitioner’s freedom.

25           There is a countervailing “public interest in prompt execution of removal  
26 orders,” *Nken*, 556 U.S. at 436, but here there is no likelihood of removal. Furthermore,

1 it is well established that “our system does not permit agencies to act unlawfully even in  
2 pursuit of desirable ends.” *Nguyen*, 2025 WL 2419288, at \*28 (quoting *Ala. Ass’n of*  
3 *Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 766 (2021)).

4 **VIII. CONCLUSION**

5 This Court should grant the preliminary injunction.

6 DATED this 29th day of October 2025.

7 Respectfully submitted,

8  
9 s/ *Ann K. Wagner*  
10 Assistant Federal Public Defender  
Attorney for Alejandro Baltodano

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