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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HIEU TRI NGUYEN, ) No.  
Petitioner, )

vs. )

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


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. )

**RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242**

**Personal Information**

1. (a) Full name: Hieu Tri Nguyen
- (b) Other names used: N/A
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.

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

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


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

6 **Decision or Action You Are Challenging**

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

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

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

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

12 (c) Decision or action you are challenging: I was originally ordered deported  
13 on or about November 14, 2001. I was held in immigration custody for approximately  
14 three months after that order was issued before immigration officials released me with  
15 conditions. I remained released under immigration supervision for many years. I  
16 sustained criminal convictions in California since then and served a lengthy sentence in  
17 California State custody. On June 11, 2025, I was released from California State  
18 custody after serving my sentence on a criminal conviction. I was then taken into  
19 immigration custody and ultimately brought to the NWIPC in Tacoma, Washington. I  
20 remain detained at the NWIPC.

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

22 7-9. First, second, and third appeals: None

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

24 11. Appeals of immigration proceedings:

25 Does this case concern immigration proceedings? Yes

26 (a) Date you were taken into immigration custody: June 11, 2025

1 (b) Date of the removal or reinstatement order: November 14, 2001

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

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

4 12. Other appeals:

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

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

8 **I. Introduction**

9 Hieu Tri Nguyen is presently detained at the Northwest ICE Processing Center  
10 (NWIPC). He has been held in immigration custody for over four months this year,  
11 building on the approximately three months he spent in immigration custody after he  
12 was originally ordered removed. Removal to his country of birth is not reasonably  
13 foreseeable. His continued detention is therefore in violation of statute and due process.  
14 *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). And the government's recent practices  
15 raise the risk that it will illegally send Mr. Nguyen to a third country where he is not a  
16 citizen. Mr. Nguyen seeks (a) release; (b) an order preventing removal to a third  
17 country without notice and meaningful opportunity to respond in compliance with the  
18 statute and due process in reopened removal proceedings; and (c) an order barring  
19 removal to any third country pursuant to Respondents' punitive removal policy.

20 **II. Jurisdiction and Venue**

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

24 This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.*  
25 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States  
26

1 as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived  
2 sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

3 The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et*  
4 *seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28  
5 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment; and the Court's  
6 inherent equitable powers.

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

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

### 16 **III. Parties**

17 Hieu Tri Nguyen was previously ordered removed to Vietnam and is currently  
18 detained in the control and custody of Respondents at NWIPC. As such, Petitioner is a  
19 resident of Tacoma, Washington.

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

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

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

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

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

#### 15 **IV. Background**

16 Mr. Nguyen was born in Vietnam in 1972. Because of his appearance and his  
17 family’s politics, he experienced discrimination in his youth and was accused of being a  
18 “war baby.”<sup>1</sup> Mr. Nguyen’s grandmother tried to protect him by keeping him indoors  
19 away from others. Despite his grandmother’s efforts, Mr. Nguyen experienced abuse,  
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21 <sup>1</sup> When he was growing up in Vietnam, many people believed Mr. Nguyen was a child  
22 born to a Vietnamese mother and an American soldier father due to his light  
23 complexion and hair color and texture. Children born in Vietnam to Vietnamese  
24 mothers whose fathers were American military members faced significant stigma and  
25 discrimination in Vietnam. *See David Lamb, Children of the Vietnam War*, Smithsonian  
26 Magazine (June 2009), <https://www.smithsonianmag.com/travel/children-of-the-vietnam-war-131207347/>. Mr. Nguyen’s father is, in fact Vietnamese, but fled as a  
refugee when Mr. Nguyen was very young. Nonetheless, Mr. Nguyen’s physical  
appearance and his father’s absence caused people in Vietnam to perceive him as a  
“war baby” and to treat him accordingly.

1 discrimination, and trauma growing up in Vietnam. Mr. Nguyen's mother also  
2 experienced discrimination due to her husband's (Mr. Nguyen's father) politics and  
3 flight from Vietnam after the war.

4 Mr. Nguyen's father immigrated to the United States as a refugee with one of  
5 Mr. Nguyen's older siblings and Mr. Nguyen believes he subsequently naturalized. Mr.  
6 Nguyen's father then sponsored Mr. Nguyen, his mother, and his other siblings to join  
7 him in the United States. Mr. Nguyen was admitted to the United States when he was  
8 17 years old in 1989. Mr. Nguyen's mother and other family members later naturalized  
9 as well.

10 Unequipped to deal with his childhood trauma, Mr. Nguyen later sustained  
11 criminal convictions in California. Following a custodial sentence, he was taken into  
12 immigration custody in 2001. On approximately November 14, 2001, an Immigration  
13 Judge ordered Mr. Nguyen removed to Vietnam. Immigration officials held him in  
14 custody following this removal order for approximately three months before apparently  
15 concluding that he could not be removed to Vietnam. At that point, immigration  
16 officials released him on conditions.

17 For many years, Mr. Nguyen followed his conditions of release. He raised his  
18 young children, one with special needs, and worked hard to support his family.  
19 However, he still had not meaningfully processed his own childhood trauma.

20 After about a decade, Mr. Nguyen was convicted of a serious crime in  
21 California. He pled guilty and began serving a lengthy sentence. While serving this  
22 years-long sentence, Mr. Nguyen was able to engage in meaningful programming. He  
23 participated in mental health programming to understand and unpack his own trauma.  
24 He took vocational training and worked within the prison industries. And he took  
25 available academic courses. Mr. Nguyen sincerely and meaningfully rehabilitated  
26 himself.

1 On approximately June 11, 2025, Mr. Nguyen was released from California state  
2 custody after completing his sentence. However, ICE immediately picked Mr. Nguyen  
3 up and took him into civil immigration custody. Approximately two weeks after he was  
4 detained, an ICE officer provided Mr. Nguyen with forms to complete to be sent to  
5 Vietnam to seek travel documents. Mr. Nguyen promptly completed the forms and  
6 returned them to ICE in less than a week. Mr. Nguyen's family and friends have also  
7 tried to provide relevant documents to the Vietnamese Consulate to facilitate this  
8 application for travel documents. However, they were informed that the consulate will  
9 need a form from the Vietnamese government first, one which has yet to be issued, and  
10 that even once the consulate receives that form, approval of travel documents usually  
11 takes a year. To date, Mr. Nguyen has received no confirmation that Vietnam will issue  
12 travel documents for him, nor that Vietnam is presently considering his application or is  
13 likely to grant it.

14 Mr. Nguyen has lived in the United States since he was 17 years old. His  
15 immediate family—his mother, siblings, ex-wife, and children—are U.S. citizens. And  
16 most of his extended family have left Vietnam. Mr. Nguyen's father and all of his  
17 grandparents have passed away. He remains detained at the NWIPC with no  
18 information regarding the likelihood or timeline of his possible removal to Vietnam.

19 **V. Legal Framework Pertaining to Continued Detention**

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

23 Following the Vietnam War, the North Vietnamese government established the  
24 Socialist Republic of Vietnam—the official nation-state of Vietnam to this day. Many  
25 people from the prior nation-state—the former Republic of Vietnam—fled the newly  
26 formed nation-state and sought refuge in the United States. *See Trinh v. Homan*, 466 F.

1 Supp. 3d 1077, 1083 (C.D. Cal. 2020) (summarizing history). For the next three  
2 decades, the Socialist Republic of Vietnam [*hereinafter* Vietnam] refused to repatriate  
3 people who had left Vietnam for the United States. *See id.*

4 In 2008, the United States and Vietnam reached a diplomatic agreement under  
5 which Vietnam agreed to begin considering some repatriation requests. Under the  
6 agreement, Vietnam agreed to consider repatriation requests for Vietnamese immigrants  
7 who arrived in the United States after July 12, 1995 (the date on which diplomatic  
8 relations between the two countries were established). *See id.* But the agreement also  
9 specifically provided that Vietnamese citizens who arrived in the United States before  
10 that date were not subject to return to Vietnam. Following this agreement, Vietnam  
11 maintained its policy that pre-1995 Vietnamese immigrants could not be repatriated.  
12 *See id.* ICE, in turn, adopted a policy recognizing that removal of pre-1995 Vietnamese  
13 immigrants was unlikely due to Vietnam’s policy, and held such immigrants no longer  
14 than 90 days following a removal order before releasing them because removal was not  
15 reasonably foreseeable. *See id.*

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

1 not significantly likely.” *Id.* at 1084. ICE returned to its practice of releasing pre-1995  
2 Vietnamese immigrants who had been ordered removed within 90 days of their removal  
3 order. *Id.*

4 In 2020, ICE and Vietnamese officials reached a Memorandum of  
5 Understanding (MOU). *See* Ex. A. The MOU specifically concerned pre-1995  
6 Vietnamese immigrants to the United States and aimed to facilitate their repatriation to  
7 Vietnam if ordered removed. The MOU has been made public via a Freedom of  
8 Information Act request, but only in a heavily redacted form. *See id.*; *Nguyen v. Scott,*  
9 *et. al.*, CV25-01398-TMC, Order Granting Preliminary Injunction at Dkt. 45, at 11  
10 (W.D. Wash. Aug. 21, 2025) (summarizing history).

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

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

24 Ex. A at § 4 (pp. 2–3). The fourth mandatory criteria for a person to be eligible for  
25 repatriation to Vietnam is unpublished and unknown to Mr. Nguyen or undersigned  
26 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

1 American officials are to consider in resolving disputes about a person’s eligibility for  
2 repatriation, including “humanitarian and family unity” factors. Ex. A at § 8, ¶ 6 (pp. 4–  
3 5). Because of these redactions, the discretionary factors utilized for determining  
4 whether someone can be repatriated to Vietnam are also unknown to Mr. Nguyen or  
5 undersigned counsel.

6 An experienced attorney with familiarity with Vietnam’s repatriation process  
7 and requirements affirms that, while Vietnam has issued more travel documents than it  
8 did previously for people ordered removed from the United States, it is still not  
9 “significantly likely” that such documents will be issued for pre-1995 immigrants to the  
10 United States. *See* Ex. B (Declaration of Tin Thanh Nguyen, previously prepared for  
11 *Nguyen v. Scott*, CV25-01398-TMC) at 2–3. In the attorney’s experience, whether or  
12 not Vietnam is willing to issue such documents depend on factors including “whether  
13 the individual has any family remaining in Vietnam, whether their Vietnamese identity  
14 can be verified, their criminal records, and the manner in which they left Vietnam and  
15 came to the United States, among other factors.” *Id.* at 3.

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

22 Although the 2020 MOU indicates that Vietnamese officials intend to issue  
23 travel documents for eligible people within 30 days, *see* Ex. A at § 8 (p.4), this intended  
24 timeline only applies once Vietnamese officials have confirmed a person’s eligibility  
25 for repatriation. *Id.* In practice, however, it has taken many months before pre-1995  
26

1 Vietnamese immigrants even receive an answer from Vietnam about whether or not  
2 travel documents can be issued. *See* Ex. B at 3.

3 As discussed further below, detention without hope of imminent removal is not  
4 allowed. The Supreme Court made clear that “once removal is no longer reasonably  
5 foreseeable, continued detention is no longer authorized by statute.” *Zadvydas*, 533  
6 U.S. at 699 (2001).

#### 7 **VI. Facts Pertaining to Continued Detention**

8 The government arrested Mr. Nguyen on approximately June 11, 2025, and has  
9 held him in custody since that date. The government made no known efforts to seek  
10 travel documents from Vietnam prior to arresting Mr. Nguyen. Furthermore, the  
11 government waited approximately two weeks before providing Mr. Nguyen with the  
12 required forms to apply for travel documents while holding him in custody. And  
13 although Mr. Nguyen promptly filled out and returned these forms to ICE months ago,  
14 he has received no updates regarding the status of the application to Vietnamese  
15 officials or any decision on that application.

16 Mr. Nguyen and counsel are aware of no approval from Vietnamese officials or  
17 confirmation that Vietnamese officials will issue travel documents for him. And  
18 because the government has not disclosed full eligibility criteria for repatriation of pre-  
19 1995 Vietnamese immigrants, Mr. Nguyen and counsel are not even aware of whether  
20 he would be eligible if and when an application is made to or decided by Vietnamese  
21 officials. Yet, the government has kept Mr. Nguyen in detention with no meaningful  
22 opportunity to challenge his detention or seek conditions of release.

#### 23 **VII. The Legal Framework for Third Country Removals**

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

1 First, an individual with a removal order may designate the country to which  
2 they want to be removed, and the government *shall* remove the individual to that  
3 country. 8 U.S.C. § 1231(b)(2)(A). The government may disregard that designation if  
4 (1) the individual fails to designate a country promptly; (2) the government of that  
5 country does not inform the U.S. government finally, within 30 days after the date the  
6 U.S. government first inquires, whether the government will accept the individual into  
7 that country; (3) the government of the country is not willing to accept the individual  
8 into the country; or (4) the government decides that removing the individual to that  
9 country is prejudicial to the United States. 8 U.S.C. § 1231(b)(2)(C).

10 Second, if the individual is not removed to the country they designated under  
11 § 1231(b)(2)(A), the government shall remove the individual to the country of which  
12 the individual is a “subject, national, or citizen” unless the government of that country  
13 does not inform the U.S. government or the individual within 30 days after first inquiry  
14 or within another reasonable period of time whether the government will accept the  
15 individual into the country or the country is not willing to accept the individual into the  
16 country. 8 U.S.C. § 1231(b)(2)(D).

17 Third, if the individual is not removed to either the country of their designation  
18 or the country of which they are a subject, national, or citizen, then the government  
19 shall remove them to any of the following options: (1) the country from which the  
20 individual was admitted to the United States; (2) the country in which is located the  
21 foreign port from which the individual left for the United States or for a foreign  
22 territory contiguous to the United States; (3) the country in which the individual resided  
23 before the individual entered the United States and from which the individual entered  
24 the United States; (4) the country in which the individual was born; or (5) the country in  
25 which the individual’s birthplace is located when the individual was ordered removed.  
26 8 U.S.C. § 1231(b)(2)(E). *Only* “[i]f impracticable, inadvisable, or impossible” to

1 remove the individual to any of these countries may the government remove the  
2 individual to “another country whose government will accept [them] into that country.”  
3 8 U.S.C. § 1231(b)(2)(E)(vii).

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

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

22 To comport with the requirements of due process, the government must provide  
23 notice of the third country removal and an opportunity to respond. Due process requires  
24 “written notice of the country being designated” and “the statutory basis for the  
25 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F.  
26 Supp. 3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland*

1 *Sec.*, No. 25-CV-10676-BEM, 2025 WL 1453640, at \*1 (D. Mass. May 21, 2025) (“All  
2 removals to third countries, *i.e.*, removal to a country other than the country or  
3 countries designated during immigration proceedings as the country of removal on the  
4 non-citizen’s order of removal, must be preceded by written notice to both the non-  
5 citizen and the non-citizen’s counsel in a language the non-citizen can understand.”  
6 (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process  
7 requires notice to the noncitizen of the right to apply for asylum and withholding to the  
8 country where they will be removed). The government must be able to show evidence  
9 that the third country will accept the individual into that country. *See Himri v. Ashcroft*,  
10 378 F.3d 932, 939 (9th Cir. 2004) (“at the time the government proposes a country of  
11 removal pursuant to § 1231(b)(2)(E)(vii), the government must be able to show that the  
12 proposed country *will* accept the [individual]”).

13 Due process also demands that the government “ask the noncitizen whether he or  
14 she fears persecution or harm upon removal to the designated country and memorialize  
15 in writing the noncitizen’s response. This requirement ensures DHS will obtain the  
16 necessary information from the noncitizen to comply with section 1231(b)(3) and  
17 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp. 3d at  
18 1019; *cf. D.V.D.*, 2025 WL 1453640, at \*1 (“Following notice, the individual must be  
19 given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim  
20 for CAT protection prior to removal.”) (emphasis omitted).

21 If the noncitizen claims fear, measures must be taken to ensure that the  
22 noncitizen can seek asylum, withholding, and relief under CAT before an immigration  
23 judge in reopened removal proceedings. *Cf. D.V.D.*, 2025 WL 1453640, at \*1 (requiring  
24 the government to move to reopen the noncitizen’s immigration proceedings if the  
25 individual demonstrates “reasonable fear” and to provide “a meaningful opportunity,  
26 and a minimum of fifteen days, for the non-citizen to seek reopening of their

1 immigration proceedings” if the noncitizen is found to not have demonstrated  
2 “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a  
3 respondent to file a motion to reopen and seek relief).

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

### 9 **VIII. The Law Governing Punitive Removal Practices**

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

16 Importantly, the Court drew a distinction between deportation, which the Court  
17 reasoned is “not a ‘banishment,’ in the sense in which that word is often applied to the  
18 expulsion of a citizen from his country by way of punishment,” and government actions  
19 aimed at punishment, such as imprisonment at hard labor in addition to deportation. *Id.*  
20 at 236. The Court explained that deportation “is but a method of enforcing the return to  
21 his own country of [a non-citizen] who has not complied with the conditions upon the  
22 performance of which the government of the nation, acting within its constitutional  
23 authority and through the proper departments, has determined that his continuing to  
24 reside here shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730  
25 (1893)). But the Court admonished that the government may not “declare unlawful  
26 residence within the country to be an infamous crime, punishable by deprivation of

1 liberty and property . . . unless provision were made that the fact of guilt should first be  
2 established by a judicial trial.” *Id.* at 237.

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

5 **IX. Facts Pertaining to Punitive Banishment to Third Countries**

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

11 Respondents reportedly have negotiated with at least 58 countries to accept  
12 deportees from other nations. On June 25, 2025, the New York Times reported that  
13 seven countries had agreed to accept deportees who are not their own citizens.<sup>2</sup> Since  
14 then, ICE has carried out highly publicized third country deportations to South Sudan  
15 and Eswatini.

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

18 In an official video, President Donald Trump stated, “[I]f illegal aliens choose to  
19 remain in America, they’re remaining illegally, and they will face severe  
20 consequences,” such as “significant jail time, . . . garnishment of all wages,  
21 imprisonment and incarceration, and *sudden deportation in a place and manner solely*

22  
23  
24 <sup>2</sup> The seven countries are Costa Rica, El Salvador, Guatemala, Kosovo, Mexico,  
25 Panama, and Rwanda. Edward Wong, et al., *Inside the Global Deal-Making Behind*  
26 *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/6CPS-FBJQ>].

1 *of our discretion.*”<sup>3</sup> In January, President Trump announced a plan to detain immigrants  
2 at the Guantanamo Bay prison in Cuba because “it’s a tough place to get out” and “we  
3 don’t want them coming back.”<sup>4</sup>

4 Later, Secretary of State Marco Rubio announced that El Salvador had agreed to  
5 “accept for deportation any illegal alien in the [U.S.] who is a criminal”<sup>5</sup> with the  
6 explicit understanding that “[President Bukele] will put them in his jails.”<sup>6</sup> Respondent  
7 DHS Secretary Kristi Noem said, “It has been wonderful for us to be able to have  
8 somewhere to send the worst of the worst and someone to partner with. And we’d like  
9 to continue that partnership because it’s been *a powerful message of consequences.*”<sup>7</sup>  
10 President Trump recently spoke about the deterrent effect of the El Salvador  
11 banishments: “[W]e bring people there and ... they don’t get out.”<sup>8</sup> DHS agreed,  
12  
13

14 <sup>3</sup> Roll Call, *Donald Trump Vlog: Self-Deportation Program - May 9, 2025*, at 00:00:55  
15 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/> [<https://perma.cc/XBX2-QALT>].

16 <sup>4</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>].

18 <sup>5</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),  
19 <https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk>.

20 <sup>6</sup> Matthew Lee, *Rubio Says El Salvador Offers to Accept Deportees from US of Any Nationality, Including Americans*, AP News (Feb. 4, 2025), <https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396baf9c45a2c0b>.

22 <sup>7</sup> Roll Call, *Remarks: Donald Trump Holds a Bilateral Meeting with Nayib Bukele of El Salvador - April 14, 2025*, at 00:06:45 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-remarks-bilat-nayib-bukele-el-salvador-april-14-2025/> [<https://perma.cc/GQ26-ADHG>].

25 <sup>8</sup> Roll Call, *Press Conference: Donald Trump Hosts a Press Conference at the White House - June 27, 2025*, at 00:20:29, <https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-white-house-june-27-2025/> [<https://perma.cc/326E-5T8L>].  
26

1 posting, “Illegal aliens are turning back because they know ... they will ultimately leave  
2 in handcuffs.”<sup>9</sup>

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

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

12 In February, Panama and Costa Rica took in hundreds of deportees from African  
13 and Central Asian countries and imprisoned them in hotels, a jungle camp, and a  
14 detention center.<sup>13</sup> In Panama, officials confiscated cell phones, denying deportees

15 <sup>9</sup> @DHSgov (Homeland Security), X (June 24, 2025, 4:17 PM), <https://x.com/DHSgov/status/1937651350059327520> [<https://perma.cc/2BRH-UXJ5>].

16 <sup>10</sup> Kate Bartlett, *Trump Administration Plans to Deport Migrants to Libya*, NPR (May  
17 7, 2025), <https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-trump-deportations> [<https://perma.cc/C9LM-7333>].

18 <sup>11</sup> Press Release, Dep’t of Homeland Sec., *DHS Releases New Nationwide and*  
19 *International Ads Warning Illegal Aliens to Self-Deport and Stay Out* (Apr. 21, 2025),  
20 <https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-ads-warning-illegal-aliens-self> [<https://perma.cc/2R24-34PA>].

21 <sup>12</sup> Press Release, *supra* note 11 (italics omitted).

22 <sup>13</sup> The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama in a Legal*  
23 *‘Black Hole,’* CBC News (Feb. 28, 2025), <https://www.cbc.ca/news/world/costa-rica-panama-us-migrants-1.7471142> [<https://perma.cc/CE84-S3Y7>]; Juan Zamorano, *Nearly*  
24 *300 Deportees From US Held in Panama Hotel as Officials Try to Return Them to Their*  
25 *Countries*, AP World News (Feb. 18, 2025), <https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455>; Manuel Rueda, *Asylum Seekers*  
26 *Deported by the U.S. Are Stuck in Panama and Unable to Return Home*, All Things  
Considered, NPR (May 5, 2025), <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>.

1 access to their attorneys.<sup>14</sup> Deportees were “guarded like prisoners,” sleeping in  
2 structures made from plastic sheets and having toilet access only when escorted.<sup>15</sup>

3 The Costa Rican president announced an agreement to receive up to 200  
4 deportees and to hold them for up to six weeks before sending them to their home  
5 countries, all paid for by the U.S.<sup>16</sup> The deportees were held at the Temporary Migrant  
6 Care Center (CATEM).<sup>17</sup> Migrants held there previously reported sleeping on the  
7 ground in tents, being held in cramped quarters like prisoners, and sanitation issues.<sup>18</sup>  
8 On June 24, a Costa Rican court ordered the release of the deportees due to civil rights  
9 violations, finding “they had been deprived of their freedom of movement without a  
10 prior individual ruling, that their communications with the outside had been restricted,  
11 and that they had not been told about the possibility of applying for refugee status.”<sup>19</sup>

12 In March, the U.S. paid El Salvador \$5 million to indefinitely imprison over 200  
13 deported Venezuelans in a maximum-security prison notorious for gross human rights

14 <sup>14</sup> Julie Turkewitz, et al., *Migrants, Deported to Panama Under Trump Plan, Detained*  
15 *in Remote Jungle Camp*, N.Y. Times (Feb. 19, 2025), [https://www.nytimes.com/](https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock)  
16 [2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login](https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock)  
[=smartlock&auth=login-smartlock \[https://perma.cc/577B-MDRN\]](https://perma.cc/577B-MDRN).

17 <sup>15</sup> Matias Delacroix & Megan Janetsky, *Isolated in ‘Harsh Conditions:’ Deportee from*  
18 *US Details Legal Limbo in Panama Camp Near Darien Gap*, AP World News (Feb. 22,  
19 2025), [https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86)  
20 [bba8c3dc33fd38efd569a5b51e481a86](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86) [<https://perma.cc/7FL8-KNXT>].

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

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

<sup>18</sup> The Associated Press, *supra* note 13.

<sup>19</sup> Vanessa Buschschlüter, *Costa Rican Court Orders Release of Migrants Deported*  
*from US*, BBC News (June 25, 2025), [https://www.bbc.com/news/articles/](https://www.bbc.com/news/articles/cwyrn42kp7no)  
[cwyrn42kp7no](https://www.bbc.com/news/articles/cwyrn42kp7no) [<https://perma.cc/45FA-3VCY>].

1 abuses, known as CECOT.<sup>20</sup> El Salvador’s justice minister stated the only way out of  
2 CECOT is in a coffin.<sup>21</sup>

3 In May, ICE attempted to deport individuals from Vietnam, Laos, the  
4 Philippines, and Mexico to Libya.<sup>22</sup> The aircraft sat on the runway for hours until the  
5 individuals were returned to a detention center after a court ordered the men not to be  
6 deported.<sup>23</sup>

7 On July 4, ICE deported eight men, including one pre-1995 Vietnamese refugee,  
8 to South Sudan.<sup>24</sup> The government of South Sudan euphemistically said in a statement  
9 that the deportees were “under the care of the relevant authorities”<sup>25</sup>—meaning they are  
10  
11  
12

13 <sup>20</sup> See, e.g., Wong, et al., *supra* note 2; Michael Rios, *What We Know About the El*  
14 *Salvador ‘Mega Prison’ Where Trump Is Sending Alleged Venezuelan Gang Members*,  
15 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>].

16 <sup>21</sup> Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison; Documents*  
17 *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>].

18 <sup>22</sup> Human Rights Watch, *U.S.: Don’t Forcibly Transfer Migrants to Libya* (May 9,  
19 2025), <https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya>  
[<https://perma.cc/LC6H-4Y6G>].

20 <sup>23</sup> Human Rights Watch, *supra* note 22.

21 <sup>24</sup> Guardian, *US Judge Clears Path for Eight Immigrants to Be Deported to South*  
22 *Sudan* (July 4, 2025), <https://www.theguardian.com/us-news/2025/jul/04/south-sudan-deportations-halted> [<https://perma.cc/33XA-N863>].

23 <sup>25</sup> Mattathias Schwartz, *Trump Administration Poised to Ramp Up Deportations to*  
24 *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/PQZ9-4B9F>];  
25 *see also* Press Statement, Republic of South Sudan, *Official Statement on the Arrival of*  
26 *Third-Country Nationals and South Sudanese Deported from the United 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>].

1 imprisoned. They have been held incommunicado since their deportation was  
2 completed.<sup>26</sup>

3 On July 15, ICE deported five men to Eswatini, including one Vietnamese pre-  
4 1995 immigrant.<sup>27</sup> DHS referred to the men as “so uniquely barbaric that their home  
5 countries refused to take them back.”<sup>28</sup> Eswatini government officials have said the  
6 men are imprisoned in solitary confinement and that the U.S. is paying for the costs of  
7 their imprisonment.<sup>29</sup> An Eswatini government official estimated the men would be  
8 held for about 12 months.<sup>30</sup>

9 It also attempted—and completed—an “end-run” around the protections of the  
10 Convention against Torture by deporting a group of migrants to Ghana, which sent  
11 them on to their countries of citizenship despite fears of persecution.<sup>31</sup>

12  
13  
14  
15 <sup>26</sup> Ex. D, ¶ 18 (this exhibit is the Declaration of Glenda M. Aldana Madrid, filed in  
16 *Nguyen v. Scott*, No. 2:25-CV-01398, dkt. 29 (W.D. Wash. Aug. 1, 2025)).

17 <sup>27</sup> Ex. B at ¶ 19.

18 <sup>28</sup> @TriciaOhio (Tricia McLaughlin), X (July 15, 2025 at 5:09 PM),  
19 <https://x.com/TriciaOhio/status/1945274627976200206> [<https://perma.cc/YV2M-4WRL>].

20 <sup>29</sup> Nimi Princewill, et al., ‘*Not Trump’s Dumping Ground*’: *Outrage Over Arrival of*  
21 *Foreign US Deportees in Tiny African Nation*, CNN World (July 18, 2025),  
22 <https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl>  
23 [<https://perma.cc/8U9T-LVMP>]; Rachel Savage, et al., *Eswatini Opposition Attacks US*  
Deal as ‘*Human Trafficking Disguised as Deportation*,’ *The Guardian* (July 23, 2025),  
<https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-deportees>  
[<https://perma.cc/XV7W-89P4>].

24 <sup>30</sup> Savage, et al., *supra* note 29.

25 <sup>31</sup> Camilo Montoya-Perez, *Judge Says U.S. Trying to Do “End-Run” Around Legal*  
26 *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://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>].

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

4           For example, conditions in South Sudan are so extreme that the U.S. State  
5           Department website warns Americans not to travel there, or to prepare their will, make  
6           funeral arrangements, and appoint a hostage-taker negotiator first.<sup>32</sup> Eswatini is ruled  
7           by a monarch, and many of its citizens live on less than four dollars a day.<sup>33</sup> The prison  
8           system is overcrowded, with prisoners receiving one meal a day.<sup>34</sup> The U.S. State  
9           Department advises Americans to “exercise increased caution in Eswatini due to crime  
10          and civil unrest.”<sup>35</sup> And Libya is in the middle of a civil war, with a record of  
11          “pervasive long-term arbitrary detention, enforced disappearances of both men and  
12          women, killings under torture, and unlawful killings in places of detention.”<sup>36</sup> The  
13          United Nations has called Libya’s violations of detainees’ rights “crimes against  
14          humanity.”<sup>37</sup>

15           **D. The Administration has violated due process in carrying out these third-**  
16           **country deportations.**

17           Respondents have through both word and action evidenced their intent to remove  
18           people to third countries without first following the procedural safeguards of the INA or  
19           providing adequate notice and opportunity to be heard regarding fear of removal to a  
20           third country.

21           <sup>32</sup> U.S. Department of State, Travel.State.Gov, *South Sudan Travel Advisory* (Mar. 8,  
22           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)  
23           [sudan-travel-advisory.html](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-sudan-travel-advisory.html) [<https://perma.cc/6NXV-JXCY>].

24           <sup>33</sup> Princewill, et al., *supra* note 29.

25           <sup>34</sup> Princewill, et al., *supra* notes 29.

26           <sup>35</sup> U.S. Department of State, Travel.State.Gov, *Eswatini Travel Advisory* (July 1, 2024),  
          [https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/eswatini-](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/eswatini-travel-advisory.html)  
          [travel-advisory.html](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/eswatini-travel-advisory.html) [<https://perma.cc/ASY7-2DUF>].

<sup>36</sup> Human Rights Watch, *supra* note 22; see Bartlett, *supra* note 10.

<sup>37</sup> Human Rights Watch, *supra* notes 22.

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

3 If the United States has received diplomatic assurances from the country  
4 of removal that [noncitizens] removed from the United States will not be  
5 persecuted or tortured, and if the Department of State believes those  
6 assurances to be credible, the [noncitizen] may be removed without the  
7 need for further procedures. ICE will seek written confirmation from the  
8 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:

- 9 • An ERO officer will serve on the [noncitizen] the attached Notice of  
10 Removal. The notice includes the intended country of removal and will be  
11 read to the [noncitizen] in a language he or she understands.
- 12 • ERO will not affirmatively ask whether the [noncitizen] is afraid of  
13 being removed to the country of removal.
- 14 • ERO will generally wait at least 24 hours following service of the  
15 Notice of Removal before effectuating removal. In exigent circumstances,  
16 ERO 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.
- 17 • Any determination to execute a removal order under exigent  
18 circumstances less than 24 hours following service of the Notice of  
19 Removal must be approved by the DHS General Counsel, or the Principal  
Legal Advisor where the DHS General Counsel is not available.
- 20 • If the [noncitizen] does not affirmatively state a fear of persecution or  
21 torture if removed to the country of removal listed on the Notice of  
22 Removal within 24 hours, ERO may proceed with removal to the country  
23 identified on the notice. ERO should check all systems for motions as  
close in time as possible to removal.
- 24 • If the [noncitizen] does affirmatively state a fear if removed to the  
25 country of removal listed on the Notice of Removal, ERO will refer the  
26 case to U.S. Citizenship and Immigration Services (USCIS) for a  
screening for eligibility for protection under section 241(b)(3) of the INA

1 and the Convention Against Torture (CAT). USCIS will generally screen  
2 the [noncitizen] within 24 hours of referral.

3 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at \*19 (W.D. Wash. Aug. 21,  
4 2025); *see also* See Ex. E (July 9, 2025, Memorandum to ICE Employees). And ICE  
5 appears to be acting on this directive. For example, the non-Sudanese men who were  
6 ultimately deported to South Sudan claimed fear of removal to South Sudan. None of  
7 those men were provided a meaningful fear screening by a USCIS officer or otherwise,  
8 despite the fact that they were held by ICE for six weeks on a U.S. military base in  
9 Djibouti before their final removal to South Sudan.<sup>38</sup>

10 As detailed above, respondents have already removed multiple people to third  
11 countries where they were met by torturous detention or re-deported to their home  
12 countries where they face torture, in violation of the Convention Against Torture. *See*  
13 *supra* pp. 16–22. Among those subjected to these actions were pre-1995 Vietnamese  
14 immigrants, who have reported no meaningful advance notice or opportunity to be  
15 heard. *See supra* pp. 20–21; Ex. B; Ex. D.

16 Mr. Nguyen fears respondents will similarly send him to a third country without  
17 notice and a meaningful opportunity to be heard. Other pre-1995 Vietnamese  
18 immigrants have been rapidly removed to third countries where they face torturous  
19 conditions and have been cut off from counsel and family. *See* Ex. B at 6–7; Ex. D at 3–  
20 5. Mr. Nguyen worries the government will use the same tactic in his case.

21 //

22 //

23 //

24 //

25 <sup>38</sup> *See* Montoya-Perez, *supra* n.31; Adam Liptak, *Supreme Court Lets Trump Deport*  
26 *Migrants to Countries Other Than Their Own* (June 23, 2025),  
[https://www.nytimes.com/2025/06/23/us/politics/supreme-court-south-sudan-](https://www.nytimes.com/2025/06/23/us/politics/supreme-court-south-sudan-migrants.html)  
[migrants.html \[https://perma.cc/4DEE-LKCC\]](https://perma.cc/4DEE-LKCC)

1 **Grounds for Relief**

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

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

7 Petitioner expects respondents will argue his present detention is authorized  
8 under 8 U.S.C. § 1231. Detention of non-citizens who have been ordered removed is  
9 mandatory during the so-called 90-day “removal period.” 8 U.S.C. § 1231(a)(1)(A).  
10 This period begins, as relevant here, on the “date the order of removal becomes  
11 administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i). Because Petitioner’s removal order  
12 became final on approximately November 14, 2001,<sup>39</sup> the removal period has long since  
13 expired and detention is no longer required under 8 U.S.C. § 1231.

14 Not only is detention no longer required, it is no longer allowed under the facts  
15 of this case. Given the “serious constitutional threat” the *Zadvydas* Court believed to be  
16 posed by the indefinite detention of noncitizens who had been admitted to the country  
17 under the Fifth Amendment’s Due Process Clause, 553 U.S. at 699, the Court  
18 interpreted 8 U.S.C. § 1231(a)(6) to permit only detention related to the statute’s “basic  
19 purpose [of] effectuating an alien’s removal[.]” *Id.* at 696-699. The Court further held  
20 that the presumptive period during which the detention is reasonably necessary to  
21 effectuate a noncitizen’s removal is six months; after that, the noncitizen is eligible for  
22 conditional release if they can demonstrate that there is “no significant likelihood of  
23 removal in the reasonably foreseeable future.” *Id.* at 701. After the “presumptively  
24 reasonable” period of six months’ detention, when the noncitizen can “provide good  
25 reason to believe that there is no significant likelihood of removal in the reasonably

26 <sup>39</sup> Counsel has not yet been able to obtain Mr. Nguyen’s immigration file, but the Executive Office of Immigration Review record indicates no appeal was taken from the order.

1 foreseeable future,” then “the Government must respond with evidence sufficient to  
2 rebut that showing.” *Id.* at 701. “A petitioner’s total length of confinement need not be  
3 consecutive to reach the six-month presumptively reasonable limit established in  
4 *Zadvydas.*” *Tang v. Bondi*, No. 2:25-CV-01473-RAJ-TLF, 2025 WL 2637750, at \*4  
5 (W.D. Wash. Sept. 11, 2025).

6 Mr. Nguyen has now been held in ICE custody post-removal order for over  
7 seven months, cumulatively. The government cannot rebut the conclusion that Mr.  
8 Nguyen’s continued detention in ICE custody violates the statute and the Due Process  
9 Clause of the Fifth Amendment under *Zadvydas*. *See Nguyen v. Scott*, No. 2:25-CV-  
10 01398, 2025 WL 2419288, at \*28–29 (W.D. Wash. Aug. 21, 2025) (granting  
11 preliminary injunction requiring release under *Zadvydas*); *Tang*, dkt. 26 at 12 (same).

12 As detailed above, Mr. Nguyen is a pre-1995 Vietnamese immigrant. As such,  
13 he is among a group of people that Vietnam has refused to repatriate until relatively  
14 recently. Even now, Vietnam will only accept pre-1995 immigrant deportees from the  
15 United States if they meet specific criteria, some of which the government has not  
16 disclosed. *See Ex. A*. Furthermore, it has taken months for people in this group to even  
17 receive an answer from Vietnamese officials about whether or not they are approved for  
18 travel documents. *See Ex. B* at 3. And Mr. Nguyen’s family has been informed that  
19 paperwork is not yet even complete for a request for travel documents, and that  
20 decisions on such requests typically take a year once all required documents are  
21 received.

22 Furthermore, respondents made no known effort to seek travel documents for  
23 Mr. Nguyen, let alone to confirm whether he is eligible, before detaining him.  
24 Respondents efforts since detaining Mr. Nguyen have been slow and possibly  
25 incomplete. ICE waited approximately two weeks before even providing Mr. Nguyen  
26 with the forms Vietnamese officials need to begin reviewing an application for

1 repatriation. Mr. Nguyen completed the form and returned it to ICE promptly. However  
2 when his family tried to assist, the consulate indicated it was still missing needed  
3 paperwork from the Vietnamese government.

4 Mr. Nguyen has lived in the United States since he was 17 years old. Both of his  
5 parents naturalized and he has multiple siblings who are also U.S. citizens. His ex-wife  
6 and his children are U.S. citizens as well. Mr. Nguyen's father and all of his  
7 grandparents have passed away and he no longer has any close family in Vietnam. The  
8 full criteria for Vietnam to repatriate pre-1995 immigrants to the United States remain  
9 undisclosed, and available information indicates it is both slow and rare for Vietnam to  
10 repatriate people from this group. Mr. Nguyen has provided "good reason to believe  
11 that there is no significant likelihood of removal in the reasonably foreseeable future,"  
12 and has not been provided evidence from the government to rebut this. *Zadvydas*, 533  
13 U.S. at 701.

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

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

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

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

8 **Ground Three: Punitive Third Country Banishment; Violation of Fifth and**  
9 **Eighth Amendments**

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

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

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

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

22 Petitioner was convicted and completed any sentences for his criminal  
23 convictions. While a criminal conviction may have been used to order him removed  
24 from the United States, Mr. Nguyen’s convictions do not authorize the government to  
25 inflict, as a matter of executive policy and discretion, additional punishment on him.  
26 Respondents’ third country removal program is punitive in nature and execution.

1 The government has arranged for third countries to receive deportees and  
2 imprison them on arrival, possibly indefinitely and often in abhorrent conditions. It has  
3 selected countries notorious for human rights abuses and instability for third country  
4 removal arrangements. It has targeted individuals with criminal convictions for third  
5 country removals where they will be imprisoned and harmed and publicly broadcast  
6 those removals to demonize and dehumanize the individuals subjected to these practices  
7 and strike fear in the immigrant community to send a message of retribution and  
8 deterrence. *See* Ex. E; Wong, et. al., *supra* n.2; Montoya-Perez, *supra* n.31; Liptak,  
9 *supra* n.38.

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

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

### 22 Prayer for Relief

23 Petitioner respectfully requests that this Court:

- 24 (a) Assume jurisdiction over this action;
- 25 (b) Order Respondents to immediately release Petitioner from custody;
- 26

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

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

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

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

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

16 DATED this 17th day of October 2025.

17 Respectfully submitted,

18 *s/ Rebecca Fish*  
19 Assistant Federal Public Defender  
20 Attorney for Hieu Tri Nguyen  
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