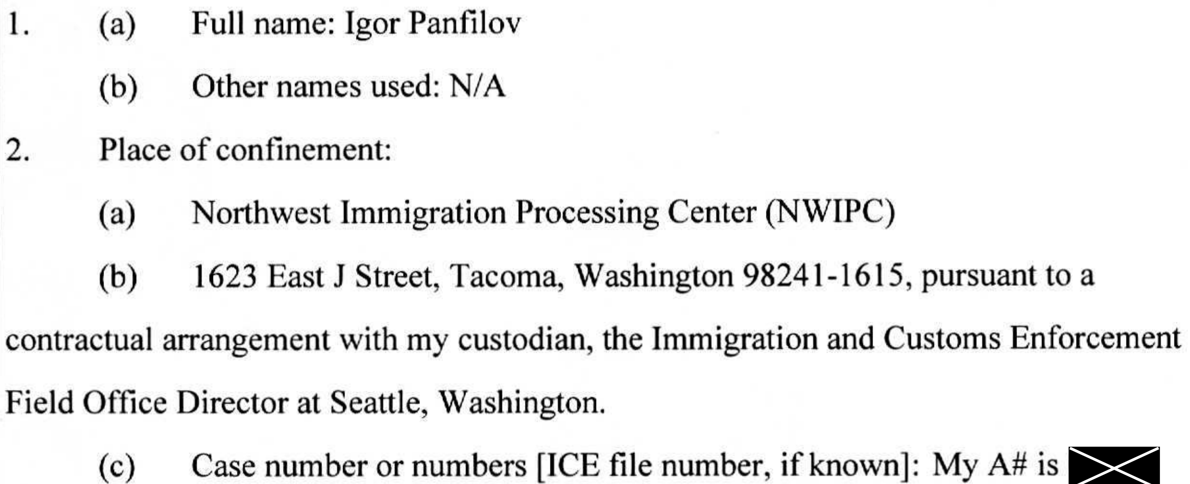
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IGOR PANFILOV, Petitioner, vs. PAMELA BONDI, Attorney General of the United States; KRISTI NOEM, Secretary, United States Department of Homeland Security; CAMMILLA WAMSLEY, Seattle Field Office Director, United States Citizenship and Immigration Services; BRUCE SCOTT, Warden of Immigration Detention Facility; and the United States Immigration and Customs Enforcement, Respondents.	No. **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND REQUEST FOR INJUNCTIVE RELIEF**

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information



1. (a) Full name: Igor Panfilov

   (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.

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

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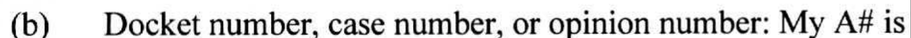
1 3. I am currently being held on orders by federal authorities: United States
2 Immigration and Customs Enforcement.
3 4. I am currently being held on an immigration charge.

4 **Decision or Action You Are Challenging**

5 5. What are you challenging in this petition: immigration detention.
6 6. Provide more information about the decision or action you are challenging:
7 (a) Name and location of the agency or court: United States Immigration and
8 Customs Enforcement
9 (b) Docket number, case number, or opinion number: My A# is 
10 (c) Decision or action you are challenging: I was issued a final order of
11 removal on July 29, 2008. I was previously detained by ICE for about 6 months before
12 being released on an order of supervision. On June 12, 2025, I was taken into custody
13 again by ICE and have now been detained for over four months.

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

15 7–9. First, second, and third appeals: None
16 10. Motion under 28 U.S.C. § 2255: N/A
17 11. Appeals of immigration proceedings:
18 Does this case concern immigration proceedings? Yes
19 (a) Date you were taken into immigration custody: June 12, 2025
20 (b) Date of the removal or reinstatement order: July 29, 2008
21 (c) Did you file an appeal with the Board of Immigration Appeals? No
22 (d) Did you appeal the decision to the United States Court of Appeals? No
23 12. Other appeals:
24 Other than the appeals listed above, have you filed any other petition,
25 application, or motion about the issues raised in this petition? No.
26

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

2 **I. Introduction**

3 Mr. Panfilov is presently detained at NWIPC. He has been held in immigration
4 custody since June 12, 2025. He was previously detained by ICE in 2008 for 6 months.
5 His six-month grace period has thus long since ended. Removal to his former country of
6 residence, Kyrgyzstan, a former Soviet republic, is not reasonably foreseeable. His
7 continued detention is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689
8 (2001). He seeks (a) release; (b) an order preventing removal to a third country without
9 notice and meaningful opportunity to respond in compliance with the statute and due
10 process in reopened removal proceedings; and (c) an order barring removal to any third
11 country pursuant to Respondents' punitive removal policy.

12 **II. Jurisdiction and Venue**

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

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

20 The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et*
21 *seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act,
22 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment; and the Court's
23 inherent equitable powers.

24 Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because the Federal
25 Respondents are agencies or officers of agencies of the United States; Respondents
26 Wamsley and Scott reside in this district; and Petitioner is detained in this district.

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Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district.

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

III. Parties

Mr. Panfilov was born in the former Soviet Union (now Kyrgyzstan). He has a final order of removal that was issued on July 29, 2008. Upon information and belief, Kyrgyzstan is listed as the country designated for removal. Mr. Panfilov is detained in the control and custody of the Respondents at NWIPC. As such, he is a resident of Tacoma, Washington.

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

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

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

Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens. Mr. Scott is sued in his official capacity as

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the Warden of a federal detention facility. *See Juarez v. Asher*, No. C20-700, 2021 WL 1946222, at *3–5 (W.D. Wash. May 14, 2021).

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

IV. Background

Mr. Panfilov was born in the former Soviet Union (now Kyrgyzstan) and immigrated to the United States on August 9, 1994, after the 1991 fall of the Soviet Union, when he was sixteen years old. He came with his two parents and siblings as refugees. Mr. Panfilov and his family eventually resettled in Portland, Oregon. His parents became U.S. citizens after Mr. Panfilov turned 18. Later, both of Mr. Panfilov's siblings became U.S. citizens and had children. Mr. Panfilov graduated from a two-year technical college in Astoria, Oregon and obtained a degree in trades through the pre-apprenticeship program.

Upon information and belief, Mr. Panfilov was convicted of a state domestic violence charge in 2007. He was sentenced to 15 months in state prison and was released after serving 13 months. He has no other criminal convictions. On July 29, 2008, a removal order was issued, on information and belief, for his removal to Kyrgyzstan. He was detained by ICE for approximately six months. He was released on supervision because his removal to Kyrgyzstan was not reasonably foreseeable. Mr. Panfilov was directed to check in with ICE every six months through either a video call or by sending a picture of his location. Mr. Panfilov complied with his release terms for years. On June 12, 2025, ICE required that he check-in with the agency in-person. Mr. Panfilov was detained after he arrived at the Portland ICE facility for his in-person

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check-in. ICE did not tell Mr. Panfilov the reason he was being arrested. In September of 2025, ICE gave Mr. Panfilov travel documents to sign and he complied.

V. Facts Pertaining to Continued Detention

Mr. Panfilov's removal to Kyrgyzstan is not reasonably foreseeable because his status has not changed since his July 29, 2008 detention and his subsequent release under *Zadvydas*: he is neither a citizen of Russia or Kyrgyzstan and thus, cannot obtain travel documents to either country. On information and belief, although ICE issued a final order of removal in 2008, Kyrgyzstan would not accept petitioner. Nor was his removal reasonably foreseeable. These circumstances still exist in 2025. On information and belief, ICE has not obtained a travel document from Kyrgyzstan for Mr. Panfilov nor has Kyrgyzstan agreed to accept him.

VI. The Legal Framework for Third Country Removals

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

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

Second, if the individual is not removed to the country they designated under § 1231(b)(2)(A), the government shall remove the individual to the country of which

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the individual is a "subject, national, or citizen" unless the government of that country does not inform the U.S. government or the individual within 30 days after first inquiry or within another reasonable period of time whether the government will accept the individual into the country or the country is not willing to accept the individual into the country. 8 U.S.C. § 1231(b)(2)(D).

Third, if the individual is not removed to either the country of their designation or the country of which they are a subject, national, or citizen, then the government shall remove them to any of the following options: (1) the country from which the individual was admitted to the United States; (2) the country in which is located the foreign port from which the individual left for the United States or for a foreign territory contiguous to the United States; (3) the country in which the individual resided before the individual entered the United States and from which the individual entered the United States; (4) the country in which the individual was born; or (5) the country in which the individual's birthplace is located when the individual was ordered removed. 8 U.S.C. § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to remove the individual to any of these countries may the government remove the individual to "another country whose government will accept [them] into that country." 8 U.S.C. § 1231(b)(2)(E)(vii).

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

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

11 To comport with due process, the government must provide notice of the third
12 country removal and an opportunity to respond. Due process requires "written notice of
13 the country being designated" and "the statutory basis for the designation, i.e., the
14 applicable subsection of § 1231(b)(2)." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019
15 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-CV-
16 10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) ("All removals to third
17 countries, *i.e.*, removal to a country other than the country or countries designated
18 during immigration proceedings as the country of removal on the non-citizen's order of
19 removal, must be preceded by written notice to both the non-citizen and the non-
20 citizen's counsel in a language the non-citizen can understand." (citation omitted));
21 *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process requires notice to
22 the noncitizen of the right to apply for asylum and withholding to the country where
23 they will be removed). The government must be able to show evidence that the third
24 country will accept the individual into that country. *See Himri v. Ashcroft*, 378 F.3d
25 932, 939 (9th Cir. 2004) ("at the time the government proposes a country of removal
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pursuant to § 1231(b)(2)(E)(vii), the government must be able to show that the proposed country *will* accept the [individual]").

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

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

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

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VII. Facts Pertaining to Punitive Banishment to Third Countries

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

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

Punishment and deterrence appear to be the point of the Administration's third country removal scheme. The Administration has reportedly negotiated with countries to have deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to arbitrarily and indefinitely imprison over 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. On July 4, 2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to South Sudan. The men have been detained incommunicado ever since. On July 15, 2025, ICE deported five men to the

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

tiny African nation of Eswatini, including one man from Vietnam, where they are reportedly being held in solitary confinement.

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

On July 9, 2025, ICE issued a new memo to staff instructing that when seeking to remove an individual to a country not designated on that person's removal order, that ICE may deport that person with no procedures for notice or an opportunity to be heard if the State Department confirms that it has received diplomatic assurances that individuals will not be persecuted or tortured. If no diplomatic assurances are received, the ICE memo instructs officers to serve on the individual a Notice of Removal that includes the intended country of removal. It instructs officers not to ask whether the individual fears removal to that country. It states that officers should "generally wait at least 24 hours following service of the Notice of Removal before effectuating removal" but that "[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided reasonable means and opportunity to speak with an attorney prior to removal."

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

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protection under the Convention Against Torture. "USCIS will generally screen within 24 hours." If USCIS determines that the noncitizen does not meet the standard, the individual will be removed. If USCIS determines that the noncitizen has met the standard, then the policy directs ICE to either move to reopen removal proceedings "for the sole purpose of determining eligibility for [withholding of removal protection] and CAT" or designate another country for removal.

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

VIII. The Law Governing Punitive Removal Practices

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

The Court distinguished between deportation, which the Court reasoned is "not a 'banishment,' in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment," and government actions aimed at punishment, such as imprisonment at hard labor in addition to deportation. *Id.* at 236. The Court explained that deportation "is but a method of enforcing the return to his own country of [a non-citizen] who has not complied with the conditions upon the performance of which the government of the nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend." *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730

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1 (1893)). But the Court admonished that the government may not "declare unlawful
2 residence within the country to be an infamous crime, punishable by deprivation of
3 liberty and property . . . unless provision were made that the fact of guilt should first be
4 established by a judicial trial." *Id.* at 237.

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

7 **Grounds for Relief**

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

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

12 Petitioner's present detention is purportedly authorized under 8 U.S.C. § 1231.
13 Detention of non-citizens who have been ordered removed is mandatory during the so-
14 called 90-day "removal period." 8 U.S.C. § 1231(a)(l)(A). This period begins, as
15 relevant here, on the "date the order of removal becomes administratively final." 8
16 U.S.C. § 1231(a)(l)(B)(i). Because Petitioner's removal order became final in 2008, the
17 removal period has long since expired and detention is no longer required under
18 8 U.S.C. § 1231.

19 Not only is detention no longer required, it is no longer allowed under the facts
20 of this case. Given the "serious constitutional threat" the *Zadvydas* Court believed to be
21 posed by the indefinite detention of aliens who had been admitted to the country under
22 the Fifth Amendment's Due Process Clause, 553 U.S. at 699, the Court interpreted 8
23 U.S.C. 1231(a)(6) to permit only detention related to the statute's "basic purpose [of]
24 effectuating an alien's removal[.]" *Id.* at 696-699. The Court further held that the
25 presumptive period during which the detention is reasonably necessary to effectuate an
26 alien's removal is six months; after that, the alien is eligible for conditional release if he

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can show there is "no significant likelihood of removal in the reasonably foreseeable future." *Id* at 701. After the "presumptively reasonable" period of six months' detention, when the noncitizen can "provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," then "the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. "A petitioner's total length of confinement need not be consecutive to reach the six-month presumptively reasonable limit established in *Zadvydas*." *Tang v. Bondi*, No. 2:25-CV-01473-RAJ-TLF, 2025 WL 2637750, at *4 (W.D. Wash. Sept. 11, 2025).

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

The *Zadvydas* grace period lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Panfilov's order of removal was entered in 2008. Exh. A at ¶ 3. Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six months after the entry of his removal order and three months after his 90-day removal period, both of which occurred in 2008. Thus, this threshold requirement is met.

The government has sometimes proposed calculating the removal period differently where, as here, an immigrant is released and then rearrested. But these proposed alternative calculations contradict the statute and *Zadvydas*.

First, the government has sometimes argued that release and rearrest resets the six-month grace period completely, taking the clock back to zero. "Courts . . . broadly agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D.

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La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen,* No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases). This proposal would create an obvious end run around *Zadvydas*, because ICE could detain an immigrant indefinitely by releasing and quickly rearresting them every six months.

Second, the government has sometimes claimed that rearrest at least resets the 90-day removal period under 8 U.S.C. § 1231(a)(1). *See, e.g.*, *Farah v. INS*, No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (adopting this view). But as a court explained in *Bailey v. Lynch*, that view cannot be squared with the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). "Pursuant to the statute, the removal period, and in turn the [six-month] presumptively reasonable period, begins from the latest of 'the date the order of removal becomes administratively final,' the date of a reviewing court's final order where the removal order is judicially removed and that court orders a stay of removal, or the alien's release from detention or confinement where he was detained for reasons other than immigration purposes at the time of his final order of removal." *Id.* None of these statutory starting points have anything to do with whether or when an immigrant is detained. *See id.* Because the statutorily defined removal period has nothing to do with release and rearrest, releasing and rearresting the immigrant cannot reset the removal period.

Third, the government sometimes claims that the immigrant must actually be *detained* for a cumulative six months—if the immigrant is released, the clock pauses, resuming only when the immigrant is rearrested. *See, e.g.*, *Nhean v. Brott*, No. CV 17-28 (PAM/FLN), 2017 WL 2437268, at *2 (D. Minn. May 2, 2017), *report and recommendation adopted*, 2017 WL 2437246 (D. Minn. June 5, 2017) (adopting this view). That misconstrues *Zadvydas*. As the Ninth Circuit has recognized, the six-month

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grace period is pegged to the start of the removal period. *See Ma*, 257 F.3d at 1102 n.5 ("[I]n *Zadvydas*, the Supreme Court read the statute to permit a 'presumptively reasonable' detention period of *six months* after a final order of removal—that is, *three months* after the statutory removal period has ended."); *Rodriguez v. Hayes*, 591 F.3d 1105, 1115 (9th Cir. 2010), *overruled in other part by Jennings v. Rodriguez*, 583 U.S. 281 (2018) ("The [*Zadvydas*] Court determined that for six months following the beginning of the removal period an alien's detention was presumptively authorized."). It is not calculated based on the length of detention. *See Bailey*, 2016 WL 5791407, at *2 (adopting the correct view).

The government's contrary view runs afoul of *Zadvydas*'s reasoning. *Zadvydas* established the six-month grace period to give ICE a fair chance to effectuate the removal before a court gets involved. 533 U.S. at 700–01. That was why the Court chose to expand the grace period beyond the 90-day statutory removal period: because Congress likely did not "believe[] that all reasonably foreseeable removals could be accomplished in that time." *Id.* at 701. But in Mr. Panfilov's case, ICE has had much more than six months effectuate the removal. The final removal order was issued in 2008, over 17 years ago. That Mr. Panfilov was released on supervision for most of that time makes no difference. Even while released, Mr. Panfilov was required to check-in, giving ICE every opportunity to enlist his help in applying for travel documents. Having been given much more than six months to try to remove Mr. Panfilov, there is no principled reason to give ICE an additional grace period.

Finally, even if the grace period had not passed, Mr. Panfilov could still file this petition. That's because the six-month grace period is only "*presumptively* reasonable." *Zadvydas*, 533 U.S. at 701 (emphasis added). Several courts have concluded that an immigrant may rebut that presumption with sufficiently compelling evidence that his removal is not foreseeable. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal.

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Seattle, Washington 98101
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2020) (collecting cases). Such evidence exists here. ICE released Mr. Panfilov in 2008 because it recognized that it could not remove him. ICE has made no progress since then.

For all these reasons, the six-month grace period has been met here.

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

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

The Fifth Amendment, the INA, the CAT, and implementing regulations mandate meaningful notice and opportunity to respond to any attempt to remove Petitioner to a third country in reopened removal proceedings. They also require an opportunity for Petitioner to make a fear-based claim against removal to a third country in reopened removal proceedings. Respondents' policy for third country removals violates these laws because it directs ICE agents to remove individuals to third countries with no notice or process where diplomatic assurances are received and, where no diplomatic assurances are received, to provide flagrantly insufficient notice (6–24 hours) and opportunity to respond, in violation of the statute, regulations, and Fifth Amendment.

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

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1601 Fifth Avenue, Suite 700
Seattle, Washington 98101
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Ground Three: Punitive Third Country Banishment; Violation of Fifth and Eighth Amendments

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

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

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

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

Mr. Panfilov was convicted and completed any sentences for his criminal conviction in 2007. His conviction made him removable from the United States, but the conviction does not authorize the government to inflict, as a matter of executive policy and discretion, additional punishment on him. Respondents' third country removal program is punitive in nature and execution.

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

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

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

13 **Prayer for Relief**

14 Petitioner respectfully requests that this Court:

15 (a) Assume jurisdiction over this action;

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

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

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

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

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

25 Counsel verifies that this petition is authorized by Petitioner. It does not
26 personally bear Petitioner's signature because of the significant difficulty for counsel in

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meeting with Petitioner in person and because mailing the petition to Petitioner and having it mailed back would cause delay that would only extend the period of his unlawful detention. Counsel knows the facts asserted above or alleges them on information and belief, based on information obtained from the government and/or Petitioner.

DATED this 17th day of October 2025.

Respectfully submitted,

s/ *Vicki W.W. Lai*
Assistant Federal Public Defender
Attorney for Igor Panfilov

FEDERAL PUBLIC DEFENDER
1601 Fifth Avenue, Suite 700
Seattle, Washington 98101
(206) 553-1100