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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

XUAN PHAT DUONG,

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) Name: Xuan Phat Duong
- (b) Other names used: none
- 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: A# 

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


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

4 **Decision or Action You Are Challenging**

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

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

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

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

10 (c) Decision or action you are challenging: I was originally ordered deported  
11 in 2003. I was taken into custody by ICE on May 28, 2025.

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

13 7-9. First, second, and third appeals: None

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

15 11. Appeals of immigration proceedings: None.

16 12. Other appeals: None.

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

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

20 **I. Introduction**

21 Xuan Duong is presently detained at the Northwest ICE Processing Center  
22 (NWIPC). He has been held in immigration custody since May 28, 2025. Removal to  
23 his former country of residence is not reasonably foreseeable. His continued detention  
24 is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). He seeks  
25 (a) release; (b) an order preventing removal to a third country without notice and  
26 meaningful opportunity to respond in compliance with the statute and due process in

1 reopened removal proceedings; and (c) an order barring removal to any third country  
2 pursuant to Respondents' punitive removal policy.

3 **II. Jurisdiction and Venue**

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

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

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

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

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

23 **III. Requirements of 28 U.S.C. §§ 2241, 2243**

24 The Court must grant the petition for writ of habeas corpus or issue an order to  
25 show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled  
26 to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to

1 file a return “within three days unless for good cause additional time, not exceeding  
2 twenty days, is allowed.” *Id.*

3 Petitioner is “in custody” for the purpose of § 2241 because he has been detained  
4 by Respondent ICE in Tacoma, Washington, since May 28.

5 **IV. Parties**

6 Xuan Duong is a citizen of Viet Nam. He came to the United States with his  
7 mother in May 1982, when he was 14 years old. Following issuance of an order of  
8 deportation in 2003, he was required by ICE to check in with the agency at least yearly  
9 and has consistently done so. He was arrested during his last check in and was told it  
10 was because of “a change in policy.” Petitioner is detained in the control and custody of  
11 Respondents at NWIPC. As such, Petitioner is a resident of Tacoma, Washington.

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

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

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

23 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day  
24 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant  
25 to a contract with ICE to detain noncitizens. Mr. Scott is sued in his official capacity as  
26

1 the Warden of a federal detention facility. *See Juarez v. Asher*, No. C20-700, 2021 WL  
2 1946222, at \*3–5 (W.D. Wash. May 14, 2021).

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

### 7 **V. Background**

8 Mr. Duong came to the United States as a child, and he has no family in Viet  
9 Nam. He has lived in Washington since coming to the United States. He is married and  
10 has five children, and his elderly mother lives in Seattle. He has no travel documents,  
11 and none have been obtained or provided by his country of origin.

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

13 Petitioner’s removal to Viet Nam is not reasonably foreseeable. ICE has not  
14 obtained a travel document from Viet Nam for Petitioner, nor has Viet Nam agreed to  
15 accept Petitioner. Historically, Viet Nam has accepted very few pre-1995 arrivals for  
16 repatriation, and there is no evidence that the practice has changed.

17 Moreover, the process for the government of Viet Nam to issue a travel  
18 document, if it is issued at all, often takes many months to complete because it involves  
19 both the Ministry of Foreign Affairs (“MOFA”) and Ministry of Public Security  
20 (“MPS”). Once the MOFA receives an official request for a travel document from ICE,  
21 the information is forwarded to the MPS so that the local police can conduct interviews  
22 and site-visits with the Petitioner’s relatives in Viet Nam. Only when this process is  
23 complete will the MPS give the green light to the MOFA to issue the travel document  
24 for repatriation to Viet Nam.

1           **VII. The Legal Framework for Third-Country Removals**

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

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

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

21           Third, if the individual is not removed to either the country of their designation  
22 or the country of which they are a subject, national, or citizen, then the government  
23 shall remove them to any of the following options: (1) the country from which the  
24 individual was admitted to the United States; (2) the country in which is located the  
25 foreign port from which the individual left for the United States or for a foreign  
26 territory contiguous to the United States; (3) the country in which the individual resided

1 before the individual entered the United States and from which the individual entered  
2 the United States; (4) the country in which the individual was born; or (5) the country in  
3 which the individual's birthplace is located when the individual was ordered removed.

4 8 U.S.C. § 1231(b)(2)(E). *Only* “[i]f impracticable, inadvisable, or impossible” to  
5 remove the individual to any of these countries may the government remove the  
6 individual to “another country whose government will accept [them] into that country.”

7 8 U.S.C. § 1231(b)(2)(E)(vii).

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

16 Similarly, Congress codified protections enshrined in the Convention Against  
17 Torture (CAT) prohibiting the government from removing a person to a country where  
18 they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998  
19 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8  
20 U.S.C. § 1231 note) (“It shall be the policy of the United States not to expel, extradite,  
21 or otherwise effect the involuntary return of any person to a country in which there are  
22 substantial grounds for believing the person would be in danger of being subjected to  
23 torture, regardless of whether the person is physically present in the United States.”); 28  
24 C.F.R. § 200.1; §§ 208.16–208.18, 1208.16–1208.18. CAT protection is also  
25 mandatory.  
26

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

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

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

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

### 15 **VIII. Facts Pertaining to Punitive Banishment to Third Countries**

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

20 Respondents reportedly have negotiated with at least 58 countries to accept  
21 deportees from other nations. On June 25, 2025, the *New York Times* reported that  
22 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and  
23 Rwanda—had agreed to accept deportees who are not their own citizens.<sup>1</sup> Since then,  
24 ICE has carried out highly publicized third-country deportations to South Sudan and

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

1 Eswatini. It also attempted—and completed—an “end-run” around the protections of  
2 the Convention Against Torture by deporting a group of migrants to Ghana, which sent  
3 them on to their countries of citizenship despite fears of persecution.

4 Punishment and deterrence appear to be the point of the Administration’s third  
5 country removal scheme. The Administration has reportedly negotiated with countries  
6 to have deportees imprisoned in prisons, camps, or other facilities. The government  
7 paid El Salvador about \$5 million to arbitrarily and indefinitely imprison more than 200  
8 deported Venezuelans in a maximum-security prison notorious for gross human rights  
9 abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of  
10 deportees from countries in Africa and Central Asia and imprisoned them in hotels, a  
11 jungle camp, and a detention center. On July 4, 2025, ICE deported eight men,  
12 including one pre-1995 Vietnamese refugee, to South Sudan. The men have been  
13 detained incommunicado ever since. On July 15, 2025, ICE deported five men to the  
14 tiny African nation of Eswatini, including one man from Viet Nam, where they are  
15 reportedly being held in solitary confinement.

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

22 On July 9, 2025, ICE issued a new memo to staff instructing that when seeking  
23 to remove an individual to a country not designated on that person’s removal order, that  
24 ICE may deport that person without any procedures for notice or an opportunity to be  
25 heard if the State Department confirms that it has received diplomatic assurances that  
26 individuals will not be persecuted or tortured. If no diplomatic assurances are received,

1 the ICE memo instructs officers to serve on the individual a Notice of Removal that  
2 includes the intended country of removal. It instructs officers not to ask whether the  
3 individual is afraid of removal to that country. It states that officers should “generally  
4 wait at least 24 hours following service of the Notice of Removal before effectuating  
5 removal” but that “[i]n exigent circumstances, [ICE] may execute a removal order six  
6 (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is  
7 provided reasonable means and opportunity to speak with an attorney prior to removal.”

8 The memo further instructs that if the noncitizen “does not affirmatively state a  
9 fear of persecution or torture if removed to the country of removal listed on the Notice  
10 of Removal within 24 hours, [ICE] may proceed with removal to the country identified  
11 on the notice.” If the noncitizen “does affirmatively state a fear if removed to the  
12 country of removal,” then ICE will refer the case to U.S. Citizenship and Immigration  
13 Services (“USCIS”) for a screening for eligibility for withholding of removal and  
14 protection under the Convention Against Torture. “USCIS will generally screen within  
15 24 hours.” If USCIS determines that the noncitizen does not meet the standard, the  
16 individual will be removed. If USCIS determines that the noncitizen has met the  
17 standard, then the policy directs ICE to either move to reopen removal proceedings “for  
18 the sole purpose of determining eligibility for [withholding of removal protection] and  
19 CAT” or designate another country for removal.

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

#### 24 **IX. The Law Governing Punitive Removal Practices**

25 It is bedrock law that the U.S. government may not impose or inflict an infamous  
26 punishment for violations of civil immigration law. In 1896, the U.S. Supreme Court

1 ruled that while deportation itself was not a punishment, the government could not  
2 attach punitive conditions to deportation—in that case, imprisonment at hard labor—  
3 absent a criminal charge, trial in a court of law, and the protections of the Fifth, Sixth,  
4 and Eighth Amendments. *Wong Wing v. United States*, 163 U.S. 228, 237 (1896).

5 Importantly, the Court drew a distinction between deportation, which the Court  
6 reasoned is “not a ‘banishment,’ in the sense in which that word is often applied to the  
7 expulsion of a citizen from his country by way of punishment,” and government actions  
8 aimed at punishment, such as imprisonment at hard labor in addition to deportation.  
9 *Id.* at 236. The Court explained that deportation “is but a method of enforcing the return  
10 to his own country of [a non-citizen] who has not complied with the conditions upon  
11 the performance of which the government of the nation, acting within its constitutional  
12 authority and through the proper departments, has determined that his continuing to  
13 reside here shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730  
14 (1893)). But the Court admonished that the government may not “declare unlawful  
15 residence within the country to be an infamous crime, punishable by deprivation of  
16 liberty and property . . . unless provision were made that the fact of guilt should first be  
17 established by a judicial trial.” *Id.* at 237.

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

### 20 **Grounds for Relief**

#### 21 **Ground One: Petitioner’s Continued Detention in Immigration Custody** 22 **Violates the Due Process Clause of the Fifth Amendment to the U.S.** 23 **Constitution Because There Is No Significant Likelihood that Petitioner Will Be** 24 **Removed in the Reasonably Foreseeable Future.**

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

25 Petitioner’s present detention is purportedly authorized under 8 U.S.C. § 1231.

26 Detention of non-citizens who have been ordered removed is mandatory during the so-

1 called 90-day “removal period.” 8 U.S.C. § 1231(a)(1)(A). This period begins, as  
2 relevant here, on the “date the order of removal becomes administratively final.”  
3 8 U.S.C. § 1231(a)(1)(B)(i). Because Petitioner’s removal order became final in 2003,  
4 the removal period has long since expired and detention is no longer required under  
5 8 U.S.C. § 1231.

6 Not only is detention no longer required, it is no longer allowed under the facts  
7 of this case. Given the “serious constitutional threat” the *Zadvydas* Court believed to be  
8 posed by the indefinite detention of non-citizens who had been admitted to the country  
9 under the Fifth Amendment’s Due Process Clause, 553 U.S. at 699, the Court  
10 interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the statute’s “basic  
11 purpose [of] effectuating [a non-citizen]’s removal[.]” *Id.* at 696–99. The Court further  
12 held that the presumptive period during which the detention is reasonably necessary to  
13 effectuate a non-citizen’s removal is six months; after that, the non-citizen is eligible  
14 for conditional release if he can demonstrate that there is “no significant likelihood of  
15 removal in the reasonably foreseeable future.” *Id.* at 701. After the “presumptively  
16 reasonable” period of six months’ detention, when the noncitizen can “provide good  
17 reason to believe that there is no significant likelihood of removal in the reasonably  
18 foreseeable future,” then “the Government must respond with evidence sufficient to  
19 rebut that showing.” *Id.* “A petitioner’s total length of confinement need not be  
20 consecutive to reach the six-month presumptively reasonable limit established in  
21 *Zadvydas*.” *Tang v. Bondi*, No. 2:25-CV-01473-RAJ-TLF, 2025 WL 2637750, at \*4  
22 (W.D. Wash. Sept. 11, 2025).

23 Here, the government cannot rebut the conclusion that Petitioner’s continued  
24 detention in ICE custody violates the Due Process Clause of the Fifth Amendment  
25 under *Zadvydas*. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at \*28–  
26

1 29 (W.D. Wash. Aug. 21, 2025) (granting preliminary injunction requiring release  
2 under *Zadvydas*); *Tang*, 2025 WL 2637750, at \*6 (same).

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

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

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

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

24 **Ground Three: Punitive Third-Country Banishment; Violation of Fifth and**  
25 **Eighth Amendments**

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

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

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

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

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

20 Respondents’ third-country removal program is more than a publicity stunt. The  
21 hundreds of individuals who have already been subjected to it have been banished in  
22 foreign prisons upon arrival without charge and often without communication with the  
23 outside world, including their families and lawyers. Respondents may not subject  
24 Petitioner to its third-country removal program designed to impose a severe punishment  
25 on its subjects. Such conduct “shocks the conscience” under Fifth Amendment  
26

1 substantive due process, is cruel and unusual punishment, and may not be imposed  
2 without charge and a judicial trial.

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

7 **Prayer for Relief**

8 Petitioner respectfully requests that this Court:

9 (a) Assume jurisdiction over this action;

10 (b) Issue an Order directing Respondents to show cause why this Petition  
11 should not be granted within three days;

12 (c) Order Respondents to immediately release Petitioner from custody;

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

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

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

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

21 Counsel verifies that this petition is authorized by Petitioner. It does not  
22 personally bear Petitioner’s signature because of the significant difficulty for counsel in  
23 meeting with Petitioner in person and because mailing the petition to Petitioner and  
24 having it mailed back would cause delay that would only extend the period of his  
25 unlawful detention. Counsel knows the facts asserted above or alleges them on  
26

1 information and belief, based on information obtained from the government and/or  
2 Petitioner.

3 DATED this 24th day of October 2025.

4 Respectfully submitted,

5  
6 *s/ Colin Fieman*  
7 Attorney for Xuan Phat Duong  
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