

DISTRICT JUDGE BENJAMIN H. SETTLE
MAGISTRATE JUDGE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CARLOS BARONIO CASTANEDA
APONTE,

Petitioner,

v.

PAMELA BONDI, Attorney General of
the United States; KRISTI NOEM,
Secretary, United States Department of
Homeland Security; LAURA
HERMOSILLO,¹ Seattle Field Office
Director, United States Citizenship and
Immigration Services; FRANCISCO
VENEGAS, Warden of Immigration
Detention Facility; and the United States
Immigration and Customs Enforcement,

Respondents.

No. CV25-02144-BHS-MLP

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

MOTION TO AMEND

Carlos Castaneda Aponte, through newly appointed counsel, respectfully moves this Court to permit him to amend his previously filed petition under 28 U.S.C. § 2241.

Because Carlos Castaneda Aponte is being held in ICE detention, he filed his Petition through his fiancée, Gina Catherine Castaneda Gutierrez, on October 28, 2025. The Court ordered the Federal Defender’s Office to review the petition and, if appropriate, to indicate whether the Federal Defender’s Office would represent

¹ Laura Hermosillo, Seattle Acting Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement, is substituted for Camilla Wamsley under Federal Rule of Civil Procedure 25(d).

1 Mr. Castaneda Aponte. After confirming Mr. Castaneda Aponte’s financial eligibility
2 and assessing the merits of his petition, undersigned counsel entered an appearance 18
3 days ago, on November 7, 2025.

4 Federal Rule of Civil Procedure 15(a)(1)(A) authorizes a Mr. Castaneda Aponte
5 to amend a pleading within 21 days of filing. After that time, amendments are
6 authorized only with leave of the Court. Fed R. Civ. P. 15 (a)(2). “The court should
7 freely give leave when justice so requires.” *Id.*

8 Mr. Castaneda Aponte therefore asks for leave to amend his petition in the
9 interests of justice. Although this amendment is filed more than 21 days since he filed
10 his petition, it has been only eighteen days since counsel entered an appearance.
11 Respondents will not be prejudiced by amendment because the Court has not yet
12 ordered a response.

13 PRELIMINARY MATTERS

14 Under 28 U.S.C. § 2243, the Court must grant a petition for writ of habeas
15 corpus or issue an order to show cause (“OSC”) to the Respondents “forthwith,” unless
16 Petitioner is not entitled to relief. If an OSC is issued, the Court must require
17 Respondents to file a return “within three days unless for good cause additional time,
18 not exceeding twenty days, is allowed.” *Id.*

19 Mr. Castaneda Aponte recognizes that three days may be unrealistic. He suggests
20 that the Court order Respondents to file a return within fourteen days and order
21 Petitioner to file a reply within five days thereafter.

22 RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

23 Personal Information

- 24 1. (a) Full name: Carlos Baronio Castaneda Aponte
25 (b) Other names used: N/A
26

1 2. Place of confinement:

2 (a) El Valle Detention Facility

3 (b) 1800 Industrial Dr, Raymondville, Raymondville, Texas 78580, pursuant
4 to a contractual arrangement with my custodian, the Immigration and Customs
5 Enforcement Field Office Director at Seattle, Washington.

6 (c) Case number or numbers: My A# will be emailed to Respondents.

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

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

10 **Decision or Action You Are Challenging**

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

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

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

15 (b) Docket number, case number, or opinion number: I have emailed my A#
16 to Respondents.

17 (c) Decision or action you are challenging: I entered the United States in
18 2023, and was released into the community on a \$2,500 bond after applying for asylum.
19 On October 21, 2025, ICE re-detained me without cause or process, and in violation of
20 their own regulations. ICE may endeavor to remove me to a third country.

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: October 21, 2025

1 (b) Date of the removal or reinstatement order: n/a

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 than the appeals listed above, have you filed any other petition,
5 application, or motion about the issues raised in this petition? On October 24, 2025, I
6 filed a petition for a writ of habeas corpus. Dkt. 1. This Court appointed the Federal
7 Defender's Office to represent me. This amended petition is intended to supplement
8 that petition.

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

10 **I. Introduction**

11 Petitioner Castaneda Aponte was originally detained upon entry into the
12 United States in 2023. He applied for asylum and was released on bond, subject to an
13 Order of Release and Recognizance ("OREC"). ICE granted Mr. Castaneda Aponte a
14 work permit.

15 On October 21, 2025, Petitioner was re-detained without any determination by
16 the government that he had become a flight risk or a danger to the community, and
17 without the required notice and process. That redetention violated the applicable
18 regulations.

19 **II. Jurisdiction and Venue**

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

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

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

5 Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because
6 Respondents are agencies or officers of agencies of the United States; Respondents
7 Wamsley and Scott reside in this district; and Petitioner is detained in this district.
8 Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the
9 events or omissions giving rise to Petitioner’s claims occurred in this district, and
10 Mr. Castaneda Aponte filed his petition while detained in this district.

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

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

15 As addressed above on p. 1, 28 U.S.C. § 2243 sets forth time constraints for an
16 OSC. Petitioner is “in custody” for the purpose of § 2241 because he filed his petition
17 while detained by Respondent ICE in Tacoma, Washington.

18 **IV. Parties**

19 Mr. Castaneda Aponte is a citizen of Columbia. He entered the United States in
20 2023 and applied for asylum. His individual hearing is scheduled for November 17,
21 2026.

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

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

4 Respondent Laura Hermosillo is the Field Office Director for ICE Enforcement
5 and Removal Operations (“ERO”) in Seattle, Washington. As the ERO Seattle Field
6 Office Director, she is Petitioner’s immediate custodian, responsible for his detention at
7 NWIPC and is the person with the authority to authorize detention or release.
8 Respondent Hermosillo is sued in her official capacity.

9 Respondent Francisco Venegas is the Warden of the El Valle Detention Center.
10 ICE transferred Mr. Castaneda Aponte after he filed his habeas petition. Respondent
11 Venegas oversees the day-to-day functioning of the El Valle detention center and has
12 immediate physical custody of Petitioner pursuant to a contract with ICE to detain
13 noncitizens. Respondent Scott is sued in his official capacity as the Warden of a federal
14 detention facility. *See Juarez v. Asher*, No. CV20-700, 2021 WL 1946222, at *3–5
15 (W.D. Wash. May 14, 2021).

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

20 **V. Background**

21 Please see the attached Declaration of Carlos Castaneda Aponte for more details.
22 In brief, Mr. Castaneda Aponte fled Columbia and applied for asylum here in the
23 United States. Mr. Castaneda Aponte then remained in immigration custody for 11
24 months before being released on bond. Although he complied with the conditions of
25 release, ICE re-detained Mr. Castaneda Aponte without notice or process outside of his
26

1 home in Portland. ICE has never given Mr. Castaneda Aponte an explanation for his re-
2 arrest.

3 **VI. The Law Pertaining to a Noncitizen’s Procedural Due Process Right Not**
4 **to Be Re-detained Absent a Hearing Establishing that the Individual Is**
5 **Either a Flight Risk or a Danger to the Community**

6 Procedural due process requires notice and an opportunity to be heard. *Mathews*
7 *v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural
8 due process rights, a petitioner must establish (1) a protected property or liberty interest,
9 and (2) a denial of adequate procedural protections. *ASSE Int’l, Inc. v. Kerry*, 803 F.3d
10 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest,
11 including the function involved and the fiscal and administrative burdens that the
12 additional or substitute procedural requirement would entail.” *Rodriguez Diaz v.*
13 *Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335).

14 Petitioner’s interest in not being detained is “the most elemental of liberty
15 interests[.]” *E.A. T.-B. v. Wamsley*, No. CV25-1192-KKE, 2025 WL 2402130, at *3, *9
16 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)) (granting petition and ordering
17 immediate release with no re-detention absent “an immigration court hearing . . . held
18 (with adequate notice) to determine whether detention is appropriate.”). *See also, e.g.,*
19 *Ledesma Gonzalez v. Bostock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, at *8
20 (W.D. Wash. Oct. 7, 2025) (finding detainee has liberty interest).

21 Where there is a liberty interest, determining what procedures are due generally
22 requires examining the factors set forth in *Mathews*:

23 First, the private interest that will be affected by the official action;
24 second, the risk of an erroneous deprivation of such interest through the
25 procedures used, and the probable value, if any, of additional or substitute
26 procedural safeguards; and finally, the Government’s interest, including
the function involved and the fiscal and administrative burdens that the
additional or substitute procedural requirement would entail.

E.A. T.-B., 2025 WL 2402130, at *3 (quoting *Mathews*, 424 U.S. at 335).

1 Given that the liberty interest here is “the most elemental,” numerous courts
2 have found that this first factor weighs heavily in a petitioner’s favor. *See Ledesma*
3 *Gonzalez*, 2025 WL 2841574, at *7 (this factor “must be accorded significant weight”).
4 Petitioner’s status as a noncitizen does not negate that interest. “While the temporary
5 detention of noncitizens may sometimes be justified by concerns about public safety or
6 flight risk, the government’s discretion to incarcerate non-citizens is always constrained
7 by the requirements of due process[.]” *E.A. T.-B.*, 2025 WL 2402130, at *3 (quoting
8 *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

9 In fact, as an individual who was released by ICE, a petitioner has a higher
10 liberty interest than that of the normal ICE detainee. *See Guillermo M.R. v. Kaiser*,
11 No. CV25-5436-RFL, 2025 WL 1810076, at *1 (N.D. Cal. June 30, 2025) (by alleging
12 that he had previously been released by ICE and was about to be re-detained,
13 “Petitioner has asserted liberty interests that differ from the liberty interests of a
14 detained person in *Rodriguez Diaz*”) (referencing *Rodriguez Diaz*, 53 F.4th 1189)).²
15 Similarly, in *Carballo v. Andrews*, No. CV25-978-KES-EPG (HC), 2025 WL 2381464,
16 *4 (E.D. Cal. Aug. 15, 2025), the court indicated that an individual who has been
17 released has had—in contrast to a detainee with no period of release—“an opportunity
18 ‘to form the [] enduring attachments of normal life’” (quoting *Morrissey v. Brewer*,
19 408 U.S. 471, 482 (1972)), and thus has a heightened liberty interest, such as that which
20 led the Supreme Court in *Morrissey* to impose due process requirements on parolees
21 where the state seeks to revoke parole.

22 The second factor, risk of an erroneous deprivation of liberty, also weighs in a
23 petitioner’s favor. A detainee’s release to the community on an OREC reflected ICE’s

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25 ² *Rodriguez* held that a person who had been detained pursuant to an individualized
26 bond hearing where he was found to be a danger or flight risk was not categorically
entitled to a second bond hearing and that, under the facts of that case, the detainee
could not succeed in an as-applied challenge to his detention.

1 determination that Petitioner was neither a flight risk nor a danger to the community.
2 *See, e.g., Ledesma Gonzalez*, 2025 WL 2841574, at *8 (when ICE released Petitioner,
3 “it did so after determining—as required by regulation—that ‘such release would not
4 pose a danger to property or persons, and that the [noncitizen] is likely to appear for any
5 future proceeding.’ . . . By issuing the OREC, ICE necessarily found that [Petitioner]
6 was neither a flight risk nor a danger to the community.”) (quoting 8 C.F.R.
7 § 236.1(c)(8)); *Barrenechea v. Albarran*, No. CV25-7883-VC, 2025 WL 2717279, at
8 *1 (N.D. Cal. Sept. 22, 2025) (“ICE’s release of Barrenechea on his own recognizance
9 in 2020 can only be understood as reflecting a determination that he did not pose a
10 flight risk or danger to the community”).

11 The final factor, the government’s interest in detaining a petitioner without
12 providing a pre-deprivation hearing, also weighs in a petitioner’s favor. “[T]he
13 government’s interest in detaining petitioner without a hearing is low.” *Carballo*, 2025
14 WL 2381464, *8 (cleaned up). “In immigration court, custody hearings are routine and
15 impose a minimal cost.” *Id.* (cleaned up).

16 As stated in *E.A. T.-B.*, 2025 WL 2402130, at *5, “although it would have
17 required the expenditure of finite resources (money and time) to provide Petitioner
18 notice and hearing on ATD violations before arresting and re-detaining him, those costs
19 are far outweighed by the risk of erroneous deprivation of the liberty interest at issue.”

20 The holding that a released detainee was entitled to a pre-deprivation hearing
21 comes not from *Ledesma Gonzalez* and *E.A. T.-B.* alone; dozens of other courts have
22 reached this conclusion as well. *See, e.g., Pinchi v. Noem*, -- F.Supp.3d --, No. CV25-
23 5632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) (“Providing [petitioner]
24 with the procedural safeguard of a pre-detention hearing will have significant value in
25 helping ensure that any future detention has a lawful basis.”); *Doe v. Becerra*, 787
26 F.Supp.3d 1083, 1094 (E.D. Cal. 2025) (“[G]iven that Petitioner was previously found

1 to not be a danger or risk of flight and the unresolved questions about the timing and
2 reliability of the new information, the risk of erroneous deprivation remains high.”);
3 *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18,
4 2025) (“Petitioner’s re-detention without any change in circumstances or procedure
5 establishes a high risk of erroneous deprivation of his protected liberty interest.”).

6 In any hearing held by the government to try to justify re-detention, the
7 government bears the burden to establish flight risk or danger by clear and convincing
8 evidence. *See Sanchez-Rivera v. Matuszewski*, No. CV22-1357-MMA-JLB, 2023 WL
9 139801, at *7 n.9 (S.D. Cal. Jan. 9, 2023) (noting that “an overwhelming majority of
10 courts” have so held). For cases in this district, *see Odimara v. Bostock*, No. CV24-
11 1412-MJP-TLF, 2025 WL 1490395, at *10 (W.D. Wash. Mar. 27, 2025), *report and*
12 *recommendation adopted*, No. CV24-1412 MJP, 2025 WL 1489705 (W.D. Wash.
13 May 23, 2025) (citing cases).

14 In addition, the government should be required to meet its burden based on
15 changed circumstances subsequent to a petitioner’s previous release by ICE. *See Duong*
16 *v. Kaiser*, No. CV25-7598-JST, 2025 WL 2689266, at *10 (N.D. Cal. Sept. 19, 2025)
17 (holding that any re-detention first required a hearing “whether a material change of
18 circumstances justifies [petitioner’s] re-detention”).

19 **VII. The Law Pertaining to a Noncitizen’s Substantive Due Process Right Not**
20 **to Be Re-detained Without Cause**

21 “[S]ubstantive due process prevents the government from engaging in conduct
22 that shocks the conscience, or interferes with rights implicit in the concept of ordered
23 liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). “Freedom from bodily
24 restraint has always been at the core of the liberty protected by the Due Process Clause
25 from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct.
26 1780, 118 L.Ed.2d 437 (1992); *see also Zadvydas*, 533 U.S. at 696, 121 S.Ct. 2491

1 (finding that a noncitizen has a liberty interest “strong enough” to challenge “indefinite
2 and potentially permanent” immigration detention). “Individuals who have been
3 released from custody, even where such release is conditional, have a liberty interest in
4 their continued liberty.” *Doe v. Becerra*, -- F.Supp.3d --, No. CV25-647-DJC-DMC,
5 2025 WL 691664, at *5 (E.D. Cal. Mar. 3, 2025) (citing *Morrissey v. Brewer*, 408 U.S.
6 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 150 (1997); *Gagnon v. Scarpelli*, 411
7 U.S. 778, 782 (1973)).

8 “A due process violation occurs when detention becomes punitive rather than
9 regulatory, meaning there is no regulatory purpose that can rationally be assigned to the
10 detention or the detention appears excessive in relation to its regulatory purpose.”
11 *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); *accord Padilla v. U.S.*
12 *Immigr. & Customs Enf’t.*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023) (“Due
13 process protects against immigration detention that is not reasonably related to the
14 legitimate purpose of effectuating removal or protecting against danger and flight
15 risk.”). The regulatory purpose of immigration detention is to hold a person that is a
16 flight risk or a danger to the community. *In re Guerra*, 24 I.&N. Dec. 37 (B.I.A. 2006).
17 Regulations governing parole identify only those two factors for consideration in the
18 release decision. 8 C.F.R. § 236.1(c)(8). For people who have been ordered deported,
19 8 C.F.R. § 241.13(i)(2) also authorizes re-detention for purposes of removal, so long as
20 respondents can prove that “there is a significant likelihood that the [noncitizen] may be
21 removed in the reasonably foreseeable future.”

22 Thus, if a re-arrest and detention is punitive or exceeds the justifications
23 permitted by regulation, it violates the individual’s substantive right to due process.
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1 **VIII. 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.");
24 28 C.F.R. §§ 200.1, 208.16-208.18, 1208.16-1208.18. CAT protection is also
25 mandatory.

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
5 F.Supp.3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland*
6 *Sec.*, No. CV25-10676-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), *as amended (Aug. 24, 2004)*, *amended sub nom. El*
16 *Himri v. Ashcroft*, No. 03-71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) (“at the
17 time the government proposes a country of removal pursuant to § 1231(b)(2)(E)(vii),
18 the government must be able to show that the proposed country *will* accept the
19 [individual]”).

20 Due process also demands that the government “ask the noncitizen whether he or
21 she fears persecution or harm upon removal to the designated country and memorialize
22 in writing the noncitizen’s response. This requirement ensures DHS will obtain the
23 necessary information from the noncitizen to comply with § (b)(3) and avoids [a dispute
24 about what the officer and noncitizen said].” *Aden*, 409 F.Supp.3d at 1019; *cf. D.V.D.*,
25 2025 WL 1453640, at *1 (“Following notice, the individual must be given a meaningful
26

1 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection
2 prior to removal.”) (emphasis omitted).

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

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

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

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

22 Respondents reportedly have negotiated with at least 58 countries to accept
23 deportees from other nations. On June 25, 2025, the *New York Times* reported that
24 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
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1 Rwanda—had agreed to accept deportees who are not their own citizens.³ Since then,
2 ICE has carried out highly publicized third-country deportations to South Sudan and
3 Eswatini. It also attempted—and completed—an “end-run” around the protections of
4 the Convention Against Torture by deporting a group of migrants to Ghana, which sent
5 them on to their countries of citizenship despite fears of persecution.

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

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

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25 _____
26 ³ 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://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html) [<https://perma.cc/64G9-XYGB>].

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

13 The memo further instructs that if the noncitizen “does not affirmatively state a
14 fear of persecution or torture if removed to the country of removal listed on the Notice
15 of Removal within 24 hours, [ICE] may proceed with removal to the country identified
16 on the notice.” If the noncitizen “does affirmatively state a fear if removed to the
17 country of removal,” then ICE will refer the case to U.S. Citizenship and Immigration
18 Services (“USCIS”) for a screening for eligibility for withholding of removal and
19 protection under the Convention Against Torture. “USCIS will generally screen within
20 24 hours.” If USCIS determines that the noncitizen does not meet the standard, the
21 individual will be removed. If USCIS determines that the noncitizen has met the
22 standard, then the policy directs ICE to either move to reopen removal proceedings “for
23 the sole purpose of determining eligibility for [withholding of removal protection] and
24 CAT” or designate another country for removal.

25 The eight men who were ultimately deported to South Sudan all claimed fear of
26 removal to South Sudan. None of those men were provided a fear screening by a

1 USCIS officer or otherwise, despite the fact that they were held by ICE for six weeks
2 on a U.S. military base in Djibouti before their final removal to South Sudan.

3 **X. The Law Governing Punitive Removal Practices**

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

10 Importantly, the Court drew a distinction between deportation, which the Court
11 reasoned is “not a ‘banishment,’ in the sense in which that word is often applied to the
12 expulsion of a citizen from his country by way of punishment,” and government actions
13 aimed at punishment, such as imprisonment at hard labor in addition to deportation. *Id.*
14 at 236. The Court explained that deportation “is but a method of enforcing the return to
15 his own country of [a noncitizen] who has not complied with the conditions upon the
16 performance of which the government of the nation, acting within its constitutional
17 authority and through the proper departments, has determined that his continuing to
18 reside here shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730
19 (1893)). But the Court admonished that the government may not “declare unlawful
20 residence within the country to be an infamous crime, punishable by deprivation of
21 liberty and property . . . unless provision were made that the fact of guilt should first be
22 established by a judicial trial.” *Id.* at 237.

23 Deportation of individuals to third countries to be imprisoned or harmed is
24 unquestionably punishment.

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Grounds for Relief

Ground One: Procedural Due Process

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

Mr. Castaneda Aponte has a liberty interest in not being re-detained. Applying the three-factor test of *Mathews*, that interest is high. The risk of any erroneous deprivation is also high, because ICE’s previous release of Mr. Castaneda Aponte necessarily reflected a conclusion that he was not a flight risk or a danger to the community. Here, as in *Ledesma Gonzalez*, “ICE revoked that release without any reassessment of those factors.” 2025 WL 2841574, at *8.

Finally, the cost to the government of providing a hearing is low, and significantly outweighed by the other factors.

Ground Two: Substantive Due Process

ICE’s refusal to explain why Mr. Castaneda Aponte was detained despite compliance with his bond proves that his re-arrest was punitive and without other justification.

Respondents’ policy against parole in all cases supports that conclusion, as do many reported statements advocating for increased arrests for their own sake. Respondents’ refusal to address widespread mistreatment of detained immigrants also supports that conclusion. *See* Nicole Acevedo, *Hundreds of alleged human rights abuses in immigrant detention, report finds*, NBC News (Aug. 5, 2025), <https://www.nbcnews.com/news/us-news/immigration-detention-human-rights-abuses-report-rcna222499> [<https://perma.cc/3XLR-6XHX>]; Center for Human Rights, *Conditions at the Northwest Detention Center*, University of Washington, <https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/> [<https://perma.cc/QF24-UR6C>] (last visited November 25, 2025).

1 **Ground Three: Failure to Comply with Regulations**

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

3 Respondents have not complied with their obligations under 8 C.F.R. § 241.13
4 and therefore Petitioner is entitled to release. On information and belief,

5 a) Respondents did not make a determination either that, on account of changed
6 circumstances, there was a significant likelihood that Petitioner would be removed in
7 the reasonably foreseeable future or that Petitioner violated the conditions of release;

8 b) to the extent that Respondents made such a determination, they lacked an
9 adequate basis to do so and did not properly consider the factors specified in the
10 regulations;

11 c) Respondents did not timely notify Petitioner in writing of the reasons for
12 revocation in a manner that he could reasonably respond to;

13 d) Respondents did not conduct the required initial informal interview;

14 e) Respondents did not afford Petitioner an opportunity to respond; and

15 f) Respondents did not advise Petitioner of the right to request a review of the
16 detention and did not comply with the requirements for such review.

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

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

21 The Fifth Amendment, the INA, the CAT, and implementing regulations
22 mandate meaningful notice and opportunity to respond to any attempt to remove
23 Petitioner to a third country in reopened removal proceedings. They also require an
24 opportunity for Petitioner to make a fear-based claim against removal to a third country
25 in reopened removal proceedings. Respondents' policy for third-country removals
26 violates all of these laws because it directs ICE agents to remove individuals to third
countries without any notice or process *at all* where diplomatic assurances are received

1 and, where no diplomatic assurances are received, to provide flagrantly insufficient
2 notice (6–24 hours) and opportunity to respond, in violation of the statute, regulations,
3 and Fifth Amendment.

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

11 **Ground Five: Punitive Third-Country Banishment; Violation of Fifth and**
12 **Eighth Amendments**

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

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

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

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

25 The government has arranged for third countries to receive deportees and
26 imprison them on arrival, possibly indefinitely and often in abhorrent conditions. It has

1 selected countries notorious for human rights abuses and instability for third-country
2 removal arrangements. It has targeted individuals with criminal convictions for third-
3 country removals where they will be imprisoned and harmed and has publicly broadcast
4 those removals to demonize and dehumanize the individuals subjected to these practices
5 and strike fear in the immigrant community to send a message of retribution and
6 deterrence.

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

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

19 **Prayer for Relief**

20 Petitioner respectfully requests that this Court:

- 21 (a) Assume jurisdiction over this action;
- 22 (b) Issue an Order directing Respondents to show cause why this Petition
23 should not be granted within five days;
- 24 (c) Order Respondents to immediately release Petitioner from custody;
- 25 (d) Order that Respondents may not re-detain Petitioner without first holding
26 a hearing before a neutral decisionmaker at which the government bears the burden of

1 establishing flight risk or danger to the community by clear and convincing evidence
2 based on changed circumstances since Petitioner was previously released;

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

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

9 (g) Order all other relief that the Court deems just and proper.

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

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

18 DATED this 26th day of November 2025.

19 Respectfully submitted,

20
21 *s/ Gregory Murphy*
22 Assistant Federal Public Defender
23 Attorney for Carlos Castaneda Aponte
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