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3  
4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 SAMAN ESHAGHPOUR

7 Petitioner,

8 v.

9 PAMELA BONDI, Attorney General of  
10 the United States; KRISTI NOEM,  
11 Secretary, United States Department of  
12 Homeland Security; CAMMILLA  
13 WAMSLEY, Seattle Field Office  
14 Director, United States Citizenship and  
Immigration Services; BRUCE SCOTT,  
15 Warden of Immigration Detention  
Facility; and the United States  
Immigration and Customs Enforcement,

16 Respondents.

) No.

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

17 **PRELIMINARY MATTERS**

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

22 Petitioner, Saman Eshaghpour, recognizes that three days may be unrealistic.  
23 Mr. Eshaghpour suggests that the Court order Respondents to file a return within five  
24 days and order Mr. Eshaghpour to file a reply within five days thereafter.

25 Furthermore, Mr. Eshaghpour asks this Court to order Respondents not to  
26 remove Mr. Eshaghpour from this district while this case is pending, both "[b]ecause

1 transfer of Petitioner to another district could interfere with his access to counsel and  
2 ability to participate in the proceedings,” *Tran v. Bondi, et al.*, No. CV25-1897-JLR-  
3 BAT, Dkt. 6 at 3 (W.D. Wash. Oct. 7, 2025) (*sua sponte* issuing such an order in a  
4 § 2241 case involving an ICE detainee), and “under the Court’s inherent power to  
5 preserve its ability to hear the case.” *Alves v. U.S. Dep’t of Just.*, No. CV25-306-KC,  
6 2025 WL 2629763, at \*5 (W.D. Tex. Sept. 12, 2025) (*same*). *See also M.M. v.*  
7 *Wansley*, No. CV25-2074-TMC, 2025 WL 3053023, at \*1 (W.D. Wash. Oct. 31, 2025)  
8 (*same*).<sup>1</sup>

9 **RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242**

10 **Personal Information**

- 11 1. (a) Full name: Saman Eshaghpour  
12 (b) Other names used: N/A  
13 2. Place of confinement:  
14 (a) Northwest Immigration Processing Center (NWIPC)  
15 (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a  
16 contractual arrangement with my custodian, the Immigration and Customs Enforcement  
17 Field Office Director at Seattle, Washington.  
18 (c) Case number or numbers [ICE file number, if known]: My A# is 079-  
19 816-350.

20  
21  
22 <sup>1</sup> For just a few examples of other courts issuing such an order in § 2241 cases  
23 involving ICE detainees within the past few months (or reflecting the court had  
24 previously issued such an order), *see, e.g., Bustos v. Raycraft*, No. CV25-13202, 2025  
25 WL 3022294, at \*2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. CV25-513-SDN,  
26 2025 WL 3003708, at \*1 (D. Me. Oct. 27, 2025) (order issued same day petition was  
filed); *Lopez Pop v. Noem*, No. CV25-2589-SSS-SSC, 2025 WL 3050095, at \*7 (C.D.  
Cal. Oct. 3, 2025); *Singh v. Delaney Hall*, No. CV25-16018-GC, 2025 WL 2772644, at  
\*1 (D.N.J. Sept. 29, 2025); *Hom v. Ceja*, No. CV25-2221-WJM-TPO, 2025 WL  
2801449, at \*2 (D. Colo. Sept. 17, 2025).

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 079-816-350.

10 (c) Decision or action you are challenging: I was originally ordered deported  
11 in August 2014. I was detained by ICE in June 2014 and held for approximately 180  
12 days before I was released on an order of supervision. I was required to check-in with  
13 ICE from approximately January 2015 until I was taken into custody by ICE on July 9,  
14 2025. Cumulatively, I have been detained in ICE custody for approximately ten months  
15 following my final deportation order.

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

17 7-9. First, second, and third appeals: None

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

19 11. Appeals of immigration proceedings: N/A

20 Does this case concern immigration proceedings? Yes

21 (a) Date you were taken into immigration custody: August 2014 and then  
22 July 9, 2025.

23 (b) Date of the removal or reinstatement order: August 2014

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

25 (d) Did you appeal the decision to the United States Court of Appeals? No.  
26

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

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

4 **I. Introduction**

5 Mr. Eshaghpour is presently detained at the Northwest ICE Processing Center  
6 (“NWIPC”). He has been held in immigration custody for a cumulative amount of time  
7 that is greater than ten months. Removal to the former country of residence, Iran, is not  
8 reasonably foreseeable. His continued detention is therefore in violation of *Zadvydas v.*  
9 *Davis*, 533 U.S. 678, 689 (2001). He seeks (a) release; (b) an order preventing removal  
10 to a third country without notice and meaningful opportunity to respond in compliance  
11 with the statute and due process in reopened removal proceedings; and (c) an order  
12 barring removal to any third country pursuant to Respondents’ punitive removal policy.

13 Mr. Eshaghpour came to the United States as a refugee in 2001. Following a  
14 conviction and sentence in Washington County, he was detained by immigration. A  
15 final order of deportation was issued in August 2014. After six months, in  
16 approximately February 2015, he was released under an Order of Release and  
17 Recognizance (“OREC”). For the first three months of his release, he was required to  
18 report to ICE monthly. After three months, he was required to report to ICE every six  
19 months, and then yearly. He complied with his bond conditions. On July 9, 2025, while  
20 reporting to ICE, he was re-detained without any determination by the government that  
21 he had become a flight risk or a danger to the community.

22 **II. Jurisdiction and Venue**

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

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

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

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

15 Because Mr. Eshaghpour is seeking relief related only to his custody status,  
16 which is not inconsistent with an order of removal, exhaustion of administrative  
17 remedies, if any, is not required.

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

19 As addressed above on p. 1, 28 U.S.C. § 2243 sets forth time constraints for an  
20 OSC. Mr. Eshaghpour is "in custody" for the purpose of § 2241 because he has been  
21 detained by Respondent ICE in Tacoma, Washington, since July 9, 2025.

### 22 **IV. Parties**

23 Mr. Eshaghpour is a citizen of Iran. He has a final order of removal with Iran as  
24 the country designated for removal. Mr. Eshaghpour is detained in the control and  
25 custody of Respondents at NWIPC. As such, Mr. Eshaghpour is a resident of Tacoma,  
26 Washington.

1 Respondent Pamela Bondi is the Attorney General of the United States. In this  
2 capacity, Respondent Bondi is the legal custodian of Mr. Eshaghpour. Respondent  
3 Bondi is sued in her official capacity.



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

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

12 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day  
13 functioning of the NWIPC, and has immediate physical custody of Mr. Eshaghpour  
14 pursuant to a contract with ICE to detain noncitizens. Respondent Scott is sued in his  
15 official capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No.  
16 CV20-700, 2021 WL 1946222, at \*3-5 (W.D. Wash. May 14, 2021).

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

21 **V. Background**

22 Mr. Eshaghpour was born in Iran in 1968. He is a member of the Baha'i Faith, a  
23 religious minority in Iran that has been persecuted there for more than a century and  
24 even more severely since the 1979 Iranian Revolution. His father was killed by   
25  in 1982 due to his religious beliefs.

1 Mr. Eshaghpour fled Iran in 2001 due to religious persecution. After a brief stay  
2 in Turkey, he arrived in the United States as a refugee that same year, claiming  
3 persecution for his religious beliefs. Mr. Eshaghpour is married and has two adult  
4 children, ages 21 and 25. His wife and children are United States citizens.

5 Upon information and belief, Mr. Eshaghpour was convicted in Washington  
6 County, Oregon, of two counts of First Degree Sexual Abuse and sentenced to 36  
7 months of imprisonment. In approximately August 2014, a final order of deportation  
8 was issued, ordering his removal to Iran. He was detained for approximately six months  
9 before being released on supervision because his removal to Iran was not reasonably  
10 foreseeable. He was directed to check in with ICE periodically after his release. Since  
11 2014, he has complied with his release conditions. On July 9, 2025, he was detained  
12 after he arrived at the Portland ICE facility for an in-person check-in. He was told he  
13 was arrested because the United States had recently bombed Iran. Mr. Eshaghpour has  
14 cooperated with ICE to try to get travel documents to Iran.

15 **VL Particularized Facts Pertaining to Mr. Eshaghpour's Continued**  
16 **Detention**

17 Mr. Eshaghpour cannot presently be returned to Iran. During his time in ICE  
18 custody in 2014 and, more recently, ICE informed Mr. Eshaghpour that it requested  
19 travel documents for him from Iran but there has been no response from Iranian  
20 officials. ICE has informed him that it is unable to remove him to Iran. ICE officials  
21 have informed Mr. Eshaghpour that they have considered sending him to a country with  
22 a Kurdish population, but cannot do so because Mr. Eshaghpour would be persecuted  
23 for his religious beliefs in those countries as well. When asked by an ICE officer for  
24 alternative countries, Mr. Eshaghpour offered Australia, Japan, or Canada. The ICE  
25 officer told him that would not be possible.  
26

1 ICE considers Iran as one of only 15 “uncooperative” countries that does not  
2 facilitate return of its nationals. Ex. 1. Iran does not “conduct[] interviews, issu[e] travel  
3 documents in a timely manner, [or] accept[] the physical return of their nationals by  
4 scheduled commercial or charter flights consistent with ICE and/or foreign government  
5 removal guidelines.” *Id.* Removal to Iran is not reasonably foreseeable. ICE has had  
6 more than ten years to get travel documents for Mr. Eshaghpour and Iran has not agreed  
7 to accept him.

8 **VII. The Legal Framework Regarding Indefinite Detention Pending Removal**

9 **A. Detention is unconstitutional when there is not a significant  
10 likelihood of removal in the reasonably foreseeable future.**

11 Under 8 U.S.C. § 1231, detention of noncitizens who have been ordered  
12 removed is mandatory during the so-called 90-day “removal period.” 8 U.S.C.  
13 § 1231(a)(1)(A). This period begins on the “date the order of removal becomes  
14 administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i). But the *Zadvydas* Court believed  
15 that a “serious constitutional threat” under the Fifth Amendment’s Due Process Clause  
16 was posed by the indefinite detention of noncitizens. 533 U.S. at 699. The Court  
17 therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the  
18 statute’s “basic purpose [of] effectuating [a noncitizen]’s removal[.]” *Id.* at 696–99.

19 The Court further held that the presumptive period during which the detention is  
20 reasonably necessary to effectuate a noncitizen’s removal is six months. After that, the  
21 noncitizen is eligible for conditional release if there is “no significant likelihood of  
22 removal in the reasonably foreseeable future.” *Id.* at 701. After the “presumptively  
23 reasonable” period of six months, when the noncitizen can “provide[] good reason to  
24 believe that there is no significant likelihood of removal in the reasonably foreseeable  
25 future,” then “the Government must respond with evidence sufficient to rebut that  
26 showing.” *Id.*

1 The issue is not whether Respondents have been able to remove some  
2 individuals to a given country. Rather, the court must make an individualized analysis  
3 as to a particular detainee. *See Nguyen v. Scott*, – F.Supp.3d –, 2025 WL 2419288, \*17  
4 (W.D. Wash. Aug. 21, 2025) (stating increase in total number of removals to Vietnam,  
5 including those who entered pre-1995, fails to rebut the evidence presented by  
6 petitioner that “his individual circumstances make removal unlikely.”). Facts that are  
7 part of the analysis include whether Respondent provides evidence that the request was  
8 submitted to Iran, whether Iran has acknowledged receipt of the request or otherwise  
9 responded to Mr. Eshaghpour’s request, and the anticipated wait time for a response  
10 from Iran.

11 When a petitioner has been detained for a total of six months after a final order  
12 of removal, the *Zadvydas* presumptively reasonable period has expired, even if the  
13 petitioner’s current period of detention is less than six months. “A petitioner’s total  
14 length of confinement need not be consecutive to reach the six-month presumptively  
15 reasonable limit established in *Zadvydas*.” *Tang v. Bondi*, No. CV25-1473-RAJ-TLF,  
16 2025 WL 2637750, at \*4 (W.D. Wash. Sept. 11, 2025).

17 **B. The six-month presumptively reasonable period runs from the**  
18 **final removal order, regardless of whether Mr. Eshaghpour**  
19 **was detained during that period.**

20 The six month presumptively reasonable period runs unabated once petitioner’s  
21 removal order was final and does not run solely during any period when  
22 Mr. Eshaghpour was detained. In *Tran v. Bondi*, No. C25-01897-JLR, 2025 WL  
23 3140462 (W.D. Wash. Nov. 10, 2025), the Hon. James L. Robert held that petitioner’s  
24 “*Zadvydas* grace period ended six months following the entry of the order of his  
25 removal[.]” *Id.* at \*3. The court reached that conclusion even though the petitioner was  
26 not detained until two years later, and Respondents argued that only five months of the  
*Zadvydas* six-month period had expired, based on the times when petitioner was

1 detained. *See* Federal Respondents' Return Memorandum and Motion to Dismiss, Dkt.  
2 13 at 1, 7 (Oct. 27, 2025). *See also, e.g., Tadros v. Noem*, No. CV25-4108-EP, 2025  
3 WL 1678501, at \*3 (D.N.J. June 13, 2025) (finding that "six-month detention period  
4 under *Zadvydas*" period began upon affirmance of removal order, rejecting argument  
5 that petitioner could not obtain habeas relief because he had not yet been in detention  
6 for six months); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009)  
7 (concluding that presumptively reasonable six month period expired six  
8 months after entry of removal order, even though petitioner was not in custody for any  
9 of that period); *Balley v. Lynch*, No. CV16-2600 (JLL), 2016 WL 5791407, at \*2  
10 (D.N.J. Oct. 3, 2016) (where order of removal became effective upon petitioner's  
11 release from underlying conviction to ICE authorities, after which he was held only  
12 "briefly" before being released on an order of supervision, the *Zadvydas* presumptively  
13 reasonable period ended "long before he was taken back into custody[.]").

14 A contrary view would run afoul of *Zadvydas*'s reasoning. *Zadvydas* established  
15 the six-month grace period to give ICE a fair chance to effectuate the removal before a  
16 court gets involved. 533 U.S. at 700–01. That was why the court chose to expand the  
17 grace period beyond the 90-day statutory removal period: because Congress likely did  
18 not "believe[] that all reasonably foreseeable removals could be accomplished in that  
19 time." *Id.* at 701. Giving the government time to remove a noncitizen does not require  
20 that the individual be detained for all of that period. ICE can just as effectively take  
21 steps to arrange an individual's removal whether he is in a cell or on the street.

22 **VIII. The Law Pertaining to a Noncitizen's Procedural Due Process Right Not**  
23 **to Be Re-detained Absent a Hearing Establishing that the Individual Is**  
24 **Either a Flight Risk or a Danger to the Community**

25 Procedural due process requires notice and an opportunity to be heard. *Mathews*  
26 *v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural  
due process rights, a petitioner must establish (1) a protected property or liberty interest,

1 and (2) a denial of adequate procedural protections. *ASSE Int'l, Inc. v. Kerry*, 803 F.3d  
2 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest,  
3 including the function involved and the fiscal and administrative burdens that the  
4 additional or substitute procedural requirement would entail.” *Rodriguez Diaz v.*  
5 *Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335).

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

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

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

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

22 Given that the liberty interest here is “the most elemental,” numerous courts  
23 have found that this first factor weighs heavily in a petitioner’s favor. *See Ledesma*  
24 *Gonzalez*, 2025 WL 2841574, at \*7 (this factor “must be accorded significant weight”).

25 Mr. Eshaghpour’s status as a noncitizen does not negate that interest. “While the  
26 temporary detention of noncitizens may sometimes be justified by concerns about  
public safety or flight risk, the government’s discretion to incarcerate non-citizens is

1 always constrained by the requirements of due process[.]” *E.A. T.-B.*, 2025 WL  
2 2402130, at \*3 (quoting *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

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

16 The second factor, risk of an erroneous deprivation of liberty, also weighs in a  
17 Mr. Eshaghpour’s favor. A detainee’s release to the community on an OREC reflected  
18 ICE’s determination that Mr. Eshaghpour was neither a flight risk nor a danger to the  
19 community. See, e.g., *Ledesma Gonzalez*, 2025 WL 2841574, at \*8 (when ICE released  
20 Petitioner, “it did so after determining—as required by regulation—that ‘such release  
21 would not pose a danger to property or persons, and that the [noncitizen] is likely to  
22 appear for any future proceeding.’ . . . By issuing the OREC, ICE necessarily found that  
23 [Mr. Eshaghpour] was neither a flight risk nor a danger to the community.”) (quoting 8  
24

25 <sup>2</sup> *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 C.F.R. § 236.1(c)(8)); *Barrenechea v. Albarran*, No. CV25-7883-VC, 2025 WL  
2 2717279, at \*1 (N.D. Cal. Sept. 22, 2025) (“ICE’s release of Barrenechea on his own  
3 recognizance in 2020 can only be understood as reflecting a determination that he did  
4 not pose a flight risk or danger to the community”).

5 The final factor, the government’s interest in detaining Mr. Eshaghpour without  
6 providing a pre-deprivation hearing, also weighs in his favor. “[T]he government’s  
7 interest in detaining petitioner without a hearing is low.” *Carballo*, 2025 WL 2381464,  
8 \*8 (citation modified). “In immigration court, custody hearings are routine and impose  
9 a minimal cost.” *Id.* (citation modified).

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

14 The holding that a released detainee was entitled to a pre-deprivation hearing  
15 comes not from *Ledesma Gorzalez* and *E.A. T.-B.* alone; dozens of other courts have  
16 reached this conclusion as well. *See, e.g., Pirchi v. Noem*, – F.Supp.3d –, No. CV25-  
17 5632-PCP, 2025 WL 2084921, at \*5 (N.D. Cal. July 24, 2025) (“Providing [petitioner]  
18 with the procedural safeguard of a pre-detention hearing will have significant value in  
19 helping ensure that any future detention has a lawful basis.”); *Doe v. Becerra*, 787  
20 F.Supp.3d 1083, 1094 (E.D. Cal. 2025) (“[G]iven that Petitioner was previously found  
21 to not be a danger or risk of flight and the unresolved questions about the timing and  
22 reliability of the new information, the risk of erroneous deprivation remains high.”);  
23 *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at \*4 (S.D.N.Y. June 18,  
24 2025) (“Petitioner’s re-detention without any change in circumstances or procedure  
25 establishes a high risk of erroneous deprivation of his protected liberty interest.”).

1 In any hearing held by the government to try to justify re-detention, the  
2 government bears the burden to establish flight risk or danger by clear and convincing  
3 evidence. *See Sanchez-Rivera v. Matuszewski*, No. CV22-1357-MMA-JLB, 2023 WL  
4 139801, at \*7 n.9 (S.D. Cal. Jan. 9, 2023) (noting that “an overwhelming majority of  
5 courts” have so held). For cases in this district, *see Odimara v. Bostock*, No. CV24-  
6 1412-MJP-TLF, 2025 WL 1490395, at \*10 (W.D. Wash. Mar. 27, 2025), *report and*  
7 *recommendation adopted*, No. CV24-1412 MJP, 2025 WL 1489705 (W.D. Wash.  
8 May 23, 2025) (citing cases).

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

14 **IX. The Law Pertaining to a Noncitizen’s Substantive Due Process Right Not**  
15 **to Be Re-detained Without Cause**

16 “[S]ubstantive due process prevents the government from engaging in conduct  
17 that shocks the conscience, or interferes with rights implicit in the concept of ordered  
18 liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). “Freedom from bodily  
19 restraint has always been at the core of the liberty protected by the Due Process Clause  
20 from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct.  
21 1780, 118 L.Ed.2d 437 (1992); *see also Zadvydas*, 533 U.S. at 696, 121 S.Ct. 2491  
22 (finding that a noncitizen has a liberty interest “strong enough” to challenge “indefinite  
23 and potentially permanent” immigration detention). “Individuals who have been  
24 released from custody, even where such release is conditional, have a liberty interest in  
25 their continued liberty.” *Doe v. Becerra*, – F.Supp.3d –, No. CV25-647-DJC-DMC,  
26 2025 WL 691664, at \*5 (E.D. Cal. Mar. 3, 2025) (citing *Morrissey v. Brewer*, 408 U.S.

1 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 150 (1997); *Gagnon v. Scarpelli*, 411  
2 U.S. 778, 782 (1973)).

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

17 Thus, if a re-arrest and detention is punitive or exceeds the justifications  
18 permitted by regulation, it violates the individual’s substantive right to due process.

#### 19 X. The Legal Framework for Third-Country Removals

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

23 First, an individual with a removal order may designate the country to which  
24 they want to be removed, and the government *shall* remove the individual to that  
25 country. 8 U.S.C. § 1231(b)(2)(A). The government may disregard that designation if  
26 (1) the individual fails to designate a country promptly; (2) the government of that

1 country does not inform the U.S. government finally, within 30 days after the date the  
2 U.S. government first inquires, whether the government will accept the individual into  
3 that country; (3) the government of the country is not willing to accept the individual  
4 into the country; or (4) the government decides that removing the individual to that  
5 country is prejudicial to the United States. 8 U.S.C. § 1231(b)(2)(C).

6 Second, if the individual is not removed to the country they designated under  
7 § 1231(b)(2)(A), the government shall remove the individual to the country of which  
8 the individual is a “subject, national, or citizen” unless the government of that country  
9 does not inform the U.S. government of the individual within 30 days after first inquiry  
10 or within another reasonable period of time whether the government will accept the  
11 individual into the country or the country is not willing to accept the individual into the  
12 country. 8 U.S.C. § 1231(b)(2)(D).

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

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

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

19 To comport with the requirements of due process, the government must provide  
20 notice of the third-country removal and an opportunity to respond. Due process requires  
21 “written notice of the country being designated” and “the statutory basis for the  
22 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409  
23 F.Supp.3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland*  
24 *Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at \*1 (D. Mass. May 21, 2025) (“All  
25 removals to third countries, i.e., removal to a country other than the country or  
26 countries designated during immigration proceedings as the country of removal on the

1 non-citizen's order of removal, must be preceded by written notice to both the non-  
2 citizen and the non-citizen's counsel in a language the non-citizen can understand."  
3 (citation omitted); *Andriarian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process  
4 requires notice to the noncitizen of the right to apply for asylum and withholding to the  
5 country where they will be removed). The government must be able to show evidence  
6 that the third country will accept the individual into that country. *See Himri v. Ashcroft*,  
7 378 F.3d 932, 939 (9th Cir. 2004), *as amended* (Aug. 24, 2004), *amended sub nom.*  
8 *El Himri v. Ashcroft*, No. CV03-71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004)  
9 ("[A]t the time the government proposes a country of removal pursuant to  
10 § 1231(b)(2)(E)(vii), the government must be able to show that the proposed country  
11 will accept the [individual].").

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

20 If the noncitizen claims fear, measures must be taken to ensure that the  
21 noncitizen can seek asylum, withholding, and relief under CAT before an immigration  
22 judge in reopened removal proceedings. *Cf. D.V.D.*, 2025 WL 1453640, at \*1 (requiring  
23 the government to move to reopen the noncitizen's immigration proceedings if the  
24 individual demonstrates "reasonable fear" and to provide "a meaningful opportunity,  
25 and a minimum of fifteen days, for the non-citizen to seek reopening of their  
26 immigration proceedings" if the noncitizen is found to not have demonstrated

1 “reasonable fear”); *Aden*, 409 F.Supp.3d at 1019 (requiring notice and time for a  
2 respondent to file a motion to reopen and seek relief).

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

#### 8 **XL Facts Pertaining to Punitive Banishment to Third Countries**

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

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

21 Punishment and deterrence appear to be the point of the Administration’s third-  
22 country removal scheme. The Administration has reportedly negotiated with countries  
23 to have deportees imprisoned in prisons, camps, or other facilities. The government  
24 paid El Salvador about \$5 million to arbitrarily and indefinitely imprison more than 200

25  
26 <sup>3</sup> 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 deported Venezuelans in a maximum-security prison notorious for gross human rights  
2 abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of  
3 deportees from countries in Africa and Central Asia and imprisoned them in hotels, a  
4 jungle camp, and a detention center. On July 4, 2025, ICE deported eight men,  
5 including one pre-1995 Vietnamese refugee, to South Sudan. The men have been  
6 detained incommunicado ever since. On July 15, 2025, ICE deported five men to the  
7 tiny African nation of Eswatini, including one man from Vietnam, where they are  
8 reportedly being held in solitary confinement.

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

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

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

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

## 17 XII. The Law Governing Punitive Removal Practices

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

24 Importantly, the Court drew a distinction between deportation, which the Court  
25 reasoned is “not a ‘banishment,’ in the sense in which that word is often applied to the  
26 expulsion of a citizen from his country by way of punishment,” and government actions

1 aimed at punishment, such as imprisonment at hard labor in addition to deportation. *Id.*  
2 at 236. The Court explained that deportation “is but a method of enforcing the return to  
3 his own country of [a noncitizen] who has not complied with the conditions upon the  
4 performance of which the government of the nation, acting within its constitutional  
5 authority and through the proper departments, has determined that his continuing to  
6 reside here shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730  
7 (1893)). But the Court admonished that the government may not “declare unlawful  
8 residence within the country to be an infamous crime, punishable by deprivation of  
9 liberty and property . . . unless provision were made that the fact of guilt should first be  
10 established by a judicial trial.” *Id.* at 237.

11 Deportation of individuals to third countries to be imprisoned or harmed is  
12 unquestionably punishment.

### 13 Grounds for Relief

#### 14 A. Ground One: Mr. Eshaghpour’s Continued Detention in 15 Immigration Custody Violates the Due Process Clause of the 16 Fifth Amendment to the U.S. Constitution Because There Is No 17 Significant Likelihood that He Will Be Removed in the 18 Reasonably Foreseeable Future.

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

19 Because Mr. Eshaghpour’s removal order became final in August 2014, the  
20 removal period has long since expired and detention is no longer required under  
21 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has  
22 passed. He was detained for six months following the 2014 final removal order and then  
23 released after six months. He was arrested on July 9, 2025 during a routine checked-in  
24 with ICE without any determination that he was a danger to the community.

25 There is “good reason to believe that there is no significant likelihood of removal  
26 in the reasonably foreseeable future[.]” *Zadvidas*, 533 U.S. at 701. ICE informed  
Mr. Eshaghpour that it requested travel documents for him from Iran but there has been

1 no response from Iranian officials. ICE has informed him that it is unable to remove  
2 him to Iran. ICE officials have informed Mr. Eshaghpour that it has considered sending  
3 him to a country with a Kurdish population, but it cannot because he would also be  
4 persecuted in those countries due to his religious beliefs. When asked by an ICE officer  
5 for alternative countries, he offered Australia, Japan, or Canada. The ICE officer told  
6 him that would not be possible.

7 ICE considers Iran as one of only 15 “uncooperative” countries that does not  
8 facilitate return of its nationals. Ex. 1. Iran does not “conduct[] interviews, issu[e] travel  
9 documents in a timely manner, [or] accept[] the physical return of their nationals by  
10 scheduled commercial or charter flights consistent with ICE and/or foreign government  
11 removal guidelines.” *Id.* Removal to Iran is not reasonably foreseeable. ICE has had  
12 more than ten years to get travel documents for Mr. Eshaghpour nor has Iran agreed to  
13 accept him.

14 Therefore, the burden shifts to the government to rebut that showing. The  
15 government cannot meet that burden under the facts of this case. *See Nguyen v. Scott*,  
16 No. CV25-1398, 2025 WL 2419288, at \*28–29 (W.D. Wash. Aug. 21, 2025) (granting  
17 preliminary injunction requiring release under *Zadvydas*); *Tang*, 2025 WL 2637750, at  
18 \*6 (same).

19 **B. Ground Two: Procedural Due Process**

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

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

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

3 **C. Ground Three: Substantive Due Process**

4 Mr. Eshaghpour's arrest was punitive and without justification. He was arrested  
5 by ICE when he check in as part of his release conditions. He was told he was arrested  
6 because the United States had recently bombed Iran. During the last four months, he  
7 has not been seen by an ICE official regarding travel documents.

8 Respondents' policy against parole in all cases supports that conclusion, as do  
9 many reported statements advocating for increased arrests for their own sake.  
10 Respondents' refusal to address widespread mistreatment of detained immigrants also  
11 supports that conclusion. See Nicole Acevedo, *Hundreds of alleged human rights*  
12 *abuses in immigrant detention, report finds*, NBC News (Aug. 5, 2025),  
13 [https://www.nbcnews.com/news/us-news/immigration-detention-human-rights-abuses-](https://www.nbcnews.com/news/us-news/immigration-detention-human-rights-abuses-report-rcna222499)  
14 [report-rcna222499](https://www.nbcnews.com/news/us-news/immigration-detention-human-rights-abuses-report-rcna222499) [<https://perma.cc/3XLR-6XHX>]; Center for Human Rights,  
15 *Conditions at the Northwest Detention Center*, University of Washington,  
16 [https://jsis.washington.edu/humanrights/projects/immigrant-rights-](https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/)  
17 [observatory/conditions-at-the-northwest-detention-center/](https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/) [[https://perma.cc/QF24-](https://perma.cc/QF24-UR6C)  
18 [UR6C](https://perma.cc/QF24-UR6C)] (last visited Aug. 28, 2025).

19 **D. Ground Four: Violation of the Fifth Amendment, 8 U.S.C.**  
20 **§ 1231, Convention Against Torture, Implementing**  
21 **Regulations, and the Administrative Procedure Act**

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

23 The Fifth Amendment, the INA, the CAT, and implementing regulations  
24 mandate meaningful notice and opportunity to respond to any attempt to remove  
25 Mr. Eshaghpour to a third country in reopened removal proceedings. They also require  
26 an opportunity for Mr. Eshaghpour to make a fear-based claim against removal to a  
third country in reopened removal proceedings. Respondents' policy for third-country

1 removals violates all of these laws because it directs ICE agents to remove individuals  
2 to third countries without any notice or process *at all* where diplomatic assurances are  
3 received and, where no diplomatic assurances are received, to provide flagrantly  
4 insufficient notice (6–24 hours) and opportunity to respond, in violation of the statute,  
5 regulations, and Fifth Amendment.

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

13 **E. Ground Five: Punitive Third-Country Banishment; Violation**  
14 **of Fifth and Eighth Amendments**

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

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

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

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

1 Mr. Eshaghpour was convicted and completed any sentences for his criminal  
2 convictions eleven years ago. Mr. Eshaghpour's convictions made him removable from  
3 the United States, but the convictions do not authorize the government to inflict, as a  
4 matter of executive policy and discretion, additional punishment on Mr. Eshaghpour.  
5 Respondents' third-country removal program is punitive in nature and execution.

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

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

22 Respondents may not seek to remove Mr. Eshaghpour to a third country under  
23 their punitive banishment policy and practices. *See Nguyen*, 2025 WL 2419288, at \*29  
24 (granting preliminary injunction against "removing Petitioner to any country where he  
25 is likely to face imprisonment upon arrival").  
26

1 **Prayer for Relief**

2 Mr. Eshaghpour respectfully requests that this Court:

3 (a) Assume jurisdiction over this action;

4 (b) Issue an Order directing Respondents to show cause why this Petition  
5 should not be granted within five days;

6 (c) Order Respondents to immediately release Mr. Eshaghpour from custody;

7 (d) Order that Respondents may not re-detain Mr. Eshaghpour without first  
8 holding a hearing before a neutral decisionmaker at which the government bears the  
9 burden of establishing flight risk or danger to the community by clear and convincing  
10 evidence based on changed circumstances since Mr. Eshaghpour was previously  
11 released;

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

16 (f) Order that Respondents may not remove Mr. Eshaghpour to any third  
17 country because Respondents' third-country removal program seeks to impose  
18 unconstitutional punishment on its subjects, including imprisonment and other forms of  
19 harm; and

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

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

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

1 them on information and belief, based on information obtained from the government  
2 and/or Mr. Eshaghpour.

3 DATED this 19th day of November 2025.

4 Respectfully submitted,

5  
6 *s/ Dennis Carroll*  
7 Senior Litigator  
8 Office of the Federal Public Defender  
9 Attorney for Saman Eshaghpour  
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