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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HOANG DAO,  
Petitioner,  
vs.

) No.

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

) PAMELA BONDI, Attorney General of  
) the United States; KRISTI NOEM,  
) Secretary, United States Department of  
) Homeland Security; LAURA  
) HERMOSILLO, Seattle Field Office  
) Director, United States Citizenship and  
) Immigration Services; BRUCE SCOTT,  
) Warden of Immigration Detention  
) Facility; and the United States  
) Immigration and Customs Enforcement,  
) Respondents.

**RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242**

**Personal Information**

1. (a) Full name: Hoang Ngoc Dao
- (b) Other names used: None, but ICE incorrectly lists my last name as Doa.
2. Place of confinement:
  - (a) Northwest Immigration Processing Center (NWIPC)
  - (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a contractual arrangement with my custodian, the Immigration and Customs Enforcement Field Office Director at Seattle, Washington.
  - (c) Case number or numbers [ICE file number, if known]: My A# is 025105039.

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


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

4 **Decision or Action You Are Challenging**

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

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

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

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

10 (c) Decision or action you are challenging: I received my final order of  
11 removal on May 19, 2025. I have been detained in ICE custody for over six months  
12 following my final order of removal.

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

14 7-9. First, second, and third appeals: None

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

16 11. Appeals of immigration proceedings:

17 Does this case concern immigration proceedings? Yes

18 (a) Date you were taken into immigration custody:

19 (b) Date of the removal or reinstatement order:

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

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

22 12. Other appeals:

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

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

2 **I. Introduction**

3 Mr. Dao is presently detained at the Northwest ICE Processing Center (NWIPC).  
4 He has been held in immigration custody for over six months. Removal to Vietnam is  
5 not reasonably foreseeable. His continued detention is therefore in violation of  
6 *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). He seeks (a) release; (b) an order  
7 preventing removal to a third country without notice and meaningful opportunity to  
8 respond in compliance with the statute and due process in reopened removal  
9 proceedings; and (c) an order barring removal to any third country pursuant to  
10 Respondents' punitive removal policy.

11 Mr. Dao received a final order of removal on May 19, 2025 and has been  
12 detained by ICE since then. By the time this matter is heard, he will have been detained  
13 well over six months.

14 **II. Jurisdiction and Venue**

15 This case arises under the Constitution of the United States, and the Immigration  
16 and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*

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

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

25 Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because  
26 Respondents are agencies or officers of agencies of the United States; Respondents

1 Wamsley and Scott reside in this district; and Petitioner is detained in this district.  
2 Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the  
3 events or omissions giving rise to Petitioner’s claims occurred in this district.

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

7 **III. Requirements of 28 U.S.C. § 2241**

8 Petitioner is “in custody” for the purpose of § 2241 because he has been detained  
9 by Respondent ICE in Tacoma, Washington, since approximately February 27, 2025.

10 **IV. Parties**

11 Petitioner is detained in the control and custody of Respondents at NWIPC. As  
12 such, Petitioner is a resident of Tacoma, Washington.

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

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


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

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

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

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

7 **V. Background**

8 Mr. Dao was born in Vietnam on  His parents fled the  
9 Communist regime and were lawfully admitted to the United States as refugees. He  
10 received a high school diploma and an AA degree in Multimedia. He had lawful  
11 permanent resident status, but was convicted of Transportation of Illegal Aliens for  
12 Profit and received probation. He has a final order of removal with Vietnam, the  
13 country designated for removal.

14 **VI. Facts Pertaining to Petitioner’s Continued Detention**

15 Following the Vietnam War, the North Vietnamese government established the  
16 Socialist Republic of Vietnam—the official nation-state of Vietnam to this day. Many  
17 people from the prior nation-state—the former Republic of Vietnam—fled the newly  
18 formed nation-state and sought refuge in the United States. *See Trinh v. Homan*, 466 F.  
19 Supp. 3d 1077, 1083 (C.D. Cal. 2020) (summarizing history). For the next three  
20 decades, the Socialist Republic of Vietnam [*hereinafter* Vietnam] refused to repatriate  
21 people who had left Vietnam for the United States. *See id.*

22 In 2008, the United States and Vietnam reached a diplomatic agreement under  
23 which Vietnam agreed to begin considering some repatriation requests. Under the  
24 agreement, Vietnam agreed to consider repatriation requests for Vietnamese immigrants  
25 who arrived in the United States after July 12, 1995 (the date on which diplomatic  
26 relations between the two countries were established). *See id.* But the agreement also

1 specifically provided that Vietnamese citizens who arrived in the United States before  
2 that date were not subject to return to Vietnam. Following this agreement, Vietnam  
3 maintained its policy that pre-1995 Vietnamese immigrants could not be repatriated.  
4 *See id.* ICE, in turn, adopted a policy recognizing that removal of pre-1995 Vietnamese  
5 immigrants was unlikely due to Vietnam's policy, and held such immigrants no longer  
6 than 90 days following a removal order before releasing them because removal was not  
7 reasonably foreseeable. *See id.*

8 In 2017, ICE again negotiated with Vietnamese officials in hopes of amending  
9 the 2008 agreement. Negotiations did not result in any formal amendment to the  
10 agreement, but "Vietnamese officials verbally committed to begin considering ICE  
11 travel document requests for pre-1995 Vietnamese immigrants on a case-by-case basis,  
12 without explicitly committing to accept any of them." *Id.* ICE, in turn, began detaining  
13 Vietnamese immigrants who had been ordered removed for more than 90 days in hopes  
14 of effectuating their removal, and of re-detaining others who had previously been  
15 released. *Id.* at 1083–84. But following a class action lawsuit regarding this new  
16 practice, ICE met with Vietnamese officials again in 2018. After this meeting, "ICE  
17 conceded that, despite Vietnam's verbal commitment to consider travel document  
18 requests for pre-1995 immigrants, in general, the removal of these individuals was still  
19 not significantly likely." *Id.* at 1084. ICE returned to its practice of releasing pre-1995  
20 Vietnamese immigrants who had been ordered removed within 90 days of their removal  
21 order. *Id.*

22 In 2020, ICE and Vietnamese officials reached a Memorandum of  
23 Understanding (MOU). *See Ex. A.* The MOU specifically concerned pre-1995  
24 Vietnamese immigrants to the United States and aimed to facilitate their repatriation to  
25 Vietnam if ordered removed. The MOU has been made public via a Freedom of  
26 Information Act request, but only in a heavily redacted form. *See id.*; *Nguyen v. Scott*,

1 *et. al.*, CV25-01398-TMC, Order Granting Preliminary Injunction at Dkt. 45, at 11  
2 (W.D. Wash. Aug. 21, 2025) (summarizing history).

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

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

16 Ex. A at § 4 (pp. 2–3). The fourth mandatory criteria for a person to be eligible for  
17 repatriation to Vietnam is unpublished and unknown to Mr. Dao or undersigned  
18 counsel.

19 Furthermore, two additional sections of the MOU—sections 5 and 6—are either  
20 mostly or entirely redacted. *See* Ex. A at §§ 5, 6 (p. 3). However, later portions of the  
21 MOU suggest that these sections pertain to discretionary factors that Vietnamese and  
22 American officials are to consider in resolving disputes about a person’s eligibility for  
23 repatriation, including “humanitarian and family unity” factors. Ex. A at § 8, ¶ 6 (pp. 4–  
24 5). Because of these redactions, the discretionary factors utilized for determining  
25 whether someone can be repatriated to Vietnam are also unknown to Mr. Dao and  
26 undersigned counsel.

27 An experienced attorney with familiarity with Vietnam’s repatriation process  
28 and requirements affirms that, while Vietnam has issued more travel documents than it  
29 did previously for people ordered removed from the United States, it is still not

1 “significantly likely” that such documents will be issued for pre-1995 immigrants to the  
2 United States. *See* Ex. B (Declaration of Tin Thanh Nguyen, previously prepared for  
3 *Nguyen v. Scott*, CV-25-01398-TMC) at 2–3. In the attorney’s experience, whether or  
4 not Vietnam is willing to issue such documents depend on factors including “whether  
5 the individual has any family remaining in Vietnam, whether their Vietnamese identity  
6 can be verified, their criminal records, and the manner in which they left Vietnam and  
7 came to the United States, among other factors.” *Id.* at 3.

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

14 Although the 2020 MOU indicates that Vietnamese officials intend to issue  
15 travel documents for eligible people within 30 days, *see* Ex. A at § 8 (p.4), this intended  
16 timeline only applies once Vietnamese officials have confirmed a person’s eligibility  
17 for repatriation. *Id.* In practice, however, it has taken many months before pre-1995  
18 Vietnamese immigrants even receive an answer from Vietnam about whether or not  
19 travel documents can be issued. *See* Ex. B at 3.

20 The government arrested Mr. Dao on approximately February 27, 2025, and has  
21 held him in custody since that date. The government made no known efforts to seek  
22 travel documents from Vietnam prior to arresting him.

23 Mr. Dao and counsel are aware of no approval from Vietnamese officials or  
24 confirmation that Vietnamese officials will issue travel documents for him. And  
25 because the government has not disclosed full eligibility criteria for repatriation of pre-  
26 1995 Vietnamese immigrants, Mr. Dao and counsel are not even aware of whether he

1 would be eligible if and when an application is made to or decided by Vietnamese  
2 officials. Yet, the government has kept Mr. Dao in detention with no meaningful  
3 opportunity to challenge his detention or seek conditions of release.

#### 4 **VII. The Legal Framework Regarding Indefinite Detention Pending Removal**

5 Under 8 U.S.C. § 1231, detention of noncitizens who have been ordered  
6 removed is mandatory during the so-called 90-day “removal period.” 8 U.S.C.  
7 § 1231(a)(1)(A). This period begins on the “date the order of removal becomes  
8 administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i). But the *Zadvydas* Court believed  
9 that a “serious constitutional threat” under the Fifth Amendment’s Due Process Clause  
10 was posed by the indefinite detention of noncitizens. 533 U.S. at 699. The Court  
11 therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the  
12 statute’s “basic purpose [of] effectuating [a noncitizen]’s removal[.]” *Id.* at 696-699.

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

21 The issue is not whether Respondents have been able to remove some  
22 individuals to a given country. Rather, the court must make an individualized analysis  
23 as to a particular detainee. *See Nguyen v. Scott*, -- F.Supp.3d --, 2025 WL 2419288, \*17  
24 (W.D. Wash. Aug. 21, 2025 (stating increase in total number of removals to Vietnam,  
25 including those who entered pre-1995, fails to rebut the evidence presented by  
26 Petitioner that “his individual circumstances make removal unlikely.”).

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.”); 28  
24 C.F.R. § 200.1; §§ 208.16–208.18, 1208.16–1208.18. CAT protection is also  
25 mandatory.  
26

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

1 Rwanda—had agreed to accept deportees who are not their own citizens.<sup>1</sup> 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.

24  
25  
26 <sup>1</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 On July 9, 2025, ICE issued a new memo (Ex. D) to staff instructing that, when  
2 seeking to remove an individual to a country not designated on that person’s removal  
3 order, ICE may deport that person without any procedures for notice or an opportunity  
4 to be heard if the State Department confirms that it has received diplomatic assurances  
5 that individuals will not be persecuted or tortured. If no diplomatic assurances are  
6 received, the ICE memo instructs officers to serve on the individual a Notice of  
7 Removal that includes the intended country of removal. It instructs officers not to ask  
8 whether the individual is afraid of removal to that country. It states that officers should  
9 “generally wait at least 24 hours following service of the Notice of Removal before  
10 effectuating removal” but that “[i]n exigent circumstances, [ICE] may execute a  
11 removal order six (6) or more hours after service of the Notice of Removal as long as  
12 the [noncitizen] is provided reasonable means and opportunity to speak with an attorney  
13 prior to removal.”

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

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

#### 5 **XI. The Law Governing Punitive Removal Practices**

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

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

25 Deportation of individuals to third countries to be imprisoned or harmed is  
26 unquestionably punishment.

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

4 This section addresses the law governing the conditions this Court should  
5 impose on Respondents should they – subsequent to the grant of his petition – seek to  
6 re-detain him.

7 Procedural due process requires notice and an opportunity to be heard. *Mathews*  
8 *v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural  
9 due process rights, a petitioner must establish (1) a protected property or liberty interest,  
10 and (2) a denial of adequate procedural protections. *ASSE Int’l, Inc. v. Kerry*, 803 F.3d  
11 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest,  
12 including the function involved and the fiscal and administrative burdens that the  
13 additional or substitute procedural requirement would entail.” *Rodriguez Diaz v.*  
*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. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at  
20 \*8 (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.

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

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

10 The second factor, risk of an erroneous deprivation of liberty, also weighs in a  
11 petitioner’s favor. A detainee’s release to the community on an OREC reflected ICE’s  
12 determination that Petitioner was neither a flight risk nor a danger to the community.  
13 *See, e.g., Ledesma Gonzalez*, 2025 WL 2841574, at \*8 (when ICE released Petitioner,  
14 “it did so after determining—as required by regulation—that ‘such release would not  
15 pose a danger to property or persons, and that the alien is likely to appear for any future  
16 proceeding.’ . . . By issuing the OREC, ICE necessarily found that [Petitioner] was  
17 neither a flight risk nor a danger to the community.”) (quoting 8 C.F.R. § 236.1(c)(8));  
18 *Barrenechea v. Albarran*, No. 25-CV-07883-VC, 2025 WL 2717279, at \*1 (N.D. Cal.  
19 Sept. 22, 2025) (“ICE’s release of Barrenechea on his own recognizance in 2020 can  
20 only be understood as reflecting a determination that he did not pose a flight risk or  
21 danger to the community”).

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

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

5 The holding that a released detainee was entitled to a pre-deprivation hearing  
6 comes not from *Ledesma Gonzalez* and *E.A. T.-B.* alone—dozens of other courts have  
7 reached this conclusion as well. *See, e.g., Pinchi v. Noem*, — F. Supp. 3d —, No.  
8 5:25-cv-05632-PCP, 2025 WL 2084921, at \*5 (N.D. Cal. July 24, 2025) (“Providing  
9 [petitioner] with the procedural safeguard of a pre-detention hearing will have  
10 significant value in helping ensure that any future detention has a lawful basis.”); *Doe*  
11 *v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025) (“[G]iven that Petitioner was  
12 previously found to not be a danger or risk of flight and the unresolved questions about  
13 the timing and reliability of the new information, the risk of erroneous deprivation  
14 remains high.”); *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at \*4  
15 (S.D.N.Y. June 18, 2025) (“Petitioner’s re-detention without any change in  
16 circumstances or procedure establishes a high risk of erroneous deprivation of his  
17 protected liberty interest.”).

18 In any hearing held by the government to try to justify re-detention, the  
19 government bears the burden to establish flight risk or danger by clear and convincing  
20 evidence. *See Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL  
21 139801, at \*7 n.9 (S.D. Cal. Jan. 9, 2023) (noting that “an overwhelming majority of  
22 courts” have so held). For cases in this district, *See, e.g., Odimara v. Bostock*, No. 2:24-  
23 CV-01412-MJP-TLF, 2025 WL 1490395, at \*10 (W.D. Wash. Mar. 27, 2025), *report*  
24 *and recommendation adopted*, No. C24-1412 MJP, 2025 WL 1489705 (W.D. Wash.  
25 May 23, 2025) (citing cases).

1 In addition, the government should be required to meet its burden based on  
2 changed circumstances subsequent to a petitioner’s previous release by ICE. *See Duong*  
3 *v. Kaiser*, No. 25-CV-07598-JST, 2025 WL 2689266, at \*10 (N.D. Cal. Sept. 19, 2025)  
4 (holding that any re-detention first required a hearing “whether a material change of  
5 circumstances justifies [petitioner’s] re-detention”).

6 **Grounds for Relief**

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

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

12 Because Petitioner’s removal order became final on May 19, 2025, the removal  
13 period has expired and detention is no longer required under 8 U.S.C. § 1231. In  
14 addition, the presumptively reasonable period of six months has passed.

15 There is “good reason to believe that there is no significant likelihood of removal  
16 in the reasonably foreseeable future[.]” *Zadvydas*, 533 U.S. at 701. As set forth in Part  
17 VI, removal is rarely occurring for those detainees who left Vietnam prior to 1995, even  
18 where they do appear to qualify under the publicly available portions of the MOU.

19 Therefore, the burden shifts to the government to rebut that showing. The  
20 government cannot meet that burden under the facts of this case. *See Nguyen v. Scott*,  
21 No. 2:25-CV-01398, 2025 WL 2419288, at \*28–29 (W.D. Wash. Aug. 21, 2025)  
22 (granting preliminary injunction requiring release under *Zadvydas*); *Tang*, 2025 WL  
23 2637750, at \*6 (same).

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

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

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

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

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

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

21 Under the Fifth Amendment to the U.S. Constitution, no person shall “be held to  
22 answer for a capital, or otherwise infamous crime, unless on a presentment or  
23 indictment of a Grand Jury;” “be subject for the same offence to be twice put in  
24 jeopardy of life or limb;” or “be deprived of life, liberty, or property, without due  
25 process of law.”  
26

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

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

7 Petitioner’s conviction arguably made him removable from the United States,  
8 but the conviction does not authorize the government to inflict, as a matter of executive  
9 policy and discretion, additional punishment on his. Respondents’ third-country  
10 removal program is punitive in nature and execution.

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

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

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

5 **Prayer for Relief**

6 Petitioner respectfully requests that this Court:

7 (a) Assume jurisdiction over this action;

8 (b) Issue an Order directing Respondents promptly to show cause why this  
9 Petition should not be granted;

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

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

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

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

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

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

23 Counsel verifies that this petition is authorized by Petitioner. It does not  
24 personally bear Petitioner’s signature because of the significant difficulty for counsel in  
25 meeting with Petitioner in person and because mailing the petition to Petitioner and  
26 having it mailed back would cause delay that would only extend the period of his

1 unlawful detention. Counsel knows the facts asserted above or alleges them on  
2 information and belief, based on information obtained from the government and/or  
3 Petitioner.

4 DATED this 21st day of November, 2025.

5 Respectfully submitted,

6 *s/ Alan Zarky*  
7 Staff Attorney  
8 Attorney for Hoang Dao  
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