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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RUBIN TEMAHAGARI,

) No.

vs.

) **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, Acting 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.  
)

**PRELIMINARY MATTERS**

Mr. Temahagari asks this Court to order Respondents not to remove him from this district while this case is pending, both “[b]ecause transfer of Petitioner to another district could interfere with his access to counsel and ability to participate in the proceedings,” *Tran v. Bondi, et al.*, No. CV25-1897-JLR-BAT, dkt. 6 at 3 (W.D. Wash. Oct. 7, 2025) (*sua sponte* issuing such an order in a § 2241 case involving an ICE detainee), and “under the Court’s inherent power to preserve its ability to hear the case.” *Alves v. U.S. Dep’t of Just.*, No. EP-25-CV-306-KC, 2025 WL 2629763, at \*5

1 (W.D. Tex. Sept. 12, 2025) (same). *See also M.M. v. Wamsley*, No. CV25-2074-TMC,  
2 2025 WL 3053023, at \*1 (W.D. Wash. Oct. 31, 2025) (same).<sup>1</sup>

3 Alternatively, he asks the Court to order Respondents not to transfer him without  
4 providing reasonable advance notice.

5 **RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242**

6 **Personal Information**

- 7 1. (a) Full name: Rubin Temahagari  
8 (b) Other names used: N/A  
9 2. Place of confinement:  
10 (a) Northwest Immigration Processing Center (NWIPC)  
11 (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a  
12 contractual arrangement with my custodian, the Immigration and Customs Enforcement  
13 Field Office Director at Seattle, Washington.  
14 (c) Case number or numbers [ICE file number, if known]: My A# has been  
15 provided to the government along with the filing of this petition.  
16 3. I am currently being held on orders by federal authorities: United States  
17 Immigration and Customs Enforcement.  
18 4. I am currently being held on an immigration charge.

19 **Decision or Action You Are Challenging**

- 20 5. What are you challenging in this petition: immigration detention.  
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. 25-13202, 2025 WL  
25 3022294, at \*2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. CV25-513-SDN, 2025  
26 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 6. Provide more information about the decision or action you are challenging:

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

4 (b) Docket number, case number, or opinion number: My A# is has been  
5 provided to the government along with the filing of this petition.

6 (c) Decision or action you are challenging: I have been in ICE custody for  
7 over four years. I was taken into custody by ICE on August 30, 2021 and granted  
8 Convention against Torture (CAT) Deferral of Removal on April 15, 2025. My removal  
9 became final 30 days later, when the time for either party to appeal that order expired.

10 I have been detained in ICE custody for over 6 months following my final  
11 removal order.

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

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

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

15 11. Appeals of immigration proceedings:

16 Does this case concern immigration proceedings? Yes

17 (a) Date you were taken into immigration custody: August 30, 2021

18 (b) Date of the removal or reinstatement order: May 15, 2025

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

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

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

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

24 **I. Introduction**

25 Mr. Temahagari is presently detained at the Northwest ICE Processing Center  
26 (NWIPC). He has been held in immigration custody for four years and three months.

1 Removal to the former country of residence is not reasonably foreseeable.

2 Mr. Temahagari's continued detention is therefore in violation of *Zadvydas v. Davis*,  
3 533 U.S. 678, 689 (2001).

4 Mr. Temahagari seeks (a) release; (b) an order preventing re-detention unless the  
5 government establishes by clear and convincing evidence at a hearing before a neutral  
6 decisionmaker that Mr. Temahagari is a flight risk or a danger to the community, based  
7 on changed circumstances after their most recent release by ICE; (c) an order  
8 preventing removal to a third country without notice and meaningful opportunity to  
9 respond in compliance with the statute and due process in reopened removal  
10 proceedings; and (d) an order barring removal to any third country pursuant to  
11 Respondents' punitive removal policy.

## 12 **II. Jurisdiction and Venue**

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

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

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

23 Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because  
24 Respondents are agencies or officers of agencies of the United States; Respondents  
25 Hermosillo and Scott reside in this district; and Mr. Temahagari is detained in this  
26 district. Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part

1 of the events or omissions giving rise to Mr. Temahagari's claims occurred in this  
2 district.

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

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

7 Mr. Temahagari is "in custody" for the purpose of § 2241 because he has been  
8 detained by Respondent ICE in Tacoma, Washington, since August 30, 2021.

9 **IV. Parties**

10 Mr. Temahagari is a citizen of the Democratic Republic of Congo (DRC). Mr.  
11 Temahagari was granted deferral of removal under the Convention against Torture  
12 (CAT) on April 15, 2025. No appeal was filed so the decision became final on May 15,  
13 2025. Mr. Temahagari is detained in the control and custody of Respondents at  
14 NWIPC. As such, Mr. Temahagari is a resident of Tacoma, Washington.

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

18 Respondent Kristi Noem is the Secretary of the Department of Homeland  
19 Security ("DHS"). In this capacity, Respondent Noem is Mr. Temahagari's legal  
20 custodian. Respondent Noem is sued in her official capacity.

21 Respondent Laura Hermosillo is the Field Office Director for ICE Enforcement  
22 and Removal Operations ("ERO") in Seattle, Washington. As the ERO Seattle Field  
23 Office Director, she is Petitioner's immediate custodian, responsible for his detention at  
24 NWIPC and is the person with the authority to authorize detention or release.

25 Respondent Hermosillo is sued in her official capacity.  
26

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

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

#### 10 **V. Background**

11 Mr. Temahagari came to the United States in 2013 as a refugee with his mother,  
12 brothers, and cousin. He was fifteen years old. His brothers and cousin all became  
13 citizens, while his mother is an LPR. Since fleeing the Democratic Republic of Congo  
14 (DRC), Mr. Temahagari has lived with his mother in Kent.

15 In 2014, Mr. Temahagari had a son who still resides with his mother. He helped  
16 his mother with income from work in the Seattle area. In 2017, Mr. Temahagari pled  
17 guilty to robbery in the second degree, felon in possession of a firearm, and retaliation  
18 against a witness and was sentenced to approximately three years' imprisonment. ICE  
19 picked up Mr. Temahagari upon his release from prison in August 2021.

20 On April 15, 2025, an immigration judge denied Mr. Temahagari's requests for  
21 asylum and adjustment of status but granted his petition for deferral of removal under  
22 CAT. That order means that Mr. Temahagari can still be deported to another country  
23 that agrees to accept him, but only if he will not be tortured in that country.

24 Mr. Temahagari has been in ICE custody for over six months since the final  
25 order granting CAT Deferral of Deportation.

1 **VI. Particularized Facts Pertaining to Mr. Temahagari's Continued Detention**

2 Mr. Temahagari has been granted deferral of removal to the Democratic  
3 Republic of the Congo (DRC), and therefore cannot be removed to that country, where  
4 rebel groups and the government are engaged in a dangerous conflict.

5 On November 25, 2025, ICE Deportation Officer DeCastro held a custody  
6 review for Mr. Temahagari. Officer DeCastro told Mr. Temahagari that because  
7 Mr. Temahagari cannot be deported to the DRC or, at present, to any other country, that  
8 Officer DeCastro would recommend his release on conditions.

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

10 **A. Detention is illegal when there is not a significant 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 Mr. Temahagari that “his individual circumstances make removal unlikely.”). Here, it  
7 appears undisputed that Mr. Temahagari cannot lawfully be removed to the DRC.

8 **B. The Legal Framework for Third-Country Removals**

9 ICE has told Mr. Temahagari that they do not presently intend to seek his  
10 removal to a third country. However, because that promise is not legally binding,  
11 Mr. Temahagari respectfully asks for an injunction against a third country removal  
12 unless he is provided the legally required protections.

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

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

25 Second, if the individual is not removed to the country they designated under  
26 § 1231(b)(2)(A), the government shall remove the individual to the country of which

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

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

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

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

11 To comport with the requirements of due process, the government must provide  
12 notice of the third-country removal and an opportunity to respond. Due process requires  
13 “written notice of the country being designated” and “the statutory basis for the  
14 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409  
15 F.Supp.3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland*  
16 *Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at \*1 (D. Mass. May 21, 2025) (“All  
17 removals to third countries, i.e., removal to a country other than the country or  
18 countries designated during immigration proceedings as the country of removal on the  
19 non-citizen’s order of removal, must be preceded by written notice to both the non-  
20 citizen and the non-citizen’s counsel in a language the non-citizen can understand.”  
21 (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process  
22 requires notice to the noncitizen of the right to apply for asylum and withholding to the  
23 country where they will be removed). The government must be able to show evidence  
24 that the third country will accept the individual into that country. *See Himri v. Ashcroft*,  
25 378 F.3d 932, 939 (9th Cir. 2004), *as amended* (Aug. 24, 2004), *amended sub nom. El*  
26 *Himri v. Ashcroft*, No. 03-71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) (“at the

1 time the government proposes a country of removal pursuant to § 1231(b)(2)(E)(vii),  
2 the government must be able to show that the proposed country *will* accept the  
3 [individual]”).

4 Due process also demands that the government “ask the noncitizen whether he or  
5 she fears persecution or harm upon removal to the designated country and memorialize  
6 in writing the noncitizen’s response. This requirement ensures DHS will obtain the  
7 necessary information from the noncitizen to comply with § (b)(3) and avoids [a dispute  
8 about what the officer and noncitizen said].” *Aden*, 409 F.Supp.3d at 1019; *cf. D.V.D.*,  
9 2025 WL 1453640, at \*1 (“Following notice, the individual must be given a meaningful  
10 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection  
11 prior to removal.”) (emphasis omitted).

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

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

1 **C. Facts Pertaining to Punitive Banishment to Third Countries**

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

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

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

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25 \_\_\_\_\_  
26 <sup>2</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 tiny African nation of Eswatini, including one man from Vietnam, where they are  
2 reportedly being held in solitary confinement.

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

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

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

1 protection under the Convention against Torture. “USCIS will generally screen within  
2 24 hours.” If USCIS determines that the noncitizen does not meet the standard, the  
3 individual will be removed. If USCIS determines that the noncitizen has met the  
4 standard, then the policy directs ICE to either move to reopen removal proceedings “for  
5 the sole purpose of determining eligibility for [withholding of removal protection] and  
6 CAT” or designate another country for removal.

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

11 **D. The Law Governing Punitive Removal Practices**

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

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

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

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

### 7 **Grounds for Relief**

#### 8 **Ground One: Mr. Temahagari’s Continued Detention in Immigration** 9 **Custody Violates the Due Process Clause of the Fifth Amendment to the** 10 **U.S. Constitution Because There Is No Significant Likelihood that Mr.** 11 **Temahagari Will Be Removed in the Reasonably Foreseeable Future.**

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

13 Because Mr. Temahagari’s order became final on May 15, 2025, the removal  
14 period has long since expired, and detention is no longer required under 8 U.S.C.  
15 § 1231. In addition, the presumptively reasonable period of six months has passed.

16 There is “good reason to believe that there is no significant likelihood of removal  
17 in the reasonably foreseeable future[.]” *Zadvydas*, 533 U.S. at 701. Mr. Temahagari was  
18 granted CAT on April 15, 2025 and cannot lawfully be removed to the DRC. ICE has  
19 promised Mr. Temahagari that he will not be deported a third country, and it appears  
20 that no effort has been made to persuade a third country to accept him.

21 Therefore, the burden shifts to the government to rebut that showing. The  
22 government cannot meet that burden when there is “no evidence that travel documents  
23 for petitioner have even been requested from any third country” *Baltodano v. Bondi*,  
24 25cv1958-RSL, Dkt. 27 at 10 (W.D. Wash. Dec. 4, 2025). *See also Nguyen v. Scott*,  
25 No. CV25-1398, 2025 WL 2419288, at \*28–29 (W.D. Wash. Aug. 21, 2025) (granting  
26 preliminary injunction requiring release under *Zadvydas*); *Tang*, 2025 WL 2637750, at  
\*6 (same).

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

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

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

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

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

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

25           Under the Fifth Amendment to the U.S. Constitution, no person shall “be held to  
26           answer for a capital, or otherwise infamous crime, unless on a presentment or  
          indictment of a Grand Jury;” “be subject for the same offence to be twice put in

1 jeopardy of life or limb;” or “be deprived of life, liberty, or property, without due  
2 process of law.”

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

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

9 Mr. Temahagari was convicted and completed any sentences for his criminal  
10 convictions years ago. Mr. Temahagari’s convictions arguably made him removable  
11 from the United States, but the convictions do not authorize the government to inflict,  
12 as a matter of executive policy and discretion, additional punishment on  
13 Mr. Temahagari. Respondents’ third-country removal program is punitive in both its  
14 nature and its execution.

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

23 Respondents’ third-country removal program is more than a publicity stunt. The  
24 hundreds of individuals who have already been subjected to it have been banished in  
25 foreign prisons upon arrival without charge and often without communication with the  
26 outside world, including their families and lawyers. Respondents may not subject

1 Mr. Temahagari to their third-country removal program designed to impose a severe  
2 punishment on their subjects. Such conduct “shocks the conscience” under Fifth  
3 Amendment substantive due process, is cruel and unusual punishment, and may not be  
4 imposed without charge and a judicial trial.

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

9 **Prayer for Relief**

10 Mr. Temahagari respectfully requests that this Court:

- 11 (a) Assume jurisdiction over this action;
- 12 (b) Issue an Order directing Respondents promptly to show cause why this  
13 Petition should not be granted;
- 14 (c) Order Respondents to immediately release Mr. Temahagari from custody;
- 15 (d) Order that Respondents may not re-detain Mr. Temahagari without first  
16 holding a hearing before a neutral decisionmaker at which the government bears the  
17 burden of establishing flight risk or danger to the community by clear and convincing  
18 evidence based on changed circumstances since Mr. Temahagari was previously  
19 released;
- 20 (e) Order that Respondents may not remove or seek to remove  
21 Mr. Temahagari to a third country without notice and meaningful opportunity to  
22 respond in compliance with the statute and due process in reopened removal  
23 proceedings;
- 24 (f) Order that Respondents may not remove Mr. Temahagari to any third  
25 country because Respondents’ third-country removal program seeks to impose  
26

1 unconstitutional punishment on its subjects, including imprisonment and other forms of  
2 harm; and

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

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

5 Counsel verifies that this petition is authorized by Mr. Temahagari. It does not  
6 personally bear Mr. Temahagari's signature because of the significant difficulty for  
7 counsel in meeting with Mr. Temahagari in person and because mailing the petition to  
8 Mr. Temahagari and having it mailed back would cause delay that would only extend  
9 the period of his unlawful detention. Counsel knows the facts asserted above or alleges  
10 them on information and belief, based on information obtained from the government  
11 and/or Mr. Temahagari.

12 DATED this 5th day of December 2025.

13 Respectfully submitted,

14 *s/ Gregory T. Murphy*  
15 Assistant Federal Public Defender  
16 Attorney for Rubin Temahagari