UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE OLEA SANCHEZ, Petitioner, vs. 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.	No. **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND REQUEST FOR INJUNCTIVE RELIEF**

PRELIMINARY MATTERS

Jose Olea Sanchez, Petitioner, asks this Court to order Respondents not to remove Petitioner 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 (W.D. Tex. Sept. 12, 2025) (same). *See also M.M. v. Wamsley*, No. CV25-2074-TMC, 2025 WL 3053023, at *1 (W.D. Wash. Oct. 31, 2025) (same).[1]

[1] For just a few examples of other courts issuing such an order in § 2241 cases involving ICE detainees within the past few months (or reflecting the court had previously issued such an order), *see, e.g.*, *Bustos v. Raycraft*, No. 25-13202, 2025 WL

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RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Jose Olea Sanchez, Petitioner

(b) Other names used: None

2. Place of confinement:

(a) Northwest Immigration Processing Center (NWIPC)

(b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a contractual arrangement with my custodian, the Immigration and Customs Enforcement Field Office Director at Seattle, Washington.

(c) Case number or numbers: Petitioner's A# has been provided to the government along with the filing of this petition.

3. Petitioner is currently being held on orders by federal authorities: United States Immigration and Customs Enforcement.

4. Petitioner is currently being held on an immigration charge.

Decision or Action You Are Challenging

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

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

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

(b) Docket number, case number, or opinion number: Petitioner's A# has been provided to the government along with the filing of this petition.

3022294, at *2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. CV25-513-SDN, 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).

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(c) Decision or action you are challenging: A final order of removal was entered on August 23, 2019, by an immigration judge in Miami Florida. Petitioner Olea Sanchez was in detention for approximately 90 days before being released on supervision since Cuba would not accept him following the order of removal. The next time Mr. Olea Sanchez was taken into immigration custody was sometime in early December of 2024. Once again, he was release on or about December 24, 2024, on supervision since Cuba would not cooperate with the removal process. Shortly after his release, Mr. Olea Sanchez was detained a third time by ICE on or about March 13, 2025. He has remained in ICE custody since that date.

Your Earlier Challenges of the Decision or Action

7–9. First, second, and third appeals: None

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

11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

(a) Date you were taken into immigration custody: March 13, 2025

(b) Date of the removal or reinstatement order: August 23, 2019

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

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

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

Grounds for Your Challenge in This Petition

I. Introduction

Petitioner Jose Olea Sanchez is presently detained at the Northwest ICE Processing Center (NWIPC). Petitioner has been held in immigration custody for approximately nine months. Removal to the former country of residence is not reasonably foreseeable. Petitioner's continued detention is therefore in violation of

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Zadvydas v. Davis, 533 U.S. 678, 689 (2001). Petitioner seeks (a) release; (b) an order preventing re-detention unless the government establishes by clear and convincing evidence at a hearing before a neutral decisionmaker that Petitioner is a flight risk or a danger to the community, based on changed circumstances after their most recent release by ICE; (c) an order preventing removal to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings; and (d) an order barring removal to any third country pursuant to Respondents' punitive removal policy.

Petitioner Olea Sanchez was initially detained on August 23, 2019, for approximately three months before being released on supervision. Subsequently, Mr. Olea Sanchez was detained a second time in early December of 2024 before being released on December 24, 2024. Most recently, Mr. Olea Sanchez was re-detained by Immigration on March 13, 2025, without any determination by the government that he had become a flight risk or a danger to the community.

II. Jurisdiction and Venue

This case arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 500–96, 701–06.

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

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

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

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

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

Petitioner is "in custody" for the purpose of § 2241 because he has been detained by Respondent since March 13, 2025.

IV. Parties

Jose Olea Sanchez is a citizen of Cuba. He has a final order of removal to Cuba effective August 23, 2019. Petitioner is detained in the control and custody of Respondents at NWIPC. As such, Petitioner is a resident of Tacoma, Washington.

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

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

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

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

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

V. Background

Mr. Jose Olea Sanchez is a Cuban national who reports having no available travel documents such as a passport on hand. Sometime in August of 2015, he entered the United States by crossing the Mexico/Texas border. At that time, he reports receiving "parole status" where he obtained a work permit and a social security card. His understanding at the time is that he would have one year to apply for permanent residency status in the United States. There is no record that he applied for permanent residency status.

It appears that Mr. Olea Sanchez does have a criminal history record from both Texas and Florida. Exhibits 1 and 2. It appears that he was convicted of a theft offense in 2019 that prompted the removal proceedings and his three-month detention in immigration custody following the final order of removal on August 23, 2019.

VI. Particularized Facts Pertaining to Petitioner's Continued Detention

Petitioner cannot presently be returned to Cuba because Cuba will not cooperate with the removal process. In fact, throughout the duration of the final order of removal, since August 23, 2019, Respondents have failed to deport Mr. Olea Sanchez to Cuba.

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After spending approximately one month in a county jail in Houston for theft, Mr. Olea Sanchez was placed in removal proceedings in 2019. During this period, he remained in ICE custody. Mr. Olea Sanchez reports spending approximately 90 days (or three months) in ICE custody resulting from the final order of removal issued on August 23, 2019. He was released because ICE could not deport him to Cuba because Cuba would not accept him nor would Cuba cooperate with the removal process.

Subsequently, in December of 2024, Mr. Olea Sanchez once again was detained by ICE. This time he only spent approximately 21 days in custody as he was released on or about December 24, 2024. Once again, he was released because ICE could not deport Mr. Olea Sanchez to Cuba.

Approximately two months later, Mr. Olea Sanchez reports that he was arrested on suspicion of theft sometime in February 2025. He reports spending approximately one month in a county jail in Houston before being taken into ICE custody on March 13, 2025.

Mr. Olea-Sanchez has been in ICE custody since March 13, 2025. Again, the extended duration in ICE custody is a function of ICE being unable to remove Mr. Olea Sanchez to Cuba. Because ICE has been unable to remove Mr. Olea Sanchez to Cuba, he reports that ICE has attempted to have him agree to be removed to Mexico. Mr. Olea has reportedly refused to be removed to Mexico. He is not a citizen or resident of Mexico and refuses to be removed to any third country.

The likely reason why Cuba will not accept Mr. Olea Sanchez appears to be because he has a criminal record. [2] Exhibits 1 and 2. While political developments in

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[2] Lizette Alvarez & Kristin Hussey, *Cubans Convicted in the U.S. Face New Fears of Deportation*, N.Y. Times (Jan. 18, 2015) https://www.nytimes.com/2015/01/19/us/cubans-convicted-in-the-us-face-new-fears-of-deportation.html [https://perma.cc/6ANE-23KJ] ("Other countries also make it difficult for the United States to deport convicted criminals, but Cuba is one of 'very few' that block most deportation orders, Ms. Gonzalez said. Among the nations listed in 2011 as

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recent years have increased the number of Cubans deported, the number of removals effected continues to remain miniscule compared to the number of outstanding removal orders.[3] For fiscal year 2025, ICE reported the arrest of 419 Cuban citizens. U.S. Immigration and Customs Enforcement Administrative Arrest Statistics, http://www.ice.gov/statistics [https://perma.cc/X2AV-89FD] (accessed Oct. 24, 2025). Within the same fiscal year, only 138 Cubans were removed. Of these, only 32 Cubans were listed as having criminal convictions. *Id.* Removals have increased in the 2025 calendar year, but still are nowhere near the pace required to reasonably process the backlog of individuals with pending removal orders. In calendar year 2025, at least 643 Cuban citizens were removed to Cuba. Deportation Data Project, Data Explorer, https://deportationdata-ice-removals.share.connect.posit.cloud/ [https://perma.cc/3UM6-3WVR].[4] In addition to these, at least 501 Cuban citizens were removed to third countries, primarily to Mexico.[5] There is no indication that the Cuban

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'recalcitrant,' as immigration officials call them, are Cambodia, China, India, Iran and Vietnam, and several in the Caribbean.").

[3] Lindsay Daniels, *The End of Special Treatment for Cubans in the U.S. Immigration System: Consequences and Solutions for Cubans with Final Orders of Removal*, 122 Dick. L. R. 2, 707 (2018), https://insight.dickinsonlaw.psu.edu/dlr/vol122/iss2/8/ [https://perma.cc/G8DG-SETL] ("There are at least 34,000 Cubans with final orders of removal in the United States, due in large part to criminal convictions.").

[4] Dataset last updated in late July 2025. Deportation Data Project, https://deportationdata.org/data/ice.html [https://perma.cc/8TLF-TGFR] ("The most recent release of data covers ICE enforcement actions through late July 2025.").

[5] Claire Healy and Syrah Ortiz-Blanes, *Cubans with Criminal Records in the U.S. are being Quietly Deported to Mexico*, Miami Herald (Oct. 21, 2025), https://www.miamiherald.com/news/local/immigration/article312432237.html [https://perma.cc/55VV-TMQG] ("It is unclear how many immigrants from third countries have been deported to Mexico from the interior of the U.S. this year. One shelter in Mexico has registered nearly 350 Cubans, the vast majority long-time U.S. residents, since the beginning of the year.").

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government's policy of refusing to accept detainees with criminal records has materially changed even as the United States government has begun re-arresting detainees who were previously released under orders of supervision. Therefore, removal to Cuba is not reasonably foreseeable.

ICE has not obtained a travel documents from Cuba for Petitioner, nor has Cuba agreed to accept Petitioner. Additionally, Petitioner reports that ICE has expressed intent to remove him to Mexico. However, Mr. Olea Sanchez has not been removed to Mexico because, without Petitioner's express consent, apparently Mexico will not accept the Petitioner either. Exhibit 3.[6] Accordingly, release from ICE custody is constitutionally necessary to avoid an indefinite detention as there is no evidence that Cuba will ever accept Mr. Olea Sanchez.

VII. The Legal Framework Regarding Indefinite Detention Pending Removal

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

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

The Court further held that the presumptive period during which the detention is reasonably necessary to effectuate a noncitizen's removal is six months. After that, the noncitizen is eligible for conditional release if there is "no significant likelihood of

[6] *See Rios v. Noem*, No. CV25-2866-JES-VET, Dkt. 13-1 (S. D. Cal. Nov. 5, 2025).

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removal in the reasonably foreseeable future[.]" *Id.* at 701. After the "presumptively reasonable" period of six months, when the noncitizen can "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," then "the Government must respond with evidence sufficient to rebut that showing." *Id.*

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

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

B. The six-month presumptively reasonable period runs from the final removal order, regardless of whether Petitioner was detained during that period.

The six-month presumptively reasonable period runs unabated once Petitioner's removal order was final, and does not run solely during any period when Petitioner was detained. In *Tran v. Bondi*, No. CV25-01897-JLR, 2025 WL 3140462 (W.D. Wash.

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Nov. 10, 2025), the Hon. James L. Robart held that petitioner's "*Zadvydas* grace period ended six months following the entry of the order of his removal[.]" *Id.* at *3. The court reached that conclusion even though the petitioner was 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 detained. *See* Federal Respondents' Return Memorandum and Motion to Dismiss, dkt. 13 at 1, 7 (Oct. 27, 2025). *See also, e.g., Tadros v. Noem*, No. 25-4108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (finding that "six-month detention period under *Zadvydas*" period began upon affirmance of removal order, rejecting argument that petitioner could not obtain habeas relief because he had not yet been in detention for six months); *Farez-Espinoza v. Chertoff*, 600 F.Supp.2d 488, 500 (S.D.N.Y. 2009) (concluding that, where government was aware of noncitizen's address but failed to pursue her removal until more than 15 months after removal order was entered, "the removal period, as well as any presumptively reasonabl[e] six-month period of removal to which the Government may have been entitled" had expired six months after the entry of the removal order); *Bailey v. Lynch*, No. CV16-2600-JLL, 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (where order of removal became effective upon petitioner's release from underlying conviction to ICE authorities, after which he was held only "briefly" before being released on an order of supervision, the *Zadvydas* presumptively reasonable period ended "long before he was taken back into custody[.]").

A contrary view would run afoul of *Zadvydas*'s reasoning. *Zadvydas* established the six-month grace period to give ICE a fair chance to effectuate the removal before a court gets involved. 533 U.S. at 700–01. That was why the Court chose to expand the grace period beyond the 90-day statutory removal period: because Congress likely did not "believe[] that all reasonably foreseeable removals could be accomplished in that time." *Id.* at 701. Giving the government time to remove a noncitizen does not require

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that the individual be detained for all of that period. ICE can just as effectively take steps to arrange an individual's removal whether he is in a cell or on the street.

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

Procedural due process requires notice and an opportunity to be heard. *Mathews 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, and (2) a denial of adequate procedural protections. *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1073 (9th Cir. 2015). The Court must also consider "the Government's interest, including the function involved and the fiscal and administrative burdens that the 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).

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

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

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

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

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

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

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

[7] *Rodriguez* held that a person who had been detained pursuant to an individualized 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.

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

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

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

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

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

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

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

IX. The Law Pertaining to a Noncitizen's Regulatory Right Not to Be Re-detained Absent Notice, an Opportunity to Be Heard, and Findings that the Regulatory Standards for Re-detention Have Been Met

The revocation of a noncitizen's release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release under § 1231 for purposes of removal or for violation of conditions of release. The government may revoke a noncitizen's release and return them to ICE custody due to failure to comply with any of the conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed circumstances, the [Immigration] Service determines that there is a significant

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likelihood that the [noncitizen] may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2).

Such revocation of release, even if justified by one of the reasons recognized by regulation, requires notice and an opportunity for the noncitizen to be heard. Upon a determination by the government (namely ICE) to re-detain a person previously released following a removal order:

> the [noncitizen] will be notified of the reasons for revocation of his or her release. [ICE] will conduct an initial informal interview promptly after his or her return to [ICE] custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Id. § 241.13(i)(3).

ICE's decision to re-detain also cannot be arbitrary, but instead is governed by the factors laid out in 8 C.F.R. § 241.13(f), including:

> the history of the [noncitizen's] efforts to comply with the order of removal, the history of [ICE's] efforts to remove [noncitizens] to the country in question or to third countries, including the ongoing nature of [ICE's] efforts to remove [the noncitizen] and the [noncitizen's] assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department of State regarding the prospects for removal of [noncitizens] to the country or countries in question.

Id. See also Phan v. Beccerra, No. CV25-1757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025). While courts do not make these determinations in the first instance, they may review them for compliance with the regulation. *See id.*; *Nguyen v. Hyde*, No. CV25-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

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X. The Law Pertaining to a Noncitizen's Substantive Due Process Right Not to Be Re-detained Without Cause

"[S]ubstantive due process prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987) (cleaned up). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80, (1992); *see also Zadvydas*, 533 U.S. at 696 (finding that a noncitizen has a liberty interest "strong enough" to challenge "indefinite and potentially permanent" immigration detention). "[I]ndividuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty." *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 150 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)).

"A due process violation occurs when detention becomes punitive rather than regulatory, meaning there is no regulatory purpose that can rationally be assigned to the detention or the detention appears excessive in relation to its regulatory purpose." *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); *accord Padilla v. U.S. Immigr. & Customs Enf't.*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023) ("Due process protects against immigration detention that is not reasonably related to the legitimate purpose of effectuating removal or protecting against danger and flight risk."). The regulatory purpose of immigration detention is to hold a person that is a flight risk or a danger to the community. *In re Guerra*, 24 I.&N. Dec. 37 (B.I.A. 2006), *abrogated on other grounds*, *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). Regulations governing parole identify only those two factors for consideration in the release decision. 8 C.F.R. § 236.1(c)(8). For people who have been ordered deported, 8 C.F.R. § 241.13(i)(2) also authorizes re-detention for purposes of removal, so long as

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respondents can prove that "there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future."

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

XI. The Legal Framework for Third-Country Removals

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

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

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

Third, if the individual is not removed to either the country of their designation or the country of which they are a subject, national, or citizen, then the government

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shall remove them to any of the following options: (1) the country from which the individual was admitted to the United States; (2) the country in which is located the foreign port from which the individual left for the United States or for a foreign territory contiguous to the United States; (3) the country in which the individual resided before the individual entered the United States and from which the individual entered the United States; (4) the country in which the individual was born; or (5) the country in which the individual's birthplace is located when the individual was ordered removed. 8 U.S.C. § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to remove the individual to any of these countries may the government remove the individual to "another country whose government will accept [them] into that country." 8 U.S.C. § 1231(b)(2)(E)(vii).

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

Similarly, Congress codified protections enshrined in the Convention Against Torture (CAT) prohibiting the government from removing a person to a country where they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998 (''FARRA''), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to

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torture, regardless of whether the person is physically present in the United States."); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. CAT protection is also mandatory.

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

Due process also demands that the government "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with § (b)(3) and avoids [a dispute about what the officer and noncitizen said]." *Aden*, 409 F.Supp.3d at 1019; *cf. D.V.D.*,

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2025 WL 1453640, at *1 ("Following notice, the individual must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal.") (emphasis omitted).

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

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

XII. Facts Pertaining to Punitive Banishment to Third Countries

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

Respondents reportedly have negotiated with at least 58 countries to accept deportees from other nations. On June 25, 2025, the *New York Times* reported that seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and

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Rwanda—had agreed to accept deportees who are not their own citizens.[8] Since then, ICE has carried out highly publicized third-country deportations to South Sudan and Eswatini. It also attempted—and completed—an "end-run" around the protections of the Convention Against Torture by deporting a group of migrants to Ghana, which sent them on to their countries of citizenship despite fears of persecution.

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

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

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[8] 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://perma.cc/64G9-XYGB].

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

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

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

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

XIII. The Law Governing Punitive Removal Practices

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

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

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

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Grounds for Relief

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

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

Because Petitioner's removal order became final on August 23, 2019, the removal period has long since expired, and detention is no longer required under 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has passed. In addition to being in Immigration custody for approximately 90 days following the final order of removal, Petitioner also spent three weeks in ICE custody in December of 2024. After being released on December 24, 2024, Petitioner was taken into ICE custody a third time on March 13, 2025. He has remained in ICE custody since that date.

There is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. Petitioner is a native of Cuba, a country that historically has not cooperated with the United States with removal proceedings. In particular, there is currently no indication that Cuba is willing to accept its own citizens who have been convicted of criminal offenses in the United States. Petitioner spent 90 days in ICE custody in 2019 with authorities having no success at removing him to Cuba. Similarly, there was no success at removing Petitioner to Cuba in December of 2024. Finally, Petitioner has been in ICE custody for over nine months with no indications that Cuba will accept him.

Finally, removal to Mexico is not reasonably foreseeable as it appears Mexico will not accept non-Mexican nationals who refuse to be removed to Mexico. Since Mr. Olea Sanchez refuses to be removed to Mexico, and because Cuba will not accept him, his detention will remain unconstitutionally indefinite.

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

Ground Two: Procedural Due Process

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

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

Finally, the cost to the government of providing a hearing is low, and significantly outweighed by the other factors. His re-detention violated his due process rights and was therefore unlawful.

Ground Three: Failure to Comply with Regulations

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

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

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

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

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

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

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

(f) Respondents did not advise Petitioner of the right to request a review of the detention and did not comply with the requirements for such review. His re-detention was therefore contrary to Respondents' regulations and unlawful.

Ground Four: Substantive Due Process

The re-arrest and detention of Petitioner was punitive to the extent that he was given no reasons for being detained indefinitely. Despite being released for several years on supervision following the final order of removal on August 23, 2019, ICE immediately detained Petitioner for a third time on March 13, 2025, without any opportunity to seek release on bond resulting in Petitioner's prolonged and indefinite detention.

Respondents' policy against parole in all cases supports the conclusion that Petitioner's detention is punitive, as do many reported statements advocating for increased arrests for their own sake. Respondents' refusal to address widespread mistreatment of detained immigrants also supports that conclusion. [9]

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[9] *See* Nicole Acevedo, *Hundreds of alleged human rights abuses in immigrant detention, report finds*, NBC News (Aug. 5, 2025), https://www.nbcnews.com/news/us-news/immigration-detention-human-rights-abuses-report-rcna222499 [https://perma.cc/3XLR-6XHX]; Center for Human Rights, *Conditions at the Northwest Detention Center*, University of Washington, https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/ [https://perma.cc/QF24-UR6C] (last visited December 2, 2025).

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

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

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

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

Ground Six: Punitive Third-Country Banishment; Violation of Fifth and Eighth Amendments

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

Under the Fifth Amendment to the U.S. Constitution, no person shall "be held to 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

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jeopardy of life or limb;" or "be deprived of life, liberty, or property, without due process of law."

The Eighth Amendment provides that no "cruel and unusual punishments" may be inflicted.

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

Petitioner completed the sentences for his prior convictions. *See* Exhibits. While Petitioner's convictions arguably made him removable from the United States, the convictions do not authorize the government to inflict, as a matter of executive policy and discretion, additional punishment on Petitioner. Respondents' third-country removal program is punitive in both its nature and its execution.

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

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

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punishment on their subjects. Such conduct "shocks the conscience" under Fifth Amendment substantive due process, is cruel and unusual punishment, and may not be imposed without charge and a judicial trial.

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

Prayer for Relief

Petitioner respectfully requests that this Court:

(a) Assume jurisdiction over this action;

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

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

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

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

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

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

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Verification Pursuant to LCR 100(e)

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

DATED this 15th day of December 2025.

Respectfully submitted,

s/ *Jesse Cantor*
Assistant Federal Public Defender
Attorney for Jose Olea Sanchez

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