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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NABIL MOHAMMED AHLAT, Detainee, Weber County Jail, Petitioner, v. PAMELA BONDI, Attorney General of the United States; KRISTI NOEM, Secretary, United States Department of Homeland Security; BRIAN HENKE, Director of Salt Lake City Field Office, United States Citizenship and Immigration Services; RYAN ARBON, Weber County Sheriff; and the United States Immigration and Customs Enforcement. Respondents.	**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 USC § 2241** Case No. 1:25-cv-199 Agency Case No. [redacted]

In 2012 Petitioner Nabil Ahlat was granted relief from removal under the Convention Against Torture (CAT). Specifically, the immigration court found that he could not safely be returned to his homeland in Jordan. He was subsequently released from immigration ICE custody pursuant to *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001), and he has remained in the United States ever since.

In July 2025 he was arrested on a new criminal charge, which remains pending in Utah's Second Judicial District. He posted bail on December 11, 2025, but instead of being released, the Weber County Jail (WCJ) kept him in custody as a courtesy to Immigration and Customs

Enforcement (ICE). On December 15, 2025, ICE unlawfully took him into their custody, and after taking him to their office for processing, they returned him to WCJ.

His rearrest violates the Constitution and laws of the United States of America. For this reason, Mr. Ahlat asks the court pursuant to 28 U.S.C. § 2241 to grant the following: (a) immediate release from custody, (b) an order preventing re-detention unless the government establishes by clear and convincing evidence at a hearing before a neutral decisionmaker that he 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.

Mr. Ahlat further asks the court to order Respondents not to transfer him out of this district or deport him while this case is pending.[1]

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[1] "[T]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 this court has "inherent power to preserve its ability to hear the case." *Alves v. U.S. Dep't of Just.*, 2025 WL 2629763, at *5 (W.D. Tex. Sept. 12, 2025) (same). 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.*, *M.M. v. Wamsley*, 2025 WL 3053023, at *1 (W.D. Wash. Oct. 31, 2025) (same); *Bustos v. Raycraft*, 2025 WL 3022294, at *2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. 2025 WL 3003708, at *1 (D. Me. Oct. 27, 2025) (order issued same day petition was filed); *Lopez Pop v. Noem*, 2025 WL 3050095, at *7 (C.D. Cal. Oct. 3, 2025); *Singh v. Delaney Hall*, 2025 WL 2772644, at *1 (D.N.J. Sept. 29, 2025); *Hom v. Ceja*, 2025 WL 2801449, at *2 (D. Colo. Sept. 17, 2025).

PERSONAL INFORMATION

1. Full Name: Nabil Mohammed Ahlat
2. [redacted]
3. Place of Confinement: Weber County Jail, 370 26th St, Ogden, Utah 84401
4. Mr. Ahlat is being held at WCJ on an immigration charge under the authority of ICE.
5. As a result of this detention, he is "in custody" for the purpose of § 2241.

DECISION BEING CHALLENGED

6. Despite having released him in approximately 2012 pursuant to *Zadvydas*, Respondents took Mr. Ahlat into custody a second time on December 15, 2025.
7. Mr. Ahlat files this petition to challenge the decision to rearrest him without cause.
8. This is the first petition filed to challenge this detention.

JURISDICTION

9. The court has jurisdiction over this petition pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States as Respondent); 28 U.S.C. § 2241(a), *et seq.* (Writs of Habeas Corpus); and 28 U.S.C. § 1651 (All Writs Act).
10. Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.
11. 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.
12. Even if the government were to argue that the court lacks jurisdiction, this court has jurisdiction to determine its jurisdiction. *Belbacha v. Bush*, 520 F.3d 452, 455-56 (citing

United States v. United Mine Workers, 330 U.S. 258, 293 (1947)).

13. This jurisdiction includes the authority to grant "interim relief" and enjoin a transfer to another district to preserve its ability to review its own jurisdiction. *Id.* (discussing All Writs Act, 28 U.S.C. § 1651).

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

VENUE

15. Venue lies in the District of Utah because this is the judicial district in which Mr. Ahlat is currently detained. *Burden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973).

16. Venue is also proper in this judicial district under 28 U.S.C. § 1391(e) because respondents are officers or employees of the United States; Mr. Ahlat is being held in this district; and a substantial part of the events or omissions giving rise to the Petition occurred in this judicial district.

REQUIREMENTS OF 28 U.S.C. § 2243

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

18. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative relief in all cases of illegal restraint or confinement." Fay v. Noia, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

19. Mr. Ahlat is a citizen of Jordan. He has resided in Utah for over thirty years. He is in ICE custody at WCJ.

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

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

22. Respondent Brian Henke is the Field Office Director for ICE Enforcement and Removal Operations ("ERO") in Salt Lake City, Utah. As Field Office Director, he is Mr. Ahlat's immediate custodian, responsible for his detention at WCJ, and is the person with the authority to authorize detention or release. Respondent Henke is sued in his official capacity.

23. Respondent Ryan Arbon is the Weber County Sheriff, Bruce Scott is the Warden of WCJ. He oversees the day-to-day functioning of WCJ and has immediate physical custody of Mr. Ahlat pursuant to a contract with ICE to detain noncitizens. Respondent Arbon is sued in his official capacity as the Warden of a federal contract detention facility.

24. Respondent U.S. Immigration and Customs Enforcement (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 Mr. Ahlat.

BACKGROUND

25. The following facts are based on information and belief.

26. Mr. Ahlat is a citizen of Jordan, although he was born in Kuwait.

27. Kuwait does not grant citizenship based on being born in that country, and Mr. Ahlat has

never been a citizen of Kuwait.

28. At some point in the 1980s, he was forced to flee to the United States and ultimately acquired lawful status here in the United States.

29. He has resided in Utah for almost 40 years.

I. First ICE detention and release pursuant to Zadvydas.

30. In 2012 he was convicted of an aggravated felony and sentenced to a few months in jail.

31. When he finished serving that sentence, he was ordered removed as a result of his conviction.

32. However, he requested deferral of removal under the Convention Against Torture (CAT), arguing that he would be subjected to torture in Jordan if he were forced to return there.

33. On or about April 4, 2012, Immigration Judge Dustin Pead granted him deferral of removal.

34. ICE, however, did not release him at that time.

35. Instead, ICE sought to remove him to Kuwait.

36. Kuwait responded to the government that they would not take Mr. Ahlat because he was not a citizen of Kuwait.

37. After spending months in immigration custody, it was clear that was no reasonable likelihood that he could be removed.

38. On information and belief, Mr. Ahlat was released from immigration custody without being deported as required by *Zadvydas v. Davis*, 533 U.S. 678 (2001).

39. Mr. Ahlat has remained in the United States ever since.

II. Re-arrest by ICE in violation of Zadvydas.

40. In July 2025 he was arrested on a new criminal charge, which remains pending in Utah's Second Judicial District. *State v. Ahlat*, Case No. 251901768 (2d D. Utah).

41. He was granted bail on December 11, 2025, and by December 15, 2025, he had posted bailed

and could be released. (*Id.* at 17.)

42. Instead of being released, ICE took him into their custody on December 15, 2025.

43. ICE took him to their office for processing and then returned him to WCJ.

44. An ICE officer explained to Mr. Ahlat that the government intended to remove him to a third party country, and he specifically mentioned Kuwait or Mexico as possible destinations.

45. At no time after taking Mr. Ahlat into custody did ICE explain why it revoked his order of supervision or give him an opportunity to respond to any alleged basis for his re-arrest.

46. On information and belief, the ICE officer did explain, however, that Respondents intended to move Mr. Ahlat to a different federal district within a day or two and that he would remain in custody until he could be removed to a third party country.

47. The conditions in Jordan have not changed since Mr. Ahlat was granted relief under CAT, and he cannot now be deported to Jordan.

48. On information and belief, neither at the time ICE arbitrarily revoked Petitioner's order of supervision.

49. On information and belief, ICE has not secured any travel documents in Petitioner's name to any third country and lacks any factual basis to conclude that removal to Jordan or any other country is reasonably foreseeable.

50. Mr. Ahlat has had multiple concussions over the years, and doctors have advised him that if he does not have eye surgery soon, he could lose his eyesight permanently.

51. His doctors are all located in Utah.

GROUNDS FOR RELIEF

Federal law authorizes this court to issue a writ of habeas corpus when a person is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.

§ 2241(a), (c)(3). "[A]n order barring their transfer to or from a place of incarceration" is "a proper claim for habeas relief." *Kiyemba v. Obama*, 561 F.3d 509, 513 (D.C. Cir. 2009). The government's plan to keep Mr. Ahlat in custody, transfer him to a different federal district, and then deport him to a third party country has several constitutional and legal problems.

I. CLAIM 1: Fifth Amendment Right to Due Process (Zadvydas).

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

Federal law requires ICE to deport a foreign national within 90 days of a final order of removal. 8 U.S.C. § 1231(a)(1)(A). This period begins on the "date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i).

In 2001, the Supreme Court concluded that the indefinite detention of noncitizens posed a "serious constitutional threat" under the Fifth Amendment's Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 699(2001). 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 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.* Once a noncitizen is released under *Zadvydas*, *Zadvydas* does not authorize a second arrest without first showing that there is now a significant likelihood of removal in the reasonably foreseeable future.

The six-month presumptively reasonable period runs unabated once a petitioner's removal order was final, and it is not tolled when a petitioner is released. *See, e.g., Tran v. Bondi*, No. C25-01897-JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025) (holding that Petitioner's "*Zadvydas* grace period ended six months following the entry of the order of his removal," even though Petitioner was detained for only five months); *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 presumptively reasonable six month period expired six months after entry of removal order, even though petitioner was not in custody for any of that period); *Bailey v. Lynch*, No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (despite having been in ICE custody only "briefly" before being released on an order of supervision, the *Zadvydas* "presumptively reasonable" period ended "long before he was taken back into custody").

Here, the immigration court granted deferral of removal in 2012, and after several more months in immigration custody, Mr. Ahlat was subsequently released under *Zadvydas* because it was clear that removal was not likely in the reasonably foreseeable future. There is no evidence that Respondents are any closer to removing Mr. Ahlat than when he was released. Circumstances in Jordan have not changed, and there is no evidence that any third party country would be willing to receive Mr. Ahlat in the near future. There is no "good reason to believe" that there is *any* "likelihood of removal in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. Therefore, Respondents violated the Fifth Amendment under *Zadvydas* when they took him back into ICE custody.

II. CLAIM 2: Procedural Due Process (Matthews).

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

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*: (1) the private interest that will be affected by the official action; (2) 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 (3) 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).

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, e.g., Ledesma Gonzalez*, 2025 WL 2841574, at *7 (this factor "must be accorded significant weight"). Mr. Ahlat'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, Mr. Ahlat 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*"). Similarly, in *Carballo v. Andrews*, No. CV25-978-KES-EPG (HC), 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 Order of Release and Recognizance (OREC) reflected ICE's determination that the individual 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.*, "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." 2025 WL 2402130, at *5.

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. And while those two cases did not involve petitioners with final removal orders, many courts have found a liberty interest in not being re-detained, applied the *Mathews* factors as discussed above, and have granted immediate release. *See, e.g., Jimenez v. Bondi*, 2025 WL 3466925, at *2-*3 (W.D. Wash. Dec. 3, 2025) (granting petition, ordering immediate release, and barring re-detention "without providing adequate notice of the reasons for his re-

detention and a meaningful opportunity to respond."); *Perez v. Mordant*, No. 2025 WL 3466956, at *5 (M.D. Fla. Dec. 3, 2025); *S-M-J v. Bostock*, 2025 WL 3137296, at *5 (D. Or. Nov. 10, 2025). *Cf. Lopez Dejesus, v. Bostock*, 2025 WL 3268002 (W.D. Wash. Nov. 24, 2025) (applying *Mathews* factors to conclude that petitioner was entitled to due process before he was detained a second time, even though his detention was pursuant to the mandatory detention provisions of 8 U.S.C. § 1226(c)).

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*, 2023 WL 139801, at *7 n.9 (S.D. Cal. Jan. 9, 2023) (noting that "an overwhelming majority of courts" have so held); *Odimara v. Bostock*, 2025 WL 1490395, at *10 (W.D. Wash. Mar. 27, 2025), *report and recommendation adopted*, 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 after the petitioner's previous release by ICE. *See Duong v. Kaiser*, 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").

Under *Mathews*, Mr. Ahlat has a high interest in not being re-detained. The risk of any erroneous deprivation is also high because ICE's previous decision to release 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. For these reasons, the decision to arrest Mr. Ahlat a second time violated his due process rights and was, therefore, unlawful.

III. CLAIM 3: Failure to comply with regulations.

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

The decision to revoke a noncitizen's release is governed by 8 C.F.R. § 241.13(i), which authorizes revocation 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). ICE can also revoke "on account of changed circumstances" if it "determines that there is a significant 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 alien 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 alien 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, so it 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, 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*, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

Here, Respondents have not complied with their obligations under 8 C.F.R. § 241.13, so Mr. Ahlat is entitled to release. On information and belief, Respondents did not decide, on account of changed circumstances, that there was a significant likelihood that Mr. Ahlat would be removed in the reasonably foreseeable future or that he violated the conditions of release. 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. Respondents did not timely notify Petitioner in writing of the reasons for revocation in a manner that he could reasonably respond to. Respondents did not conduct the required initial informal interview. Respondents did not give Mr. Ahlat the chance to respond. And Respondents did not advise Mr. Ahlat that he could seek review of detention, and they did not comply with the requirements for such review.

Because Respondents failed to comply with the applicable regulations, Mr. Ahlat's second arrest was unlawful.

IV. CLAIM 4: Substantive Due Process.

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

"[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. ICE*, 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 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.

Here, Respondents' policy against parole in all cases supports the conclusion that Mr. Ahlat'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. *See* Nicole Acevedo, *Hundreds of alleged human rights abuses in immigrant detention, report finds*, NBC News (Aug. 5, 2025)[2]; Center for Human Rights, *Conditions at the Northwest Detention Center*, University of Washington.[3] Because detention and threatened removal to a third country are punitive in nature, they violate substantive due process.

V. CLAIM 5: Immigration law, regulations, and CAT.

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

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

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[2] https://www.nbcnews.com/news/us-news/immigration-detention-human-rights-abuses-report-rcna222499 (last accessed Dec. 16, 2025).

[3] https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/ (last visited Dec. 16, 2025).

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 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). The government's authority to remove the individual to "another country whose government will accept [them] into that country" is not unfettered, and this can be done only if it is "impracticable, inadvisable, or impossible" to remove the individual to any of these countries 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 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.*, 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*, 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.*, 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.

As shown here, 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 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, Respondents must provide constitutionally and statutorily required notice and an opportunity to respond and contest that removal if Mr. Ahlat 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"). Respondents' failure to comply with these requirements, as well as their efforts to remove him to a third-party country, make it unlawful to detain Mr. Ahlat or remove him to a third-party country.

VI. CLAIM 6: Punitive Third-Country Banishment; Violation of Fifth and Eighth Amendments

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

The 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.

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 Rwanda—had agreed to accept deportees who are not their own citizens. 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 CAT by deporting a group of migrants to Ghana, which sent them on to their countries of citizenship despite fears of persecution.

Respondents' third-country removal scheme appears to be aimed at punishing and striking fear into groups of foreign nationals. The government has reportedly negotiated with countries to have deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to 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 government 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 will, make funeral arrangements, and appoint a hostage-taker negotiator first.

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

The punitive character of this regime subjects it to Constitutional protections. 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 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. As noted above, 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.

Mr. Ahlat was convicted and served his sentence for an aggravated felony in 2012. That conviction made him removable from the United States, but it does not authorize the government to inflict, as a matter of executive policy and discretion, additional punishment on him.

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 may not subject Mr. Ahlat to their third-country removal program, which is designed to impose a severe 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 him 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

For these reasons, Mr. Ahlat asks the court to order the following relief:

1. Assume jurisdiction over this action;
2. Enter an emergency order that Respondents not (a) transfer Mr. Ahlat out of this district or (b) deport him while this petition is pending.
3. Order Respondents to show cause why this petition should not be granted, pursuant to the following schedule:
    a. Respondents must provide a copy of Mr. Ahlat's A-file by December 23, 2025;
    b. Mr. Ahlat may file an amended petition by December 30, 2025; and
    c. Respondents must respond to the Order to Show Cause by January 6, 2025.
4. Order Respondents to immediately release Mr. Ahlat from custody.
5. Order Respondents not to take him into custody again 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;
6. Order that Respondents may not remove or seek to remove Mr. Ahlat to a third country

without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings;

7. 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
8. Order all other relief that the Court deems just and proper.

* * *

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 could not be accomplished before the time that Respondents' agents told Petitioner that he would be transferred to a different state. Counsel knows the facts asserted above or alleges them on information and belief, based on information obtained from Petitioner.

DATED this 16th day of December 2025.

/s/ Benjamin C. McMurray
BENJAMIN C. McMURRAY
Assistant Federal Public Defender