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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GILBERTO FRANCISCO LORENZO,

Petitioner,

v.

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. 2:25-cv-02660-LK

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

**RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242**

**Personal Information**

1. (a) Full name: Gilberto Francisco Lorenzo

(b) Other names used: Manuel Lopez Garcia, Juan Francisco Delgado,

Gilberto Lorenzo

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.

1 (c) Case number or numbers [ICE file number, if known]: Petitioner's A# has  
2 been provided to the government along with the filing of this petition.

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

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

6 **Decision or Action You Are Challenging**

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

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

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

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

13 (c) Decision or action you are challenging: I was released on February 22,  
14 2022, on an order of supervision. For two years, I complied with that order in every  
15 respect. However, when I appeared in person at ICE/ERO on February 2, 2025, for my  
16 regular check in, ICE re-detained me without notice, cause, or explanation. The SDDO  
17 explained that I was being detained due to the "change in administration."

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

19 7-9. First, second, and third appeals: None

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

21 11. Appeals of immigration proceedings:

22 Does this case concern immigration proceedings? Yes

23 (a) Date you were taken into immigration custody: Mr. Francisco Lorenzo  
24 last entered the United States in 2017. He was transferred to ICE custody on December  
25 27, 2021, and, because of a previous removal order from 2006, was subject to  
26 reinstatement. He expressed fear of returning to Guatemala and was given a reasonable

1 fear interview. After a hearing on January 14, 2022, an immigration judge found that  
2 Respondents established a reasonable possibility of persecution or torture and placed  
3 Mr. Francisco Lorenzo in "withholding-only" proceedings.

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

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

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

7 12. Other than the appeals listed above, have you filed any other petition,  
8 application, or motion about the issues raised in this petition? Yes. On March 14, 2025,  
9 I requested release in order to care for my one-year-old son, who suffers from serious  
10 medical issues. That application is attached to this petition as Exhibit 1.

### 11 **Grounds for Your Challenge in This Petition**

#### 12 **I. Introduction**

13 Petitioner Gilberto Francisco Lorenzo was initially detained on December 27,  
14 2021. He was released on an order of supervision on February 22, 2022, after an  
15 immigration judge concluded that Mr. Francisco Lorenzo established a reasonable  
16 possibility of persecution if he were removed and set the case for "withholding only"  
17 proceedings. Since being released, Mr. Francisco Lorenzo has complied with all his  
18 conditions and has appeared in immigration court when ordered. Nonetheless, on  
19 February 1, 2025, Mr. Francisco Lorenzo was re-detained without any determination by  
20 the government that he had become a flight risk or a danger to the community.

#### 21 **II. Jurisdiction and Venue**

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

25 This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.*  
26 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States

1 as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived  
2 sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

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

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

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

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

16 Petitioner is “in custody” for the purpose of § 2241 because he has been detained  
17 by Respondent ICE in Tacoma, Washington, since February 1, 2025.

18 **IV. Parties**

19 Gilberto Francisco Lorenzo is a citizen of Guatemala. He has a final order of  
20 removal to that country that cannot be reinstated unless an immigration judge denies his  
21 fear-based application for Withholding of Removal. Petitioner is detained in the control  
22 and custody of Respondents at NWIPC. As such, Petitioner is a resident of Tacoma,  
23 Washington.

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

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

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

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

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

18 **V. Background**

19 Mr. Francisco Lorenzo last entered the United States in 2017. He was transferred  
20 to ICE custody on December 27, 2021, and, because of a previous removal order from  
21 2006, was subject to reinstatement. He expressed fear of returning to Guatemala and  
22 was given a reasonable fear interview. After a hearing on January 14, 2022, an  
23 immigration judge found that Respondents established a reasonable possibility of  
24 persecution or torture and placed Mr. Francisco Lorenzo in "withholding-only"  
25 proceedings.

1 On February 22, 2022, Mr. Francisco Lorenzo was released from ICE custody on  
2 an Order of Supervision or Own Recognizance and paroled from custody under 8  
3 C.F.R. § 212.S(b). Parole under 8 C.F.R. § 212.S(b) is determined on a case-by-case  
4 basis for "urgent humanitarian reasons" or "significant public benefit," provided the  
5 noncitizen presents neither a security risk nor a risk of absconding.

6 Mr. Francisco Lorenzo attended his appearances before the court on the non-  
7 detained immigration court docket. He attended his first individual hearing before IJ  
8 Hoepfner on January 24, 2024. After a four-hour hearing, the case was continued to  
9 December 6, 2027, to continue cross-examination and any re-direct.

10 On Saturday February 1, 2025, Mr. Francisco Lorenzo appeared at ICE/ERO in  
11 person in Portland and was detained due to the "change in administration," according to  
12 the SDDO, and he was taken to Tacoma. Mr. Francisco Lorenzo's individual  
13 circumstances have not changed. He has not been arrested or charged with a new  
14 offense. He is not in violation of the conditions of his release. Before detaining  
15 Mr. Francisco Lorenzo, ICE did not provide notice, identify any legitimate cause, or  
16 offer any explanation.

17 **VI. Particularized Facts Pertaining to Petitioner's Continued Detention**

18 Petitioner cannot presently be returned to Guatemala, because proceedings are  
19 underway. Although the continuation of his withholding only proceedings have been  
20 accelerated to March 2026, it is unknown whether they will occur that date, conclude  
21 that date, or what the result will be. Removal to Guatemala is thus not reasonably  
22 foreseeable. Although Respondents have sometimes used banishment to third countries  
23 to punish non-citizens who contest removal, Respondents have not yet identified any  
24 other country willing to accept Petitioner.

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

4 Procedural due process requires notice and an opportunity to be heard. *Mathews*  
5 *v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural  
6 due process rights, a petitioner must establish (1) a protected property or liberty interest,  
7 and (2) a denial of adequate procedural protections. *ASSE Int’l, Inc. v. Kerry*, 803 F.3d  
8 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest,  
9 including the function involved and the fiscal and administrative burdens that the  
10 additional or substitute procedural requirement would entail.” *Rodriguez Diaz v.*  
11 *Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335).

12 Petitioner’s interest in not being detained is “the most elemental of liberty  
13 interests[.]” *E.A. T.-B. v. Wamsley*, 795 F.Supp.3d 1316, 1321, 1324 (quoting *Hamdi v.*  
14 *Rumsfeld*, 542 U.S. 507, 529 (2004)) (granting petition and ordering immediate release  
15 with no re-detention absent “an immigration court hearing . . . held (with adequate  
16 notice) to determine whether detention is appropriate.”). *See also, e.g., Ledesma*  
17 *Gonzalez v. Bostock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, \*8 (W.D. Wash.  
18 Oct. 7, 2025) (finding detainee has liberty interest).

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

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

27 *E.A. T.-B.*, 795 F.Supp.3d at 1320–21 (quoting *Mathews*, 424 U.S. at 335).

28 Given that the liberty interest here is “the most elemental,” numerous courts  
29 have found that this first factor weighs heavily in a petitioner’s favor. *See Ledesma*

1 *Gonzalez*, 2025 WL 2841574, at \*7 (This factor “must be accorded significant  
2 weight.”). Petitioner’s status as a noncitizen does not negate that interest. “While the  
3 temporary detention of non-citizens may sometimes be justified by concerns about  
4 public safety or flight risk, the government’s discretion to incarcerate non-citizens is  
5 always constrained by the requirements of due process[.]” *E.A. T.-B.*, 795 F.Supp.3d at  
6 1321 (quoting *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

7 In fact, as an individual who was released by ICE, a petitioner has a higher  
8 liberty interest than that of the normal ICE detainee. *See Guillermo M.R. v. Kaiser*,  
9 No. CV25-5436-RFL, 2025 WL 1810076, at \*1 (N.D. Cal. June 30, 2025) (By alleging  
10 that he had previously been released by ICE and was about to be re-detained,  
11 “Petitioner has asserted liberty interests that differ from the liberty interests of a  
12 detained person in *Rodriguez Diaz*.”) (referencing *Rodriguez Diaz*, 53 F.4th 1189).<sup>1</sup>  
13 Similarly, in *Carballo v. Andrews*, No. CV25-978-KES-EPG (HC), 2025 WL 2381464,  
14 \*4 (E.D. Cal. Aug. 15, 2025), the court indicated that an individual who has been  
15 released has had—in contrast to a detainee with no period of release—“an opportunity  
16 ‘to form the [ ] enduring attachments of normal life’” (quoting *Morrissey v. Brewer*,  
17 408 U.S. 471, 482 (1972)), and thus has a heightened liberty interest, such as that which  
18 led the Supreme Court in *Morrissey* to impose due process requirements on parolees  
19 where the state seeks to revoke parole.

20 The second factor, risk of an erroneous deprivation of liberty, also weighs in  
21 Petitioner’s favor. A detainee’s release to the community on an OREC reflected ICE’s  
22 determination that petitioner was neither a flight risk nor a danger to the community.  
23 *See, e.g., Ledesma Gonzalez*, 2025 WL 2841574, at \*8 (when ICE released petitioner,  
24

25 <sup>1</sup> *Rodriguez Diaz* held that a person who had been detained pursuant to an  
26 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.

1 “it did so after determining—as required by regulation—that ‘such release would not  
2 pose a danger to property or persons, and that the [noncitizen] is likely to appear for any  
3 future proceeding.’ . . . By issuing the OREC, ICE necessarily found that [petitioner]  
4 was neither a flight risk nor a danger to the community.”) (quoting 8 C.F.R.  
5 § 236.1(c)(8)); *Barrenechea v. Albarran*, No. CV25-7883-VC, 2025 WL 2717279,  
6 at \*1 (N.D. Cal. Sept. 22, 2025) (“ICE’s release of Barrenechea on his own  
7 recognizance in 2020 can only be understood as reflecting a determination that he did  
8 not pose a flight risk or danger to the community.”).

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

14 As stated in *E.A. T.-B.*, 795 F.Supp.3d at 1324, “although it would have required  
15 the expenditure of finite resources (money and time) to provide Petitioner notice and  
16 hearing on ATD violations before arresting and re-detaining him, those costs are far  
17 outweighed by the risk of erroneous deprivation of the liberty interest at issue.” And,  
18 here, of course, the expense is even lower, because there has been no allegation that  
19 Petitioner violated his supervision conditions.

20 The holding that a released detainee was entitled to a pre-deprivation hearing  
21 comes not from *Ledesma Gonzalez* and *E.A. T.-B.* alone; dozens of other courts have  
22 reached this conclusion as well. And while those two cases did not involve petitioners  
23 within final removal orders, many courts have found a liberty interest in not being re-  
24 detained, applied the *Mathews* factors as discussed above, and have granted immediate  
25 release. In this district, Judge Ricardo S. Martinez held, “[b]ased on this review of the  
26 *Mathews* factors, the Court finds that Petitioner has a protected liberty interest in his

1 continuing release from custody, and that due process requires that Petitioner receive  
2 proper notice and an opportunity to respond before he can be re-detained.” *Jimenez v.*  
3 *Bondi*, No. CV25-2167-RSM, 2025 WL 3466925, at \*2 (W.D. Wash. Dec. 3, 2025)  
4 (granting petition, ordering immediate release, and barring re-detention “without  
5 providing adequate notice of the reasons for his re-detention and a meaningful  
6 opportunity to respond.” *Id.* at \*3). *See also, e.g., Perez v. Mordant*, No. 2:25-CV-  
7 00947-SPC-DNF, 2025 WL 3466956, at \*5 (M.D. Fla. Dec. 3, 2025); *S-M-J v. Bostock*,  
8 No. 6:25-CV-01425-MTK, 2025 WL 3137296, at \*5 (D. Or. Nov. 10, 2025). *Cf. Lopez*  
9 *Dejesus, v. Bostock*, No. CV25-01427-JHC-TLF, 2025 WL 3268002 (W.D. Wash. Nov.  
10 24, 2025) (applying *Mathews* factors to conclude that petitioner was entitled to pre-re-  
11 detention due process, even though his detention was pursuant to the mandatory  
12 detention provisions of 8 U.S.C. § 1226(c)).<sup>2</sup>

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

21 In addition, the government should be required to meet its burden based on  
22 changed circumstances subsequent to Petitioner’s previous release by ICE. *See Duong*  
23 *v. Kaiser*, No. CV25-7598-JST, -- F.Supp.3d --, 2025 WL 2689266, at \*10 (N.D. Cal.

24  
25  
26 <sup>2</sup> The *Lopez Dejesus* opinion does not mention that detention was pursuant to § 1226(c);  
that fact is shown in Respondents’ Return Memorandum, No. CV25-01427-JHC-TLF,  
Dkt. 16 at 1 (W.D. Wash. Oct. 6, 2025).

1 Sept. 19, 2025) (holding that any re-detention first required a hearing “whether a  
2 material change of circumstances justifies [petitioner’s] re-detention”).

3 **VIII. The Law Pertaining to a Noncitizen’s Regulatory Right Not to Be Re-detained**  
4 **Absent Notice, an Opportunity to Be Heard, and Findings that the Regulatory**  
5 **Standards for Re-detention Have Been Met.**

6 ICE’s decision to re-detain cannot be arbitrary. Agency action is arbitrary or  
7 capricious if the agency relied on factors which Congress has not intended it to  
8 consider, entirely failed to consider an important aspect of the problem, offered an  
9 explanation for its decision that runs counter to the evidence before the agency, or is so  
10 implausible that it could not be ascribed to a difference in view or the product of agency  
11 expertise. *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463  
12 U.S. 29, 43 (1983). For an agency action to survive arbitrary and capricious review, it  
13 must have “articulated a satisfactory explanation for its action including a rational  
14 connection between the facts found and the choice made.” *Alliance for the Wild Rockies*  
15 *v. Petrick*, 68 F.4th 475, 493 (9th Cir. 2023) (citation modified). Furthermore, “an  
16 administrative agency is not allowed to change direction without some explanation of  
17 what it is doing and why.” *Int’l Union, UAW v. NLRB*, 802 F.2d 969, 973-74 (7th Cir.  
18 1986). An “unexplained inconsistency between agency actions” is a reason for holding  
19 an agency’s action “to be an arbitrary and capricious change.” *Organized Vill. Of Kake*  
20 *v. U.S. Dep’t of Agric.*, 795 F.3d 956, 966 (9th Cir. 2015) (quotation marks omitted).

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

23 “[S]ubstantive due process prevents the government from engaging in conduct  
24 that shocks the conscience, or interferes with rights implicit in the concept of ordered  
25 liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987) (citation modified).  
26 “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

1 U.S. 71, 80, (1992); *see also Zadvydas*, 533 U.S. at 696, (finding that a noncitizen has a  
2 liberty interest “strong enough” to challenge “indefinite and potentially permanent”  
3 immigration detention). “[I]ndividuals who have been released from custody, even  
4 where such release is conditional, have a liberty interest in their continued liberty.” *Doe*  
5 *v. Becerra*, 787 F.Supp.3d 1083, 1093 (E.D. Cal. 2025) (citing *Morrissey v. Brewer*,  
6 408 U.S. 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 150 (1997); *Gagnon v.*  
7 *Scarpelli*, 411 U.S. 778, 782 (1973)).

8 “A due process violation occurs when detention becomes punitive rather than  
9 regulatory, meaning there is no regulatory purpose that can rationally be assigned to the  
10 detention or the detention appears excessive in relation to its regulatory purpose.”  
11 *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); *accord Padilla v. U.S.*  
12 *Immigr. & Customs Enf’t.*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023) (“Due  
13 process protects against immigration detention that is not reasonably related to the  
14 legitimate purpose of effectuating removal or protecting against danger and flight  
15 risk.”). The regulatory purpose of immigration detention is to hold a person that is a  
16 flight risk or a danger to the community. *In re Guerra*, 24 I.&N. Dec. 37 (B.I.A. 2006),  
17 *abrogated on other grounds, Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021).  
18 Regulations governing parole identify only those two factors for consideration in the  
19 release decision. 8 C.F.R. § 236.1(c)(8). For people who have been ordered deported,  
20 8 C.F.R. § 241.13(i)(2) also authorizes re-detention for purposes of removal, so long as  
21 Respondents can prove that “there is a significant likelihood that the [noncitizen] may  
22 be removed in the reasonably foreseeable future.”

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

1 **X. The Legal Framework for Third-Country Removals**

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

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

14 Second, if the individual is not removed to the country they designated under  
15 § 1231(b)(2)(A), the government shall remove the individual to the country of which  
16 the individual is a “subject, national, or citizen” unless the government of that country  
17 does not inform the U.S. government or the individual within 30 days after first inquiry  
18 or within another reasonable period of time whether the government will accept the  
19 individual into the country or the country is not willing to accept the individual into the  
20 country. 8 U.S.C. § 1231(b)(2)(D).

21 Third, if the individual is not removed to either the country of their designation  
22 or the country of which they are a subject, national, or citizen, then the government  
23 shall remove them to any of the following options: (1) the country from which the  
24 individual was admitted to the United States; (2) the country in which is located the  
25 foreign port from which the individual left for the United States or for a foreign  
26 territory contiguous to the United States; (3) the country in which the individual resided

1 before the individual entered the United States and from which the individual entered  
2 the United States; (4) the country in which the individual was born; or (5) the country in  
3 which the individual's birthplace is located when the individual was ordered removed.  
4 8 U.S.C. § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to  
5 remove the individual to any of these countries may the government remove the  
6 individual to "another country whose government will accept [them] into that country."  
7 8 U.S.C. § 1231(b)(2)(E)(vii).

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

16 Similarly, Congress codified protections enshrined in the Convention Against  
17 Torture ("CAT") prohibiting the government from removing a person to a country  
18 where they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of  
19 1998 ("FARRA"), Public Law 105-277, div. G, sec. 2242, 112 Stat. 2681, 2631-822 (8  
20 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite,  
21 or otherwise effect the involuntary return of any person to a country in which there are  
22 substantial grounds for believing the person would be in danger of being subjected to  
23 torture, regardless of whether the person is physically present in the United States.");  
24 28 C.F.R. §§ 200.1, 208.16-208.18, 1208.16-1208.18. CAT protection is also  
25 mandatory.

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

20 Due process also demands that the government “ask the noncitizen whether he or  
21 she fears persecution or harm upon removal to the designated country and memorialize  
22 in writing the noncitizen’s response. This requirement ensures DHS will obtain the  
23 necessary information from the noncitizen to comply with § (b)(3) and avoids [a dispute  
24 about what the officer and noncitizen said].” *Aden*, 409 F.Supp.3d at 1019; *cf. D.V.D.*,  
25 2025 WL 1453640, at \*1 (“Following notice, the individual must be given a meaningful  
26

1 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection  
2 prior to removal.”) (emphasis omitted).

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

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

17 **XI. Facts Pertaining to Punitive Banishment to Third Countries**

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

22 Respondents reportedly have negotiated with at least 58 countries to accept  
23 deportees from other nations. On June 25, 2025, the *New York Times* reported that  
24 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and  
25  
26

1 Rwanda—had agreed to accept deportees who are not their own citizens.<sup>3</sup> Since then,  
2 ICE has carried out highly publicized third-country deportations to South Sudan and  
3 Eswatini. It also attempted—and completed—an “end-run” around the protections of  
4 the Convention Against Torture by deporting a group of migrants to Ghana, which sent  
5 them on to their countries of citizenship despite fears of persecution.

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

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

24  
25  
26 <sup>3</sup> Edward Wong, et al., *Inside the Global Deal-Making Behind Trump’s Mass  
Deportations*, N.Y. Times (June 25, 2025), [https://www.nytimes.com/2025/06/25/us/  
politics/trump-immigrants-deportations.html](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html) [<https://perma.cc/64G9-XYGB>].

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

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

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

5 **XII. The Law Governing Punitive Removal Practices**

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

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

25 Deportation of individuals to third countries to be imprisoned or harmed is  
26 unquestionably punishment. And, as a district court judge recently found, Respondents’

1 project of punitive exile continues, despite Respondents' claims to the contrary. *See*  
2 *Abrego Garcia v. Noem*, et al., 8:25-cv-02780-PX, Dkt. 110 (D. Md. Dec. 11, 2025).

### 4 **Grounds for Relief**

#### 5 **Ground One: Procedural Due Process**

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

7 Petitioner has a liberty interest in not being re-detained. Applying the three-  
8 factor test of *Mathews*, that interest is high. The risk of any erroneous deprivation is  
9 also high, because ICE's previous release of him necessarily reflected a conclusion that  
10 he was not a flight risk or a danger to the community. Here, as in *Ledesma Gonzalez*,  
11 "ICE revoked that release without any reassessment of those factors." 2025 WL  
12 2841574, at \*8.

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

#### 16 **Ground Two: Failure to Comply with Regulations**

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

18 Respondents arbitrary and capricious actions do not comply with their  
19 obligations under the Administrative Procedures Act and therefore Petitioner is entitled  
20 to release. On information and belief,

21 (a) Respondents did not make a determination either, on account of changed  
22 circumstances, Petitioner had become a flight risk or a danger to the community;

23 (b) to the extent that Respondents made such a determination, they lacked an  
24 adequate basis to do so and did not consider legitimate factors;

25 (c) Respondents provided no notice and identified no legitimate cause to rearrest  
26 Petitioner.

1                   **Ground Three: Substantive Due Process**

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

3                   Respondents re-arrested Petitioner—and thus denied him his substantive due  
4 process rights to family integrity and freedom—because a “change in administration”  
5 created an interest in punitively arresting non-citizens, even those complying with their  
6 conditions of release. But Petitioner’s two years in the community created ties that  
7 could not be removed without cause. Respondents’ policy against parole in all cases  
8 supports the conclusion that Petitioner’s detention is punitive, as do many reported  
9 statements advocating for increased arrests for their own sake. Respondents’ refusal to  
10 address widespread mistreatment of detained immigrants also supports that conclusion.  
11 *See* Nicole Acevedo, *Hundreds of alleged human rights abuses in immigrant detention,*  
12 *report finds*, NBC News (Aug. 5, 2025), [https://www.nbcnews.com/news/us-  
14 news/immigration-detention-human-rights-abuses-report-rcna222499](https://www.nbcnews.com/news/us-<br/>13 news/immigration-detention-human-rights-abuses-report-rcna222499)  
15 [<https://perma.cc/3XLR-6XHX>]; Center for Human Rights, *Conditions at the Northwest*  
16 *Detention Center*, University of Washington, [https://jsis.washington.edu/humanrights/  
19 projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/  
20 https://perma.cc/QF24-UR6C](https://jsis.washington.edu/humanrights/<br/>17 projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/<br/>18 https://perma.cc/QF24-UR6C)] (last visited Dec. 22, 2025).

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

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

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

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

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

5 Petitioner was convicted and completed any sentences for his criminal  
6 convictions long ago. Petitioner’s convictions do not authorize the government to  
7 inflict, as a matter of executive policy and discretion, additional punishment on  
8 Petitioner. Respondents’ third-country removal program is punitive in both its nature  
9 and its execution.

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

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

1 Respondents may not seek to remove Petitioner to a third country under their  
2 punitive banishment policy and practices. *See Nguyen*, 796 F.Supp.3d 703, 739  
3 (granting preliminary injunction against “removing Petitioner to any country where he  
4 is likely to face imprisonment upon arrival”).

5 **Prayer for Relief**

6 Petitioner respectfully requests that this Court:

7 (a) Assume jurisdiction over this action;

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

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

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

15 (e) Order that the government may not otherwise re-detain Petitioner unless  
16 the government:

17 (1) obtains a valid travel document,

18 (2) provides the valid travel document to him counsel,

19 (3) offers Petitioner the opportunity to leave on his own within two  
20 months, and

21 (4) Petitioner does not leave. Under such circumstances, the government  
22 may be permitted to re-detain Petitioner provided it has already made  
23 concrete arrangements for him to be put on a flight in the reasonably  
24 foreseeable future.

25 *See Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at \*6 (W.D. Wash. Dec. 5,  
26 2025); *Tang*, 2025 WL 3551381, at \*3.

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

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

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

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

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

16 DATED this 22nd day of December 2025.

17 Respectfully submitted,

18 *s/ Gregory Murphy*  
19 Assistant Federal Public Defender  
20 Attorney for Gilberto Francisco Lorenzo  
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