

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KIPOUNG SOMSANUK,

Petitioner,

vs.

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

Respondents.

No.

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

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Full name: Kipoung Somsanuk
- (b) Other names used: None
2. Place of confinement:
 - (a) Northwest Immigration Processing Center (NWIPC)
 - (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a contractual arrangement with my custodian, the Immigration and Customs Enforcement Field Office Director at Seattle, Washington.

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

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

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

Decision or Action You Are Challenging

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

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

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

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

(c) Decision or action you are challenging: Petitioner was initially ordered removed on October 27, 2003. He was originally detained for six months. He has been released on conditions since that date, and has been detained at various times after alleged violations of conditions. He was re-detained December 10, 2025.

Your Earlier Challenges of the Decision or Action

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

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

11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

(a) Date you were taken into immigration custody:

(b) Date of the removal or reinstatement order:

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

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

(6) Issues raised:

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

Grounds for Your Challenge in This Petition

I. Introduction

Petitioner Somsanuk is presently detained at the Northwest ICE Processing Center (NWIPC). Petitioner has been held in immigration custody for over seven months. Removal to the former country of residence is not reasonably foreseeable. Petitioner's continued detention is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner seeks (a) release; (b) an order preventing re-detention unless the government establishes by clear and convincing evidence at a hearing before a neutral decisionmaker that Petitioner is a flight risk or a danger to the community, based on changed circumstances after their most recent release by ICE; (c) an order preventing removal to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings; and (d) an order barring removal to any third country pursuant to Respondents' punitive removal policy.

Petitioner Somsanuk was initially detained in 2002. Petitioner was released on conditions. On December 10, 2025, Petitioner was re-detained without any determination by the government that he had become a flight risk or a danger to the community or that removal to Laos or Thailand was likely in the reasonably foreseeable future.

II. Jurisdiction and Venue

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

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

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

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

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

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

18 Petitioner is "in custody" for the purpose of § 2241 because he has been detained
19 by Respondent ICE in Tacoma, Washington, since December 10, 2025.

20 **IV. Parties**

21 Petitioner Somsanuk was informed that he was born in Laos and found
22 abandoned as the people who became his parents were fleeing Laos, ending up in a
23 refugee camp in Thailand. He has a final order of removal, with Laos as the country
24 designated for removal. Petitioner is detained in the control and custody of Respondents
25 at NWIPC. As such, Petitioner is a resident of Tacoma, Washington.
26

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

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

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

12 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
13 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant
14 to a contract with ICE to detain noncitizens. Respondent Scott is sued in his official
15 capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-
16 700, 2021 WL 1946222, at *3-5 (W.D. Wash. May 14, 2021).

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

21 **V. Background**

22 Petitioner Somsanuk was informed that he was born in Laos and found
23 abandoned as the people who became his parents were fleeing Laos, ending up in a
24 refugee camp in Thailand. He has a final order of removal. He has no connection to
25 either country.
26

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

2 Petitioner cannot presently be removed to either Laos or Thailand. It is
3 Petitioner's understanding that neither country will accept him, because there is no
4 indication that he is a citizen of either country. Removal to these countries is thus not
5 reasonably foreseeable. ICE has not obtained a travel document from either country.

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

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

9 Under 8 U.S.C. § 1231, detention of noncitizens who have been ordered
10 removed is mandatory during the so-called 90-day "removal period." 8 U.S.C.
11 § 1231(a)(1)(A). This period begins on the "date the order of removal becomes
12 administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). But the *Zadvydas* Court believed
13 that a "serious constitutional threat" under the Fifth Amendment's Due Process Clause
14 was posed by the indefinite detention of noncitizens. 533 U.S. at 699. The Court
15 therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the
16 statute's "basic purpose [of] effectuating [a noncitizen]'s removal[.]" *Id.* at 696–99.

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

25 The issue is not whether Respondents have been able to remove some
26 individuals to a given country. Rather, the court must make an individualized analysis
as to a particular detainee. *See Nguyen v. Scott*, 796 F.Supp.3d 703, 726 (W.D. Wash.

1 Aug. 21, 2025) (stating increase in total number of removals to Vietnam, including
 2 those who entered pre-1995, fails to rebut the evidence presented by Petitioner that “his
 3 individual circumstances make removal unlikely.”). Facts that are part of the analysis
 4 include whether Respondent provides evidence that the request was submitted to the
 5 country, whether the country has acknowledged receipt of the request or otherwise
 6 responded to Petitioner’s request, and the anticipated wait time for a response from the
 7 country.

8 When a petitioner has been detained for a total of six months after a final order
 9 of removal, the *Zadvydas* presumptively reasonable period has expired, even if the
 10 petitioner’s current period of detention is less than six months. “A petitioner’s total
 11 length of confinement need not be consecutive to reach the six-month presumptively
 12 reasonable limit established in *Zadvydas*.” *Tang v. Bondi*, No. CV25-1473-RAJ-TLF,
 13 2025 WL 2637750, at *4 (W.D. Wash. Sept. 11, 2025).

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

17 Procedural due process requires notice and an opportunity to be heard. *Mathews*
 18 *v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural
 19 due process rights, a petitioner must establish (1) a protected property or liberty interest,
 20 and (2) a denial of adequate procedural protections. *ASSE Int’l, Inc. v. Kerry*, 803 F.3d
 21 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest,
 22 including the function involved and the fiscal and administrative burdens that the
 23 additional or substitute procedural requirement would entail.” *Rodriguez Diaz v.*
 24 *Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335).

25 Petitioner’s interest in not being detained is “the most elemental of liberty
 26 interests[.]” *E.A. T.-B. v. Wamsley*, 795 F.Supp.3d 1316, 1321, 1324 (quoting *Hamdi v.*
Rumsfeld, 542 U.S. 507, 529 (2004)) (granting petition and ordering immediate release

1 with no re-detention absent “an immigration court hearing . . . held (with adequate
2 notice) to determine whether detention is appropriate.”). *See also, e.g., Ledesma*
3 *Gonzalez v. Bostock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, *8 (W.D. Wash.
4 Oct. 7, 2025) (finding detainee has liberty interest).

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

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

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

12 Given that the liberty interest here is “the most elemental,” numerous courts
13 have found that this first factor weighs heavily in a petitioner’s favor. *See Ledesma*
14 *Gonzalez*, 2025 WL 2841574, at *7 (this factor “must be accorded significant weight”).
15 Petitioner’s status as a noncitizen does not negate that interest. “While the temporary
16 detention of non-citizens may sometimes be justified by concerns about public safety or
17 flight risk, the government’s discretion to incarcerate non-citizens is always constrained
18 by the requirements of due process[.]” *E.A. T.-B.*, 795 F.Supp.3d at 1321 (quoting
19 *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

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 “it did so after determining—as required by regulation—that ‘such release would not
25 pose a danger to property or persons, and that the [noncitizen] is likely to appear for any
26 future proceeding.’ . . . By issuing the OREC, ICE necessarily found that [petitioner]

1 was neither a flight risk nor a danger to the community.”) (quoting 8 C.F.R.
2 § 236.1(c)(8)); *Barrenechea v. Albarran*, No. CV25-7883-VC, 2025 WL 2717279,
3 at *1 (N.D. Cal. Sept. 22, 2025) (“ICE’s release of Barrenechea on his own
4 recognizance in 2020 can only be understood as reflecting a determination that he did
5 not pose a flight risk or danger to the community”).

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

11 As stated in *E.A. T.-B.*, 795 F.Supp.3d at 1324, “although it would have required
12 the expenditure of finite resources (money and time) to provide Petitioner notice and
13 hearing on ATD violations before arresting and re-detaining him, those costs are far
14 outweighed by the risk of erroneous deprivation of the liberty interest at issue.”

15 The holding that a released detainee was entitled to a pre-deprivation hearing
16 comes not from *Ledesma Gonzalez* and *E.A. T.-B.* alone; dozens of other courts have
17 reached this conclusion as well. And while those two cases did not involve petitioners
18 within final removal orders, many courts have found a liberty interest in not being re-
19 detained, applied the *Mathews* factors as discussed above, and have granted immediate
20 release. In this district, see, e.g., *Huy Van Tran v. Bondi*, No. 2:25-CV-02335-DGE-
21 TLF, 2025 WL 3725677, at *5 (W.D. Wash. Dec. 24, 2025) (finding that detainee with
22 final order of removal has liberty interest and fact that detainee was allowed to remain
23 in community under order of supervision “only strengthens this interest”); *Khim v.*
24 *Bondi*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at *4 (W.D. Wash. Dec. 17,
25 2025) (applying the *Mathews* analysis from *E.A. T.-B.* to detainee with final order of
26 removal). See also, e.g., *Perez v. Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL

3466956, at *5 (M.D. Fla. Dec. 3, 2025); *S-M-J v. Bostock*, No. 6:25-CV-01425-MTK, 2025 WL 3137296, at *5 (D. Or. Nov. 10, 2025). *Cf. Lopez Dejesus, v. Bostock*, No. 25-CV-01427-JHC-TLF, 2025 WL 3268002 (W.D. Wash. Nov. 24, 2025) (applying *Mathews* factors to conclude that petitioner was entitled to pre-re-detention due process, even though his detention was pursuant to the mandatory detention provisions of 8 U.S.C. § 1226(c)).¹

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

In addition, the government should be required to meet its burden based on changed circumstances subsequent to the petitioner’s previous release by ICE. *See Duong v. Kaiser*, No. CV25-7598-JST, -- F.Supp.3d --, 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”).

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

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

The revocation of a noncitizen's release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release under § 1231 for purposes of removal or for violation of conditions of release. The government may revoke a noncitizen's release and return them to ICE custody due to failure to comply with any of the conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed circumstances, the [Immigration] Service determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2).

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

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

Id. § 241.13(i)(3).

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

the history of the [noncitizen's] efforts to comply with the order of removal, the history of [ICE's] efforts to remove [noncitizens] to the country in question or to third countries, including the ongoing nature

1 of [ICE's] efforts to remove [the noncitizen] and the [noncitizen's]
2 assistance with those efforts, the reasonably foreseeable results of
3 those efforts, and the views of the Department of State regarding the
prospects for removal of [noncitizens] to the country or countries in
question.

4 *Id. See also Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3
5 (E.D. Cal. July 16, 2025). While courts do not make these determinations in the first
6 instance, they may review them for compliance with the regulation. *See id.*; *Nguyen v.*
7 *Hyde*, 788 F.Supp.3d 144, 150 (D. Mass. June 20, 2025) (citing *Kong v. United States*,
8 62 F.4th 608, 620 (1st Cir. 2023)).

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

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

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

22 Second, if the individual is not removed to the country they designated under
23 § 1231(b)(2)(A), the government shall remove the individual to the country of which
24 the individual is a “subject, national, or citizen” unless the government of that country
25 does not inform the U.S. government or the individual within 30 days after first inquiry
26 or within another reasonable period of time whether the government will accept the

1 individual into the country or the country is not willing to accept the individual into the
2 country. 8 U.S.C. § 1231(b)(2)(D).

3 Third, if the individual is not removed to either the country of their designation
4 or the country of which they are a subject, national, or citizen, then the government
5 shall remove them to any of the following options: (1) the country from which the
6 individual was admitted to the United States; (2) the country in which is located the
7 foreign port from which the individual left for the United States or for a foreign
8 territory contiguous to the United States; (3) the country in which the individual resided
9 before the individual entered the United States and from which the individual entered
10 the United States; (4) the country in which the individual was born; or (5) the country in
11 which the individual's birthplace is located when the individual was ordered removed.

12 8 U.S.C. § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to
13 remove the individual to any of these countries may the government remove the
14 individual to "another country whose government will accept [them] into that country."
15 8 U.S.C. § 1231(b)(2)(E)(vii).

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

24 Similarly, Congress codified protections enshrined in the Convention Against
25 Torture (CAT) prohibiting the government from removing a person to a country where
26 they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998

1 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8
 2 U.S.C. § 1231 note) (“It shall be the policy of the United States not to expel, extradite,
 3 or otherwise effect the involuntary return of any person to a country in which there are
 4 substantial grounds for believing the person would be in danger of being subjected to
 5 torture, regardless of whether the person is physically present in the United States.”);
 6 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. CAT protection is also
 7 mandatory.

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

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

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

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

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

24 Since January 2025, Respondents have developed and implemented a policy and
25 practice of removing individuals to third countries, without first following the
26

1 procedures in the INA for designation and removal to a third country and without
2 providing fair notice and an opportunity to contest the removal in immigration court.

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

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

23 The Administration has hand-selected countries known for human rights abuses
24 and instability for these third-country deportation agreements to frighten people in the

25 ² Edward Wong, et al., *Inside the Global Deal-Making Behind Trump's Mass*
26 *Deportations*, N.Y. Times (June 25, 2025), <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html> [<https://perma.cc/64G9-XYGB>].

1 United States into self-deporting or to accept removal to their home countries. Indeed,
2 conditions in South Sudan are so extreme that the U.S. State Department website warns
3 Americans not to travel there, and, if they do, to prepare their will, make funeral
4 arrangements, and appoint a hostage-taker negotiator first.

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

17 The memo further instructs that if the noncitizen “does not affirmatively state a
18 fear of persecution or torture if removed to the country of removal listed on the Notice
19 of Removal within 24 hours, [ICE] may proceed with removal to the country identified
20 on the notice.” If the noncitizen “does affirmatively state a fear if removed to the
21 country of removal,” then ICE will refer the case to U.S. Citizenship and Immigration
22 Services (“USCIS”) for a screening for eligibility for withholding of removal and
23 protection under the Convention Against Torture. “USCIS will generally screen within
24 24 hours.” If USCIS determines that the noncitizen does not prove to the screener’s
25 satisfaction that it is more likely than not that the noncitizen will be tortured, the
26 individual will be removed. This imposes on the noncitizen a higher standard than the

1 “reasonable fear” and “credible fear” standards found in the INA. If USCIS determines
2 that the noncitizen has met the standard, then the policy directs ICE to either move to
3 reopen removal proceedings “for the sole purpose of determining eligibility for
4 [withholding of removal protection] and CAT” or designate another country for
5 removal.

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

10 Further support that petitioner faces a risk of punitive third-country removal
11 comes from two declarations submitted in *Nguyen*, attached here as Exhibits 2 and 3.
12 They detail removals to third countries with little or no notice, as described in *Nguyen*,
13 796 F.Supp.3d at 736–37.

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

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

21 Importantly, the Court distinguished deportation, which the Court reasoned is
22 “not a ‘banishment,’ in the sense in which that word is often applied to the expulsion of
23 a citizen from his country by way of punishment,” from government actions aimed at
24 punishment, such as imprisonment at hard labor in addition to deportation. *Id.* at 236.
25 The Court explained that deportation “is but a method of enforcing the return to his own
26 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.

XIII. The Law Governing Injunctive Relief

“An injunction is appropriate when the party seeking relief demonstrates that: (1) it is likely to suffer irreparable injury that cannot be redressed by an award of damages; (2) that “considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted”; and (3) “that the public interest would not be disserved by a permanent injunction.” *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1243 (9th Cir. 2018).

Grounds for Relief

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

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

Because Petitioner’s removal order became final on October 27, 2003, the removal period has long since expired, and detention is no longer required under 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has passed. He was detained for six months subsequent to that final order of removal and

1 has been detained on occasion since then, in addition to being detained since December
2 10, 2025.

3 There is “good reason to believe that there is no significant likelihood of removal
4 in the reasonably foreseeable future[.]” *Zadvydas*, 533 U.S. at 701. Respondents have
5 been unable to remove Petitioner to either Laos or Thailand since 2002 and there is no
6 indication that circumstances have changed.

7 Therefore, the burden shifts to the government to rebut that showing. The
8 government cannot meet that burden under the facts of this case. *See Nguyen*, 796
9 F.Supp.3d 703, 739 (granting preliminary injunction requiring release under *Zadvydas*);
10 *Tang*, 2025 WL 2637750, at *6 (same).

11 **Ground Two: Procedural Due Process**

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

13 Petitioner has a liberty interest in not being re-detained. Applying the three-
14 factor test of *Mathews*, that interest is high. The risk of any erroneous deprivation is
15 also high, because ICE’s previous release of him necessarily reflected a conclusion that
16 he was not a flight risk or a danger to the community. Here, as in *Ledesma Gonzalez*,
17 “ICE revoked that release without any reassessment of those factors.” 2025 WL
18 2841574, at *8.

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

22 As to Petitioner’s prayer for injunctive relief barring a new re-detention absent
23 due process, the requirements for injunctive relief are met. His prospective unlawful re-
24 detention would constitute an irreparable injury that could not be redressed by an award
25 of damages. Second, the balance of hardships is completely in Petitioner’s favor:

26 Petitioner risks unlawful re-detention, while Respondents suffer no hardship by being

1 prevented from following their unlawful re-detention practices. Finally, the public
2 interest would affirmatively be served by barring Respondents' unlawful practice.

3 Furthermore, there is a significant likelihood that Respondents would seek to
4 again re-detain Petitioner unlawfully. Respondents have a policy to round up as many
5 noncitizens as possible. *See, e.g.*, Jose Olivares, "Trump administration sets quota to
6 arrest 3,000 people a day in anti-immigration agenda," *The Guardian* (May 29, 2025),
7 <https://www.theguardian.com/us-news/2025/may/29/trump-ice-arrest-quota>
8 [<https://perma.cc/6P5L-NUDM>].

9 **Ground Three: Failure to Comply with Regulations**

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

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

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

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

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

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

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

23 (f) Respondents did not advise Petitioner of the right to request a review of the
24 detention and did not comply with the requirements for such review. His re-detention
25 was therefore contrary to Respondents' regulations and unlawful.
26

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

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

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

Prior to any third-country removal, Petitioner must be provided with constitutionally and statutorily compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country in reopened removal proceedings. *See Nguyen*, 796 F.Supp.3d 703, 739 (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”).

Furthermore, the requirements for injunctive relief are met. Petitioner's prospective unlawful re-detention would constitute an irreparable injury that could not be redressed by an award of damages. Second, the balance of hardships is completely in Petitioner's favor: Petitioner risks unlawful removal to a third country, while Respondents suffer no hardship by being prevented from following their unlawful re-

1 detention practices. Finally, the public interest would affirmatively be served by barring
2 Respondents' unlawful practice.

3 In addition, the matter is ripe. The facts set forth above—including Respondents'
4 stated policy regarding third country removals—make it reasonably likely that
5 Respondents would seek to remove Petitioner to a third country without complying
6 with their regulatory and constitutional obligations to provide Petitioner with notice and
7 an opportunity to be heard.

8 **Ground Five: Punitive Third-Country Banishment; Violation of Fifth and**
9 **Eighth Amendments**

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

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

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

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

22 Petitioner was convicted and completed the sentences for his criminal
23 convictions. Petitioner's convictions arguably made him removable from the United
24 States, but the convictions do not authorize the government to inflict, as a matter of
25 executive policy and discretion, additional punishment on Petitioner. Respondents'
26 third-country removal program is punitive in both its nature and its execution.

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

9 Respondents' third-country removal program is more than a publicity stunt. The
10 hundreds of individuals who have already been subjected to it have been banished in
11 foreign prisons upon arrival without charge and often without communication with the
12 outside world, including their families and lawyers. Respondents may not subject
13 Petitioner to their third-country removal program which is designed to impose a severe
14 punishment on their subjects. Such conduct "shocks the conscience" under Fifth
15 Amendment substantive due process, is cruel and unusual punishment, and may not be
16 imposed without charge and a judicial trial.

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

21 The criteria for an injunction in this case are met. First, unlawful removal to a
22 third country risks irreparable injury that could not be redressed by an award of
23 damages. Second, the balance of hardships is completely in Petitioner's favor:
24 Petitioner risks removal to a third country where unwarranted punishment may result,
25 and Respondents suffer no hardship by being prevented from following their unlawful
26 removal policies. Finally, the public interest would affirmatively be served by barring

1 Respondents' unlawful policies. Given the potential for Respondents to attempt a rapid
2 and unlawful removal, Petitioner would have no opportunity to seek injunctive relief at
3 that time.

4 Furthermore, the matter is ripe. The facts set forth above—including
5 Respondents' stated policy regarding third country removals—make it reasonably likely
6 that Respondents would seek to remove Petitioner to a third country with a punitive
7 intent and punitive result.

8 **Prayer for Relief**

9 Petitioner respectfully requests that this Court:

- 10 (a) Assume jurisdiction over this action;
- 11 (b) Order Respondents to immediately release Petitioner from custody;
- 12 (c) Order Respondents to, within 24 hours of his release, provide the Court
13 with a declaration confirming that Petitioner has been released from custody;
- 14 (d) Order that Respondents may not re-detain Petitioner without first holding
15 a hearing before a neutral decisionmaker at which the government bears the burden of
16 establishing flight risk or danger to the community by clear and convincing evidence
17 based on changed circumstances since Petitioner was previously released;
- 18 (e) Order that the government may not otherwise re-detain Petitioner unless
19 the government:
- 20 (1) obtains a valid travel document to Laos for him,
- 21 (2) provides the valid travel document to him and his counsel,
- 22 (3) offers Petitioner the opportunity to leave on his own within two months,
23 and
- 24 (4) Petitioner does not leave. Under such circumstances, the government may
25 be permitted to re-detain Petitioner provided it has already made concrete
26

1 arrangements for him to be put on a flight to Laos in the reasonably
2 foreseeable future.

3 *See Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at *6 (W.D. Wash. Dec. 5,
4 2025); *Tang*, 2025 WL 3551381, at *3.

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

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

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

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

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

20 DATED this 6th day of January, 2026.

21 Respectfully submitted,

22 s/ Alan Zarky
23 Staff Attorney
24 Attorney for Kipoung Somsanuk
25
26