

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAVEIN JUMEL COKE,

Petitioner,

vs.

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

Respondents.

No.

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

PRELIMINARY MATTERS

“Congress has clearly indicated that habeas petitioners are entitled to a prompt ruling” on their petition. *Mejia v. Hermosillo*, No. CV25-02196, 2025 WL 3173842, at *1 (W.D. Wash. Nov. 13, 2025).

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

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

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Full name: Javein Jumel Coke
- (b) Other names used: N/A
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:

¹ For just a few examples of other courts issuing such an order in § 2241 cases involving ICE detainees within the past few months (or reflecting the court had previously issued such an order), *see, e.g., Bustos v. Raycraft*, No. 25-13202, 2025 WL 3022294, at *2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. CV25-513-SDN, 2025 WL 3003708, at *1 (D. Me. Oct. 27, 2025) (order issued same day petition was filed); *Lopez Pop v. Noem*, No. CV25-2589-SSS-SSC, 2025 WL 3050095, at *7 (C.D. Cal. Oct. 3, 2025); *Singh v. Delaney Hall*, No. CV25-16018-GC, 2025 WL 2772644, at *1 (D.N.J. Sept. 29, 2025); *Hom v. Ceja*, No. CV25-2221-WJM-TPO, 2025 WL 2801449, at *2 (D. Colo. Sept. 17, 2025).

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

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

5 (c) Decision or action you are challenging: Petitioner Coke was taken into
6 custody by ICE on April 23, 2024 when he completed his prison sentence. Mr. Coke
7 was ordered removed to Jamaica but granted deferral of removal under CAT on
8 October 23, 2024. DHS appealed the Immigration Judge's decision. On June 23, 2025,
9 the BIA dismissed the appeal and affirmed Petitioner Coke's deferral of removal.
10 Mr. Coke has been detained in ICE custody for over twenty months.

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

12 7-9. First, second, and third appeals: None

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

14 11. Appeals of immigration proceedings:

15 Does this case concern immigration proceedings? Yes

16 (a) Date you were taken into immigration custody: April 23, 2024

17 (b) Date of the removal or reinstatement order: October 23, 2024

18 (c) Date of the Immigration Judge order granting Deferral of Removal under
19 the Convention Against Torture (CAT): October 23, 2024

20 (d) Did you file an appeal with the Board of Immigration Appeals? No. DHS
21 appealed the Immigration Judge's decision. On June 23, 2025, the BIA dismissed DHS'
22 appeal and the Immigration Judge's decision granting my application for deferral of
23 removal under the CAT was affirmed.

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

25 12. Other than the appeals listed above, have you filed any other petition,
26 application, or motion about the issues raised in this petition? On April 17, 2025, I filed

(pro se) a 28 U.S.C. § 2241 petition for writ of habeas corpus requesting the Court order my immediate release or a bond hearing. *See Coke v. Scott, et al.*, No. CV25-694, dkt. 1 (W.D. Wash., April 17, 2025). I filed a pro se Motion for Temporary Restraining Order on June 12, 2025. *See id.* at dkt. 12. On June 18, 2025, Magistrate Judge Brian Tsuchida issued a Report and Recommendation finding that my removal proceedings were ongoing, and recommending the Court deny both the habeas petition and motion for TRO for failure to exhaust available administrative remedies. *Id.* at dkt. 19. The Honorable Ricardo S. Martinez adopted the Report and Recommendations and dismissed the habeas petition and motion for TRO on July 28, 2025. *Id.* at dkts. 23, 24.

On June 23, 2025, the BIA dismissed DHS' appeal and affirmed the Immigration Judge's grant of deferral of removal under the CAT. *See Ex. B.*

Grounds for Your Challenge in This Petition

I. Introduction

Javein Coke is presently detained at the Northwest ICE Processing Center ("NWIPC"). Mr. Coke has been held in immigration custody for twenty months, since he completed his prison sentence on April 23, 2024. Removal to the former country of residence is not reasonably foreseeable because he has been granted deferral of removal under the Convention Against Torture ("CAT"). Mr. Coke'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 his 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.

1 **II. Jurisdiction and Venue**

2 This case arises under the Constitution of the United States and the Immigration
3 and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*

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

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

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

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

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

21 Petitioner Coke is “in custody” for the purpose of § 2241 because he has been
22 detained by Respondent ICE since April 23, 2024. He is currently held in Tacoma,
23 Washington.

1 **IV. Parties**

2 Petitioner Coke is a citizen of Jamaica. He cannot be removed to Jamaica
3 because he has been granted deferral of removal under the Convention Against Torture.
4 Petitioner Coke is detained in the control and custody of Respondents at NWIPC. As
5 such, Petitioner Coke is a resident of Tacoma, Washington.

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

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

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

17 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
18 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant
19 to a contract with ICE to detain noncitizens. Respondent Scott is sued in his official
20 capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-
21 700, 2021 WL 1946222, at *3–5 (W.D. Wash. May 14, 2021).

22 Respondent United States Immigration and Customs Enforcement (hereinafter
23 ICE) is the federal executive agency responsible for the enforcement of immigration
24 laws, including the arrest, detention, and removal of noncitizens. Respondent ICE is a
25 legal custodian of Petitioner.
26

V. Background

Petitioner Coke is a citizen of Jamaica. He cannot be removed to Jamaica because on October 23, 2024, an Immigration Judge granted him deferral of removal under the CAT, a decision that found “it would be more likely than not that he would be killed if returned to Jamaica.” *See* Ex. A (October 23, 2024, Immigration Judge Decision) at 7. The Immigration Judge found that Mr. Coke established that “he has a clear probability of persecution on the basis of [REDACTED]” *Id.* at 4. The Immigration Judge found that if returned to Jamaica, “it would only be a matter of time” [REDACTED]

[REDACTED] This appeal was denied. On June 23, 2025, the BIA dismissed DHS’ appeal and affirmed the Immigration Judge’s decision granting Mr. Coke deferral of removal under the CAT. *See* Ex. B (June 23, 2025, BIA Order).

Despite the prohibition against deportation to Jamaica, Mr. Coke is being held in prolonged immigration custody with no possibility of deportation to his home country.

VI. Particularized Facts Pertaining to Petitioner’s Continued Detention

Petitioner cannot presently be returned to Jamaica, because he has been granted deferral of removal by an Immigration Judge. Removal to Jamaica is thus not reasonably foreseeable. Upon information and belief, ICE has not identified another country to deport Mr. Coke to nor obtained a travel document for him to that country.

VII. The Legal Framework Regarding Indefinite Detention Pending Removal

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

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

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

The issue is not whether Respondents have been able to remove some individuals to a given country. Rather, the court must make an individualized analysis as to a particular detainee. *See Nguyen v. Scott*, 796 F.Supp.3d 703, 726 (W.D. Wash. Aug. 21, 2025) (stating increase in total number of removals to Vietnam, including those who entered pre-1995, fails to rebut the evidence presented by Petitioner that “his individual circumstances make removal unlikely.”). Facts that are part of the analysis include whether Respondent provides evidence that the request was submitted to the given country, whether that country has acknowledged receipt of the request or

1 otherwise responded to Petitioner's request, and the anticipated wait time for a response
2 from that country.

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

6 The six-month presumptively reasonable period runs unabated once Petitioner's
7 removal order was final, and does not run solely during any period when Petitioner was
8 detained. In *Tran v. Bondi*, No. C25-01897-JLR, 2025 WL 3140462 (W.D. Wash.
9 Nov. 10, 2025), the Hon. James L. Robart held that petitioner's "*Zadvydas* grace period
10 ended six months following the entry of the order of his removal[.]" *Id.* at *3. The court
11 reached that conclusion even though the petitioner was not detained until two years
12 later, and Respondents argued that only five months of the *Zadvydas* six-month period
13 had expired, based on the times when petitioner was detained. *See Tran*, No. C25-
14 01897-JLR, dkt. 13, Resp't Return Mem. and Mot. to Dismiss at 1, 7 (Oct. 27, 2025).
15 *See also, e.g., Tadros v. Noem*, No. 25-4108-EP, 2025 WL 1678501, at *3 (D.N.J. June
16 13, 2025) (finding that "six-month detention period under *Zadvydas*" period began
17 upon affirmance of removal order, rejecting argument that petitioner could not obtain
18 habeas relief because he had not yet been in detention for six months); *Farez-Espinoza*
19 *v. Chertoff*, 600 F.Supp.2d 488, 500 (S.D.N.Y. 2009) (concluding that, where
20 government was aware of noncitizen's address but failed to pursue her removal until
21 more than 15 months after removal order was entered, "the removal period, as well as
22 any presumptively reasonabl[e] six-month period of removal to which the Government
23 may have been entitled" had expired six months after the entry of the removal order);
24 *Bailey v. Lynch*, No. CV16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016)
25 (where order of removal became effective upon petitioner's release from underlying
26 conviction to ICE authorities, after which he was held only "briefly" before being

1 released on an order of supervision, the *Zadvydas* presumptively reasonable period
2 ended “long before he was taken back into custody[.]”).

3 A contrary view would run afoul of *Zadvydas*’s reasoning. *Zadvydas* established
4 the six-month grace period to give ICE a fair chance to effectuate the removal before a
5 court gets involved. 533 U.S. at 700–01. That was why the Court chose to expand the
6 grace period beyond the 90-day statutory removal period: because Congress likely did
7 not “believe[] that all reasonably foreseeable removals could be accomplished in that
8 time.” *Id.* at 701. Giving the government time to remove a noncitizen does not require
9 that the individual be detained for all of that period. ICE can just as effectively take
10 steps to arrange an individual’s removal whether he is in a cell or on the street.

11 **VIII. The Legal Framework for Third-Country Removals**

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

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

24 Second, if the individual is not removed to the country they designated under
25 § 1231(b)(2)(A), the government shall remove the individual to the country of which
26 the individual is a “subject, national, or citizen” unless the government of that country

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

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

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

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

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

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

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

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

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

IX. Facts Pertaining to Punitive Banishment to Third Countries

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

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

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

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

1 tiny African nation of Eswatini, including one man from Vietnam, where they are
2 reportedly being held in solitary confinement.

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

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

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

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

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

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

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

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

(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.

XI. 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.

Petitioner’s removal period has expired, and detention is no longer required under 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has passed. Mr. Coke was ordered deported but granted deferral of removal under the CAT by an Immigration Judge on October 23, 2024. The BIA affirmed the Immigration Judge’s decision on June 23, 2025. This deferral of removal prohibits removal to the country of feared persecution, absent formal reopening and termination of that protection. *See* 8 CFR § 1208.17.

1 There is “good reason to believe that there is no significant likelihood of removal
2 in the reasonably foreseeable future[.]” *Zadvydas*, 533 U.S. at 701. Mr. Coke was
3 granted deferral of removal and cannot lawfully be removed to Jamaica.

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

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

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

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

22 Prior to any third-country removal, Petitioner Coke must be provided with
23 constitutionally and statutorily compliant notice and an opportunity to respond and
24 contest that removal if he has a fear of persecution or torture in that country in reopened
25 removal proceedings. *See Nguyen*, 796 F.Supp.3d 703, 739 (granting preliminary
26 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 Coke’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-detention practices. Finally, the public interest would affirmatively be served by barring Respondents’ unlawful practice.

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

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

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

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

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

The U.S. Supreme Court long ago held that the government may not inflict upon individuals an “infamous punishment” in addition to deportation as a penalty for an

1 immigration violation, absent criminal charges, a judicial trial, and attendant
2 constitutional protections. *Wong Wing*, 163 U.S. at 236–38.

3 Petitioner Coke was convicted and completed the sentence for his criminal
4 conviction on April 23, 2024. Petitioner’s conviction arguably made him removable
5 from the United States, but that conviction does not authorize the government to inflict,
6 as a matter of executive policy and discretion, additional punishment on Petitioner.
7 Respondents’ third-country removal program is punitive in both its nature and its
8 execution.

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

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

25 Respondents may not seek to remove Petitioner Coke to a third country under
26 their punitive banishment policy and practices. *See Nguyen*, 796 F.Supp.3d 703, 739

1 (granting preliminary injunction against “removing Petitioner to any country where he
2 is likely to face imprisonment upon arrival”).

3 The criteria for an injunction in this case are met. First, unlawful removal to a
4 third country risks irreparable injury that could not be redressed by an award of
5 damages. Second, the balance of hardships is completely in Petitioner’s favor:
6 Petitioner risks removal to a third country where unwarranted punishment may result,
7 and Respondents suffer no hardship by being prevented from following their unlawful
8 removal policies. Finally, the public interest would affirmatively be served by barring
9 Respondents’ unlawful policies. Given the potential for Respondents to attempt a rapid
10 and unlawful removal, Petitioner would have no opportunity to seek injunctive relief at
11 that time.

12 Furthermore, the matter is ripe. The facts set forth above—including
13 Respondents’ stated policy regarding third country removals—make it reasonably likely
14 that Respondents would seek to remove Petitioner to a third country with a punitive
15 intent and punitive result.

16 **Prayer for Relief**

17 Petitioner respectfully requests that this Court:

- 18 (a) Assume jurisdiction over this action;
19 (b) Order Respondents to immediately release Petitioner Coke from custody;
20 (c) Order Respondents to, within 24 hours of his release, provide the Court
21 with a declaration confirming that Petitioner has been released from custody;
22 (d) Order that Respondents may not re-detain Petitioner without first holding
23 a hearing before a neutral decisionmaker at which the government bears the burden of
24 establishing flight risk or danger to the community by clear and convincing evidence
25 based on changed circumstances since Petitioner was previously released;
26

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

- 3 (1) obtains a valid travel document for him,
4 (2) provides the valid travel document to him and his counsel,
5 (3) offers Mr. Coke the opportunity to leave on his own within two
6 months, and
7 (4) Petitioner does not leave. Under such circumstances, the government
8 may be permitted to re-detain Petitioner provided it has already made
9 concrete arrangements for him to be put on a flight to an approved
10 country in the reasonably foreseeable future.

11 *See Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at *6 (W.D. Wash. Dec. 5,
12 2025); *Tang*, 2025 WL 3551381, at *3.

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

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

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

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

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

1 information and belief, based on information obtained from the government and/or
2 Petitioner.

3 DATED this 7th day of January, 2026.

4 Respectfully submitted,

5
6 *s/ Elizabeth Sher*
7 Assistant Federal Public Defender
8 Attorney for Javein Jumel Coke
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