

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILFREDO CASTILLO RIVAS,

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-TMC, 2025 WL 3173842, at *1 (W.D. Wash. Nov. 13, 2025).

In addition to the relief requested in the Unopposed Motion for Briefing Schedule, to be filed once the case is docketed, Petitioner asks this Court to order Respondents not to remove Petitioner from this district while this case is pending, both “[b]ecause transfer of Petitioner to another district could interfere with his access to counsel and ability to participate in the proceedings,” *Tran v. Bondi, et al.*, No. CV25-1897-JLR-BAT, Dkt. 6 at 3 (W.D. Wash. Oct. 7, 2025) (*sua sponte* issuing such an order in a § 2241 case involving an ICE detainee), and “under the Court’s inherent power to preserve its ability to hear the case.” *Alves v. U.S. Dep’t of Just.*, No. EP-25-

CV-306-KC, 2025 WL 2629763, at *5 (W.D. Tex. Sept. 12, 2025) (same). *See also* *M.M. v. Wamsley*, No. CV25-2074-TMC, 2025 WL 3053023, at *1 (W.D. Wash. Oct. 31, 2025) (same).¹

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Full name: Wilfredo Castillo Rivas
- (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 was initially granted
6 Withholding of Removal through the Convention against Torture (CAT) on July 18,
7 2025. *See* Ex. 1. Petitioner was taken into custody on March 25, 2025 and has been
8 detained in ICE custody for more than 6 months following the final removal order.

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

10 7-9. First, second, and third appeals: None

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

12 11. Appeals of immigration proceedings:

13 Does this case concern immigration proceedings? Yes

14 (a) Date you were taken into immigration custody: March 25, 2025

15 (b) Date of the removal or reinstatement order: July 18, 2025

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

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

18 12. Other than the appeals listed above, have you filed any other petition,
19 application, or motion about the issues raised in this petition? Application for asylum
20 relief, INS withholding, and withholding under the Convention Against Torture, which
21 resulted in an IJ decision granting withholding of removal to Venezuela.

22 **Grounds for Your Challenge in This Petition**

23 **I. Introduction**

24 Petitioner Wilfredo Castillo Rivas is presently detained at the Northwest ICE
25 Processing Center (NWIPC). Petitioner has been held in immigration custody for
26 approximately ten months. Removal to Venezuela is not reasonably foreseeable because

Petitioner was granted withholding of removal to Venezuela by an immigration judge. Ex. 1. 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.

II. Jurisdiction and Venue

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

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

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

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

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

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

5 Petitioner is “in custody” for the purpose of § 2241 because he has been detained
6 by Respondent ICE in Tacoma, Washington, since March 25, 2025.

7 **IV. Parties**

8 Wilfredo Castillo Rivas is a citizen of Venezuela. On July 18, 2025, an
9 immigration judge denied Mr. Castillo Rivas’s applications for asylum and withholding
10 of removal under INA § 241(b)(3) but granted him withholding from removal under the
11 Convention Against Torture. Ex 1. The order simultaneously ordered Mr. Castillo Rivas
12 “removed to Venezuela” and granted withholding for that country. No other countries
13 were designated for removal. *Id.* Despite this grant of relief, Mr. Castillo Rivas remains
14 detained at NWIPC. As such, Petitioner is a resident of Tacoma, Washington.

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

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

21 Respondent Laura Hermosillo is the Field Office Director for ICE Enforcement
22 and Removal Operations (“ERO”) in Seattle, Washington. As the ERO Seattle Field
23 Office Director, she is Petitioner’s immediate custodian, responsible for his detention at
24 NWIPC, and is the person with the authority to authorize detention or release.
25 Respondent Hermosillo is sued in her official capacity.
26

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

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

10 **V. Background**

11 Mr. Castillo Rivas entered the United States in April 2024 to seek asylum. The
12 Department of Homeland Security found that he had established credible fear of
13 persecution, and he was released under the Intensive Supervision Appearance Program
14 (ISAP). His Master Calendar Hearing was scheduled for April 22, 2027. For the next
15 year, Mr. Castillo Rivas diligently followed the conditions of his ISAP.

16 The conditions of his ISAP release included regular check-ins through the
17 SmartLink mobile app. Although the SmartLink app often malfunctioned, Mr. Castillo
18 Rivas' case manager informed him that his records showed that he was meeting the
19 conditions.

20 On March 25, 2025, Mr. Castillo Rivas attended his scheduled in-person check-
21 in at the ICE office. Instead of his case manager, he was met by three ICE officers, who
22 claimed he had missed numerous mobile check-ins. The ICE officers detained
23 Mr. Castillo Rivas, transferring him to the Northwest Immigrant Processing Center in
24 Tacoma, Washington.

25 Mr. Castillo Rivas' Master Calendar Hearing was rescheduled to April 23, 2025
26 However, he faced extreme hardship in attempting to collect evidence for his asylum

1 claim from inside the detention center, as he could not reach family in Venezuela by
2 phone. Mr. Castillo Rivas' wife, a United States citizen, does not speak Spanish, and
3 could not communicate with his family in Venezuela in order to help Mr. Castillo Rivas
4 gather evidence. Further, Mr. Castillo Rivas paid an attorney \$2,000 to represent him at
5 a bond hearing and the asylum hearing, but the attorney ceased communications with
6 Mr. Castillo Rivas, withdrew the bond request, and refused to return his payment.
7 Ultimately, the immigration judge continued Mr. Castillo Rivas' Master Calendar
8 Hearing to July 18, 2025.

9 At the Individual Calendar Hearing, Mr. Castillo Rivas represented himself,
10 testifying about the sexual assault he suffered at the hands of Venezuelan officials. The
11 immigration judge denied his request for asylum and withholding but granted his
12 application for withholding from removal under the Convention Against Torture.

13 After the hearing, Mr. Castillo Rivas' attempts to have his custody determination
14 reevaluated by ICE were met with generic responses to "refer" to previous
15 communications, which did not exist. While detained, he has developed severe
16 psoriasis, which has worsened significantly with each passing day.

17 On August 12, 2025, Mr. Castillo Rivas was stabbed repeatedly by another
18 detainee. Mr. Castillo Rivas had been lying in bed when the other detainee suddenly
19 attacked him. Despite the commotion and yelling from Mr. Castillo Rivas and other
20 detainees, no officers or employees at the detention center intervened while the attack
21 was ongoing. Mr. Castillo Rivas was able to eventually restrain the other detainee, and
22 the other detainee was able to escape and run to another area of the unit before a GEO
23 employee eventually responded to the men yelling. Mr. Castillo Rivas had suffered
24 eight stab wounds in his forearm and thigh and a scratch across his stomach.

25 Mr. Castillo Rivas was not permitted to seek emergency medical assistance
26 outside the detention center, despite formally requesting to do so through pro bono

1 counsel. Mr. Castillo Rivas was also not permitted to report the assault to the Tacoma
2 Police Department, also despite formal request through counsel.

3 Mr. Castillo Rivas submitted a formal request for review of his custody
4 determination on November 21, 2025, along with extensive documentary evidence
5 regarding that he is not a flight risk or a danger to the community. His request was
6 denied on December 12, 2025.

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

8 Petitioner cannot presently be returned to Venezuela, because he has proven that
9 it is more likely than not that he would be tortured if returned to Venezuela and an
10 immigration judge has ordered that removal to Venezuela be withheld. Removal to
11 Venezuela is thus not reasonably foreseeable even though he has been detained far
12 longer than the presumptively reasonable six months, and Petitioner has no ties to any
13 other country. ICE has not obtained a travel document from Venezuela or any other
14 country for Petitioner, nor has any country agreed to accept him. Mr. Castillo Rivas also
15 cannot be removed to Mexico because he is unwilling to go there. *See* Emergency
16 Motion for Order Preventing Transfer and accompanying exhibits.

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

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

20 Under 8 U.S.C. § 1231, detention of noncitizens who have been ordered
21 removed is mandatory during the so-called 90-day “removal period.” 8 U.S.C.
22 § 1231(a)(1)(A). This period begins on the “date the order of removal becomes
23 administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i). But the *Zadvydas* Court believed
24 that a “serious constitutional threat” under the Fifth Amendment’s Due Process Clause
25 was posed by the indefinite detention of noncitizens. 533 U.S. at 699. The Court
26

1 therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the
 2 statute's "basic purpose [of] effectuating [a noncitizen]'s removal[.]" *Id.* at 696–99.

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

11 The issue is not whether Respondents have been able to remove some
 12 individuals to a given country. Rather, the court must make an individualized analysis
 13 as to a particular detainee. *See Nguyen v. Scott*, 796 F.Supp.3d 703, 726 (W.D. Wash.
 14 Aug. 21, 2025) (stating increase in total number of removals to Vietnam, including
 15 those who entered pre-1995, fails to rebut the evidence presented by Petitioner that "his
 16 individual circumstances make removal unlikely."). Facts that are part of the analysis
 17 here include the Convention Against Torture decision granting withholding of removal
 18 to Venezuela and any unsuccessful attempts at third-country removal.

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

22 The six-month presumptively reasonable period runs unabated once Petitioner's
 23 removal order was final, and does not run solely during any period when Petitioner was
 24 detained. In *Tran v. Bondi*, No. C25-01897-JLR, 2025 WL 3140462 (W.D. Wash.
 25 Nov. 10, 2025), the Hon. James L. Robart held that petitioner's "*Zadvydas* grace period
 26 ended six months following the entry of the order of his removal[.]" *Id.* at *3. The court
 reached that conclusion even though the petitioner was not detained until two years

1 later, and Respondents argued that only five months of the *Zadvydas* six-month period
2 had expired, based on the times when petitioner was detained. *See Tran*, No. C25-
3 01897-JLR, dkt. 13, Resp't Return Mem. and Mot. to Dismiss at 1, 7 (Oct. 27, 2025).
4 *See also, e.g., Tadros v. Noem*, No. 25-4108-EP, 2025 WL 1678501, at *3 (D.N.J. June
5 13, 2025) (finding that “six-month detention period under *Zadvydas*” period began
6 upon affirmance of removal order, rejecting argument that petitioner could not obtain
7 habeas relief because he had not yet been in detention for six months); *Farez-Espinoza*
8 *v. Chertoff*, 600 F.Supp.2d 488, 500 (S.D.N.Y. 2009) (concluding that, where
9 government was aware of noncitizen’s address but failed to pursue her removal until
10 more than 15 months after removal order was entered, “the removal period, as well as
11 any presumptively reasonabl[e] six-month period of removal to which the Government
12 may have been entitled” had expired six months after the entry of the removal order);
13 *Bailey v. Lynch*, No. CV16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016)
14 (where order of removal became effective upon petitioner’s release from underlying
15 conviction to ICE authorities, after which he was held only “briefly” before being
16 released on an order of supervision, the *Zadvydas* presumptively reasonable period
17 ended “long before he was taken back into custody[.]”).

18 A contrary view would run afoul of *Zadvydas*’s reasoning. *Zadvydas* established
19 the six-month grace period to give ICE a fair chance to effectuate the removal before a
20 court gets involved. 533 U.S. at 700–01. That was why the Court chose to expand the
21 grace period beyond the 90-day statutory removal period: because Congress likely did
22 not “believe[] that all reasonably foreseeable removals could be accomplished in that
23 time.” *Id.* at 701. Giving the government time to remove a noncitizen does not require
24 that the individual be detained for all of that period. ICE can just as effectively take
25 steps to arrange an individual’s removal whether he is in a cell or on the street.
26

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

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

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

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

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

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

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

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

7 In fact, as an individual who was released by ICE, a petitioner has a higher
 8 liberty interest than that of the normal ICE detainee. *See Guillermo M.R. v. Kaiser*,
 9 No. CV25-5436-RFL, 2025 WL 1810076, at *1 (N.D. Cal. June 30, 2025) (by alleging
 10 that he had previously been released by ICE and was about to be re-detained,
 11 “Petitioner has asserted liberty interests that differ from the liberty interests of a
 12 detained person in *Rodriguez Diaz*”) (referencing *Rodriguez Diaz*, 53 F.4th 1189)).²
 13 Similarly, in *Carballo v. Andrews*, No. CV25-978-KES-EPG (HC), 2025 WL 2381464,
 14 *4 (E.D. Cal. Aug. 15, 2025), the court indicated that an individual who has been
 15 released has had—in contrast to a detainee with no period of release—“an opportunity
 16 ‘to form the [] enduring attachments of normal life’” (quoting *Morrissey v. Brewer*,
 17 408 U.S. 471, 482 (1972)), and thus has a heightened liberty interest, such as that which
 18 led the Supreme Court in *Morrissey* to impose due process requirements on parolees
 19 where the state seeks to revoke parole.

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

25 ² *Rodriguez* held that a person who had been detained pursuant to an individualized
 26 bond hearing where he was found to be a danger or flight risk was not categorically
 entitled to a second bond hearing and that, under the facts of that case, the detainee
 could not succeed in an as-applied challenge to his detention.

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

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

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

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

1 *Bondi*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at *4 (W.D. Wash. Dec. 17,
 2 2025) (applying the *Mathews* analysis from *E.A. T.-B.* to detainee with final order of
 3 removal); *Jimenez v. Bondi*, No. C25-2167RSM, 2025 WL 3466925, at *2 (W.D.
 4 Wash. Dec. 3, 2025) (finding that petitioner with final order of removal “has a protected
 5 liberty interest in his continuing release from custody, and that due process requires that
 6 Petitioner receive proper notice and an opportunity to respond before he can be re-
 7 detained”; barring re-detention “without providing adequate notice of the reasons for
 8 his re-detention and a meaningful opportunity to respond.” *Id.* at *3). *See also, e.g.,*
 9 *Perez v. Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at *5 (M.D. Fla.
 10 Dec. 3, 2025); *S-M-J v. Bostock*, No. 6:25-CV-01425-MTK, 2025 WL 3137296, at *5
 11 (D. Or. Nov. 10, 2025). *Cf. Lopez Dejesus, v. Bostock*, No. 25-CV-01427-JHC-TLF,
 12 2025 WL 3268002 (W.D. Wash. Nov. 24, 2025) (applying *Mathews* factors to conclude
 13 that petitioner was entitled to pre-re-detention due process, even though his detention
 14 was pursuant to the mandatory detention provisions of 8 U.S.C. § 1226(c)).³

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

23 In addition, the government should be required to meet its burden based on
 24 changed circumstances subsequent to the petitioner’s previous release by ICE. *See*

25 ³ The *Lopez Dejesus* opinion does not mention that detention was pursuant to § 1226(c);
 26 that fact is shown in Respondents’ Return Memorandum, No. 25-CV-01427-JHC-TLF,
 dkt. 16 at 1 (W.D. Wash. Oct. 6, 2025).

1 *Duong v. Kaiser*, No. CV25-7598-JST, -- F.Supp.3d --, 2025 WL 2689266, at *10
 2 (N.D. Cal. Sept. 19, 2025) (holding that any re-detention first required a hearing
 3 “whether a material change of circumstances justifies [petitioner’s] re-detention”).

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

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

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

19 the [noncitizen] will be notified of the reasons for revocation of his or
 20 her release. [ICE] will conduct an initial informal interview promptly
 21 after his or her return to [ICE] custody to afford the [noncitizen] an
 22 opportunity to respond to the reasons for revocation stated in the
 23 notification. The [noncitizen] may submit any evidence or information
 24 that he or she believes shows there is no significant likelihood he or
 25 she be removed in the reasonably foreseeable future, or that he or she
 26 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).

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

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

11 *Id. See also Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3
12 (E.D. Cal. July 16, 2025). While courts do not make these determinations in the first
13 instance, they may review them for compliance with the regulation. *See id.*; *Nguyen v.*
14 *Hyde*, 788 F.Supp.3d 144, 150 (D. Mass. June 20, 2025) (citing *Kong v. United States*,
15 62 F.4th 608, 620 (1st Cir. 2023)).

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

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

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

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

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

Notwithstanding any of these procedures, the statute prohibits removal to a third country where a person may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government “may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen’s] life or freedom would be threatened in that country because of the [noncitizen’s] race, religion, nationality, membership in a particular social group, or

1 political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is
 2 a mandatory protection.

3 Similarly, Congress codified protections enshrined in the Convention Against
 4 Torture (CAT) prohibiting the government from removing a person to a country where
 5 they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998
 6 (‘FARRA’), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8
 7 U.S.C. § 1231 note) (“It shall be the policy of the United States not to expel, extradite,
 8 or otherwise effect the involuntary return of any person to a country in which there are
 9 substantial grounds for believing the person would be in danger of being subjected to
 10 torture, regardless of whether the person is physically present in the United States.”);
 11 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. CAT protection is also
 12 mandatory.

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

1 378 F.3d 932, 939 (9th Cir. 2004), *amended sub nom. El Himri v. Ashcroft*, No. 03-
2 71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) (“at the time the government
3 proposes a country of removal pursuant to § 1231(b)(2)(E)(vii), the government must
4 be able to show that the proposed country *will* accept the [individual]”).

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

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

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

XI. 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.⁴ 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. *See generally* Ex. 2, Sarah Stillman, *Disappeared to a Foreign Prison*, *New Yorker* (Dec. 12, 2025).

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

⁴ 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. *See* Ex. 3 (ICE memo). If no diplomatic assurances are received,
14 the ICE memo instructs officers to serve on the individual a Notice of Removal that
15 includes the intended country of removal. It instructs officers not to ask whether the
16 individual is afraid of removal to that country. It states that officers should “generally
17 wait at least 24 hours following service of the Notice of Removal before effectuating
18 removal” but that “[i]n exigent circumstances, [ICE] may execute a removal order six
19 (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is
20 provided 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 prove to the screener’s
 3 satisfaction that it is more likely than not that the noncitizen will be tortured, the
 4 individual will be removed. This imposes on the noncitizen a higher standard than the
 5 “reasonable fear” and “credible fear” standards found in the INA. If USCIS determines
 6 that the noncitizen has met the standard, then the policy directs ICE to either move to
 7 reopen removal proceedings “for the sole purpose of determining eligibility for
 8 [withholding of removal protection] and CAT” or designate another country for
 9 removal.

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

14 Further support that petitioner faces a risk of punitive third-country removal
 15 comes from two declarations submitted in *Nguyen*, attached here as Exhibits 4 and 5
 16 (Nguyen and Aldana Decs). They detail removals to third countries with little or no
 17 notice, as described in *Nguyen*, 796 F.Supp.3d at 736–37.

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

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

25 Importantly, the Court distinguished deportation, which the Court reasoned is
 26 “not a ‘banishment,’ in the sense in which that word is often applied to the expulsion of

1 a citizen from his country by way of punishment,” from government actions aimed at
 2 punishment, such as imprisonment at hard labor in addition to deportation. *Id.* at 236.
 3 The Court explained that deportation “is but a method of enforcing the return to his own
 4 country of [a noncitizen] who has not complied with the conditions upon the
 5 performance of which the government of the nation, acting within its constitutional
 6 authority and through the proper departments, has determined that his continuing to
 7 reside here shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730
 8 (1893)). But the Court admonished that the government may not “declare unlawful
 9 residence within the country to be an infamous crime, punishable by deprivation of
 10 liberty and property . . . unless provision were made that the fact of guilt should first be
 11 established by a judicial trial.” *Id.* at 237.

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

14 **XIII. The Law Governing Injunctive Relief**

15 “An injunction is appropriate when the party seeking relief demonstrates that: (1)
 16 it is likely to suffer irreparable injury that cannot be redressed by an award of damages;
 17 (2) that “considering the balance of hardships between the plaintiff and defendant, a
 18 remedy in equity is warranted”; and (3) “that the public interest would not be disserved
 19 by a permanent injunction.” *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225,
 20 1243 (9th Cir. 2018).

21 **Grounds for Relief**

22 **Ground One: Petitioner’s Continued Detention in Immigration Custody** 23 **Violates the Due Process Clause of the Fifth Amendment to the U.S.** 24 **Constitution Because There Is No Significant Likelihood that Petitioner** 25 **Will Be Removed in the Reasonably Foreseeable Future.**

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

1 Because Petitioner's removal order became final on July 18, 2025, the removal
2 period has long since expired, and detention is no longer required under 8 U.S.C.
3 § 1231. In addition, the presumptively reasonable period of six months has passed.

4 There is "good reason to believe that there is no significant likelihood of removal
5 in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. Petitioner has
6 obtained withholding of removal to Venezuela and has no ties to other countries. *See*
7 *Baltodano*, 2025 WL 3484769, at *4.

8 Therefore, the burden shifts to the government to rebut that showing. The
9 government cannot meet that burden under the facts of this case. *See Nguyen*, 796
10 F.Supp.3d 703, 739 (granting preliminary injunction requiring release under *Zadvydas*);
11 *Tang*, 2025 WL 2637750, at *6 (same); *Baltodano*, 2025 WL 3484769, at *5 (granting
12 release after briefing on the merits).

13 **Ground Two: Procedural Due Process**

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

15 Petitioner has a liberty interest in not being re-detained. Applying the three-
16 factor test of *Mathews*, that interest is high. The risk of any erroneous deprivation is
17 also high, because ICE's previous release of him necessarily reflected a conclusion that
18 he was not a flight risk or a danger to the community. Here, as in *Ledesma Gonzalez*,
19 "ICE revoked that release without any reassessment of those factors." 2025 WL
20 2841574, at *8.

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

24 As to Petitioner's prayer for injunctive relief barring a new re-detention absent
25 due process, the requirements for injunctive relief are met. His prospective unlawful re-
26 detention would constitute an irreparable injury that could not be redressed by an award

1 of damages. Second, the balance of hardships is completely in Petitioner's favor:
 2 Petitioner risks unlawful re-detention, while Respondents suffer no hardship by being
 3 prevented from following their unlawful re-detention practices. Finally, the public
 4 interest would affirmatively be served by barring Respondents' unlawful practice.

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

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

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

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

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

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

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

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

24 (e) Respondents did not afford Petitioner an opportunity to respond; and
 25
 26

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

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

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

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

18 Prior to any third-country removal, Petitioner must be provided with
19 constitutionally and statutorily compliant notice and an opportunity to respond and
20 contest that removal if he has a fear of persecution or torture in that country in reopened
21 removal proceedings. *See Nguyen*, 796 F.Supp.3d 703, 739 (granting preliminary
22 injunction against “removing Petitioner to a country other than [home country] without
23 notice and a meaningful opportunity to be heard in reopened removal proceedings with
24 a hearing before an immigration judge”).

25 Furthermore, the requirements for injunctive relief are met. Petitioner's
26 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

1 Petitioner’s favor: Petitioner risks unlawful removal to a third country, while
2 Respondents suffer no hardship by being prevented from following their unlawful re-
3 detention practices. Finally, the public interest would affirmatively be served by barring
4 Respondents’ unlawful practice.

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

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

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

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

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

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

24 Petitioner is removable from the United States, but that does not authorize the
25 government to inflict, as a matter of executive policy and discretion, additional
26

1 punishment on Petitioner. Respondents' third-country removal program is punitive in
2 both its nature and its execution.

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

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

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

23 The criteria for an injunction in this case are met. First, unlawful removal to a
24 third country risks irreparable injury that could not be redressed by an award of
25 damages. Second, the balance of hardships is completely in Petitioner's favor:
26 Petitioner risks removal to a third country where unwarranted punishment may result,

1 and Respondents suffer no hardship by being prevented from following their unlawful
2 removal policies. Finally, the public interest would affirmatively be served by barring
3 Respondents' unlawful policies. Given the potential for Respondents to attempt a rapid
4 and unlawful removal, Petitioner would have no opportunity to seek injunctive relief at
5 that time.

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

10 **Prayer for Relief**

11 Petitioner respectfully requests that this Court:

- 12 (a) Assume jurisdiction over this action;
- 13 (b) Order Respondents to immediately release Petitioner from custody;
- 14 (c) Order Respondents to, within 24 hours of his release, provide the Court
15 with a declaration confirming that Petitioner has been released from custody;
- 16 (d) Order that Respondents may not re-detain Petitioner without first holding
17 a hearing before a neutral decisionmaker at which the government bears the burden of
18 establishing flight risk or danger to the community by clear and convincing evidence
19 based on changed circumstances since Petitioner was previously released;
- 20 (e) Order that the government may not otherwise re-detain Petitioner unless
21 the government:
 - 22 (1) obtains a valid travel document to a third country for him,
 - 23 (2) provides the valid travel document to him and his counsel,
 - 24 (3) gives him opportunity to challenge the third country removal as detailed
25 in other grounds.

1 *See Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at *6 (W.D. Wash. Dec. 5,
2 2025); *Tang*, 2025 WL 3551381, at *3.

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

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

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

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

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

18 DATED this 14th day of January 2026.

19 Respectfully submitted,

20 s/ *Ann K. Wagner*
21 Assistant Federal Public Defender
22 Attorney for Wilfredo Castillo Rivas
23
24
25
26