

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Son Truong VO,

Petitioner,

v.

Bruce SCOTT, Warden, Northwest ICE)
Processing Center; Camilla WAMSLEY,
Enforcement and Removal Operations, Seattle)
Field Office Director, U.S. Immigration and
Customs Enforcement; Kristi NOEM,
Secretary, U.S. Department of Homeland
Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; Todd LYONS,
Acting Director and Senior Official
Performing Duties of Director of ICE;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Respondents.

) Civil Case No.

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I. INTRODUCTION

1. Petitioner Son Truong Vo is presently detained at the Northwest ICE Processing Center (NWIPC). He is a Vietnamese refugee who came to the United States in 1994 and settled in the Pacific Northwest. For 23 years, he has been subject to a removal order that was never enforced and has lived on an ICE order of supervision to which he has always adhered.

2. For 23 years, Vietnam would not accept Petitioner Vo, or virtually any pre-1995 refugee, for repatriation. The United States, for its part, took no steps to remove him to any other country. Petitioner Vo, in turn, built his life, grounded in his family and his community, understanding implicitly that the respective positions of each country meant he would likely never be deported. But then, on December 16, 2025, without prior notice or a hearing, ICE abruptly detained him without explanation or authority. ICE does not have a travel document for Vietnam for Petitioner, nor could it have any degree of certainty that it would be able to obtain one at the time it detained Petitioner because it had not even begun the process of asking Petitioner for information needed to complete the travel document request. In keeping with its demonstrated practice over the past six months, ICE's actions in re-detaining him appear designed to unconstitutionally punish by incarcerating him when it is not legally permitted or necessary and when the duration is indefinite. Its actions repeat those that this district court alone has made clear violate the law in countless habeas cases. Such willful violations demonstrate punitive intent. Meanwhile, a father, husband, business owner and friend has been ripped away from his life and community and faces a future—deportation—that he had been led to believe would never occur.

3. Petitioner's re-detention violates procedural and substantive due process because the revocation of his supervised release required notice and a hearing, and because it is unconstitutionally punitive and his removal is not reasonably foreseeable, *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner's re-detention also violates ICE's own regulations governing the revocation of release of supervision, § C.F.R. § 241.13(i). ICE's sudden enforcement of a

1 long-dormant removal order without providing him additional measures to claim relief from
 2 removal also violates due process and is precluded under the doctrine of laches. Petitioner seeks
 3 (a) immediate release; (b) an order preventing re-detention unless he is first provided notice and
 4 a hearing; (c) an order preventing re-detention unless the government obtains a travel document,
 5 gives it to him, and provides him an opportunity leave on his own and he does not leave; (d) an
 6 order preventing the enforcement of his removal order without the government first reopening
 7 his 23-year-old removal proceedings and permitting him the opportunity to claim relief; (e) an
 8 order preventing removal to a third country without notice and meaningful opportunity to
 9 respond in compliance with the statute and due process in reopened removal proceedings; and
 10 (f) an order barring removal to any third country pursuant to Respondents' punitive removal
 11 policy.

12 II. JURISDICTION AND VENUE

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

16 5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, et seq.
 17 (habeas corpus), U.S. Const. art. I, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 1331 (federal
 18 question), 28 U.S.C. § 1346 (United States as Respondent), and 28 U.S.C. § 1651 (All Writs
 19 Act). Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702,
 20 706.

21 6. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241,
 22 et seq.; the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq.; the All Writs Act, 28 U.S.C. §
 23 1651; and the Court's inherent equitable powers.

24 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because

1 Respondents are agencies or officers of agencies of the United States. Respondents reside in this
2 District, Petitioner is detained in this District, and a substantial part of the events or omissions
3 giving rise to Petitioner's claims occurred in this District.

4 **III. PARTIES**

5 8. Petitioner Son Truong Vo is a national of Vietnam, who immigrated to the
6 United States in 1994. He has a final order of removal, with Vietnam as the country
7 designated for removal. Petitioner is detained in the control and custody of Respondents at
8 the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington. Petitioner is a
9 resident of Oregon and has been detained at NWIPC since December 16, 2025.

10 9. Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
11 functioning of the NWIPC, and has immediate physical custody of Petitioner, pursuant to a
12 contract with ICE to detain noncitizens. Mr. Scott is sued in his official capacity as the Warden
13 of a federal detention facility. See *Jaurez v. Asher*, No. C20-700, 2021 WL 1946222, at *3-5
14 (W.D. Wash. May 14, 2021).

15 10. Respondent Cammilla Wamsley is the Field Office Director for ICE
16 Enforcement and Removal Operations ("ERO") in Seattle, Washington. As the ERO Seattle
17 Field Office Director, he is Petitioner's immediate custodian, responsible for his detention at
18 NWIPC, and the person with the authority to authorize detention or release. Respondent Bostock
19 is sued in his official capacity.

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

23 12. Respondent Department of Homeland Security (DHS) is a federal executive
24 agency responsible for, among other things, enforcing federal immigration laws and overseeing
25 lawful immigration to the United States. Respondent DHS is a legal custodian of Petitioner.

26 13. Respondent Todd Lyons is Acting Director and Senior Official Performing the

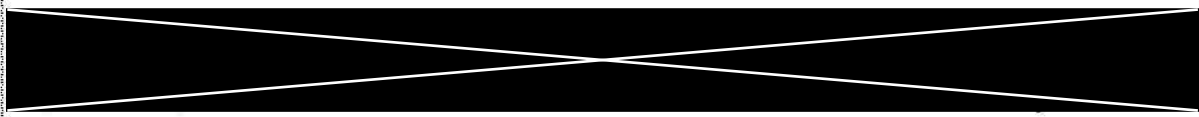
1 Duties of the Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and
2 procedures, including those relating to removal procedures and the detention of immigrants
3 during their removal procedures. Respondent Lyons is a legal custodian of Petitioner.
4 Respondent Lyons is sued in his official capacity.

5 14. Respondent ICE is the federal executive agency responsible for the
6 enforcement of immigration laws, including the arrest, detention, and removal of noncitizens.
7 Respondent ICE is a legal custodian of Petitioner.

8 IV. STATEMENT OF FACTS

9 Petitioner's Facts

10 15. Petitioner Son Truong Vo is a 52-year-old man born in Vietnam. He came to
11 the United States with his parents and siblings as a refugee in 1994. Mr. Son's father was 

12 
13  Eventually the family obtained refugee status and a
14 sponsor in Tacoma, WA.

15 16. Today, 32 years later since his arrival, Petitioner Vo is a well-respected business
16 owner and community member. He is the husband of a U.S. citizen and father to three U.S.
17 citizen children, ages 19, 18 and 12. His oldest daughter is a military spouse, and her husband is
18 in the U.S. Air Force. His middle daughter is in college with dreams of becoming a doctor.
19 Petitioner and his wife work hard to pay for her higher education. The family resides in Unstilla,
20 Oregon and own a nail salon in Hermiston, Oregon called  Declaration of Jennifer
21 Pasquarella, filed concurrently, ¶4 (Exh. C, Family photos).

22 17. Since Petitioner's arrest and detention by ICE, elected officials, community leaders,
23 concerned friends and family have written letters urging his release and describing him as an
24 honest and hardworking person who is deeply devoted to his family, his business and his
25 community. Pasquarella Decl. ¶2 (Exh. A, Letters of Support).
26

1 18. On January 16, 2003, Petitioner Vo was ordered removed by the Tacoma
2 immigration court. Despite being detained by immigration authorities for many months after his
3 removal order, he was not removed. Instead, the government released him on an Order of
4 Supervision.

5 19. For 23 years, Petitioner Vo has dutifully complied with his Order of Supervision. He
6 has attended every required check in and never once violated the conditions of supervision. See
7 *id.* ¶3 (Exh. B, OSUP paperwork). Although his original removal order is based on an assault
8 conviction from March 19, 1997, that conviction is his only criminal conviction.

9 20. In June 2025, Petitioner appeared for his annual check in at the ICE office in
10 Richland, WA. Without reason or justification, an ICE officer also placed him on the Intensive
11 Supervision Appearance Program ("ISAP") which required him to routinely check in with ICE
12 via an app on his phone. On December 15, 2025, the ISAP app instructed him to appear in person
13 the following day.

14 21. On December 16, 2025, Petitioner complied. He appeared as instructed at the
15 ICE office in Richland, WA. At the ICE office, an ICE officer greeted him and told him that he
16 needed to take him to the secure area of the office to set his next check in for a year later. Upon
17 entering the office, the ICE officer told him that he was instead revoking his supervision and
18 detaining him.

19 22. The ICE officer gave Petitioner Vo no reasons for revoking his supervision,
20 nor did the officer provide Petitioner Vo with the required Notice of Revocation of Release
21 explaining in writing the reasons for the revocation. Present counsel, Ms. Pasquarella, showed
22 Mr. Vo a copy of what the ICE Notice of Revocation of Release looks like, and Mr. Vo confirmed
23 he had never seen that. Pasquarella Decl. ¶5.

24 23. At no point prior to ICE's arrest and detention of Mr. Vo on December 16,
25 2025 did ICE request information from Mr. Vo to complete the travel document request for
26 Vietnam.

24. ICE did not have a travel document for Petitioner at the time of his re-detention and does not have it today.

25. As Petitioner is a pre-1995 Vietnamese refugee, ICE had no knowledge or reason to believe it was significantly likely that Vietnam would now issue him a travel document.

26. Nearly one month into Mr. Vo's detention, ICE has still not provided Mr. Vo with the Notice of Revocation of Release or provided reasons for the revocation of his supervision, either in writing or orally. Accordingly, ICE has not provided Mr. Vo an opportunity to respond to any agency allegations that re-detention is warranted.

27. For 23 years, since ICE released Petitioner Vo from custody after his removal order could not be executed to Vietnam, Petitioner has understood that due to Vietnamese and United States policy and relations, Vietnam would likely never accept him back and the United States would likely never again seek to remove him. He has lived his life under an ICE order of supervision that he understood to be indefinite because he could not be removed. With that understanding, he has built a productive and law-abiding life in his community in Oregon, owning a thriving business and raising a family.

Repatriation to Vietnam History

28. Before a Vietnamese immigrant without a passport or other travel document can be repatriated, Vietnam must issue a passport or other travel document in response to a request from ICE. *See Trinh v. Humam*, 466 F.Supp.3d 1077, 1083 (C.D. Cal. 2020).

29. Between the end of the Vietnam War and 2008, Vietnam refused to repatriate any Vietnamese immigrant who had been ordered removed from the United States. *See id.*

30. In 2008, the United States and Vietnam reached a diplomatic agreement pursuant to which Vietnam agreed to start considering repatriation requests for certain Vietnamese immigrants. *See id.* The agreement obligated Vietnam to consider repatriation requests for Vietnamese immigrants who had arrived in the United States after July 12, 1995. *See id.* The agreement also provided that "Vietnamese citizens are not subject to return to

1 Vietnam under this agreement if they arrived in the United States before July 12, 1995.” *Id.*
 2 Relying on this provision, Vietnam maintained its policy of non-repatriation for pre-1995
 3 Vietnamese immigrants after signing the 2008 agreement. *See id.*

4 31. Prior to 2017, ICE maintained that the removal of pre-1995 Vietnamese
 5 immigrants was unlikely given Vietnam’s consistent refusal to repatriate them. *See id.* ICE
 6 adopted a policy of detaining pre-1995 Vietnamese immigrants for no longer than ninety days
 7 after their removal orders became final. *See id.* After ninety days, ICE generally released them
 8 into the community on orders of supervision. *See id.* In 2017, after some negotiations with
 9 Vietnam led ICE to believe Vietnamese officials would begin considering travel documents for
 10 pre-1995 Vietnamese immigrants, ICE began re-detaining some Vietnamese individuals who
 11 had previously been released on supervision and detaining individuals for longer than 90 days
 12 based on a possibility that Vietnam would issue the requisite travel documents. *Id.* That
 13 possibility did not materialize.

14 32. After renewed discussions with Vietnam in August 2018, ICE reversed its
 15 position again and acknowledged that the removal of pre-1995 immigrants to Vietnam was not
 16 significantly likely. *Id.* In October 2018, ICE instructed field offices to resume the practice of
 17 releasing pre-1995 Vietnamese immigrants within 90 days of a final order of removal. *Id.*

18 33. Between 2017 and 2019, ICE requested travel documents for pre-1995
 19 Vietnamese immigrants 251 times. Vietnam granted those requests only 18 times.

20 34. In November 2020, the United States and Vietnam signed a Memorandum of
 21 Understanding that creates a process for deporting pre-1995 immigrants. Section 4 of the MOU
 22 obliges the United States and Vietnam to consider specific factors prior to deciding to remove a
 23 Vietnamese citizen and prior to deciding to accept for repatriation a Vietnamese citizen. *Id.*
 24 These factors are not publicly known because the U.S. government redacted them in Freedom of
 25 Information Act (FOIA) disclosures of the MOU, yet they appear to dictate which categories of
 26 people may be deported to Vietnam. *Id.* Under Section 8 of the MOU, if a person meets the

1 designated criteria, ICE is expected to put together a documentation package for Vietnam to
 2 include, inter alia, a self-declaration form of the individual to be removed (using a form attached
 3 to the MOU), copies of identity and citizenship documents, and copies of the final order of
 4 removal and any criminal records. *Id.* The MOU states that Vietnam intends to issue the travel
 5 document within 30 calendar days of receiving the information package when the individual
 6 meets the eligibility criteria. *Id.*

7 35. Between September 2021 to September 2023, the U.S. government deported
 8 only four pre-1995 Vietnamese immigrants. *Id.*

9 36. Without any known change in Vietnamese policy or practice, the U.S.
 10 government began re-detaining Vietnamese nationals with prior orders of removal in significant
 11 number in or around June 2025.

12 **ICE's Third Country Removal Policy**

13 37. On July 9, ICE released a memo instructing staff that ICE may deport a person to a
 14 third country not designated on the removal order without providing any notice or an opportunity
 15 to be heard if the State Department confirms that it has received diplomatic assurances that
 16 individuals will not be persecuted or tortured. Pasq. Decl. ¶6 (Exh. D, Third Country Removal
 17 Policy). *There is no mention of assurances that a person will not be arbitrarily or indefinitely*
 18 *imprisoned. Id.*

19 38. If no diplomatic assurances are received, officers are instructed to serve on the
 20 individual a Notice of Removal ("Notice") that includes the intended country of removal. *Id.* It
 21 tells officers not to ask whether the individual is afraid of removal to that country and states that
 22 officers should "generally wait at least 24 hours following service of the [Notice] before
 23 effectuating removal." *Id.* The memo states that "[i]n exigent circumstances, [ICE] may execute
 24 a removal order six (6) or more hours after service of the [Notice] as long as the [noncitizen] is
 25 provided reasonable means and opportunity to speak with an attorney prior to removal." *Id.*

26 39. The memo states that if the noncitizen "does not affirmatively state a fear of

1 persecution or torture if removed to the country of removal listed on the [Notice] within 24 hours,
 2 [ICE] may proceed with removal to the country identified on the notice.” If the noncitizen “does
 3 affirmatively state a fear if removed to the country of removal,” then ICE will refer the case to
 4 U.S. Citizenship and Immigration Services (“USCIS”) to screen for eligibility for withholding
 5 of removal and protection under the Convention Against Torture (“CAT”). *Id.* “USCIS will
 6 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen does not meet the
 7 standard, the individual will be removed, but if it determines that they have met the standard,
 8 then ICE may reopen removal proceedings “for the sole purpose of determining eligibility for
 9 [withholding of removal protection] and CAT ... [or] designate another country for removal.”
 10 *Id.*

11 **Punitive Banishment to Third Countries**

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

16 41. Respondents reportedly have negotiated with at least 58 countries to accept
 17 deportees from other nations. On June 25, 2025, the *New York Times* reported that seven
 18 countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had
 19 agreed to accept deportees who are not their own citizens.¹ Since then, ICE has carried out highly
 20 publicized third country deportations to South Sudan, Eswatini, Rwanda, Uganda, and Ghana.

21 42. The Administration’s third country removal scheme is designed to punish and
 22 deter. In an official video, President Donald Trump stated, “[I]f illegal aliens choose to remain
 23 in America, they’re remaining illegally, and they will face severe consequences,” such as
 24 “significant jail time, ... garnishment of all wages, imprisonment and incarceration, and *sudden*
 25

26 ¹ Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025.

1 *deportation in a place and manner solely of our discretion.*"² In January, President Trump
 2 announced a plan to detain immigrants at the Guantanamo Bay prison in Cuba because "it's a
 3 tough place to get out" and "we don't want them coming back."³

4 43. Later, Secretary of State Marco Rubio announced that El Salvador had agreed to
 5 "accept for deportation any illegal alien in the [U.S.] who is a criminal"⁴ with the explicit
 6 understanding that "[President Bukele] will put them in his jails."⁵ Respondent DHS Secretary
 7 Kristi Noem said, "It has been wonderful for us to be able to have somewhere to send the worst
 8 of the worst and someone to partner with. And we'd like to continue that partnership because
 9 it's been *a powerful message of consequences.*"⁶ President Trump recently spoke about the
 10 deterrent effect of the El Salvador banishments: "[W]e bring people there and ... they don't get
 11 out."⁷ DHS agreed, posting, "Illegal aliens are turning back because they know ... they will
 12 ultimately leave in handcuffs."⁸

13 44. In April, Secretary of State Rubio stated that the administration is "working with
 14 other countries ... to send [them] some of the most despicable human beings ... and the further
 15 away from America, the better, so they can't come back."⁹ Secretary Noem has publicly
 16

17 ² Roll Call, *Donald Trump Vlog: Self-Deportation Program - May 9, 2025*, at 00:00:55 (emphasis added),
 18 <https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/>
 (last visited July 24, 2025).

19 ³ Benedict Garman & Matt Murphy, *Migrant Tents Removed From Guantanamo Bay, Satellite Images Show*,
 BBC News (Apr. 17, 2025), <https://www.bbc.com/news/articles/crm3x27vw70o>.

20 ⁴ Stefano Pozzebon et al, *El Salvador Offers to House Violent US Criminals and Deportees of any Nationality in Unprecedented Deal*, CNN World (Feb. 4, 2025), <https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk>.

21 ⁵ Matthew Lee, *Rubio Says El Salvador Offers to Accept Deportees from US of Any Nationality, Including Americans*, AP News (Feb. 4, 2025), <https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396ba9c45a2c0b>.

22 ⁶ Roll Call, *Remarks: Donald Trump Holds a Bilateral Meeting with Nayib Bukele of El Salvador - April 14, 2025*, at 00:06:45 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-remarks-bilat-nayib-bukele-el-salvador-april-14-2025/> (last visited July 24, 2025).

23 ⁷ Roll Call, *White House Press Conference: Press Conference: Donald Trump Hosts a Press Conference at the White House - June 27, 2025*, at 00:20:29, <https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-white-house-june-27-2025/> (last visited July 24, 2025).

24 ⁸ Homeland Security (@DHSgov), X (June 24, 2025 at 4:17 PM), <https://x.com/DHSgov/status/1937651350059327520>.

25 ⁹ Kate Bartlett, *Trump Administration Plans to Deport Migrants to Libya*, NPR (May 7, 2025),
 26 <https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-trump-deportations>.

1 threatened noncitizens with criminal convictions to “leave America” or “be fined nearly \$1,000
 2 per day, imprisoned, and deported.”¹⁰ She stated, “President Trump and I have a clear message
 3 to those in our country illegally: LEAVE NOW. If you do not self-deport, we will hunt you
 4 down, arrest you, and deport you.”¹¹

5 45. The Administration has negotiated with countries to have U.S. deportees imprisoned
 6 in prisons, camps, or other facilities. In February, Panama and Costa Rica took in hundreds of
 7 deportees from African and Central Asian countries and imprisoned them in hotels, a jungle
 8 camp, and a detention center.¹² In Panama, officials confiscated cell phones, denying deportees
 9 access to their attorneys.¹³ Deportees were “guarded like prisoners,” sleeping in structures made
 10 from plastic sheets and having toilet access only when escorted.¹⁴

11 46. The Costa Rican president announced an agreement to receive up to 200 deportees
 12 and to hold them for up to six weeks before sending them to their home countries, all paid for by
 13 the United States.¹⁵ The deportees were held at the Temporary Migrant Care Center (CATEM).¹⁶
 14 Migrants held there previously reported sleeping on the ground in tents, being held in cramped

15 ¹⁰ Press Release, Dep’t of Homeland Sec., *DHS Releases New Nationwide and International Ads Warning Illegal*
 16 *Aliens to Self-Deport and Stay Out* (Apr. 21, 2025), <https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-ads-warning-illegal-aliens-self>.

17 ¹¹ *Id.* (italics omitted).

18 ¹² The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama in a Legal ‘Black Hole,’* CBC News
 19 (Feb. 28, 2025, 6:29 AM), <https://www.cbc.ca/news/world/costa-rica-panama-us-migrants-1.7471142>; Juan
 20 Zamorano, *Nearly 300 Deportees from US held in Panama Hotel as Officials Try to Return Them to Their*
 21 *Countries*, AP World News (Feb. 18, 2025), <https://apnews.com/article/panama-trump-migrants-darien-d841e33a215c172b8f99d0aeb43b0455>; Manuel Rueda, *Asylum Seekers Deported by the U.S. Are Stuck in*
 22 *Panama and Unable to Return Home*, All Things Considered, NPR (May 5, 2025), <https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home>.

23 ¹³ Julie Turkewitz et al., *Migrants, Deported to Panama Under Trump Plan, Detained in Remote Jungle Camp*,
 24 N.Y. Times (Feb. 19, 2025), <https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock>.

25 ¹⁴ Matias Delacroix & Megan Janetsky, *Isolated in ‘Harsh Conditions,’ Deportee from US Details Legal Limbo in*
 26 *Panama Camp Near Darien Gap*, AP World News (Feb. 22, 2025), <https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86>.

¹⁵ Alvaro Murillo, *Costa Rica Could Hold US Deportees for Up to Six Weeks, President Says*, Reuters (Feb. 19, 2025), <https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-2025-02-19/>.

¹⁶ The Associated Press, *Group of Mostly Asian Migrants Deported from U.S. Arrive in Costa Rica*, NBC News (Feb. 21, 2025 at 7:37 AM PST), <https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148>

1 quarters like prisoners, and sanitation issues.¹⁷ On June 24, a Costa Rican court ordered the
 2 release of the deportees due to civil rights violations, finding “they had been deprived of their
 3 freedom of movement without a prior individual ruling, that their communications with the
 4 outside had been restricted, and that they had not been told about the possibility of applying for
 5 refugee status.”¹⁸

6 47. In March, the U.S. paid El Salvador \$5 million to indefinitely imprison over 200
 7 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses,
 8 known as CECOT.¹⁹ El Salvador’s justice minister stated the only way out of CECOT is in a
 9 coffin.²⁰

10 48. In May, ICE attempted to deport individuals from Vietnam, Laos, the Philippines,
 11 and Mexico to Libya.²¹ The aircraft sat on the runway for hours until the individuals were
 12 returned to a detention center after a court ordered the men not to be deported.²²

13 49. On July 4, ICE deported eight men, including one Vietnamese man, to South Sudan.²³

21 ¹⁷ *Id.*

22 ¹⁸ Vanessa Buchachiller, *Costa Rican Court Orders Release of Migrants Deported from U.S.*, BBC News (June 25, 2023), <https://www.bbc.com/news/articles/cwym642p7mo>.

23 ¹⁹ See, e.g., Wong, *supra* note 1; Michael Rios, *What We Know About the El Salvador ‘Mega Prison’ Where Trump Is Sending Alleged Venezuelan Gang Members*, CNN (Mar. 17, 2023).

24 ²⁰ Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison, Documents Indicate Most Have No Apparent Criminal Records*, CRS News (Apr. 6, 2023), <https://www.crsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/>.

25 ²¹ Human Rights Watch, *U.S.: Don’t Forceably Transfer Migrants to Libya*, May 9, 2023, <https://www.hrw.org/news/2023/05/09/us-dont-forceably-transfer-migrants-libya>.

26 ²² *Id.*

²³ Guardian, *US Judge Clears Path for Eight Immigrants to be Deported to South Sudan*, July 4, 2023, <https://www.theguardian.com/us-news/2023/jul/04/south-sudan-deportations-habeas>.

1 The government of South Sudan euphemistically said in a statement that the deportees were
 2 "under the care of the relevant authorities."²⁴ As of September 7, 2025, six of the eight men
 3 remained in South Sudanese custody.²⁵

4 50. On July 15, ICE deported five men to Eswatini, including one Vietnamese man. DHS
 5 referred to the men as "so uniquely barbaric that their home countries refused to take them
 6 back."²⁶ Eswatini government officials have said the men are imprisoned in solitary confinement
 7 and that the U.S. is paying for the costs of their imprisonment.²⁷ An Eswatini government official
 8 estimated the men would be held for about 12 months.²⁸

9 51. In mid-August, ICE deported seven individuals to Rwanda.²⁹ Rwanda also reported
 10 reaching an agreement with the United States to receive up to 250 deportees.³⁰

11 52. In September, ICE deported as many as 28 individuals to Ghana, at least 14 of whom
 12 had won protection against removal in immigration court. In court filings, five of these
 13 individuals alleged that ICE abruptly put them on a plane in the middle of the night,
 14 straightjacketed them, and did not tell them where they were being flown until they were already
 15 in flight. *D.A. v. Noem*, 2025 WL 2646888, at *1 (D.D.C. Sept. 15, 2025). In Ghana they were
 16
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18 ²⁴ Matthias Schwart, *Trump Administration Poised to Ramp Up Deportations to Distant Countries*, N.Y.
 19 Times, July 13, 2025, <https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html>; see also Press Statement, Republic of South Sudan, *Official Statement on the Arrival of Third-Country Nationals and South Sudanese Departed from the United States of America to South Sudan*, July 8, 2025, <https://moiaf.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-departed-from-the-united-states-of-america-to-south-sudan/>.

20 ²⁵ Isa Cardona, *South Sudan repatriates Mexican man deported from U.S.*, CNN, Sept. 7, 2025, <https://www.cnn.com/2025/09/07/americas/mexican-south-sudan-repatriation-intl>.

21 ²⁶ Tricia McLaughlin (@TriciaDine), X (July 15, 2025), <https://x.com/TriciaDine/status/1945274627976208206>.

22 ²⁷ Nami Princewill et al., *'Not Trump's Dumping Ground': Outrage Over Arrival of Foreign U.S. Deportees in Tiny African Nation*, CNN World (July 18, 2025), <https://www.cnn.com/2025/07/17/africa/ethiopia-trump-us-deportees-intl>; Rachel Savage et al., *Eswatini opposition attacks US deal as 'human trafficking disguised as deportation'*, The Guardian, Jul. 23, 2025, <https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-deportees>.

23 ²⁸ *Id.*

24 ²⁹ Taphne Pschodakis et al., *Rwanda received migrants deported from US earlier this month*, Reuters, Aug. 28, 2025, <https://www.reuters.com/world/africa/rwanda-received-migrants-deported-us-earlier-this-month-2025-08-28/>.

25 ³⁰ *Id.*

held in an open-air detention facility surrounded by armed military guards. *Id.* Now, Ghana has reportedly expelled eight to ten of these individuals to Togo without their passports.³¹

V. ARGUMENT

53. Over the past six months, hundreds of district court judges around the country have ordered ICE to release individuals unlawfully detained.³² Many of these cases are just like Petitioner's—individuals with final orders of removal detained at their regularly scheduled check-ins without any prior notice, an opportunity to respond, and without ICE following its own regulatory requirements. The law governing re-detention is clear and well-established; the government intentionally violates it when it makes no effort to cure the legal violations the federal courts have consistently identified and instead continues to engage in it.

54. For Vietnamese nationals, like Mr. Vo, there is an additional dimension. Re-detention of pre-1995 Vietnamese refugees, who the government has been unable to remove for decades, is unconstitutionally indefinite, unless the government has already secured the travel document and a deportation flight, given the unique challenges with removals to Vietnam. Numerous decisions from this district alone have held that the fact that Vietnam is issuing travel documents to more pre-1995 individuals than it was before does not make it “significantly likely] that any Vietnamese citizen. . . will be removed to Vietnam in the reasonably foreseeable future, justifying their detention.” *Nguyen v. Scott*, 796 F.Supp.3d 703, 725 (W.D. Wash. 2025). See *Do v. Scott*, 2025 WL 3496909 (W.D. Wash. Dec. 5, 2025); *Tran v. Bondi*, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025); *Abubakar v. Bondi*, 2025 WL 3204369 (W.D. Wash. Nov. 17, 2025); *Huynh v. Bondi*, 2025 WL 3718991 (W.D. Wash. Dec. 23, 2025); *Duong v. Bondi*, 2025 WL 3628631 (W.D. Wash. Dec. 15, 2025); *Van Huynh v. Bondi*, 2025 WL 3534210 (W.D. Wash. Dec. 10, 2025); *Kuot v. Bondi*, 2025 WL 3763930 (W.D. Wash. Dec. 30, 2025); *Tang v.*

³¹ *West Africans deported from US to Ghana ‘dumped without documents in Togo,’* The Guardian, Sept. 29, 2025, <https://www.theguardian.com/us-news/2025/sep/29/west-africans-deported-us-ice-ghana-togo>.

³² See Kyle Cheney, *Hundreds of judges reject Trump’s mandatory detention policy, with no end in sight*, Politico, Jan. 5, 2026, <https://www.politico.com/news/2026/01/05/trump-immigration-immigrants-mandatory-detention-007699494>.

1 *Bondy*, 2025 WL 2637750 (W.D. Wash. Sept. 11, 2025); *Wana v. Bondy*, 2025 WL 3628634
 2 (W.D. Wash. Dec. 15, 2025); *Tram v. Scott*, 2025 WL 2898638 (W.D. Wash. Oct. 12, 2025); *Bui*
 3 *v. Scott*, 2025 WL 3250962 (W.D. Wash. Nov. 21, 2025). Nonetheless, ICE continues to detain
 4 pre-1995 Vietnamese nationals, like Mr. Vo, at their scheduled check-ins without first obtaining
 5 a travel document from Vietnam or making any effort to first determine from Vietnam whether
 6 they will accept the individual now, when historically they have refused. Instead, ICE is simply
 7 locking people up, forcing them to remain detained for several months at least, because despite
 8 the illegality of the detention, only those who are lucky enough to obtain a lawyer and to obtain
 9 release through habeas get out. Others remain endlessly detained.

10 55. Petitioner Vo's detention violates core principles of due process, governing ICE
 11 regulations, and the principles of ordered liberty inherent in our constitutional system. By
 12 willfully violating the law, to imprison Petitioner Vo and others like him, ICE has made plain its
 13 objective with detention is to punish him. This Court should order Petitioner Vo's immediate
 14 release and, given the grave harm he faces, order other protective measures against future harm.

15 **A. The Government's Re-Detention of Petitioner Violates Due Process**

16 56. The government cannot deprive any person of "life, liberty, or property, without
 17 due process of law[.]" U.S. Const. Amend. V. Due process extends to "all 'persons' within the
 18 United States, including [non-citizens], whether their presence here is lawful, unlawful,
 19 temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 672, 693 (2001). "Freedom from
 20 imprisonment—from government custody, detention, or other forms of physical restraint—lies
 21 at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

22 **1. Procedural Due Process**

23 57. It is well-established that ICE may not revoke a person's release on supervision
 24 without prior notice and a hearing. When the government releases an individual previously
 25 detained, even if that release is conditional or discretionary, that individual has a protected liberty
 26 interest in their continued freedom that cannot be taken away without due process. *Morrisey v.*

1 *Brewer*, 408 U.S. 471, 481-82 (1972). *See also Hurd v. District of Columbia*, 864 F.3d 671, 683
 2 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is
 3 lawfully revocable—has a liberty interest that entitles him to constitutional due process before
 4 he is re-incarcerated”) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997), *Gagnon v. Scarpelli*,
 5 411 U.S. 778, 782 (1973), and *Morrissey*, 408 U.S. at 482). As the Supreme Court explained, a
 6 parolee relies “on at least an implicit promise that parole will be revoked only if he fails to live
 7 up to the parole conditions.” *Morrissey*, 408 U.S. at 482.

8 58. The protected liberty interest created by conditional parole also applies to the
 9 immigration detention context. “While the temporary detention of non-citizens may sometimes
 10 be justified by concerns about public safety or flight risk, the government’s discretion to
 11 incarcerate non-citizens is always constrained by the requirements of due process[.]” *Hernandez*
 12 *v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). “Just as people on preparole, parole, and probation
 13 status have a liberty interest, so too does [a noncitizen released from immigration detention] have
 14 a liberty interest in remaining out of custody on bond.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963,
 15 969 (N.D. Cal. 2019).

16 59. Determining what procedures are due generally requires examining the factors set
 17 forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976):

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

22 *E.A. T.-B. v. Wamsley*, 795 F.Supp.3d 1316, 1320-21 (W.D. Wash. 2025) (quoting *Mathews*, 424
 23 U.S. at 335).

24 60. Petitioner’s interest in not being detained is “the most elemental of liberty interests[.]”
 25 *Id.* at 1321 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)) (granting petition and
 26 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., *Leidesma Gonzalez v. Boutock*, No. CV25-1404-JNW-GIL, 2025 WL 2841574, *8 (W.D. Wash. Oct. 7, 2025) (finding detainee has liberty interest).

61. The protected liberty interest is even more substantial when balancing the nonpunitive purpose of immigration detention against the “irreparable harms imposed on anyone subject to immigration detention,” including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995.

62. The longer the individual has been released, the more his liberty interest grows. *Morrissey*, 408 U.S. at 482. Here, Petitioner’s private interests could not be more substantial. For 23 years, Petitioner Vo had been free from custody while on supervision. During that time, he has done everything society has asked of him. He has built and sustained a productive and law-abiding life; married a U.S. citizen and raised three children; and owned and operated a thriving business. He has invested in his family, in his church, and in his community. He has dutifully adhered to ICE’s conditions of supervision. In sum, he has built an established life on the “implicit promise” that it would not be taken away unless he failed to “live up” to the conditions of his ICE supervision. *Morrissey*, 408 U.S. at 482; see also *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (quoting *Morrissey*, 408 U.S. at 482 and applying it in immigration re-detention case). At no point has he failed to “live up” to the conditions of his ICE supervision; by any measure, he has exceeded them.

63. The second factor, risk of an erroneous deprivation of liberty, also weighs in Petitioner’s favor. Where the petitioner “has not received any bond or custody. . . hearing, the risk of an erroneous deprivation [of liberty] is high because neither the government nor [Petitioner] has had an opportunity to determine whether there is any valid basis for her detention.” *Pinchi*, 792 F. Supp. 3d at 1035 (citation omitted). A pre-detention hearing

significantly decreases that risk because the government must prove to a neutral adjudicator by clear and convincing evidence that circumstances have materially changed to justify re-detention. *See Duong v. Kaiser*, No. CV25-7598-JST, 2025 WL 2689266, at *10 (N.D. Cal. Sept. 19, 2025) (holding that any re-detention first required a hearing “whether a material change of circumstances justifies [petitioner’s] re-detention”). Absent a hearing, ICE would be permitted unilateral authority to determine when and whether to revoke a post-order person’s release and re-detain without any neutral check. In such circumstances, the risk of error is considerable, as evidenced in this case and hundreds of others brought before district courts in recent months. *See Guillermo M.R. v. Kaiser*, 791 F. Supp. 3d 1021, 1034 (N.D. Cal. 2025) (finding an “undeniably stark” risk of erroneous deprivation where ICE claimed the authority to make unilateral re-detention decisions that had no other mechanism for review by a neutral arbiter). *See also Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when “delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement” are at issue, the “risk of error is considerable when just determinations are made after hearing only one side”).

64. Critically, in a pre-detention hearing, the government would bear the burden of demonstrating that the detention would not be impermissibly punitive. As immigration detention is civil and only permitted to prevent flight and protect against danger to the community, *Zadvydas v. Davis*, 533 U.S. 678, 690, 697 (2001), the government must prove by clear and convincing evidence that the individual is a flight risk or a danger. *See Sanchez-Rivera v. Matuzewski*, No. CV22-1357-MMA-JLB, 2023 WL 139801, at *7 n.9 (S.D. Cal. Jan. 9, 2023) (noting that “an overwhelming majority of courts” have so held); *Singh v. Andrews*, 2025 WL 1918670, at *7 (E.D. Cal. July 11, 2025) (noting high risk of erroneous deprivation where no evidence of flight risk or danger justifying re-detention).

65. The final factor, the government’s interest in detaining a petitioner without providing a pre-deprivation hearing, also weighs sharply in the petitioner’s favor. It has been 23 years since

1 Petitioner was ordered deported and released from custody. For 23 years, the government took
 2 no action to remove him. The government has no legitimate claim that it is burdened by a slight
 3 delay in detaining Petitioner to attempt to remove him. *See Chhoeun v. Marin*, 442 F. Supp. 3d
 4 1233, 1249 (C.D. Cal. 2020) (holding the government claim that it could not wait 14 additional
 5 days to execute removal orders of Cambodian nationals “is laughable” when it “waited years or
 6 decades to execute these removal orders, allowing Petitioners to develop deep ties to this country
 7 by raising families and working”). Even if the government “ultimately demonstrates to a neutral
 8 decisionmaker by clear and convincing evidence that [Petitioner’s] detention is necessary to
 9 prevent danger to the community or flight,” then “the only potential injury the government faces
 10 is a short delay in detaining” Petitioner. *Pinchi*, 792 F.Supp.3d 1025, 1037-38 (N.D. Cal. 2025).
 11 The human suffering inherent in unlawful imprisonment vastly outweighs the short delay to the
 12 government. *Id.* at 1038 (“Faced with ... a conflict between minimally costly procedures and
 13 preventable human suffering, [the Court has] little difficulty concluding that the balance of
 14 hardships tips decidedly in plaintiff[’s] favor.”) (cleaned up). *See also E.A. T.-B. v. Wamsley*,
 15 795 F.Supp.3d 1316, 1324 (W.D. Wash. 2025) (“although it would have required the expenditure
 16 of finite resources (money and time) to provide Petitioner notice and hearing on ATD violations
 17 before arresting and re-detaining him, those costs are far outweighed by the risk of erroneous
 18 deprivation of the liberty interest at issue.”); *Chaudhry v. Bondi*, 2025 WL 3706534, at *6 (W.D.
 19 Wash. Dec. 22, 2025) (quoting the same).

20 66. For all these reasons, “[c]ourts in this circuit have repeatedly, consistently, and with
 21 growing frequency found constitutional violations where individuals are detained at check-ins
 22 or appointments without prior notice or opportunity to be heard.” *Chaudhry v. Bondi*, 2025 WL
 23 3706534, at *5 (W.D. Wash. Dec. 22, 2025) (collecting cases).

24 67. This Court should order Petitioner’s immediate release and prohibit any re-detention
 25 without prior notice and a hearing before this Court.

1 2. *Substantive Due Process*

2 68. The government's re-detention of Petitioner violates substantive due process for
3 several interlocking reasons.

4 69. The INA provides that after a removal order becomes final, the government "shall
5 remove the alien from the [U.S.] within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This 90-
6 day period is often referred to as the initial removal period and during it, the government "shall
7 detain the alien." *Id.* § 1231(a)(2). In some circumstances, federal immigration authorities can
8 continue to detain an alien beyond the initial removal period. Specifically, section 1231(a)(6)
9 allows the government to detain certain enumerated classes of immigrants—including those
10 ordered removed due to criminal convictions—for more than 90 days. *Id.* § 1231(a)(6).

11 70. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court interpreted the
12 detention statute, 8 U.S.C. § 1231(a)(6), in light of the Due Process Clause and held that "[a]
13 statute permitting indefinite detention of an alien would raise a serious constitutional problem"
14 because it would become punitive. *Id.* at 690. "[G]overnment detention violates [the Fifth
15 Amendment's Due Process Clause] unless the detention is ordered in a *criminal* proceeding with
16 adequate procedural protections, or, in certain special and narrow nonpunitive circumstances. . .
17 where a special justification, such as a harm-threatening mental illness, outweighs the
18 individual's constitutionally protected interest in avoiding physical restraint." *Id.* Civil
19 immigration detention, the Court said, is only authorized for the limited purpose of flight risk or
20 a danger to the community. *Id.* The Court held that section 1231(a)(6) "implicitly limits an alien's
21 detention to a period reasonably necessary to bring about that alien's removal." *Id.* at 679. Thus,
22 "once removal is no longer reasonably foreseeable, continued detention is no longer authorized
23 by [section 1231(a)(6)]." *Id.* at 699. "[F]or the sake of uniform administration in the federal
24 courts," the Court found that post-order detention was "presumptively reasonable" for the first
25 six months. *Id.* at 700–01.

71. After that “presumptively reasonable” six-month period ends, once the noncitizen “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. *Id.* at 701. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Id.*

72. Here, several principles make clear that Petitioner’s re-detention was prohibited under substantive due process.

73. First, ICE’s detention of Petitioner is unconstitutionally punitive because it has no permitted justification. ICE can make no claim that Petitioner is a flight risk or a danger of society—the only authorized purposes of immigration detention. *Zadvydas*, 533 U.S. at 690; *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). To the contrary, he has complied with his order of supervision for 23 years. When he was asked with one day of notice to appear at the ICE office in Richland, WA on December 16, 2025—an irregular request clearly signaling he might be detained—he showed up. His only criminal conviction is from 1997. There is plainly no lawful justification for detaining him.

74. Indeed, for a post-order person like Petitioner, immigration detention can only be used for the “narrow nonpunitive” purpose of securing a person’s removal “at the moment” of removal. *Zadvydas*, 533 U.S. at 690, 699. The “[r]easonableness” of the detention is measured “in terms of the statute’s basic purpose”: “assuring the [noncitizen’s] presence at the moment of removal.” *Id.* at 699. In this case, however, ICE has arrested and re-detained Petitioner without any scheduled removal at all—it does not even know whether it can remove him. Far from detaining him solely to secure his removal, it has apparently detained him for the sake of detaining him because it does not yet know whether it can remove him.

75. If the government had secured his travel document from Vietnam and scheduled him for a deportation flight within days or even a week from the date of his re-detention, that would be a narrow use of immigration detention to secure his removal at the moment of removal. The

1 opposite, however, is true here. The government does not have a travel document from Vietnam,
2 nor does it have any certainty that Vietnam will issue one, as Petitioner is a pre-1995 refugee. It
3 knows this to be true. Vietnam's process for consideration of repatriation still results in most
4 people not being issued a travel document. *See* Declaration of Julie Valencia, filed concurrently.
5 The government also knows it to be true that Vietnam, when it does issue travel documents, can
6 take a very long time to do so. *See id.*; Pasquarella Decl. ¶F (Decl. of Tin Nguyen). Numerous
7 courts in this district alone have admonished the government that the law does not permit it to
8 detain people "indefinitely while it waits for travel documents from Vietnam." *Tran v. Bondi*,
9 2025 WL 3140462, at *3 (W.D. Wash. Nov. 10, 2025). *See, e.g., Do v. Scott*, 2025 WL 3496909,
10 at *4 (W.D. Wash. Dec. 5, 2025). Yet the government continues to detain pre-1995 Vietnamese
11 nationals, like Petitioner, without so much as requesting the travel document from Vietnam first.
12 The government's repeated violations of the law to imprison people demonstrates the punitive
13 intent of its actions. *See Am. Civ. Liberties Union of Nev. v. Mastro*, 670 F.3d 1046, 1053 (9th
14 Cir. 2012) (citing *Smith v. Doe*, 538 U.S. 84, 92 (2003)) (If the government's intent is to punish,
15 "that is the end of the inquiry.").

16 76. Second, ICE's detention of Petitioner is unconstitutionally indefinite under *Zadvydas*.
17 The 90-day removal period and the six-month *Zadvydas* grace period following the issuance of
18 Petitioner's removal order elapsed 23 years ago. *See Tran v. Bondi*, 2025 WL 3140462, at *3
19 (W.D. Wash. Nov. 10, 2025) (holding *Zadvydas* grace period ended six months after the entry
20 of the order of removal, even though Petitioner had only been held two months before being
21 released). *Zadvydas* dealt only with the presumptively reasonable period the government could
22 hold an individual immediately following the issuance of a removal order. Once the government
23 releases a person it cannot remove, the law does not permit it to re-detain and pick up where it
24 left off in running the clock on the *Zadvydas* six-month period, where removal is not reasonably
25 foreseeable. *See Tran*, 2025 WL 3140462, at *3. Rather, to comport with the principles
26 announced in *Zadvydas* and later incorporated into ICE's regulations, the re-detention is
permissible only if changed circumstances show that it is significantly likely that Petitioner will

1 be removed in the reasonably foreseeable future. *Zachryden*, 533 U.S. at 701. “Because more than
 2 six months have elapsed since the entry of the order of removal, the burden shifts to Respondents
 3 to show [Petitioner] is likely to be removed in the foreseeable future.” *Tran*, 2025 WL 3140462,
 4 at *3.

5 77. Here, the government cannot meet its burden. ICE re-detained Petitioner without even
 6 so much as first requesting a travel document. There is no evidence that Vietnam will issue a
 7 travel document to Petitioner, making his removal foreseeable. For 23 years, the government of
 8 Vietnam has refused to receive Petitioner. There is no evidence that Vietnam will accept him
 9 under the known MOU criteria.

10 78. The fact that Vietnam is now accepting some pre-1995 arrivals for removal for the
 11 first time in history, does not make it significantly likely that it will accept Petitioner. As the
 12 Court noted in *Nguyen*, the fact that new developments may show that there is “some possibility”
 13 that Vietnam will accept Petitioner “at some point,” “that is not the same as a significant
 14 likelihood that he will be accepted in the reasonably foreseeable future.” 796 F.Supp. 3d at 725.
 15 Moreover, “[c]ourts in this circuit have regularly refused to find Respondents’ burden met where
 16 Respondents have offered little more than generalizations regarding the likelihood that removal
 17 will occur,” and it should not do so here. *Id.*; see also *id.* at 726 (“The government has not
 18 provided any evidence of Vietnam’s eligibility criteria or why it believes Petitioner now meets
 19 it.”); *Singh v. Gonzalez*, 448 F.Supp.2d 1214, 1220 (W.D. Wash. 2006) (finding ICE did not
 20 meet its burden where it “merely assert[ed] that it has followed up on its request for travel
 21 documents”); see also *Cham Yat Ma v. Asher*, 2012 WL 1432229, at *4 (W.D. Wash. Apr. 25,
 22 2012); *Hoac v. Recerra*, 2025 WL 1993771, at *3 (E.D. Cal. June 25, 2025).

23 79. For these reasons, ICE’s re-detention of Petitioner is unconstitutional under
 24 substantive due process.

B. The Government's Re-Detention of Petitioner Violates its Own Regulations

80. Re-detention and the revocation of release on an order of supervision is governed by 8 C.F.R. § 241.13(i). ICE may revoke a noncitizen's release and return them to ICE custody due to failure to comply with any of the conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed circumstances, the Service determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." *Id.* § 241.13(i)(2).

81. Upon such a determination by ICE to re-detain, "the alien will be notified of the reasons for revocation of his or her release. [ICE] will conduct an initial informal interview promptly after his or her return to [ICE] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she [will] be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release." *Id.* § 241.13(i)(3).

82. Here, Respondents did not comply with the procedural requirements of 8 C.F.R. § 241.13(i) in revoking Petitioner's release. ICE is required to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); see *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established."). "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

83. As discussed, no "changed circumstances" make it significantly likely that Petitioner will be removed in the foreseeable future. 8 C.F.R. § 241.13(i)(2). ICE did not notify Petitioner of the "reasons for revocation of his [] release," conduct "an initial informal interview promptly

1 after his [] return to [ICE] custody to afford [him] an opportunity to respond to the reasons for
 2 revocation stated in the notification," allow Petitioner to "submit any evidence or information
 3 that he [] believes shows there is no significant likelihood he [] [will] be removed in the
 4 reasonably foreseeable future," or provide a written "revocation custody review." *Id.* §
 5 241.13(i)(3); *see also Phan v. Becerra*, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025).

6 84. ICE has not presented Petitioner with a Notice of Revocation of Release or otherwise
 7 explained to Petitioner in an interview or otherwise the reasons why the government revoked his
 8 supervision. Pasquarella Decl. ¶5.

9 85. Accordingly, as numerous courts in this Circuit have held in recent months, ICE's
 10 failure to adhere to its own regulations violates Petitioner's rights and warrants his immediate
 11 release from custody. *See, e.g., Phan*, 2025 WL 1993735, at *3-4; *Huac v. Becerra*, 2025 WL
 12 1993771 (E.D. Cal. June 30, 2025); *Yang v. Kaiser*, 2025 WL 2791778, at *7 (E.D. Cal. Aug.
 13 20, 2025); *Constantinovic v. Bondi*, 2025 WL 2898985, at *6-7 (S.D. Cal. Oct. 10, 2025)
 14 (holding ICE violated the revocation of release regulation and such violation also constituted a
 15 due process violation); *Murales Sanchez v. Bondi*, 2025 WL 3651899, at *5-6 (C.D. Cal. Dec.
 16 5, 2025).

17 **C. The Government's Unreasonable Delay and Affirmative Misconduct in Attempting**
 18 **to Enforce Petitioner's Removal Order After 23 Years Violates Due Process, the**
Administrative Procedures Act and the Doctrine of Laches.

19 86. For 23 years since it ordered him removed, the government has permitted Petitioner
 20 to remain in the United States and to build all the attachments attendant to a well-lived life.
 21 It released him from ICE custody in 2003 because it could not remove him to Vietnam. The
 22 government's release of Petitioner created the "implicit promise" that he would never again be
 23 detained unless he violated the terms of his supervision. *Morrissey*, 408 U.S. at 482. Petitioner
 24 understood that Vietnam did not recognize him as a citizen and would never take him back. For
 25 the past 23 years that has been true. Even after the government negotiated a new treaty with
 26 Vietnam in 2020 governing the repatriation of pre-1995 refugees, hardly any pre-1995

1 individuals were deported. Accordingly, Petitioner understood that he would live the rest of his
 2 life with a removal order that could never be executed, but he would live his life at home in the
 3 United States.

4 87. Now, he has a family and a thriving business and a community that cares about him.
 5 After 23 years living under a “dormant” removal order, *Chhorun v. Marin*, 306 F.Supp.3d 1147,
 6 1162 (C.D. Cal. 2018), the government now threatens to execute it and take from him his
 7 “property and life, or [] all that makes life worth living.” *Ng Fung Ho v. White*, 259 U.S. 276
 8 (1922). Due process demands more.

9 88. With the long passage of time since his removal order, Petitioner’s circumstances
 10 have also changed. His marriage to a U.S. citizen could provide a basis for him to re-adjust his
 11 status to a lawful permanent resident in reopened removal proceedings. Moreover, he is eligible
 12 for a discretionary waiver of the immigration consequences of his 1997 criminal conviction
 13 under the former Immigration and National Act Section 212(c). *See INS v. St. Cyr*, 533 U.S. 289,
 14 295 (2001) (holding that the repeal of § 212(c) relief did not retroactively apply to immigrants
 15 who were ordered deported based on convictions that pre-dated the repeal). But he can only
 16 apply for that in reopened removal proceedings, and Petitioner is time barred from filing a motion
 17 to reopen. *See Bonilla v. Lynch*, 840 F.3d 575, 585 (9th Cir. 2016) (explaining that before IRIRA
 18 in 1996, “there was no time limit for requesting reopening,” but now the statute only permits
 19 reopening within 90 days of the final removal order). Although the time bar for reopening can
 20 be equitably tolled, the standard is extraordinarily difficult to meet, requiring a litigant show that
 21 they have diligently pursued their rights since their removal order and that the delay was caused
 22 by an extraordinary circumstance. *See Magana-Magana v. Bondi*, 129 F.4th 557, 575 (9th Cir.
 23 2025).

24 89. The extremely long lapse in time since Petitioner was ordered removed requires
 25 additional procedural protections to ensure that he is not removed without, at a minimum, being
 26 afforded an opportunity to claim relief from removal. Due process requires more before the

1 government may abruptly deprive a long-time resident of this country of his life and liberty. See
2 *Mathews*, 424 U.S. at 334 (“Due process is flexible and calls for such procedural protections as
3 the particular situation demands.”). See also *Chhoeun*, 306 F. Supp. 3d at 1162 (holding that due
4 process required the government provide notice and time to Cambodian nationals who were
5 abruptly threatened with deportation after years or decades of living with “dormant” removal
6 orders).

7 90. The doctrine of laches also protects Petitioner against the government enforcing his
8 removal after more than two decades of not doing so. Laches can be a defense against the
9 government’s enforcement of Petitioner’s decades-dormant removal order where there has been
10 affirmative misconduct on the part of the government. See *Perez v. Holder*, 411 Fed.Appx. 34,
11 38 (9th Cir. 2010); *Fed Trade Comm’n v. Directv, Inc.*, 2015 WL 9268119, at *3 (N.D. Cal. Dec.
12 21, 2015). The government engages in affirmative misconduct when it knowingly and
13 intentionally violates the law to imprison people in contravention of court rulings and well-
14 established legal principles, as discussed herein. Moreover, the government’s extreme delay in
15 enforcing the removal orders substantially prejudiced Petitioner, allowing him to build a well-
16 established life in the United States.

17 91. Given the magnitude of harm facing Petitioner, this Court should fashion a remedy
18 that ensures that the government cannot benefit from its violations of law in re-detaining
19 Petitioner and ensures that the government cannot remove him now, without permitting him an
20 opportunity to pursue his claims to relief from removal in immigration court. To that end,
21 Petitioner asks that this Court order that the government may not re-detain or seek to remove
22 him, unless it first moves to reopen and obtains reopening of Petitioner’s removal proceedings,
23 allowing Petitioner to file claims for relief from removal.

D. The Government's Third Country Removal Policy Threatens to Deny Petitioner His Due Process Rights

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

93. First, an individual with a removal order may designate the country to which they want to be removed, and the government *shall* remove the individual to that country. 8 U.S.C. § 1231(b)(2)(A). The government may disregard that designation if (1) the individual fails to designate a country promptly; (2) the government of that country does not inform the U.S. government finally, within 30 days after the date the U.S. government first inquires, whether the government will accept the individual into that country; (3) the government of the country is not 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).

94. 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).

95. 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).

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

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

98. To comport with the requirements of due process, the government must provide notice of the third-country removal and an opportunity to respond. Due process requires “written notice of the country being designated” and “the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F.Supp.3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All removals to third countries, i.e., removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen’s order of removal, must be preceded by written notice to

1 both the non-citizen and the non-citizen's counsel in a language the non-citizen can understand." (citation omitted)); *Andrianian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process requires
 2 notice to the noncitizen of the right to apply for asylum and withholding to the country where
 3 they will be removed). The government must be able to show evidence that the third country will
 4 accept the individual into that country. See *Hinri v. Ashcroft*, 378 F.3d 932, 939 (9th Cir. 2004),
 5 amended sub nom. *El Hinri v. Ashcroft*, No. 03-71152, 2004 WL 1879255 (9th Cir. Aug. 24,
 6 2004) ("at the time the government proposes a country of removal pursuant to §
 7 1231(b)(2)(E)(vii), the government must be able to show that the proposed country will accept
 8 the [individual]").

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

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

25 101. Finally, notice of the country to which the noncitizen will be removed must not be
 26 "last minute" because that would deprive an individual of a meaningful opportunity to apply for

1 fear-based protection from removal. *Andriacian*, 180 F.3d at 1041. They must have time to
 2 prepare and present relevant arguments and evidence and to seek reopening of their removal
 3 case.

4 102. Respondents' third country removal program skips over these statutory and
 5 constitutional procedural protections. According to ICE's July 7 guidance, individuals can be
 6 removed to third countries "without the need for further procedures," so long as "the [U.S.] has
 7 received diplomatic assurances." Petitioner is likely to succeed on the merits of his claim on this
 8 fact alone, because the policy instructs officers to violate the statutory and constitutional
 9 requirements. The same is true of the minimal procedures ICE offers when no diplomatic
 10 assurances are present. The policy provides no meaningful notice (6-24 hours), instructs officers
 11 not to ask about fear, and provides no actual opportunity to see counsel and prepare a fear-based
 12 claim (6-24 hours), let alone reopen removal proceedings. In sum, it directs ICE officers to
 13 violate the rights of those whom they seek to subject to the third country removal program.

14 103. In Petitioner's case, only Vietnam meets the criteria for removal under 8 U.S.C. §
 15 1231(b)(2)(A)-(E). Removing Petitioner to a third country requires the Attorney General to first
 16 determine that it is "impracticable, inadvisable, or impossible" to remove Petitioner to Vietnam
 17 and that the designated third country "will accept [Petitioner]." *Id.* § 1231(b)(2)(E)(vii); see
 18 *Hunni v. Ashcroft*, 378 F.3d 932, 939 n.4 (9th Cir. 2004) (8 U.S.C. § 1231(b)(2)(E)(vii)
 19 "indisputably requires the Attorney General to prove that the proposed country of removal is
 20 willing to accept the alien"); see also *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 344
 21 (2005). Removing Petitioner to a third country requires Respondents to move to reopen
 22 Petitioner's 23-year-old removal proceedings to ask an immigration judge to designate a third
 23 country under the statutory process. See *Nguyen*, 796 F.Supp.3d at 728-29 ("Petitioner is likely
 24 to succeed on his claim that removal to a third country under ICE's current policy, without
 25 meaningful notice and reopening of his removal proceedings for a hearing, would violate due
 26 process."); *Sauyechov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) (unpublished) (holding

1 that “the agency must provide [the noncitizen] with notice and an opportunity to reopen his case
 2 for full adjudication of his claim of withholding of removal from” the third country); *Aden*, 409
 3 F. Supp. 3d at 1009 (finding that removal proceedings “shall be reopened and a hearing shall be
 4 held before the immigration judge so that petitioner may apply for relief from removal” to a
 5 different country not previously designated).

6 104. Adherence to that process also ensures Petitioner’s statutory right to claim
 7 protection in immigration court against removal to a third country where she may be persecuted
 8 or tortured, a form of protection known as withholding of removal, 8 U.S.C. § 1231(b)(3)(A);
 9 see also 8 C.F.R. §§ 208.16, 1208.16, as well as her right to claim deferral of removal under the
 10 CAT; see 28 C.F.R. § 200.1 (“A removal order ... shall not be executed in circumstances that
 11 would violate [the CAT]”); 8 C.F.R. §§ 208.17-18, 1208.17-18.

12 **E. The Government’s Third Country Removal Threatens to Subject Petitioner to** 13 **Punitive Banishment**

14 105. The prohibition against imposing punitive measures on an individual subject to a
 15 final order of removal is as old as immigration law. *Wong Wing v. United States*, 163 U.S. 228
 16 (1896). The Supreme Court in *Wong Wing* struck down a provision of the Chinese Exclusion Act
 17 that imposed one year of imprisonment at hard labor as an immigration sanction before
 18 deportation. *Id.* at 237. The Court distinguished “deportation,” described as a sanction for
 19 noncompliance with U.S. residency legal requirements that may be imposed by executive
 20 authorities, from “punishment,” which may not. *Id.* at 236-37. The Court held that the
 21 government could not attach a punishment to deportation (here, imprisonment) without criminal
 22 charges, a judicial trial, and the concomitant protections of the Fifth, Sixth and Eighth
 23 Amendments. *Id.*

24 106. The government’s third country removal program defies 130 years of constitutional
 25 immigration law between civil penalty and infamous punishment. See, e.g., *Zachrydas*, 533 U.S.
 26 at 694. Respondents’ third country removal program is designed to punish those it deports by

1 subjecting them to imprisonment upon their arrival in the receiving countries. Respondents'
 2 program is not just about removing individuals to third countries. It is about removing them to
 3 be imprisoned upon arrival and paying countries to carry out said imprisonment; selecting
 4 countries and overseas prisons notorious for cruelty, torture, lawlessness, and other human rights
 5 abuses; and publicly broadcasting these third country removals to demonize deportees and strike
 6 extreme fear in immigrants to entice self-deportation. This program is about punitive
 7 banishment.

8 107. To determine whether a given sanction constitutes punishment, courts look to intent.
 9 If the government's intent is to punish, "that is the end of the inquiry." *Am. Civ. Liberties Union*
 10 *of Nev. v. Manto*, 670 F.3d 1046, 1053 (9th Cir. 2012) (citing *Smith v. Doe*, 538 U.S. 84, 92
 11 *(2003)*). Here, the government's own statements show intent to deport individuals, particularly
 12 those with criminal convictions, into situations of forever confinement or substantial harm.

13 108. When the government's intent to punish is unclear, courts move to the second step
 14 of the inquiry to determine whether the practices are "so punitive either in purpose or effect as
 15 to negate the [government's] intention to deem it civil." *Id.* (quoting *Smith*, 538 U.S. at 92). To
 16 determine punitive purpose or effect, courts often turn to the factors laid out in *Kennedy v.*
 17 *Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963); see also *Hudson v. United States*, 522 U.S.
 18 93, 99 (1997) ("the factors listed in *Kennedy v. Mendoza-Martinez* [citation], provide useful
 19 guideposts"). Those factors are: "[w]hether the sanction involves an affirmative disability or
 20 restraint, whether it has historically been regarded as a punishment, whether it comes into play
 21 only on a finding of scienter, whether its operation will promote the traditional aims of
 22 punishment—retribution and deterrence, whether the behavior to which it applies is already a
 23 crime, whether an alternative purpose to which it may rationally be connected is assignable for
 24 it, and whether it appears excessive in relation to the alternative purpose assigned." *Mendoza-*
 25 *Martinez*, 372 U.S. at 168-69 (footnotes omitted).

109. The government's third country removal program undeniably constitutes punishment meets all these factors. Under the first factor, the government's practices of deporting people only to have them imprisoned or subjected to other forms of physical harm, is an "affirmative disability or restraint." The "paradigmatic affirmative disability" is the "punishment of imprisonment." *Smith*, 538 U.S. at 100. And under this factor, "we inquire how the effects of the [sanction] are felt by those subject to it. If the disability or restraint is minor and indirect, its effects are unlikely to be punitive." *Id.* at 99-100. Undoubtedly, deportation to be imprisoned or suffer other extreme harm will be felt as a significant and direct disability or restraint. Indeed, as this court held in a similar case, "Respondents' practice of third-country removal paired with imprisonment violates due process." *Nguyen*, 796 F. Supp. 3d at 735. *See also Abubaka v. Bondi*, 2025 WL 3204369, at *8 (W.D. Wash. Nov. 17, 2025) (ordering respondents "not to remove petitioner to any third country where he is likely to face imprisonment upon arrival").

VI. CLAIMS FOR RELIEF

COUNT ONE

Unlawful Re-Detention: Procedural Due Process

Violation of the Fifth Amendment Due Process Clause

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

111. Respondents were required to provide Petitioner pre-deprivation notice and a hearing before re-detaining him, given that he has remained fully compliant with his order of supervision and release conditions.

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

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

4 **COUNT TWO**

5 **Unlawful Detention: Substantive Due Process**

6 **Violation of the Fifth Amendment Due Process Clause and 8 U.S.C. § 1231(a)**

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

8 115. The government's detention of Petitioner is unconstitutionally punitive because the
9 law does not allow the government to detain (or re-detain) a person in immigration custody who
10 is not a flight risk or danger to society. Petitioner is categorically neither. For 23 years, Petitioner
11 has never fled from ICE; rather he has complied with every check in and every requirement of
12 his order of supervision.

13 116. Because Petitioner's removal order became final on January 16, 2003, the removal
14 period has long since expired, and detention is no longer required under 8 U.S.C. § 1231. In
15 addition, the presumptively reasonable period of six months has passed.

16 117. The government's detention of Petitioner is unconstitutionally indefinite.

17 118. There is "good reason to believe that there is no significant likelihood of removal in
18 the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. Respondents had not applied
19 for a travel document from Vietnam at this time of Petitioner's re-detention. In fact, they only
20 began to ask questions related to his connection to Vietnam after they re-detained him. Upon
21 information and belief, ICE has still not requested a travel document for Petitioner, despite the
22 fact that Petitioner has already been detained for one month as of the time of filing. Moreover, it
23 is highly uncertain whether Vietnam will accept Petitioner, as he is a pre-1995 refugee. Once a
24 travel document request is submitted to Vietnam, it can take months for Vietnam to process that
25 request.

119. As the removal period and *Zachrydas* grace period long ago expired, *Tran*, 2025 WL 3140462, at *3, the burden is on the government to show that Petitioner can be removed in the reasonably foreseeable future. The government cannot meet that burden under the facts of this case. *See Nguyen v. Scott*, No. CV25-1398, 2025 WL 2419288, at *28–29 (W.D. Wash. Aug. 21, 2025) (granting preliminary injunction requiring release under *Zachrydas*); *Tang*, 2025 WL 2637750, at *6 (same).

COUNT THREE

Unlawful Re-Detention: Failure to Comply with Regulations

Violation of 8 C.F.R. § 241.13 and the Administrative Procedures Act

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

121. Respondents violated governing regulations for revoking Petitioner's conditions of release. Petitioner has duly complied with the conditions of his supervised release, including attending check-ins and providing the information and documentation requested of him. His release may be revoked only if changed circumstances make his removal reasonably foreseeable. 8 C.F.R. § 241.13(i)(2). Upon such a determination, several procedural steps are required to revoke release, *id.* § 241.13(i)(3), none of which were followed here. Respondents are required to follow their own regulations. *United States ex rel. Accardi v. Shanghnessy*, 347 U.S. 260, 268 (1954).

122. Respondents have not complied with their obligations under 8 C.F.R. § 241.13 and therefore Petitioner is entitled to release.

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

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

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

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

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

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

8 **COUNT FOUR**

9 **Procedural Protections Against Enforcement of Long Dormant Removal Order**

10 **Equitable Defense of Laches and Violations of the Fifth Amendment and the**
11 **Administrative Procedures Act**

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

13 124. Respondent's delay of 23 years in enforcing Petitioner's 2003 removal order
14 precludes its abrupt enforcement without providing, at a minimum, providing procedural
15 protections to prevent against an unjust removal of a person with legal claims to stay.

16 125. The defense of laches requires proof of two elements (1) an unreasonable or
17 inexcusable delay in asserting a right, and (2) prejudice to the party asserting the defense
18 resulting from that delay. Laches is generally not available against the federal government,
19 except where affirmative misconduct took place.

20 126. Here, the government's prolonged inaction in not enforcing the removal order and
21 in permitting Petitioner to remain in the United States on conditions of supervision misled
22 Petitioner into believing the order would never be executed. ICE could have sought removal to
23 other countries, and it could have pursued removal to Vietnam once the 2020 MOU was signed—
24 it did not. Instead, by "implicitly promising" Petitioner that he could remain free in the United
25 States so long as he adhered to the conditions of his supervised release, it allowed him to build
26 a prosperous and established life. Its belated effort to enforce the removal order now has and will

1 cause extreme prejudice, stripping from Petitioner everything he knows and loves in life if
2 deported. Its belated enforcement would disserve the public interest.

3 127. The Administrative Procedures Act (APA) requires administrative agencies to act
4 “within a reasonable time.” 5 U.S.C. § 555(b). A district court may “compel agency action
5 unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). It may also declare unlawful
6 and set aside agency action found to be arbitrary, capricious, or otherwise not in accordance with
7 law; contrary to constitutional rights; or without observance of procedure required by law. 5
8 U.S.C. § 706(2). “Agency action” includes, among other things, a “failure to act.” 5 U.S.C. §
9 551(13). Congress established a 90-day removal period, expressing its judgment that removal
10 should occur promptly and within a short window. Here, Petitioner’s removal order has lied
11 dormant for 23 years. A delay that is two orders of magnitude beyond the statutory benchmark
12 is unreasonable by any measure. The passage of decades has prejudiced Petitioner because he
13 has established his life in the United States.

14 128. “Procedural due process imposes constraints on governmental decisions which
15 deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process
16 Clause of the Fifth or Fourteenth Amendment.” *Mathews*, 424 U.S. at 332. “Due process, unlike
17 some legal rules, is not a technical conception with a fixed content unrelated to time, place and
18 circumstances. Due process is flexible and calls for such procedural protections as the particular
19 situation demands.” *Id.* at 334.

20 129. The particular situation in this case demands procedural protections to ensure that
21 the government may not remove Petitioner without affording him the opportunity to apply for
22 relief from removal in reopened removal proceedings given the long passage of time and his
23 change in circumstances, including his marriage to a U.S. citizen.

24 COUNT FIVE

25 Third Country Removal

26 Violation of the Fifth Amendment, 8 U.S.C. § 1231, Convention Against Torture,

Implementing Regulations, and the Administrative Procedures Act

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

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

132. Prior to any third country removal, Petitioner must be provided with constitutionally and statutorily compliant notice and an opportunity to respond and contest that removal if she has a fear of persecution or torture in that country in reopened removal proceedings. See *Nguyen v. Scott*, 796 F.Supp.3d 703, 739 (W.D. Wash. 2025) (granting preliminary injunction against "removing Petitioner to a country other than [home country] without notice and a meaningful opportunity to be heard in reopened removal proceedings with a hearing before an immigration judge").

COUNT SIX

Punitive Third Country Banishment

Violation of Fifth and Eighth Amendments

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

134. Under the Fifth Amendment of 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."

135. The Eighth Amendment provides that no "cruel and unusual punishments" may be inflicted.

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

5 137. Petitioner was convicted and completed his sentence decades ago. His
 6 conviction made him removable from the United States, but his conviction does not authorize
 7 the government to inflict, as a matter of executive policy and discretion, additional punishment
 8 on him. Respondents’ third country removal program is punitive in nature and execution. The
 9 government has arranged for third countries to receive deportees and imprison them on arrival,
 10 possibly indefinitely and often in abhorrent conditions. It has selected countries notorious for
 11 human rights abuses and instability for third country removal arrangements. It has targeted
 12 individuals with criminal convictions for third country removals where they will be imprisoned
 13 and harmed and publicly broadcast those removals to demonize and dehumanize the individuals
 14 subjected to these practices and strike fear in the immigrant community to send a message of
 15 retribution and deterrence. Respondents’ third country removal program is more than a publicity
 16 stunt. The hundreds of individuals who have already been subjected to it have been banished in
 17 foreign prisons upon arrival without charge and often without communication with the outside
 18 world, including their families and lawyers.

19 138. Respondents may not subject Petitioner to its third country removal
 20 program designed to impose a severe punishment on its subjects. *See Alshadad v. Bondi*, 2025
 21 WL 3204369, at *8 (W.D. Wash. Nov. 17, 2025) (holding “the government’s practice of third-
 22 country removal paired with imprisonment is intended to be punitive and thus violates due
 23 process under *Wong Wing*, 163 U.S. 228 at 236-38 (1896), and *Zachrydas*, 533 U.S. 678 at 693-
 24 4 (2001).”); *Nguyen*, 796 F.Supp.3d at 739 (granting preliminary injunction against “removing
 25 Petitioner to any country where he is likely to face imprisonment upon arrival”). Such conduct
 26 “shocks the conscience” and imposes “state created danger” under Fifth Amendment substantive

1 due process, is cruel and unusual punishment, and may not be imposed without charge and a
2 judicial trial.

3 139. Respondents may not seek to remove Petitioner to a third country under
4 their punitive banishment policy and practices.

5
6 **VII. PRAYER FOR RELIEF**

7 140. Petitioner respectfully requests that this Court:

8 (a) Assume jurisdiction over this action;

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

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

12 (d) Enjoin Respondents from re-detaining Petitioner without notice and a hearing
13 before this Court;

14 (e) Enjoin Respondents from re-detaining Petitioner, unless Petitioner violates the
15 conditions of his order of supervision or Respondents obtain a travel document from Vietnam,
16 provide Petitioner (and his counsel) the travel document, and give him two months to leave on
17 his own and he does not leave;

18 (f) Enjoin Respondents from re-detaining and removing or seeking to remove
19 Petitioner without first reopening removal proceedings so that Petitioner may apply for relief
20 from removal;

21 (g) Enjoin Respondents from removing or seeking to remove Petitioner to a third
22 country without notice and meaningful opportunity to respond in compliance with the statute
23 and due process in reopened removal proceedings;

24 (h) Enjoin Respondents from removing Petitioner to any third country because
25 Respondents' third-country removal program seeks to impose unconstitutional punishment on
26 its subjects, including imprisonment and other forms of harm; and

(i) Award costs and reasonable attorney fees under the Equal Access to Justice Act,
28 U.S.C. § 2412; and

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

Dated: January 14, 2026.

Respectfully submitted,

/s/ Jennifer Pasquarella

Seattle Clemency Project (WA Bar. No. 62205)

20415 72nd Ave S., Suite 1-415

Kent, WA 98032

Telephone: 917.690.2038

jennie@seattleclemencyproject.org

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3 **VERIFICATION**

4 Pursuant to Local Court Rule 100(e), I, Jennifer Pasquarella, verify that the
5 facts set forth therein are true and correct to the best of my knowledge. I make this verification
6 on behalf of Petitioner Son Troung Vo who is unable to make this verification himself while he
7 is detained at the Northwest Immigration and Customs Enforcement Processing Center in
8 Tacoma, Washington.

9 DATED: January 14, 2026.

10 /s/ Jennifer Pasquarella
11 Jennifer Pasquarella
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CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2026, I caused a true and correct copy of the foregoing document to be filed with the Clerk of the Court for the United States District Court – Western District of Washington by using the CM/ECF system. All participants in this case are registered CM/ECF users and will be served by the CM/ECF system.

/s/ Jennifer Pasquarella
Jennifer Pasquarella