

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

R.J.E.R.,

Petitioner,

vs

LAURA HERMOSILLO, Seattle Acting Field
Office Director, Enforcement and Removal
Operations, United States Immigration and
Customs Enforcement; **BRUCE SCOTT**,
Warden, Northwest ICE Processing Center;
KRISTI NOEM, Secretary, United States
Department of Homeland Security; **UNITED
STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT; PAMELA BONDI**, U.S.
Attorney General;

Respondents.

Case No.: 2-25-cv-0296

Agency No.: AXXXXXXXXX

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

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Full name: R.J.E.R. non-pseudonym name has been provided to the
government along with the filing of a non-pseudonym name petition immediately after filing
using email USAWAW.ImmigrationHabeasService@usdoj.gov.

(b) Other names used: N/ A

2. Place of confinement:

(a) Northwest Immigration Processing Center ("NWIPC")

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Law Offices of Bart Klein
#500, 605 First Avenue
Seattle, WA 98104
(206)755-5651 cell/624-3787 off/238-9975 fax

1 (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a
2 contractual arrangement with my custodian, the Immigration and Customs Enforcement
3 Field Office Director at Seattle, Washington.

4 (c) Case number or numbers: Petitioner's A# has been provided to the
5 government along with the filing of this petition immediately after filing using email
6 USAWAW.ImmigrationHabeasService@usdoj.gov.

7 3. Petitioner is currently being held on orders by federal authorities: United States
8 Immigration and Customs Enforcement ("ICE").

9 Petitioner is currently being held on an immigration charge.

10 Decision or Action You Are Challenging

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

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

13 (a) Name and location of the agency or court: United States Immigration and
14 Customs Enforcement
15

16 (b) Docket number, case number, or opinion number: Petitioner's A# has
17 been provided to the government in the caption of this petition.

18 (c) Decision or action you are challenging: Petitioner was initially ordered
19 removed on July 16, 2025, but granted Article III Convention Against Torture (CAT)
20 withholding of removal on the same date.
21

22 Your Earlier Challenges of the Decision or Action

23 7-9. First, second, and third appeals: None

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

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28 bart.klein@bartklein.com

1 11. Appeals of immigration proceedings:

2 Does this case concern immigration proceedings? Yes

3 Date you were taken into immigration custody: 11/07/24

4 Date of the removal or reinstatement order: 07/16/25

5 Did you file an appeal with the Board of Immigration Appeals? No

6 Did you appeal the decision to the United States Court of Appeals? No

7 12. Other than the appeals listed above, have you filed any other petition,

8 application, or motion about the issues raised in this petition? No

9
10 **Grounds for Your Challenge in This Petition**

11 **I. Introduction**

12 Petitioner, R.J.E.R., is presently detained at the Northwest ICE Processing Center
13 ("NWIPC"). Petitioner has been held in immigration custody for approximately six months and
14 11 days past the final order of removal. Removal to the former country of residence,
15 Venezuela, is not reasonably foreseeable. Petitioner's continued detention is therefore in
16 violation of *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner seeks (a) release; (b) an
17 order preventing re-detention unless the government establishes by clear and convincing
18 evidence at a hearing before a neutral decisionmaker that Petitioner is a flight risk or a danger
19 to the community, based on changed circumstances after their most recent release by ICE; (c)
20 an order preventing removal to a third country without notice and meaningful opportunity to
21 respond in compliance with the statute and due process in reopened removal proceedings; and
22 (d) an order barring removal to any third country pursuant to Respondents' punitive removal
23 policy.

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1 **II. Jurisdiction and Venue**

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

4 This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.*
5 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States
6 as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived
7 sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.
8

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

13 Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because
14 Respondents are agencies or officers of agencies of the United States; Respondents
15 Hermosillo and Scott reside in this district; and Petitioner is detained in this district.
16 Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the
17 events or omissions giving rise to Petitioner's claims occurred in this district.
18

19 Because Petitioner is seeking relief related only to his custody status, which is
20 not inconsistent with an order of removal, exhaustion of administrative remedies, if any,
21 is not required.
22

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

24 Petitioner is "in custody" for the purpose of § 2241 because he has been detained
25 by Respondent ICE in Tacoma, Washington, since approximately November 7, 2024,
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1 and the final removal order issued on July 6, 2026.

2 **IV. Parties**

3 R.J.E.R. is a citizen of Venezuela. The immigration court granted Article III
4 Convention Against Torture (CAT) withholding of removal to Venezuela on July 16, 2025.
5 Petitioner is detained in the control and custody of Respondents at NWIPC. As such,
6 Petitioner is a resident of Tacoma, Washington.

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

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

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

19
20 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
21 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant
22 to a contract with ICE to detain noncitizens. Respondent Scott is sued in his official
23 capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-

24
25 700, 2021 WL 1946222, at *3-5 (W.D. Wash. May 14, 2021).

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

V. Background and Particularized Facts Pertaining to Petitioner's Continued Detention

Mr. R.J.E.R. fled to the United States in October 26, 2022. He fled Venezuela because of persecution by [REDACTED]

[REDACTED] On July 16, 2025, an immigration judge denied his request for asylum, ordered him removed to Venezuela, but granted his petition for withholding of removal under Article III of the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), finding a more likely than not chance that he or she would be tortured if removed to the proposed country of removal. 8 C.F. R. § 1208.16 (c)(2). The withholding order means that Mr. R.J.E.R. can still be deported to another country that agrees to accept him, but only if he will not be tortured in that country.

Mr. R.J.E.R. has been in ICE custody for over six months since the final order granting withholding of removal. On January 20, 2026, ICE served a Notice of Removal to Mexico on him, and nothing else listed on the notice or other documents served on him. To his knowledge, ICE has not made efforts to remove him to any other country.

Mr. R.J.E.R. has been granted withholding of removal to Venezuela and therefore cannot be removed to that country. ICE has not informed him about any specific plan to

1 remove him to a particular third country.

2 **VI. The Legal Framework Regarding Indefinite Detention Pending Removal**

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

5 Under 8 U.S.C. § 1231, detention of noncitizens who have been ordered
6 removed is mandatory during the so-called 90-day "removal period." 8 U.S.C.
7 § 1231(a)(1)(A). This period begins on the "date the order of removal becomes
8 administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). But the *Zadvydas* Court believed
9 that a "serious constitutional threat" under the Fifth Amendment's Due Process Clause
10 was posed by the indefinite detention of noncitizens. 533 U.S. at 699. The Court
11 therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the
12 statute's "basic purpose [of] effectuating [a noncitizen]'s removal[.]" *Id.* at 696-99.
13 The Court further held that the presumptive period during which the detention is
14 reasonably necessary to effectuate a noncitizen's removal is six months. After that, the
15 noncitizen is eligible for conditional release if there is "no significant likelihood of
16 removal in the reasonably foreseeable future[.]" *Id.* at 701. After the "presumptively
17 reasonable" period of six months, when the noncitizen can "provide[] good reason to
18 believe that there is no significant likelihood of removal in the reasonably foreseeable
19 future," then "the Government must respond with evidence sufficient to rebut that
20 showing." *Id.*

21 The issue is not whether Respondents have been able to remove some
22 individuals to a given country. Rather, the court must make an individualized analysis
23
24
25

1 as to a particular detainee. *See Nguyen v. Scott*, 796 F.Supp.3d 703, 726 (W.D. Wash.
2 Aug. 21, 2025) (stating increase in total number of removals to Vietnam, including
3 those who entered pre-1995, fails to rebut the evidence presented by petitioner that "his
4 individual circumstances make removal unlikely"). Here, it appears undisputed that
5 Mr. R.J.E.R. cannot lawfully be removed to Venezuela.

6 **VII. The Legal Framework for Third-Country Removals**

7
8 The immigration laws delineate the proper procedures by which a country may
9 be designated for removal. *See* 8 U.S.C. § 1231(b). These procedures move in
10 incremental steps.

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

21 Second, if the individual is not removed to the country they designated under
22 § 1231(b)(2)(A), the government shall remove the individual to the country of which
23 the individual is a "subject, national, or citizen" unless the government of that country
24 does not inform the U.S. government or the individual within 30 days after first inquiry

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

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

13 8 U.S.C. § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to
14 remove the individual to any of these countries may the government remove the
15 individual to "another country whose government will accept [them] into that country."
16 8 U.S.C. § 1231(b)(2)(E)(vii).

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

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

3 Similarly, Congress codified protections enshrined in the Convention Against
4 Torture ("CAT") prohibiting the government from removing a person to a country
5 where they would be tortured. See Foreign Affairs Reform and Restructuring Act of
6 1998 ("FARRA"), Public Law 105-277, div. G, sec. 2242, 112 Stat. 2681, 2631-822 (8
7 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite,
8 or otherwise effect the involuntary return of any person to a country in which there are
9 substantial grounds for believing the person would be in danger of being subjected to
10 torture, regardless of whether the person is physically present in the United States.");
11 28 C.F.R. §§ 200.1, 208.16-208.18, 1208.16-1208.18. CAT protection is also
12 mandatory.
13

14 To comport with the requirements of due process, the government must provide
15 notice of the third-country removal and an opportunity to respond. Due process requires
16 "written notice of the country being designated" and "the statutory basis for the
17 designation, i.e., the applicable subsection of § 1231 (b)(2)." *Aden v. Nielsen*, 409
18 F.Supp.3d 998, 1019 (W.D. Wash. 2019); see also *D. VD. v. US. Dep't of Homeland*
19 *Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) ("All
20 removals to third countries, i.e., removal to a country other than the country or
21 countries designated during immigration proceedings as the country of removal on the
22 non-citizen's order of removal, must be preceded by written notice to both the non-
23
24

1 citizen and the non-citizen's counsel in a language the non-citizen can understand."
2 (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process
3 requires notice to the noncitizen of the right to apply for asylum and withholding to the
4 country where they will be removed). The government must be able to show evidence
5 , that the third country will accept the individual into that country. *See Himri v. Ashcroft*,
6 378 F.3d 932, 939 (9th Cir. 2004), *amended sub nom. El Himri v. Ashcroft*, No. 03-
7 71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) ("[A]t the time the government
8 proposes a country of removal pursuant to § 1231(b)(2)(E)(vii), the government must
9 be able to show that the proposed country *will* accept the [individual].").

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

20 If the noncitizen claims fear, measures must be taken to ensure that the
21 noncitizen can seek asylum, withholding, and relief under CAT before an immigration
22 judge in reopened removal proceedings. *Cf D. VD.*, 2025 WL 1453640, at *1 (requiring
23 the government to move to reopen the noncitizen's immigration proceedings if the
24

1 individual demonstrates "reasonable fear" and to provide "a meaningful opportunity,
 2 and a minimum of fifteen days, for the non-citizen to seek reopening of their
 3 immigration proceedings" if the noncitizen is found to not have demonstrated
 4 "reasonable fear"); *Aden*, 409 F.Supp.3d at 1019 (requiring notice and time for a
 5 respondent to file a motion to reopen and seek relief).

6 Finally, notice of the country to which the noncitizen will be removed must not
 7 be "last minute" because that would deprive an individual of a meaningful opportunity
 8 to apply for fear-based protection from removal. *Andriasian*, 180 F.3d at 1041. They
 9 must have time to prepare and present relevant arguments and evidence and to seek
 10 reopening of their removal case.
 11

12 **VIII. Facts Pertaining to Punitive Banishment to Third Countries**

13 Since January 2025, Respondents have developed and implemented a policy and
 14 practice of removing individuals to third countries, without first following the
 15 procedures in the INA for designation and removal to a third country and without
 16 providing fair notice and an opportunity to contest the removal in immigration court.
 17

18 Respondents reportedly have negotiated with at least 58 countries to accept
 19 deportees from other nations. On June 25, 2025, the *New York Times* reported that
 20 seven countries-Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
 21 Rwanda-had agreed to accept deportees who are not their own citizens. 2 Since then,
 22 ICE has carried out highly publicized third-country deportations to South Sudan and
 23 Eswatini. It also attempted-and completed-an "end-run" around the protections of
 24

1 the Convention Against Torture by deporting a group of migrants to Ghana, which sent
2 them on to their countries of citizenship despite fears of persecution.

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

16 The Administration has hand-selected countries known for human rights abuses
17 and instability for these third-country deportation agreements to frighten people in the
18 2 Edward Wong, et al., *Inside the Global Deal-Making Behind Trump's Mass*
19 *Deportations*, N.Y. Times (June 25, 2025), [https://www.nytimes.com/2025/06/25/us/](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html)
20 [politics/trump-immigrants-deportations.html](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html) [https://perma.cc/64G9-XYGB].
21 United States into self-deporting or to accept removal to their home countries. Indeed,
22 conditions in South Sudan are so extreme that the U.S. State Department website warns
23
24

1 Americans not to travel there, and, if they do, to prepare their will, make funeral
2 arrangements, and appoint a hostage-taker negotiator first.

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

16 The memo further instructs that if the noncitizen "does not affirmatively state a
17 fear of persecution or torture if removed to the country of removal listed on the Notice
18 of Removal within 24 hours, [ICE] may proceed with removal to the country identified
19 on the notice." If the noncitizen "does affirmatively state a fear if removed to the
20 country of removal," then ICE will refer the case to U.S. Citizenship and Immigration
21 Services ("USCIS") for a screening for eligibility for withholding of removal and
22 protection under the Convention Against Torture. "USCIS will generally screen within
23
24

24 hours." If USCIS determines that the noncitizen does not prove to the screener's satisfaction that it is more likely than not that the noncitizen will be tortured, the individual will be removed. This imposes on the noncitizen a higher standard than the "reasonable fear" and "credible fear" standards found in the INA. If USCIS determines that the noncitizen has met the standard, then the policy directs ICE to either move to reopen removal proceedings "for the sole purpose of determining eligibility for [withholding of removal protection] and CAT" or designate another country for removal.

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

Further support that petitioner faces a risk of punitive third-country removal comes from two declarations submitted in *Nguyen*, attached here as Exhibits 1 and 2. They detail removals to third countries with little or no notice, as described in *Nguyen*, 796 F.Supp.3d at 736-37.

IX. The Law Governing Punitive Removal Practices

It is bedrock law that the U.S. government may not impose or inflict an infamous punishment for violations of civil immigration law. In 1896, the U.S. Supreme Court ruled that while deportation itself was not a punishment, the government could not attach punitive conditions to deportation-in that case, imprisonment at hard labor-

absent a criminal charge, trial in a court of law, and the protections of the Fifth, Sixth, and Eighth Amendments. *Wong Wing v. United States*, 163 U.S. 228, 237 (1896).

Importantly, the Court distinguished deportation, which the Court reasoned is "not a 'banishment,' in the sense in which that word is often applied to the expulsion of a citizen from his country by way of punishment," from government actions aimed at punishment, such as imprisonment at hard labor in addition to deportation. *Id.* at 236. The Court explained that deportation "is but a method of enforcing the return to his own country of [a noncitizen] who has not complied with the conditions upon the performance of which the government of the nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend." *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730 (1893)). But the Court admonished that the government may not "declare unlawful residence within the country to be an infamous crime, punishable by deprivation of liberty and property ... unless provision were made that the fact of guilt should first be established by a judicial trial." *Id.* at 23 7.

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

X. The Law Governing Injunctive Relief

"An injunction is appropriate when the party seeking relief demonstrates that:

(1) it is likely to suffer irreparable injury that cannot be redressed by an award of damages; (2) that "considering the balance of hardships between the plaintiff and

defendant, a remedy in equity is warranted"; and (3) "that the public interest would not be disserved by a permanent injunction." *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1243 (9th Cir. 2018).

Grounds for Relief

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

The allegations in the above paragraphs are realleged and incorporated herein. Because Petitioner's removal order became final on July 16, 2025, the removal period has long since expired, and detention is no longer required under 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has passed.

There is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. Mr. R.J.E.R. was granted withholding of removal on July 16, 2025, and cannot lawfully be removed to Venezuela. Other than ICE's recent January 20, 2026 notice to remove him to Mexico, it appears no effort has been made to persuade Mexico or another third country to accept him.

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

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

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

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

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

21 Furthermore, the requirements for injunctive relief are met. Petitioner's
22 prospective unlawful re-detention would constitute an irreparable injury that could not
23 be redressed by an award of damages. Second, the balance of hardships is completely in
24

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

5 In addition, the matter is ripe. The facts set forth above-including Respondents'
6 stated policy regarding third country removals-make it reasonably likely that
7 Respondents would seek to remove Petitioner to a third country without complying
8 with their regulatory and constitutional obligations to provide Petitioner with notice and
9 an opportunity to be heard.
10

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

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

14 Under the Fifth Amendment to the U.S. Constitution, no person shall "be held to
15 answer for a capital, or otherwise infamous crime, unless on a presentment or
16 indictment of a Grand Jury"; "be subject for the same offence to be twice put in
17 jeopardy of life or limb;" or "be deprived of life, liberty, or property, without due
18 process of law."
19

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

22 The U.S. Supreme Court long ago held that the government may not inflict upon
23 individuals an "infamous punishment" in addition to deportation as a penalty for an
24 immigration violation, absent criminal charges, a judicial trial, and attendant

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1 constitutional protections. *Wong Wing*, 163 U.S. at 236-38.

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

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

20 Respondents may not seek to remove Petitioner to a third country under their
21 punitive banishment policy and practices. *See Nguyen*, 796 F.Supp.3d 703, 739
22 (granting preliminary injunction against "removing Petitioner to any country where he
23 is likely to face imprisonment upon arrival").
24

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

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

16 Prayer for Relief

17 Petitioner respectfully requests that this Court:

- 18 (a) Assume jurisdiction over this action;
19 (b) Order Respondents to immediately release Petitioner from custody;
20 (c) Order Respondents to, within 24 hours of his release, provide the Court
21 with a declaration confirming that Petitioner has been released from custody;
22 (d) Order that Respondents may not re-detain Petitioner without first holding
23 a hearing before a neutral decisionmaker at which the government bears the burden of
24

1 establishing flight risk or danger to the community by clear and convincing evidence
2 based on changed circumstances since Petitioner was previously released;

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

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

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

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

13 Counsel verifies that this petition is authorized by Petitioner per phone call January 26, 2026, at
14 5:18pm from the NWIPC. It does not personally bear Petitioner's signature because of the
15 significant difficulty for counsel in meeting with Petitioner in person and because mailing the
16 petition to Petitioner and having it mailed back would cause delay that would only extend the
17 period of his unlawful detention. Counsel knows the facts asserted above or alleges them on
18 information and belief, based on information obtained from the government and/or
19 Petitioner.
20

21 DATED this 27th day of January 2026.
22

23 Respectfully submitted,
24 LAW OFFICES OF BART KLEIN
25 s/ Bart Klein
26 Bart Klein, Attorney for Petitioner, WSBA #10909

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7 **CERTIFICATE OF SERVICE**

8 I, Bart Klein, certify that on January 27, 2026, I filed the foregoing filing (with the Court's
9 File Number but #A number(s) redacted and possibly names(s) initialized or pseudonym) with
10 the Clerk of Court using the CM/ECF system. With such filing, I further certify that pursuant
11 to GO 10-25, an automatic email USAWAW.ImmigrationHabeasService@usdoj.gov is issued
12 to serve the following parties:

13 Civil Chief and the Habeas Coordinator
14 United States Attorney's Office
15 700 Stewart Street, Suite 5220
16 Seattle, WA 98101-1271

17 ICE Office of the Principal Legal Advisor (OCC – Seattle/Tacoma)
18 DHS/ICE Enforcement and Removal Operations (ERO)

19 DOJ Office of Immigration Litigation (OIL-District Court Section)
20 Internal DOJ/Habeas Response Personnel

21 and which by operation of law serves also:

22 Bruce Scott, Warden
23 Northwest ICE Processing Center
24 1623 East J Street, Suite 1
25 Tacoma, WA 98421

26 Furthermore, immediately after filing, I, Bart Klein, certify that the foregoing with the Court
27 File Number and full #A number(s) and Petitioner's name(s) will be emailed
28 USAWAW.ImmigrationHabeasService@usdoj.gov

January 27, 2025

s/ Bart Klein,
Bart Klein, WSBA#10909
Attorney for Petitioner

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