

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Giau Van DANG,) Civil Case No.
)
Petitioner,)
) **COMPLAINT AND PETITION FOR**
v.) **WRIT OF HABEAS CORPUS AND**
) **INJUNCTIVE RELIEF**
)
Bruce SCOTT, Warden, Northwest ICE)
Processing Center; Laura HERMOSILLO,)
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.

I. INTRODUCTION

1. Petitioner Giau Van Dang (A# [REDACTED]) is presently detained at the Northwest ICE Processing Center (NWIPC). He is a Vietnamese refugee who came to the United States in 1990 and settled in Washington. For 30 years, he has been subject to an exclusion order¹ that the United States never enforced. After an immigration judge ordered his exclusion on December 20, 1995, Petitioner Dang was held in Immigration and Customs Enforcement (“ICE”) detention facilities for approximately three and a half years before being released under supervision. When released from custody, Petitioner Dang complied with his annual ICE check-ins. In September 2025, ICE increased his mandated check-ins to a twice-monthly schedule; Petitioner Dang continued to comply with all additional requirements. On December 23, 2025, during a check-in at an ICE office, agents arrested Petitioner Dang while his minor stepson Daniel Van stood by and watched. ICE does not have a travel document for Petitioner Dang, nor has it even begun the process of requesting a travel document despite having held Petitioner in custody for more than a month as of the date of this filing. As a pre-1995 Vietnamese refugee who came from Vietnam shortly after the war, and without a passport, it is unlikely that Vietnam will accept him now. Therefore, his removal is not significantly likely to occur in the reasonably foreseeable future.

2. Petitioner Dang is a treasured member of his community and church, Tacoma River

¹ Petitioner Dang was placed in exclusion proceedings, rather than removal proceedings, because his case was adjudicated before the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996. Before the IIRIRA, refugees were subject to exclusion proceedings when found inadmissible due to criminal convictions, even if the refugee had already been admitted to the United States. See *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335 (2005) (“[Noncitizens] who . . . were allowed into the United States as refugees were subject to exclusion proceedings rather than deportation proceedings when their refugee status was revoked.”) (citing 8 C.F.R. § 207.8 (1995)); *Morales-Ramirez v. Reno*, 209 F.3d 977, 978 (2000) (The IIRIRA “replace[d] exclusion and deportation proceedings with removal proceedings” but “all [noncitizens] previously in deportation or exclusion proceedings as of April 1, 1997, were to remain in deportation or exclusion proceedings, rather than in removal proceedings.”) (citing IIRIRA § 309(c)(1)(A), enacted as 8 U.S.C. § 1101; C.F.R. §§ 240.30, 240.40 (1997)). Courts may review exclusion orders in habeas corpus proceedings. *Ramirez-Durazo v. I.N.S.*, 794 F.2d 491, 495 (9th Cir. 1986). Because the excludable/removable distinction does not materially affect challenges to detention, this complaint may use the terms “excludable” and “removable” interchangeably throughout. Cf. *Alvarez-Mendez v. Stock*, 941 F.2d 956, 960 (9th Cir. 1991) (rejecting the argument that excludable/removable distinction materially affects a habeas corpus petition).

1 of Grace Church, where he participates in the church's leadership team, volunteers to clean the
2 parish on weekends, provide meals for the unhoused in the community, and photograph church
3 events. He has been unlawfully removed from his family and his livelihood. He is the main
4 source of income for his wife and stepson, both of whom are U.S. citizens. Since being detained,
5 over forty friends and community members have written in support of Petitioner Dang's
6 character, integrity, and commitment to his church and community. While detained, he has been
7 visited regularly by friends, family, and church members.

8 3. Petitioner's re-detention violates substantive due process because it is
9 unconstitutionally punitive and his removal is not reasonably foreseeable. *See Zadvydas v. Davis*,
10 533 U.S. 678, 689 (2001). Petitioner's re-detention also violates ICE's own regulations governing
11 the revocation of release under supervision, 8 C.F.R. § 241.13(i)(3). Petitioner seeks (a)
12 immediate release; (b) an order preventing re-detention unless the government obtains a travel
13 document, gives it to him, and provides him an opportunity to leave on his own and he does not
14 leave; (c) an order preventing removal to a third country without notice and meaningful
15 opportunity to respond, in compliance with the statute and due process, in reopened removal
16 proceedings; and (d) an order barring removal to any third country pursuant to Respondents'
17 punitive removal policy.

18 II. JURISDICTION AND VENUE

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

22 5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, et seq. (habeas
23 corpus), U.S. Const. art. I, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 1331 (federal question),
24 28 U.S.C. § 1346 (United States as Respondent), and 28 U.S.C. § 1651 (All Writs Act).
25 Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

26 6. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, et

1 seq.; the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq.; the All Writs Act, 28 U.S.C. §
2 1651; and the Court's inherent equitable powers.

3 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1) because
4 Respondents are agencies or officers of agencies of the United States, Respondents reside in this
5 District, Petitioner is detained in this District, and a substantial part of the events or omissions
6 giving rise to Petitioner's claims occurred in this District.

7 **III. PARTIES**

8 8. Petitioner Giau Van Dang is a national of Vietnam who immigrated to the United
9 States in 1990. He has a final order of exclusion, issued on December 20, 1995. Petitioner is
10 detained in the control and custody of Respondents at the Northwest ICE Processing Center
11 ("NWIPC") in Tacoma, Washington. Petitioner Dang is a resident of Washington and has
12 been detained at NWIPC since December 23, 2025.

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

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

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

26 12. Respondent Department of Homeland Security (DHS) is a federal executive

1 agency responsible for, among other things, enforcing federal immigration laws and overseeing
2 lawful immigration to the United States. Respondent DHS is a legal custodian of Petitioner.

3 13. Respondent Todd Lyons is the Acting Director and Senior Official Performing the
4 Duties of the Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and
5 procedures, including those relating to removal procedures and the detention of immigrants
6 during their removal procedures. Respondent Lyons is a legal custodian of Petitioner.
7 Respondent Lyons is sued in his official capacity.

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

11 **IV. STATEMENT OF FACTS**

12 **Petitioner's Facts**

13 15. Petitioner Giau Van Dang is a 52-year-old man born in Vietnam. He left Vietnam for
14 Malaysia in 1986 when he was twelve years old. He lived in a refugee camp in Malaysia before
15 moving to the United States in 1990 as an unaccompanied sixteen-year-old refugee. He adjusted
16 to lawful permanent residence on June 27, 1990. *See* Declaration of Theiline Cramer ¶6 (Exh. E,
17 Green Card Denial), filed concurrently. His parents remained in Vietnam and have since passed
18 away. Today, 35 years since his arrival in this country, Petitioner Dang is a loving husband and
19 stepfather. His biological son, Justin Dang (age 24), resides in Portland, Oregon, and his wife,
20 Ngoc Nghiem Thi Le (age 43), and stepson, D [REDACTED] (age 15), live with Petitioner in Tacoma,
21 Washington. These three family members are all U.S. citizens. Cramer Decl. ¶7 (Exh. F, Letters
22 of Support), at 36, 45.

23 16. Until his arrest by ICE, Petitioner was working at Minter Industries, a small
24 aerospace machine shop and manufacturing company in Lakewood, Washington. Cramer Decl.
25 ¶8 (Exh. G, Letter from Employer [REDACTED]). He is a valued employee, and his employer
26 has confirmed they are holding his job for him, if he is released from custody. *Id.*

1 17. Petitioner describes his main purpose in life as serving his church, volunteering for
2 his community, and providing a safe and stable home for his wife and stepson. Cramer Decl. ¶7
3 (Exh. F, Letters of Support); *id.* at ¶13 (Exh. L, NWIPC Visitor List).

4 18. Petitioner's interactions with the criminal legal system began when he was a young
5 man, and ended with federal convictions for kidnapping, 18 U.S.C. § 1201, and the receipt,
6 possession, or disposition of ransom money, 18 U.S.C. § 1202, in 2006. His prior state
7 convictions appear to have involved assault and the possession of stolen property. Petitioner was
8 released from federal custody in 2015 and describes his life as completely transformed since
9 then. Since release, he has devoted his life to his church, community, and his family.

10 19. When released from prison in 2015, he first went to live with the Pham family, who
11 are active members of the Vietnamese Baptist Church in Tacoma, later renamed Tacoma River
12 of Grace Church. Cramer Decl. ¶7 (Exh. F, Letters of Support), at 38–39, 46. Between 2015
13 and 2025, Petitioner was consistently employed, working a variety of jobs ranging from
14 aerospace manufacturing to HVAC installation and nail technician. Cramer Decl. ¶8 (Exh. G,
15 Letter from Employer [REDACTED] Cramer Decl. ¶9 (Exh. H, Previous Work). He
16 became an active and valued member of his church, [REDACTED]
17 committing himself to a life of religious service. He is a deacon, participates in the church's
18 pastoral leadership team, and has completed certain theological seminary certifications. Cramer
19 Decl. ¶10 (Exh. I, Theological Certifications and Letters). He helps to clean the church on
20 weekends and evenings, plays the guitar at church services, and volunteers to cook and serve
21 meals to unhoused community members in Olympia, Washington. Cramer Decl. ¶11 (Exh. J,
22 Public Service Verification), at 2. He also volunteers to assist the elderly. *Id.* at 3–4.

23 20. Petitioner is also close with his adult son, Justin Dang, who lives in Portland.
24 Petitioner supported his son financially after release from federal custody in 2015.

25 21. On December 20, 1995, Petitioner was ordered excluded by the Tacoma Immigration
26

1 Court. Although he spent approximately three and a half years in immigration detention in
2 connection with the exclusion proceedings, he was not removed. Instead, the government
3 released him on an Order of Supervision (“OSUP”) because it could not remove him to Vietnam.

4 22. When not in ICE detention or federal custody, Petitioner has always complied with
5 his OSUP. Cramer Decl. ¶12 (Exh. K, ICE OSUP and Personal Record Report).

6 23. On December 23, 2025, ICE officers arrested him during a check-in at an ICE
7 office. Petitioner Dang willingly appeared for this visit. He was accompanied by his stepson
8 Daniel. He was transferred to the NWIPC later that day, while Daniel was told to remain at the
9 ICE office and wait for his mother to pick him up.

10 24. The arresting ICE officers did not tell Petitioner why he was being re-detained on
11 December 23, 2025. Petitioner was not given a Notice of Revocation of Release, and no “initial
12 informal interview” was performed as required by ICE regulations, 8 C.F.R. § 241.13(i)(3). As
13 of the date of this filing, no ICE officer has spoken to Petitioner about the reasons for the
14 revocation of his release, conducted an “initial informal interview,” or given him an opportunity
15 to respond to the reasons for the revocation.

16 25. ICE does not have a travel document from Vietnam for Petitioner. It did not have one
17 at the time of his re-detention and it does not have one now.

18 26. On information and belief, although more than one month has elapsed since his arrest
19 and detention, ICE has not even begun the process of preparing a travel document request for
20 Petitioner from Vietnam, let alone submitted one. As of the date of this filing, ICE has not asked
21 Petitioner to provide any information necessary to complete a travel document request, including
22 completing the self-declaration form for Vietnam.

23 27. Vietnam is unlikely to issue a travel document for Petitioner Dang. Petitioner Dang
24 has no substantive family ties in Vietnam and has never had a Vietnamese passport. Upon
25 information and belief, Petitioner does not meet the criteria for acceptance by Vietnam as a pre-
26 1995 refugee under the governing Memorandum of Understanding, explained below.

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

3 **Repatriation to Vietnam History**

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

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

9 31. In 2008, the United States and Vietnam reached a diplomatic agreement pursuant to
10 which Vietnam agreed to start considering repatriation requests for certain Vietnamese
11 immigrants. *See id.* The agreement obligated Vietnam to consider repatriation requests for
12 Vietnamese immigrants who had arrived in the United States after July 12, 1995. *See id.* The
13 agreement also provided that “Vietnamese citizens are not subject to return to Vietnam under
14 this agreement if they arrived in the United States before July 12, 1995.” *Id.* Relying on this
15 provision, Vietnam maintained its policy of non-repatriation for pre-1995 Vietnamese
16 immigrants after signing the 2008 agreement. *See id.*

17 32. Prior to 2017, ICE maintained that the removal of pre-1995 Vietnamese immigrants
18 was unlikely given Vietnam’s consistent refusal to repatriate them. *See id.* ICE adopted a policy
19 of detaining pre-1995 Vietnamese immigrants for no longer than ninety days after their removal
20 orders became final. *See id.* After ninety days, ICE generally released them into the community
21 on orders of supervision. *See id.* In 2017, after some negotiations with Vietnam led ICE to believe
22 Vietnamese officials would begin considering travel documents for pre-1995 Vietnamese
23 immigrants, ICE began re-detaining some Vietnamese individuals who had previously been
24 released on supervision and detaining individuals for longer than 90 days based on a possibility
25 that Vietnam would issue the requisite travel documents. *Id.* That possibility did not materialize.

26 33. After renewed discussions with Vietnam in August 2018, ICE reversed its position

1 again, and acknowledged that the removal of pre-1995 immigrants to Vietnam was not
2 significantly likely. *Id.* In October 2018, ICE instructed field offices to resume the practice of
3 releasing pre-1995 Vietnamese immigrants within 90 days of a final order of removal. *Id.*

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

6 35. In November 2020, the United States and Vietnam signed a Memorandum of
7 Understanding that creates a process for deporting pre-1995 immigrants. Section 4 of the MOU
8 obliges the United States and Vietnam to consider specific factors prior to deciding to remove a
9 Vietnamese citizen and prior to deciding to accept for repatriation a Vietnamese citizen. *Id.*
10 These factors are not publicly known because the U.S. government redacted them in Freedom of
11 Information Act (FOIA) disclosures of the MOU, yet they appear to dictate which categories of
12 people may be deported to Vietnam. *Id.* Under Section 8 of the MOU, if a person meets the
13 designated criteria, ICE is expected to put together a documentation package for Vietnam to
14 include, inter alia, a self-declaration form of the individual to be removed (using a form attached
15 to the MOU), copies of identity and citizenship documents, and copies of the final order of
16 removal and any criminal records. *Id.* The MOU states that Vietnam intends to issue the travel
17 document within 30 calendar days of receiving the information package when the individual
18 meets the eligibility criteria. *Id.*

19 36. Between September 2021 and September 2023, the U.S. government deported only
20 four pre-1995 Vietnamese immigrants. *Id.*

21 37. Without any known change in Vietnamese policy or practice, the U.S. government
22 began re-detaining Vietnamese nationals with prior orders of removal in significant numbers in
23 or around June 2025.

24 38. A copy of the MOU is attached hereto. Cramer Decl. ¶2 (Exh. A, MOU).

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

26 39. On July 9, ICE released a memo instructing staff that ICE may deport a person to a

1 third country not designated on the removal order without providing any notice or an opportunity
2 to be heard if the State Department confirms that it has received diplomatic assurances that
3 individuals will not be persecuted or tortured. Cramer Decl. ¶3 (Exh. B, Third Country Removal
4 Policy). *There is no mention of assurances that a person will not be arbitrarily or indefinitely*
5 *imprisoned. Id.*

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

13 41. The memo states that if the noncitizen “does not affirmatively state a fear of
14 persecution or torture if removed to the country of removal listed on the [Notice] within 24 hours,
15 [ICE] may proceed with removal to the country identified on the notice.” If the noncitizen “does
16 affirmatively state a fear if removed to the country of removal,” then ICE will refer the case to
17 U.S. Citizenship and Immigration Services (“USCIS”) to screen for eligibility for withholding
18 of removal and protection under the Convention Against Torture (“CAT”). *Id.* “USCIS will
19 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen does not meet the
20 standard, the individual will be removed, but if it determines that they have met the standard,
21 then ICE may reopen removal proceedings “for the sole purpose of determining eligibility for
22 [withholding of removal protection] and CAT ... [or] designate another country for removal.”
23 *Id.*

24 **Punitive Banishment to Third Countries**

25 42. Since January 2025, Respondents have implemented a policy and practice of
26

1 removing individuals to third countries, without first following the procedures in the INA for
 2 designation and removal to a third country and without providing fair notice and an opportunity
 3 to contest the removal in immigration court.

4 43. Respondents reportedly have negotiated with at least 58 countries to accept
 5 deportees from other nations. On June 25, 2025, the *New York Times* reported that seven
 6 countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had
 7 agreed to accept deportees who are not their own citizens.² Since then, ICE has carried out highly
 8 publicized third country deportations to South Sudan, Eswatini, Rwanda, Uganda, and Ghana.
 9 Cramer Decl. ¶4 (Exh. C, Article on Third Country Removal).

10 44. The Administration's third country removal scheme is designed to punish and
 11 deter. In an official video, President Donald Trump stated, “[I]f illegal aliens choose to remain
 12 in America, they’re remaining illegally, and they will face severe consequences,” such as
 13 “significant jail time, ... garnishment of all wages, imprisonment and incarceration, and *sudden*
 14 *deportation in a place and manner solely of our discretion.*”³ In January, President Trump
 15 announced a plan to detain immigrants at the Guantanamo Bay Prison in Cuba because “it’s a
 16 tough place to get out” and “we don’t want them coming back.”⁴

17 45. Later, Secretary of State Marco Rubio announced that El Salvador had agreed to
 18 “accept for deportation any illegal alien in the [U.S.] who is a criminal”⁵ with the explicit
 19 understanding that “[President Bukele] will put them in his jails.”⁶ Respondent DHS Secretary

20
 21 ² Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025.

22 ³ Roll Call, *Donald Trump Vlog: Self-Deportation Program - May 9, 2025*, at 00:00:55 (emphasis added),
 23 <https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/>
 (last visited July 24, 2025).

24 ⁴ 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>.

25 ⁵ 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-](https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk)
[migrant-deal-marco-rubio-intl-hnk](https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk).

26 ⁶ 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-](https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396baf9c45a2c0b)
[237f06b7d4bdd9ff1396baf9c45a2c0b](https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396baf9c45a2c0b).

1 Kristi Noem said, “It has been wonderful for us to be able to have somewhere to send the worst
 2 of the worst and someone to partner with. And we’d like to continue that partnership because
 3 it’s been *a powerful message of consequences*.”⁷ President Trump recently spoke about the
 4 deterrent effect of the El Salvador banishments: “[W]e bring people there and ... they don’t get
 5 out.”⁸ DHS agreed, posting, “Illegal aliens are turning back because they know ... they will
 6 ultimately leave in handcuffs.”⁹

7 46. In April, Secretary of State Rubio stated that the administration is “working with
 8 other countries ... to send [them] some of the most despicable human beings ... and the further
 9 away from America, the better, so they can’t come back.”¹⁰ Secretary Noem has publicly
 10 threatened noncitizens with criminal convictions to “leave America” or “be fined nearly \$1,000
 11 per day, imprisoned, and deported.”¹¹ She stated, “President Trump and I have a clear message
 12 to those in our country illegally: LEAVE NOW. If you do not self-deport, we will hunt you
 13 down, arrest you, and deport you.”¹²

14 47. The Administration has negotiated with countries to have U.S. deportees imprisoned
 15 in prisons, camps, or other facilities. In February, Panama and Costa Rica took in hundreds of
 16 deportees from African and Central Asian countries and imprisoned them in hotels, a jungle
 17 camp, and a detention center.¹³ In Panama, officials confiscated cell phones, denying deportees

18 ⁷ Roll Call, *Remarks: Donald Trump Holds a Bilateral Meeting with Nayib Bukele of El Salvador - April 14,*
 19 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).

20 ⁸ Roll Call, *White House Press Conference: Press Conference: Donald Trump Hosts a Press Conference at the*
 21 *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).

22 ⁹ Homeland Security (@DHSgov), X (June 24, 2025, at 4:17 PM), <https://x.com/DHSgov/status/1937651350059327520>.

23 ¹⁰ Kate Bartlett, *Trump Administration Plans to Deport Migrants to Libya*, NPR (May 7, 2025),
 24 <https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-trump-deportations>.

25 ¹¹ Press Release, Dep’t of Homeland Sec., *DHS Releases New Nationwide and International Ads Warning Illegal*
 26 *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>.

¹² *Id.* (italics omitted).

¹³ The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama in a Legal ‘Black Hole,’* CBC News (Feb. 28, 2025, 6:29 AM), <https://www.cbc.ca/news/world/costa-rica-panama-us-migrants-1.7471142>; Juan Zamorano, *Nearly 300 Deportees from US held in Panama Hotel as Officials Try to Return Them to Their Countries*, AP World News (Feb. 18, 2025), <https://apnews.com/article/panama-trump-migrants-darien->

1 access to their attorneys.¹⁴ Deportees were “guarded like prisoners,” sleeping in structures made
 2 from plastic sheets and having toilet access only when escorted.¹⁵

3 48. The Costa Rican president announced an agreement to receive up to 200 deportees
 4 and to hold them for up to six weeks before sending them to their home countries, all paid for by
 5 the United States.¹⁶ The deportees were held at the Temporary Migrant Care Center (CATEM).¹⁷
 6 Migrants held there previously reported sleeping on the ground in tents, being held in cramped
 7 quarters like prisoners, and sanitation issues.¹⁸ On June 24, a Costa Rican court ordered the
 8 release of the deportees due to civil rights violations, finding “they had been deprived of their
 9 freedom of movement without a prior individual ruling, that their communications with the
 10 outside had been restricted, and that they had not been told about the possibility of applying for
 11 refugee status.”¹⁹

12 49. In March, the U.S. paid El Salvador \$5 million to indefinitely imprison over 200

13
 14
 15
 16
 17
 18 d841c33a215c172b8f99d0aeb43b0455; Manuel Rueda, *Asylum Seekers Deported by the U.S. Are Stuck in*
Panama and Unable to Return Home, All Things Considered, NPR (May 5,

19 2025), [https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-](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)
 20 [unable-to-return-home](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).
 21 ¹⁴ Julie Turkewitz et al, *Migrants, Deported to Panama Under Trump Plan, Detained in Remote Jungle Camp*,

22 N.Y. Times (Feb. 19, 2025), [https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-](https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock)
 23 [camp.html?login=smartlock&auth=login-smartlock](https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock).
 24 ¹⁵ Matias Delacroix & Megan Janetsky, *Isolated in ‘Harsh Conditions’: Deportee from US Details Legal Limbo in*

25 *Panama Camp Near Darien Gap*, AP World News (Feb. 22, 2025), [https://apnews.com/article/panama-deportees-](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38cfd569a5b51e481a86)
 26 [trump-hotel-darien-gap-iom-bba8c3dc33fd38cfd569a5b51e481a86](https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38cfd569a5b51e481a86).
 27 ¹⁶ Alvaro Murillo, *Costa Rica Could Hold US Deportees for Up to Six Weeks, President Says*, Reuters (Feb. 19,

28 2025), [https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-](https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-2025-02-19/)
 29 [2025-02-19/](https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-2025-02-19/).
 30 ¹⁷ The Associated Press, *Group of Mostly Asian Migrants Deported from U.S. Arrive in Costa Rica*, NBC News

31 (Feb. 21, 2025 at 7:37 AM PST), [https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-](https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148)

32 [costa-rica-rcna193148](https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148)
 33 ¹⁸ *Id.*
 34 ¹⁹ Vanessa Buschschlüter, *Costa Rican Court Orders Release of Migrants Deported from US*, BBC News (June

1 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses,
 2 known as CECOT.²⁰ El Salvador's justice minister stated the only way out of CECOT is in a
 3 coffin.²¹

4 50. In May, ICE attempted to deport individuals from Vietnam, Laos, the Philippines,
 5 and Mexico to Libya.²² The aircraft sat on the runway for hours until the individuals were
 6 returned to a detention center after a court ordered the men not to be deported.²³

7 51. On July 4, ICE deported eight men, including one Vietnamese man, to South Sudan.²⁴
 8 The government of South Sudan euphemistically said in a statement that the deportees were
 9 "under the care of the relevant authorities."²⁵ As of September 7, 2025, six of the eight men
 10 remained in South Sudanese custody.²⁶

11 52. On July 15, ICE deported five men to Eswatini, including one Vietnamese man. DHS
 12 referred to the men as "so uniquely barbaric that their home countries refused to take them
 13 back."²⁷ Eswatini government officials have said the men are imprisoned in solitary confinement

18 ²⁰ 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, 2025).

19 ²¹ Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison; Documents Indicate Most Have No*
Apparent Criminal Records, CBS News (Apr. 6, 2025), [https://www.cbsnews.com/news/what-records-show-](https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/)
 20 [about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/](https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/).

21 ²² Human Rights Watch, *U.S.: Don't Forcibly Transfer Migrants to Libya*, May 9, 2025, [https://www.hrw.org/](https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya)
[news/2025/05/09/us-dont-forcibly-transfer-migrants-libya](https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya).

22 ²³ *Id.*

23 ²⁴ Guardian, *US Judge Clears Path for Eight Immigrants to be Deported to South Sudan*, July 4, 2025,
<https://www.theguardian.com/us-news/2025/jul/04/south-sudan-deportations-halted>.

24 ²⁵ Mattathias Schwartz, *Trump Administration Poised to Ramp Up Deportations to Distant Countries*, N.Y.
 Times, July 13, 2025, [https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-](https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html)
 25 [deportations.html](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 Deported from the United States of America to South Sudan, July 8, 2025,
[https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-](https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-of-america-to-south-sudan/)
 26 [from-the-united-states-of-america-to-south-sudan/](https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-of-america-to-south-sudan/).

27 ²⁶ Isa Cardona, *South Sudan repatriates Mexican man deported from US*, CNN, Sept. 7, 2025,
<https://www.cnn.com/2025/09/06/americas/mexican-south-sudan-returns-latam-intl>.

²⁷ Tricia McLaughlin (@TriciaOhio), X (July 15, 2025), <https://x.com/TriciaOhio/status/1945274627976200206>.

1 and that the U.S. is paying for the costs of their imprisonment.²⁸ An Eswatini government official
2 estimated the men would be held for about 12 months.²⁹

3 53. In mid-August, ICE deported seven individuals to Rwanda.³⁰ Rwanda also reported
4 reaching an agreement with the United States to receive up to 250 deportees.³¹

5 54. In September, ICE deported as many as 28 individuals to Ghana, at least 14 of whom
6 had won protection against removal in immigration court. In court filings, five of these
7 individuals alleged that ICE abruptly put them on a plane in the middle of the night,
8 straightjacketed them, and did not tell them where they were being flown until they were already
9 in flight. *D.A. v. Noem*, 800 F. Supp. 3d 43, 45 (D.D.C. 2025). In Ghana, they were held in an
10 open-air detention facility surrounded by armed military guards. *Id.* Now, Ghana has reportedly
11 expelled eight to ten of these individuals to Togo without their passports.³²

12 V. LEGAL FRAMEWORK AND ARGUMENT

13 55. Re-detention of pre-1995 Vietnamese refugees, who the government has been unable
14 to remove for decades, is unconstitutionally indefinite, unless the government has already
15 secured the travel document and a deportation flight. That is because Vietnam still does not issue
16 travel documents for most pre-1995 Vietnamese refugees and, even when it does, it often takes
17 many months for Vietnam to investigate and process the travel document request. *See*
18 Declaration of Jacqueline Dan ¶¶10–13, filed concurrently. The government will argue, as it has
19 in every other pre-1995 Vietnamese habeas case coming before this district court and courts
20 around the country, that things have changed under the current Trump Administration and

21 ²⁸ Nimi Princewill et al., 'Not Trump's Dumping Ground': Outrage Over Arrival of Foreign US Deportees in Tiny
22 African Nation, CNN World (July 18, 2025), [https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-](https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl)
23 [deportees-intl](https://www.cnn.com/2025/07/17/africa/africa-eswatini-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-](https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-deportees)
[deportees](https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-deportees).

24 ²⁹ Savage et al., *supra* note 29.

25 ³⁰ Daphne Psaedakis 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-](https://www.reuters.com/world/africa/rwanda-received-migrants-deported-us-earlier-this-month-2025-08-28/)
[28/](https://www.reuters.com/world/africa/rwanda-received-migrants-deported-us-earlier-this-month-2025-08-28/).

26 ³¹ *Id.*

³² *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>.

1 Vietnam is now accepting more pre-1995 individuals than before. But previously, Vietnam did
 2 not accept any pre-1995 individuals and numerous decisions from this district alone have held
 3 that the fact that Vietnam is issuing travel documents to more pre-1995 individuals than before
 4 does not make it “significantly likel[y] that *any* Vietnamese citizen . . . will be removed to
 5 Vietnam in the reasonably foreseeable future, justifying their detention.” *Nguyen v. Scott*, 796 F.
 6 Supp. 3d 703, 725 (W.D. Wash. 2025); *see Do v. Scott*, 2025 WL 3496909 (W.D. Wash. Dec. 5,
 7 2025); *Tran v. Bondi*, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025); *Abubaka v. Bondi*, 2025
 8 WL 3204369 (W.D. Wash. Nov. 17, 2025); *Huynh v. Bondi*, 2025 WL 3718991 (W.D. Wash.
 9 Dec. 23, 2025); *Duong v. Bondi*, 2025 WL 3628631 (W.D. Wash. Dec. 15, 2025); *Van Huynh v.*
 10 *Bondi*, 2025 WL 3534210 (W.D. Wash. Dec. 10, 2025); *Kuot v. Bondi*, 2025 WL 3763930 (W.D.
 11 Wash. Dec. 30, 2025); *Tang v. Bondi*, 2025 WL 2637750 (W.D. Wash. Sept. 11, 2025); *Wana*
 12 *v. Bondi*, 2025 WL 3628634 (W.D. Wash. Dec. 15, 2025); *Tran v. Scott*, 2025 WL 2898638
 13 (W.D. Wash. Oct. 12, 2025); *Bui v. Scott*, 2025 WL 3250962 (W.D. Wash. Nov. 21, 2025).
 14 Nonetheless, ICE continues to detain pre-1995 Vietnamese nationals, like Petitioner, without
 15 first obtaining a travel document from Vietnam or making any effort to first determine from
 16 Vietnam whether they will accept the individual now, when historically they have refused.
 17 Instead, ICE is simply locking up longtime residents like Petitioner Dang and forcing them to
 18 remain detained for several months at least, while they petition the courts for their release. Dan
 19 Decl. ¶¶9–14.

20 56. Petitioner’s detention violates core principles of due process and governing ICE
 21 regulations. By willfully violating the law to imprison Petitioner and others like him, ICE has
 22 made plain that its objective with detention is impermissible punishment. This Court should
 23 order Petitioner Dang’s immediate release and order other protective measures against future
 24 harm.

25 A. The Government’s Re-Detention of Petitioner Violates Due Process

26 57. The government cannot deprive any person of “life, liberty, or property, without due

1 process of law[.]” U.S. Const. Amend. V. Due process extends to “all ‘persons’ within the United
 2 States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or
 3 permanent.” *Zadvydas*, 533 U.S. at 693. “Freedom from imprisonment—from government
 4 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the
 5 Due Process] Clause protects.” *Id.* at 690.

6 ***1. Procedural Due Process***

7 58. It is well-established that ICE may not revoke a person’s release on supervision
 8 without prior notice and a hearing. When the government releases an individual previously
 9 detained, even if that release is conditional or discretionary, that individual has a protected liberty
 10 interest in their continued freedom that cannot be taken away without due process. *Morrissey v.*
 11 *Brewer*, 408 U.S. 471, 481–82 (1972). *See also Hurd v. District of Columbia*, 864 F.3d 671, 683
 12 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is
 13 lawfully revocable—has a liberty interest that entitles him to constitutional due process before
 14 he is re-incarcerated”) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997), *Gagnon v. Scarpelli*,
 15 411 U.S. 778, 782 (1973), and *Morrissey*, 408 U.S. at 482). As the Supreme Court explained, a
 16 parolee relies “on at least an implicit promise that parole will be revoked only if he fails to live
 17 up to the parole conditions.” *Morrissey*, 408 U.S. at 482.

18 59. The protected liberty interest created by conditional parole also applies to the
 19 immigration detention context. “While the temporary detention of non-citizens may sometimes
 20 be justified by concerns about public safety or flight risk, the government’s discretion to
 21 incarcerate non-citizens is always constrained by the requirements of due process[.]” *Hernandez*
 22 *v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). “Just as people on preparole, parole, and probation
 23 status have a liberty interest, so too does [a noncitizen released from immigration detention] have
 24 a liberty interest in remaining out of custody on bond.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963,
 25 969 (N.D. Cal. 2019).

26 60. Determining what procedures are due generally requires examining the factors set

1 forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976):

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

9 *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1320–21 (W.D. Wash. 2025) (quoting *Mathews*,
10 424 U.S. at 335).

11 61. Petitioner's interest in not being detained is "the most elemental of liberty
12 interests[.]" *Id.* at 1321 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)) (granting petition
13 and ordering immediate release with no re-detention absent "an immigration court hearing . . .
14 held (with adequate notice) to determine whether detention is appropriate."). *See also, e.g.*,
15 *Ledesma Gonzalez v. Bostock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, at *8 (W.D.
16 Wash. Oct. 7, 2025) (finding detainee has liberty interest).

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

23 63. The longer the individual has been released, the more his liberty interest grows.
24 *Morrissey*, 408 U.S. at 482. Here, Petitioner's private interests are substantial. Since 2015,
25 Petitioner had been continuously free from custody while on supervision. During that time, he
26 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 a stepson; and been a valued employee at a variety
of businesses. He has engaged in significant acts of community service in his church and in his
community. He has dutifully adhered to ICE's conditions of supervision. In sum, he has built an

1 established life on the “implicit promise” that it would not be taken away unless he failed to “live
2 up” to the conditions of his ICE supervision. *Morrissey*, 408 U.S. at 482; *see also Pinchi v.*
3 *Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (quoting *Morrissey*, 408 U.S. at 482 and
4 applying it in immigration re-detention case). At no point has he failed to “live up” to the
5 conditions of his ICE supervision; by any measure, he has exceeded them.

6 64. The second factor, risk of an erroneous deprivation of liberty, also weighs in
7 Petitioner’s favor. Where the petitioner “has not received any bond or custody . . . hearing, the
8 risk of an erroneous deprivation [of liberty] is high because neither the government nor
9 [Petitioner] has had an opportunity to determine whether there is any valid basis for [his]
10 detention.” *Pinchi*, 792 F. Supp. 3d at 1035 (citation omitted). A pre-detention hearing
11 significantly decreases that risk because the government must prove to a neutral adjudicator by
12 clear and convincing evidence that circumstances have materially changed to justify re-
13 detention. *See Duong v. Kaiser*, No. CV25-7598-JST, 2025 WL 2689266, at *10 (N.D. Cal. Sept.
14 19, 2025) (holding that any re-detention first required a hearing “whether a material change of
15 circumstances justifies [petitioner’s] re-detention”). Absent a hearing, ICE would be permitted
16 unilateral authority to determine when and whether to revoke a post-order person’s release and
17 re-detain the person without any neutral check. In such circumstances, the risk of error is
18 considerable, as evidenced in this case and hundreds of others brought before district courts in
19 recent months. *See Guillermo M.R. v. Kaiser*, 791 F. Supp. 3d 1021, 1034 (N.D. Cal. 2025)
20 (finding an “undeniably stark” risk of erroneous deprivation where ICE claimed the authority to
21 make unilateral re-detention decisions that had no other mechanism for review by a neutral
22 arbiter). *See also Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when
23 “delicate judgments depending on credibility of witnesses and assessment of conditions not
24 subject to measurement” are at issue, the “risk of error is considerable when just determinations
25 are made after hearing only one side”).

26 65. Critically, in a pre-detention hearing, the government would bear the burden of

1 demonstrating that the detention would not be impermissibly punitive. As immigration detention
2 is civil and only permitted to prevent flight and protect against danger to the community,
3 *Zadvydas*, 533 U.S. at 690, 697, the government must prove by clear and convincing evidence
4 that the individual is a flight risk or a danger. *See Sanchez-Rivera v. Matuszewski*, No. CV22-
5 1357-MMA-JLB, 2023 WL 139801, at *7 n.9 (S.D. Cal. Jan. 9, 2023) (noting that “an
6 overwhelming majority of courts” have so held); *Singh v. Andrews*, 2025 WL 1918670, at *7
7 (E.D. Cal. July 11, 2025) (noting high risk of erroneous deprivation where no evidence of flight
8 risk or danger justifying re-detention).

9 66. The final factor, the government’s interest in detaining a petitioner without providing
10 a pre-deprivation hearing, also weighs sharply in the petitioner’s favor. It has been 30 years since
11 Petitioner was ordered excluded and approximately 26 years since he was released from
12 immigration custody. Since then, the government took no action to remove him. The government
13 has no legitimate claim that it is burdened by a slight delay in detaining Petitioner to attempt to
14 remove him. *See Chhoeun v. Marin*, 442 F. Supp. 3d 1233, 1249 (C.D. Cal. 2020) (holding the
15 government claim that it could not wait 14 additional days to execute removal orders of
16 Cambodian nationals “is laughable” when it “waited years or decades to execute these removal
17 orders, allowing Petitioners to develop deep ties to this country by raising families and
18 working”). Even if the government “ultimately demonstrates to a neutral decisionmaker by clear
19 and convincing evidence that [Petitioner’s] detention is necessary to prevent danger to the
20 community or flight,” then “the only potential injury the government faces is a short delay in
21 detaining” Petitioner. *Pinchi*, 792 F. Supp. 3d at 1037–38. The human suffering inherent in
22 unlawful imprisonment vastly outweighs the short delay to the government. *Id.* at 1038 (“Faced
23 with ... a conflict between minimally costly procedures and preventable human suffering, [the
24 Court has] little difficulty concluding that the balance of hardships tips decidedly in plaintiff[’s]
25 favor.”) (cleaned up). *See also E.A. T.-B.*, 795 F. Supp. 3d at 1324 (“although it would have
26 required the expenditure of finite resources (money and time) to provide Petitioner notice and

1 hearing on ATD violations before arresting and re-detaining him, those costs are far outweighed
2 by the risk of erroneous deprivation of the liberty interest at issue.”); *Chaudhry v. Bondi*, 2025
3 WL 3706534, at *6 (W.D. Wash. Dec. 22, 2025) (quoting the same).

4 67. For all these reasons, “[c]ourts in this circuit have repeatedly, consistently, and with
5 growing frequency found constitutional violations where individuals are detained at check-ins
6 or appointments without prior notice or opportunity to be heard.” *Id.* at *5 (collecting cases).

7 68. In sum, ICE’s re-detention of Petitioner is unconstitutional under procedural due
8 process. This Court should order Petitioner’s immediate release and prohibit any re-detention
9 without prior notice and a hearing before this Court.

10 2. *Substantive Due Process*

11 69. The government’s re-detention of Petitioner violates substantive due process for
12 several reasons.

13 70. The INA provides that after a removal order, or in this case, an exclusion order,
14 becomes final, the government “shall remove the alien from the [U.S.] within a period of 90
15 days.” 8 U.S.C. § 1231(a)(1)(A). This 90-day period is often referred to as the initial removal
16 period and during it, the government “shall detain the alien.” 8 U.S.C. § 1231(a)(2). In some
17 circumstances, federal immigration authorities can continue to detain an alien beyond the initial
18 removal period. Specifically, section 1231(a)(6) allows the government to detain certain
19 enumerated classes of immigrants—including those ordered removed due to criminal
20 convictions—for more than 90 days. 8 U.S.C. § 1231(a)(6).

21 71. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court interpreted the
22 detention statute, 8 U.S.C. § 1231(a)(6), in light of the Due Process Clause and held that “[a]
23 statute permitting indefinite detention of an alien would raise a serious constitutional problem”
24 because it would become punitive. *Zadvydas*, 533 U.S. at 690. “[G]overnment detention violates
25 [the Fifth Amendment’s Due Process Clause] unless the detention is ordered in a *criminal*
26 proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive

1 circumstances. . . where a special justification, such as a harm-threatening mental illness,
2 outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.*
3 Civil immigration detention, the Court said, is only authorized for the limited purpose of flight
4 risk or a danger to the community. *Id.* The Court held that section 1231(a)(6) "implicitly limits
5 an alien's detention to a period reasonably necessary to bring about that alien's removal." *Id.* at
6 679. Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer
7 authorized by [section 1231(a)(6)]." *Id.* at 699. "[F]or the sake of uniform administration in the
8 federal courts," the Court found that post-order detention was "presumptively reasonable" for
9 the first six months. *Id.* at 700–01.

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

16 73. Here, several principles make clear that Petitioner's re-detention was prohibited
17 under substantive due process. First, ICE's detention of Petitioner is unconstitutionally punitive
18 because it has no permitted justification. ICE can make no claim that Petitioner is a flight risk or
19 a danger to society: the only authorized purposes of immigration detention. *Zadvydas*, 533 U.S.
20 at 690; *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). To the contrary,
21 Petitioner has complied with his order of supervision. When he was asked to appear at the ICE
22 office on December 23, 2025—an irregular visit that could indicate that he might be detained—
23 he still showed up. His federal criminal convictions are from 2006, and he has long since
24 completed his sentence and achieved full rehabilitation. There is plainly no lawful justification
25 for detaining him.

26 74. Indeed, for a post-order person like Petitioner, immigration detention can only be

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

8 75. If the government had secured his travel document from Vietnam and scheduled
9 him for a deportation flight within days or even a week from the date of his re-detention, that
10 would be a narrow use of immigration detention to secure his removal at the moment of removal.
11 The opposite, however, is true here. The government does not have a travel document from
12 Vietnam, has not begun the process of requesting one, nor does it have any certainty that Vietnam
13 will issue one, as Petitioner is a pre-1995 refugee. It knows this to be true. Vietnam’s process for
14 consideration of repatriation still results in most people not being issued a travel document. *See*
15 Declaration of Julie Valencia, filed concurrently. Vietnam, when it does issue travel documents,
16 can take a very long time to do so. *See id.*; Cramer Decl. ¶5 (Exh. D, Decl. of Tin Nguyen).
17 Numerous courts in this district alone have admonished the government that the law does not
18 permit it to detain people “indefinitely while it waits for travel documents from Vietnam.” *Tran*,
19 2025 WL 3140462, at *3. *See, e.g., Do*, 2025 WL 3496909, at *4. Yet the government continues
20 to detain pre-1995 Vietnamese nationals, like Petitioner, without so much as requesting the travel
21 document from Vietnam first. Dan Decl. ¶10. The government’s repeated violations of the law
22 to imprison people demonstrate the punitive intent of its actions. *See Am. Civ. Liberties Union*
23 *of Nev. v. Masto*, 670 F.3d 1046, 1053 (9th Cir. 2012) (citing *Smith v. Doe*, 538 U.S. 84, 92
24 (2003)) (If the government’s intent is to punish, “that is the end of the inquiry.”).

25 76. Second, ICE’s detention of Petitioner is unconstitutionally indefinite under *Zadvydas*.
26

1 The 90-day removal period and the six-month *Zadvydas* grace period following the issuance of
2 Petitioner's exclusion order elapsed 30 years ago. Petitioner Dang has most recently been
3 detained for over one month but was held for over three years in ICE custody, approximately
4 between 1996 and 2000. *See Tran*, 2025 WL 3140462, at *3 (holding *Zadvydas* grace period
5 ended six months after the entry of the order of removal, even though Petitioner had only been
6 held two months before being released). *Zadvydas* dealt only with the presumptively reasonable
7 period the government could hold an individual immediately following the issuance of a removal
8 order. Once the government releases a person it cannot remove, the law does not permit it to re-
9 detain and pick up where it left off in running the clock on the *Zadvydas* six-month period, where
10 removal is not reasonably foreseeable. *See Tran*, 2025 WL 3140462, at *3; *Nguyen*, 796 F. Supp.
11 3d at 721; *Khim v. Bondi*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at *3 (W.D. Wash. Dec.
12 17, 2025). Rather, to comport with the principles announced in *Zadvydas* and later incorporated
13 into ICE's regulations, the re-detention is permissible only if changed circumstances show that
14 it is significantly likely that Petitioner will be removed in the reasonably foreseeable future.
15 *Zadvydas*, 533 U.S. at 701. "Because more than six months have elapsed since the entry of the
16 order of removal, the burden shifts to Respondents to show [Petitioner] is likely to be removed
17 in the foreseeable future." *Tran*, 2025 WL 3140462, at *3.

18 77. Here, the government cannot meet its burden. ICE re-detained Petitioner without
19 even so much as first requesting a travel document. There is no evidence that Vietnam will issue
20 a travel document to Petitioner, making his removal foreseeable. For 35 years, the government
21 of Vietnam has refused to receive Petitioner. There is no evidence that Vietnam will accept him
22 under the known MOU criteria.

23 78. The fact that Vietnam is now accepting *some* pre-1995 arrivals for removal for the
24 first time in history does not make it significantly likely that it will accept Petitioner. As the
25 Court noted in *Nguyen*, the fact that new developments may show that there is "some possibility"
26 that Vietnam will accept Petitioner "at some point," "that is not the same as a significant

1 likelihood that he will be accepted in the reasonably foreseeable future.” 796 F. Supp. 3d at 725.
2 Moreover, “[c]ourts in this circuit have regularly refused to find Respondents’ burden met where
3 Respondents have offered little more than generalizations regarding the likelihood that removal
4 will occur,” and it should not do so here. *Id.*; *see also id.* at 726 (“The government has not
5 provided any evidence of Vietnam’s eligibility criteria or why it believes Petitioner now meets
6 it.”); *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006) (finding ICE did not
7 meet its burden where it “merely assert[ed] that it has followed up on its request for travel
8 documents”); *see also Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *4
9 (W.D. Wash. Apr. 25, 2012); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
10 1993771, at *3 (E.D. Cal. July 16, 2025).

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

13 **B. The Government’s Re-Detention of Petitioner Violates its Own Regulations**

14 80. Re-detention and the revocation of release on an order of supervision are governed
15 by 8 C.F.R. § 241.13(i). ICE may revoke a noncitizen’s release and return the noncitizen to ICE
16 custody due to failure to comply with any of the conditions of release, 8 C.F.R. § 241.13(i)(1),
17 or if, “on account of changed circumstances, the Service determines that there is a significant
18 likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.” 8 C.F.R.
19 § 241.13(i)(2).

20 81. Upon such a determination by ICE to re-detain, “the alien will be notified of the
21 reasons for revocation of his or her release. [ICE] will conduct an initial informal interview
22 promptly after his or her return to [ICE] custody to afford the alien an opportunity to respond to
23 the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence
24 or information that he or she believes shows there is no significant likelihood he or she [will] be
25 removed in the reasonably foreseeable future, or that he or she has not violated the order of
26 supervision. The revocation custody review will include an evaluation of any contested facts

1 relevant to the revocation and a determination whether the facts as determined warrant
2 revocation and further denial of release.” 8 C.F.R. § 241.13(i)(3).

3 82. Here, Respondents did not comply with the procedural requirements of 8 C.F.R.
4 § 241.13(i) in revoking Petitioner’s release. ICE is required to follow its own regulations. *United*
5 *States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d
6 1150, 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to abide by
7 certain internal policies is well-established.”). “Where the rights of individuals are affected, it is
8 incumbent upon agencies to follow their own procedures. This is so even where the internal
9 procedures are possibly more rigorous than otherwise would be required.” *Morton v. Ruiz*, 415
10 U.S. 199, 235 (1974).

11 83. As discussed, no “changed circumstances” make it significantly likely that Petitioner
12 will be removed in the foreseeable future. 8 C.F.R. § 241.13(i)(2). ICE did not notify Petitioner
13 of the “reasons for revocation of his [] release,” conduct “an initial informal interview promptly
14 after his [] return to [ICE] custody to afford [him] an opportunity to respond to the reasons for
15 revocation stated in the notification,” allow Petitioner to “submit any evidence or information
16 that he [] believes shows there is no significant likelihood he [] [will] be removed in the
17 reasonably foreseeable future,” or provide a written “revocation custody review.” *Id.* §
18 241.13(i)(3); *see also Phan v. Becerra*, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025).

19 84. Petitioner Dang has faithfully complied with all ICE requirements since release from
20 federal custody in 2015. Cramer Decl. ¶X (Exh. K, ICE Check-in Log). Nevertheless, ICE has
21 not presented Petitioner with a Notice of Revocation of Release or otherwise explained to
22 Petitioner in an interview or otherwise the reasons why the government revoked his supervision.
23 Cramer Decl. ¶5 (Exh. D, Decl. of Tin Nguyen).

24 85. Accordingly, as numerous courts in this Circuit have held in recent months, ICE’s
25 failure to adhere to its own regulations violates Petitioner’s rights and warrants his immediate
26 release from custody. *See, e.g., Phan*, 2025 WL 1993735, at *3–4; *Hoac*, 2025 WL 1993771, at
*3–4; *Yang v. Kaiser*, 2025 WL 2791778, at *7 (E.D. Cal. Aug. 20, 2025); *Constantinovici v.*

1 *Bondi*, 2025 WL 2898985, at *6–7 (S.D. Cal. Oct. 10, 2025) (holding ICE violated the revocation
2 of release regulation and such violation also constituted a due process violation); *Morales*
3 *Sanchez v. Bondi*, 2025 WL 3651899, at *5–6 (C.D. Cal. Dec. 5, 2025).

4 **C. The Government’s Third Country Removal Policy Threatens to Deny Petitioner His**
5 **Due Process Rights**

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

8 87. First, an individual with a removal or exclusion order may designate the country to
9 which they want to be removed, and the government *shall* remove the individual to that country.
10 8 U.S.C. § 1231(b)(2)(A). The government may disregard that designation if (1) the individual
11 fails to designate a country promptly; (2) the government of that country does not inform the
12 U.S. government finally, within 30 days after the date the U.S. government first inquires, whether
13 the government will accept the individual into that country; (3) the government of the country is
14 not willing to accept the individual into the country; or (4) the government decides that removing
15 the individual to that country is prejudicial to the United States. 8 U.S.C. § 1231(b)(2)(C).

16 88. Second, if the individual is not removed to the country they designated under
17 § 1231(b)(2)(A), the government shall remove the individual to the country of which the
18 individual is a “subject, national, or citizen” unless the government of that country does not
19 inform the U.S. government or the individual within 30 days after first inquiry or within another
20 reasonable period of time whether the government will accept the individual into the country or
21 the country is not willing to accept the individual into the country. 8 U.S.C. § 1231(b)(2)(D).

22 89. Third, if the individual is not removed to either the country of their designation or the
23 country of which they are a subject, national, or citizen, then the government shall remove them
24 to any of the following options: (1) the country from which the individual was admitted to the
25 United States; (2) the country in which is located the foreign port from which the individual left
26 for the United States or for a foreign territory contiguous to the United States; (3) the country in

1 which the individual resided before the individual entered the United States and from which the
2 individual entered the United States; (4) the country in which the individual was born; or (5) the
3 country in which the individual's birthplace is located when the individual was ordered removed.
4 8 U.S.C. § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to remove the
5 individual to any of these countries may the government remove the individual to "another
6 country whose government will accept [them] into that country." 8 U.S.C. § 1231(b)(2)(E)(vii).

7 90. Notwithstanding any of these procedures, the statute prohibits removal to a third
8 country where a person may be persecuted or tortured, a form of protection known as
9 withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not remove [a
10 noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom
11 would be threatened in that country because of the [noncitizen's] race, religion, nationality,
12 membership in a particular social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16,
13 1208.16. Withholding of removal is a mandatory protection.

14 91. Similarly, Congress codified protections enshrined in the Convention Against
15 Torture (CAT) prohibiting the government from removing a person to a country where they
16 would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–
17 277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. § 1231 note) ("It shall be the policy
18 of the United States not to expel, extradite, or otherwise effect the involuntary return of any
19 person to a country in which there are substantial grounds for believing the person would be in
20 danger of being subjected to torture, regardless of whether the person is physically present in the
21 United States."); 28 C.F.R. §§ 200.1, 208.16–.18, 1208.16–.18. CAT protection is also
22 mandatory.

23 92. To comport with the requirements of due process, the government must provide
24 notice of the third-country removal and an opportunity to respond. Due process requires "written
25 notice of the country being designated" and "the statutory basis for the designation, i.e., the
26 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 both the non-citizen and the non-citizen’s counsel in a language the non-citizen can understand.” (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process requires notice to the noncitizen of the right to apply for asylum and withholding to the country where they will be removed). The government must be able to show evidence that the third country will accept the individual into that country. *See Himri v. Ashcroft*, 378 F.3d 932, 939 (9th Cir. 2004), *amended sub nom. El Himri v. Ashcroft*, No. 03-71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) (“at the time the government proposes a country of removal pursuant to § 1231(b)(2)(E)(vii), the government must be able to show that the proposed country *will* accept the [individual]”).

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

94. If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. *Cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen the noncitizen’s immigration proceedings if the individual demonstrates “reasonable fear” and to provide “a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings” if the noncitizen is found to not have

1 demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a
2 respondent to file a motion to reopen and seek relief).

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

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

18 97. In Petitioner’s case, only Vietnam meets the criteria for removal under 8 U.S.C. §
19 1231(b)(2)(A)–(E). Removing Petitioner to a third country requires the Attorney General to first
20 determine that it is “impracticable, inadvisable, or impossible” to remove Petitioner to Vietnam
21 and that the designated third country “will accept [Petitioner].” 8 U.S.C. § 1231(b)(2)(E)(vii);
22 *see Himri v. Ashcroft*, 378 F.3d 932, 939 n.4 (9th Cir. 2004) (8 U.S.C. § 1231(b)(2)(E)(vii)
23 “indisputably requires the Attorney General to prove that the proposed country of removal is
24 willing to accept the alien”); *see also Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 344
25 (2005). Removing Petitioner to a third country requires Respondents to move to reopen
26 Petitioner’s 23-year-old removal proceedings to ask an immigration judge to designate a third

country under the statutory process. *See Nguyen*, 796 F. Supp. 3d at 728-29 (“Petitioner is likely to succeed on his claim that removal to a third country under ICE’s current policy, without meaningful notice and reopening of his removal proceedings for a hearing, would violate due process.”); *Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014) (unpublished) (holding that “the agency must provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of removal from” the third country); *Aden*, 409 F. Supp. 3d at 1009 (finding that removal proceedings “shall be reopened and a hearing shall be held before the immigration judge so that petitioner may apply for relief from removal” to a different country not previously designated).

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

D. The Government’s Third Country Removal Threatens to Subject Petitioner to Punitive Banishment

99. The prohibition against imposing punitive measures on an individual subject to a final order of removal is as old as immigration law. *Wong Wing v. United States*, 163 U.S. 228 (1896). The Supreme Court in *Wong Wing* struck down a provision of the Chinese Exclusion Act that imposed one year of imprisonment at hard labor as an immigration sanction before deportation. *Id.* at 237. The Court distinguished “deportation,” described as a sanction for noncompliance with U.S. residency legal requirements that may be imposed by executive authorities, from “punishment,” which may not. *Id.* at 236–37. The Court held that the government could not attach a punishment to deportation (here, imprisonment) without criminal

1 charges, a judicial trial, and the concomitant protections of the Fifth, Sixth, and Eighth
2 Amendments. *Id.*

3 100. The government's third country removal program defies 130 years of
4 constitutional immigration law between civil penalty and infamous punishment. *See, e.g.,*
5 *Zadvydas*, 533 U.S. at 694. Respondents' third country removal program is designed to punish
6 those it deports by subjecting them to imprisonment upon their arrival in the receiving countries.
7 Respondents' program is not just about removing individuals to third countries. It is about
8 removing them to be imprisoned upon arrival and paying countries to carry out said
9 imprisonment; selecting countries and overseas prisons notorious for cruelty, torture,
10 lawlessness, and other human rights abuses; and publicly broadcasting these third country
11 removals to demonize deportees and strike extreme fear in immigrants to entice self-deportation.
12 This program is about punitive banishment.

13 101. To determine whether a given sanction constitutes punishment, courts look to
14 intent. If the government's intent is to punish, "that is the end of the inquiry." *Masto*, 670 F.3d
15 at 1053 (citing *Smith*, 538 U.S. at 92). Here, the government's own statements show intent to
16 deport individuals, particularly those with criminal convictions, into situations of forever
17 confinement or substantial harm.

18 102. When the government's intent to punish is unclear, courts move to the second
19 step of the inquiry to determine whether the practices are "so punitive either in purpose or effect
20 as to negate the [government's] intention to deem it civil." *Id.* (quoting *Smith*, 538 U.S. at 92).
21 To determine punitive purpose or effect, courts often turn to the factors laid out in *Kennedy v.*
22 *Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963); *see also Hudson v. United States*, 522 U.S.
23 93, 99 (1997) ("the factors listed in *Kennedy v. Mendoza-Martinez* [citation], provide useful
24 guideposts"). Those factors are: "[w]hether the sanction involves an affirmative disability or
25 restraint, whether it has historically been regarded as a punishment, whether it comes into play
26 only on a finding of scienter, whether its operation will promote the traditional aims of

1 punishment—retribution and deterrence, whether the behavior to which it applies is already a
2 crime, whether an alternative purpose to which it may rationally be connected is assignable for
3 it, and whether it appears excessive in relation to the alternative purpose assigned.” *Mendoza-*
4 *Martinez*, 372 U.S. at 168–69 (footnotes omitted).

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

17 VI. CLAIMS FOR RELIEF

18 COUNT ONE

19 Unlawful Re-Detention: Procedural Due Process

20 Violation of the Fifth Amendment Due Process Clause

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

22 105. Respondents were required to provide Petitioner pre-deprivation notice and a

23 hearing

24 before re-detaining him, given that he has remained fully compliant with his order of supervision
25 and release conditions.

26 106. Petitioner has a liberty interest in not being re-detained. Applying the three factor

1 *Mathews* test, that interest is high. The risk of any erroneous deprivation is also high, because
 2 ICE's previous release of him necessarily reflected a conclusion that he was not a flight risk or
 3 a danger to the community. Here, as in *Ledesma Gonzalez*, "ICE revoked that release without
 4 any reassessment of those factors." 2025 WL 2841574, at *8.

5 107. Finally, the cost to the government of providing a hearing is low and significantly
 6 outweighed by the other factors. His re-detention violated his due process rights and was
 7 therefore unlawful.

8 COUNT TWO

9 Unlawful Detention: Substantive Due Process

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

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

12 109. The government's detention of Petitioner is unconstitutionally punitive because
 13 the law does not allow the government to detain (or re-detain) a person in immigration custody
 14 who is not a flight risk or danger to society. Petitioner is categorically neither. Petitioner has
 15 never fled from ICE; rather he has complied with every check-in and every requirement of his
 16 order of supervision.

17 110. Because Petitioner's exclusion order became final on December 20, 1995, the
 18 removal period has long since expired, and detention is no longer required under 8 U.S.C.
 19 § 1231. In addition, the presumptively reasonable period of six months has passed.

20 111. The government's detention of Petitioner is unconstitutionally indefinite.

21 112. There is "good reason to believe that there is no significant likelihood of removal
 22 in the reasonably foreseeable future[.]" *Zadvydus*, 533 U.S. at 701. Respondents had not applied
 23 for a travel document from Vietnam at this time of Petitioner's re-detention. Upon information
 24 and belief, ICE has still not requested a travel document for Petitioner, even though Petitioner
 25 has already been detained for over one month as of the time of filing. *See* Dan Decl. ¶¶9–14.
 26 Moreover, it is highly uncertain whether Vietnam will accept Petitioner, as he is a pre-1995

1 refugee. Once a travel document request is submitted to Vietnam, it can take months for Vietnam
2 to process that request. *Id.*

3 113. As the removal period and *Zadvydas* grace period long ago expired, *Tran*, 2025
4 WL 3140462, at *3, the burden is on the government to show that Petitioner can be removed in
5 the reasonably foreseeable future. The government cannot meet that burden under the facts of
6 this case. *See Nguyen*, 796 F. Supp. 3d at 739 (granting preliminary injunction requiring release
7 under *Zadvydas*); *Tang*, 2025 WL 2637750, at *6 (same).

8 **COUNT THREE**

9 **Unlawful Re-Detention: Failure to Comply with Regulations**

10 **Violation of 8 C.F.R. § 241.13 and the Administrative Procedure Act**

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

12 115. Respondents violated governing regulations for revoking Petitioner's conditions
13 of release. Petitioner has duly complied with the conditions of his supervised release, including
14 attending check-ins and providing the information and documentation requested of him. His
15 release may be revoked only if changed circumstances make his removal reasonably foreseeable.
16 8 C.F.R. § 241.13(i)(2). Upon such a determination, several procedural steps are required to
17 revoke release, *id.* § 241.13(i)(3), none of which were followed here. Respondents are required
18 to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268
19 (1954).

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

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

25 b) to the extent that Respondents made such a determination, they lacked an adequate
26 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 **Third Country Removal**

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

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

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

22 119. Prior to any third country removal, Petitioner must be provided with
23 constitutionally and statutorily compliant notice and an opportunity to respond and contest that
24 removal if he has a fear of persecution or torture in that country in reopened removal proceedings.
25 *See Nguyen*, 796 F. Supp. 3d at 739 (granting preliminary injunction against “removing
26

1 Petitioner to a country other than [home country] without notice and a meaningful opportunity
2 to be heard in reopened removal proceedings with a hearing before an immigration judge”).

3 **COUNT FIVE**

4 **Punitive Third Country Banishment**

5 **Violation of Fifth and Eighth Amendments**

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

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

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

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

17 124. Petitioner was convicted and completed his sentence a decade ago. His
18 convictions made him excludable from the United States, but his convictions do not authorize
19 the government to inflict, as a matter of executive policy and discretion, additional punishment
20 on him. Respondents’ third country removal program is punitive in nature and execution. The
21 government has arranged for third countries to receive deportees and imprison them on arrival,
22 possibly indefinitely and often in abhorrent conditions. It has selected countries notorious for
23 human rights abuses and instability for third country removal arrangements. It has targeted
24 individuals with criminal convictions for third country removals where they will be imprisoned
25 and harmed and publicly broadcast those removals to demonize and dehumanize the individuals
26 subjected to these practices and strike fear in the immigrant community to send a message of
retribution and deterrence. Respondents’ third country removal program is more than a publicity

1 stunt. The hundreds of individuals who have already been subjected to it have been banished in
2 foreign prisons upon arrival without charge and often without communication with the outside
3 world, including their families and lawyers.

4 125. Respondents may not subject Petitioner to its third country removal program
5 designed to impose a severe punishment on its subjects. *See Abubaka*, 2025 WL 3204369, at *8
6 (holding “the government’s practice of third-country removal paired with imprisonment is
7 intended to be punitive and thus violates due process under *Wong Wing*, 163 U.S. 228 at 236–38
8 (1896), and *Zadvydas*, 533 U.S. at 693–94 (2001).”); *Nguyen*, 796 F. Supp. 3d at 739 (granting
9 preliminary injunction against “removing Petitioner to any country where he is likely to face
10 imprisonment upon arrival”). Such conduct “shocks the conscience” and imposes “state created
11 danger” under Fifth Amendment substantive due process, is cruel and unusual punishment, and
12 may not be imposed without charge and a judicial trial.

13 126. Respondents may not seek to remove Petitioner to a third country under
14 their punitive banishment policy and practices.

15 VII. PRAYER FOR RELIEF

16 127. Petitioner respectfully requests that this Court:

- 17 (a) Assume jurisdiction over this action;
18 (b) Order Respondents to immediately release Petitioner from custody;
19 (c) Enjoin Respondents from re-detaining Petitioner without notice and a hearing
20 before this Court;

21 (d) Enjoin Respondents from re-detaining Petitioner unless Petitioner violates the
22 conditions of his order of supervision or Respondents obtain a travel document from Vietnam,
23 provide Petitioner (and his counsel) the travel document, and give him two months to leave on
24 his own and he does not leave;

25 (e) Enjoin Respondents from re-detaining and removing or seeking to remove Petitioner
26 without first reopening removal proceedings so that Petitioner may apply for relief from removal;

1 (f) Enjoin Respondents from removing or seeking to remove Petitioner to a third
2 country without notice and meaningful opportunity to respond in compliance with the statute
3 and due process in reopened removal proceedings;

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

7 (h) Award costs and reasonable attorney's fees under the Equal Access to Justice Act,
8 28 U.S.C. § 2412; and

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

10
11 Dated: February 2, 2026.

12
13 Respectfully submitted,

14 /s/ Theiline Cramer
15 Seattle Clemency Project
16 Pro Bono Counsel (WA Bar. No. 60445)
17 20415 72nd Ave S., Suite 1-415
18 Kent, WA 98032
19 Telephone: 425.272.5701
20 tylicramer@gmail.com

21 /s/ Jennifer Pasquarella
22 Jennifer Pasquarella (WA Bar No. 62205)
23 Seattle Clemency Project
24 20415 72nd Ave South, Suite 1-415
25 Kent, WA 98032
26 Telephone: 917.690.2038
jennie@scattleclemencyproject.org

1
2
3 **VERIFICATION**

4 Pursuant to Local Court Rule 100(e), I, Theiline Cramer, 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 Giau Van Dang 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: February 2, 2026.

10
11 /s/ Theiline Cramer
Theiline Cramer
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26