

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IVAN MARTINEZ-HERNANDEZ,) No.

Petitioner,)

vs.)

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

Respondents.)

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

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Ivan Martinez-Hernandez

(b) None

2. Place of confinement:

(a) Northwest Immigration Processing Center (NWIPC)

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

(c) Case number or numbers [ICE file number, if known]: Petitioner's A# has
been provided to the government along with the filing of this petition.

3. Petitioner is currently being held on orders by federal authorities: United States Immigration and Customs Enforcement.

4. Petitioner is currently being held on an immigration charge.

Decision or Action You Are Challenging

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

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

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

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

(c) Decision or action you are challenging: Petitioner was initially ordered removed on August 11, 2020, following a criminal conviction for possession of cocaine and DUI. Mr. Martinez-Hernandez reports serving approximately three months in county custody for the convictions before being transferred into immigration custody. After a brief period in immigration custody, he was released on supervision with a condition that he report annually to ICE. Then on May 27, 2025, Mr. Martinez-Hernandez was arrested by ICE without a hearing. He has remained in ICE custody since his arrest on May 27, 2025. On August 14, 2025, Mr. Martinez-Hernandez filed a motion to reopen immigration proceedings which was subsequently denied. The record indicates no pending appeals before any court, including the Board of Immigration Appeals.

Your Earlier Challenges of the Decision or Action

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

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

11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

(a) Date you were taken into immigration custody: May 27, 2025

(b) Date of the removal or reinstatement order: August 11, 2020

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

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

12. Other than the appeals listed above, have you filed any other petition, application, or motion about the issues raised in this petition? No.

Grounds for Your Challenge in This Petition

I. Introduction

Petitioner Ivan Martinez-Hernandez is presently detained at the Northwest ICE Processing Center (NWIPC). Petitioner has been held in immigration custody for well over six months as he has been in ICE custody since May 27, 2025. Removal to the former country of residence is not reasonably foreseeable. Petitioner's continued detention is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner seeks (a) release; (b) an order preventing re-detention unless the government establishes by clear and convincing evidence at a hearing before a neutral decisionmaker that Petitioner is a flight risk or a danger to the community, based on changed circumstances after their most recent release by ICE; (c) an order preventing removal to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings; and (d) an order barring removal to any third country pursuant to Respondents' punitive removal policy.

Petitioner Martinez-Hernandez was initially detained by immigration per a removal order on August 11, 2020, following a short sentence on a state criminal conviction. Petitioner was convicted of DUI and possession of a controlled substance in Florida. Exhibit 1. He was subsequently released on supervision and required to check in yearly with ICE. Then, on May 27, 2025, ICE revoked supervision without a hearing

1 and arrested Mr. Martinez-Hernandez. He has been in ICE custody since May 27, 2025.
2 Mr. Martinez-Hernandez was re-detained without any determination by the government
3 that he had become a flight risk or a danger to the community.

4 **II. Jurisdiction and Venue**

5 This case arises under the Constitution of the United States the Immigration and
6 Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures
7 Act (“APA”), 5 U.S.C. §§ 500–596, 701–706.

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

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

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

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

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

25 Petitioner is “in custody” for the purpose of § 2241 because he has been detained
26 by Respondent ICE in Tacoma, Washington, since May 27, 2025.

1 **IV. Parties**

2 Mr. Martinez-Hernandez is a citizen of Cuba. He has a final order of removal to
3 Cuba that was entered on August 11, 2020, by an immigration judge in Miami, Florida.
4 Petitioner is currently detained in the control and custody of Respondents at NWIPC.
5 As such, Petitioner is a resident of Tacoma, Washington.

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

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

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

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

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

1 **V. Background**

2 Mr. Martinez-Hernandez is a 51-year-old Cuban national who arrived in the
3 United States on or about April 11, 1995. He is married with four children (who are all
4 United States citizens) and has been gainfully employed in construction and asphalt
5 work since his arrival.

6 In 2020, Mr. Martinez-Hernandez was arrested for DUI and possessing a
7 controlled substance in Miami, Florida. After spending three months in custody, he was
8 transferred to ICE for removal proceedings.

9 On August 11, 2020, Mr. Martinez-Hernandez was ordered to be removed to
10 Cuba. However, because Cuba would not accept Mr. Martinez-Hernandez, he was
11 released on supervision after spending two months in ICE custody. Following his
12 release from ICE custody, Mr. Martinez-Hernandez was required to check in yearly
13 with ICE officials.

14 From his release date in 2020, there does not appear to be any indication that
15 Mr. Martinez-Hernandez presented as being a flight risk or a danger to the community.
16 Instead, he continued working and checking in with ICE as required.

17 Then, on May 27, 2025, as Mr. Martinez-Hernandez was checking in, ICE
18 placed him under arrest and took him into custody without notice and a hearing to
19 afford him the opportunity to show that he was neither a flight risk nor a danger to the
20 community.

21 Aside from depriving Mr. Martinez-Hernandez of his due process rights to
22 notice and a hearing, he has been in continuous ICE custody since May 27, 2025, with
23 no foreseeable removal date. Finally, because Cuba will not accept Mr. Martinez-
24 Hernandez, ICE has attempted to remove him to Mexico on several occasions without
25 success.

VI. Particularized Facts Pertaining to Petitioner's Continued Detention

Petitioner Martinez-Hernandez cannot presently be returned to Cuba because Cuba refuses to cooperate with the removal process and will not accept him. Removal to Cuba is thus not reasonably foreseeable. ICE has not obtained a travel document from Cuba for Petitioner, nor has Cuba agreed to accept Petitioner. Additionally, Mexico will not accept Mr. Martinez-Hernandez likely because he refuses Mexico as a third country for removal. Exhibit 2.

A likely reason why Cuba will not accept Mr. Martinez-Hernandez is probably because he has a criminal record. In other words, there is no indication that the Cuban government's policy of refusing to accept detainees with criminal records has materially changed even as the United States government has begun re-arresting detainees who were previously released under orders of supervision. That explains why Respondents are now attempting to uniformly remove Cuban nationals to Mexico. Accordingly, removing Petitioner to Cuba is not reasonably foreseeable.

Finally, Mr. Martinez-Hernandez adamantly refuses Mexico as a third country for removal. The record is clear that Mexico will not accept any non-Mexican national who refuses Mexico as a third country, as made evident by Respondents' numerous failed attempts to remove Petitioner to Mexico. Accordingly, release from ICE custody is constitutionally necessary to avoid an indefinite detention as there is no evidence Cuba (or Mexico) will accept Mr. Martinez-Hernandez.

VII. The Legal Framework Regarding Indefinite Detention Pending Removal

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

Under 8 U.S.C. § 1231, detention of noncitizens who have been ordered removed is mandatory during the so-called 90-day "removal period." 8 U.S.C. § 1231(a)(1)(A). This period begins on the "date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). But the *Zadvydas* Court believed

1 that a “serious constitutional threat” under the Fifth Amendment’s Due Process Clause
2 was posed by the indefinite detention of noncitizens. 533 U.S. at 699. The Court
3 therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the
4 statute’s “basic purpose [of] effectuating [a noncitizen]’s removal[.]” *Id.* at 696–99.

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

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

22 When a petitioner has been detained for a total of six months after a final order
23 of removal, the *Zadvydas* presumptively reasonable period has expired, even if the
24 petitioner’s current period of detention is less than six months. “A petitioner’s total
25 length of confinement need not be consecutive to reach the six-month presumptively
26

1 reasonable limit established in *Zadvydas*.” *Tang v. Bondi*, No. CV25-1473-RAJ-TLF,
 2 2025 WL 2637750, at *4 (W.D. Wash. Sept. 11, 2025).

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

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

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

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

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

14 Procedural due process requires notice and an opportunity to be heard. *Mathews*
 15 *v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural
 16 due process rights, a petitioner must establish (1) a protected property or liberty interest,
 17 and (2) a denial of adequate procedural protections. *ASSE Int’l, Inc. v. Kerry*, 803 F.3d
 18 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest,
 19 including the function involved and the fiscal and administrative burdens that the
 20 additional or substitute procedural requirement would entail.” *Rodriguez Diaz v.*
Garland, 53 F.4th 1189, 1207 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335).

21 Petitioner’s interest in not being detained is “the most elemental of liberty
 22 interests[.]” *E.A. T.-B. v. Wamsley*, 795 F.Supp.3d 1316, 1321, 1324 (quoting *Hamdi v.*
 23 *Rumsfeld*, 542 U.S. 507, 529 (2004)) (granting petition and ordering immediate release
 24 with no re-detention absent “an immigration court hearing . . . held (with adequate
 25 notice) to determine whether detention is appropriate.”). *See also, e.g., Ledesma*
 26

1 *Gonzalez v. Bostock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, *8 (W.D. Wash.
2 Oct. 7, 2025) (finding detainee has liberty interest).

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

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

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

10 Given that the liberty interest here is “the most elemental,” numerous courts
11 have found that this first factor weighs heavily in a petitioner’s favor. *See Ledesma*
12 *Gonzalez*, 2025 WL 2841574, at *7 (this factor “must be accorded significant weight”).
13 Petitioner’s status as a noncitizen does not negate that interest. “While the temporary
14 detention of non-citizens may sometimes be justified by concerns about public safety or
15 flight risk, the government’s discretion to incarcerate non-citizens is always constrained
16 by the requirements of due process[.]” *E.A. T.-B.*, 795 F.Supp.3d at 1321 (quoting
17 *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

18 In fact, as an individual who was released by ICE, a petitioner has a higher
19 liberty interest than that of the normal ICE detainee. *See Guillermo M.R. v. Kaiser*,
20 No. CV25-5436-RFL, 2025 WL 1810076, at *1 (N.D. Cal. June 30, 2025) (by alleging
21 that he had previously been released by ICE and was about to be re-detained,
22 “Petitioner has asserted liberty interests that differ from the liberty interests of a
23 detained person in *Rodriguez Diaz*”) (referencing *Rodriguez Diaz*, 53 F.4th 1189)).¹

24
25 ¹ *Rodriguez Diaz* held that a person who had been detained pursuant to an
26 individualized bond hearing where he was found to be a danger or flight risk was not
categorically entitled to a second bond hearing and that, under the facts of that case, the
detainee could not succeed in an as-applied challenge to his detention.

1 Similarly, in *Carballo v. Andrews*, No. CV25-978-KES-EPG (HC), 2025 WL 2381464,
2 *4 (E.D. Cal. Aug. 15, 2025), the court indicated that an individual who has been
3 released has had—in contrast to a detainee with no period of release—“an opportunity
4 ‘to form the [] enduring attachments of normal life’” (quoting *Morrissey v. Brewer*,
5 408 U.S. 471, 482 (1972)), and thus has a heightened liberty interest, such as that which
6 led the Supreme Court in *Morrissey* to impose due process requirements on parolees
7 where the state seeks to revoke parole.

8 The second factor, risk of an erroneous deprivation of liberty, also weighs in
9 Petitioner’s favor. A detainee’s release to the community on an OREC reflected ICE’s
10 determination that petitioner was neither a flight risk nor a danger to the community.
11 See, e.g., *Ledesma Gonzalez*, 2025 WL 2841574, at *8 (when ICE released petitioner,
12 “it did so after determining—as required by regulation—that ‘such release would not
13 pose a danger to property or persons, and that the [noncitizen] is likely to appear for any
14 future proceeding.’ . . . By issuing the OREC, ICE necessarily found that [petitioner]
15 was neither a flight risk nor a danger to the community.”) (quoting 8 C.F.R.
16 § 236.1(c)(8)); *Barrenechea v. Albarran*, No. CV25-7883-VC, 2025 WL 2717279,
17 at *1 (N.D. Cal. Sept. 22, 2025) (“ICE’s release of Barrenechea on his own
18 recognizance in 2020 can only be understood as reflecting a determination that he did
19 not pose a flight risk or danger to the community”).

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

25 As stated in *E.A. T.-B.*, 795 F.Supp.3d at 1324, “although it would have required
26 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
2 outweighed by the risk of erroneous deprivation of the liberty interest at issue.”

3 The holding that a released detainee was entitled to a pre-deprivation hearing
4 comes not from *Ledesma Gonzalez* and *E.A. T.-B.* alone; dozens of other courts have
5 reached this conclusion as well. And while those two cases did not involve petitioners
6 within final removal orders, many courts have found a liberty interest in not being re-
7 detained, applied the *Mathews* factors as discussed above, and have granted immediate
8 release. In this district, *see, e.g., Huy Van Tran v. Bondi*, No. 2:25-CV-02335-DGE-
9 TLF, 2025 WL 3725677, at *5 (W.D. Wash. Dec. 24, 2025) (finding that detainee with
10 final order of removal has liberty interest and fact that detainee was allowed to remain
11 in community under order of supervision “only strengthens this interest”); *Khim v.*
12 *Bondi*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at *4 (W.D. Wash. Dec. 17,
13 2025) (applying the *Mathews* analysis from *E.A. T.-B.* to detainee with final order of
14 removal); *Jimenez v. Bondi*, No. C25-2167RSM, 2025 WL 3466925, at *2 (W.D.
15 Wash. Dec. 3, 2025) (finding that petitioner with final order of removal “has a protected
16 liberty interest in his continuing release from custody, and that due process requires that
17 Petitioner receive proper notice and an opportunity to respond before he can be re-
18 detained”; barring re-detention “without providing adequate notice of the reasons for
19 his re-detention and a meaningful opportunity to respond.” *Id.* at *3). *See also, e.g.,*
20 *Perez v. Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at *5 (M.D. Fla.
21 Dec. 3, 2025); *S-M-J v. Bostock*, No. 6:25-CV-01425-MTK, 2025 WL 3137296, at *5
22 (D. Or. Nov. 10, 2025). *Cf. Lopez Dejesus, v. Bostock*, No. 25-CV-01427-JHC-TLF,
23 2025 WL 3268002 (W.D. Wash. Nov. 24, 2025) (applying *Mathews* factors to conclude
24
25
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1 that petitioner was entitled to pre-re-detention due process, even though his detention
2 was pursuant to the mandatory detention provisions of 8 U.S.C. § 1226(c)).²

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

11 In addition, the government should be required to meet its burden based on
12 changed circumstances subsequent to the petitioner’s previous release by ICE. *See*
13 *Duong v. Kaiser*, No. CV25-7598-JST, -- F.Supp.3d --, 2025 WL 2689266, at *10
14 (N.D. Cal. Sept. 19, 2025) (holding that any re-detention first required a hearing
15 “whether a material change of circumstances justifies [petitioner’s] re-detention”).

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

19 The revocation of a noncitizen’s release is governed by 8 C.F.R. § 241.13(i),
20 which authorizes ICE to revoke a noncitizen’s release under § 1231 for purposes of
21 removal or for violation of conditions of release. The government may revoke a
22 noncitizen’s release and return them to ICE custody due to failure to comply with any
23 of the conditions of release, 8 C.F.R. § 241.13(i)(1), or if, “on account of changed
24 circumstances, the [Immigration] Service determines that there is a significant

25 ² The *Lopez Dejesus* opinion does not mention that detention was pursuant to § 1226(c);
26 that fact is shown in Respondents’ Return Memorandum, No. 25-CV-01427-JHC-TLF,
dkt. 16 at 1 (W.D. Wash. Oct. 6, 2025).

likelihood that the [noncitizen] may be removed in the reasonably foreseeable future,”
id. § 241.13(i)(2).

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

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

Id. § 241.13(i)(3).

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

the history of the [noncitizen’s] efforts to comply with the order of removal, the history of [ICE’s] efforts to remove [noncitizens] to the country in question or to third countries, including the ongoing nature of [ICE’s] efforts to remove [the noncitizen] and the [noncitizen’s] assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department of State regarding the prospects for removal of [noncitizens] to the country or countries in question.

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

X. The Law Pertaining to a Noncitizen's Substantive Due Process Right Not to Be Re-detained Without Cause

“[S]ubstantive due process prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987) (cleaned up). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80, (1992); *see also Zadvydas*, 533 U.S. at 696, (finding that a noncitizen has a liberty interest “strong enough” to challenge “indefinite and potentially permanent” immigration detention). “[I]ndividuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty.” *Doe v. Becerra*, 787 F.Supp.3d 1083, 1093 (E.D. Cal. 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 150 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)).

“A due process violation occurs when detention becomes punitive rather than regulatory, meaning there is no regulatory purpose that can rationally be assigned to the detention or the detention appears excessive in relation to its regulatory purpose.” *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); *accord Padilla v. U.S. Immigr. & Customs Enf't.*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023) (“Due process protects against immigration detention that is not reasonably related to the legitimate purpose of effectuating removal or protecting against danger and flight risk.”). The regulatory purpose of immigration detention is to hold a person that is a flight risk or a danger to the community. *In re Guerra*, 24 I.&N. Dec. 37 (B.I.A. 2006), *abrogated on other grounds*, *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021). Regulations governing parole identify only those two factors for consideration in the release decision. 8 C.F.R. § 236.1(c)(8). For people who have been ordered deported, 8 C.F.R. § 241.13(i)(2) also authorizes re-detention for purposes of removal, so long as

1 respondents can prove that “there is a significant likelihood that the [noncitizen] may be
2 removed in the reasonably foreseeable future.”

3 Thus, if a re-arrest and detention is punitive or exceeds the justifications
4 permitted by regulation, it violates the individual’s substantive right to due process.

5 **XI. The Legal Framework for Third-Country Removals**

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

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

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

25 Third, if the individual is not removed to either the country of their designation
26 or the country of which they are a subject, national, or citizen, then the government

1 shall remove them to any of the following options: (1) the country from which the
2 individual was admitted to the United States; (2) the country in which is located the
3 foreign port from which the individual left for the United States or for a foreign
4 territory contiguous to the United States; (3) the country in which the individual resided
5 before the individual entered the United States and from which the individual entered
6 the United States; (4) the country in which the individual was born; or (5) the country in
7 which the individual's birthplace is located when the individual was ordered removed.

8 8 U.S.C. § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to
9 remove the individual to any of these countries may the government remove the
10 individual to "another country whose government will accept [them] into that country."
11 8 U.S.C. § 1231(b)(2)(E)(vii).

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

20 Similarly, Congress codified protections enshrined in the Convention Against
21 Torture (CAT) prohibiting the government from removing a person to a country where
22 they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998
23 ("FARRA"), Public Law 105-277, div. G, sec. 2242, 112 Stat. 2681, 2631-822 (8
24 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite,
25 or otherwise effect the involuntary return of any person to a country in which there are
26 substantial grounds for believing the person would be in danger of being subjected to

1 torture, regardless of whether the person is physically present in the United States.”);
2 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. CAT protection is also
3 mandatory.

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

22 Due process also demands that the government “ask the noncitizen whether he or
23 she fears persecution or harm upon removal to the designated country and memorialize
24 in writing the noncitizen’s response. This requirement ensures DHS will obtain the
25 necessary information from the noncitizen to comply with § (b)(3) and avoids [a dispute
26 about what the officer and noncitizen said].” *Aden*, 409 F.Supp.3d at 1019; *cf. D.V.D.*,

1 2025 WL 1453640, at *1 (“Following notice, the individual must be given a meaningful
2 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection
3 prior to removal.”) (emphasis omitted).

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

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

18 **XII. Facts Pertaining to Punitive Banishment to Third Countries**

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

23 Respondents reportedly have negotiated with at least 58 countries to accept
24 deportees from other nations. On June 25, 2025, the *New York Times* reported that
25 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
26

1 Rwanda—had agreed to accept deportees who are not their own citizens.³ Since then,
 2 ICE has carried out highly publicized third-country deportations to South Sudan and
 3 Eswatini. It also attempted—and completed—an “end-run” around the protections of
 4 the Convention Against Torture by deporting a group of migrants to Ghana, which sent
 5 them on to their countries of citizenship despite fears of persecution.

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

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

24
 25
 26 ³ Edward Wong, et al., *Inside the Global Deal-Making Behind Trump’s Mass*
Deportations, N.Y. Times (June 25, 2025), [https://www.nytimes.com/2025/06/25/us/](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html)
[politics/trump-immigrants-deportations.html](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html) [<https://perma.cc/64G9-XYGB>].

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

13 The memo further instructs that if the noncitizen “does not affirmatively state a
14 fear of persecution or torture if removed to the country of removal listed on the Notice
15 of Removal within 24 hours, [ICE] may proceed with removal to the country identified
16 on the notice.” If the noncitizen “does affirmatively state a fear if removed to the
17 country of removal,” then ICE will refer the case to U.S. Citizenship and Immigration
18 Services (“USCIS”) for a screening for eligibility for withholding of removal and
19 protection under the Convention Against Torture. “USCIS will generally screen within
20 24 hours.” If USCIS determines that the noncitizen does not prove to the screener’s
21 satisfaction that it is more likely than not that the noncitizen will be tortured, the
22 individual will be removed. This imposes on the noncitizen a higher standard than the
23 “reasonable fear” and “credible fear” standards found in the INA. If USCIS determines
24 that the noncitizen has met the standard, then the policy directs ICE to either move to
25 reopen removal proceedings “for the sole purpose of determining eligibility for
26

1 [withholding of removal protection] and CAT” or designate another country for
2 removal.

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

7 Further support that petitioner faces a risk of punitive third-country removal
8 comes from two declarations submitted in *Nguyen*, attached here as Exhibits 4 and 5.
9 They detail removals to third countries with little or no notice, as described in *Nguyen*,
10 796 F.Supp.3d at 736–37.

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

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

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

(1893)). But the Court admonished that the government may not “declare unlawful residence within the country to be an infamous crime, punishable by deprivation of liberty and property . . . unless provision were made that the fact of guilt should first be established by a judicial trial.” *Id.* at 237.

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

XIV. The Law Governing Injunctive Relief

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

Grounds for Relief

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

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

Because Petitioner’s removal order became final on August 11, 2020, the removal period has long since expired, and detention is no longer required under 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has passed. In addition to the several failed attempts to remove Petitioner to Cuba, because Cuba clearly will not cooperate with the removal process, Respondents similarly have been unsuccessful at removing Petitioner to a third country, specifically Mexico. Accordingly, there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]” *Zadvydas*, 533 U.S. at 701.

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

5 **Ground Two: Procedural Due Process**

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

7 Petitioner has a liberty interest in not being re-detained. Applying the three-
8 factor test of *Mathews*, that interest is high. The risk of any erroneous deprivation is
9 also high, because ICE's previous release of him necessarily reflected a conclusion that
10 he was not a flight risk or a danger to the community. Here, as in *Ledesma Gonzalez*,
11 "ICE revoked that release without any reassessment of those factors." 2025 WL
12 2841574, at *8.

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

16 As to Petitioner's prayer for injunctive relief barring a new re-detention absent
17 due process, the requirements for injunctive relief are met. Petitioner's prospective
18 unlawful re-detention would constitute an irreparable injury that could not be redressed
19 by an award of damages. Second, the balance of hardships is completely in Petitioner's
20 favor: Petitioner risks unlawful re-detention, while Respondents suffer no hardship by
21 being prevented from following their unlawful re-detention practices. Finally, the
22 public interest would affirmatively be served by barring Respondents' unlawful
23 practice.

24 Furthermore, there is a significant likelihood that Respondents would seek to
25 again re-detain Petitioner unlawfully. Respondents have a policy to round up as many
26 noncitizens as possible. *See, e.g., Jose Olivares*, "Trump administration sets quota to

1 arrest 3,000 people a day in anti-immigration agenda,” The Guardian (May 29, 2025),
2 <https://www.theguardian.com/us-news/2025/may/29/trump-ice-arrest-quota>
3 [<https://perma.cc/6P5L-NUDM>].

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

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

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

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

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

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

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

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

19 (f) Respondents did not advise Petitioner of the right to request a review of
20 the detention and did not comply with the requirements for such review. His re-
21 detention was therefore contrary to Respondents’ regulations and unlawful.

22 **Ground Four: Substantive Due Process**

23 The re-arrest and detention of Petitioner was punitive to the extent that he was
24 given no reasons for being detained indefinitely. Despite being released for several
25 years on supervision, ICE immediately detained Petitioner on May 27, 2025, without
26

1 any opportunity to seek release on bond which resulted in Petitioner's prolonged and
2 indefinite detention.

3 Respondents' policy against parole in all cases supports the conclusion that
4 Petitioner's detention is punitive, as do many reported statements advocating for
5 increased arrests for their own sake. Respondents' refusal to address widespread
6 mistreatment of detained immigrants also supports that conclusion. *See Nicole*
7 *Acevedo, Hundreds of alleged human rights abuses in immigrant detention, report*
8 *finds*, NBC News (Aug. 5, 2025), [https://www.nbcnews.com/news/us-](https://www.nbcnews.com/news/us-news/immigration-detention-human-rights-abuses-report-rcna222499)
9 [news/immigration-detention-human-rights-abuses-report-rcna222499](https://www.nbcnews.com/news/immigration-detention-human-rights-abuses-report-rcna222499)
10 [<https://perma.cc/3XLR-6XHX>]; Center for Human Rights, *Conditions at the Northwest*
11 *Detention Center*, University of Washington,
12 [https://jsis.washington.edu/humanrights/projects/immigrant-rights-](https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/)
13 [observatory/conditions-at-the-northwest-detention-center/](https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/) [[https://perma.cc/QF24-](https://perma.cc/QF24-UR6C)
14 [UR6C](https://perma.cc/QF24-UR6C)] (last visited Aug. 28, 2025).

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

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

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

1 notice (6–24 hours) and opportunity to respond, in violation of the statute, regulations,
2 and Fifth Amendment.

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

10 Furthermore, the requirements for injunctive relief are met. Petitioner’s
11 prospective unlawful re-detention would constitute an irreparable injury that could not
12 be redressed by an award of damages. Second, the balance of hardships is completely in
13 Petitioner’s favor: Petitioner risks unlawful removal to a third country, while
14 Respondents suffer no hardship by being prevented from following their unlawful re-
15 detention practices. Finally, the public interest would affirmatively be served by barring
16 Respondents’ unlawful practice.

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

22 **Ground Six: Punitive Third-Country Banishment; Violation of Fifth and**
23 **Eighth Amendments**

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

25 Under the Fifth Amendment to the U.S. Constitution, no person shall “be held to
26 answer for a capital, or otherwise infamous crime, unless on a presentment or

1 indictment of a Grand Jury;” “be subject for the same offence to be twice put in
2 jeopardy of life or limb;” or “be deprived of life, liberty, or property, without due
3 process of law.”

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

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

10 Petitioner was convicted and completed any sentences for his criminal
11 conviction years ago. Petitioner’s convictions arguably made him removable from the
12 United States, but the convictions do not authorize the government to inflict, as a matter
13 of executive policy and discretion, additional punishment on Petitioner. Respondents’
14 third-country removal program is punitive in both its nature and its execution.

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

23 Respondents’ third-country removal program is more than a publicity stunt. The
24 hundreds of individuals who have already been subjected to it have been banished in
25 foreign prisons upon arrival without charge and often without communication with the
26 outside world, including their families and lawyers. Respondents may not subject

1 Petitioner to their third-country removal program which is designed to impose a severe
2 punishment on their subjects. Such conduct “shocks the conscience” under Fifth
3 Amendment substantive due process, is cruel and unusual punishment, and may not be
4 imposed without charge and a judicial trial.

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

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

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

22 Prayer for Relief

23 Petitioner respectfully requests that this Court:

- 24 (a) Assume jurisdiction over this action;
25 (b) Order Respondents to immediately release Petitioner from custody;
26

1 (c) Order Respondents to, within 24 hours of his release, provide the Court
2 with a declaration confirming that Petitioner has been released from custody;

3 (d) Order that Respondents may not re-detain Petitioner without first holding
4 a hearing before a neutral decisionmaker at which the government bears the burden of
5 establishing flight risk or danger to the community by clear and convincing evidence
6 based on changed circumstances since Petitioner was previously released;

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

9 (1) obtains a valid travel document to Cuba for him,

10 (2) provides the valid travel document to him and his counsel,

11 (3) offers Petitioner the opportunity to leave on his own within two months,
12 and

13 (4) Petitioner does not leave. Under such circumstances, the government may
14 be permitted to re-detain Petitioner provided it has already made concrete
15 arrangements for him to be put on a flight to Cuba in the reasonably
16 foreseeable future.

17 *See Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at *6 (W.D. Wash. Dec. 5,
18 2025); *Tang*, 2025 WL 3551381, at *3.

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

22 (g) Order that Respondents may not remove Petitioner to any country where
23 he is likely to face imprisonment or other punishment upon arrival; and

24 (h) Order all other relief that the Court deems just and proper.
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26

Verification Pursuant to LCR 100(e)

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

DATED this 17th day of February 2026.

Respectfully submitted,

s/ Jesse Cantor
Assistant Federal Public Defender
Attorney for Ivan Martinez-Hernandez.