

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NEBIL KEDIR GEBI,

Petitioner,

vs.

BRUCE SCOTT, Warden of Northwest
ICE Processing Center; PAMELA
BONDI, Attorney General of the United
States; KRISTI NOEM, Secretary,
United States Department of Homeland
Security; LAURA HERMOSILLO,
Acting Seattle Field Office Director,

Respondents.

No. 2:26-cv-00755

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

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Full name: Nebil Kedir Gebi (“Mr. Kedir Gebi” or “Petitioner”)
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 Petitioner's custodian, the Immigration and Customs Enforcement Field Office Director at Seattle, Washington.

(c) Case number or numbers: 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, Tacoma, Washington.

(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: Mr. Kedir Gebi was initially ordered removed on September 28, 2023. Petitioner was detained by ICE on March 6, 2023, and was released on an order of supervision on April 8, 2024. He was re-detained on January 6, 2026.

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: January 6, 2026

(b) Date of the removal or reinstatement order: September 28, 2023

(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

13. Petitioner Nebil Kedir Gebi is presently detained at the Northwest ICE Processing Center (NWIPC). Petitioner has been held in immigration custody for over six weeks, in addition to the thirteen months he was detained immediately upon entering the United States. Petitioner was held in detention for over six months after he was ordered removed on September 28, 2023, and was formerly released April 8, 2024, since the government was unable to deport him to his country of origin. Removal to Ethiopia, his country of origin, is not reasonably foreseeable. Mr. Kedir Gebi'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.

14. Petitioner Nebil Kedir Gebi was initially detained on March 6, 2023, after entering the United States in San Diego, California. He was detained at the Buffalo Federal Immigration Detention Facility in Batavia, New York for thirteen months. Mr. Kedir Gebi was released on April 8, 2024, with an Order of Supervision. Since

1 Petitioner's release, he applied for and received Temporary Protected Status. He
2 complied with all conditions of his release, including attending all scheduled check-in
3 appointments, and he maintained lawful status and employment authorization. After
4 moving to Portland, Oregon in January 2025, he has worked lawfully as a caregiver for
5 disabled individuals, a role that is sorely needed and highly valued by his employer and
6 his community. On January 6, 2026, Mr. Kedir Gebi was re-detained without any
7 determination by the government that he had become a flight risk or a danger to the
8 community.

9 **II. Jurisdiction and Venue**

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

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

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

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

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

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

5 20. Petitioner is “in custody” for the purpose of § 2241 because he has been detained
6 by Respondent ICE in Tacoma, Washington, since January 6, 2026.

7 **IV. Parties**

8 21. Nebil Kedir Gebi is a native and citizen of Ethiopia. On September 28, 2023, an
9 Immigration Judge denied his application for asylum, withholding of removal, and
10 protection under the Convention Against Torture, and issued a final order of removal.
11 Mr. Kedir Gebi is detained in the control and custody of Respondents at NWIPC. As
12 such, Mr. Kedir Gebi is a resident of Tacoma, Washington.

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

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

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

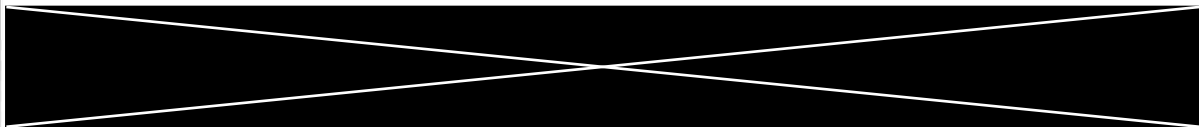
24 25. Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
25 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant
26 to a contract with ICE to detain noncitizens. Respondent Scott is sued in his official

capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-700, 2021 WL 1946222, at *3–5 (W.D. Wash. May 14, 2021).

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

V. Background

27. Petitioner Nebil Kedir Gebi is a native and citizen of Ethiopia. 



Finding it no longer safe to remain in his country of origin, he fled to the United States, where he applied for asylum, withholding of removal, and protection under the Convention Against Torture. At the conclusion of his removal proceedings, during which time Mr. Kedir Gebi remained detained, an Immigration Judge ordered him removed. This order was not appealed and thus became administratively final on September 28, 2023.

VI. Particularized Facts Pertaining to Petitioner's Continued Detention

28. Mr. Kedir Gebi cannot presently be returned to Ethiopia, because Ethiopia refused to issue him a travel document. Removal to Ethiopia is thus not reasonably foreseeable. ICE has not obtained a travel document from Ethiopia for Petitioner, nor has Ethiopia agreed to accept Petitioner. On February 2, 2026, an officer stated to Mr. Kedir Gebi that while ICE wishes to remove him to Ethiopia, there is currently no plan in place to effectuate that removal, reiterating the fact that Ethiopia will not accept Petitioner.

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.

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

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

31. The issue is not whether Respondents have been able to remove some individuals to a given country. Rather, the court must make an individualized analysis as to a particular detainee. *See Nguyen v. Scott*, 796 F.Supp.3d 703, 726 (W.D. Wash. Aug. 21, 2025) (stating increase in total number of removals to Vietnam, including those who entered pre-1995, fails to rebut the evidence presented by Petitioner that “his individual circumstances make removal unlikely.”). Facts that are part of the analysis include whether Respondents provide evidence that the request was submitted to Ethiopia, whether Ethiopia has acknowledged receipt of the request or otherwise

1 responded to Respondents' request, and the anticipated wait time for a response from
2 Ethiopia.

3 32. When a petitioner has been detained for a total of six months after a final order
4 of removal, the *Zadvydas* presumptively reasonable period has expired, even if the
5 petitioner's current period of detention is less than six months. "A petitioner's total
6 length of confinement need not be consecutive to reach the six-month presumptively
7 reasonable limit established in *Zadvydas*." *Tang v. Bondi*, No. CV25-1473-RAJ-TLF,
8 2025 WL 2637750, at *4 (W.D. Wash. Sept. 11, 2025).

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

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

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

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

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

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

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

37. In fact, as an individual who was released by ICE, a petitioner has a higher liberty interest than that of the normal ICE detainee. *See Guillermo M.R. v. Kaiser*, No. CV25-5436-RFL, 2025 WL 1810076, at *1 (N.D. Cal. June 30, 2025) (by alleging that he had previously been released by ICE and was about to be re-detained, “Petitioner has asserted liberty interests that differ from the liberty interests of a detained person in *Rodriguez Diaz*”) (referencing *Rodriguez Diaz*, 53 F.4th 1189)).¹ Similarly, in *Carballo v. Andrews*, No. CV25-978-KES-EPG (HC), 2025 WL 2381464, *4 (E.D. Cal. Aug. 15, 2025), the court indicated that an individual who has been

¹ *Rodriguez* held that a person who had been detained pursuant to an 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 released has had—in contrast to a detainee with no period of release—“an opportunity
2 ‘to form the [] enduring attachments of normal life’” (quoting *Morrissey v. Brewer*, 408
3 U.S. 471, 482 (1972)), and thus has a heightened liberty interest, such as that which led
4 the Supreme Court in *Morrissey* to impose due process requirements on parolees where
5 the state seeks to revoke parole.

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

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

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

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

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

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

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

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

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

45. 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).

46. 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 Legal Framework for Third-Country Removals

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

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

10 49. Second, if the individual is not removed to the country they designated under
11 § 1231(b)(2)(A), the government shall remove the individual to the country of which
12 the individual is a “subject, national, or citizen” unless the government of that country
13 does not inform the U.S. government or the individual within 30 days after first inquiry
14 or within another reasonable period of time whether the government will accept the
15 individual into the country or the country is not willing to accept the individual into the
16 country. 8 U.S.C. § 1231(b)(2)(D).

17 50. Third, if the individual is not removed to either the country of their designation
18 or the country of which they are a subject, national, or citizen, then the government
19 shall remove them to any of the following options: (1) the country from which the
20 individual was admitted to the United States; (2) the country in which is located the
21 foreign port from which the individual left for the United States or for a foreign
22 territory contiguous to the United States; (3) the country in which the individual resided
23 before the individual entered the United States and from which the individual entered
24 the United States; (4) the country in which the individual was born; or (5) the country in
25 which the individual’s birthplace is located when the individual was ordered removed.
26 8 U.S.C. § 1231(b)(2)(E). *Only* “[i]f impracticable, inadvisable, or impossible” to

1 remove the individual to any of these countries may the government remove the
2 individual to “another country whose government will accept [them] into that country.”
3 8 U.S.C. § 1231(b)(2)(E)(vii).

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

12 52. Similarly, Congress codified protections enshrined in the Convention Against
13 Torture (CAT) prohibiting the government from removing a person to a country where
14 they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998
15 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8
16 U.S.C. § 1231 note) (“It shall be the policy of the United States not to expel, extradite,
17 or otherwise effect the involuntary return of any person to a country in which there are
18 substantial grounds for believing the person would be in danger of being subjected to
19 torture, regardless of whether the person is physically present in the United States.”);
20 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. CAT protection is also
21 mandatory.

22 53. To comport with the requirements of due process, the government must provide
23 notice of the third-country removal and an opportunity to respond. Due process requires
24 “written notice of the country being designated” and “the statutory basis for the
25 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409
26 F.Supp.3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland*

1 *Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All
2 removals to third countries, *i.e.*, removal to a country other than the country or
3 countries designated during immigration proceedings as the country of removal on the
4 non-citizen’s order of removal, must be preceded by written notice to both the non-
5 citizen and the non-citizen’s counsel in a language the non-citizen can understand.”
6 (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process
7 requires notice to the noncitizen of the right to apply for asylum and withholding to the
8 country where they will be removed). The government must be able to show evidence
9 that the third country will accept the individual into that country. *See Himri v. Ashcroft*,
10 378 F.3d 932, 939 (9th Cir. 2004), *amended sub nom. El Himri v. Ashcroft*, No. 03-
11 71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) (“at the time the government
12 proposes a country of removal pursuant to § 1231(b)(2)(E)(vii), the government must
13 be able to show that the proposed country *will* accept the [individual]”).

14 54. Due process also demands that the government “ask the noncitizen whether he or
15 she fears persecution or harm upon removal to the designated country and memorialize
16 in writing the noncitizen’s response. This requirement ensures DHS will obtain the
17 necessary information from the noncitizen to comply with § (b)(3) and avoids [a dispute
18 about what the officer and noncitizen said].” *Aden*, 409 F.Supp.3d at 1019; *cf. D.V.D.*,
19 2025 WL 1453640, at *1 (“Following notice, the individual must be given a meaningful
20 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection
21 prior to removal.”) (emphasis omitted).

22 55. If the noncitizen claims fear, measures must be taken to ensure that the
23 noncitizen can seek asylum, withholding, and relief under CAT before an immigration
24 judge in reopened removal proceedings. *Cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring
25 the government to move to reopen the noncitizen’s immigration proceedings if the
26 individual demonstrates “reasonable fear” and to provide “a meaningful opportunity,

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

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

10 **XI. Facts Pertaining to Punitive Banishment to Third Countries**

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

15 58. Respondents reportedly have negotiated with at least 58 countries to accept
 16 deportees from other nations. On June 25, 2025, the *New York Times* reported that
 17 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
 18 Rwanda—had agreed to accept deportees who are not their own citizens.³ Since then,
 19 ICE has carried out highly publicized third-country deportations to South Sudan and
 20 Eswatini. It also attempted—and completed—an “end-run” around the protections of
 21 the Convention Against Torture by deporting a group of migrants to Ghana, which sent
 22 them on to their countries of citizenship despite fears of persecution.

23 59. Punishment and deterrence appear to be the point of the Administration’s third-
 24 country removal scheme. The Administration has reportedly negotiated with countries

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

1 to have deportees imprisoned in prisons, camps, or other facilities. The government
2 paid El Salvador about \$5 million to arbitrarily and indefinitely imprison more than 200
3 deported Venezuelans in a maximum-security prison notorious for gross human rights
4 abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of
5 deportees from countries in Africa and Central Asia and imprisoned them in hotels, a
6 jungle camp, and a detention center. On July 4, 2025, ICE deported eight men to South
7 Sudan. The men have been detained incommunicado ever since. On July 15, 2025, ICE
8 deported five men to the tiny African nation of Eswatini, where they are reportedly
9 being held in solitary confinement.

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

16 61. On July 9, 2025, ICE issued a new memo stating that, when seeking to remove
17 an individual to a country not designated on the removal order, ICE may deport that
18 person without any procedures for notice or an opportunity to be heard if the State
19 Department confirms it has received diplomatic assurances that individuals will not be
20 persecuted or tortured. If no diplomatic assurances are received, the ICE memo
21 instructs officers to serve on the individual a Notice of Removal that includes the
22 intended country of removal. It instructs officers not to ask whether the individual is
23 afraid of removal to that country. It states that officers should “generally wait at least 24
24 hours following service of the Notice of Removal before effectuating removal” but that
25 “[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours
26

1 after service of the Notice of Removal as long as the [noncitizen] is provided
2 reasonable means and opportunity to speak with an attorney prior to removal.”

3 62. The memo further instructs that if the noncitizen “does not affirmatively state a
4 fear of persecution or torture if removed to the country of removal listed on the Notice
5 of Removal within 24 hours, [ICE] may proceed with removal to the country identified
6 on the notice.” If the noncitizen “does affirmatively state a fear if removed to the
7 country of removal,” then ICE will refer the case to U.S. Citizenship and Immigration
8 Services (“USCIS”) for a screening for eligibility for withholding of removal and
9 protection under the Convention Against Torture. “USCIS will generally screen within
10 24 hours.” If USCIS determines that the noncitizen does not prove to the screener’s
11 satisfaction that it is more likely than not that the noncitizen will be tortured, the
12 individual will be removed. This imposes on the noncitizen a higher standard than the
13 “reasonable fear” and “credible fear” standards found in the INA. If USCIS determines
14 that the noncitizen has met the standard, then the policy directs ICE to either move to
15 reopen removal proceedings “for the sole purpose of determining eligibility for
16 [withholding of removal protection] and CAT” or designate another country for
17 removal.

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

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

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

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

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

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

XIII. The Law Governing Injunctive Relief

67. “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.

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

69. Because Mr. Kedir Gebi's removal order became final on September 28, 2023, 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. Mr. Kedir Gebi's initial release on April 8, 2024 occurred shortly after the conclusion of that six-month period.

70. There is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. Mr. Kedir Gebi's native Ethiopia refused to cooperate with his attempted removal and declined to issue him a travel document. In the time since this initial determination, there has been no change in circumstances or indication that Ethiopia is now willing to issue a travel document and accept Mr. Kedir Gebi's repatriation. He does not have access to an Ethiopian passport or any other document that would permit him to be returned.

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

Ground Two: Procedural Due Process

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

73. Mr. Kedir Gebi has a liberty interest in not being re-detained. Applying the three-factor test of *Mathews*, that interest is high. The risk of any erroneous deprivation is also high, because ICE's previous release of him necessarily reflected a conclusion

that he was not a flight risk or a danger to the community. Here, as in *Ledesma Gonzalez*, “ICE revoked that release without any reassessment of those factors.” 2025 WL 2841574, at *8.

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

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

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

Ground Three: Failure to Comply with Regulations

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

78. Respondents have not complied with their obligations under 8 C.F.R. § 241.13 and therefore Mr. Kedir Gebi is entitled to release. On information and belief,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 85. Under the Fifth Amendment to the U.S. Constitution, no person shall “be held to
 24 answer for a capital, or otherwise infamous crime, unless on a presentment or
 25 indictment of a Grand Jury;” “be subject for the same offence to be twice put in
 26

1 jeopardy of life or limb;” or “be deprived of life, liberty, or property, without due
2 process of law.”

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

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

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

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

24 90. Respondents may not seek to remove Petitioner to a third country under their
25 punitive banishment policy and practices. *See Nguyen*, 796 F.Supp.3d 703, 739
26

(granting preliminary injunction against “removing Petitioner to any country where he is likely to face imprisonment upon arrival”).

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

92. Furthermore, the matter is ripe. The facts set forth above—including Respondents’ stated policy regarding third country removals—make it reasonably likely that Respondents would seek to remove Mr. Kedir Gebi to a third country with a punitive intent and punitive result.

Prayer for Relief

93. Petitioner respectfully requests that this Court:

- (a) Assume jurisdiction over this action;
- (b) Order Respondents to immediately release Mr. Kedir Gebi from custody;
- (c) Order that Respondents may not re-detain Mr. Kedir Gebi without first holding a hearing before a neutral decisionmaker at which the government bears the burden of establishing flight risk or danger to the community by clear and convincing evidence based on changed circumstances since Petitioner was previously released;
- (d) Order that the government may not otherwise re-detain Mr. Kedir Gebi unless the government:
 - (1) obtains a valid travel document to Ethiopia for him,

- 1 (2) provides the valid travel document to him and his counsel,
2 (3) offers Petitioner the opportunity to leave on his own within two months,
3 and
4 (4) Petitioner does not leave. Under such circumstances, the government may
5 be permitted to re-detain Petitioner provided it has already made concrete
6 arrangements for him to be put on a flight to Ethiopia in the reasonably
7 foreseeable future.

8 *See Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at *6 (W.D. Wash. Dec. 5,
9 2025); *Tang*, 2025 WL 3551381, at *3.

10 (f) Order that Respondents may not remove or seek to remove Mr. Kedir
11 Gebi to a third country without notice and meaningful opportunity to respond in
12 compliance with the statute and due process in reopened removal proceedings;

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

15 (h) Order all other relief that the Court deems just and proper, including
16 attorney fees.

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

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

25
26 DATED this 5th day of March, 2026.

1 Respectfully submitted,
2
3

4 s/ Meredith Hoffman

5 Meredith Hoffman

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