

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VIKTOR MOSKALENKO,

Petitioner,

v.

PAMELA BONDI, Attorney General of the
United States; MARKWAYNE MULLIN,
Acting 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 UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT,

Respondents.

Case No.

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

INTRODUCTION

Petitioner Viktor Leonidovich Moskalkenko ("Mr. Moskalkenko") and his family fled the Soviet Union because of  and legally immigrated to the United States as refugees in 1992. Mr. Moskalkenko was a teenager when his family immigrated to the United States. Mr. Moskalkenko was born in the Soviet Union in 1978. The Soviet Union ceased to exist on December 26, 1991. The place where he was born and lived prior to immigrating to the United

1 States is now in Estonia. Mr. Moskalenko is not a citizen of Estonia or any other country formerly
2 in the Soviet Union.

3 In 1999, when he was around 21 years old, an immigration judge issued a final removal
4 order for Mr. Moskalenko. However, Estonia refused accept him. An ICE officer informed
5 Mr. Moskalenko that Russia also refused to accept him. There is no “no significant likelihood of
6 removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

7 Mr. Moskalenko has been detained for far more than six months since the final order of
8 removal in 1999. Mr. Moskalenko was detained by ICE for approximately three months in 1999,
9 approximately two months in the 2010s, and approximately 20 days in 2017. Most recently, he has
10 been detained at the Northwest Immigration Processing Center (“NWIPC”) in Tacoma,
11 Washington since October 27, 2025. His continued detention is unconstitutional and he should be
12 released.

13 Further, given Respondents’ policies and practices of re-detention without due process,
14 third country removal without due process and in violation of the Immigration and Nationality Act
15 (“INA”), 8 U.S.C. § 1101, *et seq.*, and regulations, and the use of third country removal as
16 banishment, Mr. Moskalenko seeks injunctions to protect him from future violations of his
17 constitutional rights and of the INA and its regulations.

18 **RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242**

19 **Personal Information**

- 20 1. (a) Full name: Viktor Leonidovich Moskalenko
21 (b) Other names used: None
22 2. Place of confinement:
23 (a) Northwest Immigration Processing Center (“NWIPC”)
24 (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a
25 contractual arrangement with Mr. Moskalenko’s custodian, the Immigration and Customs
26 Enforcement Field Office Director at Seattle, Washington.

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

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

5 4. Mr. Moskalenko is currently being held on an immigration charge.

6 **Decision or Action You Are Challenging**

7 5. What are you challenging in this petition: Immigration detention.

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

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

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

13 (c) Decision or action you are challenging: Mr. Moskalenko was initially
14 ordered removed on July 14, 1999. Mr. Moskalenko was detained by Immigration and Customs
15 Enforcement ("ICE") in 1999 for approximately three months. He was released on an order of
16 supervision. He was re-detained for approximately two months and released on an order of
17 supervision. Mr. Moskalenko does not remember the date of this detention. He was re-detained
18 again in or around November 2017 and detained for approximately 20 days. He was again released
19 on an order of supervision on December 13, 2017. He was re-detained for a third time on October
20 27, 2025 and remains in ICE custody as of the date of this petition. Mr. Moskalenko has been in
21 ICE custody for more than six months following the final removal order in 1999.

22 **Your Earlier Challenges of the Decision or Action**

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

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

25 11. Appeals of immigration proceedings:

26 Does this case concern immigration proceedings? Yes

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

(b) Date of the removal or reinstatement order: July 14, 1999

(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

Mr. Moskalenko is presently detained at the NWIPC. Mr. Moskalenko has been held in immigration custody for at least 6 months since his order of final removal on July 14, 1999. Mr. Moskalenko was born in the Soviet Union. After the Soviet Union dissolved in 1991, the area where Mr. Moskalenko was born became Estonia. However, Estonia has repeatedly refused to accept Mr. Moskalenko and in December 2025 reiterated that he is not an Estonian citizen. Mr. Moskalenko is not a citizen of any country. Russia has also refused to accept Mr. Moskalenko. Thus, removal is not reasonably foreseeable. Mr. Moskalenko's continued detention is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

Mr. Moskalenko 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.

II. Jurisdiction and Venue

This case arises under the Constitution of the United States and the INA.

This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.* (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as Respondent), and

1 28 U.S.C. § 1651 (All Writs Act). Respondents have waived sovereign immunity for purposes of
2 this suit. 5 U.S.C. §§ 702, 706.

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

6 Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because Respondents are
7 agencies or officers of agencies of the United States; Respondents Julio Hernandez and Bruce
8 Scott reside in this district; and Petitioner is detained in this district. Venue is further proper under
9 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to
10 Petitioner's claims occurred in this district.

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

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

15 Petitioner is "in custody" for the purpose of 28 U.S.C. § 2241 because he has been detained
16 by Respondent ICE in Tacoma, Washington, since October 27, 2025.

17 **IV. Parties**

18 Viktor Moskalenko was born in the Soviet Union in an area that is now Estonia. He is not
19 a citizen of Estonia, or any other country. He has a final order of removal dated July 14, 1999. Mr.
20 Moskalenko is detained in the control and custody of Respondents at NWIPC. As such, Petitioner
21 is a resident of Tacoma, Washington.

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

25 Respondent Markwayne Mullin is the Interim Secretary of the Department of Homeland
26 Security ("DHS"). In this capacity, Respondent Mullin is the legal custodian of Petitioner.
27 Respondent Mullin is sued in his official capacity.

Respondent Hernandez is the Field Office Director for ICE Enforcement and Removal Operations (“ERO”) in Seattle, Washington. As the ERO Seattle Field Office Director, he is Petitioner’s immediate custodian, responsible for his detention at NWIPC, and is the person with the authority to authorize detention or release. Respondent Hernandez is sued in his official capacity.

Respondent Scott is the Warden of the NWIPC, oversees the day-to-day functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant 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).

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

Mr. Moskalenko was born in the former Soviet Union in 1978. The area of the Soviet Union where he was born is now Estonia. Mr. Moskalenko and his family were persecuted for [REDACTED] and in 1992, when he was 13 years old, he immigrated to the United States with his entire family as [REDACTED]. Mr. Moskalenko’s parents and his six siblings all live in the United States as citizens and legal permanent residents. He has two daughters and one grandchild, all of whom are United States citizens. Mr. Moskalenko does not have family or connections in any other country. Mr. Moskalenko is not a citizen of Estonia, nor are his parents.

On July 14, 1999, an immigration judge issued a final order of removal for Mr. Moskalenko after a criminal conviction. On information and belief, the immigration judge ordered Mr. Moskalenko removed to Estonia, but Estonia would not accept him because he is not an Estonian citizen. On information and belief, Mr. Moskalenko was detained by ICE for approximately three months in 1999 following the final order of removal and was released on an order of supervision when ICE was unable to deport him. Mr. Moskalenko has been re-detained

1 three times since 1999. He was re-detained once in the mid 2010s for approximately two months,
2 but is unsure of the exact date of his detention. On information and belief, he was released on an
3 order of supervision. He was re-detained again in 2017 and held for approximately 20 days. He
4 was again released on an order of supervision on December 13, 2017.

5 In April 2025 Mr. Moskalenko pled guilty to driving without a license. He served a prison
6 sentence at the Columbia River Correctional Institution in Portland, Oregon. Immediately upon
7 his release, ICE detained Mr. Moskalenko on October 27, 2025. He has been detained at NWIPC
8 ever since.

9 In December 2025 Mr. Moskalenko reached out to the Estonian Embassy asking for travel
10 documents, attached as Exhibit A. The Embassy sent a letter, attached as Exhibit B, declining to
11 issue any documentation to Mr. Moskalenko. Mr. Moskalenko consented to removal to Russia. An
12 ICE officer told Mr. Moskalenko that Russia declined to accept him. Mr. Moskalenko immigrated
13 to the United States when he was a minor and has no connections in any former Soviet country, or
14 any country other than the United States. His entire family lives in the United States.

15 Mr. Moskalenko has multiple criminal convictions on his record. He recognizes that he has
16 made serious mistakes in his life and has  Mr. Moskalenko's
17 criminal history is related to his struggle with alcoholism. He is committed to changing his life.

18 As part of his commitment to his recovery, he advocated for a place in the Bridges to
19 Change treatment center in Portland, Oregon. He is motivated to start treatment if he is released
20 and is in contact with Bridges to Change to ensure that a bed is available immediately upon his
21 release. He also plans to engage with his church and with his AA sponsor if he is released. Family
22 is very important to Mr. Moskalenko and his family is supportive of him. Two of his brothers live
23 in the Portland area and will support him upon release.

24 **VI. Particularized Facts Pertaining to Petitioner's Continued Detention**

25 Mr. Moskalenko was born in a country that no longer exists: the Soviet Union. He is not a
26 citizen of any country. Estonia has declined to accept him, stating that he is not eligible for Estonia
27

1 citizenship, even though he was born in the region when it was part of the Soviet Union, because
2 his parents are not Estonian citizens. Russia has also declined to accept him.

3 After the Soviet Union dissolved on December 26, 1991, each of the fifteen newly separate
4 countries adopted their own citizenship requirements. *See* Kelly Ann Whelan, U.S. Committee for
5 Refugees and Immigrants, *When You Cease to Exist: The State of Statelessness in the Former*
6 *Soviet Union* (August 2, 2020) [https://refugees.org/wp-](https://refugees.org/wp-content/uploads/2020/12/8_3_20_Brief_StatelessSoviet-1.pdf)
7 [content/uploads/2020/12/8_3_20_Brief_StatelessSoviet-1.pdf](https://refugees.org/wp-content/uploads/2020/12/8_3_20_Brief_StatelessSoviet-1.pdf). Each country's citizenship laws
8 are different and the inconsistent across the region. *Id.* at 2. Many people fell through the cracks
9 during the dissolution and were left stateless. *Id.* Mr. Moskalenko is one of those people.

10 Despite being born in Estonia when it was a part of the Soviet Union, Mr. Moskalenko
11 does not have a passport from any country, and Estonia has refused to recognize him as a citizen
12 or issue travel documents for him. Mr. Moskalenko is considered "stateless" under both the United
13 States definition and the international definition of statelessness. *Statelessness*, U.S. Department
14 of State, <https://2017-2021.state.gov/other-policy-issues/statelessness/> ("A stateless person is
15 someone who, under national laws, does not enjoy citizenship – the legal bond between a
16 government and an individual – in any country."); *About statelessness*, UNHCR, The UN Refugee
17 Agency, [https://www.unhcr.org/us/what-we-do/protect-human-rights/ending-statelessness/about-](https://www.unhcr.org/us/what-we-do/protect-human-rights/ending-statelessness/about-statelessness)
18 [statelessness](https://www.unhcr.org/us/what-we-do/protect-human-rights/ending-statelessness/about-statelessness) ("The international legal definition of a stateless person is 'a person who is not
19 considered as a national by any State under the operation of its law.'").

20 In its December 2025 letter, the Estonian Embassy indicated that there is no path for
21 Mr. Moskalenko to become a citizen because his parents are not Estonia citizens. Removal to
22 Estonia is thus not reasonably foreseeable. ICE has not obtained a travel document from Estonia
23 for Mr. Moskalenko and Estonia declined to accept Mr. Moskalenko. Indeed, Estonia has
24 consistently declined to accept Mr. Moskalenko since 1999 despite multiple requests over the
25 years.

26 Upon ICE's request, Mr. Moskalenko consented to removal to Russia. However,
27 Mr. Moskalenko is not a Russian citizen and does not have a Russian passport. An ICE agent told

1 Mr. Moskalenko that Russia declined to accept him. Further, to the extent ICE argues that it is still
2 working with Russia to obtain travel documents for Mr. Moskalenko, any such claim is
3 undermined by the fact that ICE currently lists Russia as a “Recalcitrant” and “uncooperative”
4 country for the purpose of immigration removals. *See* Congressional Research Service,
5 *Immigration: “Recalcitrant” Countries and the Use of Visa Sanctions to Encourage Cooperation*
6 *with Alien Removal* (July 10, 2020)
7 https://www.congress.gov/crs_external_products/IF/PDF/IF11025/IF11025.7.pdf. In addition, the
8 United States has issued a travel advisory warning against travel to Russia for any reason due to
9 terrorism, unrest, wrongful detention, and other threats. *See Travel Advisory – Russian Federation*,
10 U.S. Department of State: Travel.State.Gov, [https://travel.state.gov/en/international-travel/travel-](https://travel.state.gov/en/international-travel/travel-advisories/russia.html)
11 [advisories/russia.html](https://travel.state.gov/en/international-travel/travel-advisories/russia.html).

12 **VII. Detention is Unconstitutional When There is Not a Significant Likelihood of**
13 **Removal in the Reasonably Foreseeable Future.**

14 Under 8 U.S.C. § 1231, after a final order of removal, ICE must remove a noncitizen within
15 90-days, the so called 90-day “removal period,” and in certain situations detention of noncitizens
16 who have been ordered removed is mandatory during this “removal period.” 8 U.S.C.
17 § 1231(a)(1)(B)(i). This period begins on the “date the order of removal becomes administratively
18 final.” *Id.* ICE may continue to detain certain noncitizens after the 90-day removal period ends. *Id.*
19 § 1231(a)(6).

20 However, ICE cannot detain noncitizens indefinitely. *Zadvydas*, 533 U.S. at 682. In
21 *Zadvydas*, the Supreme Court held that the indefinite detention of noncitizens poses a “serious
22 constitutional threat” under the Fifth Amendment’s Due Process Clause. *Id.* at 699. The Court
23 therefore interpreted 8 U.S.C. § 1231(a)(6) to permit only detention related to the statute’s “basic
24 purpose [of] effectuating [a noncitizen]’s removal.” *Id.* at 696–99.

25 The presumptive period during which detention is reasonably necessary to effectuate a
26 noncitizen’s removal is six months. *Id.* at 701. After that, the noncitizen is eligible for conditional
27 release if there is “no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

1 When a petitioner has been detained for a total of six months after a final order of removal, the
2 *Zadvydas* presumptively reasonable period has expired, even if the petitioner's current period of
3 detention is less than six months.¹ "A petitioner's total length of confinement need not be
4 consecutive to reach the six-month presumptively reasonable limit established in *Zadvydas*." *Tang*
5 *v. Bondi*, No. CV25-1473-RAJ-TLF, 2025 WL 2637750, at *4 (W.D. Wash. Sept. 11, 2025).

6 Once a noncitizen in custody "provides good reason to believe that there is no significant
7 likelihood of removal in the reasonably foreseeable future, the Government must respond with
8 evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. If the Government does not
9 meet its burden, the noncitizen must be released from detention. *Jennings v. Rodriguez*, 583 U.S.
10 281, 299 (2018). The issue is not whether Respondents have been able to remove some individuals
11 to a given country. Rather, the court must make an individualized analysis as to a particular
12 detainee. *See Nguyen v. Scott*, 796 F.Supp.3d 703, 726 (W.D. Wash. Aug. 21, 2025) (stating
13 increase in total number of removals to Vietnam, including those who entered pre-1995, fails to
14 rebut the evidence presented by Petitioner that "his individual circumstances make removal
15 unlikely"). Facts that are part of the analysis include whether Respondent provides evidence that
16 the request was submitted to Estonia and Russia, whether Estonia and Russia have acknowledged
17 receipt of the request or otherwise responded to Petitioner's request, and the anticipated wait time
18 for a response from Estonia and Russia.

19
20
21 ¹ The six-month presumptively reasonable period runs unabated after the final removal order is
22 entered, regardless of whether the noncitizen was detained during that time. *See Tran v. Bondi*,
23 No. C25-01897-JLR, 2025 WL 3140462, at *3 (W.D. Wash. Nov. 10, 2025) (holding that
24 petitioner's "*Zadvydas* grace period ended six months following the entry of the order of his
25 removal" even though the petitioner was not detained until two years after the entry of the order
26 of removal, and petitioner had been physically detained for five months (*Tran*, No. C25-01897-
27 JLR, Dkt. 13, Resp't Return Mem. and Mot. to Dismiss at 1, 7 (Oct. 27, 2025))). *See also, e.g.,*
Tadros v. Noem, No. 25-4108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (finding that
"six-month detention period under *Zadvydas*" period began upon affirmance of removal order,
rejecting argument that petitioner could not obtain habeas relief because he had not yet been in
detention for six months).

1 Criminal history is not a factor that the Court considers in habeas petitions arising under
2 *Zadvydas*. The two petitioners in *Zadvydas* both had significant criminal history. 533 U.S. at 684–
3 85. Mr. Zadvydas himself had “a long criminal record, involving drug crimes, attempted robbery,
4 attempted burglary, and theft,” as well as “a history of flight, from both criminal and deportation
5 proceedings.” *Id.* at 684. The other petitioner, Kim Ho Ma, was “involved in a gang-related
6 shooting [and] convicted of manslaughter.” *Id.* at 685. The government argued that both men could
7 be detained regardless of their likelihood of removal, because they posed too great a risk of danger
8 or flight. *Id.* at 690–91. The Supreme Court rejected that argument. The Court appreciated the
9 seriousness of the government’s concerns. *Id.* at 691. But the Court found that the immigrant’s
10 liberty interests were weightier. *Id.* The Court had never countenanced “potentially permanent”
11 “civil confinement,” based only on the government’s belief that the person would misbehave in
12 the future. *Id.*

13 Mr. Moskalenko has been detained for more than six months cumulatively since the final
14 order of removal on July 14, 1999. Estonia has consistently declined to issue travel documents for
15 Mr. Moskalenko or accept him. In December 2025, Mr. Moskalenko reached out to the Estonian
16 Embassy and the Embassy once again declined to issue travel documents to him. *See* Exhibits A
17 & B. Thus, Mr. Moskalenko will not be removed to Estonia in the reasonably foreseeable future.
18 Further, an ICE agent told Mr. Moskalenko that Russia has also declined to accept him. Even if
19 ICE has not heard back from Russia, ICE designates Russia as a recalcitrant and uncooperative
20 country for the purpose of immigration removal. Thus, it is unlikely that Mr. Moskalenko will be
21 removed to Russia in the reasonably foreseeable future. ICE has not designated any other country
22 to which it proposed to remove Mr. Moskalenko at this time, and any theoretical third country
23 removal is not likely in the reasonably foreseeable future. Thus, Mr. Moskalenko’s continued
24 detention is unconstitutional.

VIII. Noncitizens Have a Procedural Due Process Right Not to be Re-Detained Absent a Hearing Establishing that the Individual is Either a Flight Risk or a Danger to the Community and Must Receive Notice of Such Re-Detention

Mr. Moskalenko seeks an injunction against future re-detention without pre-deprivation notice and a hearing. Mr. Moskalenko therefore includes the following discussion, even though he does not allege that his current detention was a result of an illegal re-detention, because it is a necessary prerequisite to seeking that injunction.

Procedural due process requires notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural due process rights, a petitioner must establish (1) a protected property or liberty interest, and (2) a denial of adequate procedural protections. *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest, including the function involved and the fiscal and administrative burdens that the 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).

Mr. Moskalenko’s interest in not being detained is “the most elemental of liberty interests.” *Acosta-Ginori v. Bondi*, No. 2:25-CV-02649-RAJ, 2026 WL 221509, at *4 (W.D. Wash. Jan. 28, 2026) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)) (granting petition and, 2026 WL 221509, at *7, ordering immediate release with no re-detention “unless and until providing at least 10 days’ notice and an opportunity to be heard before an immigration judge to determine whether re-detention is appropriate”).

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.

Id. (quoting *Mathews*, 424 U.S. at 335).

1 First, the private interest here—to be free from physical detention—is “the most elemental
2 of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Thus, the first *Mathews* factor
3 weighs heavily in Mr. Moskalenko’s favor, and his status as a noncitizen does not negate that
4 interest. “While the temporary detention of non-citizens may sometimes be justified by concerns
5 about public safety or flight risk, the Government’s discretion to incarcerate non-citizens is always
6 constrained by the requirements of due process.” *Tzafir v. Bondi*, No. 25-CV-02126-JHC, 2026
7 WL 81759, at *4 (W.D. Wash. Jan. 12, 2026) (quoting *Hernandez v. Sessions*, 872 F.3d 976, 981
8 (9th Cir. 2017)). In fact, as an individual who was previously released by ICE, a petitioner has a
9 higher liberty interest than that of the normal ICE detainee. *See Lecky v. Bondi*, No. 2:25-cv-02637-
10 TLF, 2026 WL 266066, at *7 (W.D. Wash. Feb. 2, 2026) (“A released individual had an
11 opportunity to form the enduring attachments of normal life and thus has a heightened liberty
12 interest.”) (cleaned up); *see also Huy Van Tran v. Bondi*, No. 2:25-CV-02335-DGE-TLF, 2025
13 WL 3725677, at *5 (W.D. Wash. Dec. 24, 2025) (holding that detainee with final order of removal
14 has liberty interest and that prior community release under an order of supervision strengthens that
15 interest).

16 Second, Mr. Moskalenko faces an extreme risk of erroneous deprivation of liberty. A
17 detainee’s prior release to the community on an order of supervision “reflected ICE’s
18 determination that [he] was neither a flight risk nor a danger to the community.” *Francisco Lorenzo*
19 *v. Bondi*, No. 2:25-CV-02660-LK, 2026 WL 237501, at *5 (W.D. Wash. Jan. 29, 2026) (alteration
20 in original). “Petitioner’s re-detention without any change in circumstances or procedure
21 establishes a high risk of erroneous deprivation of his protected liberty interest.” *Todd v. Bondi*,
22 No. 25-CV-02519-JHC, 2026 WL 145725, at *4 (W.D. Wash. Jan. 20, 2026). Requiring pre-
23 deprivation notice and a hearing would better ensure that his liberty interests are protected.

24 Third, the final factor, the government’s interest in detaining a petitioner without providing
25 a pre-deprivation hearing, also weighs in the Mr. Moskalenko’s favor. “[T]he Government’s
26 interest in re-detaining non-citizens previously released without a hearing is low.” *Lecky*, 2026
27 WL 266066, at *8 (citation omitted). “While a pre-detention process would impose some

1 administrative burden, that burden is minimal when weighed against the fundamental liberty
2 interest at stake and the high risk of erroneous deprivation. Providing effectively no pre-
3 deprivation process, as ICE did here, is constitutionally insufficient.” *Id.*; *see also Jimenez v.*
4 *Bondi*, No. 25-cv-2167-RSM, 2025 WL 3466925, at *2–3 (W.D. Wash. Dec. 3, 2025) (holding
5 that petitioner with final order of removal has a protected liberty interest in continuing release from
6 custody and that due process requires proper notice and an opportunity to respond before re-
7 detention); *see* 8 C.F.R. § 241.13(i).

8 Such revocation of release, even if justified by one of the reasons recognized by regulation,
9 requires notice and an opportunity for the noncitizen to be heard. Upon determination by the
10 government (namely ICE) to re-detain a person previously released following a removal order, the
11 noncitizen must be notified of the reasons for revocation of release. ICE must conduct an initial
12 informal interview promptly after the noncitizen’s return to custody, and the review must include
13 an evaluation of contested facts and a determination whether those facts warrant revocation and
14 continued denial of release. *Id.* § 241.13(i)(3).

15 ICE’s decision to re-detain also cannot be arbitrary, but instead is governed by the factors
16 laid out in 8 C.F.R. § 241.13(f). While courts do not make these determinations in the first instance,
17 they may review them for compliance with the regulation. *See Tran v. Bondi*, No. 25-cv-01897-
18 JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025).

19 In any hearing held by the government to justify re-detention, the government bears the
20 burden of establishing by clear and convincing evidence that the petitioner poses “a risk of flight
21 or danger.” *Ahmed v. Bondi*, No. 25-cv-2718-JLR, 2026 WL 252078, at *5 (W.D. Wash. Jan. 30,
22 2026). In addition, the government should be required to meet its burden based on changed
23 circumstances subsequent to the petitioner’s previous release by ICE. *See, e.g., Hamedani v.*
24 *Bondi*, No. 2:25-CV-02509-JNW, 2026 WL 452424, at *5 (W.D. Wash. Feb. 18, 2026) (“To the
25 extent the Government seeks to revoke Hamedani’s release and re-detain him, any such decision
26 must be supported by changed circumstances demonstrating a significant likelihood that he may
27 be removed in the reasonably foreseeable future.”); *Kara v. Bondi*, No. 2:26-cv-00105-JHC, 2026

1 WL 322772, at *4 (W.D. Wash. Feb. 6, 2026) (requiring “that the government not re-detain
2 Petitioner without notice and a hearing and absent changed circumstances”).

3 If Mr. Moskalenko is ordered released, this Court should simultaneously enter a
4 preliminary injunction requiring ICE to afford Mr. Moskalenko notice and a hearing prior to any
5 re-detention.

6 **IX. ICE and the Administration are Carrying Out Third-Country Removals That Fail**
7 **to Follow the Proper Procedure and Amount to Unconstitutional Banishment.**

8 **A. The Legal Framework for Third-Country Removals**

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

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

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

25 Third, if the individual is not removed to either the country of their designation or the
26 country of which they are a subject, national, or citizen, then the government shall remove them
27 to any of the following options: (1) the country from which the individual was admitted to the

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

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

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

25 To comport with the requirements of due process, the government must provide notice of
26 the third-country removal and an opportunity to respond. Due process requires "written notice of
27 the country being designated" and "the statutory basis for the designation, i.e., the applicable

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

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

21 If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek
22 asylum, withholding, and relief under CAT before an immigration judge in reopened removal
23 proceedings. *Cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen
24 the noncitizen’s immigration proceedings if the individual demonstrates “reasonable fear” and to
25 provide “a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek
26 reopening of their immigration proceedings” if the noncitizen is found to not have demonstrated
27

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

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

7 **B. The Law Governing Punitive Removal Practices**

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

14 Importantly, the Court distinguished deportation, which the Court reasoned is “not a
15 ‘banishment,’ in the sense in which that word is often applied to the expulsion of a citizen from
16 his country by way of punishment,” from government actions aimed at punishment, such as
17 imprisonment at hard labor in addition to deportation. *Id.* at 236. The Court explained that
18 deportation “is but a method of enforcing the return to his own country of [a noncitizen] who has
19 not complied with the conditions upon the performance of which the government of the nation,
20 acting within its constitutional authority and through the proper departments, has determined that
21 his continuing to reside here shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S.
22 730 (1893)). But the Court admonished that the government may not “declare unlawful residence
23 within the country to be an infamous crime, punishable by deprivation of liberty and property . . .
24 unless provision were made that the fact of guilt should first be established by a judicial trial.” *Id.*
25 at 237.

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

C. Facts Pertaining to Third Countries Removals

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

Respondents reportedly have negotiated with at least 58 countries to accept deportees from other nations. On June 25, 2025, the *New York Times* reported that seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are not their own citizens.² Since then, ICE has carried out highly publicized third-country deportations to South Sudan and Eswatini.³ It also attempted—and completed—an “end-run” around the protections of the Convention Against Torture by deporting a group of migrants to Ghana, which sent them on to their countries of citizenship despite fears of persecution.⁴

Punishment and deterrence appear to be the point of the Administration’s third-country removal scheme. The Administration has reportedly negotiated with countries to have deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about \$5 million to arbitrarily and indefinitely imprison around 200 deported Venezuelans in a maximum-

² 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/politics/trump-immigrants-deportations.html> [<https://perma.cc/64G9-XYGB>].

³ *Eswatini says it received more ‘third country’ deportees as part of deal with Trump administration*, The Guardian (March 12, 2026), <https://www.theguardian.com/us-news/2026/mar/12/trump-immigration-deportations-eswatini>; *South Sudan took 8 migrants from the US. It wants something in return.*, Politico (July 30, 2025) <https://www.politico.com/news/2025/07/30/south-sudan-might-take-more-us-migrant-deportees-it-has-a-few-asks-00482793>.

⁴ Robbie Corey-Boulet and Emmanuel Bruce, *Ghana took in Trump’s deported West Africans. Then it forced them home*, Reuters (January 16, 2026), <https://www.reuters.com/world/africa/ghana-took-trumps-deported-west-africans-then-it-forced-them-home-2026-01-16/>.

1 security prison notorious for gross human rights abuses, known as CECOT.⁵ In February 2025,
 2 Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia
 3 and imprisoned them in hotels, a jungle camp, and a detention center.⁶ On July 4, 2025, ICE
 4 deported eight men to South Sudan.⁷ On July 15, 2025, ICE deported five men to Eswatini, where
 5 they are reportedly being held in solitary confinement.⁸

6 The Administration has hand-selected countries known for human rights abuses and
 7 instability for these third-country deportation agreements to frighten people in the United States
 8 into self-deporting or to accept removal to their home countries. Indeed, conditions in South Sudan
 9 are so extreme that the U.S. State Department website warns Americans not to travel there, and, if
 10 they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator
 11 first.⁹

12 On July 9, 2025, ICE issued a new memo stating that, when seeking to remove an
 13 individual to a country not designated on the removal order, ICE may deport that person without
 14 any procedures for notice or an opportunity to be heard if the State Department confirms it has
 15 received diplomatic assurances that individuals will not be persecuted or tortured.¹⁰ If no
 16

17 ⁵ Rebecca Beitsch, *Litigation reveals details of Trump deal with El Salvador to imprison migrants*,
 18 *The Hill* (September 9, 2025), <https://thehill.com/homenews/administration/5493750-cecot-legal-counsel-ban/>.

19 ⁶ Associated Press, *Nearly 300 deportees from U.S. held in Panama hotel*, NPR (February 19,
 20 2025), <https://www.npr.org/2025/02/19/nx-sl-5301668/panama-us-deportees-hotel>.

21 ⁷ Associated Press, *US completes deportation of eight men to South Sudan after legal wrangling*,
 22 *The Guardian* (July 7, 2025), <https://www.theguardian.com/us-news/2025/jul/07/us-deportation-men-south-sudan>.

23 ⁸ Nimi Princewill, et al., *'Not Trump's dumping ground': Outrage over arrival of foreign US*
 24 *deportees in tiny African nation*, CNN (July 18, 2025), <https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl>.

25 ⁹ *Travel Advisory – Republic of South Sudan*, U.S. Department of State, Travel.State.Gov,
 26 <https://travel.state.gov/en/international-travel/travel-advisories/south-sudan.html>.

27 ¹⁰ Memorandum from Todd Lyons, Acting Director of ICE, Third Country Removals Following
 the Supreme Court's Order in *Department of Homeland Security v. D. V.D.*, No. 24A1153 (U.S.
 PETITION FOR WRIT OF HABEAS CORPUS
 UNDER 28 U.S.C. § 2241 AND REQUEST FOR
 INJUNCTIVE RELIEF – 20

1 diplomatic assurances are received, the ICE memo instructs officers to serve on the individual a
 2 Notice of Removal that includes the intended country of removal. It instructs officers not to ask
 3 whether the individual is afraid of removal to that country. It states that officers should “generally
 4 wait at least 24 hours following service of the Notice of Removal before effectuating removal” but
 5 that “[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours after
 6 service of the Notice of Removal as long as the [noncitizen] is provided reasonable means and
 7 opportunity to speak with an attorney prior to removal.”

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

21 This practice and policy continues unabated.¹¹ In January 2026 nine individuals were
 22 deported to Cameroon without prior notice to the individuals or their attorneys. Since arrival, they
 23

24 June 23, 2025) (July 9, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf)
 25 [gov.uscourts.mad.282404.190.1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mad.282404.190.1.pdf).

26 ¹¹ Pranav Baskar and Hamed Aleaziz, *U.S. Deports Nine Migrants in Secret, Ignoring Legal*
 27 *Protections*, N.Y. Times (Feb. 14, 2026), [https://www.nytimes.com/2026/02/14/world/africa/us-](https://www.nytimes.com/2026/02/14/world/africa/us-secret-deportation-cameroon.html?smid=nytcore-ios-share)
[secret-deportation-cameroon.html?smid=nytcore-ios-share](https://www.nytimes.com/2026/02/14/world/africa/us-secret-deportation-cameroon.html?smid=nytcore-ios-share) [<https://perma.cc/HX2S-MTZD>].

1 have been detained in a state-owned compound and told by authorities “they cannot leave the
2 facility unless they agree to return to their home countries, from which they fled to escape war or
3 persecution.”

4 **X. XIV. The Law Governing Injunctive Relief**

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

10 **Grounds for Relief**

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

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

15 Because Mr. Moskalenko’s removal order became final on July 14, 1999, the removal
16 period has long since expired, and detention is no longer required under 8 U.S.C. § 1231. In
17 addition, the presumptively reasonable period of six months has passed. Mr. Moskalenko has been
18 detained for more than six months total since his final order of removal in 1999.

19 There is “good reason to believe that there is no significant likelihood of removal in the
20 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Mr. Moskalenko was born and grew
21 up on a country that no longer exists: the Soviet Union. The area where he was born is now Estonia.
22 But, Mr. Moskalenko is not an Estonian citizen, and Estonia has refused to grant him citizenship,
23 issue him travel documents, or allow him to be deported to Estonia. Mr. Moskalenko consented to
24 be deported to Russia, but he is not a Russian citizen, and Russian has refused to accept him. Mr.
25 Moskalenko is not a citizen of any country and thus does not have a passport. Further, he does not
26 have any known living family in any other country besides the United States, which is where his
27 parents, siblings, children, and grandchildren all currently reside.

1 Therefore, the burden 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, 739 (granting
3 preliminary injunction requiring release under *Zadvydas*); *Tang*, 2025 WL 2637750, at *6 (same).

4 The Court should therefore grant Mr. Moskalenko's petition and order him to be released.

5 **Ground Two: Re-Detention Without Process Is a Violation of the Fifth Amendment**
6 **Right to Procedural Due Process.**

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

8 Mr. Moskalenko has a liberty interest in not being re-detained. Applying the three-factor
9 test of *Mathews*, that interest is high. The risk of any erroneous deprivation is also high. In addition,
10 the cost to the government of providing a hearing is low and significantly outweighed by the other
11 factors.

12 Additionally, the requirements for injunctive relief are met. His prospective unlawful re-
13 detention would constitute an irreparable injury that could not be redressed by an award of
14 damages. Second, the balance of hardships is completely in Mr. Moskalenko's favor: Mr.
15 Moskalenko risks unlawful re-detention, while Respondents suffer no hardship by being prevented
16 from following their unlawful re-detention practices. Finally, the public interest would
17 affirmatively be served by barring Respondents' unlawful practice.

18 Furthermore, there is a significant likelihood that Respondents would seek to again re-
19 detain Mr. Moskalenko unlawfully. Respondents have a policy to round up as many noncitizens
20 as possible.¹²

21 The Court should therefore grant Mr. Moskalenko's request for a permanent injunction,
22 enjoining Respondents from re-detaining Mr. Moskalenko without due process.

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

25 _____
26 ¹² Jose Olivares, *Trump administration sets quota to arrest 3,000 people a day in anti-immigration*
27 *agenda*, The Guardian (May 29, 2025), <https://www.theguardian.com/us-news/2025/may/29/trump-ice-arrest-quota>.

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

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

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

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

22 In addition, the matter is ripe. The facts set forth above—including Respondents' stated
23 policy regarding third country removals—make it reasonably likely that Respondents would seek
24 to remove Petitioner to a third country without complying with their regulatory and constitutional
25 obligations to provide Petitioner with notice and an opportunity to be heard.

26 **Ground Four: Punitive Third-Country Banishment is a Violation of the Fifth and**
27 **Eighth Amendments.**

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

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

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

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

12 Mr. Moskalenko has been convicted of various crimes by the states of Oregon and
13 Washington. He was sentenced and served time in state prison for his crimes. Mr. Moskalenko’s
14 convictions made him removable from the United States, but the convictions do not authorize the
15 government to inflict, as a matter of executive policy and discretion, additional punishment on Mr.
16 Moskalenko. Respondents’ third-country removal program is punitive in both its nature and its
17 execution.

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

25 Respondents’ third-country removal program is more than a publicity stunt. The hundreds
26 of individuals who have already been subjected to it have been banished in foreign prisons upon
27 arrival without charge and often without communication with the outside world, including their

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

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

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

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

20 **Prayer for Relief**

21 Petitioner respectfully requests that this Court:

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

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

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

5 (1) obtains a valid travel document to Estonia or Russia for him,

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

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

9 (4) Petitioner does not leave. Under such circumstances, the
10 government may be permitted to re-detain Petitioner provided it has
11 already made concrete arrangements for him to be put on a flight to
12 Estonia or Russia in the reasonably foreseeable future.

13 *See Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at *6 (W.D. Wash. Dec. 5, 2025); *Tang*,
14 2025 WL 3551381, at *3.

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

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

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

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

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

1 DATED: March 24, 2026

2 BALLARD SPAHR LLP

3 By 

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