

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Jose Miguel Arenado-Borges,

Petitioner,

v.

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

Respondents.

No.

**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: Jose Miguel Arenado-Borges
- (b) Other names used: Jose Miguel Arenado
2. Place of confinement:
 - (a) Northwest Immigration Processing Center (NWIPC)
 - (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a contractual arrangement with my custodian, the Immigration and Customs Enforcement Field Office Director at Seattle, Washington.
- (c) Case number or numbers : My A# is .

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

4. I am currently being held on an immigration charge.

Decision or Action You Are Challenging

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

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

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

(b) Docket number, case number, or opinion number: My A# is .

(c) Decision or action you are challenging: I was originally ordered deported on November 19, 1999. Ex. 1, Order Granting Habeas at 6.¹ I was detained by the Immigration and Naturalization Service on May 4, 1999, and released approximately October or November of 2000 pursuant to the judgment issued in the Central District of California. This judgment, dated October 11, 2000, required that INS release me within 30 days of its entry, subject to supervisory conditions. Ex. 2, Judgment. On April 15, 2025, I reported for a regular check-in with ICE and was told to return on May 27, 2025, for an additional, irregular check-in. At this May 27, 2025, check-in, I was detained. I have now been re-detained in ICE custody for over five months.

Your Earlier Challenges of the Decision or Action

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

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

11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

(a) Date you were taken into immigration custody: May 4, 1999, and May 27, 2025.

¹ Exhibit page numbers refer to blue CM/ECF-stamped text in the document header.

- 1 (b) Date of the removal or reinstatement order: November 29, 1999.
2 (c) Did you file an appeal with the Board of Immigration Appeals? No.
3 (d) Did you appeal the decision to the United States Court of Appeals? No.
4 12. Other appeals: No.

5 **Grounds for Your Challenge in This Petition**

6 **I. Introduction**

7 Jose Miguel Arenado-Borges is presently detained at the Northwest ICE
8 Processing Center (“NWIPC”). He has been held in immigration custody for over five
9 months. Removal to the former country of residence is not reasonably foreseeable. His
10 continued detention is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689
11 (2001). He seeks (a) release; (b) an order preventing removal to a third country without
12 notice and meaningful opportunity to respond in compliance with the statute and due
13 process in reopened removal proceedings; and (c) an order barring removal to any third
14 country pursuant to Respondents’ punitive removal policy.

15 **II. Jurisdiction and Venue**

16 This case arises under the Constitution of the United States, the Immigration and
17 Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures
18 Act (“APA”), 5 U.S.C. §§ 500–96, 701–06.

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

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

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

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

III. Parties

Jose Miguel Arenado-Borges is a citizen of Cuba. He has a final order of removal, with Cuba designated for removal. Ex. 1 at 7. Petitioner is detained in the control and custody of Respondents at NWIPC. As such, Petitioner is a resident of Tacoma, Washington.

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

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

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

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

1 to a contract with ICE to detain noncitizens. Mr. Scott is sued in his official capacity as
2 the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-700-JLR,
3 2021 WL 1946222, at *3–5 (W.D. Wash. May 14, 2021).

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

8 **IV. Background**

9 Mr. Arenado-Borges is a 63-year-old Cuban man who was residing in
10 Westminster, California, prior to his recent arrest by ICE. Mr. Arenado-Borges arrived
11 in Miami, Florida, from Guantanamo Bay, Cuba, in 1967, when he was a child. As a
12 young boy, Mr. Arenado-Borges arrived in the United States on one of the “freedom
13 flights” authorized by President Lyndon B. Johnson.² *See* Ex. 1 at 8. He was paroled
14 into the United States and became a lawful permanent resident in 1977.

15 In 1994 and 1997, Mr. Arenado-Borges was convicted of crimes. From March
16 1997 to May 1999, Mr. Arenado-Borges was in state custody serving a sentence. Ex. 1
17 at 8. At the conclusion of this sentence, he was released into INS custody, and was
18 ordered removed on November 29, 1999. *Id.* After the expiration of his removal period,
19 with Mr. Arenado-Borges still in INS custody, he filed a habeas petition, alleging that
20 he was being indefinitely detained, without a reasonable likelihood of removal in the
21 foreseeable future. *Id.* at 4–5. This petition was eventually granted by the district court
22

23
24 ² “President Johnson today announced completion of arrangements with Cuba for
25 transportation of between 3,000 and 4,000 refugees a month into this country aboard
26 U.S. chartered air flights.” U.S. to airlift Cuban Refugees, United Press International,
November 6, 1965 (available at <https://www.upi.com/Archives/1965/11/06/US-to-airlift-Cuban-refugees/3711572895010/>) [<https://perma.cc/N2YK-W5PW>].

1 in an order dated October 11, 2000, which required that Mr. Arenado-Borges be
2 released within 30 days on supervisory conditions. *Id.* at 1–2.

3 On April 15, 2025, Mr. Arenado-Borges reported in person to ICE for a routine
4 check-in, as he had done for years. He was told to return in approximately 45 days for a
5 special visit. On May 27, 2025, Mr. Arenado-Borges appeared as ordered and was re-
6 detained by ICE officers.

7 **V. Facts Pertaining to Continued Detention**

8 Petitioner cannot presently be returned to Cuba, because Cuba historically has
9 been extremely reluctant to accept individuals with criminal records.³ While political
10 developments in recent years have increased the number of Cubans deported, the
11 number of removals effected continues to remain miniscule compared to the number of
12 outstanding removal orders.⁴

13 //

14 //

18 ³ Lizette Alvarez & Kristin Hussey, *Cubans Convicted in the U.S. Face New Fears of*
19 *Deportation*, N.Y. Times (Jan. 18, 2015) [https://www.nytimes.com/2015/01/19/us/](https://www.nytimes.com/2015/01/19/us/cubans-convicted-in-the-us-face-new-fears-of-deportation.html)
20 <https://perma.cc/6ANE-23KJ> (“Other countries also make it difficult for the
21 United States to deport convicted criminals, but Cuba is one of ‘very few’ that block
22 most deportation orders, Ms. Gonzalez said. Among the nations listed in 2011 as
23 ‘recalcitrant,’ as immigration officials call them, are Cambodia, China, India, Iran and
Vietnam, and several in the Caribbean.”).

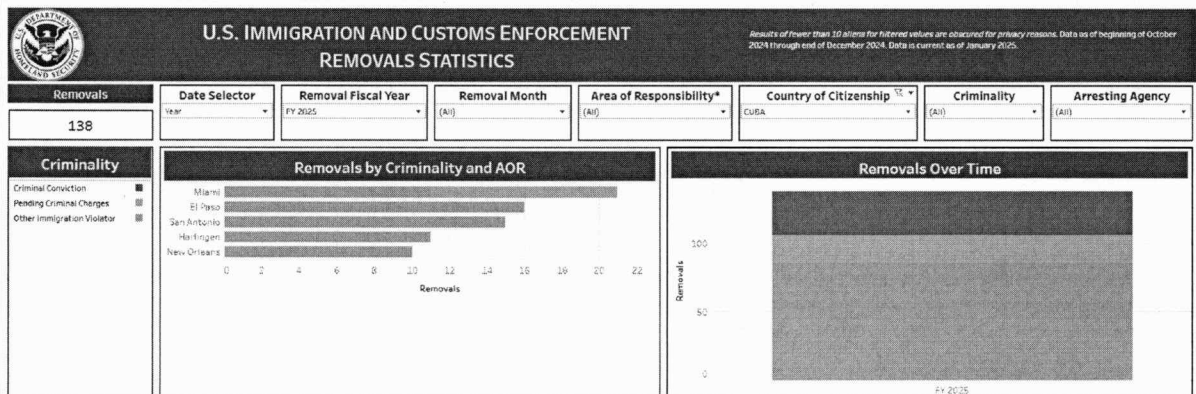
24 ⁴ Lindsay Daniels, *The End of Special Treatment for Cubans in the U.S. Immigration*
25 *System: Consequences and Solutions for Cubans with Final Orders of Removal*, 122
26 Dick. L. R. 2, 707 (2018), <https://insight.dickinsonlaw.psu.edu/dlr/vol122/iss2/8/>
[\[https://perma.cc/G8DG-SETL\]](https://perma.cc/G8DG-SETL) (“There are at least 34,000 Cubans with final orders of
removal in the United States, due in large part to criminal convictions.”).

For fiscal year 2025, ICE reported the arrest of 419 Cuban citizens:

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT ADMINISTRATIVE ARREST STATISTICS							
Arrests	Date Selector	Arrest Fiscal Year	Arrest Month	Area of Responsibility *	Country of Citizenship	Criminality	
419	Year	FY 2025	(All)	(All)	CUBA	(All)	

U.S. Immigration and Customs Enforcement Administrative Arrest Statistics, <http://www.ice.gov/statistics> [<https://perma.cc/X2AV-89FD>] (accessed October 24, 2025).

Within the same fiscal year, only 138 Cubans were removed. Of these, only 32 Cubans were listed as having criminal convictions:



Id. Removals have increased in the 2025 calendar year but still are nowhere near the pace required to reasonably process the backlog of individuals with pending removal orders. In calendar year 2025, at least 643 Cuban citizens were removed to Cuba.

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Deportation Data Project Data Explorer [Show tour](#)

Filter

- **Filter:** a single condition to subset the data.
- **Nested filter:** a group of filters combined together.
- Filtering is case-sensitive for text fields.

AND OR [+ Add filter](#) [+ Add nested filter](#)

citizenship_country

equal

CUBA

departure_country

contains

CUBA

departed_date

greater or equal

01/01/2025

Result: 643 rows match the filter(s) out of 528,441

Missing values detected:

- citizenship_country : 1 missing (0%)
- departure_country : 1 missing (0%)

[Reset filters](#)

Deportation Data Project, Data Explorer, <https://deportationdata-ice-removals.share.connect.posit.cloud/> [<https://perma.cc/3UM6-3WVR>].⁵

In addition to these, at least 501 Cuban citizens were removed to third countries, primarily to Mexico.⁶

⁵ Dataset last updated in late July 2025. Deportation Data Project, <https://deportationdata.org/data/ice.html> [<https://perma.cc/8TLF-TGFR>] (“The most recent release of data covers ICE enforcement actions through late July 2025.”).

⁶ Claire Healy and Syrah Ortiz-Blanes, *Cubans with Criminal Records in the U.S. are being Quietly Deported to Mexico*, Miami Herald (Oct. 21, 2025), <https://www.miamiherald.com/news/local/immigration/article312432237.html> [<https://perma.cc/55VV-TMQG>] (“It is unclear how many immigrants from third

Deportation Data Project Data Explorer [Show tour](#)

- **Filter:** a single condition to subset the data. [?]
- **Nested filter:** a group of filters combined together.
- Filtering is case-sensitive for text fields.

AND OR [+ Add filter](#) [+ Add nested filter](#)

citizenship_country ×

equal ▼

CUBA ▼

departure_country ×

doesn't contain ▼

CUBA

departed_date ×

greater or equal ▼

01/01/2025

Result: 501 rows match the filter(s) out of 528,441

Missing values detected: [?]

- citizenship_country : 1 missing (0%)
- departure_country : 1 missing (0%)

[Reset filters](#)

There is no indication that the Cuban government's policy of refusing to accept detainees with criminal records has materially changed even as the United States government has begun re-arresting detainees who were previously released under orders of supervision.

Removal to Cuba is not reasonably foreseeable. ICE has not obtained a travel document from Cuba for Petitioner, nor has Cuba agreed to accept Petitioner.

countries have been deported to Mexico from the interior of the U.S. this year. One shelter in Mexico has registered nearly 350 Cubans, the vast majority long-time U.S. residents, since the beginning of the year.”).

VI. The Legal Framework for Third-Country Removals

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.

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

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

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

1 before the individual entered the United States and from which the individual entered
2 the United States; (4) the country in which the individual was born; or (5) the country in
3 which the individual's birthplace is located when the individual was ordered removed.

4 8 U.S.C. § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to
5 remove the individual to any of these countries may the government remove the
6 individual to "another country whose government will accept [them] into that country."

7 8 U.S.C. § 1231(b)(2)(E)(vii).

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

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

1 To comport with the requirements of due process, the government must provide
2 notice of the third-country removal and an opportunity to respond. Due process requires
3 “written notice of the country being designated” and “the statutory basis for the
4 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F.
5 Supp. 3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland*
6 *Sec.*, No. 25-CV-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All
7 removals to third countries, i.e., removal to a country other than the country or
8 countries designated during immigration proceedings as the country of removal on the
9 non-citizen’s order of removal, must be preceded by written notice to both the non-
10 citizen and the non-citizen’s counsel in a language the non-citizen can understand.”
11 (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process
12 requires notice to the noncitizen of the right to apply for asylum and withholding to the
13 country where they will be removed). The government must be able to show evidence
14 that the third country will accept the individual into that country. *See Himri v. Ashcroft*,
15 378 F.3d 932, 939 (9th Cir. 2004) (“at the time the government proposes a country of
16 removal pursuant to § 1231(b)(2)(E)(vii), the government must be able to show that the
17 proposed country *will* accept the [individual]”).

18 Due process also demands that the government “ask the noncitizen whether he or
19 she fears persecution or harm upon removal to the designated country and memorialize
20 in writing the noncitizen’s response. This requirement ensures DHS will obtain the
21 necessary information from the noncitizen to comply with section 1231(b)(3) and
22 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp. 3d at
23 1019; *cf. D.V.D.*, 2025 WL 1453640, at *1 (“Following notice, the individual must be
24 given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim
25 for CAT protection prior to removal.”) (emphasis omitted).

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

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

15 **VII. Facts Pertaining to Punitive Banishment to Third Countries**

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

20 Respondents reportedly have negotiated with at least 58 countries to accept
 21 deportees from other nations. On June 25, 2025, the *New York Times* reported that
 22 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
 23 Rwanda—had agreed to accept deportees who are not their own citizens.⁷ Since then,
 24 ICE has carried out highly publicized third-country deportations to South Sudan and

25 ⁷ 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 Eswatini. It also attempted—and completed—an “end-run” around the protections of
2 the Convention Against Torture by deporting a group of migrants to Ghana, which sent
3 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-
5 country removal scheme. The Administration has reportedly negotiated with countries
6 to have deportees imprisoned in prisons, camps, or other facilities. The government
7 paid El Salvador about \$5 million to arbitrarily and indefinitely imprison more than 200
8 deported Venezuelans in a maximum-security prison notorious for gross human rights
9 abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of
10 deportees from countries in Africa and Central Asia and imprisoned them in hotels, a
11 jungle camp, and a detention center. On July 4, 2025, ICE deported eight men,
12 including one pre-1995 Vietnamese refugee, to South Sudan. The men have been
13 detained incommunicado ever since. On July 15, 2025, ICE deported five men to the
14 tiny African nation of Eswatini, including one man from Vietnam, where they are
15 reportedly being held in solitary confinement.

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

22 On July 9, 2025, ICE issued a new memo to staff instructing that when seeking
23 to remove an individual to a country not designated on that person’s removal order, that
24 ICE may deport that person without any procedures for notice or an opportunity to be
25 heard if the State Department confirms that it has received diplomatic assurances that
26 individuals will not be persecuted or tortured. If no diplomatic assurances are received,

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

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

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

24 **VIII. The Law Governing Punitive Removal Practices**

25 It is bedrock law that the U.S. government may not impose or inflict an infamous
26 punishment for violations of civil immigration law. In 1896, the U.S. Supreme Court

1 ruled that while deportation itself was not a punishment, the government could not
 2 attach punitive conditions to deportation—in that case, imprisonment at hard labor—
 3 absent a criminal charge, trial in a court of law, and the protections of the Fifth, Sixth,
 4 and Eighth Amendments. *Wong Wing v. United States*, 163 U.S. 228, 237 (1896).

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

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

20 Grounds for Relief

21 **Ground One: Petitioner’s Continued Detention in Immigration Custody** 22 **Violates the Due Process Clause of the Fifth Amendment to the U.S.** 23 **Constitution Because There Is No Significant Likelihood that Petitioner Will Be** 24 **Removed in the Reasonably Foreseeable Future.**

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

25 Petitioner’s present detention is purportedly authorized under 8 U.S.C. § 1231.

26 Detention of non-citizens who have been ordered removed is mandatory during the so-

1 called 90-day “removal period.” 8 U.S.C. § 1231(a)(1)(A). This period begins, as
2 relevant here, on the “date the order of removal becomes administratively final.” 8
3 U.S.C. § 1231(a)(1)(B)(i). Because Petitioner’s removal order became final on
4 November 29, 1999, the removal period has long since expired and detention is no
5 longer required under 8 U.S.C. § 1231.

6 Not only is detention no longer required, it is no longer allowed under the facts
7 of this case. Given the “serious constitutional threat” the *Zadvydas* Court believed to be
8 posed by the indefinite detention of aliens who had been admitted to the country under
9 the Fifth Amendment’s Due Process Clause, 553 U.S. at 699, the Court interpreted 8
10 U.S.C. § 1231(a)(6) to permit only detention related to the statute’s “basic purpose [of]
11 effectuating an alien’s removal[.]” *Id.* at 696–99. The Court further held that the
12 presumptive period during which the detention is reasonably necessary to effectuate an
13 alien’s removal is six months; after that, the alien is eligible for conditional release if he
14 can demonstrate that there is “no significant likelihood of removal in the reasonably
15 foreseeable future.” *Id.* at 701. After the “presumptively reasonable” period of six
16 months’ detention, when the noncitizen can “provide good reason to believe that there
17 is no significant likelihood of removal in the reasonably foreseeable future,” then “the
18 Government must respond with evidence sufficient to rebut that showing.” *Id.* at 701.
19 “A petitioner’s total length of confinement need not be consecutive to reach the six-
20 month presumptively reasonable limit established in *Zadvydas*.” *Tang v. Bondi*,
21 No. CV25-01473-RAJ-TLF, 2025 WL 2637750, at *4 (W.D. Wash. Sep. 11, 2025).

22 Here, the government cannot rebut the conclusion that Petitioner’s continued
23 detention in ICE custody violates the Due Process Clause of the Fifth Amendment
24 under *Zadvydas*. See *Nguyen v. Scott*, No. CV25-01398, 2025 WL 2419288, at *28–29
25 (W.D. Wash. Aug. 21, 2025) (granting preliminary injunction requiring release under
26 *Zadvydas*); *Tang*, Dkt. 26 at 12 (same). Because Mr. Arenado-Borges is a citizen of

1 Cuba, a country notorious for not accepting deportees who have criminal records, it is
2 especially unlikely that respondents will succeed in removing Mr. Arenado-Borges in
3 the reasonably foreseeable future.

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

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

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

18 Prior to any third-country removal, Petitioner must be provided with
19 constitutionally and statutorily compliant notice and an opportunity to respond and
20 contest that removal if he has a fear of persecution or torture in that country in reopened
21 removal proceedings. *See Nguyen*, 2025 WL 2419288, at *29 (granting preliminary
22 injunction against “removing Petitioner to a country other than [home country] without
23 notice and a meaningful opportunity to be heard in reopened removal proceedings with
24 a hearing before an immigration judge”).

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

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

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

6 The Eighth Amendment provides that no “cruel and unusual punishments” may
7 be 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
10 immigration violation, absent criminal charges, a judicial trial, and attendant
11 constitutional protections. *Wong Wing*, 163 U.S. at 236–38.

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

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

25 Respondents’ third-country removal program is more than a publicity stunt. The
26 hundreds of individuals who have already been subjected to it have been banished in

1 foreign prisons upon arrival without charge and often without communication with the
2 outside world, including their families and lawyers. Respondents may not subject
3 Petitioner to its third-country removal program designed to impose a severe punishment
4 on its subjects. *See id.* Such conduct “shocks the conscience” under Fifth Amendment
5 substantive due process, is cruel and unusual punishment, and may not be imposed
6 without charge and a judicial trial.

7 Respondents may not seek to remove Petitioner to a third country under their
8 punitive banishment policy and practices. *See Nguyen*, 2025 WL 2419288, at *29
9 (granting preliminary injunction against “removing Petitioner to any country where he
10 is likely to face imprisonment upon arrival”).

11 **Prayer for Relief**

12 Petitioner respectfully requests that this Court:

- 13 (a) Assume jurisdiction over this action;
- 14 (b) Order Respondents to immediately release Petitioner from custody;
- 15 (c) 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
17 the statute and due process in reopened removal proceedings;
- 18 (d) Order that Respondents may not remove Petitioner to any third country
19 because Respondents’ third-country removal program seeks to impose unconstitutional
20 punishment on its subjects, including imprisonment and other forms of harm; and
- 21 (e) Order all other relief that the Court deems just and proper.

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

23 Counsel verifies that this petition is authorized by Petitioner. It does not
24 personally bear Petitioner’s signature because of the significant difficulty for counsel in
25 meeting with Petitioner in person and because mailing the petition to Petitioner and
26 having it mailed back would cause delay that would only extend the period of his

1 unlawful detention. Counsel knows the facts asserted above or alleges them on
2 information and belief, based on information obtained from the government and/or
3 Petitioner.

4 DATED this 4th day of November 2025.

5 Respectfully submitted,

6
7 *s/ J. Leonardo Costales*
8 Assistant Federal Public Defender
9 Attorney for Jose Miguel Arenado-Borges
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