

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOMPHALAVANH
SOPHANTHAVONG,

Petitioner,

vs.

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

Respondents.

No.

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

PRELIMINARY MATTERS

“Congress has clearly indicated that habeas petitioners are entitled to a prompt ruling” on their petition. *Mejia v. Hermosillo*, No. 2:25-CV-02196, 2025 WL 3173842, at *1 (W.D. Wash. Nov. 13, 2025). Petitioner suggests that Respondents be directed to file their response within 14 days of service of the petition on Respondents and that Petitioner reply within five days.

Mr. Sophanthavong asks this Court to order Respondents not to remove him from this district while this case is pending, both “[b]ecause transfer of Petitioner to another district could interfere with his access to counsel and ability to participate in the proceedings,” *Tran v. Bondi, et al.*, No. CV25-1897-JLR-BAT, dkt. 6 at 3 (W.D. Wash. Oct. 7, 2025) (*sua sponte* issuing such an order in a § 2241 case involving an ICE

1 detainee), and “under the Court’s inherent power to preserve its ability to hear the
2 case.” *Alves v. U.S. Dep’t of Just.*, No. EP-25-CV-306-KC, 2025 WL 2629763, at *5
3 (W.D. Tex. Sept. 12, 2025) (same). *See also M.M. v. Wamsley*, No. CV25-2074-TMC,
4 2025 WL 3053023, at *1 (W.D. Wash. Oct. 31, 2025) (same).¹

5 **RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242**

6 **Personal Information**

- 7 1. (a) Full name: Somphalavanh Sophanthavong
8 (b) Other names used: N/A
9 2. Place of confinement:
10 (a) Northwest Immigration Processing Center (NWIPC)
11 (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a
12 contractual arrangement with my custodian, the Immigration and Customs Enforcement
13 Field Office Director at Seattle, Washington.
14 (c) Case number or numbers [ICE file number, if known]: My A# has been
15 provided to the government along with the filing of this petition.
16 3. I am currently being held on orders by federal authorities: United States
17 Immigration and Customs Enforcement.
18 4. I am currently being held on an immigration charge.

19 **Decision or Action You Are Challenging**

- 20 5. What are you challenging in this petition: immigration detention.
21

22 ¹ For just a few examples of other courts issuing such an order in § 2241 cases
23 involving ICE detainees within the past few months (or reflecting the court had
24 previously issued such an order), *see, e.g., Bustos v. Raycraft*, No. 25-13202, 2025 WL
25 3022294, at *2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. CV25-513-SDN, 2025
26 WL 3003708, at *1 (D. Me. Oct. 27, 2025) (order issued same day petition was filed);
Lopez Pop v. Noem, No. CV25-2589-SSS-SSC, 2025 WL 3050095, at *7 (C.D. Cal.
Oct. 3, 2025); *Singh v. Delaney Hall*, No. CV25-16018-GC, 2025 WL 2772644, at *1
(D.N.J. Sept. 29, 2025); *Hom v. Ceja*, No. CV25-2221-WJM-TPO, 2025 WL 2801449,
at *2 (D. Colo. Sept. 17, 2025).

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# has been provided to the government along with the filing of this petition.

(c) Decision or action you are challenging: I was originally ordered removed on November 13, 2007, and detained for 90-days. I was arrested by ICE on October 31, 2025, and have been in ICE custody since then.

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: October 31, 2025

(b) Date of the removal or reinstatement order: November 13, 2007

(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

On October 31, 2025, Mr. Sophanthavong was taken into custody by ICE agents outside his family's Portland, Oregon home. He was then taken to the Northwest ICE Processing Center (NWIPC) and re-detained. His order of removal was issued on November 13, 2007, almost two decades ago. Having not removed him in the time since, his removal to Laos, his birthplace, is not reasonably foreseeable.

1 Mr. Sophanthavong's continued detention is therefore in violation of *Zadvydas v. Davis*,
2 533 U.S. 678, 689 (2001). Mr. Sophanthavong seeks (a) release; (b) an order preventing
3 re-detention unless the government establishes by clear and convincing evidence at a
4 hearing before a neutral decisionmaker that he is a flight risk or a danger to the
5 community, based on changed circumstances after their most recent release by ICE; (c)
6 an order preventing removal to a third country without notice and meaningful
7 opportunity to respond in compliance with the statute and due process in reopened
8 removal proceedings; and (d) an order barring removal to any third country pursuant to
9 Respondents' punitive removal policy.

10 On information and belief, Mr. Sophanthavong was initially detained by ICE for
11 90 days in 2007 after he was released from the Oregon Department of Corrections in
12 October 2007 and placed on an order of supervision (OSUP). On October 31, 2025,
13 Mr. Sophanthavong was re-detained without any determination by the government that
14 he had become a flight risk, a danger to the community, or a change in circumstances.

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. §§ 500–596, 701–706.

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 Hermosillo 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 Mr. Sophanthavong is seeking relief related only to his custody status, which is not inconsistent with an order of removal, exhaustion of administrative remedies, if any, is not required.

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

As addressed above on p. 1, 28 U.S.C. § 2243 sets forth time constraints for an OSC. Petitioner is "in custody" for the purpose of § 2241 because he has been detained by Respondent ICE in Tacoma, Washington, since October 31, 2025.

IV. Parties

Mr. Sophanthavong was born in Laos. He has a final order of removal to Laos as the country designated for removal. He 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 Laura Hermosillo is the Acting Field Office Director for ICE Enforcement and Removal Operations ("ERO") in Seattle, Washington. As the Acting ERO Seattle Field Office Director, she is Petitioner's immediate custodian, responsible

1 for his detention at NWIPC and is the person with the authority to authorize detention
2 or release. Respondent Hermosillo is sued in her official capacity.

3 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
4 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant
5 to a contract with ICE to detain noncitizens. Respondent Scott is sued in his official
6 capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-
7 700, 2021 WL 1946222, at *3–5 (W.D. Wash. May 14, 2021).

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

12 **V. Background**

13 Mr. Sophanthavong was born in Laos on  He fled to the United
14 States in 1982 with his mother and older brother as refugees when he was five years
15 old. After first landing in Hong Kong, they were reunited with Mr. Sophanthavong's
16 father and siblings who had resettled in Portland, Oregon from a refugee camp in
17 Thailand. His parents and siblings eventually became U.S. citizens, and another sibling
18 was born in the United States. His father also has three children from a previous
19 relationship living in the household. In 1994, when he was 16 years old,
20 Mr. Sophanthavong, with an adult co-defendant, was convicted of felony murder and
21 was sentenced to the Oregon Department of Corrections. He was convicted as an "aider
22 and abettor." He was not armed and did not personally commit the murder.
23 Mr. Sophanthavong was released from the Department of Corrections in October 2007,
24 and an order of removal was issued on November 13, 2007.

25 He was detained for about ninety-days in immigration custody until he was
26 released on an OSUP because he could not be removed to Laos because of its social and

1 political instability. While in prison, Mr. Sophantavong became addicted to
2 methamphetamine but after his release until the middle of 2010, Mr. Sophanthavong
3 turned his life around and was a full-time student at Portland Community College while
4 also working at the school. But after losing his job at the end of 2010, he fell behind
5 financially and could no longer afford school. Although his parents and siblings were
6 supportive of him, they did not have the financial means to help him.

7 Mr. Sophanthvong began using drugs again and became involved with counterfeiting to
8 fuel his addiction. On September 24, 2012, Mr. Sophanthvong pled guilty to conspiracy
9 to manufacture, deal, and counterfeit obligations of the United States under 18 U.S.C.
10 § 371 and manufacturing counterfeit currency under 18 U.S.C. §§ 471 and 2. Case No.
11 3:12-CR-00063-01-BR. On March 18, 2013, he was sentenced by a Portland federal
12 district judge to 33 months concurrent sentences on both counts and three years of
13 supervised release. He has been law-abiding ever since.

14 Mr. Sophanthavoing and his wife of 14 years, Tan Deewicharn, own a restaurant
15 in Portland. His wife is a United States citizen. The couple have been running this
16 restaurant for the past ten years. According to Ms. Deewicharn, Mr. Sophanthavong
17 helps to care for her severely disabled 25-year-old son (who suffered a traumatic brain
18 injury at birth and has the mental capacity of a five-year-old), her other son,
19 Mr. Sophanthavong's elderly parents, and other family members who rely on him for
20 emotional and financial support. Since his first conviction, Mr. Sophanthavong has
21 diligently checked-in with ICE and his last check-in was in August 2025.

22 On October 31, 2025, Mr. Sophanthavong came home from work and saw ICE
23 agents parked in his driveway. The agents yanked him out of his truck and took him to
24 their Portland Field Office. He was not told why he was being detained and was told
25 only that ICE was revoking his supervision. Once at NWIPC, he was asked to sign
26 "some papers" and was told by the officer that he would return in three weeks. He has

1 not spoken with anyone from ICE since that initial interaction. The officer did not
2 inform Mr. Sophanthavong of any changes with his removal status.

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

4 Petitioner cannot presently be returned to Laos, because Laos has failed to issue
5 him travel documents for the past eighteen years. Removal to Laos is thus not
6 reasonably foreseeable. ICE has not obtained a travel document from Laos for
7 Petitioner, nor has Laos agreed to accept Petitioner.

8 **VII. The Legal Framework Regarding Indefinite Detention Pending Removal**

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

11 Under 8 U.S.C. § 1231, detention of noncitizens who have been ordered
12 removed is mandatory during the so-called 90-day "removal period." 8 U.S.C.
13 § 1231(a)(1)(A). This period begins on the "date the order of removal becomes
14 administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). But the *Zadvydas* Court believed
15 that a "serious constitutional threat" under the Fifth Amendment's Due Process Clause
16 was posed by the indefinite detention of noncitizens. 533 U.S. at 699. The Court
17 therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the
18 statute's "basic purpose [of] effectuating [a noncitizen]'s removal[.]" *Id.* at 696–99.

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

1 The issue is not whether Respondents have removed some individuals to a given
 2 country. Rather, the court must make an individualized analysis as to a particular
 3 detainee. *See Nguyen v. Scott*, -- F.Supp.3d --, 2025 WL 2419288, *17 (W.D. Wash.
 4 Aug. 21, 2025) (stating increase in total number of removals to Vietnam, including
 5 those who entered pre-1995, fails to rebut the evidence presented by Petitioner that “his
 6 individual circumstances make removal unlikely.”). Facts that are part of the analysis
 7 include whether Respondents provide evidence that the request was submitted to Laos,
 8 whether Laos has acknowledged receipt of the request or otherwise responded to
 9 Petitioner’s request, and the anticipated wait time for a response from Laos.

10 When a petitioner has been detained for a total of six months after a final order
 11 of removal, the *Zadvydas* presumptively reasonable period has expired, even if the
 12 petitioner’s current period of detention, as here, is less than six months. “A petitioner’s
 13 total length of confinement need not be consecutive to reach the six-month
 14 presumptively reasonable limit established in *Zadvydas*.” *Tang v. Bondi*, No. CV25-
 15 1473-RAJ-TLF, 2025 WL 2637750, at *4 (W.D. Wash. Sept. 11, 2025).

16 **B. The six month presumptively reasonable period runs from the**
 17 **final removal order, regardless of whether Petitioner was**
 18 **detained during that period.**

19 The six month presumptively reasonable period runs unabated once Petitioner’s
 20 removal order was final and does not run solely during any period when Petitioner was
 21 detained. In *Tran v. Bondi*, No. C25-01897-JLR, 2025 WL 3140462 (W.D. Wash. Nov.
 22 10, 2025), the Hon. James L. Robart held that petitioner’s “*Zadvydas* grace period
 23 ended six months following the entry of the order of his removal[.]” *Id.* at *3. The court
 24 reached that conclusion even though the petitioner was not detained until two years
 25 later, and Respondents argued that only five months of the *Zadvydas* six-month period
 26 had expired, based on the times when petitioner was detained. *See* Federal
 Respondents’ Return Memorandum and Motion to Dismiss, dkt. 13 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); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009) (concluding that, where government was aware of noncitizen’s address but failed to pursue her removal until more than 15 months after removal order was entered, “the removal period, as well as any presumptively reasonable six-month period of removal to which the Government may have been entitled” had expired six months after the entry of the removal order); *Bailey v. Lynch*, No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (where order of removal became effective upon petitioner’s release from underlying conviction to ICE authorities, after which he was held only “briefly” before being released on an order of supervision, the *Zadvydas* presumptively reasonable period ended “long before he was taken back into custody[.]”).

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

VIII. The Law Pertaining to a Noncitizen’s 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

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

1 due process rights, a petitioner must establish (1) a protected property or liberty interest,
 2 and (2) a denial of adequate procedural protections. *ASSE Int'l, Inc. v. Kerry*, 803 F.3d
 3 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest,
 4 including the function involved and the fiscal and administrative burdens that the
 5 additional or substitute procedural requirement would entail.” *Rodriguez Diaz v.*
 6 *Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335).

7 Petitioner’s interest in not being detained is “the most elemental of liberty
 8 interests[.]” *E.A. T.-B. v. Wamsley*, No. CV25-1192-KKE, 2025 WL 2402130, at *3, *9
 9 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)) (granting petition and ordering
 10 immediate release with no re-detention absent “an immigration court hearing . . . held
 11 (with adequate notice) to determine whether detention is appropriate.”). *See also, e.g.,*
 12 *Ledesma Gonzalez v. Bostock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, *8
 13 (W.D. Wash. Oct. 7, 2025) (finding detainee has liberty interest).

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

16 First, the private interest that will be affected by the official action;
 17 second, the risk of an erroneous deprivation of such interest through the
 18 procedures used, and the probable value, if any, of additional or substitute
 19 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.

20 *E.A. T.-B.*, 2025 WL 2402130, at *3 (quoting *Mathews*, 424 U.S. at 335).

21 Given that the liberty interest here is “the most elemental,” numerous courts
 22 have found that this first factor weighs heavily in a petitioner’s favor. *See Ledesma*
 23 *Gonzalez*, 2025 WL 2841574, at *7 (this factor “must be accorded significant weight”).
 24 Petitioner’s status as a noncitizen does not negate that interest. “While the temporary
 25 detention of noncitizens may sometimes be justified by concerns about public safety or
 26 flight risk, the government’s discretion to incarcerate non-citizens is always constrained

1 by the requirements of due process[.]” *E.A. T.-B.*, 2025 WL 2402130, at *3 (quoting
2 *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

3 As an individual who was released by ICE, a petitioner has a higher liberty
4 interest than that of the normal ICE detainee. *See Guillermo M.R. v. Kaiser*, No. CV25-
5 5436-RFL, 2025 WL 1810076, at *1 (N.D. Cal. June 30, 2025) (by alleging that he had
6 previously been released by ICE and was about to be re-detained, “Petitioner has
7 asserted liberty interests that differ from the liberty interests of a detained person in
8 *Rodriguez Diaz*”) (referencing *Rodriguez Diaz*, 53 F.4th 1189)).² Similarly, in *Carballo*
9 *v. Andrews*, No. CV25-978-KES-EPG (HC), 2025 WL 2381464, *4 (E.D. Cal. Aug. 15,
10 2025), the court indicated that an individual who has been released has had—in contrast
11 to a detainee with no period of release—“an opportunity ‘to form the [] enduring
12 attachments of normal life’” (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)),
13 and thus has a heightened liberty interest, such as that which led the Supreme Court in
14 *Morrissey* to impose due process requirements on parolees where the state seeks to
15 revoke parole.

16 The second factor, risk of an erroneous deprivation of liberty, also weighs in a
17 petitioner’s favor. A detainee’s release to the community on an OREC reflected ICE’s
18 determination that Petitioner was neither a flight risk nor a danger to the community.
19 *See, e.g., Ledesma Gonzalez*, 2025 WL 2841574, at *8 (when ICE released Petitioner,
20 “it did so after determining—as required by regulation—that ‘such release would not
21 pose a danger to property or persons, and that the [noncitizen] is likely to appear for any
22 future proceeding.’ . . . By issuing the OREC, ICE necessarily found that [Petitioner]
23 was neither a flight risk nor a danger to the community.”) (quoting 8 C.F.R.

24 _____
25 ² *Rodriguez* held that a person who had been detained pursuant to an individualized
26 bond hearing where he was found to be a danger or flight risk was not categorically
entitled to a second bond hearing and that, under the facts of that case, the detainee
could not succeed in an as-applied challenge to his detention.

1 § 236.1(c)(8)); *Barrenechea v. Albarran*, No. CV25-7883-VC, 2025 WL 2717279, at
2 *1 (N.D. Cal. Sept. 22, 2025) (“ICE’s release of Barrenechea on his own recognizance
3 in 2020 can only be understood as reflecting a determination that he did not pose a
4 flight risk or danger to the community”).

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

10 As stated in *E.A. T.-B.*, 2025 WL 2402130, at *5, “although it would have
11 required the expenditure of finite resources (money and time) to provide Petitioner
12 notice and hearing on ATD violations before arresting and re-detaining him, those costs
13 are far outweighed by the risk of erroneous deprivation of the liberty interest at issue.”

14 The holding that a released detainee was entitled to a pre-deprivation hearing
15 comes not from *Ledesma Gonzalez* and *E.A. T.-B.* alone; dozens of other courts have
16 concluded this as well. *See, e.g., Pinchi v. Noem*, -- F.Supp.3d --, No. CV25-5632-PCP,
17 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) (“Providing [petitioner] with the
18 procedural safeguard of a pre-detention hearing will have significant value in helping
19 ensure that any future detention has a lawful basis.”); *Doe v. Becerra*, 787 F.Supp.3d
20 1083, 1094 (E.D. Cal. 2025) (“[G]iven that Petitioner was previously found to not be a
21 danger or risk of flight and the unresolved questions about the timing and reliability of
22 the new information, the risk of erroneous deprivation remains high.”); *Valdez v. Joyce*,
23 25 Civ. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (“Petitioner’s
24 re-detention without any change in circumstances or procedure establishes a high risk
25 of erroneous deprivation of his protected liberty interest.”).

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

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

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

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

25 Such revocation of release, even if justified by one of the reasons recognized by
 26 regulation, requires notice and an opportunity for the noncitizen to be heard. Upon a

determination by the government (namely ICE) to re-detain a person previously released following a removal order:

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

Id. § 241.13(i)(3).

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

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

Id. See also *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025). While courts do not make these determinations in the first instance, they may review them for compliance with the regulation. See *id.*; *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

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

"[S]ubstantive due process prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered

liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992); *see also Zadvydas*, 533 U.S. at 696, 121 S.Ct. 2491 (finding that a noncitizen has a liberty interest “strong enough” to challenge “indefinite and potentially permanent” immigration detention). “Individuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty.” *Doe v. Becerra*, -- F.Supp.3d --, No. CV25-647-DJC-DMC, 2025 WL 691664, at *5 (E.D. Cal. Mar. 3, 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 150 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)).

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

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

3 **X. The Legal Framework for Third-Country Removals**

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

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

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

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

1 foreign port from which the individual left for the United States or for a foreign
2 territory contiguous to the United States; (3) the country in which the individual resided
3 before the individual entered the United States and from which the individual entered
4 the United States; (4) the country in which the individual was born; or (5) the country in
5 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
7 remove the individual to any of these countries may the government remove the
8 individual to "another country whose government will accept [them] into that country."
9 8 U.S.C. § 1231(b)(2)(E)(vii).

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

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

1 States.”); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. CAT protection is also
2 mandatory.

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

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

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

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

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

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

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

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

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

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

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

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

1 If there is any doubt about the punitive intent of the administration's third-
 2 country removal practice, consider the following public announcements with the
 3 officials who are driving the practice.

4 In an official video, President Donald Trump stated, "[I]f illegal aliens choose to
 5 remain in America, they're remaining illegally, and they will face severe
 6 consequences," such as "significant jail time, ... garnishment of all wages,
 7 imprisonment and incarceration, and *sudden deportation in a place and manner solely*
 8 *of our discretion.*"⁴

9 Secretary of State Marco Rubio announced that El Salvador had agreed to
 10 "accept for deportation any illegal alien in the [U.S.] who is a criminal"⁵ with the
 11 explicit understanding that "[President Bukele] will put them in his jails."⁶ Respondent
 12 DHS Secretary Kristi Noem seemed gleeful about this development: "It has been
 13 wonderful for us to be able to have somewhere to send the worst of the worst and
 14 someone to partner with. And we'd like to continue that partnership because it's been *a*
 15 *powerful message of consequences.*"⁷ President Trump recently spoke about the
 16 deterrent effect of the El Salvador banishments: "[W]e bring people there and ... they
 17
 18

19 ⁴ Roll Call, *Donald Trump Vlog: Self-Deportation Program - May 9, 2025*, at 00:00:55
 20 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-vlog-self-deportation-program-may-9-2025/> [<https://perma.cc/XBX2-QALT>].

21 ⁵ Stefano Pozzebon, et al., *El Salvador Offers to House Violent US Criminals and*
 22 *Deportees of Any Nationality in Unprecedented Deal*, CNN World (Feb. 4, 2025),
<https://www.cnn.com/2025/02/03/americas/el-salvador-migrant-deal-marco-rubio-intl-hnk>.

23 ⁶ Matthew Lee, *Rubio Says El Salvador Offers to Accept Deportees from US of Any*
 24 *Nationality, Including Americans*, AP News (Feb. 4, 2025), <https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396baf9c45a2c0b>.

25 ⁷ Roll Call, *Remarks: Donald Trump Holds a Bilateral Meeting with Nayib Bukele of El*
 26 *Salvador - April 14, 2025*, at 00:06:45 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-remarks-bilat-nayib-bukele-el-salvador-april-14-2025/>
[\[https://perma.cc/GQ26-ADHG\]](https://perma.cc/GQ26-ADHG).

1 don't get out.”⁸ Not only is the system designed to punish, but it also designed to ensure
2 that a detainee will not be able to exercise his or her due process rights to avoid
3 deportation to a country in which they persecution.

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

16 The memo further instructs that if the noncitizen “does not affirmatively state a
17 fear of persecution or torture if removed to the country of removal listed on the Notice
18 of Removal within 24 hours, [ICE] may proceed with removal to the country identified
19 on the notice.” If the noncitizen “does affirmatively state a fear if removed to the
20 country of removal,” then ICE will refer the case to U.S. Citizenship and Immigration
21 Services (“USCIS”) for a screening for eligibility for withholding of removal and
22 protection under the Convention Against Torture. “USCIS will generally screen within
23 24 hours.” If USCIS determines that the noncitizen does not meet the standard, the
24

25 ⁸ Roll Call, *Press Conference: Donald Trump Hosts a Press Conference at the White*
26 *House - June 27, 2025*, at 00:20:29, <https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-white-house-june-27-2025/> [<https://perma.cc/326E-5T8L>].

1 individual will be removed. If USCIS determines that the noncitizen has met the
2 standard, then the policy directs ICE to either move to reopen removal proceedings “for
3 the sole purpose of determining eligibility for [withholding of removal protection] and
4 CAT” or designate another country for removal.

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

9 XII. The Law Governing Punitive Removal Practices

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

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

1 liberty and property . . . unless provision were made that the fact of guilt should first be
2 established by a judicial trial.” *Id.* at 237.

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

5 **Grounds for Relief**

6 **Ground One: Petitioner’s Continued Detention in Immigration Custody** 7 **Violates the Due Process Clause of the Fifth Amendment to the U.S.** 8 **Constitution Because There Is No Significant Likelihood that Petitioner** 9 **Will Be Removed in the Reasonably Foreseeable Future.**

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

10 Because Petitioner’s removal order became final on November 13, 2007, the
11 removal period has long since expired and detention is no longer required under
12 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has
13 passed.

14 There is “good reason to believe that there is no significant likelihood of removal
15 in the reasonably foreseeable future[.]” *Zadvydas*, 533 U.S. at 701. Mr. Sophanthavong
16 left Laos when he was five years old. His family, including his parents live in the
17 United States. He does not have a Laotian passport. Laos also declined to issue travel
18 documents when he was first detained in 2007.

19 Therefore, the burden shifts to the government to rebut that showing. The
20 government cannot meet that burden under the facts of this case. *See Nguyen v. Scott*,
21 No. CV25-1398, 2025 WL 2419288, at *28–29 (W.D. Wash. Aug. 21, 2025) (granting
22 preliminary injunction requiring release under *Zadvydas*); *Tang*, 2025 WL 2637750, at
23 *6 (same).

24 **Ground Two: Procedural Due Process**

25 The allegations in the above paragraphs are realleged and incorporated herein.
26

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

7 Finally, the cost to the government of providing a hearing is low and
8 significantly outweighed by the other factors.

9 Applying these factors, Petitioner was entitled to a hearing before being re-
10 detained.

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

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

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

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

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

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

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

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

25 f) Respondents did not advise Petitioner of the right to request a review of the
26 detention and did not comply with the requirements for such review.

1 **Ground Four: Substantive Due Process**

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

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

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

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

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

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

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

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

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

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

22 Petitioner was convicted and completed any sentences for his criminal
23 convictions decades ago. Petitioner’s convictions arguably made him removable from
24 the United States, but the convictions do not authorize the government to inflict, as a
25 matter of executive policy and discretion, additional punishment on Petitioner.
26 Respondents’ third-country removal program is punitive in nature and execution.

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

9 Respondents' third-country removal program is more than a publicity stunt. The
 10 hundreds of individuals who have already been subjected to it have been banished in
 11 foreign prisons upon arrival without charge and often without communication with the
 12 outside world, including their families and lawyers. Respondents may not subject
 13 Petitioner to its third-country removal program designed to impose a severe punishment
 14 on its subjects. Such conduct "shocks the conscience" under Fifth Amendment
 15 substantive due process, is cruel and unusual punishment, and may not be imposed
 16 without charge and a judicial trial.

17 Respondents may not seek to remove Petitioner to a third country under their
 18 punitive banishment policy and practices. *See Nguyen*, 2025 WL 2419288, at *29
 19 (granting preliminary injunction against "removing Petitioner to any country where he
 20 is likely to face imprisonment upon arrival").

21 **Prayer for Relief**

22 Petitioner respectfully requests that this Court:

- 23 (a) Assume jurisdiction over this action;
- 24 (b) Issue an Order directing Respondents to show cause why this Petition
 25 should not be granted;
- 26 (c) Order Respondents to immediately release Petitioner from custody;

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

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

8 (f) Order that Respondents may not remove Petitioner to any third country
9 because Respondents' third-country removal program seeks to impose unconstitutional
10 punishment on its subjects, including imprisonment and other forms of harm; and

11 (g) Order all other relief that the Court deems just and proper.

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

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

20 DATED this 26th day of November 2025.

21 Respectfully submitted,

22 s/Vicki W.W. Lai
23 Assistant Federal Public Defender
24 Attorney for Somphalavanh Sophanthavong
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