

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILLIAM PANTOJA,

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.

Petitioner Pantoja 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) William Pantoja
8 (b) Other names used: William Pantoja Julia
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 initially ordered removed on January 13, 2011, in the Immigration Court located in Miami. I was detained by ICE on or about May 27, 2025, while reporting to ICE for my yearly check-in.

Your Earlier Challenges of the Decision or Action

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

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

11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

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

(b) Date of the removal or reinstatement order: January 13, 2011

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

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

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

Grounds for Your Challenge in This Petition

I. Introduction

Petitioner William Pantoja is presently detained at the Northwest ICE Processing Center (NWIPC). Petitioner has been held in immigration custody for approximately six and a half months. Removal to the former country of residence is not reasonably foreseeable. Petitioner's continued detention is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner seeks (a) release; (b) an order preventing re-

1 detention unless the government establishes by clear and convincing evidence at a
2 hearing before a neutral decisionmaker that Petitioner is a flight risk or a danger to the
3 community, based on changed circumstances after their most recent release by ICE;
4 (c) an order preventing removal to a third country without notice and meaningful
5 opportunity to respond in compliance with the statute and due process in reopened
6 removal proceedings; and (d) an order barring removal to any third country pursuant to
7 Respondents' punitive removal policy.

8 Petitioner Pantoja was first detained by immigration authorities after his
9 permanent residence was revoked in January of 2011 following a criminal domestic
10 violence conviction. However, he is a Cuban national and at the time Cuba was not
11 accepting any of its citizens who were in removal proceedings. Petitioner was released
12 from immigration custody on condition that he check in once a year with immigration
13 officials. When his permanent residency status was revoked, in January of 2011, he did
14 not appeal and accordingly a final order of removal was issued. Nevertheless, Petitioner
15 made his yearly check-ins with immigration without any problems. When he made his
16 yearly check-in with ICE on May 27, 2025, he was detained. Petitioner has been in
17 immigration custody since that date. When he was re-detained, ICE made no
18 determination or finding that he was somehow a flight risk or a danger to the
19 community.

20 **II. Jurisdiction and Venue**

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

24 This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.*
25 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States
26

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

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

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

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

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

16 Petitioner is "in custody" for the purpose of § 2241 because he has been detained
17 by Respondent ICE in Tacoma, Washington, since May 27, 2025.

18 **IV. Parties**

19 William Pantoja is a citizen of Cuba with a final order of removal issued on
20 January 13, 2011. Petitioner is detained in the control and custody of Respondents at
21 NWIPC. He has been in custody since May 27, 2025. As such, Petitioner is a resident
22 of Tacoma, Washington.

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

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

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

9 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
10 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant
11 to a contract with ICE to detain noncitizens. Respondent Scott is sued in his official
12 capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-
13 700, 2021 WL 1946222, at *3–5 (W.D. Wash. May 14, 2021).

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

18 **V. Background**

19 Petitioner Pantoja is a 39-year-old Cuban national born in 1986. He left Cuba
20 and arrived in the United States in April of 2004 lawfully via a lottery system that
21 offered an opportunity to apply for permanent resident status. He applied for permanent
22 residency and settled with family in Miami, Florida. In August of 2006, Petitioner was
23 granted lawful permanent resident status that applied retroactively to his date of entry.
24 In 2014, Petitioner earned his commercial driver’s license and pursued a career in
25 commercial trucking. To supplement his income, he also worked in various restaurants
26 in addition to undertaking various construction jobs.

On November 21, 2007, Petitioner was convicted in Miami-Dade County Court for domestic violence Aggravated Battery and was sentenced to two years of probation. As a result of this conviction, an immigration judge entered a removal order against Petitioner Pantoja on January 13, 2011, with the appeal waived. Exhibit 1. However, because Cuba would not accept Petitioner, he was placed under the supervision of the Department of Homeland Security after spending approximately 90 days in immigration custody.

On January 19, 2023, Petitioner filed an I-485 Application to Register Permanent Residence or Adjust Status under the Cuban Adjustment Act based on being a qualified Cuban applicant. Exhibit 2. That application was denied on March 17, 2025. Additionally, Petitioner submitted a Form I-601, Application for Waiver of Grounds of Inadmissibility, in conjunction with the Form I-485. Exhibit 3. That application was similarly denied on March 17, 2025.

Petitioner had been diligently checking in with immigration authorities as directed since being placed on supervision. Then, during his annual check-in on May 27, 2025, he was taken into immigration custody for the second time since his permanent residency was revoked.

VI. Particularized Facts Pertaining to Petitioner's Continued Detention

Petitioner Pantoja cannot presently be returned to Cuba, because Cuba will not accept him due to his criminal conviction.² While political developments in recent

² Lizette Alvarez & Kristin Hussey, *Cubans Convicted in the U.S. Face New Fears of Deportation*, N.Y. Times (Jan. 18, 2015) <https://www.nytimes.com/2015/01/19/us/cubans-convicted-in-the-us-face-new-fears-of-deportation.html> [https://perma.cc/6ANE-23KJ] (“Other countries also make it difficult for the United States to deport convicted criminals, but Cuba is one of ‘very few’ that block most deportation orders, Ms. Gonzalez said. Among the nations listed in 2011 as ‘recalcitrant,’ as immigration officials call them, are Cambodia, China, India, Iran and Vietnam, and several in the Caribbean.”).

1 years have increased the number of Cubans deported, the number of removals effected
2 continues to remain miniscule compared to the number of outstanding removal orders.³

3 For fiscal year 2025, ICE reported the arrest of 419 Cuban citizens. U.S.
4 Immigration and Customs Enforcement Administrative Arrest Statistics,
5 <http://www.ice.gov/statistics> [<https://perma.cc/X2AV-89FD>] (accessed October 24,
6 2025). Within the same fiscal year, only 138 Cubans were removed. Of these, only 32
7 Cubans were listed as having criminal convictions. *Id.* Removals have increased in the
8 2025 calendar year, but still are nowhere near the pace required to reasonably process
9 the backlog of individuals with pending removal orders. In calendar year 2025, at least
10 643 Cuban citizens were removed to Cuba. Deportation Data Project, Data Explorer,
11 <https://deportationdata-ice-removals.share.connect.posit.cloud/>
12 [<https://perma.cc/3UM6-3WVR>].⁴ In addition to these, at least 501 Cuban citizens were
13 removed to third countries, primarily to Mexico.⁵ There is no indication that the Cuban
14 government's policy of refusing to accept detainees with criminal records has
15 materially changed even as the United States government has begun re-arresting
16 detainees who were previously released under orders of supervision. Removal to Cuba

17 ³ Lindsay Daniels, *The End of Special Treatment for Cubans in the U.S. Immigration*
18 *System: Consequences and Solutions for Cubans with Final Orders of Removal*, 122
19 Dick. L. R. 2, 707 (2018), <https://insight.dickinsonlaw.psu.edu/dlr/vol122/iss2/8/>
20 [<https://perma.cc/G8DG-SETL>] (“There are at least 34,000 Cubans with final orders of
21 removal in the United States, due in large part to criminal convictions.”).

22 ⁴ Dataset last updated in late July 2025. Deportation Data Project,
23 <https://deportationdata.org/data/ice.html> [<https://perma.cc/8TLF-TGFR>] (“The most
24 recent release of data covers ICE enforcement actions through late July 2025.”).

25 ⁵ Claire Healy and Syrah Ortiz-Blanes, *Cubans with Criminal Records in the U.S. are*
26 *being Quietly Deported to Mexico*, Miami Herald (Oct. 21, 2025),
27 <https://www.miamiherald.com/news/local/immigration/article312432237.html>
28 [<https://perma.cc/55VV-TMQG>] (“It is unclear how many immigrants from third
29 countries have been deported to Mexico from the interior of the U.S. this year. One
30 shelter in Mexico has registered nearly 350 Cubans, the vast majority long-time U.S.
31 residents, since the beginning of the year.”).

1 is not reasonably foreseeable. ICE has not obtained a travel document from Cuba for
 2 Petitioner, nor has Cuba agreed to accept Petitioner. Petitioner reports that ICE intends
 3 to deport him to Mexico, but that Petitioner is refusing to enter Mexico. Without
 4 Petitioner's express consent, apparently Mexico will not accept the Petitioner either.
 5 Exhibit 4.⁶ Accordingly, absent a conditional release, and absent Cuba's cooperation,
 6 we can expect Petitioner to be indefinitely detained.

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

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

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

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

26 ⁶ See *Rios v. Noem*, No. CV25-2866-JES-VET, dkt. 13-1 (S.D. Cal. Nov. 5, 2025).

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

11 When a petitioner has been detained for a total of six months after a final order
 12 of removal, the *Zadvydas* presumptively reasonable period has expired, even if the
 13 petitioner’s current period of detention is less than six months. “A petitioner’s total
 14 length of confinement need not be consecutive to reach the six-month presumptively
 15 reasonable limit established in *Zadvydas*.” *Tang v. Bondi*, No. CV25-1473-RAJ-TLF,
 16 2025 WL 2637750, at *4 (W.D. Wash. Sept. 11, 2025).

17 However, Petitioner Pantoja has been detained for more than six months as he
 18 has been in immigration custody since May 27, 2025. Moreover, the United States has
 19 failed to remove Petitioner for nearly the past 15 years since the removal order was
 20 entered on January 13 of 2011. We can also presume that the 2011 removal order was a
 21 final order of removal since the order reflects that Petitioner waived appeal.

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

25 The six-month presumptively reasonable period runs unabated once Petitioner’s
 26 removal order was final, and does not run solely during any period when Petitioner was
 detained. In *Tran v. Bondi*, No. C25-01897-JLR, 2025 WL 3140462 (W.D. Wash.

1 Nov. 10, 2025), the Hon. James L. Robart held that petitioner’s “*Zadvydas* grace period
2 ended six months following the entry of the order of his removal[.]” *Id.* at *3. The court
3 reached that conclusion even though the petitioner was not detained until two years
4 later, and Respondents argued that only five months of the *Zadvydas* six-month period
5 had expired, based on the times when petitioner was detained. *See* Federal
6 Respondents’ Return Memorandum and Motion to Dismiss, dkt. 13 at 1, 7 (Oct. 27,
7 2025). *See also, e.g., Tadros v. Noem*, No. 25-4108-EP, 2025 WL 1678501, at *3
8 (D.N.J. June 13, 2025) (finding that “six-month detention period under *Zadvydas*”
9 period began upon affirmance of removal order, rejecting argument that petitioner
10 could not obtain habeas relief because he had not yet been in detention for six months);
11 *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009) (concluding
12 that, where government was aware of noncitizen’s address but failed to pursue her
13 removal until more than 15 months after removal order was entered, “the removal
14 period, as well as any presumptively reasonabl[e] six-month period of removal to which
15 the Government may have been entitled” had expired six months after the entry of the
16 removal order); *Bailey v. Lynch*, No. CV 16-2600 (JLL), 2016 WL 5791407, at *2
17 (D.N.J. Oct. 3, 2016) (where order of removal became effective upon petitioner’s
18 release from underlying conviction to ICE authorities, after which he was held only
19 “briefly” before being released on an order of supervision, the *Zadvydas* presumptively
20 reasonable period ended “long before he was taken back into custody[.]”). *See also*
21 *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8,
22 2025) (citing *Cordon-Salguero v. Noem*, No. 25-1626-GLR, Mot. Hr’g Tr. at 33–34
23 (D. Md. June 23, 2025) (Dkt. No. 21) as “finding that the six-month period was not
24 tolled upon release from detention”).

25 A contrary view would run afoul of *Zadvydas*’s reasoning. *Zadvydas* established
26 the six-month grace period to give ICE a fair chance to effectuate the removal before a

1 court gets involved. 533 U.S. at 700–01. That was why the Court chose to expand the
 2 grace period beyond the 90-day statutory removal period: because Congress likely did
 3 not “believe[] that all reasonably foreseeable removals could be accomplished in that
 4 time.” *Id.* at 701. Giving the government time to remove a noncitizen does not require
 5 that the individual be detained for all of that period. ICE can just as effectively take
 6 steps to arrange an individual’s removal whether he is in a cell or on the street.

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

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

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

24 Where there is a liberty interest, determining what procedures are due generally
 25 requires examining the factors set forth in *Mathews*:
 26

1 First, the private interest that will be affected by the official action;
 2 second, the risk of an erroneous deprivation of such interest through the
 3 procedures used, and the probable value, if any, of additional or substitute
 4 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.

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

6 Given that the liberty interest here is “the most elemental,” numerous courts
 7 have found that this first factor weighs heavily in a petitioner's favor. *See Ledesma*
 8 *Gonzalez*, 2025 WL 2841574, at *7 (this factor “must be accorded significant weight”).
 9 Petitioner's status as a noncitizen does not negate that interest. “While the temporary
 10 detention of noncitizens may sometimes be justified by concerns about public safety or
 11 flight risk, the government's discretion to incarcerate non-citizens is always constrained
 12 by the requirements of due process[.]” *E.A. T.-B.*, 2025 WL 2402130, at *3 (quoting
 13 *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

14 In fact, as an individual who was released by ICE, a petitioner has a higher
 15 liberty interest than that of the normal ICE detainee. *See Guillermo M.R. v. Kaiser*,
 16 No. CV25-5436-RFL, 2025 WL 1810076, at *1 (N.D. Cal. June 30, 2025) (by alleging
 17 that he had previously been released by ICE and was about to be re-detained,
 18 “Petitioner has asserted liberty interests that differ from the liberty interests of a
 19 detained person in *Rodriguez Diaz*”) (referencing *Rodriguez Diaz*, 53 F.4th 1189)).⁷
 20 Similarly, in *Carballo v. Andrews*, No. CV25-978-KES-EPG (HC), 2025 WL 2381464,
 21 *4 (E.D. Cal. Aug. 15, 2025), the court indicated that an individual who has been
 22 released has had—in contrast to a detainee with no period of release—“an opportunity
 23 ‘to form the [] enduring attachments of normal life’” (quoting *Morrissey v. Brewer*,

24
 25 ⁷ *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.

1 408 U.S. 471, 482 (1972)), and thus has a heightened liberty interest, such as that which
2 led the Supreme Court in *Morrissey* to impose due process requirements on parolees
3 where the state seeks to revoke parole.

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

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

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

25 The holding that a released detainee was entitled to a pre-deprivation hearing
26 comes not from *Ledesma Gonzalez* and *E.A. T.-B.* alone; dozens of other courts have

1 reached this conclusion as well. *See, e.g., Pinchi v. Noem*, -- F.Supp.3d --, No. CV25-
 2 5632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) (“Providing [petitioner]
 3 with the procedural safeguard of a pre-detention hearing will have significant value in
 4 helping ensure that any future detention has a lawful basis.”); *Doe v. Becerra*, 787
 5 F.Supp.3d 1083, 1094 (E.D. Cal. 2025) (“[G]iven that Petitioner was previously found
 6 to not be a danger or risk of flight and the unresolved questions about the timing and
 7 reliability of the new information, the risk of erroneous deprivation remains high.”);
 8 *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18,
 9 2025) (“Petitioner’s re-detention without any change in circumstances or procedure
 10 establishes a high risk of erroneous deprivation of his protected liberty interest.”).

11 In any hearing held by the government to try to justify re-detention, the
 12 government bears the burden to establish flight risk or danger by clear and convincing
 13 evidence. *See Sanchez-Rivera v. Matuszewski*, No. CV22-1357-MMA-JLB, 2023 WL
 14 139801, at *7 n.9 (S.D. Cal. Jan. 9, 2023) (noting that “an overwhelming majority of
 15 courts” have so held). For cases in this district, *see Odimara v. Bostock*, No. CV24-
 16 1412-MJP-TLF, 2025 WL 1490395, at *10 (W.D. Wash. Mar. 27, 2025), *report and*
 17 *recommendation adopted*, No. CV24-1412 MJP, 2025 WL 1489705 (W.D. Wash.
 18 May 23, 2025) (citing cases).

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

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

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

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

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

Id. § 241.13(i)(3).

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

the history of the [noncitizen's] efforts to comply with the order of removal, the history of [ICE's] efforts to remove [noncitizens] to the country in question or to third countries, including the ongoing nature

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

Id. See also *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025). While courts do not make these determinations in the first instance, they may review them for compliance with the regulation. See *id.*; *Nguyen v. Hyde*, 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."

1 *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); accord *Padilla v. U.S.*
 2 *Immigr. & Customs Enf't.*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023) (“Due
 3 process protects against immigration detention that is not reasonably related to the
 4 legitimate purpose of effectuating removal or protecting against danger and flight
 5 risk.”). The regulatory purpose of immigration detention is to hold a person that is a
 6 flight risk or a danger to the community. *In re Guerra*, 24 I.&N. Dec. 37 (B.I.A. 2006).
 7 Regulations governing parole identify only those two factors for consideration in the
 8 release decision. 8 C.F.R. § 236.1(c)(8). For people who have been ordered deported,
 9 8 C.F.R. § 241.13(i)(2) also authorizes re-detention for purposes of removal, so long as
 10 respondents can prove that “there is a significant likelihood that the [noncitizen] may be
 11 removed in the reasonably foreseeable future.”

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

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

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

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

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

8 Third, if the individual is not removed to either the country of their designation
9 or the country of which they are a subject, national, or citizen, then the government
10 shall remove them to any of the following options: (1) the country from which the
11 individual was admitted to the United States; (2) the country in which is located the
12 foreign port from which the individual left for the United States or for a foreign
13 territory contiguous to the United States; (3) the country in which the individual resided
14 before the individual entered the United States and from which the individual entered
15 the United States; (4) the country in which the individual was born; or (5) the country in
16 which the individual’s birthplace is located when the individual was ordered removed.
17 8 U.S.C. § 1231(b)(2)(E). *Only* “[i]f impracticable, inadvisable, or impossible” to
18 remove the individual to any of these countries may the government remove the
19 individual to “another country whose government will accept [them] into that country.”
20 8 U.S.C. § 1231(b)(2)(E)(vii).

21 Notwithstanding any of these procedures, the statute prohibits removal to a third
22 country where a person may be persecuted or tortured, a form of protection known as
23 withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government “may not
24 remove [a noncitizen] to a country if the Attorney General decides that the
25 [noncitizen’s] life or freedom would be threatened in that country because of the
26 [noncitizen’s] race, religion, nationality, membership in a particular social group, or

1 political opinion.” *Id.*; see also 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is
2 a mandatory protection.

3 Similarly, Congress codified protections enshrined in the Convention Against
4 Torture (CAT) prohibiting the government from removing a person to a country where
5 they would be tortured. See Foreign Affairs Reform and Restructuring Act of 1998
6 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8
7 U.S.C. § 1231 note) (“It shall be the policy of the United States not to expel, extradite,
8 or otherwise effect the involuntary return of any person to a country in which there are
9 substantial grounds for believing the person would be in danger of being subjected to
10 torture, regardless of whether the person is physically present in the United States.”);
11 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. CAT protection is also
12 mandatory.

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

1 378 F.3d 932, 939 (9th Cir. 2004), *as amended* (Aug. 24, 2004), *amended sub nom. El*
2 *Himri v. Ashcroft*, No. 03-71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) (“at the
3 time the government proposes a country of removal pursuant to § 1231(b)(2)(E)(vii),
4 the government must be able to show that the proposed country *will* accept the
5 [individual]”).

6 Due process also demands that the government “ask the noncitizen whether he or
7 she fears persecution or harm upon removal to the designated country and memorialize
8 in writing the noncitizen’s response. This requirement ensures DHS will obtain the
9 necessary information from the noncitizen to comply with § (b)(3) and avoids [a dispute
10 about what the officer and noncitizen said].” *Aden*, 409 F.Supp.3d at 1019; *cf. D.V.D.*,
11 2025 WL 1453640, at *1 (“Following notice, the individual must be given a meaningful
12 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection
13 prior to removal.”) (emphasis omitted).

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

23 Finally, notice of the country to which the noncitizen will be removed must not
24 be “last minute” because that would deprive an individual of a meaningful opportunity
25 to apply for fear-based protection from removal. *Andriasian*, 180 F.3d at 1041. They
26

1 must have time to prepare and present relevant arguments and evidence and to seek
2 reopening of their removal case.

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

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

8 Respondents reportedly have negotiated with at least 58 countries to accept
9 deportees from other nations. On June 25, 2025, the *New York Times* reported that
10 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
11 Rwanda—had agreed to accept deportees who are not their own citizens.⁸ Since then,
12 ICE has carried out highly publicized third-country deportations to South Sudan and
13 Eswatini. It also attempted—and completed—an “end-run” around the protections of
14 the Convention Against Torture by deporting a group of migrants to Ghana, which sent
15 them on to their countries of citizenship despite fears of persecution.

16 Punishment and deterrence appear to be the point of the Administration’s third-
17 country removal scheme. The Administration has reportedly negotiated with countries
18 to have deportees imprisoned in prisons, camps, or other facilities. The government
19 paid El Salvador about \$5 million to arbitrarily and indefinitely imprison more than 200
20 deported Venezuelans in a maximum-security prison notorious for gross human rights
21 abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of
22 deportees from countries in Africa and Central Asia and imprisoned them in hotels, a
23 jungle camp, and a detention center. On July 4, 2025, ICE deported eight men,
24 including one pre-1995 Vietnamese refugee, to South Sudan. The men have been

25 ⁸ 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 detained incommunicado ever since. On July 15, 2025, ICE deported five men to the
2 tiny African nation of Eswatini, including one man from Vietnam, where they are
3 reportedly being held in solitary confinement.

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

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

22 The memo further instructs that if the noncitizen “does not affirmatively state a
23 fear of persecution or torture if removed to the country of removal listed on the Notice
24 of Removal within 24 hours, [ICE] may proceed with removal to the country identified
25 on the notice.” *Id.* If the noncitizen “does affirmatively state a fear if removed to the
26 country of removal,” then ICE will refer the case to U.S. Citizenship and Immigration

1 Services (“USCIS”) for a screening for eligibility for withholding of removal and
2 protection under the Convention Against Torture. *Id.* “USCIS will generally screen
3 within 24 hours.” *Id.* If USCIS determines that the noncitizen does not meet the
4 standard, the individual will be removed. *Id.* If USCIS determines that the noncitizen
5 has met the standard, then the policy directs ICE to either move to reopen removal
6 proceedings “for the sole purpose of determining eligibility for [withholding of removal
7 protection] and CAT” or designate another country for removal. *Id.*

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

12 As mentioned above, Cuba is not cooperating with the removal process, and it
13 appears that they will not accept Petitioner Pantoja most likely due to his criminal
14 record. Additionally, Petitioner refuses to go to Mexico. It further appears from the
15 record that Mexico will not accept anyone who refuses Mexico. Accordingly, failure to
16 release Petitioner on supervision will result in indefinite detention while removing him
17 to a third-party country will amount to punitive removal practices.

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

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

25 Importantly, the Court distinguished deportation, which the Court reasoned is
26 “not a ‘banishment,’ in the sense in which that word is often applied to the expulsion of

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

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

14 **Grounds for Relief**

15 **Ground One: Petitioner’s Continued Detention in Immigration Custody** 16 **Violates the Due Process Clause of the Fifth Amendment to the U.S.** 17 **Constitution Because There Is No Significant Likelihood that Petitioner** 18 **Will Be Removed in the Reasonably Foreseeable Future.**

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

19 Because Petitioner Pantoja’s removal order became final on January 13, 2011,
 20 the removal period has long since expired, and detention is no longer required under
 21 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has
 22 passed. Following the removal order in 2011, Petitioner spent approximately three
 23 months in immigration custody before being released on supervision. He checked in
 24 with the Immigration Service on an annual basis without any reports of absconding or
 25 failure to appear. In other words, he reported diligently as directed. Then on May 27,
 26

1 2025, during his annual check-in, ICE arrested Petitioner, and he has been in ICE
2 custody since that date.

3 There is “good reason to believe that there is no significant likelihood of removal
4 in the reasonably foreseeable future[.]” *Zadvydas*, 533 U.S. at 701. Cuba will not
5 cooperate with the removal process, which is clearly evident given the removal order
6 was issued on January 13, 2011, with no indication that Cuba will accept Petitioner
7 Pantoja. Furthermore, Petitioner refuses to be removed to Mexico. Accordingly, there is
8 no indication that Mexico will accept Petitioner despite that country’s agreement to take
9 Cuban nationals who agree to be removed to Mexico.

10 Therefore, the burden shifts to the government to rebut that showing. The
11 government cannot meet that burden under the facts of this case. *See Nguyen v. Scott*,
12 No. CV25-1398, 2025 WL 2419288, at *28–29 (W.D. Wash. Aug. 21, 2025) (granting
13 preliminary injunction requiring release under *Zadvydas*); *Tang*, 2025 WL 2637750, at
14 *6 (same).

15 **Ground Two: Procedural Due Process**

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

17 Petitioner Pantoja has a liberty interest in not being re-detained. Applying the
18 three-factor test of *Mathews*, that interest is high. The risk of any erroneous deprivation
19 is also high, because ICE’s previous release of Petitioner necessarily reflected a
20 conclusion that he was not a flight risk or a danger to the community. Here, as in
21 *Ledesma Gonzalez*, “ICE revoked that release without any reassessment of those
22 factors.” 2025 WL 2841574, at *8.

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

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

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

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

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

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

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

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

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

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

15 **Ground Four: Substantive Due Process**

16 The re-arrest and detention of Petitioner Pantoja was punitive to the extent that
17 he was given no reasons for being detained indefinitely. Despite having a reliable
18 record of complying with Immigration's directives to check in on an annual basis and
19 instances of absconding or failure to appear, ICE immediately arrested Petitioner on
20 May 27, 2025, without any opportunity to seek release on bond. Respondents' policy
21 against parole in all cases supports the conclusion that Petitioner's detention is punitive,
22 as do many reported statements advocating for increased arrests for their own sake.
23 Respondents' refusal to address widespread mistreatment of detained immigrants also
24 supports that conclusion.⁹

25
26 ⁹ See Nicole Acevedo, *Hundreds of alleged human rights abuses in immigrant
detention, report finds*, NBC News (Aug. 5, 2025), <https://www.nbcnews.com/news/us->

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

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

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

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

news/immigration-detention-human-rights-abuses-report-rcna222499 [https://perma.cc/3XLR-6XHX]; Center for Human Rights, *Conditions at the Northwest Detention Center*, University of Washington, https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/ [https://perma.cc/QF24-UR6C] (last visited December 2, 2025).

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

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

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

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

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

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

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

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

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

13 Prayer for Relief

14 Petitioner respectfully requests that this Court:

- 15 (a) Assume jurisdiction over this action;
- 16 (b) Issue an Order directing Respondents promptly to show cause why this
17 Petition should not be granted;
- 18 (c) Order Respondents to immediately release Petitioner from custody;
- 19 (d) Order that Respondents may not re-detain Petitioner without first holding
20 a hearing before a neutral decisionmaker at which the government bears the burden of
21 establishing flight risk or danger to the community by clear and convincing evidence
22 based on changed circumstances since Petitioner was previously released;
- 23 (e) Order that Respondents may not remove or seek to remove Petitioner to a
24 third country without notice and meaningful opportunity to respond in compliance with
25 the statute and due process in reopened removal proceedings;

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

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

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

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

13 DATED this 2nd day of December 2025.

14 Respectfully submitted,

15 *s/ Jesse Cantor*
16 Assistant Federal Public Defender
17 Attorney for William Pantoja
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