Vay, Tan Trung [redacted]
California City Immigration
Processing Center
22844 Virginia Blvd
California City, CA 93505

DETAINED

FILED

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EASTERN DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF CALIFONIA**

VAY, TAN TRUNG

Petitioner,

vs.

CHRISTOPHER CHESTNUT,
Warden of California City Detention Facility
PAMELA BONDI, Attorney General of the United States; KRISTI NOEM, Secretary, United States Department of Homeland Security; TODD M. LYONS, Acting Director, Immigration and Customs Enforcement,

Respondents.

Case No. 1:25-CV-01810-JLT-SKO (HC)

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

# I. Statement of Facts

## A. Facts Regarding My Case.

My name is VAY, TAN TRUNG

I have also used the Names: N/A

I am currently detained at, California City Detention Facility

The detention facility's address is: California City Immigration Processing Center
22844 Virginia Blvd
California City, CA 93505

The detention facility is detaining me pursuant to a contractual arrangement with my custodian, United States Immigration and Customs Enforcement (ICE).

My Alien Registration Number, or A Number, is [redacted]

My Country of birth is: Vietnam

I was ordered deported/removed on or about September 25,997. I was ordered deported/removed to the nation of Vietnam.

In total, I have been detained by ICE for more than six months following my removal/deportation order. I do not believe there is a significant likelihood that ICE will be able to remove me to the country identified in my deportation/removal order for the following reason: Vietnamese That left the country prior to 1995 are not allow to return to Vietnam. Petitioner believes ICE has not obtain any travel document to be remove to Vietnam original country of removal-order.

**First or Subsequent Detention Period Following Deportation/Removal Order?**

☐ I have been detained by ICE continuously since the day I was ordered deported/removed.

☒ After I was ordered deported/removed, I was detained until . I was then released from ICE custody under an Order of Supervision until September 25,2025. I was arrested and/or taken back into custody on that date and I have been detained by ICE continually since that date.

**B. Facts Pertaining to ICE's Current Third-Country Removal Procedures.**

Under procedures announced to ICE staff on July 9, 2025, when seeking to remove an individual to a country not designated on that person's removal order, that ICE may deport that person without any procedures for notice or an opportunity to be heard if the State Department confirms that it has received diplomatic assurances that individuals will not be persecuted or tortured. *Y.T.D. v. Andrews*, 2025 WL 2675760, at *9 (E.D. Cal. Sept. 18, 2025). If no diplomatic assurances are received, the ICE memo instructs officers to serve on the individual a Notice of Removal that includes the intended country of removal. It instructs officers <u>not</u> to ask whether the individual is afraid of removal to that country. It states that officers should "generally wait at least 24 hours following service of the Notice of Removal before effectuating removal" but that "[i]n exigent circumstances, [ICE] may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is provided reasonable means and opportunity to speak with an attorney prior to removal." *Y.T.D.*, 2025 WL 2675760, at *9-10.

The memo further instructs that if the noncitizen "<u>does not</u> affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, [ICE] may proceed with removal to the country identified on the notice." *Id.* at *10. If the noncitizen "does affirmatively state a fear if removal to the country of removal," then ICE will refer the case to U.S. Citizenship and Immigration Services ("USCIS") for a screening for eligibility for withholding of removal and protection under the Convention Against Torture. "USCIS will generally screen within 24 hours." *Ibid.* If USCIS determines that the noncitizen does not meet the standard, the individual will be removed. *Ibid.* If USCIS determines that the noncitizen has met the standard, then the policy directs ICE to either move to reopen removal proceedings "for the sole purpose of determining eligibility for [withholding of removal protection] and CAT" or designate another country for removal. *Ibid.*

**C. Facts Pertaining to Punitive Removals to Third Counties**

Since January 2025, Respondents have developed and implemented a policy and practice of removing individuals to third countries without first following the procedures in the Immigration and Nationality Act for designation and removal to a third country and without providing fair notice and an opportunity to contest the removal in immigration court. In several cases "authorities have rounded up – often at night and with little or no notice – men, women, and children being held in detention facilities, hastily put them on planes and language, and are unable to contact family or counsel." *D.A. v. Noem*, __ F. Supp.3d __, 2025 WL 2646888, at *1 (D.D.C. Sept. 15, 2025).

Respondents reportedly have negotiated with numerous countries to accept deportees from other nations. These countries include Uganda, Honduras, El Salvador, Costa Rica, Cuba, Jamaica, Mexico, Laos, Myanmar, Yemen, South Sudan, Eswatini, Guatemala, Kosovo, Ghana, Rwanda, Paraguay, and Panama.[1]

[1] Edward Wong, et al., *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. TIMES (June 25, 2025), https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html; Camilo Montoya-Galvez, *U.S. Broadens search for deportation agreements, striking deals with Honduras and Uganda, documents show*, CBS NEWS (Aug. 21, 2025), https://www.cbsnews.com/news/us-deportation-agreements-honduras-uganda/; Matthew Mpoke Bigg, *Why African Countries Keep Making Deals to Accept U.S. Deportees*, N.Y.

Punishment and deterrence appear to be the point of the Administration's third-country removal scheme. As noted by Judge Cartwright in *Nguyen*, "court across the country have recognized that the government is intentionally removing individuals to countries where they will be imprisoned." *Nguyen v. Scott*, 2025 WL 2419288, at *24 (W.D. Wash. Aug. 21, 2025). For example, the government paid El Salvador $4.76 million to arbitrarily and indefinitely imprison more than deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT.[2] In September, 2025, five ICE detainees were awoken in the middle of the night and flown to Ghana and had no connection with Ghana. *D.A.*, 2025 WL 2646888, at *2. Ghana then sent at least one of these persons to a country where they would likely be tortured. *Id.* The other four were taken to an open-air detention facility in Ghana where they were held with little running water, wore the same clothes for several days, and were surrounded by armed military guards. *Id.* at *4. Similarly, ICE deported five men from Cuba, Jamaica, Laos, Vietnam and Yemen to Eswatini, "an absolute monarchy ruled by a king who is accused of clamping down on human rights." [3] The man are being jailed in a maximum security prison in Eswatini.[4]

Public statements by government officials provide further evidence that "third country deportation is occurring as punishment." *Nguyen*, 2025 WL 2419288, at *24 (judicially noticing "official video of President Donald J. Trump stating '[I]f illegal aliens choose to remain in America, they're remaining illegally and they will face severe consequences. Illegal aliens who stay in America face punishments, including

Times (Sept. 23, 2025), https://www.nytimes.com/2025/09/23/world/african-countries-us-deportees.html

[2] Rebecca Beitsch, Litigation reveals details of Trump deal with El Salvador to imprison migrants, THE HILL (September 9, 2025), https://thehill.com/homenews/administration/5493750-cecot-legal-counsel-ban/.

[3] Gerald Imray, A Cuban man deported by the US to Africa is on a hunger strike in prison, his lawyer says, AP NEWS (Oct. 23, 2025), https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859.

[4] *Ibid.*

significant jail time, enormous financial penalties, confiscation of all property, garnishment of all wages, imprisonment and incarceration, and sudden deportation in a place and manner solely of our discretion.'" and "statement by President Donald J. Trump that immigrants would be detained at Guantanamo Bay prison because 'it's a tough place to get out' and 'we don't want them coming back.'").

## II. Jurisdiction and Venue

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

This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as Respondent), and 28 U.S.C. § 1651 (All Writ Act). Respondents have waived sovereign immunity for purposed of this suit. 5 U.S.C. §§ 702, 706.

The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et seq*.; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq*.; the All Writs Act, 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment; and the Court's 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 and Petitioner detained in this district. Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district.

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

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

The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

Petitioner is "in custody" for the purpose of § 2241 because petitioner is being detained by ICE.

## IV. Parties

Petitioner is subject to a final order of removal from the United States and is detained by ICE.

The first listed Respondent in the caption of this petition is the Warden or Director of the facility in which Petitioner is detained. This person has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens. This person is sued in his/her official capacity.

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 Todd M. Lyons is the Acting Director of the United States Immigration and Customs Enforcement ("ICE") and as such can authorize Petitioner's detention or release. Respondent Lyons is sued in his official capacity.

## V. Legal Framework

### A. Detention Following a Final Order of Removal/Deportation

The INA provides that after a removal order becomes final, the government "shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This period is sometimes referred to as the "removal period." § 1231(a)(1). During the 90-day removal period, detention of the noncitizen is authorized. 8 U.S.C. § 1231(a)(2).

8 U.S.C. § 1231(a)(6) allows the government to detain certain enumerated classes of noncitizens – including those ordered removed due to criminal convictions – for more than 90 days. Id. § 1231(a)(6). However, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by [section 1231(a)(6)]." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001).

Upon release from custody, a noncitizen subject to a final order of removal must comply with certain conditions of release. 8 U.S.C. § 1231(a)(3), (6).

**B. Revocation of Post-Final-Order Release**

The Government has promulgated regulations in the Code of Federal Regulations concerning the release of noncitizens who are subject to a final removal order. 8 C.F.R. § 241.4; 8 C.F.R. § 241.13. Both 8 C.F.R. § 241.4(1)(1) and § 241.13(i)(3) provide that, upon revocation of release, the noncitizen "will be notified of the reasons for revocation of his or her release," and will be given "an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Constantinovici v. Bondi*, __ F.Supp.3d __, 2025 WL 2898985, at *4 (S.D. Cal. Oct. 10, 2025) (citing cases); *Diaz v. Wofford*, 2025 WL 2581575, at *5 (E.D. Cal. Sept. 5, 2025) (same). "Both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 were intended to provide due process protections to noncitizens following the removal period as they are considered for continued detention, release, and then possible revocation of release." *Constantinovici*, 2025 WL 2898985 at *5 (internal quotations and citations omitted). The government is required to follow these regulations in revoking a noncitizen's release. *Hoac v. Becerra*, 2025 WL 1993771, at *4 (E.D. Cal. Aug. 20, 2025) (same).

### C. The legal framework for Third-Country Removals

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

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

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

Third , if the individual is not removed to either the country of their designation or the country of which they are a subject, national, or citizen, then the government shall remove them to any of the following option: (1) the country from which the individual was admitted to the United States; (2) the country in which is located the foreign port from which he individual left for the United States or for a foreign territory contiguous to the United States; (3) the country in which the individual resided before the individual entered the United states and from which the individual entered the United States; (4) the country in which the individual was born; or (5) the Country in which the individual's birthplace is located when the individual was ordered removed. 8 U.S.C. § 1231(b)(2)(E). Only "[i]f impracticable, inadvisable, or impossible" to remove the individual to any of these countries may the government remove the individual to "another county whose government will accept [them] into that country." 8 U.S.C. § 1231(b)(2)(E)(vii).

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

Similarly, Congress codified protection enshrined in the Convention Against Torture (CAT) prohibiting the government from removing a person to a country where they would be tortured. See Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA") Public law 105-277, div. G, see 2242, 1212 Stat. 2681, 2631-822 (8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physical present in the Untied States."); 28 C.F.R. § 200.1; §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

To comport with the requirements of due process, the government must provide notice of the third-country removal and an opportunity to respond. Due process requires" written notice of the country being designated" and " the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)." *Aden v. Nielsin*, 409 F. Sup. 3D 998, 1019 (W.D. Wash. 2019); see also *Ibarra- Perez v. United States*, __ F.4th ___, 2025 WL 2461663, at *5 (9th Cir. Aug. 27, 2025) ("DHS must also 'notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deport'; otherwise, DHS violates their constitutional right to due process") (citing *Andrasian*); *Andriasian v. INS*, 180 F.3d 1033, 1041 ($9^{th}$ Cir. 1999) (due process requires notice to the noncitizen of the right to apply for asylum and withholding to the country where they will be removed); *Nguyen*, 2025 WL 2419288, at *18 ( under binding Ninth Circuit precedent, ICE detainee "cannot be removed to a third country without sufficient notice and opportunity to be heard."). In addition, the government must be able to show evidence that the third country will accept the individual into that country. *See Himri v. Ashcroft*, 378 F.3d 932, 939 ($9^{th}$ Cir. 2004) ("at the time the government proposes a country of removal pursuant to § 1231(b)(2)(E)(vii), the government must be able to show that the proposed country *will* accept the [individual]").

Due process also demands that the government "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said]." *Aden*, 409 F. Supp.3d at 1019.

If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. *Cf. Y.T.D. v. Andrews*, 2025 WL 2675760, at *13 (E.D. Cal. Sept. 18, 2025) (requiring the government to move to reopen the noncitizen's immigration proceedings if the individual demonstrates "reasonable fear" and to provide "a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings" if the noncitizen is found to not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp.3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

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

**D. The Law Governing Punitive Removal Practices**

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

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

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

## VI. Grounds for Relief

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

Petitioner's present detention is purportedly authorized under 8 U.S.C. § 1231. Detention of non-citizens who have been ordered removed is mandatory during the so-called 90-day "removal period." 8 U.S.C. § 1231(a)(1)(A). This period begins, as relevant here, on the "date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). Because Petitioner's removal order became final more than six months ago the removal period has long since expired and detention is no longer required under 8 U.S.C. § 1231.

Not only is detention no longer required, it is no longer allowed under the facts of this case. Given the "serious constitutional threat" the *Zadvydas* Court believed to be posed by the indefinite detention of non-citizens who had been admitted to the country under the Fifth Amendment's Due Process Clause, 553 U.S. at 699, the Court interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the statute's "basic purpose [of] effectuating [a non-citizen]'s removal[.]" *Id.* at 696-699. The Court further held that the presumptive period during which the detention is reasonably necessary to effectuate a non-citizen's removal is six months; after that, the non-citizen is eligible for conditional release if he can demonstrate that there is "no significant likelihood of removal in the reasonably foreseeable future." *Id* at 701. After the "presumptively reasonable" period of six months' detention, when the noncitizen can "provide good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," then "the Government must respond with evidence sufficient to rebut that showing." *Id.*

For the reasons stated in Section I (A) of this petition, there is not a significant likelihood Petitioner will be removed in the reasonably foreseeable future. Petitioner's continued detention in ICE custody violates the Due Process Clause of the Fifth Amendment under *Zadvydas*. *See e.g.*, *Nguyen*, 2025 WL 2419288, at *28-29 (granting preliminary injunction requiring release under *Zadvydas*).

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

As an ICE detainee, Petitioner is subject to ICE's current procedures regarding removal of persons to third countries. ICE's current procedures for removal of detainees to third countries, described in Section I (B) of this petition, violates the Fifth Amendment, the INA, the CAT, and implementing regulations, all of which mandate meaningful notice and opportunity to respond to any attempt to remove Petitioner 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.

Respondents' current third country removal procedures is inconsistent with Ninth Circuit precedent regarding due process protections with respect to removal to third country, as described in Section V (C) of this petition. *Nguyen*, 2025 WL 2419288. at *18-19 (W.D. Wash. Aug. 21, 2025). ICE's current procedures fail to give an ICE detainee sufficient notice and a meaningful opportunity to present asylum and withholding of removal claims regarding the third country to which ICE seeks to send the detainee. *Ibid.*; *see also Y.T.D.*, 2025 WL 2675760, at *13 (permanently enjoining Respondent from removing petitioner to third country without "(a) Providing him and his counsel with written notice in a language the Petitioner can understand. (b) Following notice, Petitioner must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal. (c) If Petitioner demonstrates 'reasonable fear' of removal to the third country, Defendants must move to reopen his immigration proceedings. (d) If the non-citizen is not found to have demonstrated a 'reasonable fear' of removal to the third country, Defendants must provide a meaningful opportunity, and minimum of fifteen days, for the non-citizen to seek reopening of his immigration proceedings.")

### C. Ground Three: Punitive Third-Country Banishment; Violation of Fifth and Eighth Amendments

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 offense 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 trail, and attendant constitutional protections. *Wong Wing*, 163 U.S. at 236-38.

Petitioner has completed any sentence imposed for criminal conviction. Respondents are not authorized to punish the Petitioner as part of immigration proceedings. Respondents' third-country removal program is punitive in nature and execution.

As described in Section I (c) of this petition, 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 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.

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

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

### D. Ground Four: Petitioner's Continued Detention in Immigration Custody Violates the Fifth Amendment Due Process Clause, 8 C.F.R. § 241.13, and the Administrative Procedures Act

***[pick one]***

☐ I am not pursuing Ground One because I have been detained by ICE continuously since the day I was deported/removed.

☒ I am pursuing Ground One because I was previously release from post-final order detention and then ICE detained me again without (a) proof that an ICE official determined I there is a significant likelihood I will be deported soon, (b) notification of the reasons for revocation of my release, and/or (c) an initial informal interview promptly after my return to custody to afford me an opportunity to respond to the reasons stated in the notification.

Title 8 C.F.R. § 241.13(i)(2) provides that ICE may "revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). That "regulation require[s] (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619-20 (1st Cir. 2023). In *Rokhfirooz*, the Court determined that these requirements were not met on a record materially indistinguishable from this one. 2025 WL 2646165, at *3. There, the government failed to produce "any documented determination, made prior to Petitioner's arrest, that his release should be revoked." *Id.* at *3. Similarly in *Hoac* the Court ordered release where "Respondents have not provided any details about why a travel document could not be obtained in the past, nor have they attempted to show why a travel document is more likely this time around." *Hoac*, 2025 WL 1993771, at *4.

In addition, Title 8 C.F.R. §§ 241.4(1), 241.13(i)(3)'s "require ICE to provide 'an initial informal interview promptly ... to afford the alien an opportunity to respond to the reasons for revocation.'" *Rombot v. Souza*, 296 F.Supp.3d 383, 387 (D. Mass. 2017) (quoting 8 C.F.R. §§ 241.4(1)(2), 241.13(i)(3)). ICE's failure to afford such an interview violates Petitioner's right to due process. *Ceesay v. Kurzdorfer*, 781 F. Supp.3d 137, 164-65 (W.D.N.Y. 2025); *see also Rombot*, 296 F. Supp.3d at 386-89. That violation requires release, because (1) government agencies are required to follow their own regulations, and (2) these particular regulations provide the most "minimal process" that the Constitution would permit before "someone's most basic right of freedom is taken away." *Ceesay*, 781 F. Supp.3d at 164-65; *see also Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) ("The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." (cleaned up)). That is reason enough to grant this petition.

Numerous courts have granted habeas petitions and/or ordered an immigration detainee's release where ICE has failed to follow its own regulations in re-detaining the petitioner. *See, e.g., Phan v. Noem*, 2025 2025 WL 2898977, at *4 (S.D. Cal. 10, 2025) (granting petition and ordering release of person with final order of removal to Vietnăm where "ICE's Failure to provide an interview and opportunity to respond" and failure to show a determination " that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future" fell short of requirement of 8 C.F.R. § 241.13(i)); *Yee S. v. Bondi*, 2025 WL 2879479, at *6 ( D. Minn. Oct. 9, 2025) (partially granting petition and ordering petition and ordering petitioner released where "Petitioner has shown that ICE's re-detention of him on June 6, 2025 Violated the law because ICE did not comply with its own regulations under section 241.13(i)(2)"); *Hoac*, 2025 WL 1993771, at *4.[5]

[5] *See also Bui v. Warden, Otay Mesa Detention Facility, et al.*, 2025 WL 2988356, at *5 (S.D. Cl. Oct. 23, 2025) (granting petition and ordering release where respondent failed to follow its own regulations in revoking release); *Constantinovici*, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025)(same); *Sun v. Noem*, 2025 WL 2800037 (S.D.. Cal. Sept. 30, 2025) (granting TRO for release where respondent failed to follow its own regulation in revoking release ); *Va Tran v. Noem*, 2025 WL 2770623 (S.D.. CAL. Sept. 29, 2025) (same); *Rokhfiooz*, 2025 WL 2646165 (granting petition and ordering release where respondent failed to follow its own regulation in revoking release); *Zhu v. Genalo*, 2025 WL 2452353, at *9 (S.D.N.Y.Aug. 26, 2025) (partially granting petition and ordering release where respondent did not follow its own regulations before revoking release); *Ceesay*, 781 F. Supp.3d at 166 ( because ICE did not follow its own regulations in deciding to re-detain Ceesay, his due process rights where violated, and he is entitled to release."); *M.S.L. v. Bostock*, 2025 WL 2430267, at *15 (D.OR. Aug. 21, 2025)(granting petition and ordering release where respondent violated regulations in revoking release); *Escalante v. Noem*, 2025 WL 2206113, at 4 (E.D. Tex. Aug.2, 2025(same); *Liu v. Carter*, 2025 WL 1696526, at3 (D. Kan. June 17, 2025)(same); *Rombot*, 296 F.Supp.3d at 387 (odering ICE to release petitioner where ICE failed to follow its own regulations in detaining petitioner).

## VII. Prayer for Relief

Petitioner respectfully requests that this Court:

(a) Assume jurisdiction over this action;

(b) Issue an Order directing Respondents to show cause why this Petition should not be granted within three days;

(c) Order Respondents to immediately release Petitioner from custody;

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

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

(f) Order all other relief that the Court deems just in proper.

## VIII. Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system: December 10, 2025.

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct to the best of my knowledge. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: December 10, 2025

[redacted]

Vay, Tan Trung
California City Immigration
Processing Center
22844 Virginia Blvd
California City, CA 93505

# CERTIFICATE OF SERVICE

I here certify that a true copy of this Certificate of Service and Petitioners, Petition for writ of habeas corpus under 28 U.S.C. § 2241 and request for injunctive relief was place in a prepaid postage envelope and deposited at the California City Immigration Processing Center, mailing system authorize by the detainees on December 10, 2025 in California City, CA address to the Following

Office of the Clerk
United States District Court
Eastern District of California
2500 Tulare Street, Suite 1501
Fresno, CA 93721

U.S. Department of Justice
United States Attorneys Office
Eastern District of California
501 I Street, Suite 10-100
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.

[redacted]

Vay, Tan Trung
California City Immigration
Processing Center
22844 Virginia Blvd
California City, CA 93505