

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VICTOR ARGENIS REA-
HERNANDEZ,

Petitioner,

v.

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. CV25-02196-TMC, 2025 WL 3173842, at *1 (W.D. Wash. Nov. 13, 2025).

In addition to the relief requested in the Unopposed Motion for Briefing Schedule, to be filed once the case is docketed, Petitioner asks this Court to order Respondents not to remove Petitioner 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 detainee), and “under the Court’s inherent

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

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Full name: Victor Argenis Rea-Hernandez
- (b) Other names used: None
2. Place of confinement:
 - (a) Northwest Immigration Processing Center (NWIPC)
 - (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a contractual arrangement with my custodian, the Immigration and Customs Enforcement Field Office Director at Seattle, Washington.
- (c) Case number or numbers [ICE file number, if known]: My A# has been provided to the government along with the filing of this petition.
3. I am currently being held on orders by federal authorities: United States Immigration and Customs Enforcement.
4. I am currently being held on an immigration charge.

Decision or Action You Are Challenging

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

¹ For just a few examples of other courts issuing such an order in § 2241 cases involving ICE detainees within the past few months (or reflecting the court had previously issued such an order), *see, e.g., Bustos v. Raycraft*, No. 25-13202, 2025 WL 3022294, at *2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. CV25-513-SDN, 2025 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 an unknown date. I was taken into custody by ICE in Utah on January 22, 2025. I obtained an IJ order of withholding of removal under the Convention Against Torture on May 12, 2025. I have been detained in ICE custody for 11 months, including nearly six months since the IJ decision.

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: 1/22/2025

(b) Date of the removal or reinstatement order: unknown, possibly 5/12/2025

(c) Did you or the government 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? Application for asylum relief, INS withholding, and withholding under the Convention Against Torture, which resulted in an IJ decision granting withholding of removal to Venezuela.

Grounds for Your Challenge in This Petition

I. Introduction

Petitioner Victor Rea-Hernandez is presently detained at the Northwest ICE Processing Center (“NWIPC”). Petitioner has been held in immigration custody for 11 months, during which he contracted meningitis at the facility, was hospitalized for one month, and continues to suffer serious symptoms, including poor appetite, headaches, and fever. Removal to Venezuela is not reasonably foreseeable because Petitioner was granted withholding of removal to Venezuela by an immigration judge after [REDACTED]

[REDACTED]

[REDACTED] See Ex. 1. Removal to a third country is not reasonably foreseeable because ICE has told Petitioner that it has sent requests to Mexico, Canada, Guatemala, and unidentified African countries but did not receive answers. *See, e.g.*, Ex. 2 (Notice of Removal to Mexico dated June 24, 2025). Petitioner’s continued detention is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner seeks (a) release to his family in Ogden, Utah; (b) an order preventing re-detention unless the government establishes by clear and convincing evidence at a hearing before a neutral decisionmaker that Petitioner is a flight risk or a danger to the community, based on changed circumstances after his most recent release by ICE; (c) an order preventing removal to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings; and (d) an order barring removal to any third country pursuant to Respondents’ punitive removal policy.

II. Jurisdiction and Venue

This case arises under the Constitution of the United States 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.

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

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

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

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

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

18 Petitioner is "in custody" for the purpose of § 2241 because he has been detained
19 by Respondent ICE in Tacoma, Washington, since January 22, 2025.

20 **IV. Parties**

21 Petitioner is a citizen of Venezuela. He has obtained withholding of removal to
22 Venezuela under the Convention Against Torture, but he is nonetheless detained in the
23 control and custody of Respondents at NWIPC. As such, Petitioner is a resident of
24 Tacoma, Washington.

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

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

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

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

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

V. Background

Victor Rea-Hernandez was born on [REDACTED] in Venezuela, and is currently 34 years old. He has been in ICE custody since January 22, 2025. In those 11 months he contracted meningitis in the facility and became seriously ill and was hospitalized at St. Joseph Medical Center for one month. He is still suffering serious

1 symptoms and takes 25 pills per day, but he is afraid to tell officers in the detention
2 center when he is in pain because he is afraid they will not release him if he is sick.

3 Petitioner obtained withholding of removal to Venezuela under the Convention
4 Against Torture on May 12, 2025, based on [REDACTED]
5 [REDACTED]

6 Even though the government waived its right to appeal, ICE has still not released him.
7 *See id.* He has been told of attempts to remove him to third countries or given notice
8 that ICE intended to remove him a third country, but no such removals have occurred.
9 *See Ex. 2.*

10 ICE had previously detained him in 2022 when he turned himself in near the
11 border, but he was released after a few days with some paperwork. No court date was
12 scheduled for him. He was out of custody in the United States from 2022 until 2025 and
13 was not aware of any reporting requirement. He was working as an assistant to an
14 automobile mechanic until ICE arrested him in 2025.

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

16 Petitioner cannot presently be returned to Venezuela, because he has obtained
17 withholding of removal to Venezuela under the Convention Against Torture. *See Ex. 1.*
18 Removal to Venezuela is thus not reasonably foreseeable even though he has been
19 detained far longer than the presumptively reasonable six months, and Petitioner has no
20 ties to any other country. Upon information and belief, ICE has asked other countries to
21 accept him but has failed. For example, although ICE told him it intended to remove
22 him to Mexico, no such removal has occurred. *See Ex. 2.* In other cases, ICE has
23 submitted a sworn declaration stating that Mexico will only accept deportees who are
24 willing to go there. *See Parsons Decl., Ex. 3.* Because Petitioner was kidnapped twice
25 the last time he traveled through Mexico, he is not willing to go there.
26

VII. The Legal Framework Regarding Indefinite Detention Pending Removal

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

Under 8 U.S.C. § 1231, detention of noncitizens 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 on the “date the order of removal becomes administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i). But the *Zadvydas* Court believed that a “serious constitutional threat” under the Fifth Amendment’s Due Process Clause was posed by the indefinite detention of noncitizens. 533 U.S. at 699. The Court therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the statute’s “basic purpose [of] effectuating [a noncitizen]’s removal[.]” *Id.* at 696–99.

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

The issue is not whether Respondents have been able to remove some individuals to a given country. Rather, the court must make an individualized analysis as to a particular detainee. *See Nguyen v. Scott*, 796 F.Supp.3d 703, 726 (W.D. Wash. 2025) (stating increase in total number of removals to Vietnam, including those who entered pre-1995, fails to rebut the evidence presented by Petitioner that “his individual circumstances make removal unlikely.”). Facts that are part of the analysis here include the Convention Against Torture decision granting withholding of removal to Venezuela and any unsuccessful attempts at third-country removal.

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

The six month presumptively reasonable period runs unabated once Petitioner was ordered removed (if earlier than the CAT grant), and does not run solely during any period when Petitioner was detained. In *Tran v. Bondi*, No. CV25-01897-JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025), the Hon. James L. Robart held that petitioner’s “*Zadvydas* grace period ended six months following the entry of the order of his removal[.]” *Id.* at *3. The court reached that conclusion even though the petitioner was not detained until two years later, and Respondents argued that only five months of the *Zadvydas* six-month period had expired, based on the times when petitioner was detained. See Federal Respondents’ Return Memorandum and Motion to Dismiss, Dkt. 13 at 1, 7 (Oct. 27, 2025). See also, e.g., *Tadros v. Noem*, No. 25-4108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (finding that “six-month detention period under *Zadvydas*” period began upon affirmance of removal order, rejecting argument that petitioner could not obtain habeas relief because he had not yet been in detention for six months); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009) (concluding that, where government was aware of noncitizen’s address but failed to pursue her removal until more than 15 months after removal order was entered, “the removal period, as well as any presumptively reasonable six-month period of removal to which the Government may have been entitled” had expired six months after the entry of the removal order); *Bailey v. Lynch*, No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (where order of removal became effective upon petitioner’s release from underlying conviction to ICE authorities, after which he was held only “briefly” before being released on an order of supervision, the *Zadvydas* presumptively reasonable period ended “long before he was taken back into custody[.]”).

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

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

12 Procedural due process requires notice and an opportunity to be heard. *Mathews*
 13 *v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural
 14 due process rights, a petitioner must establish (1) a protected property or liberty interest,
 15 and (2) a denial of adequate procedural protections. *ASSE Int’l, Inc. v. Kerry*, 803 F.3d
 16 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest,
 17 including the function involved and the fiscal and administrative burdens that the
 18 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).

19 Petitioner’s interest in not being detained is “the most elemental of liberty
 20 interests[.]” *E.A. T.-B. v. Wamsley*, 795 F.Supp.3d 1316, 1321, 1324 (quoting *Hamdi v.*
 21 *Rumsfeld*, 542 U.S. 507, 529 (2004)) (granting petition and ordering immediate release
 22 with no re-detention absent “an immigration court hearing . . . held (with adequate
 23 notice) to determine whether detention is appropriate.”). *See also, e.g., Ledesma*
 24 *Gonzalez v. Bostock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, *8 (W.D. Wash.
 25 Oct. 7, 2025) (finding detainee has liberty interest).
 26

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

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

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

Given that the liberty interest here is “the most elemental,” numerous courts have found that this first factor weighs heavily in a petitioner’s favor. *See Ledesma Gonzalez*, 2025 WL 2841574, at *7 (this factor “must be accorded significant weight”). Petitioner’s status as a noncitizen does not negate that interest. “While the temporary detention of non-citizens may sometimes be justified by concerns about public safety or flight risk, the government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process[.]” *E.A. T.-B.*, 795 F.Supp.3d 1316, 1321 (quoting *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

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

1 in 2020 can only be understood as reflecting a determination that he did not pose a
2 flight risk or danger to the community.”).

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

8 As stated in *E.A. T.-B.*, 795 F.Supp.3d at 1324, “although it would have required
9 the expenditure of finite resources (money and time) to provide Petitioner notice and
10 hearing on ATD violations before arresting and re-detaining him, those costs are far
11 outweighed by the risk of erroneous deprivation of the liberty interest at issue.”

12 The holding that a released detainee was entitled to a pre-deprivation hearing
13 comes not from *Ledesma Gonzalez* and *E.A. T.-B.* alone; dozens of other courts have
14 reached this conclusion as well. And while those two cases did not involve petitioners
15 within final removal orders, many courts have found a liberty interest in not being re-
16 detained, applied the *Mathews* factors as discussed above, and have granted immediate
17 release. In this district, Judge Ricardo S. Martinez held, “[b]ased on this review of the
18 *Mathews* factors, the Court finds that Petitioner has a protected liberty interest in his
19 continuing release from custody, and that due process requires that Petitioner receive
20 proper notice and an opportunity to respond before he can be re-detained.” *Jimenez v.*
21 *Bondi*, No. CV25-2167-RSM, 2025 WL 3466925, at *2 (W.D. Wash. Dec. 3, 2025)
22 (granting petition, ordering immediate release, and barring re-detention “without
23 providing adequate notice of the reasons for his re-detention and a meaningful
24 opportunity to respond.” *Id.* at *3). *See also, e.g., Perez v. Mordant*, No. 2:25-CV-
25 00947-SPC-DNF, 2025 WL 3466956, at *5 (M.D. Fla. Dec. 3, 2025); *S-M-J v. Bostock*,
26 No. 6:25-CV-01425-MTK, 2025 WL 3137296, at *5 (D. Or. Nov. 10, 2025). *Cf. Lopez*

Dejesus, v. Bostock, No. CV25-01427-JHC-TLF, 2025 WL 3268002 (W.D. Wash. Nov. 24, 2025) (applying *Mathews* factors to conclude that petitioner was entitled to pre-redetention due process, even though his detention was pursuant to the mandatory detention provisions of 8 U.S.C. § 1226(c)).²

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

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

² The *Lopez Dejesus* opinion does not mention that detention was pursuant to § 1226(c); that fact is shown in Respondents’ Return Memorandum, Dkt. 16 at 1, CV25-01427-JHC-TLF (W.D. Wash. Oct. 6, 2025).

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

Id. § 241.13(i)(3).

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

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

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

1 *Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing
2 *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

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

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

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

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

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

1 foreign port from which the individual left for the United States or for a foreign
2 territory contiguous to the United States; (3) the country in which the individual resided
3 before the individual entered the United States and from which the individual entered
4 the United States; (4) the country in which the individual was born; or (5) the country in
5 which the individual's birthplace is located when the individual was ordered removed.

6 8 U.S.C. § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to
7 remove the individual to any of these countries may the government remove the
8 individual to "another country whose government will accept [them] into that country."
9 8 U.S.C. § 1231(b)(2)(E)(vii).

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

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

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. Nielsen*, 409 F.Supp.3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All removals to third countries, *i.e.*, removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen’s order of removal, must be preceded by written notice to both the non-citizen and the non-citizen’s counsel in a language the non-citizen can understand.” (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th 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). 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 (9th Cir. 2004), *amended sub nom. El Himri v. Ashcroft*, No. 03-71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) (“[A]t 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 § (b)(3) and avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F.Supp.3d at 1019; *cf. D.V.D.*, 2025 WL 1453640, at *1 (“Following notice, the individual must be given a meaningful

1 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection
 2 prior to removal.”) (emphasis omitted).

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

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

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

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

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

1 Rwanda—had agreed to accept deportees who are not their own citizens.³ Since then,
 2 ICE has carried out highly publicized third-country deportations to South Sudan and
 3 Eswatini. It also attempted—and completed—an “end-run” around the protections of
 4 the Convention Against Torture by deporting a group of migrants to Ghana, which sent
 5 them on to their countries of citizenship despite fears of persecution. *See generally*
 6 Ex. 4, Sarah Stillman, *Disappeared to a Foreign Prison*, New Yorker (Dec. 12, 2025).

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

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

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

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

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

25 The eight men who were ultimately deported to South Sudan all claimed fear of
26 removal to South Sudan. None of those men were provided a fear screening by a

USCIS officer or otherwise, despite the fact that they were held by ICE for six weeks on a U.S. military base in Djibouti before their final removal to South Sudan.

XII. 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 hard labor—absent a criminal charge, trial 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 distinguished 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,” from 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 noncitizen] who has not complied with the conditions 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 shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730 (1893)). But 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 trial.” *Id.* at 237.

Deportation of individuals to third countries to be imprisoned or harmed is unquestionably punishment, and courts in this district have held that “the Government’s practice of third-country removal paired with imprisonment is intended to be punitive and thus violates due process under *Wong Wing*, 163 U.S. 228 at 236–38 (1896), and

Zadvydas, 533 U.S. 678 at 693–94 (2001).” *Baltodano v. Bondi*, No. CV25-1958-RSL, 2025 WL 3484769, at *10 (W.D. Wash. Dec. 4, 2025); *see also D.A. v. Noem*, No. 25-cv-3135-TSC, 2025 WL 2646888, at *2 (D.D.C. Sept. 15, 2025) (describing deportations of noncitizens who had obtained CAT protections to Ghana, which was threatening to send them on to their home countries, as “part of a pattern and widespread effort to evade the government’s legal obligations by doing indirectly what it cannot do directly.”). This Court should do the same.

Grounds for Relief

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.

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

Because Petitioner was ordered removed no later than May 12, 2025, the removal period has expired, and detention is no longer required under 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has passed.

There is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]” *Zadvydas*, 533 U.S. at 701. Petitioner has obtained withholding of removal to Venezuela and has no ties to other countries. *See Baltodano*, 2025 WL 3484769, at *4.

Therefore, the burden shifts to the government to rebut that showing. The government cannot meet that burden under the facts of this case. *See Nguyen v. Scott*, No. CV25-1398, 2025 WL 2419288, at *28–29 (W.D. Wash. Aug. 21, 2025) (granting preliminary injunction requiring release under *Zadvydas*); *Tang*, 2025 WL 2637750, at *6 (same); *Baltodano*, 2025 WL 3484769, at *5 (granting release after briefing on the merits).

Ground Two: Procedural Due Process

The allegations in the above paragraphs are realleged and incorporated herein. Petitioner has a liberty interest in not being re-detained. Applying the three-factor test of *Mathews*, that interest is high. The risk of any erroneous deprivation is also high, because ICE's previous release of him necessarily reflected a conclusion that he was not a flight risk or a danger to the community. Here, as in *Ledesma Gonzalez*, "ICE revoked that release without any reassessment of those factors." 2025 WL 2841574, at *8.

Finally, the cost to the government of providing a hearing is low, and significantly outweighed by the other factors. His re-detention violated his due process rights and was therefore unlawful.

Ground Three: Failure to Comply with Regulations

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

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

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

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

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

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

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

(f) Respondents did not advise Petitioner of the right to request a review of the detention and did not comply with the requirements for such review. His re-detention was therefore contrary to Respondents' regulations and unlawful.

Ground Four: 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 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”).

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

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

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

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

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

12 Petitioner is removable from the United States, but that does not authorize the
13 government to inflict, as a matter of executive policy and discretion, punishment on
14 Petitioner. Respondents’ third-country removal program is punitive in both its nature
15 and its execution.

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

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

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

6 Respondents may not seek to remove Petitioner to a third country under their
7 punitive banishment policy and practices. *See Nguyen*, 2025 WL 2419288, at *29
8 (granting preliminary injunction against “removing Petitioner to any country where he
9 is likely to face imprisonment upon arrival”); *Baltodano*, 2025 WL 3484769, at *10
10 (granting injunction against “remov[ing] petitioner to any third country where he is
11 likely to face imprisonment or harm”).

12 **Prayer for Relief**

13 Petitioner respectfully requests that this Court:

- 14 (a) Assume jurisdiction over this action;
- 15 (b) Issue an Order directing Respondents promptly to show cause why this
16 Petition should not be granted;
- 17 (c) Order Respondents to immediately release Petitioner from custody;
- 18 (d) Order that Respondents may not re-detain Petitioner without first holding
19 a hearing before a neutral decisionmaker at which the government bears the burden of
20 establishing flight risk or danger to the community by clear and convincing evidence
21 based on changed circumstances since Petitioner was previously released;
- 22 (e) Order that Respondents may not remove or seek to remove Petitioner to a
23 third country without notice and meaningful opportunity to respond in compliance with
24 the statute and due process in reopened removal proceedings;
- 25
26

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 18th day of December 2025.

14 Respectfully submitted,

15 s/ *Ann K. Wagner*
16 Assistant Federal Public Defender
17 Attorney for Victor Rea-Hernandez
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