

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STANISLAV RODRIGUEZ-FERNANDEZ,) No.

Petitioner,

vs.

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

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.

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Full name: Stanislav Rodriguez-Fernandez
- (b) Other names used: Unknown.
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]: Petitioner's A# has been provided to the government along with the filing of this petition.

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

4. Petitioner is currently being held on an immigration charge.

Decision or Action You Are Challenging

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

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

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

(b) Docket number, case number, or opinion number: Petitioner's A# has been provided to the government along with the filing of this petition.

(c) Decision or action you are challenging: Petitioner reports that he was initially ordered removed sometime in 2010 in Miami, Florida. He reports being detained by Immigration for approximately 27 days before being released on supervision. Since then, he has lived in Florida, Texas, and Massachusetts. On May 27, 2025, ICE detained Petitioner again, and since that date he has been in immigration detention continuously. Accordingly, Petitioner has been in continuous ICE custody for well over six months.

Your Earlier Challenges of the Decision or Action

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

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

11. Appeals of immigration proceedings: None

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: Petitioner believes that he was ordered removed sometime in 2010.

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

1
2 (d) Did you appeal the decision to the United States Court of Appeals? No.
3 12. Other than the appeals listed above, have you filed any other petition,
4 application, or motion about the issues raised in this petition? No.

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

6 **I. Introduction**

7 Petitioner Stanislav Rodriguez-Fernandez is presently detained at the Northwest
8 ICE Processing Center (NWIPC). Petitioner has been held in immigration custody since
9 May 27, 2025. Removal to the former country of residence, Cuba, is not reasonably
10 foreseeable. Petitioner's continued detention is therefore in violation of *Zadvydas v.*
11 *Davis*, 533 U.S. 678, 689 (2001). Petitioner seeks (a) release; (b) an order preventing re-
12 detention unless the government establishes by clear and convincing evidence at a
13 hearing before a neutral decisionmaker that Petitioner is a flight risk or a danger to the
14 community, based on changed circumstances after their most recent release by ICE;
15 (c) an order preventing removal to a third country without notice and meaningful
16 opportunity to respond in compliance with the statute and due process in reopened
17 removal proceedings; and (d) an order barring removal to any third country pursuant to
18 Respondents' punitive removal policy.

19 In addition to being in custody since May 27, 2025, Petitioner reports that he
20 was originally detained for approximately 27 days by Immigration after being ordered
21 removed sometime in 2010 (or thereabouts). Upon being released, Mr. Rodriguez-
22 Fernandez was ordered to check in periodically with the Immigration Service. He has
23 not been deported to Cuba because Cuba will not cooperate with the removal process.
24 On May 27, 2025, Petitioner was re-detained without any determination by the
25 government that he had become a flight risk or a danger to the community.
26

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. § 2241, *et seq.* (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived sovereign immunity for purposes 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; Respondents Hermosillo and Scott reside in this district; and Petitioner is detained in this district. Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Petitioner’s claims occurred in this district.

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

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

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

IV. Parties

Stanislav Rodriguez-Fernandez is a citizen of Cuba. Cuba has not cooperated with the removal process, which has prompted the government to seek removal to

1 Mexico. However, Mr. Rodriguez-Fernandez refuses to be removed to Mexico and has
2 declined to sign the Notice of Removal to Mexico. Exhibit 1. Petitioner is detained in
3 the control and custody of Respondents at NWIPC. As such, Petitioner is a resident of
4 Tacoma, Washington.

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

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

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

16 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
17 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant
18 to a contract with ICE to detain noncitizens. Respondent Scott is sued in his official
19 capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-
20 700, 2021 WL 1946222, at *3–5 (W.D. Wash. May 14, 2021).

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

V. Background

Stanislav Rodriguez-Fernandez is a Cuban national who is experiencing indefinite detention because Cuba will not cooperate with the removal process. He is not a citizen or resident of any other country. Additionally, he has no ties to any other country. Nevertheless, the government is attempting to seek removal to Mexico notwithstanding Petitioner's refusal to agree to Mexico as a third country. Exhibit 1.

Mr. Rodriguez-Fernandez came to the United States on or about January 19, 2009, via the Florida Keys. Since arriving in the United States, Mr. Rodriguez-Fernandez has lived in Tampa, Miami, and Orlando, Florida; Houston, Texas; and Boston, Massachusetts. He primarily has worked as an auto mechanic but has also held jobs working in welding and construction.

Mr. Rodriguez-Fernandez reports that shortly after arriving, he hired an immigration attorney to help apply for legal status. However, it does not appear from the records that he ever received legal status. It is also unclear when a final order of removal was filed.

VI. Particularized Facts Pertaining to Petitioner's Continued Detention

Petitioner cannot presently be returned to Cuba, because Cuba will not cooperate with the removal process. In fact, since 2010, when he was released on supervision after spending approximately 27 days in immigration custody, the Respondents have failed to deport Mr. Rodriguez-Fernandez to Cuba. Moreover, since he has been in immigration custody since May 27, 2025, Respondents have failed to remove Petitioner to Cuba.

Because ICE has been unable to remove Mr. Rodriguez-Fernandez to Cuba, he reports that ICE has attempted to have him agree to be removed to Mexico. Mr. Rodriguez-Fernandez has refused Mexico as a third country for removal. He is not

1 a citizen or resident of Mexico and refuses to be removed to any country other than
2 Cuba.

3 The likely reason why Cuba will not accept Mr. Rodriguez-Fernandez appears to
4 be because he has a criminal record. While political developments in recent years have
5 increased the number of Cubans deported, the number of removals effected continues to
6 remain miniscule compared to the number of outstanding removal orders.¹ For fiscal
7 year 2025, ICE reported the arrest of 419 Cuban citizens. U.S. Immigration and
8 Customs Enforcement Administrative Arrest Statistics, <http://www.ice.gov/statistics>
9 [<https://perma.cc/X2AV-89FD>] (accessed Oct. 24, 2025). Within the same fiscal year,
10 only 138 Cubans were removed. Of these, only 32 Cubans were listed as having
11 criminal convictions. *Id.* There is no indication that the Cuban government's policy of
12 refusing to accept detainees with criminal records has materially changed even as the
13 United States government has begun re-arresting detainees who were previously
14 released under orders of supervision. Therefore, removal to Cuba is not reasonably
15 foreseeable.

16 The record is clear that removing Mr. Fernandez-Rodriguez to Cuba is, simply
17 put, not reasonably foreseeable. There is no indication that ICE has obtained any travel
18 documents from Cuba for Petitioner, nor is there any indication that Cuba has since
19 agreed to accept Petitioner. Additionally, Petitioner reports that ICE has expressed
20 intent to remove him to Mexico. However, Mr. Rodriguez-Fernandez has not been
21 removed to Mexico because, without Petitioner's express consent, apparently Mexico
22
23

24 ¹ Lindsay Daniels, *The End of Special Treatment for Cubans in the U.S. Immigration*
25 *System: Consequences and Solutions for Cubans with Final Orders of Removal*, 122
26 Dick. L. R. 2, 707 (2018), <https://insight.dickinsonlaw.psu.edu/dlr/vol122/iss2/8/>
[<https://perma.cc/G8DG-SETL>] ("There are at least 34,000 Cubans with final orders of
removal in the United States, due in large part to criminal convictions.").

1 will not accept Mr. Rodriguez-Fernandez either. Exhibit 2.² Accordingly, release from
2 ICE custody is constitutionally necessary to avoid an indefinite detention as there is no
3 evidence that Cuba will accept Mr. Rodriguez-Fernandez.

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

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

7 Under 8 U.S.C. § 1231, detention of noncitizens who have been ordered
8 removed is mandatory during the so-called 90-day “removal period.” 8 U.S.C.
9 § 1231(a)(1)(A). This period begins on the “date the order of removal becomes
10 administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i). But the *Zadvydas* Court believed
11 that a “serious constitutional threat” under the Fifth Amendment’s Due Process Clause
12 was posed by the indefinite detention of noncitizens. 533 U.S. at 699. The Court
13 therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the
14 statute’s “basic purpose [of] effectuating [a noncitizen]’s removal[.]” *Id.* at 696–99.

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

23 The issue is not whether Respondents have been able to remove some
24 individuals to a given country. Rather, the court must make an individualized analysis

25 ² See Supplemental Declaration, *Rios v. Noem*, No. 25-cv-02866-JES-VET, Dkt. 13-1
26 (S.D. Cal. Nov. 5, 2025).

1 as to a particular detainee. *See Nguyen v. Scott*, 796 F.Supp.3d 703, 726 (W.D. Wash.
 2 Aug. 21, 2025) (stating increase in total number of removals to Vietnam, including
 3 those who entered pre-1995, fails to rebut the evidence presented by Petitioner that “his
 4 individual circumstances make removal unlikely.”). Facts that are part of the analysis
 5 include whether Respondent provides evidence that the request was submitted to Cuba,
 6 whether Cuba has acknowledged receipt of the request or otherwise responded to
 7 Petitioner’s request, and the anticipated wait time for a response from Cuba.

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

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

17 The six-month presumptively reasonable period runs unabated once Petitioner’s
 18 removal order was final, and does not run solely during any period when Petitioner was
 19 detained. In *Tran v. Bondi*, No. C25-01897-JLR, 2025 WL 3140462 (W.D. Wash.
 20 Nov. 10, 2025), the Hon. James L. Robart held that petitioner’s “*Zadvydas* grace period
 21 ended six months following the entry of the order of his removal[.]” *Id.* at *3. The court
 22 reached that conclusion even though the petitioner was not detained until two years
 23 later, and Respondents argued that only five months of the *Zadvydas* six-month period
 24 had expired, based on the times when petitioner was detained. *See Tran*, No. C25-
 25 01897-JLR, Dkt. 13, Resp’t Return Mem. and Mot. to Dismiss at 1, 7 (Oct. 27, 2025).
 26 *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

1 upon affirmance of removal order, rejecting argument that petitioner could not obtain
 2 habeas relief because he had not yet been in detention for six months); *Farez-Espinoza*
 3 *v. Chertoff*, 600 F.Supp.2d 488, 500 (S.D.N.Y. 2009) (concluding that, where
 4 government was aware of noncitizen's address but failed to pursue her removal until
 5 more than 15 months after removal order was entered, "the removal period, as well as
 6 any presumptively reasonabl[e] six-month period of removal to which the Government
 7 may have been entitled" had expired six months after the entry of the removal order);
 8 *Bailey v. Lynch*, No. CV16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016)
 9 (where order of removal became effective upon petitioner's release from underlying
 10 conviction to ICE authorities, after which he was held only "briefly" before being
 11 released on an order of supervision, the *Zadvydas* presumptively reasonable period
 12 ended "long before he was taken back into custody[.]").

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

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

24 Procedural due process requires notice and an opportunity to be heard. *Mathews*
 25 *v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural
 26 due process rights, a petitioner must establish (1) a protected property or liberty interest,
 and (2) a denial of adequate procedural protections. *ASSE Int'l, Inc. v. Kerry*, 803 F.3d

1 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest,
 2 including the function involved and the fiscal and administrative burdens that the
 3 additional or substitute procedural requirement would entail.” *Rodriguez Diaz v.*
 4 *Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335).

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

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

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

18 *E.A. T.-B.*, 795 F.Supp.3d at 1320–21 (quoting *Mathews*, 424 U.S. at 335).

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

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

14 The second factor, risk of an erroneous deprivation of liberty, also weighs in
 15 Petitioner’s favor. A detainee’s release to the community on an OREC reflected ICE’s
 16 determination that petitioner was neither a flight risk nor a danger to the community.
 17 *See, e.g., Ledesma Gonzalez*, 2025 WL 2841574, at *8 (when ICE released petitioner,
 18 “it did so after determining—as required by regulation—that ‘such release would not
 19 pose a danger to property or persons, and that the [noncitizen] is likely to appear for any
 20 future proceeding.’ . . . By issuing the OREC, ICE necessarily found that [petitioner]
 21 was neither a flight risk nor a danger to the community.”) (quoting 8 C.F.R.
 22 § 236.1(c)(8)); *Barrenechea v. Albarran*, No. CV25-7883-VC, 2025 WL 2717279,
 23 at *1 (N.D. Cal. Sept. 22, 2025) (“ICE’s release of Barrenechea on his own
 24

25 ³ *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 recognizance in 2020 can only be understood as reflecting a determination that he did
2 not pose a 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 (cleaned up). “In immigration court, custody hearings are routine and
7 impose a minimal cost.” *Id.* (cleaned up).

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, “Based 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. C25-2167RSM, 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*

1 *Dejesus, v. Bostock*, No. 25-CV-01427-JHC-TLF, 2025 WL 3268002 (W.D. Wash.
 2 Nov. 24, 2025) (applying *Mathews* factors to conclude that petitioner was entitled to
 3 pre-re-detention due process, even though his detention was pursuant to the mandatory
 4 detention provisions of 8 U.S.C. § 1226(c)).⁴

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

13 In addition, the government should be required to meet its burden based on
 14 changed circumstances subsequent to the petitioner’s previous release by ICE. See
 15 *Duong v. Kaiser*, No. CV25-7598-JST, -- F.Supp.3d --, 2025 WL 2689266, at *10
 16 (N.D. Cal. Sept. 19, 2025) (holding that any re-detention first required a hearing
 17 “whether a material change of circumstances justifies [petitioner’s] re-detention”).

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

21 The revocation of a noncitizen’s release is governed by 8 C.F.R. § 241.13(i),
 22 which authorizes ICE to revoke a noncitizen’s release under § 1231 for purposes of
 23 removal or for violation of conditions of release. The government may revoke a
 24 noncitizen’s release and return them to ICE custody due to failure to comply with any

25 ⁴ The *Lopez Dejesus* opinion does not mention that detention was pursuant to § 1226(c);
 26 that fact is shown in Respondents’ Return Memorandum, No. 25-CV-01427-JHC-TLF,
 Dkt. 16 at 1 (W.D. Wash. Oct. 6, 2025).

1 of the conditions of release, 8 C.F.R. § 241.13(i)(1), or if, “on account of changed
2 circumstances, the [Immigration] Service determines that there is a significant
3 likelihood that the [noncitizen] may be removed in the reasonably foreseeable future,”
4 *id.* § 241.13(i)(2).

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

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

20 *Id.* § 241.13(i)(3).

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

23 the history of the [noncitizen’s] efforts to comply with the order of
24 removal, the history of [ICE’s] efforts to remove [noncitizens] to the
25 country in question or to third countries, including the ongoing nature
26 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, 788 F.Supp.3d 144, 150 (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) (cleaned up). "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, (1992); *see also Zadvydas*, 533 U.S. at 696, (finding that a noncitizen has a liberty interest "strong enough" to challenge "indefinite and potentially permanent" immigration detention). "[I]ndividuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty." *Doe v. Becerra*, 787 F.Supp.3d 1083, 1093 (E.D. Cal. 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 150 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)).

"A due process violation occurs when detention becomes punitive rather than regulatory, meaning there is no regulatory purpose that can rationally be assigned to the detention or the detention appears excessive in relation to its regulatory purpose." *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); *accord Padilla v. U.S. Immigr. & Customs Enf't.*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023) ("Due process protects against immigration detention that is not reasonably related to the legitimate purpose of effectuating removal or protecting against danger and flight risk."). The regulatory purpose of immigration detention is to hold a person that is a flight risk or a danger to the community. *In re Guerra*, 24 I.&N. Dec. 37 (B.I.A. 2006), *abrogated on other grounds*, *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021).

1 Regulations governing parole identify only those two factors for consideration in the
2 release decision. 8 C.F.R. § 236.1(c)(8). For people who have been ordered deported,
3 8 C.F.R. § 241.13(i)(2) also authorizes re-detention for purposes of removal, so long as
4 respondents can prove that “there is a significant likelihood that the [noncitizen] may be
5 removed in the reasonably foreseeable future.”

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

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

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

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

21 Second, if the individual is not removed to the country they designated under
22 § 1231(b)(2)(A), the government shall remove the individual to the country of which
23 the individual is a “subject, national, or citizen” unless the government of that country
24 does not inform the U.S. government or the individual within 30 days after first inquiry
25 or within another reasonable period of time whether the government will accept the
26

1 individual into the country or the country is not willing to accept the individual into the
2 country. 8 U.S.C. § 1231(b)(2)(D).

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

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

24 Similarly, Congress codified protections enshrined in the Convention Against
25 Torture (CAT) prohibiting the government from removing a person to a country where
26 they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998

1 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8
2 U.S.C. § 1231 note) (“It shall be the policy of the United States not to expel, extradite,
3 or otherwise effect the involuntary return of any person to a country in which there are
4 substantial grounds for believing the person would be in danger of being subjected to
5 torture, regardless of whether the person is physically present in the United States.”);
6 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. CAT protection is also
7 mandatory.

8 To comport with the requirements of due process, the government must provide
9 notice of the third-country removal and an opportunity to respond. Due process requires
10 “written notice of the country being designated” and “the statutory basis for the
11 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409
12 F.Supp.3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland*
13 *Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All
14 removals to third countries, i.e., removal to a country other than the country or
15 countries designated during immigration proceedings as the country of removal on the
16 non-citizen’s order of removal, must be preceded by written notice to both the non-
17 citizen and the non-citizen’s counsel in a language the non-citizen can understand.”
18 (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process
19 requires notice to the noncitizen of the right to apply for asylum and withholding to the
20 country where they will be removed). The government must be able to show evidence
21 that the third country will accept the individual into that country. *See Himri v. Ashcroft*,
22 378 F.3d 932, 939 (9th Cir. 2004), *amended sub nom. El Himri v. Ashcroft*, No. 03-
23 71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) (“at the time the government
24 proposes a country of removal pursuant to § 1231(b)(2)(E)(vii), the government must
25 be able to show that the proposed country *will* accept the [individual]”).
26

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

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

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

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

24 Since January 2025, Respondents have developed and implemented a policy and
 25 practice of removing individuals to third countries, without first following the
 26

1 procedures in the INA for designation and removal to a third country and without
2 providing fair notice and an opportunity to contest the removal in immigration court.

3 Respondents reportedly have negotiated with at least 58 countries to accept
4 deportees from other nations. On June 25, 2025, the *New York Times* reported that
5 seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
6 Rwanda—had agreed to accept deportees who are not their own citizens.⁵ Since then,
7 ICE has carried out highly publicized third-country deportations to South Sudan and
8 Eswatini. It also attempted—and completed—an “end-run” around the protections of
9 the Convention Against Torture by deporting a group of migrants to Ghana, which sent
10 them on to their countries of citizenship despite fears of persecution.

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

23 The Administration has hand-selected countries known for human rights abuses
24 and instability for these third-country deportation agreements to frighten people in the

25 ⁵ 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 United States into self-deporting or to accept removal to their home countries. Indeed,
2 conditions in South Sudan are so extreme that the U.S. State Department website warns
3 Americans not to travel there, and, if they do, to prepare their will, make funeral
4 arrangements, and appoint a hostage-taker negotiator first.

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

17 The memo further instructs that if the noncitizen “does not affirmatively state a
18 fear of persecution or torture if removed to the country of removal listed on the Notice
19 of Removal within 24 hours, [ICE] may proceed with removal to the country identified
20 on the notice.” If the noncitizen “does affirmatively state a fear if removed to the
21 country of removal,” then ICE will refer the case to U.S. Citizenship and Immigration
22 Services (“USCIS”) for a screening for eligibility for withholding of removal and
23 protection under the Convention Against Torture. “USCIS will generally screen within
24 24 hours.” If USCIS determines that the noncitizen does not prove to the screener’s
25 satisfaction that it is more likely than not that the noncitizen will be tortured, the
26 individual will be removed. This imposes on the noncitizen a higher standard than the

1 “reasonable fear” and “credible fear” standards found in the INA. If USCIS determines
2 that the noncitizen has met the standard, then the policy directs ICE to either move to
3 reopen removal proceedings “for the sole purpose of determining eligibility for
4 [withholding of removal protection] and CAT” or designate another country for
5 removal.

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

10 Further support that petitioner faces a risk of punitive third-country removal
11 comes from two declarations submitted in *Nguyen*, attached here as Exhibits 4 and 5.
12 They detail removals to third countries with little or no notice, as described in *Nguyen*,
13 796 F.Supp.3d at 736–37.

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

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

21 Importantly, the Court distinguished deportation, which the Court reasoned is
22 “not a ‘banishment,’ in the sense in which that word is often applied to the expulsion of
23 a citizen from his country by way of punishment,” from government actions aimed at
24 punishment, such as imprisonment at hard labor in addition to deportation. *Id.* at 236.
25 The Court explained that deportation “is but a method of enforcing the return to his own
26 country of [a noncitizen] who has not complied with the conditions upon the

1 performance of which the government of the nation, acting within its constitutional
 2 authority and through the proper departments, has determined that his continuing to
 3 reside here shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730
 4 (1893)). But the Court admonished that the government may not “declare unlawful
 5 residence within the country to be an infamous crime, punishable by deprivation of
 6 liberty and property . . . unless provision were made that the fact of guilt should first be
 7 established by a judicial trial.” *Id.* at 237.

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

10 **XIV. The Law Governing Injunctive Relief**

11 “An injunction is appropriate when the party seeking relief demonstrates that:
 12 (1) it is likely to suffer irreparable injury that cannot be redressed by an award of
 13 damages; (2) that “considering the balance of hardships between the plaintiff and
 14 defendant, a remedy in equity is warranted”; and (3) “that the public interest would not
 15 be disserved by a permanent injunction.” *City & Cnty. of San Francisco v. Trump*, 897
 16 F.3d 1225, 1243 (9th Cir. 2018).

17 **Grounds for Relief**

18 **Ground One: Petitioner’s Continued Detention in Immigration Custody** 19 **Violates the Due Process Clause of the Fifth Amendment to the U.S.** 20 **Constitution Because There Is No Significant Likelihood that Petitioner** 21 **Will Be Removed in the Reasonably Foreseeable Future.**

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

22 Petitioner believes his removal order became final several years ago.

23 Accordingly, the removal period has long since expired and detention is no longer
 24 required under 8 U.S.C. § 1231. Additionally, the presumptively reasonable period of
 25 six months has passed as Petitioner has been in continuous ICE custody since May 27,
 26 2025.

1 There is “good reason to believe that there is no significant likelihood of removal
2 in the reasonably foreseeable future[.]” *Zadvydas*, 533 U.S. at 701. Mr. Rodriguez-
3 Fernandez is a Cuban national, and Cuba will not cooperate with the removal process.
4 As a result, Respondents have sought to remove Petitioner to Mexico. However, he will
5 not sign the Notice of Removal to Mexico, and apparently Mexico will not accept non-
6 Mexicans who refuse.

7 Therefore, the burden shifts to the government to rebut that showing. The
8 government cannot meet that burden under the facts of this case. *See Nguyen*, 796
9 F.Supp.3d 703, 739 (granting preliminary injunction requiring release under *Zadvydas*);
10 *Tang*, 2025 WL 2637750, at *6 (same).

11 **Ground Two: Procedural Due Process**

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

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

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

22 As to Petitioner’s prayer for injunctive relief barring a new re-detention absent
23 due process, the requirements for injunctive relief are met. His prospective unlawful re-
24 detention would constitute an irreparable injury that could not be redressed by an award
25 of damages. Second, the balance of hardships is completely in Petitioner’s favor:
26 Petitioner risks unlawful re-detention, while Respondents suffer no hardship by being

1 prevented from following their unlawful re-detention practices. Finally, the public
2 interest would affirmatively be served by barring Respondents' unlawful practice.

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

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

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

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

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

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

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

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

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

20 **Ground Four: Substantive Due Process**

21 The re-arrest and detention of Petitioner was punitive to the extent that he was
22 given no reasons for being detained indefinitely. Despite being released for several
23 years on supervision, ICE immediately detained Petitioner on May 27, 2025, without
24 any opportunity to seek release on bond, which resulted in Petitioner's prolonged and
25 indefinite detention.
26

1 Respondents' policy against parole in all cases supports the conclusion that
 2 Petitioner's detention is punitive, as do many reported statements advocating for
 3 increased arrests for their own sake. Respondents' refusal to address widespread
 4 mistreatment of detained immigrants also supports that conclusion.⁶

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

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

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

19 Prior to any third-country removal, Petitioner must be provided with
 20 constitutionally and statutorily compliant notice and an opportunity to respond and
 21 contest that removal if he has a fear of persecution or torture in that country in reopened

22 ⁶ See Nicole Acevedo, *Hundreds of alleged human rights abuses in immigrant*
 23 *detention, report finds*, NBC News (Aug. 5, 2025), [https://www.nbcnews.com/news/us-](https://www.nbcnews.com/news/us-news/immigration-detention-human-rights-abuses-report-rcna222499)
 24 [news/immigration-detention-human-rights-abuses-report-rcna222499](https://perma.cc/3XLR-6XHX)
 25 [<https://perma.cc/3XLR-6XHX>]; Center for Human Rights, *Conditions at the Northwest*
 26 *Detention Center*, University of Washington,
[https://jsis.washington.edu/humanrights/projects/immigrant-rights-](https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/)
[observatory/conditions-at-the-northwest-detention-center/](https://perma.cc/QF24-UR6C) [[https://perma.cc/QF24-](https://perma.cc/QF24-UR6C)
 UR6C] (last visited Aug. 28, 2025).

1 removal proceedings. *See Nguyen*, 796 F.Supp.3d 703, 739 (granting preliminary
2 injunction against “removing Petitioner to a country other than [home country] without
3 notice and a meaningful opportunity to be heard in reopened removal proceedings with
4 a hearing before an immigration judge”).

5 Furthermore, the requirements for injunctive relief are met. Petitioner’s
6 prospective unlawful re-detention would constitute an irreparable injury that could not
7 be redressed by an award of damages. Second, the balance of hardships is completely in
8 Petitioner’s favor: Petitioner risks unlawful removal to a third country, while
9 Respondents suffer no hardship by being prevented from following their unlawful re-
10 detention practices. Finally, the public interest would affirmatively be served by barring
11 Respondents’ unlawful practice.

12 In addition, the matter is ripe. The facts set forth above—including Respondents’
13 stated policy regarding third country removals—make it reasonably likely that
14 Respondents would seek to remove Petitioner to a third country without complying
15 with their regulatory and constitutional obligations to provide Petitioner with notice and
16 an opportunity to be heard.

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

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

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

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

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

5 Petitioner completed the sentences for his criminal convictions. While
6 Petitioner’s convictions arguably made him removable from the United States, the
7 convictions do not authorize the government to inflict, as a matter of executive policy
8 and discretion, additional punishment on Petitioner. Respondents’ third-country
9 removal program is punitive in both its nature and its execution.

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

18 Respondents’ third-country removal program is more than a publicity stunt. The
19 hundreds of individuals who have already been subjected to it have been banished in
20 foreign prisons upon arrival without charge and often without communication with the
21 outside world, including their families and lawyers. Respondents may not subject
22 Petitioner to their third-country removal program which is designed to impose a severe
23 punishment on their subjects. Such conduct “shocks the conscience” under Fifth
24 Amendment substantive due process, is cruel and unusual punishment, and may not be
25 imposed without charge and a judicial trial.
26

1 Respondents may not seek to remove Petitioner to a third country under their
2 punitive banishment policy and practices. *See Nguyen*, 796 F.Supp.3d 703, 739
3 (granting preliminary injunction against “removing Petitioner to any country where he
4 is likely to face imprisonment upon arrival”).

5 The criteria for an injunction in this case are met. First, unlawful removal to a
6 third country risks irreparable injury that could not be redressed by an award of
7 damages. Second, the balance of hardships is completely in Petitioner’s favor:
8 Petitioner risks removal to a third country where unwarranted punishment may result,
9 and Respondents suffer no hardship by being prevented from following their unlawful
10 removal policies. Finally, the public interest would affirmatively be served by barring
11 Respondents’ unlawful policies. Given the potential for Respondents to attempt a rapid
12 and unlawful removal, Petitioner would have no opportunity to seek injunctive relief at
13 that time.

14 Furthermore, the matter is ripe. The facts set forth above—including
15 Respondents’ stated policy regarding third country removals—make it reasonably likely
16 that Respondents would seek to remove Petitioner to a third country with a punitive
17 intent and punitive result.

18 Prayer for Relief

19 Petitioner respectfully requests that this Court:

- 20 (a) Assume jurisdiction over this action;
- 21 (b) Order Respondents to immediately release Petitioner from custody;
- 22 (c) Order Respondents to, within 24 hours of his release, provide the Court
23 with a declaration confirming that Petitioner has been released from custody;
- 24 (d) Order that Respondents may not re-detain Petitioner without first holding
25 a hearing before a neutral decisionmaker at which the government bears the burden of
26

1 establishing flight risk or danger to the community by clear and convincing evidence
2 based on changed circumstances since Petitioner was previously released;

3 (e) Order that the government may not otherwise re-detain Petitioner unless
4 the government:

- 5 (1) obtains a valid travel document to Cuba for him,
6 (2) provides the valid travel document to him and his counsel,
7 (3) offers Petitioner the opportunity to leave on his own within two months,
8 and
9 (4) Petitioner does not leave. Under such circumstances, the government may
10 be permitted to re-detain Petitioner provided it has already made concrete
11 arrangements for him to be put on a flight to Cuba in the reasonably
12 foreseeable future.

13 *See Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at *6 (W.D. Wash. Dec. 5,
14 2025); *Tang*, 2025 WL 3551381, at *3.

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

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

21 (h) Order all other relief that the Court deems just and proper.

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

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

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

3 DATED this 16th day of January 2026.

4 Respectfully submitted,

5 *s/ Jesse Cantor*
6 Assistant Federal Public Defender
7 Attorney for Stanislav Rodriguez-Fernanedeaz.
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