

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MEHAWI YOHANNES MEHARI,

Petitioner,

vs.

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

Respondents.

No. CV26-175 MLP

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

**RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242**

**Personal Information**

1. (a) Full name: Mehawi Yohannes Mehari
- (b) Other names used:
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]: Mr. Yohannes Mehari's A# has been provided to the government along with the filing of this petition.

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

4. Mr. Yohannes Mehari 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: Mr. Yohannes Mehari's A# has been provided to the government along with the filing of this petition.

(c) Decision or action you are challenging: On information and belief, Mr. Yohannes Mehari was initially ordered removed in or about 2009. It is possible that the Immigration Judge at the time ordered withholding or deferral of removal due to danger if Mr. Yohannes Mehari were removed to his country of birth. After this removal order, ICE continued detaining Mr. Yohannes Mehari for approximately 90 days before releasing him on an order of supervision. On October 6, 2025, ICE arrested and re-detained Mr. Yohannes Mehari.

**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 known

Does this case concern immigration proceedings? Yes

(a) Date you were taken into immigration custody: October 6, 2025

(b) Date of the removal or reinstatement order: 2009

1 (c) Did you file an appeal with the Board of Immigration Appeals? No (on  
2 information and belief)

3 (d) Did you appeal the decision to the United States Court of Appeals? No  
4 (on information and belief)

5 12. Other than the appeals listed above, have you filed any other petition,  
6 application, or motion about the issues raised in this petition? None known

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

8 **I. Introduction**

9 Petitioner Mehawi Yohannes Mehari is presently detained at the Northwest ICE  
10 Processing Center (NWIPC). He has been held in immigration custody for over three  
11 months since his re-detention in October 2025, and for an additional (approximately)  
12 three months following entry of a removal order against him in or about 2009. It is also  
13 possible that he has been detained by ICE an additional time between 2009 and 2025.  
14 Removal to his country of birth is not reasonably foreseeable. Mr. Yohannes Mehari's  
15 continued detention is therefore in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689  
16 (2001). Mr. Yohannes Mehari seeks (a) release; (b) an order preventing re-detention  
17 unless the government establishes by clear and convincing evidence at a hearing before  
18 a neutral decisionmaker that Mr. Yohannes Mehari is a flight risk or a danger to the  
19 community and that removal is likely in the reasonably foreseeable future, based on  
20 changed circumstances after their most recent release by ICE; (c) an order preventing  
21 removal to a third country without notice and meaningful opportunity to respond in  
22 compliance with the statute and due process in reopened removal proceedings; and  
23 (d) an order barring removal to any third country pursuant to Respondents' punitive  
24 removal policy.

25 Immigration authorities initially detained Mr. Yohannes Mehari in or around  
26 2009. He was ordered removed, then kept in detention for approximately 90 days

1 following entry of the removal order. Immigration authorities then released him  
2 pursuant to an order of supervision. Since then, Mr. Yohannes Mehari has lived in the  
3 community. As detailed below, he experienced significant trauma in his early life and  
4 has serious mental health conditions. These have impacted and limited him. Last year,  
5 at the time ICE re-detained him, Mr. Yohannes Mehari was engaged with a community  
6 organization in this district. He was living in program housing and was receiving  
7 appropriate services. On October 6, 2025, ICE re-detained Mr. Yohannes Mehari  
8 without advance notice. He does not recall receiving any opportunity to contest the re-  
9 detention.

## 10 **II. Jurisdiction and Venue**

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

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

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

22 Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because  
23 Respondents are agencies or officers of agencies of the United States; Respondents  
24 Hermosillo and Scott reside in this district; and Mr. Yohannes Mehari is detained in this  
25 district. Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part  
26

1 of the events or omissions giving rise to Mr. Yohannes Mehari's claims occurred in this  
2 district.

3 Because Mr. Yohannes Mehari is seeking relief related only to his custody  
4 status, which is not inconsistent with an order of removal, exhaustion of administrative  
5 remedies, if any, is not required.

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

7 Mr. Yohannes Mehari is "in custody" for the purpose of § 2241 because he has  
8 been detained by Respondent ICE in Tacoma, Washington, since October 6, 2025.

9 **IV. Parties**

10 Mehawi Yohannes Mehari is likely a citizen of Eritrea.<sup>1</sup> His entire immediate  
11 family fled Eritrea when Mr. Yohannes Mehari was a child during the lengthy War for  
12 Independence from Ethiopia. They arrived in the United States in 1990, when he was  
13 approximately seven years old, and soon became lawful permanent residents. Mr.  
14 Yohannes Mehari experienced substantial trauma in his childhood and was later  
15 diagnosed with serious mental conditions. As he struggled to manage these, Mr.  
16 Yohannes Mehari sustained criminal convictions. He was placed in removal  
17 proceedings in or about 2009 and ordered removed to Eritrea. Following this removal  
18 order, ICE kept him in detention for approximately 90 days before releasing him on an  
19 order of supervision. On October 6, 2025, ICE re-detained Mr. Yohannes Mehari.  
20 However, the U.S. Department of State's most recent country report for Eritrea  
21 concludes:

22 The government [of Eritrea] abused a wide range of human rights.  
23 Significant human rights issues included credible reports of:  
24 disappearances; torture or cruel, inhuman, or degrading treatment or

25 <sup>1</sup> Initial investigation indicates a possibility that Mr. Yohannes Mehari derived U.S.  
26 citizenship via his parents' naturalization, but ongoing investigation is needed.  
Additionally, Mr. Yohannes Mehari was born before Eritrea's statehood was  
recognized, when the region was deemed part of Ethiopia.

1 punishment; arbitrary arrest or detention; transnational repression against  
2 individuals in another country; serious abuses in a conflict; serious  
3 restrictions on freedom of expression and media freedom; restrictions of  
4 religious freedom; trafficking in persons, including forced labor;  
5 prohibiting independent trade unions and systematic restrictions on  
6 workers' freedom of association; and significant presence of any of the  
7 worst forms of child labor.

8 The government did not take credible steps or action to identify and  
9 punish officials who committed human rights abuses.<sup>2</sup>

10 Nonetheless, Mr. Yohannes Mehari remains detained in the control and custody of  
11 Respondents at NWIPC. As such, Mr. Yohannes Mehari is a resident of Tacoma,  
12 Washington.

13 Respondent Pamela Bondi is the Attorney General of the United States. In this  
14 capacity, Respondent Bondi is the legal custodian of Mr. Yohannes Mehari.  
15 Respondent Bondi is sued in her official capacity.

16 Respondent Kristi Noem is the Secretary of the Department of Homeland  
17 Security ("DHS"). In this capacity, Respondent Noem is the legal custodian of Mr.  
18 Yohannes Mehari. Respondent Noem is sued in her official capacity.

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

24 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day  
25 functioning of the NWIPC, and has immediate physical custody of Mr. Yohannes  
26 Mehari pursuant to a contract with ICE to detain noncitizens. Respondent Scott is sued

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<sup>2</sup> U.S. Dep't of State, 2024 Country Reports on Human Rights Practices: Eritrea, at 1  
(2024), *available at* <https://www.state.gov/reports/2024-country-reports-on-human-rights-practices/eritrea/> [*hereinafter* "State Dep't Report on Eritrea 2024"].

1 in his official capacity as the Warden of a federal detention facility. *See Juarez v.*  
 2 *Asher*, No. CV20-700, 2021 WL 1946222, at \*3–5 (W.D. Wash. May 14, 2021).

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

### 7 **V. Background**

8 Mr. Yohannes Mehari was born in Eritrea when the nation was in the midst of a  
 9 decades-long War for Independence from neighboring Ethiopia, under whose rule  
 10 Eritrea was placed by other world powers.<sup>3</sup> The war was “brutal,” *id.* at 37, resulting in  
 11 approximately 575,000 deaths, 600,000 internal displacements, and 450,000 Eritreans  
 12 fleeing the country.<sup>4</sup> Mr. Yohannes Mehari’s family fled when he was a young child,  
 13 arriving in the United States as refugees in 1990, when he was approximately 10 years  
 14 old. Mr. Yohannes Mehari and his family soon became lawful permanent residents of  
 15 the United States.

16 Mr. Yohannes Mehari experienced substantial trauma in his early life, both  
 17 before and after leaving Eritrea. He struggled to deal with this trauma and later in life  
 18 was diagnosed with serious mental conditions. He sustained criminal convictions and in  
 19 approximately 2009 was placed in removal proceedings. It is unclear whether these

20 \_\_\_\_\_  
 21 <sup>3</sup> See generally Terrence Lyons, *Eritrea: The Independence Struggle and the Struggles*  
 22 *of Independence*, Independence Movements and Their Aftermath: Self-Determination  
 23 and the Struggle for Success, C. for Strategic & Int’l Studies (CSIS) Reports) at 36–52  
 (2019), available at [https://csis-website-prod.s3.amazonaws.com/s3fs-](https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/190115_Eritrea_IndependenceMovements.pdf)  
[public/publication/190115\\_Eritrea\\_IndependenceMovements.pdf](https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/190115_Eritrea_IndependenceMovements.pdf).

24 <sup>4</sup> See U. Central Arkansas, G., Dep’t of Public Service, & Int’l Studies, Dynamic  
 25 Analysis of Dispute Management (DADM) Project (Project Director Mark  
 Mullenbach), 16. *Ethiopia/Eritrea (1950–1993)*,  
 26 [https://uca.edu/politicalscience/home/research-projects/dadm-project/sub-saharan-](https://uca.edu/politicalscience/home/research-projects/dadm-project/sub-saharan-africa-region/ethiopiaeritrea-1950-1993/)  
[africa-region/ethiopiaeritrea-1950-1993/](https://uca.edu/politicalscience/home/research-projects/dadm-project/sub-saharan-africa-region/ethiopiaeritrea-1950-1993/) (last accessed Jan. 15, 2026).

1 proceedings involved sufficient procedural protections—namely whether Mr. Yohannes  
 2 Mehari was appointed counsel as undersigned counsel believes likely would be required  
 3 under *Franco-Gonzales v. Holder*, 767 F. Supp. 2d 1034 (C.D. Cal. 2010) (and  
 4 subsequent settlements, see *Franco-Gonzales v. Holder*, 10-cv-02211-DMG-AGR at  
 5 Dkt. 818, 821, 860, 866 (C.D. Cal. 2015)).<sup>5</sup> It is also unclear whether Mr. Yohannes  
 6 Mehari was granted withholding or deferral of removal in conjunction with the order of  
 7 removal in 2009. At that time, Eritrea had a troubling human rights record,<sup>6</sup> and was  
 8 even sanctioned by the United Nations for ongoing involvement in armed conflict in the  
 9 region.<sup>7</sup>

10 After the final removal order was entered in or about 2009, ICE held Mr.  
 11 Yohannes Mehari in ongoing detention for approximately 90 days. ICE then released  
 12 Mr. Yohannes Mehari on an order of supervision. In the years that followed, Mr.  
 13 Yohannes Mehari attempted to manage his trauma and mental conditions—at times  
 14 successfully, at times less so (sometimes resulting in additional criminal convictions).  
 15 Last fall, Mr. Yohannes Mehari was moving in a positive direction. He was connected  
 16 with a community organization in this district. The organization assisted him to find  
 17

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18 <sup>5</sup> Given the believed timing of Mr. Yohannes Mehari's removal proceedings and the  
 19 timing of the *Franco-Gonzales* litigation, it is unlikely that Mr. Yohannes Mehari  
 20 received appointed counsel, though undersigned counsel continues to investigate.

21 <sup>6</sup> See Human Rights Watch, *Eritrea: Events of 2009*, <https://www.hrw.org/world-report/2010/country-chapters/eritrea> (last visited Jan. 15, 2026) (“Arbitrary arrests and  
 22 detention, torture, extrajudicial killings, severe restrictions on freedoms of expression  
 23 and worship, and forced labor are routine. Despite government efforts to veil abuses  
 24 from scrutiny, Eritrean refugees provided consistent firsthand accounts of widespread  
 25 abuses. Thousands of people fled the country in 2009 due to Eritrea's serious human  
 26 rights violations and indefinite military conscription.”).

<sup>7</sup> See United Nations, *Security Council Imposes Sanctions on Eritrea over Its Role in  
 Somalia, Refusal to Withdraw Troops Following Conflict with Djibouti*, Dec. 23, 2009,  
<https://press.un.org/en/2009/sc9833.doc.htm>.

1 appropriate housing, and helped him receive needed services. However, on October 6,  
2 2025, ICE went to Mr. Yohannes Mehari's home and arrested him.<sup>8</sup>

3 Mr. Yohannes Mehari does not recall being given an opportunity to contest his  
4 re-detention. Mr. Yohannes Mehari's understanding from ICE officers'  
5 communications is that they intend to remove him. He does not, however, understand  
6 all of the communications or the paperwork that has been shown to him. It is likely that  
7 Mr. Yohannes Mehari's mental conditions impact his ability to understand these  
8 materials and communications. Indeed, even after months in detention, undersigned  
9 counsel observed symptoms and indications of significant mental conditions.

#### 10 **VI. Particularized Facts Pertaining to Mr. Yohannes Mehari's Continued Detention**

11 Mr. Yohannes Mehari cannot presently be removed to Eritrea. For one, it is  
12 unknown which or whether Eritrea would recognize him as a citizen given the timing  
13 and location of his birth. Furthermore, it appears that Respondents do not have  
14 sufficient diplomatic relations with Eritrea to repatriate Mr. Yohannes Mehari. Indeed,  
15 "Eritrea . . . has for years refused to provide U.S. immigration authorities with the  
16 documents needed to repatriate Eritreans, and those who are denied asylum can end up  
17 in a state of limbo."<sup>9</sup> See also Ex. A at 7 (ICE Report on Non-Detained Noncitizens  
18 with Final Removal Orders and Related Article) (classifying Eritrea as a country that is

19 \_\_\_\_\_  
20 <sup>8</sup> Indeed, it appears ICE officers used a sham "knock and talk" tactic to arrest Mr.  
21 Yohannes Mehari at his home and its curtilage without a Fourth Amendment-compliant  
22 judicial warrant. Such policy and practice was held to be unconstitutional and vacated  
23 in the Central District of California by the Honorable District Judge Otis D. Wright, II,  
24 in *Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 987 (C.D. Cal. 2024).

25 <sup>9</sup> Ben Gittleston, *US Deporting More and More People to Eritrea - a Country It Says*  
26 *Tortures and Kills Its Citizens*, ABC News, May 10, 2019,  
<https://abcnews.go.com/International/us-deporting-people-eritrea-country-tortures-kills-citizens/story?id=62931798#:~:text=Eritrea%2C%20which%20borders%20Ethiopia%2C%20Djibouti%20and%20Sudan,hand%2C%20in%20September%202017%2C%20the%20Department%20of.>

1 “uncooperative” in repatriating its citizens and effectuating removals). Eritrea has  
 2 continued to refuse to repatriation of people forcibly removed from other countries to  
 3 be returned to Eritrea.<sup>10</sup> And the United States has apparently sought to instead remove  
 4 at least some Eritreans to third countries.<sup>11</sup> The State Department unsurprisingly  
 5 describes its relations with Eritrea as “strained.”<sup>12</sup>

6 In addition, removal to Eritrea would put Mr. Yohannes Mehari at unacceptable  
 7 risk of persecution and torture, in violation of controlling law. *See* 8 U.S.C. §  
 8 1231(b)(3)(A); 8 C.F.R. §§ 208.16, 1208.16 (requiring withholding of removal if a  
 9 person faces persecution on account of a protected category); Foreign Affairs Reform  
 10 and Restructuring Act of 1998 (“FARRA”), Public Law 105–277, div. G, sec. 2242,  
 11 112 Stat. 2681, 2631–822 (8 U.S.C. § 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18,  
 12 1208.16–1208.18 (codifying the Convention Against Torture and prohibiting removal  
 13 to a country where a person faces a danger of torture).

14 Mr. Yohannes Mehari is very afraid of being removed to Eritrea. Indeed, Eritrea  
 15 and Ethiopia are on the verge of another war, and both have ongoing records of human  
 16 rights abuses. Eritrea and Ethiopia previously engaged in armed conflict following  
 17 Eritrea’s independence in what was known as the Eritrean-Ethiopian War (or “border

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 19 <sup>10</sup> *See* Solomon Ekanem, *Another African Country Faces Aid Shortfall as Switzerland*  
 20 *Withdraws Funding*, Business Insider Africa, Feb. 4, 2025,  
 21 [https://africa.businessinsider.com/local/lifestyle/another-african-country-faces-aid-](https://africa.businessinsider.com/local/lifestyle/another-african-country-faces-aid-shortfall-as-switzerland-withdraws-funding/p8qnyvq)  
 22 [shortfall-as-switzerland-withdraws-funding/p8qnyvq](https://africa.businessinsider.com/local/lifestyle/another-african-country-faces-aid-shortfall-as-switzerland-withdraws-funding/p8qnyvq) (Indicating Switzerland was  
 cutting aid to Eritrea due to Eritrea’s refusal to repatriate Eritrean deportees from  
 Switzerland).

23 <sup>11</sup> *See* Matina Stevis-Gridneff, *She Tried to Leave America. She Entered an*  
 24 *Immigration Hall of Mirrors*, N.Y. Times, Nov. 25, 2025,  
 25 [https://www.nytimes.com/2025/11/25/world/canada/usa-ice-eritrea-deportation-](https://www.nytimes.com/2025/11/25/world/canada/usa-ice-eritrea-deportation-asylum.html)  
[asylum.html](https://www.nytimes.com/2025/11/25/world/canada/usa-ice-eritrea-deportation-asylum.html).

26 <sup>12</sup> U.S. Dep’t of State, *Eritrea: U.S. Relationship*, [https://2021-2025.state.gov/countries-](https://2021-2025.state.gov/countries-areas/eritrea/)  
[areas/eritrea/](https://2021-2025.state.gov/countries-areas/eritrea/) (last accessed Jan. 15, 2026).

war"). The conflict from 1998–2000 occurred in the region of the border between the two countries and killed approximately 70,000 people.<sup>13</sup> Now, the governments of Ethiopia and Eritrea have publicly exchanged accusations and veiled or unveiled threats against one another. The exchanges stem from Ethiopia's stated intent to "take back" by force a region of Eritrea needed to access the Red Sea and from fall-out from the recent Ethiopian civil war in the Tigray region that borders Eritrea (during which both governments were accused of human rights abuses).<sup>14</sup> Both countries appear to be building up their militaries. *See id.*

And both countries have documented serious domestic human rights abuses. The State Department's most recent report on Eritrea notes, among other concerns:

There were reports from local sources and international advocacy organizations of enforced disappearances by or on behalf of government authorities. An unknown number of persons disappeared during the year and were believed to be in government detention or to have died while in detention. The disappeared included persons presumably detained for political and religious beliefs; locally employed staff of foreign embassies; foreign or dual nationals; and individuals suspected of evading national service and militia duties. Authorities disappeared others for unknown offenses. The government did not make efforts to prevent disappearances or to investigate or punish those responsible

State Dep't Report on Eritrea 2024 at 8. In addition to this wide range of disappearances, significant unlawful detention has been reported:

Authorities generally detained suspects for longer periods without bringing them before a judge, charging them with a crime, or informing

<sup>13</sup> See Elias Gebreselassie, *Between Peace and Uncertainty After Ethiopia-Eritrea Deal*, Al-Jazeera, July 9, 2019, <https://www.aljazeera.com/features/2019/7/9/between-peace-and-uncertainty-after-ethiopia-eritrea-deal>.

<sup>14</sup> See Al Jazeera Staff, *Are Ethiopia and Eritrea Hurtling Toward War?*, Al Jazeera, Mar. 5, 2025, <https://www.aljazeera.com/news/2025/3/25/are-ethiopia-and-eritrea-on-the-brink-of-war>; BBC Monitoring, *Escalating War of Words Between Ethiopia and Eritrea Triggers Fears of Conflict*, BBC, Nov. 23, 2025, <https://www.bbc.com/news/articles/cvgwg042vr4o>.

1 them of the reason for their detention. Authorities sometimes arbitrarily  
2 changed charges during detention. Incommunicado detention was  
widespread.

3 Arbitrary arrests occurred frequently. Security force personnel detained  
4 individuals for reasons that included suspicion of intent to evade national  
5 and militia service, criticizing the government, attempting to leave the  
6 country without an exit visa or passport, and for unspecified national  
7 security threats. Authorities also arrested members of unregistered  
8 Christian groups that were not Orthodox, Eastern Catholic, or Evangelical  
9 Lutheran. Authorities sometimes arrested persons whose papers were not  
in order and detained them until they were able to provide evidence of  
their active national service or militia status, or proof of their  
demobilization from national service. The government contacted places of  
employment to identify those unwilling to participate in the militia.

10 The government held an unknown number of detainees without charge or  
11 trial, including politicians, journalists, members of registered and  
12 unregistered religious groups, and persons suspected of not completing  
13 national service or evading militia duty. In 2022, Amnesty International  
14 and Human Rights Watch estimated there were hundreds of prisoners of  
15 conscience including journalists, former politicians, and practitioners of  
unauthorized religions. The local partner of international NGO Release  
International estimated more than 1,000 Christian prisoners remained in  
indefinite detention without trial.

16 State Dep't Report on Eritrea 2024 at 9–10. Mr. Yohannes Mehari would be especially  
17 vulnerable to such abuses as a person with mental limitations and no family or other  
18 supports in Eritrea. His American upbringing, with different social traditions, also  
19 leaves him vulnerable to targeting on political or religious grounds.

20 Neighboring Ethiopia has a record of similar abuses. The State Department's  
21 most recent country report of Ethiopia recognized human rights violations including:

22 arbitrary or unlawful killings; disappearances; torture or cruel, inhuman,  
23 or degrading treatment or punishment; arbitrary arrest or detention;  
24 transnational repression against individuals in another country; serious  
25 abuses in a conflict; and serious restrictions on freedom of expression and  
26

media freedom, including violence or threats of violence against journalists, unjustified arrests of journalists and censorship.<sup>15</sup>

Indeed, Ethiopia is still emerging from a civil war declared over just a few years ago, which encompassed the region bordering Eritrea. *Id.* Mr. Yohannes Mehari would be at high risk of persecution and torture in Ethiopia for the same reasons as in Eritrea and additionally due to his Eritrean ethnicity.

Mr. Yohannes Mehari is unaware of any changed circumstances that would enable his deportation to Eritrea. Nor, discussed further below, would third-country removal be appropriate or legal.

## **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

<sup>15</sup> U.S. Dep’t of State, *2024 Country Reports on Human Rights Practices: Ethiopia*, <https://www.state.gov/reports/2024-country-reports-on-human-rights-practices/ethiopia> (last accessed Jan. 15, 2026).

1 believe that there is no significant likelihood of removal in the reasonably foreseeable  
2 future,” then “the Government must respond with evidence sufficient to rebut that  
3 showing.” *Id.*

4 The issue is not whether Respondents have been able to remove some  
5 individuals to a given country. Rather, the court must make an individualized analysis  
6 as to a particular detainee. *See Nguyen v. Scott*, 796 F.Supp.3d 703, 726 (W.D. Wash.  
7 Aug. 21, 2025) (stating increase in total number of removals to Vietnam, including  
8 those who entered pre-1995, fails to rebut the evidence presented by Petitioner that “his  
9 individual circumstances make removal unlikely.”). This analysis may include the  
10 United States’ diplomatic relations with the country in question, whether any request  
11 for repatriation/needed travel documents has been submitted to that country, whether  
12 the country has acknowledged receipt or otherwise responded, and the anticipated wait  
13 time for a response.

14 When a petitioner has been detained for a total of six months after a final order  
15 of removal, the *Zadvydas* presumptively reasonable period has expired, even if the  
16 petitioner’s current period of detention is less than six months. “A petitioner’s total  
17 length of confinement need not be consecutive to reach the six-month presumptively  
18 reasonable limit established in *Zadvydas*.” *Tang v. Bondi*, No. CV25-1473-RAJ-TLF,  
19 2025 WL 2637750, at \*4 (W.D. Wash. Sept. 11, 2025).

20 **B. The six-month presumptively reasonable period runs from the final**  
21 **removal order, regardless of whether Mr. Yohannes Mehari was**  
22 **detained during that period.**

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

1 The court reached that conclusion even though the petitioner was not detained until two  
2 years later, and Respondents argued that only five months of the *Zadvydas* six-month  
3 period had expired, based on the times when petitioner was detained. *See Tran*, No.  
4 C25-01897-JLR, dkt. 13, Resp't Return Mem. and Mot. to Dismiss at 1, 7 (Oct. 27,  
5 2025). *See also, e.g., Tadros v. Noem*, No. 25-4108-EP, 2025 WL 1678501, at \*3  
6 (D.N.J. June 13, 2025) (finding that "six-month detention period under *Zadvydas*"  
7 period began upon affirmance of removal order, rejecting argument that petitioner  
8 could not obtain habeas relief because he had not yet been in detention for six months);  
9 *Farez-Espinoza v. Chertoff*, 600 F.Supp.2d 488, 500 (S.D.N.Y. 2009) (concluding that,  
10 where government was aware of noncitizen's address but failed to pursue her removal  
11 until more than 15 months after removal order was entered, "the removal period, as  
12 well as any presumptively reasonabl[e] six-month period of removal to which the  
13 Government may have been entitled" had expired six months after the entry of the  
14 removal order); *Bailey v. Lynch*, No. CV16-2600 (JLL), 2016 WL 5791407, at \*2  
15 (D.N.J. Oct. 3, 2016) (where order of removal became effective upon petitioner's  
16 release from underlying conviction to ICE authorities, after which he was held only  
17 "briefly" before being released on an order of supervision, the *Zadvydas* presumptively  
18 reasonable period ended "long before he was taken back into custody[.]").

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

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

Procedural due process requires notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural 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 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest, including the function involved and the fiscal and administrative burdens that the 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).

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

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.*, 795 F.Supp.3d at 1320–21 (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*

1 *Gonzalez*, 2025 WL 2841574, at \*7 (this factor “must be accorded significant weight”).  
 2 Mr. Yohannes Mehari’s status as a noncitizen does not negate that interest. “While the  
 3 *temporary* detention of non-citizens may sometimes be justified by concerns about  
 4 public safety or flight risk, the government’s discretion to incarcerate non-citizens is  
 5 always constrained by the requirements of due process[.]” *E.A. T.-B.*, 795 F.Supp.3d at  
 6 1321 (quoting *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)) (emphasis  
 7 added).

8 In fact, an individual who was previously released by ICE has a higher liberty  
 9 interest than that of the typical ICE detainee. See *Guillermo M.R. v. Kaiser*, No. CV25-  
 10 5436-RFL, 2025 WL 1810076, at \*1 (N.D. Cal. June 30, 2025) (by alleging that he had  
 11 previously been released by ICE and was about to be re-detained, “Petitioner has  
 12 asserted liberty interests that differ from the liberty interests of a detained person in  
 13 *Rodriguez Diaz*”) (referencing *Rodriguez Diaz*, 53 F.4th 1189)).<sup>16</sup> Similarly, in  
 14 *Carballo v. Andrews*, No. CV25-978-KES-EPG (HC), 2025 WL 2381464, \*4 (E.D.  
 15 Cal. Aug. 15, 2025), the court indicated that an individual who has been released has  
 16 had—in contrast to a detainee with no period of release—“an opportunity ‘to form the [

17 ] enduring attachments of normal life’” (quoting *Morrissey v. Brewer*, 408 U.S. 471,  
 18 482 (1972)), and thus has a heightened liberty interest, such as that which led the  
 19 Supreme Court in *Morrissey* to impose due process requirements on parolees where the  
 20 state seeks to revoke parole.

21 The second factor, risk of an erroneous deprivation of liberty, also weighs in Mr.  
 22 Yohannes Mehari’s favor. A detainee’s release to the community on an order of  
 23 supervision reflected ICE’s determination that they were neither an unmanageable

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24  
 25 <sup>16</sup> *Rodriguez Diaz* held that a person who had been detained pursuant to an  
 26 individualized 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 flight risk nor a danger to the community. *See, e.g., Ledesma Gonzalez*, 2025 WL  
2 2841574, at \*8 (when ICE released petitioner, “it did so after determining—as required  
3 by regulation—that ‘such release would not pose a danger to property or persons, and  
4 that the [noncitizen] is likely to appear for any future proceeding.’ . . . By issuing the  
5 OREC, ICE necessarily found that [petitioner] was neither a flight risk nor a danger to  
6 the community.”) (quoting 8 C.F.R. § 236.1(c)(8)); *Barrenechea v. Albarran*, No.  
7 CV25-7883-VC, 2025 WL 2717279, at \*1 (N.D. Cal. Sept. 22, 2025) (“ICE’s release of  
8 Barrenechea on his own recognizance in 2020 can only be understood as reflecting a  
9 determination that he did not pose a flight risk or danger to the community”).

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

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

19 The holding that a released detainee was entitled to a pre-deprivation hearing  
20 comes not from *Ledesma Gonzalez* and *E.A. T.-B.* alone; dozens of other courts have  
21 reached this conclusion as well. And while those two cases did not involve petitioners  
22 within final removal orders, many courts have found a liberty interest in not being re-  
23 detained, applied the *Mathews* factors as discussed above, and have granted immediate  
24 release. In this district, *see, e.g., Huy Van Tran v. Bondi*, No. 2:25-CV-02335-DGE-  
25 TLF, 2025 WL 3725677, at \*5 (W.D. Wash. Dec. 24, 2025) (finding that detainee with  
26 final order of removal has liberty interest and fact that detainee was allowed to remain

1 in community under order of supervision “only strengthens this interest”); *Khim v.*  
 2 *Bondi*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at \*4 (W.D. Wash. Dec. 17,  
 3 2025) (applying the *Mathews* analysis from *E.A. T.-B.* to detainee with final order of  
 4 removal); *Jimenez v. Bondi*, No. C25-2167RSM, 2025 WL 3466925, at \*2 (W.D.  
 5 Wash. Dec. 3, 2025) (finding that petitioner with final order of removal “has a protected  
 6 liberty interest in his continuing release from custody, and that due process requires that  
 7 Petitioner receive proper notice and an opportunity to respond before he can be re-  
 8 detained”; barring re-detention “without providing adequate notice of the reasons for  
 9 his re-detention and a meaningful opportunity to respond.” *Id.* at \*3). *See also, e.g.,*  
 10 *Perez v. Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at \*5 (M.D. Fla.  
 11 Dec. 3, 2025); *S-M-J v. Bostock*, No. 6:25-CV-01425-MTK, 2025 WL 3137296, at \*5  
 12 (D. Or. Nov. 10, 2025). *Cf. Lopez Dejesus, v. Bostock*, No. 25-CV-01427-JHC-TLF,  
 13 2025 WL 3268002 (W.D. Wash. Nov. 24, 2025) (applying *Mathews* factors to conclude  
 14 that petitioner was entitled to pre-re-detention due process, even though his detention  
 15 was pursuant to the mandatory detention provisions of 8 U.S.C. § 1226(c)).<sup>17</sup>

16 In any hearing held by the government to justify re-detention, the government  
 17 bears the burden of establishing flight risk or danger by clear and convincing evidence.  
 18 *See Sanchez-Rivera v. Matuszewski*, No. CV22-1357-MMA-JLB, 2023 WL 139801,  
 19 at \*7 n.9 (S.D. Cal. Jan. 9, 2023) (noting that “an overwhelming majority of courts”  
 20 have so held). Courts in this district have reached the same conclusion. *See Odimara v.*  
 21 *Bostock*, No. CV24-1412-MJP-TLF, 2025 WL 1490395, at \*10 (W.D. Wash. Mar. 27,  
 22 2025), *report and recommendation adopted*, No. CV24-1412 MJP, 2025 WL 1489705  
 23 (W.D. Wash. May 23, 2025) (citing cases).

24  
 25  
 26 <sup>17</sup> The *Lopez Dejesus* opinion does not mention that detention was pursuant to  
 § 1226(c); 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 In addition, the government should be required to meet its burden based on  
 2 changed circumstances subsequent to Mr. Yohannes Mehari's previous release by ICE.  
 3 *See Duong v. Kaiser*, No. CV25-7598-JST, -- F.Supp.3d --, 2025 WL 2689266, at \*10  
 4 (N.D. Cal. Sept. 19, 2025) (holding that any re-detention first required a hearing  
 5 "whether a material change of circumstances justifies [petitioner's] re-detention").

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

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

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

21 the [noncitizen] will be notified of the reasons for revocation of his or  
 22 her release. [ICE] will conduct an initial informal interview promptly  
 23 after his or her return to [ICE] custody to afford the [noncitizen] an  
 24 opportunity to respond to the reasons for revocation stated in the  
 25 notification. The [noncitizen] may submit any evidence or information  
 26 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.

1 *Id.* § 241.13(i)(3).

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

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

12 *Id.* See also *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at \*3  
13 (E.D. Cal. July 16, 2025). While courts do not make these determinations in the first  
14 instance, they may review them for compliance with the regulation. See *id.*; *Nguyen v.*  
15 *Hyde*, 788 F.Supp.3d 144, 150 (D. Mass. June 20, 2025) (citing *Kong v. United States*,  
16 62 F.4th 608, 620 (1st Cir. 2023)).

#### 17 **X. The Legal Framework for Third-Country Removals**

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

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

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

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

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

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

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

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

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

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

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

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

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

Since January 2025, Respondents have developed and implemented a policy and practice of removing individuals to third countries, without first following the procedures in the INA for designation and removal to a third country and without providing fair notice and an opportunity to contest the removal in immigration court. Statements by multiple high-ranking officials demonstrate that punishment is the point of these third country removals.

Respondents reportedly have negotiated with at least 58 countries to accept deportees from other nations. On June 25, 2025, the New York Times reported that seven countries had agreed to accept deportees who are not their own citizens.<sup>18</sup> Since then, ICE has carried out highly publicized third country deportations to South Sudan and Eswatini.

**A. The Administration's third country removal scheme is designed to punish and deter.**

In an official video, President Donald Trump stated, "[I]f illegal aliens choose to remain in America, they're remaining illegally, and they will face severe consequences," such as "significant jail time, ... garnishment of all wages, imprisonment and incarceration, and *sudden deportation in a place and manner solely of our discretion*."<sup>19</sup> In January 2025, President Trump announced a plan to detain

<sup>18</sup> The seven countries are Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda. Edward Wong, et al., *Inside the Global Deal-Making Behind Trump's Mass Deportations*, NY Times (June 25, 2025), <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html> [https://perma.cc/6CPS-FBJQ].

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

1 immigrants at the Guantanamo Bay prison in Cuba because “it’s a tough place to get  
2 out” and “we don’t want them coming back.”<sup>20</sup>

3 Later, Secretary of State Marco Rubio announced that El Salvador had agreed to  
4 “accept for deportation any illegal alien in the [U.S.] who is a criminal”<sup>21</sup> with the  
5 explicit understanding that “[President Bukele] will put them in his jails.”<sup>22</sup> Respondent  
6 DHS Secretary Kristi Noem said, “It has been wonderful for us to be able to have  
7 somewhere to send the worst of the worst and someone to partner with. And we’d like  
8 to continue that partnership because it’s been *a powerful message of consequences*.”<sup>23</sup>  
9 President Trump also spoke about the deterrent effect of the El Salvador banishments:  
10 “[W]e bring people there and ... they don’t get out.”<sup>24</sup> DHS agreed, posting, “Illegal  
11 aliens are turning back because they know ... they will ultimately leave in handcuffs.”<sup>25</sup>

12 In April, Secretary of State Rubio stated that the Administration is “working  
13 with other countries ... to send [them] some of the most despicable human beings ...

14 <sup>20</sup> Benedict Garman & Matt Murphy, *Migrant Tents Removed from Guantanamo Bay, Satellite Images Show*, BBC News (Apr. 17, 2025), <https://www.bbc.com/news/articles/crm3x27vw70o> [<https://perma.cc/DGM4-JJE9>].

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

19 <sup>22</sup> Matthew Lee, *Rubio Says El Salvador Offers to Accept Deportees from US of Any Nationality, Including Americans*, AP News (Feb. 4, 2025), <https://apnews.com/article/migration-rubio-panama-colombia-venezuela-237f06b7d4bdd9ff1396ba9c45a2c0b>.

21 <sup>23</sup> Roll Call, *Remarks: Donald Trump Holds a Bilateral Meeting with Nayib Bukele of El Salvador - April 14, 2025*, at 00:06:45 (emphasis added), <https://rollcall.com/factbase/trump/transcript/donald-trump-remarks-bilat-nayib-bukele-el-salvador-april-14-2025/> [<https://perma.cc/GQ26-ADHG>].

23 <sup>24</sup> Roll Call, *Press Conference: Donald Trump Hosts a Press Conference at the White House - June 27, 2025*, at 00:20:29, <https://rollcall.com/factbase/trump/transcript/donald-trump-press-conference-white-house-june-27-2025/> [<https://perma.cc/326E-5T8L>].

26 <sup>25</sup> @DHSgov (Homeland Security), X (June 24, 2025, 4:17 PM), <https://x.com/DHSgov/status/1937651350059327520> [<https://perma.cc/2BRH-UXJ5>].

1 and the further away from America, the better, so they can't come back."<sup>26</sup> Secretary  
 2 Noem has publicly threatened noncitizens with criminal convictions to "leave America"  
 3 or "be fined nearly \$1,000 per day, imprisoned, and deported."<sup>27</sup> She stated, "President  
 4 Trump and I have a clear message to those in our country illegally: LEAVE NOW. If  
 5 you do not self-deport, we will hunt you down, arrest you, and deport you."<sup>28</sup>

6 **B. The Administration has negotiated with countries to have U.S. deportees**  
 7 **imprisoned in prisons, camps, or other facilities.**

8 In February, Panama and Costa Rica took in hundreds of deportees from African  
 9 and Central Asian countries and imprisoned them in hotels, a jungle camp, and a  
 10 detention center.<sup>29</sup> In Panama, officials confiscated cell phones, denying deportees  
 11 access to their attorneys.<sup>30</sup> Deportees were "guarded like prisoners," sleeping in  
 12 structures made from plastic sheets and having toilet access only when escorted.<sup>31</sup>

13 <sup>26</sup> Kate Bartlett, *Trump Administration Plans to Deport Migrants to Libya*, NPR (May  
 14 7, 2025), <https://www.npr.org/2025/05/07/nx-s1-5389739/libya-immigration-crackdown-trump-deportations> [<https://perma.cc/C9LM-7333>].

15 <sup>27</sup> Press Release, Dep't of Homeland Sec., *DHS Releases New Nationwide and*  
 16 *International Ads Warning Illegal Aliens to Self-Deport and Stay Out* (Apr. 21, 2025),  
 17 <https://www.dhs.gov/news/2025/04/21/dhs-releases-new-nationwide-and-international-ads-warning-illegal-aliens-self> [<https://perma.cc/2R24-34PA>].

18 <sup>28</sup> Press Release, *supra* note 27 (italics omitted).

19 <sup>29</sup> The Associated Press, *Migrants Expelled from U.S. to Costa Rica, Panama in a Legal*  
 20 *'Black Hole,'* CBC News (Feb. 28, 2025), <https://www.cbc.ca/news/world/costa-rica-panama-us-migrants-1.7471142> [<https://perma.cc/CE84-S3Y7>]; Juan Zamorano, *Nearly*  
 21 *300 Deportees From US Held in Panama Hotel as Officials Try to Return Them to Their*  
 22 *Countries*, AP World News (Feb. 18, 2025), <https://apnews.com/article/panama-trump-migrants-darien-d841c33a215c172b8f99d0aeb43b0455>; Manuel Rueda, *Asylum Seekers*  
 23 *Deported by the U.S. Are Stuck in Panama and Unable to Return Home*, All Things  
 24 *Considered*, NPR (May 5, 2025), <https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home>.

25 <sup>30</sup> Julie Turkewitz, et al., *Migrants, Deported to Panama Under Trump Plan, Detained*  
 26 *in Remote Jungle Camp*, N.Y. Times (Feb. 19, 2025), <https://www.nytimes.com/2025/02/19/world/americas/us-migrants-panama-jungle-camp.html?login=smartlock&auth=login-smartlock> [<https://perma.cc/577B-MDRN>].

<sup>31</sup> Matias Delacroix & Megan Janetsky, *Isolated in 'Harsh Conditions:' Deportee from*  
*US Details Legal Limbo in Panama Camp Near Darien Gap*, AP World News (Feb. 22,

1 The Costa Rican president announced an agreement to receive up to 200  
 2 deportees and to hold them for up to six weeks before sending them to their home  
 3 countries, all paid for by the U.S.<sup>32</sup> The deportees were held at the Temporary Migrant  
 4 Care Center (CATEM).<sup>33</sup> Migrants held there previously reported sleeping on the  
 5 ground in tents, being held in cramped quarters like prisoners, and sanitation issues.<sup>34</sup>  
 6 On June 24, a Costa Rican court ordered the release of the deportees due to civil rights  
 7 violations, finding “they had been deprived of their freedom of movement without a  
 8 prior individual ruling, that their communications with the outside had been restricted,  
 9 and that they had not been told about the possibility of applying for refugee status.”<sup>35</sup>

10 In March, the U.S. paid El Salvador \$5 million to indefinitely imprison over 200  
 11 deported Venezuelans in a maximum-security prison notorious for gross human rights  
 12 abuses, known as CECOT.<sup>36</sup> El Salvador’s justice minister stated the only way out of  
 13 CECOT is in a coffin.<sup>37</sup>

14  
 15 2025), <https://apnews.com/article/panama-deportees-trump-hotel-darien-gap-iom-bba8c3dc33fd38efd569a5b51e481a86> [https://perma.cc/7FL8-KNXT].

16 <sup>32</sup> Alvaro Murillo, *Costa Rica Could Hold US Deportees for Up to Six Weeks, President*  
 17 *Says*, Reuters (Feb. 19, 2025), <https://www.reuters.com/world/americas/costa-rica-could-hold-us-deportees-up-six-weeks-president-says-2025-02-19/> [https://perma.cc/8NR4-4F4A].

18 <sup>33</sup> The Associated Press, *Group of Mostly Asian Migrants Deported from U.S. Arrive in*  
 19 *Costa Rica*, NBC News (Feb. 21, 2025), <https://www.nbcnews.com/news/asian-america/asian-migrants-deported-arrive-costa-rica-rcna193148>  
 20 [https://perma.cc/R6MT-HK9F].

21 <sup>34</sup> The Associated Press, *supra* note 29.

22 <sup>35</sup> Vanessa Buschschlüter, *Costa Rican Court Orders Release of Migrants Deported*  
 23 *from US*, BBC News (June 25, 2025), <https://www.bbc.com/news/articles/cwyrn42kp7no> [https://perma.cc/45FA-3VCY].

24 <sup>36</sup> See, e.g., Wong, et al., *supra* note 18; Michael Rios, *What We Know About the El*  
 25 *Salvador ‘Mega Prison’ Where Trump Is Sending Alleged Venezuelan Gang Members*,  
 CNN (Mar. 17, 2025), <https://www.cnn.com/2025/03/17/americas/el-salvador-prison-trump-deportations-gangs-intl-latam> [https://perma.cc/G3CE-M2LB].

26 <sup>37</sup> Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison; Documents*  
*Indicate Most Have No Apparent Criminal Records*, CBS News (Apr. 6, 2025),

1 In May, ICE attempted to deport individuals from Vietnam, Laos, the  
 2 Philippines, and Mexico to Libya.<sup>38</sup> The aircraft sat on the runway for hours until the  
 3 individuals were returned to a detention center after a court ordered the men not to be  
 4 deported.<sup>39</sup>

5 On July 4, ICE deported eight men from various countries to South Sudan.<sup>40</sup> The  
 6 government of South Sudan euphemistically said in a statement that the deportees were  
 7 “under the care of the relevant authorities”<sup>41</sup>—meaning they are imprisoned. They were  
 8 held incommunicado after their deportation was completed.<sup>42</sup>

9 On July 15, ICE deported five men from multiple countries to Eswatini.<sup>43</sup> DHS  
 10 referred to the men as “so uniquely barbaric that their home countries refused to take  
 11  
 12

13 [https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-](https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/)  
 14 [prison-60-minutes-transcript/](https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/) [<https://perma.cc/65ZQ-UNXZ>].

15 <sup>38</sup> Human Rights Watch, *U.S.: Don’t Forcibly Transfer Migrants to Libya* (May 9,  
 16 2025), <https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya>  
 [<https://perma.cc/LC6H-4Y6G>].

17 <sup>39</sup> Human Rights Watch, *supra* note 38.

18 <sup>40</sup> Guardian, *US Judge Clears Path for Eight Immigrants to Be Deported to South*  
 19 *Sudan* (July 4, 2025), [https://www.theguardian.com/us-news/2025/jul/04/south-sudan-](https://www.theguardian.com/us-news/2025/jul/04/south-sudan-deportations-halted)  
[deportations-halted](https://www.theguardian.com/us-news/2025/jul/04/south-sudan-deportations-halted) [<https://perma.cc/33XA-N863>].

20 <sup>41</sup> Mattathias Schwartz, *Trump Administration Poised to Ramp Up Deportations to*  
 21 *Distant Countries*, N.Y. Times (July 13, 2025), [https://www.nytimes.com/2025/07/13/](https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html)  
 22 [us/politics/south-sudan-third-country-deportations.html](https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html) [<https://perma.cc/PQZ9-4B9F>];  
 23 *see also* Press Statement, Republic of South Sudan, *Official Statement on the Arrival of*  
*Third-Country Nationals and South Sudanese Deported from the United States of*  
*America to South Sudan* (July 8, 2025), [https://mofaic.gov.ss/official-statement-on-the-](https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-of-america-to-south-sudan/)  
[arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-](https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-of-america-to-south-sudan/)  
[of-america-to-south-sudan/](https://mofaic.gov.ss/official-statement-on-the-arrival-of-third-country-nationals-and-south-sudanese-deported-from-the-united-states-of-america-to-south-sudan/) [<https://perma.cc/ML25-BJZM>].

24 <sup>42</sup> Ex. D, ¶ 18 (this exhibit is the Declaration of Glenda M. Aldana Madrid, filed in  
 25 *Nguyen v. Scott*, No. 2:25-CV-01398, dkt. 29 (W.D. Wash. Aug. 1, 2025)).

26 <sup>43</sup> Ex. C at ¶ 19.

1 them back.”<sup>44</sup> Eswatini government officials have said the men are imprisoned in  
 2 solitary confinement and that the U.S. is paying for the costs of their imprisonment.<sup>45</sup>  
 3 An Eswatini government official estimated the men would be held for about 12  
 4 months.<sup>46</sup>

5 It also attempted—and completed—an “end-run” around the protections of the  
 6 Convention against Torture by deporting a group of migrants to Ghana, which sent  
 7 them on to their countries of citizenship despite fears of persecution.<sup>47</sup>

8 **C. The Administration has handpicked countries known for human rights**  
 9 **abuses for third country deportation agreements to scare people in the**  
 10 **U.S. into self-deporting or to accept removal to their home countries.**

11 For example, conditions in South Sudan are so extreme that the U.S. State  
 12 Department website warns Americans not to travel there, or to prepare their will, make  
 13 funeral arrangements, and appoint a hostage-taker negotiator first.<sup>48</sup> Eswatini is ruled  
 14 by a monarch, and many of its citizens live on less than four dollars a day.<sup>49</sup> The prison

15 <sup>44</sup> @TriciaOhio (Tricia McLaughlin), X (July 15, 2025 at 5:09 PM),  
 16 <https://x.com/TriciaOhio/status/1945274627976200206> [<https://perma.cc/YV2M-4WRL>].

17 <sup>45</sup> Nimi Princewill, et al., ‘*Not Trump’s Dumping Ground*’: *Outrage Over Arrival of*  
 18 *Foreign US Deportees in Tiny African Nation*, CNN World (July 18, 2025),  
 19 <https://www.cnn.com/2025/07/17/africa/africa-eswatini-trump-us-deportees-intl>  
 20 [<https://perma.cc/8U9T-LVMP>]; Rachel Savage, et al., *Eswatini Opposition Attacks US*  
 21 *Deal as ‘Human Trafficking Disguised as Deportation’*, The Guardian (July 23, 2025),  
 22 <https://www.theguardian.com/world/2025/jul/23/eswatini-petition-us-deportees>  
 23 [<https://perma.cc/XV7W-89P4>].

24 <sup>46</sup> Savage, et al., *supra* note 45.

25 <sup>47</sup> Camilo Montoya-Perez, *Judge Says U.S. Trying to Do “End-Run” Around Legal*  
 26 *Protections with Deportations to Ghana*, CBS News (Sept. 15, 2025),  
<https://www.cbsnews.com/news/judge-says-u-s-trying-to-do-end-run-around-legal-protections-with-deportations-to-ghana/> [<https://perma.cc/9RUP-KJQJ>].

<sup>48</sup> U.S. Department of State, Travel.State.Gov, *South Sudan Travel Advisory* (Mar. 8, 2025), <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-sudan-travel-advisory.html> [<https://perma.cc/6NXV-JXCY>].

<sup>49</sup> Princewill, et al., *supra* note 45.

1 system is overcrowded, with prisoners receiving one meal a day.<sup>50</sup> The U.S. State  
 2 Department advises Americans to “exercise increased caution in Eswatini due to crime  
 3 and civil unrest.”<sup>51</sup> And Libya is in the middle of a civil war, with a record of  
 4 “pervasive long-term arbitrary detention, enforced disappearances of both men and  
 5 women, killings under torture, and unlawful killings in places of detention.”<sup>52</sup> The  
 6 United Nations has called Libya’s violations of detainees’ rights “crimes against  
 7 humanity.”<sup>53</sup>

8 **D. The Administration has violated due process in carrying out these third-**  
 9 **country deportations.**

10 Respondents have through both word and action evidenced their intent to remove  
 11 people to third countries without first following the procedural safeguards of the INA or  
 12 providing adequate notice and opportunity to be heard regarding fear of removal to a  
 13 third country.

14 On July 9, 2025, ICE issued a new memo stating that, when seeking to remove  
 15 an individual to a country not designated on the removal order, ICE may deport that  
 16 person without any procedures for notice or an opportunity to be heard if the State  
 17 Department confirms it has received diplomatic assurances that individuals will not be  
 18 persecuted or tortured. *See* Ex. B (July 9, 2025 Memo). If no diplomatic assurances are  
 19 received, the ICE memo instructs officers to serve on the individual a Notice of  
 20 Removal that includes the intended country of removal. It instructs officers not to ask  
 21 whether the individual is afraid of removal to that country. It states that officers should

22 \_\_\_\_\_  
 23 <sup>50</sup> Princewill, et al., *supra* notes 45.

24 <sup>51</sup> U.S. Department of State, Travel.State.Gov, *Eswatini Travel Advisory* (July 1, 2024),  
 25 <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/eswatini-travel-advisory.html> [<https://perma.cc/ASY7-2DUF>].

26 <sup>52</sup> Human Rights Watch, *supra* note 38; *see* Bartlett, *supra* note 26.

<sup>53</sup> Human Rights Watch, *supra* notes 38.

1 “generally wait at least 24 hours following service of the Notice of Removal before  
2 effectuating removal” but that “[i]n exigent circumstances, [ICE] may execute a  
3 removal order six (6) or more hours after service of the Notice of Removal as long as  
4 the [noncitizen] is provided reasonable means and opportunity to speak with an attorney  
5 prior to removal.” *Id.* at 1.

6 The memo further instructs that if the noncitizen “does not affirmatively state a  
7 fear of persecution or torture if removed to the country of removal listed on the Notice  
8 of Removal within 24 hours, [ICE] may proceed with removal to the country identified  
9 on the notice.” *Id.* at 2. If the noncitizen “does affirmatively state a fear if removed to  
10 the country of removal,” then ICE will refer the case to U.S. Citizenship and  
11 Immigration Services (“USCIS”) for a screening for eligibility for withholding of  
12 removal and protection under the Convention Against Torture. *Id.* “USCIS will  
13 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen does not  
14 prove to the screener’s satisfaction that it is more likely than not that the noncitizen will  
15 be tortured, the individual will be removed. *Id.* This imposes on the noncitizen a higher  
16 standard than the “reasonable fear” and “credible fear” standards found in the INA. If  
17 USCIS determines that the noncitizen has met the standard, then the policy directs ICE  
18 to either move to reopen removal proceedings “for the sole purpose of determining  
19 eligibility for [withholding of removal protection] and CAT” or designate another  
20 country for removal. *Id.*

21 And ICE appears to be acting on this directive. For example, the non-Sudanese  
22 men who were ultimately deported to South Sudan claimed fear of removal to South  
23 Sudan. None of those men were provided a meaningful fear screening by a USCIS  
24  
25  
26

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.<sup>54</sup>

Further support that Mr. Yohannes Mehari faces a risk of punitive third-country removal comes from two declarations submitted in *Nguyen*, attached here as Ex. C (Declaration of Tin Thanh Nguyen) and Ex. D (Declaration of Glenda M. Aldana). They detail removals to third countries with little or no notice, as described in *Nguyen*, 796 F.Supp.3d at 736–37. Additionally, respondents detained an Eritrean woman who had been released years ago following a final removal order after she tried to seek refuge in Canada in response to the present Administration’s threats of third country removal.<sup>55</sup> She was detained and transported in poor conditions by ICE before ultimately being removed to a third country. *Id.* Fortunately for her, Canada later agreed to accept her. *Id.* However, unlike that woman, Mr. Yohannes Mehari has no family or support in Canada or another safe country besides the United States.

## **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

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<sup>54</sup> See Montoya-Perez, *supra* note 47; Adam Liptak, *Supreme Court Lets Trump Deport Migrants to Countries Other Than Their Own* (June 23, 2025), <https://www.nytimes.com/2025/06/23/us/politics/supreme-court-south-sudan-migrants.html> [https://perma.cc/4DEE-LKCC]

<sup>55</sup> See Stevis-Gridneff, *supra* note 11.

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2 military base in Djibouti before their final removal to South Sudan.<sup>54</sup>

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24 <sup>54</sup> See Montoya-Perez, *supra* note 47; Adam Liptak, *Supreme Court Lets Trump Deport*  
25 *Migrants to Countries Other Than Their Own* (June 23, 2025),  
26 [https://www.nytimes.com/2025/06/23/us/politics/supreme-court-south-sudan-](https://www.nytimes.com/2025/06/23/us/politics/supreme-court-south-sudan-migrants.html)  
[migrants.html](https://www.nytimes.com/2025/06/23/us/politics/supreme-court-south-sudan-migrants.html) [https://perma.cc/4DEE-LKCC]

<sup>55</sup> See Stevis-Gridneff, *supra* note 11.

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.

### **XIII. The Law Governing Injunctive Relief**

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

#### **Grounds for Relief**

##### **Ground One: Mr. Yohannes Mehari’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 Mr. Yohannes Mehari Will Be Removed in the Reasonably Foreseeable Future.**

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

1 Because Mr. Yohannes Mehari's removal order became final in or about 2009,  
 2 the removal period has long since expired, and detention is no longer required under  
 3 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has  
 4 passed. Whether calculated from the date of the final order of removal, or in terms of  
 5 Mr. Yohannes Mehari's total time in detention, the *Zadvydas* grace period has passed.

6 There is "good reason to believe that there is no significant likelihood of removal  
 7 in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. As detailed above,  
 8 the United States does not have good diplomatic relations with Eritrea, and Eritrea has  
 9 been uncooperative with repatriation for many years. Furthermore, Mr. Yohannes  
 10 Mehari's citizenship is uncertain given the timing and location of his birth. Mr.  
 11 Yohannes Mehari was born in the area that is now Eritrea before Eritrea was recognized  
 12 as a state. Eritrea's laws may require him to trace back generations of his family to be  
 13 recognized as a citizen,<sup>56</sup> a task that may not be possible due to his family's exodus  
 14 during the War for Independence and his mental conditions. And while it appears Mr.  
 15 Yohannes Mehari is receiving some medication for his mental conditions, it does not  
 16 appear he is receiving any accommodation (such as appointed counsel for removal  
 17 proceedings) to assist him in understanding ICE's communications or requests. There is

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18  
 19 <sup>56</sup> See U.S. Citizenship & Immigration Services, *Resource Information Center: Eritrea*  
 20 (1999), <https://www.uscis.gov/archive/resource-information-center-eritrea-1>  
 21 (summarizing law); Bronwen Manby, *Citizenship Law in Africa: A Comparative Study*  
 22 (Open Society Foundations 2016), *available at*  
 23 [https://www.opensocietyfoundations.org/uploads/d5d1d086-1a0d-4088-b679-](https://www.opensocietyfoundations.org/uploads/d5d1d086-1a0d-4088-b679-003e09e9c125/citizenship-law-africa-third-edition-20160129.pdf)  
 24 [003e09e9c125/citizenship-law-africa-third-edition-20160129.pdf](https://www.opensocietyfoundations.org/uploads/d5d1d086-1a0d-4088-b679-003e09e9c125/citizenship-law-africa-third-edition-20160129.pdf) (summarizing  
 25 nationality laws of many African countries, including Eritrea and Ethiopia); The  
 26 Constitution of Eritrea, at Ch. 1, art. III, Ratified by the Constituent Assembly on May  
 23, 1997, 24 N.C. J. Int'l L. & Com. Reg. 521, 523 (1999) (citizenship granted to those  
 born to a parent of Eritrean origin or as provided by law); The Eritrean Nationality  
 Proclamation No. 21/1992, *available at*  
<https://www.refworld.org/legal/legislation/natlegbod/1992/en/14094> (detailing who is  
 an Eritrean national, including heightened burden to demonstrate "Eritrean origin" for  
 those not residing in Eritrea in or before 1933).

1 no reason to believe that Respondents will be able to remove Mr. Yohannes Mehari to  
2 Eritrea in the near future, nor that they could do so without violating the INA and the  
3 Convention Against Torture.

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

8 **Ground Two: Procedural Due Process**

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

10 Mr. Yohannes Mehari has a liberty interest in not being re-detained. Applying  
11 the three-factor test of *Mathews*, that interest is high. The risk of any erroneous  
12 deprivation is also high, because ICE's previous release of him necessarily reflected a  
13 conclusion that he was not a flight risk or a danger to the community, and/or that he  
14 could not be removed in the reasonably foreseeable future. Here, as in *Ledesma*  
15 *Gonzalez*, it appears that "ICE revoked that release without any reassessment of those  
16 factors." 2025 WL 2841574, at \*8.

17 In addition, the cost to the government of providing a hearing is low, and  
18 significantly outweighed by the other factors. ICE's re-detention of Mr. Yohannes  
19 Mehari violated his due process rights and was therefore unlawful.

20 As to Mr. Yohannes Mehari's prayer for injunctive relief barring a new re-  
21 detention absent due process, the requirements for injunctive relief are met. His  
22 prospective unlawful re-detention would constitute an irreparable injury that could not  
23 be redressed by an award of damages. Second, the balance of hardships is completely in  
24 Mr. Yohannes Mehari's favor: Mr. Yohannes Mehari risks unlawful re-detention, while  
25 Respondents suffer no hardship by being prevented from following their unlawful re-  
26 detention practices. Even if Respondents had concerns about keeping track of Mr.

1 Yohannes Mehari given his mental conditions, they could simply grant him a  
 2 reasonable accommodation or employ additional supervision (for example additional  
 3 check-ins or a location monitor). Finally, the public interest would affirmatively be  
 4 served by barring Respondents' unlawful practice.

5 Furthermore, there is a significant likelihood that Respondents would seek to  
 6 again re-detain Mr. Yohannes Mehari unlawfully. Respondents have a policy to round  
 7 up as many noncitizens as possible.<sup>57</sup> They have demonstrated their willingness to  
 8 ignore legal limits and practices when doing so.<sup>58</sup>

### 9 **Ground Three: Failure to Comply with Regulations**

10 The allegations in the above paragraphs are realleged and incorporated herein.  
 11  
 12

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13 <sup>57</sup> See, e.g., Jose Olivares, "Trump administration sets quota to arrest 3,000 people a  
 14 day in anti-immigration agenda," *The Guardian* (May 29, 2025),  
 15 <https://www.theguardian.com/us-news/2025/may/29/trump-ice-arrest-quota>  
 [https://perma.cc/6P5L-NUDM].

16 <sup>58</sup> See, e.g., José Olivares, *US Citizen Detained by Immigration Officials Who*  
 17 *Dismissed his Real ID as Fake*, *The Guardian*, May 24, 2025,  
 18 <https://www.theguardian.com/us-news/2025/may/24/us-citizen-detained-ice-real-id>;  
 19 Leo Stallworth & Leanne Suter, *ICE Agents Ram Car to Take Man into Custody in*  
 20 *Boyle Heights*, ABC 7, June 11, 2025, [https://abc7.com/post/federal-agents-involved-](https://abc7.com/post/federal-agents-involved-boyle-heights-crash-accused-hit-run-lapd-investigating/16724558/)  
 21 [boyle-heights-crash-accused-hit-run-lapd-investigating/16724558/](https://abc7.com/post/federal-agents-involved-boyle-heights-crash-accused-hit-run-lapd-investigating/16724558/); Rebekah Riess &  
 22 Bill Kirkos, *37 People Arrested and American Kids Separated from Parents After ICE*  
 23 *Raid at Chicago Apartments*, CNN, Oct. 3, 2025,  
 24 <https://www.cnn.com/2025/10/03/us/chicago-apartment-ice-raid>; Liz Landers, *Mother*  
 25 *Speaks Out After Teen with Disabilities Mistakenly Arrested in Immigration Raid:*  
 26 *Interview*, PBS News Hour, Oct. 22, 2025,  
[https://www.pbs.org/newshour/show/mother-speaks-out-after-teen-with-disabilities-](https://www.pbs.org/newshour/show/mother-speaks-out-after-teen-with-disabilities-mistakenly-arrested-in-immigration-raid)  
[mistakenly-arrested-in-immigration-raid](https://www.pbs.org/newshour/show/mother-speaks-out-after-teen-with-disabilities-mistakenly-arrested-in-immigration-raid); Jon Collins, *Privacy Advocates: ICE Using*  
*Private Data to Intimidate Observers and Activists*, Jan. 13, 2026, Minnesota Public  
 Radio, [https://www.mprnews.org/story/2026/01/13/ice-using-private-data-to-](https://www.mprnews.org/story/2026/01/13/ice-using-private-data-to-intimidate-observers-and-activists-advocates-say)  
[intimidate-observers-and-activists-advocates-say](https://www.mprnews.org/story/2026/01/13/ice-using-private-data-to-intimidate-observers-and-activists-advocates-say); Shaila Dewan & Jonah E. Bromwich,  
*Can the ICE Agent Who Shot Renee Good Be Prosecuted?*, N.Y. Times, Jan. 14, 2026,  
<https://www.nytimes.com/2026/01/14/us/renee-good-ice-shooting-prosecution.html>.

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

3 (a) Respondents may not have made a determination either that, on account of  
4 changed circumstances, there was a significant likelihood that Mr. Yohannes Mehari  
5 would be removed in the reasonably foreseeable future or that he violated the  
6 conditions of release;

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

10 (c) Respondents did not timely notify Mr. Yohannes Mehari in writing of the  
11 reasons for revocation in a manner that he could reasonably respond to;

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

13 (e) Respondents did not afford Mr. Yohannes Mehari an opportunity to respond;  
14 and

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

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

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

22 The Fifth Amendment, the INA, the CAT, and implementing regulations  
23 mandate meaningful notice and opportunity to respond to any attempt to remove Mr.  
24 Yohannes Mehari to a third country in reopened removal proceedings. They also  
25 require an opportunity for Mr. Yohannes Mehari to make a fear-based claim against  
26 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

1 remove individuals to third countries without any notice or process *at all* where  
2 diplomatic assurances are received and, where no diplomatic assurances are received, to  
3 provide flagrantly insufficient notice (6–24 hours) and opportunity to respond, in  
4 violation of the statute, regulations, and Fifth Amendment.

5 Prior to any third-country removal, Mr. Yohannes Mehari must be provided with  
6 constitutionally and statutorily compliant notice and an opportunity to respond and  
7 contest that removal if he has a fear of persecution or torture in that country in reopened  
8 removal proceedings. *See Nguyen*, 796 F.Supp.3d 703, 739 (granting preliminary  
9 injunction against “removing Petitioner to a country other than [home country] without  
10 notice and a meaningful opportunity to be heard in reopened removal proceedings with  
11 a hearing before an immigration judge”).

12 Furthermore, the requirements for injunctive relief are met. Mr. Yohannes  
13 Mehari’s prospective unlawful re-detention or removal to a third country would  
14 constitute an irreparable injury that could not be redressed by an award of damages.  
15 Second, the balance of hardships is completely in Mr. Yohannes Mehari’s favor: He  
16 risks unlawful removal to a third country, while Respondents suffer no hardship by  
17 being prevented from following their unlawful re-detention practices. Finally, the  
18 public interest would affirmatively be served by barring Respondents’ unlawful  
19 practice.

20 In addition, the matter is ripe. The facts set forth above—including Respondents’  
21 stated policy regarding third country removals—make it reasonably likely that  
22 Respondents would seek to remove Mr. Yohannes Mehari to a third country without  
23 complying with their regulatory and constitutional obligations to provide Mr. Yohannes  
24 Mehari with notice and an opportunity to be heard.

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

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

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

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

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

Mr. Yohannes Mehari has been convicted of crimes and completed any sentences for those crimes. It is possible that one of those convictions made him removable from the United States, but the convictions do not authorize Respondents to inflict, as a matter of executive policy and discretion, additional punishment on Mr. Yohannes Mehari. Respondents’ third-country removal program is punitive in both its nature and its execution.

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

1 these practices and strike fear in the immigrant community to send a message of  
2 retribution and deterrence.

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

11 Respondents may not seek to remove Mr. Yohannes Mehari to a third country  
12 under their punitive banishment policy and practices. *See Nguyen*, 796 F.Supp.3d 703,  
13 739 (granting preliminary injunction against "removing Petitioner to any country where  
14 he is likely to face imprisonment upon arrival").

15 The criteria for an injunction in this case are met. First, unlawful removal to a  
16 third country risks irreparable injury that could not be redressed by an award of  
17 damages. Second, the balance of hardships is completely in Mr. Yohannes Mehari's  
18 favor: Mr. Yohannes Mehari risks removal to a third country where unwarranted  
19 punishment may result, and Respondents suffer no hardship by being prevented from  
20 following their unlawful removal policies. Finally, the public interest would  
21 affirmatively be served by barring Respondents' unlawful policies. Given the potential  
22 for Respondents to attempt a rapid and unlawful removal, Mr. Yohannes Mehari would  
23 have no opportunity to seek injunctive relief at that time.

24 Furthermore, the matter is ripe. The facts set forth above—including  
25 Respondents' stated policy regarding third country removals—make it reasonably likely  
26

1 that Respondents would seek to remove Mr. Yohannes Mehari to a third country with a  
2 punitive intent and punitive result.

3 **Prayer for Relief**

4 Mr. Yohannes Mehari respectfully requests that this Court:

5 (a) Assume jurisdiction over this action;

6 (b) Order Respondents to immediately release Mr. Yohannes Mehari from  
7 custody;

8 (c) Order Respondents to, within 24 hours of his release, provide the Court  
9 with a declaration confirming that Mr. Yohannes Mehari has been released from  
10 custody;

11 (d) Order that Respondents may not re-detain Mr. Yohannes Mehari without  
12 first holding a hearing before a neutral decisionmaker at which the government bears  
13 the burden of establishing flight risk or danger to the community by clear and  
14 convincing evidence based on changed circumstances since Mr. Yohannes Mehari was  
15 previously released;

16 (e) Order that the government may not otherwise re-detain Mr. Yohannes  
17 Mehari unless the government:

18 (1) obtains a valid travel document to Eritrea for him and affords him an  
19 opportunity to claim fear of removal,

20 (2) provides the valid travel document to him and his counsel,

21 (3) offers Mr. Yohannes Mehari the opportunity to leave on his own within  
22 two months, and

23 (4) Mr. Yohannes Mehari does not leave. Under such circumstances, the  
24 government may be permitted to re-detain Mr. Yohannes Mehari provided  
25 it has already made concrete arrangements for him to be put on a flight to  
26 Eritrea in the reasonably foreseeable future.

1 *See Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at \*6 (W.D. Wash. Dec. 5,  
2 2025); *Tang*, 2025 WL 3551381, at \*3.

3 (f) Order that Respondents may not remove or seek to remove Mr. Yohannes  
4 Mehari to a third country without notice and meaningful opportunity to respond in  
5 compliance with the statute and due process in reopened removal proceedings;

6 (g) Order that Respondents may not remove Mr. Yohannes Mehari to any  
7 third country because Respondents' third-country removal program seeks to impose  
8 unconstitutional punishment on its subjects, including imprisonment and other forms of  
9 harm; and

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

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

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

19 DATED this 16th day of January, 2026.

20 Respectfully submitted,

21 *s/ Rebecca Fish*  
22 Assistant Federal Public Defender  
23 Attorney for Mehawi Yohannes Mehari  
24  
25  
26

# **EXHIBIT A**

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT



**U.S. Immigration and Customs Enforcement (ICE)  
Enforcement and Removal Operations (ERO)  
November 2024**

**Question:** How many individuals on the non-detained docket have final orders of removal? Please provide the data broken down by nationality and categories of reasons that make it difficult to remove to specific countries (e.g., withholdings and convention against torture protections)?

**Response:** As of November 24, 2024, there are 1,445,549 noncitizens on ICE's non-detained docket with final orders of removal. Please see the following chart for a breakdown by country of citizenship:

**Noncitizens on the ICE Non-Detained Docket with Final Orders of Removal  
by Country of Citizenship**

| Citizenship Country | Totals |
|---------------------|--------|
| Afghanistan         | 1,708  |
| Albania             | 1,874  |
| Algeria             | 306    |
| Angola              | 662    |
| Antigua-Barbuda     | 110    |
| Argentina           | 1,148  |
| Armenia             | 2,808  |
| Aruba               | 2      |
| Australia           | 261    |
| Austria             | 60     |
| Azerbaijan          | 709    |
| Bahamas             | 426    |
| Bahrain             | 17     |
| Bangladesh          | 4,837  |
| Barbados            | 151    |
| Belarus             | 323    |
| Belgium             | 46     |
| Belize              | 899    |
| Benin               | 102    |
| Bermuda             | 10     |
| Bhutan              | 122    |
| Bolivia             | 1,366  |
| Bosnia-Herzegovina  | 166    |
| Botswana            | 12     |

|                                  |         |
|----------------------------------|---------|
| Brazil                           | 38,677  |
| British Virgin Islands           | 5       |
| Brunei                           | 4       |
| Bulgaria                         | 727     |
| Burkina Faso                     | 303     |
| Burma                            | 679     |
| Burundi                          | 462     |
| Cambodia                         | 1,747   |
| Cameroon                         | 1,736   |
| Canada                           | 1,290   |
| Cape Verde                       | 314     |
| Cayman Islands                   | 2       |
| Central African Republic         | 82      |
| Chad                             | 169     |
| Chile                            | 1,137   |
| China, Peoples Republic of       | 37,908  |
| Colombia                         | 27,388  |
| Comoros                          | 3       |
| Congo                            | 795     |
| Costa Rica                       | 2,116   |
| Croatia                          | 126     |
| Cuba                             | 42,084  |
| Cyprus                           | 14      |
| Czech Republic                   | 100     |
| Czechoslovakia                   | 254     |
| Democratic Republic of the Congo | 1,068   |
| Denmark                          | 45      |
| Djibouti                         | 29      |
| Dominica                         | 104     |
| Dominican Republic               | 12,699  |
| Ecuador                          | 31,252  |
| Egypt                            | 1,461   |
| El Salvador                      | 203,822 |
| Equatorial Guinea                | 20      |
| Eritrea                          | 973     |
| Estonia                          | 94      |
| Eswatini                         | 6       |
| Ethiopia                         | 1,713   |
| Fiji                             | 353     |

|                  |         |
|------------------|---------|
| Finland          | 22      |
| France           | 402     |
| French Guiana    | 6       |
| French Polynesia | 2       |
| Gabon            | 60      |
| Gambia           | 1,035   |
| Georgia          | 833     |
| Germany          | 571     |
| Ghana            | 3,228   |
| Greece           | 211     |
| Grenada          | 149     |
| Guadeloupe       | 12      |
| Guatemala        | 253,413 |
| Guinea           | 1,897   |
| Guinea-Bissau    | 48      |
| Guyana           | 1,236   |
| Haiti            | 32,363  |
| Honduras         | 261,651 |
| Hong Kong        | 122     |
| Hungary          | 294     |
| Iceland          | 5       |
| India            | 17,940  |
| Indonesia        | 4,276   |
| Iran             | 2,618   |
| Iraq             | 1,299   |
| Ireland          | 171     |
| Israel           | 1,148   |
| Italy            | 355     |
| Ivory Coast      | 1,224   |
| Jamaica          | 5,120   |
| Japan            | 281     |
| Jordan           | 1,660   |
| Kazakhstan       | 369     |
| Kenya            | 1,282   |
| Kiribati         | 3       |
| Korea            | 1,229   |
| Kosovo           | 118     |
| Kuwait           | 146     |
| Kyrgyzstan       | 319     |

|                                 |         |
|---------------------------------|---------|
| Laos                            | 4,850   |
| Latvia                          | 125     |
| Lebanon                         | 1,055   |
| Lesotho                         | 11      |
| Liberia                         | 1,563   |
| Libya                           | 89      |
| Liechtenstein                   | 1       |
| Lithuania                       | 259     |
| Macau                           | 2       |
| Madagascar                      | 5       |
| Malawi                          | 56      |
| Malaysia                        | 435     |
| Mali                            | 929     |
| Malta                           | 8       |
| Marshall Islands                | 39      |
| Mauritania                      | 3,822   |
| Mauritius                       | 15      |
| Mexico                          | 252,044 |
| Micronesia, Federated States of | 72      |
| Moldova                         | 279     |
| Monaco                          | 1       |
| Mongolia                        | 461     |
| Montenegro                      | 68      |
| Montserrat                      | 8       |
| Morocco                         | 495     |
| Mozambique                      | 14      |
| Namibia                         | 19      |
| Nepal                           | 1,365   |
| Netherlands                     | 184     |
| Netherlands Antilles            | 6       |
| New Zealand                     | 166     |
| Nicaragua                       | 45,995  |
| Niger                           | 642     |
| Nigeria                         | 3,690   |
| North Korea                     | 3       |
| North Macedonia                 | 341     |
| Norway                          | 39      |
| Oman                            | 6       |
| Pakistan                        | 7,760   |

|                         |        |
|-------------------------|--------|
| Palau                   | 8      |
| Panama                  | 662    |
| Papua New Guinea        | 5      |
| Paraguay                | 197    |
| Peru                    | 13,769 |
| Philippines             | 3,772  |
| Poland                  | 2,303  |
| Portugal                | 360    |
| Qatar                   | 10     |
| Romania                 | 4,445  |
| Russia                  | 3,518  |
| Rwanda                  | 338    |
| Samoa                   | 57     |
| San Marino              | 2      |
| Sao Tome and Principe   | 1      |
| Saudi Arabia            | 337    |
| Senegal                 | 1,689  |
| Serbia                  | 50     |
| Serbia and Montenegro   | 64     |
| Seychelles              | 4      |
| Sierra Leone            | 1,563  |
| Singapore               | 111    |
| Slovakia                | 131    |
| Slovenia                | 16     |
| Solomon Islands         | 3      |
| Somalia                 | 4,090  |
| South Africa            | 379    |
| South Korea             | 837    |
| South Sudan             | 136    |
| Spain                   | 364    |
| Sri Lanka               | 3,065  |
| St. Kitts-Nevis         | 68     |
| St. Lucia               | 202    |
| St. Pierre and Miquelon | 1      |
| St. Vincent-Grenadines  | 127    |
| Sudan                   | 1,012  |
| Suriname                | 137    |
| Sweden                  | 120    |
| Switzerland             | 60     |

|                          |                  |
|--------------------------|------------------|
| Syria                    | 741              |
| Taiwan                   | 392              |
| Tajikistan               | 149              |
| Tanzania                 | 301              |
| Thailand                 | 619              |
| Togo                     | 427              |
| Tonga                    | 151              |
| Trinidad and Tobago      | 1,197            |
| Tunisia                  | 160              |
| Türkiye                  | 3,103            |
| Turkmenistan             | 40               |
| Turks and Caicos Islands | 25               |
| Tuvalu                   | 1                |
| Uganda                   | 393              |
| Ukraine                  | 1,862            |
| United Arab Emirates     | 21               |
| United Kingdom           | 1,157            |
| Unknown                  | 1,451            |
| Uruguay                  | 365              |
| USSR                     | 337              |
| Uzbekistan               | 975              |
| Vanuatu                  | 1                |
| Venezuela                | 22,749           |
| Vietnam                  | 8,675            |
| Yemen                    | 558              |
| Yugoslavia               | 845              |
| Zambia                   | 174              |
| Zimbabwe                 | 545              |
| <b>Total</b>             | <b>1,445,549</b> |

ICE is unable to provide a list of case-specific reasons why the agency is unable to remove certain noncitizens on the non-detained docket with final orders. There are several reasons why ICE is unable to effectuate removals. Under Title 8 of the U.S. Code, ICE may remove noncitizens from the United States who are subject to final orders of removal issued by an immigration judge or other lawful orders, including those processed under expedited removal who either have not claimed a fear of return or received a negative credible fear determination affirmed by an immigration judge. However, this does not guarantee every person seeking to remain in the United States will be able to do so. There are several reasons ICE may not be able to effectuate the removal of a noncitizen with a final order of removal.

Noncitizens may pursue a form of relief or protection from removal, which may include asylum,<sup>1</sup> withholding of removal,<sup>2</sup> or protection under the Convention Against Torture.<sup>3</sup> If a noncitizen is granted any form of relief from removal, ICE is unable to effectuate the removal.

Additionally, ICE works to remove undocumented noncitizens from the United States once they are subject to final orders of removal in a timely manner. The U.S. Government believes every country is obligated to accept the return of its citizens and nationals who are ineligible to remain in the United States. Lack of cooperation from the foreign government delays and, in many cases, inhibits the removal process. The U.S. Government requests foreign governments take appropriate steps to confirm the citizenship of noncitizens suspected to be their nationals, which include conducting interviews, issuing travel documents in a timely manner, and accepting the physical return of their nationals by scheduled commercial or charter flights consistent with ICE and/or foreign government removal guidelines. Lack of cooperation from countries in accepting the return of their nationals may lead to ICE classifying those countries as uncooperative or at-risk of non-compliance.<sup>4</sup> Currently, ICE considers 15 countries to be uncooperative: Bhutan, Burma, Cuba, Democratic Republic of the Congo, Eritrea, Ethiopia, Hong Kong, India, Iran, Laos, Pakistan, People's Republic of China, Russia, Somalia, and Venezuela. ICE considers 11 countries to be at risk of non-compliance: Bosnia-Herzegovina, Burkina Faso, Cambodia, Gabon, Gambia, Iraq, Jamaica, Nicaragua, South Sudan, St. Lucia, and Vietnam.

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<sup>1</sup> Asylum status is a form of protection available to people who meet the definition of refugee and are already in the United States or are seeking admission at a port of entry.

<sup>2</sup> Withholding of removal is a form of relief from deportation that allows noncitizens to remain in the United States if they would face persecution in their home country. It's an alternative to asylum, which is another way to avoid deportation. To be granted withholding of removal, applicants must meet a higher standard of proof than for asylum. To be eligible, applicants must demonstrate that they are more likely than not to face persecution if returned to their home country and show that the persecution would be due to their race, religion, nationality, political opinion, or membership of a particular social group. If a noncitizen is granted withholding of removal, the applicant can remain and work lawfully in the United States for an indefinite period.

<sup>3</sup> Withholding of removal under the Convention Against Torture (CAT) is a mandatory form of protection that prevents the deportation of noncitizens to countries where they would likely face torture. To be eligible, applicants must demonstrate that they are more likely than not to be tortured if returned to their home country.

<sup>4</sup> Factors that could lead to a country being classified as uncooperative include hindering ICE's removal efforts by refusing to conduct consular interviews when necessary; refusing to accept charter removal missions; having an unacceptable ratio of releases when compared to removals and/or unacceptable average time from executable final order of removal to removal; and/or denying or delaying issuance of travel documents, such as passports. At Risk of Non-Compliance countries accept removals, but they fail to meet one or more cooperative country criteria, which may include delaying the issuance of travel documents; refusing to accept certain categories of their nationals; or not accepting accepted chartered removal flights.



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## Immigration: “Recalcitrant” Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals

The ability to repatriate foreign nationals (*aliens*) who violate U.S. immigration law is central to the immigration enforcement system. The Immigration and Nationality Act (INA) provides broad authority to the Department of Homeland Security (DHS) and the Department of Justice (DOJ) to remove certain foreign nationals from the United States.

Any foreign national found to be inadmissible or deportable under the grounds specified in the INA may be ordered removed. Those ordered removed may include unauthorized aliens (i.e., foreign nationals who enter without inspection, enter with fraudulent documents, or enter legally but overstay their temporary visas). Lawfully present foreign nationals who commit crimes or certain other acts may also be subject to removal. To effectuate a removal, the alien’s country of citizenship must confirm the alien’s nationality, issue travel documents, and accept his or her physical return by commercial flight or, where necessary, charter flight.

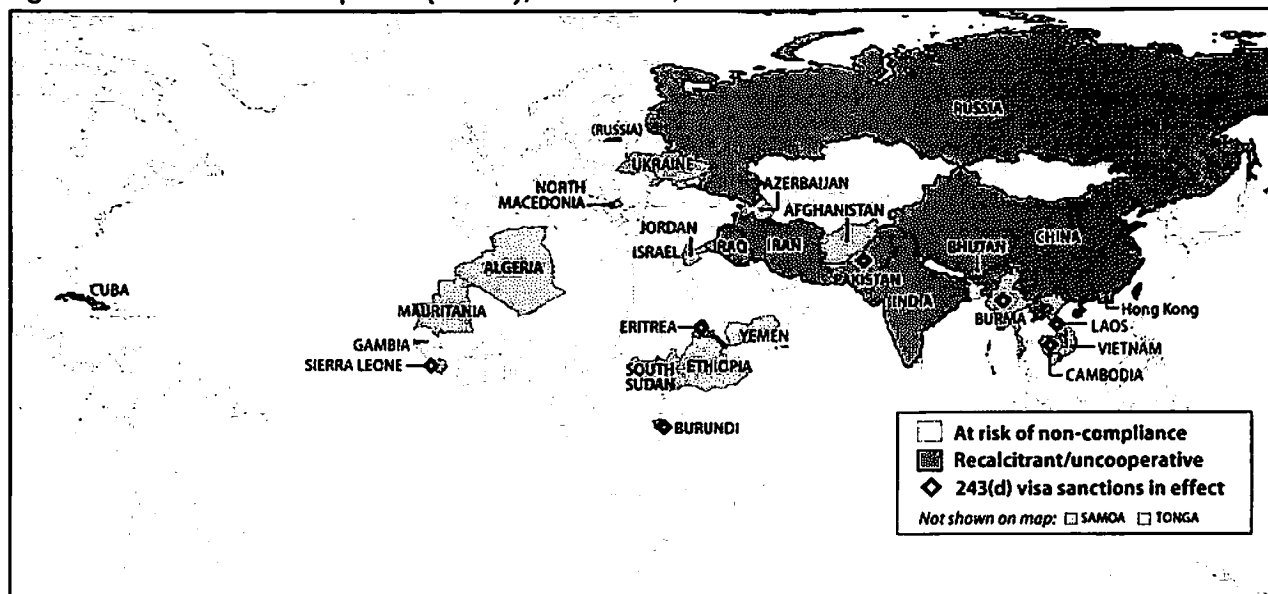
A 2001 Supreme Court ruling, *Zadvydas v. Davis*, generally limits the government’s authority to indefinitely detain aliens who have been ordered removed. As a result, detained aliens subject to removal orders but for whom there is “no significant likelihood of removal in the reasonably foreseeable future,” must be released into the United States after six months, with limited exceptions.

### Recalcitrant Countries

According to DHS’s Immigration and Customs Enforcement (ICE), most countries adhere to their international obligations to accept the timely return of their citizens. Countries that systematically refuse or delay the repatriation of their citizens, however, are considered by DHS to be “recalcitrant,” also called “uncooperative.” Countries that demonstrate some but not full cooperation are considered “at risk of non-compliance” (ARON). ICE currently classifies 13 countries as recalcitrant/uncooperative and 17 as ARON (Figure 1).

Countries are ranked on a scale ranging from uncooperative to cooperative, based on statistical data and analytic feedback on a range of assessment factors. These factors include a refusal to accept charter flight-based removals, the ratio of releases to removals, and average length of time between issuance of a removal order and removal. ICE also takes into account mitigating factors, such as a natural or man-made disaster or limited capacity (e.g., regarding law enforcement, inadequate records, and/or inefficient bureaucracy), to assess whether a country is intentionally uncooperative or incapable due to country conditions. Some countries disagree with ICE’s assessments, maintaining that the United States has not adequately demonstrated that the persons ordered removed are indeed their nationals.

**Figure 1. At Risk of Non-compliance (ARON), Recalcitrant, and Sanctioned Countries**



**Source:** Map created by CRS using data from Esri Data and Maps, 2017. Boundary representation is not necessarily authoritative. ARON/recalcitrant data provided by DHS’s Immigration and Customs Enforcement (ICE), current as of June 3, 2020. Sanctions data come from publicly available sources including DHS press releases, U.S. embassy websites, and the *Federal Register*, current as of July 10, 2020.

## Past Use of Visa Sanctions

INA §243(d) provides that if the Secretary of Homeland Security notifies the Secretary of State that a country "denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country," the Secretary of State "shall order consular officers in that foreign country to discontinue granting immigrant visas or nonimmigrant visas, or both." The Secretary of State determines which categories of visas and visa applicants will be covered by the suspension. Visa issuance resumes once the Secretary of Homeland Security notifies the Secretary of State that the country has accepted its nationals upon removal from the United States.

This provision of law was enacted in 1952, and the United States used it during the Cold War to restrict visa issuances to certain ex-Soviet bloc nationals. Between the end of the Cold War and 2016, the designation was used once, against Guyana in 2001. Citing the Supreme Court's decision in *Zadvydas v. Davis*, DOJ—which was then in charge of removal decisions—imposed visa sanctions to ensure removal of 113 criminally convicted Guyanese nationals then in U.S. custody whom DOJ had deemed dangerous. These sanctions followed numerous unsuccessful U.S. diplomatic attempts to effect their removal. Within two months, Guyana responded by issuing travel documents to 112 of these nationals and sanctions were lifted.

This authority was not used again until 2016, after The Gambia resisted sustained pressure to cooperate with the repatriation of its nationals. This imposition of sanctions came on the heels of a July 2016 House Committee on Oversight and Government Reform hearing in which ICE and the Department of State (DOS) discussed various measures used to persuade recalcitrant countries to cooperate (see text box). Some Members from both parties urged DHS and DOS to move beyond diplomacy and impose visa sanctions under INA §243(d) both to elicit cooperation from a country, or countries, on which sanctions are imposed and to serve as a deterrent to non-cooperation by other countries. Some Members cited the case of Jean Jacques, a Haitian who committed a murder in Connecticut in 2015 following his release from prison after a second degree murder conviction. Despite repeated attempts, DHS had been unable to repatriate Jacques due to Haiti's refusal to issue travel documents.

## Use of Visa Sanctions by the Trump Administration

Shortly after taking office, President Donald Trump issued Executive Order 13768, "Enhancing Public Safety in the Interior of the United States." Section 12 of the order, titled "Recalcitrant Countries," directs DHS and DOS to "effectively implement" the sanctions provided by INA §243(d). It also requires the Secretary of State to "ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States."

In September 2017, DOS imposed visa sanctions under INA §243(d) on four countries: Cambodia, Eritrea, Guinea, and Sierra Leone. In a press release, DHS maintained that these countries had failed to establish reliable processes for issuing travel documents to their nationals ordered removed. DHS reported that it had been forced to release

into the United States 2,137 Guineans and 831 Sierra Leoneans with final orders of removal, many with serious criminal convictions. DHS also reported that some 700 Eritrean nationals and 1,900 Cambodian nationals with final orders of removal—some with serious criminal convictions—were residing in the United States. Sanctions on Guinea were lifted on August 27, 2018 after the country cooperated with repatriation requests from DHS.

DHS announced sanctions for two additional countries—Burma and Laos—on July 9, 2018, citing their failure to establish reliable processes for issuing travel documents and the resulting requirement for ICE to release into the United States some of their nationals, including some convicted of serious crimes. On January 31, 2019, DHS announced 243(d) visa sanctions against Ghana, which were lifted on January 17, 2020; sanctions against Pakistan were imposed on April 5, 2019. On June 12, 2020, sanctions were imposed on Burundi. With the exception of Eritrea, Laos, and Burundi, all 243(d) sanctions apply only to tourist/business visitor (B) visas for certain government officials and, in some cases, their families and attendants. A broader set of visa categories and applicants are covered by the sanctions imposed on Eritrea, Laos, and Burundi.

## Alternatives to Visa Sanctions

Visa sanctions are not the only tool available to the U.S. government to encourage cooperation with alien removals. DHS and DOS work together to identify the most effective approach in each case, beginning with diplomatic efforts. They escalate to the use of sanctions when they determine that doing so will be effective and that the benefit will outweigh the potential negative impact on foreign policy interests. Some countries sharply restrict the foreign travel of their citizens and may be unmoved by visa sanctions; others may retaliate in ways detrimental to bilateral trade, tourism, law enforcement, or other forms of cooperation. In cases in which identity documents are not readily available and the foreign country questions the nationality of individuals with removal orders, a "recalcitrant" classification or visa sanctions may impede friendly bilateral relations.

### Measures to Address Recalcitrant Countries

- Issue a demarche (i.e., a formal diplomatic request)
- Hold a joint meeting with the ambassador to the United States, DOS, and ICE
- Provide notice of the U.S. government's intent to exercise visa sanctions to gain compliance
- Impose visa sanctions
- Call for inter-agency meetings to pursue withholding of aid or other funding

DHS and DOS have reported success in achieving cooperation without resorting to visa sanctions, resulting in countries being removed from the recalcitrant or ARON lists. In July 2016, there were 23 recalcitrant and 62 ARON countries; as of June 2020, those numbers had dropped to 13 recalcitrant and 17 ARON countries, a reduction that DHS and DOS attribute to pressure and diplomacy.

Jill H. Wilson, Analyst in Immigration Policy

IFI1025

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## Disclaimer

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## **EXHIBIT B**

CASE NO. PX 25-951IDENTIFICATION: JUL 10 2025ADMITTED: JUL 10 2025

To All ICE Employees  
July 9, 2025

**Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)**

---

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the district court's nationwide preliminary injunction in *D.V.D. v. Department of Homeland Security*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required certain procedures related to providing a "meaningful opportunity" to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country. Accordingly, all previous guidance implementing the district court's preliminary injunction related the third country removals issued in *D.V.D.* is hereby rescinded. Absent additional action by the Supreme Court, the stay will remain in place until any writ of certiorari is denied or a judgment following any decision issues.

Effective immediately, when seeking to remove an alien with a final order of removal—other than an expedited removal order under section 235(b) of the Immigration and Nationality Act (INA)—to an alternative country as identified in section 241(b)(1)(C) of the INA, ICE must adhere to Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, *Guidance Regarding Third Country Removals*, as detailed below. A "third country" or "alternative country" refers to a country other than that specifically referenced in the order of removal.

If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures. ICE will seek written confirmation from the Department of State that such diplomatic assurances were received and determined to be credible. HSI and ERO will be made aware of any such assurances. In all other cases, ICE must comply with the following procedures:

- An ERO officer will serve on the alien the attached Notice of Removal. The notice includes the intended country of removal and will be read to the alien in a language he or she understands.
- ERO will not affirmatively ask whether the alien is afraid of being removed to the country of removal.
- ERO will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal.
  - Any determination to execute a removal order under exigent circumstances less than 24 hours following service of the Notice of Removal must be approved by the DHS General Counsel, or the Principal Legal Advisor where the DHS General Counsel is not available.

- If the alien does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, ERO may proceed with removal to the country identified on the notice. ERO should check all systems for motions as close in time as possible to removal.
- If the alien does affirmatively state a fear if removed to the country of removal listed on the Notice of Removal, ERO will refer the case to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under section 241(b)(3) of the INA and the Convention Against Torture (CAT). USCIS will generally screen the alien within 24 hours of referral.
  - USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.
  - If USCIS determines that the alien has not met this standard, the alien will be removed.
  - If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the immigration court, USCIS will refer the matter to the immigration court for further proceedings. In cases where the alien was previously in proceedings before the immigration court, USCIS will notify the referring immigration officer of its finding, and the immigration officer will inform ICE. In such cases, ERO will alert their local Office of the Principal Legal Advisor (OPLA) Field Location to file a motion to reopen with the immigration court or the Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under section 241(b)(3) of the INA and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.

Notably, the Supreme Court's stay of removal does not alter any decisions issued by any other courts as to individual aliens regarding the process that must be provided before removing that alien to a third country.

Please direct any questions about this guidance to your OPLA field location.

Thank you for all you continue to do for the agency.

Todd M. Lyons  
Acting Director  
U.S. Immigration and Customs Enforcement

**Attachments:**

- U.S. Supreme Court Order
- Secretary Noem's Memorandum
- Notice of Removal

## **EXHIBIT C**

THE HONORABLE TIFFANY M. CARTWRIGHT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Phong Thanh Nguyen,

*Petitioner,*

v.

Bruce SCOTT, Warden, Northwest ICE  
Processing Center; Camilla WAMSLEY,  
Enforcement and Removal Operations,  
Seattle Field Office Director, U.S.  
Immigration and Customs Enforcement;  
Kristi NOEM, Secretary, U.S. Department  
of Homeland Security; U.S.  
DEPARTMENT OF HOMELAND  
SECURITY,

*Respondents.*

Civil Case No. 2:25-cv-01398-TMC-SKV

**DECLARATION OF TIN THANH  
NGUYEN IN SUPPORT OF PHONG  
THANH NGUYEN'S MOTION FOR A  
PRELIMINARY INJUNCTION**

**NOTED FOR CONSIDERATION:  
AUGUST 14, 2025**

**DECLARATION OF TIN THANH NGUYEN**

I, Tin Thanh Nguyen, declare and state, as follows:

1. I make this declaration based on my personal knowledge and, if called to testify to these facts, could and would do so competently.

2. I submit this declaration in support of Mr. Phong Thanh Nguyen's motion for a preliminary injunction.

3. I am a licensed attorney in the state of North Carolina and in good standing with

DECL. OF T. NGUYEN ISO PRELIMINARY INJUNCTION - I  
Case No. 2:25-cv-01398-TMC-SKV

1 the North Carolina State Bar. I have been a member of the North Carolina State Bar since  
2 September 2007.

3 4. I am an attorney with Law Office of Tin Thanh Nguyen, PLLC, which is located  
4 at 6769 Albemarle Road, Suite B, Charlotte, NC 28212. I also have an office in Vietnam.

5 5. I practice immigration law before the Executive Office of Immigration Review  
6 (“EOIR”) (the Immigration Court and the Board of Immigration Appeals), United States  
7 Citizenship and Immigration Services (“USCIS”) and before the Department of State. (“DOS”).  
8 I have represented many respondents, facing removal at different stages of the removal process,  
9 including appeals and motions to reopen/reconsider to the Board of Immigration Appeals  
10 (“BIA”).

11 6. I am a member of the Federal Bars of the Eastern and Western Districts of North  
12 Carolina where I regularly file petitions for Writs of Mandamus. I have represented different  
13 Vietnamese nationals in the U.S. District Court for the Northern District of Alabama in  
14 Birmingham, AL and in the U.S. Middle District of Georgia in Columbus, GA on petitions for  
15 Writ of Habeas Corpus.

16 7. For nearly two decades, I have specialized in immigration and deportation cases  
17 involving Vietnamese citizens. I have represented many Vietnamese nationals who are subject to  
18 final orders of removal and were released from immigration custody on an Order of Supervision  
19 (“OSUP”) because the Government of Vietnam was not issuing travel documents to individuals  
20 who entered the United States before 1995. Because of Vietnam’s refusal to issue travel  
21 documents, many Vietnamese nationals who came to the United States as refugees before 1995  
22 and were ordered removed years ago, have continued to live and work in the United States and  
23 have regularly checked in with ICE in accordance with their OSUP conditions.

24 8. I am not aware of any formal change in Vietnam’s repatriation process this year. I  
25 am aware that Vietnam has issued many more travel documents for pre-1995 individuals than it  
26 ever has in the past. However, that does not mean it is significantly likely that a travel document

DECL. OF T. NGUYEN ISO PRELIMINARY INJUNCTION - 2  
Case No. 2:25-cv-01398-TMC-SKV

1 will be issued in any pre-1995 case. The process is highly dependent on the individualized facts  
2 of each case, including whether the individual has any family remaining in Vietnam, whether  
3 their Vietnamese identity can be verified, their criminal records, and the manner in which they  
4 left Vietnam and came to the United States, among many other factors.

5 9. In May 2025, ICE carried out its a deportation flight to Vietnam and Laos.  
6 Ninety-three Vietnamese citizens were deported to Vietnam. I arrived in Vietnam a week after  
7 the flight landed and have assisted and spoken with many of these deportees. There were pre-  
8 1995 arrivals on this flight. However, I do not how many and I am not aware of any published  
9 data on that.

10 10. The work I have done with deportees to Vietnam, as well as those facing  
11 deportation in the United States, includes liaising with the Government of Vietnam to facilitate  
12 the issuance of travel documents. For this reason, I am familiar with the process and the various  
13 challenges inherent in getting Vietnam to issue travel documents for pre-1995 arrivals to the  
14 United States.

15 11. I estimate that I have worked on or assisted with hundreds of cases of pre-1995  
16 arrival Vietnamese immigrants for whom the U.S. government requested travel documents from  
17 Vietnam, during my career. Of those, I estimate travel documents were issued in only a handful  
18 of cases.

19 12. This year, I have worked with or assisted on the cases of almost a hundred pre-  
20 1995 individuals for whom ICE has requested travel documents from Vietnam. I have yet to see  
21 Vietnam issue a travel document within 30 days or less. Rather, in my experience, it can take  
22 many months to get any answer from Vietnam about whether it will issue a travel document. On  
23 the other hand, I have seen Vietnam issue travel documents within 30 days to individuals who  
24 arrived after July 12, 1995. Two of my *pro bono* clients who had entered the United States after  
25 1995 both received travel documents around 30 days and were deported to Vietnam in the  
26 middle of March 2025.

1           13.     The process for the Government of Vietnam to issue a travel document often  
2 takes many months to complete because it involves both the Ministry of Foreign Affairs  
3 (“MOFA”) and Ministry of Public Security (“MPS”). Once the MOFA receives an official  
4 request for a travel document from ICE, the information is forwarded to the MPS so that the  
5 local police can conduct interviews and site-visits with the respondent’s relatives in Vietnam.  
6 Only when this process is complete will the MPS give the green light to the MOFA to issue the  
7 travel document for repatriation to Vietnam.

8           14.     For many Vietnamese nationals, especially the ones who entered the United States  
9 prior to 1995, the process to decide whether to issue travel documents takes even longer since  
10 many people no longer have any relatives in Vietnam who can verify their identity, or they do  
11 not have any documentation from Vietnam at all.

12           15.     Since May 30, 2025, I have been monitoring a disturbing trend of ICE re-  
13 detaining pre-1995 Vietnamese nationals, usually at their scheduled check in appointments, and  
14 detaining them without first requesting or securing their travel documents. These re-detentions  
15 are extremely concerning because ICE is detaining people without first establishing that removal  
16 is even possible in an individual case.

17           16.     Together with other partner organizations, I have collected publicly available  
18 information about ICE detainees and through detainee family calls for support. I am tracking  
19 daily the detention and movements of individuals identified. When a person is released, we make  
20 note of that in our database. As of today, I am tracking around three hundred (300) pre-1995  
21 Vietnamese individuals detained in ICE custody. Of those 300, I know that at least 160 have  
22 been held in ICE detention centers for more than 30 days. I saw a significant jump in detentions  
23 beginning in late June 2025. It is my understanding that there are just as many, if not more, post-  
24 1995 Vietnamese arrivals in ICE custody currently.

25           17.     I am currently representing a Vietnamese individual with a final order of removal,  
26 who had been on OSUP for almost ten (10) years and was detained at his check-in in the

1 beginning of June 2025. After almost two months of detention, his deportation officer is now  
2 telling me that he will be removed to Vietnam in the next 4-6 weeks. I asked whether the  
3 Government of Vietnam issued a travel document, and the deportation officer responded that  
4 ICE had yet to secure one—and, in fact, they had not even requested a travel document to the  
5 Vietnamese Embassy. The deportation officer's assertion that he will be deported within that  
6 time frame is not substantiated by any documentation, and I have doubts whether he will be  
7 removed within 4-6 weeks.

8 18. In recent months, I have observed an increasing pattern of detainees being  
9 transferred repeatedly between detention facilities without sufficient justification or notice. Such  
10 transfers result in severe disruption of legal representation and impede meaningful access to  
11 counsel and due process, particularly where the new facility is geographically remote or lacks  
12 video-conferencing capabilities. These transfers also isolate individuals from family members  
13 and other support systems, compounding the mental and emotional toll of detention.

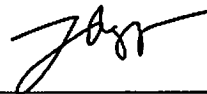
14 19. I am very concerned about the risk of third country removals to pre-1995  
15 Vietnamese nationals because of the continued challenges of securing travel documents from  
16 Vietnam. I am currently representing a pre-1995 Vietnamese national who was deported to  
17 Eswatini. I believe that ICE deported him to Eswatini without actually seeking to remove him to  
18 Vietnam first. There is no evidence in that case that ICE requested a travel document from the  
19 Government of Vietnam prior to his deportation. First, his family members in Viet Nam did not  
20 receive any communication from the local police which is usually the final step to verify a  
21 Vietnamese national's identity before issuance of a travel document. Second, my client never  
22 mentioned anything about ICE obtaining a travel document to his wife who was in frequent  
23 communication with him during the period of his immigration custody. Third, it is uncertain  
24 whether ICE provided any notice to my client, either in writing or orally, prior to being deported  
25 to Eswatini. His wife did not hear from him for over 24 hours and only learned of his  
26 deportation to Eswatini when she saw Tricia McLaughlin's, Assistant Secretary for Public Affairs

1 for the Department of Homeland Security (“DHS”), post on X formerly Twitter on July 16, 2025,  
2 announcing that ICE had deported five (5) men to Eswatini and included a photo of her husband.  
3 He remains incommunicado since his deportation to Eswatini.

4 20. I am also familiar with the case of Tuan Phan, a pre-1995 Vietnamese citizen who  
5 ICE deported to South Sudan. I am supporting his wife and legal team with efforts to have the  
6 Vietnamese government issue a travel document so that he may be released from imprisonment  
7 in South Sudan and go to Vietnam. I am aware that in that case ICE never submitted the request  
8 to Vietnam to issue a travel document before it deported him to South Sudan.

9 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
10 knowledge.

11 Executed on July 31, 2025 in Charlotte, NC.

12  
13 

14 \_\_\_\_\_  
Tin Thanh Nguyen

## **EXHIBIT D**

The HONORABLE TIFFANY M. CARTWRIGHT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

PHONG THANG NGUYEN,

*Petitioner,*

v.

Bruce SCOTT, Warden, Northwest ICE  
Processing Center; Camilla WAMSLEY,  
Enforcement and Removal Operations,  
Seattle Field Office Director, U.S.  
Immigration and Customs Enforcement;  
Kristi NOEM, Secretary, U.S. Department of  
Homeland Security; U.S. DEPARTMENT  
OF HOMELAND SECURITY;

*Respondents.*

Case No. 2:25-cv-01398-TMC-SKV

**DECLARATION OF GLENDA M.  
ALDANA MADRID IN SUPPORT OF  
PETITIONER NGUYEN'S MOTION  
FOR A PRELIMINARY INJUNCTION**

NOTED FOR CONSIDERATION:  
AUGUST 14, 2025

1 I, Glenda M. Aldana Madrid, hereby declare as follows:

2 1. I am over the age of 18, have personal knowledge of the facts set forth herein,  
3 and, if called as a witness, I could and would testify competently as set forth below.

4 2. I am a staff attorney with the Northwest Immigrant Rights Project.

5 3. I am class counsel in *DVD v. DHS*, No. 1:25-cv-10676-BEM (D. Mass.), a class  
6 action challenging the federal government's failure to provide individuals with certain final  
7 removal orders with meaningful notice and an opportunity to be heard on any fear of persecution,  
8 torture, or death prior to deporting them to a third country—that is, a country other than the one  
9 designated in their removal order.

10 4. I also represent Mr. Tuan Thanh Phan, a member of the *D.V.D.* class and  
11 Vietnamese national who was deported from the United States to South Sudan.

12 5. Mr. Phan came to the United States lawfully from Vietnam in 1991, on an  
13 immigrant visa as a next of kin of an Amerasian person.

14 6. I understand that on March 3, 2025, upon completion of his prison sentence in  
15 Washington State, he was transferred to Immigration and Customs Enforcement ("ICE")  
16 custody. He remained in ICE custody in the United States until May 20, 2025, when ICE put him  
17 on a deportation flight headed to South Sudan.

18 7. Based on my conversations with Mr. Phan's wife, Ngoc Phan, I have learned that  
19 Ms. Phan was in communication with a deportation officer in charge of her husband's case to  
20 facilitate his deportation to Vietnam, the country on his order of removal.

21 8. Mr. Phan sent the deportation officer the contact information for a family member  
22 in Vietnam who would be receiving him there.

1           9.       Ms. Phan had also coordinated with the deportation officer in order to send a  
2 suitcase to Mr. Phan in anticipation of his deportation to Vietnam. Before Ms. Phan was able to  
3 send the luggage, however, Mr. Phan was transferred to another detention facility.

4           10.       In response, on Monday, May 19, 2025, Ms. Phan contacted the deportation  
5 officer to ask whether Vietnam had already issued her husband's travel documents and to  
6 coordinate the sending of the luggage to him at the new detention facility. The officer replied  
7 that he had not submitted the paperwork for his travel documents yet.

8           11.       The next day, May 20, 2025, Mr. Phan was placed on a flight bound for South  
9 Sudan.

10          12.       Attached hereto as **Exhibit A** is a true and correct copy of the text message  
11 exchange between Ms. Phan and Mr. Phan's deportation officer reflecting Ms. Phan's efforts to  
12 obtain information about ICE's movements and deportation of Mr. Phan, including his sudden  
13 deportation to South Sudan. Mrs. Phan shared these messages with me. I have redacted the  
14 officer's name and phone number.

15          13.       Mr. Phan was not deported to South Sudan right away. Instead, following a ruling  
16 by the district judge in the *D.V.D.* litigation that the government's attempt to deport Mr. Phan  
17 and the other men on the flight with him violated a then-existing preliminary injunction, the  
18 judge ordered that the government provide Mr. Phan and the other men the process they ought to  
19 have received prior to boarding the plane bound for South Sudan: a reasonable fear interview to  
20 ascertain their fear of torture if they were sent to the country.

21          14.       As the judge gave the government flexibility in choosing where to hold the men  
22 while it afforded them this process, the government elected to hold them at a U.S. military base  
23 in Djibouti. Mr. Phan and the other men were there from approximately May 21 until around July  
24

1 4. 2025, in a shipping container where they were shackled by the feet for 24 hours a day, except  
2 to shower once every other day.

3 15. Despite being held in Djibouti for over six weeks. Mr. Phan's reasonable fear  
4 interview never took place. The government originally tentatively scheduled the interview for the  
5 week of June 16 and then actually scheduled it for June 25.

6 16. On June 23, the Supreme Court issued a stay of the preliminary injunction in the  
7 *D.V.D.* litigation; the injunction required the government to provide meaningful notice and an  
8 opportunity to be heard as to any fear of torture in the planned third country of removal. On June  
9 24, the government filed a request for clarification on the question whether the Court's grant of a  
10 stay also stayed the district court judge's remedial order with respect to the men in Djibouti.

11 17. On June 24, the asylum office in charge of Mr. Phan's reasonable fear interview  
12 canceled the June 25 interview, alleging it would reschedule it at a future date. The government  
13 never rescheduled the interview and Mr. Phan was put on a plane for South Sudan sometime in  
14 the evening of July 4th or morning of July 5th after the Supreme Court clarified that its stay  
15 extended to the judge's remedial order concerning the men held in Djibouti.

16 18. Since arriving in South Sudan, I am aware that Mr. Phan has been held  
17 incommunicado in government custody. The government has not allowed him to call his family  
18 or his lawyers, and his future remains uncertain.

19  
20 I declare under penalty of perjury under the laws of the United States of America that the  
21 foregoing information is true and correct to the best of my knowledge.  
22  
23  
24

Executed this 31st day of July, 2025, in Seattle, Washington.

s/Glenda M. Aldana Madrid  
Glenda M. Aldana Madrid  
NORTHWEST IMMIGRANT RIGHTS PROJECT  
615 Second Avenue, Suite 400  
Seattle, WA 98104  
Telephone: (206) 957-8646  
Email: glenda@nwirp.org