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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Reza Abghari,

Petitioner

vs.

Laura HERMOSILLO, Seattle Field Office Acting Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement;
Bruce SCOTT, Warden, Northwest ICE Processing Center;
Kristi NOEM, Secretary of Department of Homeland Security;
Pamela BONDI, United States Attorney General,

Respondents

Case No. 2:26-cv-00269-JNW

PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

1. Reza Abghari, who was born in Iran, entered the United States in 2001. He is under a final order of removal, but he has been granted relief under the Convention Against Torture (CAT relief), preventing his deportation to Iran. He was released under an order of supervision on or about October 31, 2016. Ever since that time for almost ten years, he has lived peaceably and lawfully in the United States, attempting to build his life here in the United States. He has a five year old U.S. citizen daughter whom he supports. On August 6, 2025, Immigration and Customs Enforcement officers arrested him without any notice or explanation.

2. Mr. Abghari is currently being held in detention without bond by United States Immigration and Customs Enforcement (ICE) at the Northwest Immigration Processing Center in Tacoma, Washington. There was no lawful basis for his arrest and detention without bond. Mr. Abghari seeks an order requiring, *inter alia*, his immediate release from detention.

JURISDICTION

3. This court has jurisdiction pursuant to 28 U.S.C. §2241 (habeas corpus jurisdiction); 28 U.S.C. §1331 (federal question jurisdiction); 28 U.S.C. §2201 (jurisdiction to render declaratory judgments); and 28 U.S.C. §1361 (jurisdiction over actions for mandamus).

4. Venue in the Western District of Washington is appropriate because Mr. Abghari is currently in custody at the Northwest ICE Processing Center in Tacoma. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973). In addition, venue is also properly in this district pursuant to 28 U.S.C. §1391(e) because Respondents are employees, officers, and

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agencies of the United States, and a substantial part of the events or omissions giving rise to the claims in this lawsuit have occurred in this district.

PARTIES

5. Reza Abghari has been living in the United States since 2001. He is currently being held in detention by United States Immigration and Customs Enforcement (ICE) at the Northwest Immigration Processing Center in Tacoma, Washington.

6. Respondent Laura Hermosillo is the Seattle Field Office Acting Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. She is sued in her official capacity.

7. Respondent Bruce Scott is Warden of the Northwest ICE Processing Center in Tacoma, Washington. He is sued in his official capacity.

8. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). DHS is the agency responsible for implementing the Immigration and Nationality Act, and Kristi Noem, as Secretary of DHS, is the person ultimately responsible for custody determinations regarding Petitioner. Respondent Noem is sued in her official capacity.

9. Respondent Pamela Bondi, United States Attorney General, is the executive officer who has been given authority to manage and control the Executive Office of Immigration Review (EOIR), including the Immigration Judges and the Board of Immigration Appeals (BIA). In addition, the U.S. Attorney General has authority to establish legal and policy guidelines concerning which non-citizens are to be detained for immigration purposes. Respondent Bondi is sued in her official capacity.

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FACTUAL BACKGROUND

10. Reza Abghari, a native and citizen of Iran, entered the United States on February 1, 2001, as a derivative beneficiary of his father's approved application for asylum. He was 17 years old at the time.

11. On or about January 5, 2005, Mr. Abghari was convicted of unlawful possession of a firearm and assault 3. He was sentenced to 12 months in prison plus a firearm enhancement of 18 months.

12. After Mr. Abghari's release from prison he was transferred to the custody of ICE for removal proceedings. On or about August 24, 2006, the immigration judge ordered removal to Iran and granted withholding of removal under 8 U.S.C. 1231(b)(3), prohibiting Mr. Abghari's removal to Iran because it is likely he would be persecuted or tortured there.

13. Between 2006 and 2015 Mr. Abghari was convicted of the following offenses: on or about February 11, 2010, robbery 2, sentence of 15 months in prison; on or about May 23, 2013, retail theft 3, malicious mischief, and criminal trespass, sentence of 10 months in prison; on or about March 20, 2014, theft 2, sentence of 10 months in prison; on or about August 4, 2015, unlawful possession of a firearm, sentence of 36 months in prison.

14. On or about October 31, 2016, after Mr. Abghari completed serving his sentence for the 2015 conviction, he was taken into custody and detained by ICE. He was taken to the ICE office in Tukwila, and then he was released.

15. On or about October 31, 2016, Mr. Abghari was released under his 2006 order of supervision.

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16. In releasing Mr. Abghari on or about October 31, 2016, ICE determined that Mr. Abghari is not a danger to the community and not a flight risk. 8 C.F.R. 214.4(d)(1). *See R.A.N.O. v. Wofford*, 2026 U.S. Dist. LEXIS 1963, *2 (E.D. Cal. 2026) ("Release ... reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk"); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd *sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

17. Ever since October 2016 – for almost ten years – Mr. Abghari has taken steps to prove that he is rehabilitated and that ICE was correct in making the determination at that time to release him from custody.

18. In 2020, Mr. Abghari's daughter was born in Everett, Washington. She is a United States citizen. Mr. Abghari shares custody of his daughter with the mother, and he provides essential financial and emotional support for his daughter.

19. Since his release from ICE detention, Mr. Abghari has led an exemplary life. He has strong and broad support from members of his community.

20. Since his release from detention in October 2016, there have been no changed circumstances that would warrant a finding the Mr. Abghari is a danger to the community or a flight risk.

21. On July 9, 2025, Respondents adopted a policy of removing noncitizens to a third country other than the country designated in the order of removal (the "third country removal policy"). Todd Lyons, Acting Director, ICE, "Memo on Third Country Removals" (July 9, 2025).

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22. Under the third country removal policy, if the United States has received diplomatic assurances from a country that the noncitizen will not be persecuted or tortured in that country, then the noncitizen may be removed to that country without any further procedures. In those cases where ICE has not received diplomatic assurances, an officer will serve the noncitizen with a notice of removal stating the intended country of removal and "generally wait at least 24 hours" before effectuating removal, although in "exigent circumstances" ICE may wait only six hours. If the noncitizen does not "affirmatively state a fear of persecution or torture" then ICE "may proceed with removal to the country identified on the notice."

23. The Respondents' third country removal policy was adopted with the intent to punish individuals living in the United States without lawful permanent status in the United States.

24. On information and belief, individuals removed to third countries under the third country removal policy have been held in prisons, persecuted, and tortured in those countries.

25. On information and belief, in some cases individuals removed to third countries under the third country removal policy have been deported from the third country back to the individual's home country where the individual faces persecution and torture; such deportations occur even though there is a final order under United States law finding that return to the home country would likely result in persecution and/or torture, and ordering that removal to that home country must be withheld.

26. The Respondents' third country removal policy was adopted without proper consideration of all relevant facts, and is arbitrary and capricious.

27. The removal of Mr. Abghari to a third country under the third country removal policy would constitute unlawful and unconstitutional punishment.

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28. On August 6, 2025, Mr. Abghari planned to meet his daughter to celebrate his birthday. Several ICE officers surrounded Mr. Abhari's car to block it from moving. Four ICE officers approached Mr. Abghari with assault weapons drawn and pointed at him. In arresting Mr. Abghari, ICE officers used unnecessary and excessive force and threats.

29. Prior to arresting Mr. Abghari, ICE made no determination that there were any changed circumstances that would warrant a finding that Mr. Abghari constitutes a danger to the community or a flight risk.

30. ICE did not provide Mr. Abghari with a statement of the reasons for the revocation of his order of supervision.

31. ICE did not provide Mr. Abghari with an opportunity for an interview so he could respond to any reasons ICE had for revoking his order of supervision.

32. ICE has held Mr. Abghari in detention without bond at the Northwest Immigration Processing Center in Tacoma since his arrest on August 6, 2025.

33. In arresting and detaining Mr. Abghari, the Respondents intend to punish Mr. Abghari. The treatment of Mr. Abghari by the Respondents constitutes unlawful and unconstitutional punishment.

34. The arrest and continuing detention of Mr. Abghari imposes severe hardships on Mr. Abghari's five year old U.S. citizen daughter.

35. Mr. Abghari has been held in immigration detention for a total of more than six months.

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36. DHS has not provided Mr. Abghari notice that it intends to remove him to any particular third country, and Mr. Abghari has not been given an opportunity to object to any such removal.

37. The Respondents have no legal authority to remove Mr. Abghari from the United States.

38. There is no likelihood that the Respondents will remove Mr. Abghari from the United States in the reasonably foreseeable future.

39. There have been no changed circumstances since October, 2016, that warrant holding Mr. Abghari in detention without bond.

40. Mr. Abghari has a liberty interest in remaining free from custody. *See, e.g.*, *Iza v. Larocco*, 2026 U.S. Dist. LEXIS 1009, *27-28 (E.D.N.Y. 2026) (noncitizen who continuously resided in New York for more than three years has developed deep community ties and has a liberty interest in being free from detention).

41. Mr. Abghari is not a danger to the community and he is not a flight risk.

LEGAL FRAMEWORK

A. Detention after the 90-day Removal Period

42. The Immigration and Nationality Act (INA) provides that after an order of removal becomes administratively final, a "removal period" begins during which time DHS undertakes efforts to remove the noncitizen. The removal period begins on the date the order of removal becomes administratively final and lasts for 90 days, during which time the noncitizen is subject

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to mandatory detention. 8 U.S.C. §1231(a)(2). After the removal period, a noncitizen who has been detained under §1231(a) can be released on an order of supervision. 8 U.S.C. §1231(a)(3).

43. The INA provides that certain individuals, including individuals who are removable on the basis of criminal convictions, "may be detained beyond the removal period." 8 U.S.C. §1231(a)(6).

44. Under DHS regulations, a person subject to detention under §1231(a)(6) can be released provided that the person "will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight." 8 C.F.R. §241.4(d)(1). If the person is released, release must be under an order of supervision. 8 C.F.R. §241.4(j), §241.5.

45. Release under 8 C.F.R. §241.4(d)(1) may be revoked if DHS determines that:

> (i) the purposes of release have been served;
> (ii) the noncitizen has violated the order of supervision;
> (iii) it is "appropriate to enforce [the] removal order"; or
> (iv) the conduct of the noncitizen, or any other circumstance, indicates that release would no longer be appropriate.

8 C.F.R. §241.4(l)(2). If release is revoked, the noncitizen must be notified of the reasons for revocation and afforded an informal interview promptly after being taken into custody to afford him an opportunity to respond to the reasons for revocation. 8 C.F.R. §241.4(l)(1).

B. Indefinite Detention

46. Although 8 U.S.C. §1231(a)(6) permits detention beyond the 90-day removal period, indefinite detention is not constitutionally permissible. "A statute permitting indefinite detention of an alien would raise a serious constitutional problem" under the Fifth Amendment's Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). According to the Supreme Court, a period of six months for DHS to make arrangements for removal is "presumptively

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reasonable." *Id.* at 701. After that period of time, however, if there is "no significant likelihood of removal in the reasonably foreseeable" then the noncitizen cannot be held any longer in confinement under §1231(a). *Id.*

47. The presumptively reasonable six-month period begins to run when the order of removal becomes final. 8 U.S.C. §1231(a)(1).

48. The presumptively reasonable six-month period does not begin to run anew every time a person is taken into custody under §1231(a). *See, e.g.*, *Abubaka v. Bondi*, 2025 U.S. Dist. LEXIS 225914, *9 (W.D. Wash. 11/17/2025)("where a petitioner has been detained and released by ICE multiple times after a final order of removal, 'the clock' on *Zadvydas*'s six-month period of presumptive reasonability does not re-start with each successive detention"); *Tran v. Bondi*, 2025 U.S. Dist. LEXIS 221487, *7 (W.D. Wash. 11/10/2025) ("*Zadvydas* grace period ended six months following the entry of the order of his removal"); *Phong Thanh Nguyen v. Scott*, 796 F. Supp. 3d 703, 722 (W.D. Wash. 8/21/2025) (where petitioner had been previously held in detention for over six months during 2000 and 2001, the *Zadvydas* six-month period did not reset when he was taken into custody in 2025; "Petitioner's detention is not presumptively reasonable"); *Tadros v. Noem*, 2025 U.S. Dist. LEXIS 113198, *9 (D.N.J. 6/13/2025) ("his final order of removal triggered the six-month detention period under *Zadvydas*" and thus the six-month period lapsed while petitioner was under an order of supervision); *Sied v. Nielsen*, 2018 U.S. Dist. LEXIS 66374, *16 (N.D. Cal. 2018) ("the six-month period does not reset when the government detains an alien under 8 U.S.C. §1231(a), releases him from detention, and then re-detains him again" (citing cases)); *Farez-Espinoza v. Chertoff*, 600 F.Supp.2d 488, 500 (S.D.N.Y. 2009) (where government failed to pursue petitioner's removal for more than 15

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months after removal order was entered, "the removal period, along with any 'presumptively reasonable' detention period under *Zadvydas*, has lapsed"); *Bailey v. Lynch*, No. CV16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. 2016) (where, after removal order became final, petitioner was held only "briefly" before being released on an order of supervision, the *Zadvydas* presumptively reasonable period ended "long before he was taken back into custody[.]"). *See also Abuelhawa v. Noem*, 2025 U.S. Dist. LEXIS 203959, *11 (S.D. Tex. 10/16/2025) ("Most courts to consider the issue have concluded that the *Zadvydas* period is cumulative, motivated by a concern that the federal government could otherwise detain aliens indefinitely by continuously releasing and re-detaining them." (Citing cases)).

49. DHS regulations provide that release after the *Zadvydas* six-month detention period occurs under order of supervision. 8 C.F.R. §241.13(h).

50. Release under 8 C.F.R. §241.13(h) may be revoked if DHS determines that, on account of changed circumstances, there is a significant likelihood that the person may be removed in the reasonably foreseeable future. 8 C.F.R. §241.13(i)(2). If release is revoked, the noncitizen must be notified of the reasons for revocation and DHS must conduct an informal interview promptly after taking the noncitizen into custody to afford him an opportunity to respond to the reasons for revocation. 8 C.F.R. §241.13(i)(3).

C. Procedural Due Process

51. The Due Process Clause of the Fifth Amendment to the U.S. Constitution forbids the government from depriving any person of liberty without due process of law. Procedural due process requires at a minimum notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333–334 (1976).

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52. To determine what procedures are constitutionally sufficient, courts must consider: (1) "the private interest that will be affected by the official action"; (2) "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 (3) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. at 335.

53. As to the first *Mathews* factor: the individual's private interest at stake when DHS has detained a person weighs heavily in the petitioner's favor. *See, e.g.*, *Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (petitioner's interest "is the most significant liberty interest there is—the interest in being free from imprisonment. … Case after case instructs us that in this country liberty is the norm and detention 'is the carefully limited exception.'" Citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004), and *United States v. Salerno*, 481 U.S. 739, 755 (1987)); *Gonzalez v. Bostock*, 2025 U.S. Dist. LEXIS 198515, *20-21 (W.D. Wash. 2025) ("The first factor—the private interest affected by the official action … is a fundamental interest that must be accorded significant weight."); *E.A.T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1321 (W.D. Wash. 2025) ("Petitioner's interest in not being detained is 'the most elemental of liberty interests," quoting *Hamdi*). A person who has been previously released by ICE has a higher liberty interest than that of the normal ICE detainee. *Carballo v. Andrews*, 2025 U.S. Dist. LEXIS 158839, *12 (E.D. Cal. 2025) (an individual who has been released from DHS detention has had – in contrast to a detainee with no period of release – "an opportunity 'to form the [ ] enduring attachments of normal life'" (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)).

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54. As to the second *Mathews* factor: civil immigration detention – which is "nonpunitive in purpose and effect" – is justified only if a noncitizen presents a danger to the community or a flight risk. *Zadvydas*, 533 U.S. at 690; *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("Due process protects against immigration detention that is not reasonably related to the legitimate purpose of effectuating removal or protecting against danger and flight risk."). Where a person has been released from DHS custody years earlier and has committed no further criminal offenses, the risk of an erroneous deprivation of liberty is high if the person is re-detained without any sort of hearing. *See, e.g.*, *A.E. v. Andrews*, 2025 U.S. Dist. LEXIS 94233, *12 (Report and Recommendation, adopted 2025 U.S. Dist. LEXIS 125244 (E.D. Cal. 7/1/2025) (petitioner taken into custody as an "enforcement priority"; the risk of error was high because "Respondents have provided virtually no procedural safeguards at all").

55. As to the third *Mathews* factor: where a noncitizen has been previously released and has complied with the order of supervision, the government's interest is low. The government's interest at stake is preventing danger to the community and ensuring that the noncitizen appears at all scheduled check-ins. *Zadvydas*, 533 U.S. at 691. The government does not have a legitimate interest in taking the noncitizen into custody without a pre-deprivation hearing. *See, e.g.*, *Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 127539, *7-8 (N.D. Cal. 7/4/2025) (the government's interest in re-detaining a person released from custody is low where the person "has consistently appeared for her immigration hearings for more than two years and she does not have a criminal record").

56. Under the *Mathews* analysis, where a noncitizen who was previously released from DHS detention and has complied with the terms of the order of supervision has been re-detained

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without a hearing, the continued detention violates procedural due process and the noncitizen is entitled to an order of immediate release. *See, e.g.*, *Tran v. Bondi*, 2025 U.S. Dist. LEXIS 265787, *19 (W.D. Wash. 12/24/2025) (ordering immediate release; "all three *Mathews* factors favor Petitioner" and thus the "detention of Petitioner with apparently no process at all violates the due process protections afforded to him by the Constitution"); *Khim v. Bondi*, 2025 U.S. Dist. LEXIS 261018, *11 (W.D. Wash. 12/17/2025) (ordering immediate release; "the government's interest in arresting and detaining a noncitizen without a hearing is low where the noncitizen was already released"); *Jimenez v. Bondi*, 2025 U.S. Dist. LEXIS 253558, *6 (W.D. Wash. 12/3/2025) (ordering immediate release and holding: "[b]ased on … review of the *Mathews* factors, … due process requires that Petitioner receive proper notice and an opportunity to respond before he can be re-detained").

57. In any hearing held by the government to justify re-detention, the government bears the burden of establishing flight risk or danger by clear and convincing evidence. In addition, the government should be required to meet its burden based on changed circumstances subsequent to the petitioner's previous release by ICE. *See Duong v. Kaiser*, No. CV25-7598-JST, -- F.Supp.3d --, 2025 U.S. Dist. LEXIS 185024, *22-23 (N.D. Cal. 2025) (holding that any re-detention first requires a hearing "whether a material change of circumstances justifies [petitioner's] re-detention").

D. Substantive Due Process

58. "[S]ubstantive due process prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987) (cleaned up). "Freedom from bodily restraint has

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always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80, (1992).

59. Civil detention, including detention for immigration purposes, is justified only in certain "in certain special and 'narrow' non-punitive 'circumstances,' … where a special justification, such as harm-threatening mental illness, outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) and *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997). In the immigration context, the "special justification" for detention is two-fold: first, preventing danger to the community; and second, ensuring the appearance of the noncitizen at future immigration proceedings and for removal, if ordered. *Zadvydas*, 533 U.S. at 691. *See also Lopez v. Decker*, 978 F.3d 842, 857 (2d Cir. 2020) ("[t]he Government … has no interest in the continued incarceration of an individual who it cannot show to be either a flight risk or a danger to his community").

60. "A due process violation occurs when detention becomes punitive rather than regulatory, meaning there is no regulatory purpose that can rationally be assigned to the detention or the detention appears excessive in relation to its regulatory purpose." *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021). *See also Padilla v. ICE*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023) ("Due process protects against immigration detention that is not reasonably related to the legitimate purpose of effectuating removal or protecting against danger and flight risk.").

61. Where a noncitizen has been previously released by DHS and is living in the community, if that person proves by his conduct that he is not a danger to the community and not

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a flight risk, then his re-detention exceeds the justifications for detention permitted by law, is punitive, and violates the individual's substantive right to due process.

E. Third Country Removal

62. The Immigration and Nationality Act prohibits removal to a third country where a person may be persecuted or tortured because of his or her race, religion, nationality, membership in a particular social group, or political opinion. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §208.16, §1208.16. Withholding of removal is a mandatory form protection.

63. The Foreign Affairs Reform and Restructuring Act of 1998 (''FARRA'') codifies the protections enshrined in the Convention Against Torture (CAT) prohibiting the government from removing a person to a country where "there are substantial grounds for believing the person would be in danger of being subjected to torture." FARRA, Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. §1231 note). Protection under the Convention Against Torture is a mandatory form of protection.

64. To comport with the requirements of due process, where a noncitizen has been previously released from detention, before detaining that individual for removal to a third country the government must provide notice of the third-country removal and an opportunity to respond. *See, e.g.*, *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) ("the last minute designation of Armenia as a country of deportation violated due process and [petitioner] is entitled to a remand in order to present additional evidence of the persecution that he would face if deported to that country"); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (W.D. Wash. 2019) (attempt to remove petitioner to a third country "without notice, much less an opportunity to be heard, violated petitioner's due process rights"). *See also Mahdejian v. Bradford*, 2025 U.S.

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Dist. LEXIS 154931, *12 (E.D. Tex. 7/3/2025) (where petitioner had been granted withholding of removal as to Iran, court issued injunction prohibiting DHS from removing him to a third country without notice and a meaningful opportunity to establish that his life or freedom would be threatened there); *Ortega v. Kaiser*, 2025 U.S. Dist. LEXIS 121997, *7 (N.D. Cal. 6/26/2025) (where petitioner was granted CAT relief as to El Salvador, "there are no countries to which Ortega could currently be removed without his first being afforded notice and opportunity to be heard on a fear-based claim as to that country, as the Fifth Amendment Due Process Clause requires").

65. To comport with the requirements of due process, where a noncitizen has been previously released from detention, before detaining that individual for removal to a third country, the government must be able to provide evidence that the third country will accept the individual into that country. *See Himri v. Ashcroft,* 378 F.3d 932, 939 (9th Cir. 2004), as amended, 2004 U.S. App. LEXIS 17968 (9th Cir., Aug. 24, 2004) ("at the time the government proposes [a third country for removal], the government must be able to show that the proposed country *will* accept the alien" (emphasis in original)).

66. Due process also demands that a noncitizen facing removal to a third country must be given an opportunity to seek withholding of removal and CAT relief before an immigration judge in reopened removal proceedings. *See, e.g., J.R. v. Bostock*, 796 F. Supp. 3d 684, 690-691 (W.D. Wash. 6/30/2025) (where DHS has not notified the petitioner what country it intends to deport him to, there are "serious questions" whether "the Government violated his rights by attempting third-country removals without providing him notice and an opportunity to seek CAT protection"); *Nguyen v. Scott*, 796 F. Supp. 3d 703, 728-729 (W.D. Wash. 8/21/2025) (under

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Ninth Circuit precedent, "Petitioner is likely to succeed on his claim that removal to a third country under ICE's current policy, without meaningful notice and reopening of his removal proceedings for a hearing, would violate due process"); *Baltodano v. Bondi*, 2025 U.S. Dist. LEXIS 220311, *10 (W.D. Wash. 11/7/2025) (same); *Aden*, 409 F.Supp.3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

F. Punitive Removal Practices

67. A noncitizen cannot be subjected to punishment for violations of civil immigration law. *Wong Wing v. United States*, 163 U.S. 228, 237 (1896) (the government cannot attach punitive conditions to deportation such as imprisonment at hard labor absent a criminal charge, trial in a court of law, and the protections of the Fifth, Sixth, and Eighth Amendments).

68. Deportation – in the sense of enforcing the return of a noncitizen to his own country where he can live and prosper – is distinct from "banishment" in the sense of expelling a citizen from his own country by way of punishment, and government actions aimed at punishment, such as imprisonment at hard labor in addition to deportation. *Wong Wing*, 163 U.S. at 236. 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)). However, 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.

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69. Deportation of individuals to third countries where it is likely the noncitizen is to be imprisoned or harmed constitutes punishment. *Abubaka v. Bondi*, 2025 U.S. Dist. LEXIS 225914, *25 (W.D. Wash. 11/17/2025) ("the government's practice of third-country removal paired with imprisonment is intended to be punitive and thus violates due process," citing *Wong Wing*, 163 U.S. 228 at 236-38, and *Zadvydas*, 533 U.S. 678 at 693-694.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

70. Petitioner has no available administrative remedies that can provide the relief he seeks. *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541–42 (9th Cir. 2004) ("Exhaustion of remedies is not required when resort to such remedies would be futile.").

CLAIMS

FIRST CLAIM

71. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

72. Petitioner has been held in detention after a final order of removal in excess of six months. There is no significant likelihood of his removal in the reasonably foreseeable future. Accordingly, the continued detention of Petitioner is a violation of Due Process. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

SECOND CLAIM

73. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

74. The detention of Petitioner on August 6, 2025, and the revocation of his order of supervision, when there were no changed circumstances after his previously granted release from

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detention and no lawful reason to revoke his previously granted order of supervision, is arbitrary and capricious, and constitutes a violation of the Administrative Procedure Act, the Immigration and Nationality Act, and its implementing regulations, including 8 CFR §214.4(l).

THIRD CLAIM

75. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

76. The decision to re-detain Petitioner without a hearing to determine whether Petitioner is a danger to the community or a flight risk constitutes a violation of the Due Process clause of the United States Constitution.

FOURTH CLAIM

77. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

78. The deportation of Petitioner to any previously undesignated third country without an opportunity to apply for withholding of removal and protection under the Convention Against Torture violates the Immigration and Nationality Act and the Foreign Affairs Reform and Restructuring Act (FARRA), which implements the Convention Against Torture.

FIFTH CLAIM

79. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

80. The deportation of Petitioner to any previously undesignated third country without an opportunity to apply for withholding of removal and protection under the Convention Against Torture constitutes unlawful punishment in violation of Due Process.

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SIXTH CLAIM

81. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

82. The third country removal policy adopted by the Respondents on or about July 9, 2025, is arbitrary and capricious, not in accordance with law, in violation of the Administrative Procedure Act, §706(2).

REQUEST FOR RELIEF

The Petitioner herein respectfully requests that this Court:

(1) Assume jurisdiction over this petition;

(2) Declare that the continued detention of Petitioner violates Due Process;

(3) Declare that the revocation of Petitioner's order of supervision is arbitrary and capricious in violation of the Administrative Procedure Act, and violates the Immigration and Nationality Act and the governing regulations, and has no legal effect;

(4) Declare that Respondents' third country removal policy is arbitrary and capricious, and seeks to impose unconstitutional punishment, including imprisonment and other forms of harm, on those noncitizens subject to the policy;

(5) Issue an order that Petitioner be immediately released from detention under the terms and conditions of his prior order of supervision;

(6) Issue an order preventing re-detention unless the government establishes by clear and convincing evidence at a hearing before a neutral decisionmaker that Petitioner is a flight risk or

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a danger to the community, based on changed circumstances after their most recent release by ICE;

(7) Issue an order that the Respondents may not remove or seek to remove Petitioner to a third country without notice and meaningful opportunity to respond in compliance with the Immigration and Nationality Act and Due Process in reopened removal proceedings;

(8) Issue an order that the Respondents may not remove or seek to remove Petitioner to any third country because Respondents' third country removal program seeks to impose unconstitutional punishment on its subject's, including imprisonment and other forms of harm.

(9) Issue an order prohibiting ICE from removing Petitioner out of this jurisdiction;

(10) Grant such other relief as may be just and appropriate, including costs, expenses and reasonable attorney fees.

Dated this *23rd* day of *January*, 2026 .

/s/ Robert Pauw

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VERIFICATION

Robert Pauw, being duly sworn upon oath, hereby states: I represent the Petitioner in these habeas corpus proceedings. I have discussed with the Petitioner and his prior counsel the matters alleged in the foregoing Petition. I verify that the information contained in the foregoing Petition is true and correct to the best of my knowledge and belief.

Dated: *January 23, 2026*

/s/ Robert Pauw

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