

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PHUONG DONG NGUYEN,

Petitioner,

vs.

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

Respondents.

No.

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

PRELIMINARY MATTERS

“Congress has clearly indicated that habeas petitioners are entitled to a prompt ruling” on their petition. *Mejia v. Hermosillo*, No. CV25-02196-TMC, 2025 WL 3173842, at *1 (W.D. Wash. Nov. 13, 2025).

Petitioner Phuong Dong Nguyen was ordered removed but has been granted relief in the form of Withholding of Removal under INA § 241(b)(3) and thus cannot be removed to his native Vietnam. He asks that this Court order Respondents not to remove him from this district while this case is pending, both “[b]ecause transfer of Petitioner to another district could interfere with his access to counsel and ability to participate in the proceedings,” *Tran v. Bondi, et al.*, No. CV25-1897-JLR-BAT, Dkt. 6 at 3 (W.D. Wash. Oct. 7, 2025) (*sua sponte* issuing such an order in a § 2241 case

1 involving an ICE detainee), and “under the Court’s inherent power to preserve its
2 ability to hear the case.” *Alves v. U.S. Dep’t of Just.*, No. EP-25-CV-306-KC, 2025 WL
3 2629763, at *5 (W.D. Tex. Sept. 12, 2025) (same). *See also M.M. v. Wamsley*,
4 No. CV25-2074-TMC, 2025 WL 3053023, at *1 (W.D. Wash. Oct. 31, 2025) (same).¹

5 **RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242**

6 **Personal Information**

- 7 1. (a) Full name: Phuong Dong Nguyen
8 (b) Other names used: Dong Nguyen
9 2. Place of confinement:
10 (a) Northwest Immigration Processing Center (NWIPC)
11 (b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a
12 contractual arrangement with my custodian, the Immigration and Customs Enforcement
13 Field Office Director at Seattle, Washington.
14 (c) Case number or numbers [ICE file number, if known]: Petitioner’s A# has
15 been provided to the government along with the filing of this petition.
16 3. Petitioner is currently being held on orders by federal authorities: United States
17 Immigration and Customs Enforcement.
18 4. Petitioner is currently being held on an immigration charge.

19 **Decision or Action You Are Challenging**

- 20 5. What are you challenging in this petition: immigration detention.
21

22 ¹ For just a few examples of other courts issuing such an order in § 2241 cases
23 involving ICE detainees within the past few months (or reflecting the court had
24 previously issued such an order), *see, e.g., Bustos v. Raycraft*, No. 25-13202, 2025 WL
25 3022294, at *2 (E.D. Mich. Oct. 29, 2025); *Ferro v. Hyde*, No. CV25-513-SDN, 2025
26 WL 3003708, at *1 (D. Me. Oct. 27, 2025) (order issued same day petition was filed);
Lopez Pop v. Noem, No. CV25-2589-SSS-SSC, 2025 WL 3050095, at *7 (C.D. Cal.
Oct. 3, 2025); *Singh v. Delaney Hall*, No. CV25-16018-GC, 2025 WL 2772644, at *1
(D.N.J. Sept. 29, 2025); *Hom v. Ceja*, No. CV25-2221-WJM-TPO, 2025 WL 2801449,
at *2 (D. Colo. Sept. 17, 2025).

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

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

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

(c) Decision or action you are challenging: Mr. Nguyen was granted INA Withholding of Removal on August 6, 2025. Neither party appealed. He was taken into custody by ICE on January 16, 2025, after he entered the United States without inspection from Mexico and has been held since that time. He has been detained in ICE custody for over seven months since he was ordered removed and granted withholding.

Your Earlier Challenges of the Decision or Action

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

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

11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

(a) Date you were taken into immigration custody: January 16, 2025.

(b) Date of the removal or reinstatement order: August 6, 2025.

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

(d) Did you appeal the decision to the United States Court of Appeals? No.

12. Other than the appeals listed above, have you filed any other petition, application, or motion about the issues raised in this petition? No.

Grounds for Your Challenge in This Petition

I. Introduction

Mr. Nguyen is presently detained at the Northwest ICE Processing Center (NWIPC). He has been held in immigration custody for 14 months. Over seven months have passed since his removal to Vietnam was ordered and withholding to that same

country, Vietnam, was granted. Removal to Mr. Nguyen's country of origin is not reasonably foreseeable because an immigration judge has granted withholding of removal to Vietnam. On information and belief, he has not been accepted by a third country. His continued detention is thus in violation of *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Petitioner seeks (a) release; (b) an order preventing re-detention unless the government establishes by clear and convincing evidence at a hearing before a neutral decisionmaker that he is a flight risk or a danger to the community, based on changed circumstances after their most recent release by ICE; (c) an order preventing removal to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings; and (d) an order barring removal to any third country pursuant to Respondents' punitive removal policy.

II. Jurisdiction and Venue

This case arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*

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

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

Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because Respondents are agencies or officers of agencies of the United States; Respondents Hernandez and Scott reside in this district; and Petitioner is detained in this district.

Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district.

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

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

Mr. Nguyen is "in custody" for the purpose of § 2241 because he has been detained by Respondent ICE in Tacoma, Washington, since at least August 6, 2025.

IV. Parties

Mr. Nguyen is a citizen of Vietnam. Although the immigration court issued a removal order, it also granted withholding of removal to his native Vietnam.

Mr. Nguyen is nonetheless still detained in the control and custody of Respondents at NWIPC. As such, Petitioner is a resident of Tacoma, Washington.

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

Respondent Kristi Noem is the current Secretary of the Department of Homeland Security ("DHS").² In this capacity, Respondent Noem is the legal custodian of Petitioner. Respondent Noem is sued in her official capacity.

Respondent Julio Hernandez is the Acting Field Office Director for ICE Enforcement and Removal Operations ("ERO") in Seattle, Washington. As the ERO Seattle Field Office Director, he is Petitioner's immediate custodian, is responsible for

² Kristi Noem's last day as Secretary of Homeland Security is March 31, 2026. See [https://www.dhs.gov/employee-resources/news/2026/03/05/message-secretary-kristi-noem#:~:text=I%20look%20forward%20to%20continuing,Secretary%20of%20Homeland%20SecurityMs. Noem's \[https://perma.cc/2FJ4-C2LZ\]](https://www.dhs.gov/employee-resources/news/2026/03/05/message-secretary-kristi-noem#:~:text=I%20look%20forward%20to%20continuing,Secretary%20of%20Homeland%20SecurityMs. Noem's [https://perma.cc/2FJ4-C2LZ]).

1 his detention at NWIPC, and is the person with the authority to authorize detention or
2 release. Respondent Hernandez is sued in his official capacity.

3 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
4 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant
5 to a contract with ICE to detain noncitizens. Respondent Scott is sued in his official
6 capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-
7 700, 2021 WL 1946222, at *3–5 (W.D. Wash. May 14, 2021).

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

12 **V. Background**

13 Mr. Nguyen was born in Vietnam in 2004 and is just 22 years old. He speaks no
14 English. He was taken into immigration custody on January 16, 2025, after he entered
15 the United States without inspection from the Mexican border. Mr. Nguyen was ordered
16 removed to Vietnam but granted INA Withholding of Removal on August 6, 2025.

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

18 Petitioner cannot presently be returned to Vietnam because he has been
19 specifically granted protection from removal to Vietnam under INA § 241(b)(3). Thus,
20 removal to Vietnam is not reasonably foreseeable. ICE has not provided evidence of a
21 travel document for any other country. On information and belief, no country has
22 agreed to accept Mr. Nguyen.

VII. The Legal Framework Regarding Indefinite Detention Pending Removal

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

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

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

The issue is not whether Respondents have been able to remove some individuals to a given country. Rather, the court must make an individualized analysis as to a particular detainee. *See Nguyen v. Scott*, 796 F.Supp.3d 703, 726 (W.D. Wash. Aug. 21, 2025) (stating increase in total number of removals to Vietnam, including those who entered pre-1995, fails to rebut the evidence presented by Petitioner that “his individual circumstances make removal unlikely.”). Facts that are part of the analysis include the INA decision granting withholding of removal to Vietnam and any unsuccessful attempts at third-country removal.

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

Mr. Nguyen seeks an injunction against future re-detention without pre-deprivation notice and a hearing. He therefore includes the following discussion, even though he does not allege that his current detention was a result of an illegal re-detention, because it is a necessary prerequisite to seeking that injunction.

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. Nguyen’s interest in not being detained is “the most elemental of liberty interests[.]” *Acosta-Ginori v. Bondi*, No. 2:25-CV-02649-RAJ, 2026 WL 221509, at *4 (W.D. Wash. Jan. 28, 2026) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)) (granting petition and, 2026 WL 221509, at *7, ordering immediate release with no re-detention “unless and until providing at least 10 days’ notice and an opportunity to be heard before an immigration judge to determine whether re-detention is appropriate”).

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.

1 *Id.* (quoting *Mathews*, 424 U.S. at 335).

2 Given that the liberty interest here is “the most elemental,” this first factor
3 should weigh heavily in a petitioner’s favor. Petitioner’s status as a noncitizen does not
4 negate that interest. “While the temporary detention of non-citizens may sometimes be
5 justified by concerns about public safety or flight risk, the Government’s discretion to
6 incarcerate non-citizens is always constrained by the requirements of due process[.]”
7 *Tzafir v. Bondi*, No. 25-CV-02126-JHC, 2026 WL 81759, at *4 (W.D. Wash. Jan. 12,
8 2026) (quoting *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

9 In fact, as an individual who was previously released by ICE, a petitioner has a
10 higher liberty interest than that of the normal ICE detainee. *See Lecky v. Bondi*,
11 No. 2:25-cv-02637-TLF, 2026 WL 266066, at *7 (W.D. Wash. Feb. 2, 2026) (“A
12 released individual had an opportunity to form the enduring attachments of normal life
13 and thus has a heightened liberty interest”) (cleaned up).

14 The second factor, risk of an erroneous deprivation of liberty, also weighs in
15 Petitioner’s favor. A detainee’s prior release to the community on an OREC “reflected
16 ICE’s determination that [he] was neither a flight risk nor a danger to the community.”
17 *Francisco Lorenzo v. Bondi*, No. 2:25-CV-02660-LK, 2026 WL 237501, at *5 (W.D.
18 Wash. Jan. 29, 2026). “Petitioner’s re-detention without any change in circumstances or
19 procedure establishes a high risk of erroneous deprivation of his protected liberty
20 interest.” *Todd v. Bondi*, No. 25-CV-02519-JHC, 2026 WL 145725, at *4 (W.D. Wash.
21 Jan. 20, 2026).

22 The final factor, the government’s interest in detaining a petitioner without
23 providing a pre-deprivation hearing, also weighs in the petitioner’s favor. “[T]he
24 Government’s interest in re-detaining non-citizens previously released without a
25 hearing is low[.]” *Lecky*, 2026 WL 266066, at *8 (citation omitted). “While a pre-
26 detention process would impose some administrative burden, that burden is minimal

1 when weighed against the fundamental liberty interest at stake and the high risk of
2 erroneous deprivation. Providing effectively no pre-deprivation process, as ICE did
3 here, is constitutionally insufficient.” *Id.*

4 In addition, the government should be required to meet its burden based on
5 changed circumstances subsequent to the petitioner’s previous release by ICE. *See, e.g.,*
6 *Hamedani v. Bondi*, No. 2:25-CV-02509-JNW, 2026 WL 452424, at *5 (W.D. Wash.
7 Feb. 18, 2026) (“To the extent the Government seeks to revoke Hamedani’s release and
8 re-detain him, any such decision must be supported by changed circumstances
9 demonstrating a significant likelihood that he may be removed in the reasonably
10 foreseeable future.”); *Kara v. Bondi*, No. 2:26-CV-00105-JHC, 2026 WL 322772, at *4
11 (W.D. Wash. Feb. 6, 2026) (requiring “that the government not re-detain Petitioner
12 without notice and a hearing and absent changed circumstances”).

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

16 The revocation of a noncitizen’s release is governed by 8 C.F.R. § 241.13(i),
17 which authorizes ICE to revoke a noncitizen’s release under § 1231 for purposes of
18 removal or for violation of conditions of release. The government may revoke a
19 noncitizen’s release and return them to ICE custody due to failure to comply with any
20 of the conditions of release, 8 C.F.R. § 241.13(i)(1), or if, “on account of changed
21 circumstances, the [Immigration] Service determines that there is a significant
22 likelihood that the [noncitizen] may be removed in the reasonably foreseeable future,”
23 *id.* § 241.13(i)(2).

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

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

Id. § 241.13(i)(3).

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

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

Id. While courts do not make these determinations in the first instance, they may review them for compliance with the regulation. *See Tran v. Bondi*, No. C25-01897-JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 150 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

X. The Legal Framework for Third-Country Removals

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

First, an individual with a removal order may designate the country to which they want to be removed, and the government *shall* remove the individual to that country. 8 U.S.C. § 1231(b)(2)(A). The government may disregard that designation if

1 (1) the individual fails to designate a country promptly; (2) the government of that
2 country does not inform the U.S. government finally, within 30 days after the date the
3 U.S. government first inquires, whether the government will accept the individual into
4 that country; (3) the government of the country is not willing to accept the individual
5 into the country; or (4) the government decides that removing the individual to that
6 country is prejudicial to the United States. 8 U.S.C. § 1231(b)(2)(C).

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

14 Third, if the individual is not removed to either the country of their designation
15 or the country of which they are a subject, national, or citizen, then the government
16 shall remove them to any of the following options: (1) the country from which the
17 individual was admitted to the United States; (2) the country in which is located the
18 foreign port from which the individual left for the United States or for a foreign
19 territory contiguous to the United States; (3) the country in which the individual resided
20 before the individual entered the United States and from which the individual entered
21 the United States; (4) the country in which the individual was born; or (5) the country in
22 which the individual’s birthplace is located when the individual was ordered removed.
23 8 U.S.C. § 1231(b)(2)(E). *Only* “[i]f impracticable, inadvisable, or impossible” to
24 remove the individual to any of these countries may the government remove the
25 individual to “another country whose government will accept [them] into that country.”
26 8 U.S.C. § 1231(b)(2)(E)(vii).

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

9 Similarly, Congress codified protections enshrined in the Convention Against
10 Torture (CAT) prohibiting the government from removing a person to a country where
11 they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998
12 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822
13 (8 U.S.C. § 1231 note) (“It shall be the policy of the United States not to expel,
14 extradite, or otherwise effect the involuntary return of any person to a country in which
15 there are substantial grounds for believing the person would be in danger of being
16 subjected to torture, regardless of whether the person is physically present in the United
17 States.”); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. CAT protection is also
18 mandatory.

19 To comport with the requirements of due process, the government must provide
20 notice of the third-country removal and an opportunity to respond. Due process requires
21 “written notice of the country being designated” and “the statutory basis for the
22 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409
23 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland*
24 *Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All
25 removals to third countries, i.e., removal to a country other than the country or
26 countries designated during immigration proceedings as the country of removal on the

1 non-citizen's order of removal, must be preceded by written notice to both the non-
2 citizen and the non-citizen's counsel in a language the non-citizen can understand."
3 (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process
4 requires notice to the noncitizen of the right to apply for asylum and withholding to the
5 country where they will be removed). The government must be able to show evidence
6 that the third country will accept the individual into that country. *See Himri v. Ashcroft*,
7 378 F.3d 932, 939 (9th Cir. 2004), *amended sub nom. El Himri v. Ashcroft*, No. 03-
8 71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) ("at the time the government
9 proposes a country of removal pursuant to § 1231(b)(2)(E)(vii), the government must
10 be able to show that the proposed country *will* accept the [individual]").

11 Due process also demands that the government "ask the noncitizen whether he or
12 she fears persecution or harm upon removal to the designated country and memorialize
13 in writing the noncitizen's response. This requirement ensures DHS will obtain the
14 necessary information from the noncitizen to comply with § (b)(3) and avoids [a dispute
15 about what the officer and noncitizen said]." *Aden*, 409 F.Supp.3d at 1019; *cf. D.V.D.*,
16 2025 WL 1453640, at *1 ("Following notice, the individual must be given a meaningful
17 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection
18 prior to removal.") (emphasis omitted).

19 If the noncitizen claims fear, measures must be taken to ensure that the
20 noncitizen can seek asylum, withholding, and relief under CAT before an immigration
21 judge in reopened removal proceedings. *Cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring
22 the government to move to reopen the noncitizen's immigration proceedings if the
23 individual demonstrates "reasonable fear" and to provide "a meaningful opportunity,
24 and a minimum of fifteen days, for the non-citizen to seek reopening of their
25 immigration proceedings" if the noncitizen is found to not have demonstrated

1 “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a
2 respondent to file a motion to reopen and seek relief).

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

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

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

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

21 Punishment and deterrence appear to be the point of the Administration’s third-
22 country removal scheme. The Administration has reportedly negotiated with countries
23 to have deportees imprisoned in prisons, camps, or other facilities. The government
24 paid El Salvador about \$5 million to arbitrarily and indefinitely imprison more than 200

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

1 deported Venezuelans in a maximum-security prison notorious for gross human rights
2 abuses, known as CECOT. In February 2025, Panama and Costa Rica took in hundreds
3 of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a
4 jungle camp, and a detention center. On July 4, 2025, ICE deported eight men,
5 including one pre-1995 Vietnamese refugee, to South Sudan. The men have been
6 detained incommunicado ever since. On July 15, 2025, ICE deported five men to the
7 tiny African nation of Eswatini, including one man from Vietnam, where they are
8 reportedly being held in solitary confinement.

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

15 On July 9, 2025, ICE issued a new memo stating that, when seeking to remove
16 an individual to a country not designated on the removal order, ICE may deport that
17 person without any procedures for notice or an opportunity to be heard if the State
18 Department confirms it has received diplomatic assurances that individuals will not be
19 persecuted or tortured. If no diplomatic assurances are received, the ICE memo
20 instructs officers to serve on the individual a Notice of Removal that includes the
21 intended country of removal. Exhibit 1 at 1. It instructs officers not to ask whether the
22 individual is afraid of removal to that country. *Id.* It states that officers should
23 “generally wait at least 24 hours following service of the Notice of Removal before
24 effectuating removal” but that “[i]n exigent circumstances, [ICE] may execute a
25 removal order six (6) or more hours after service of the Notice of Removal as long as
26

1 the [noncitizen] is provided reasonable means and opportunity to speak with an attorney
2 prior to removal.” *Id.*

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

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

22 Further support that petitioner faces a risk of punitive third-country removal
23 comes from two declarations submitted in *Nguyen*, attached here as exhibits 1, 2, and 3.
24 They detail removals to third countries with little or no notice, as described in *Nguyen*,
25 796 F. Supp. 3d at 736–37.

26

1 This practice and policy continue unabated. *See* Pranav Baskar and Hamed
 2 Aleaziz, *U.S. Deports Nine Migrants in Secret, Ignoring Legal Protections*, N.Y. Times
 3 (Feb. 14, 2026), [https://www.nytimes.com/2026/02/14/world/africa/us-secret-](https://www.nytimes.com/2026/02/14/world/africa/us-secret-deportation-cameroon.html?smid=nytcare-ios-share)
 4 [deportation-cameroon.html?smid=nytcare-ios-share](https://www.nytimes.com/2026/02/14/world/africa/us-secret-deportation-cameroon.html?smid=nytcare-ios-share) [<https://perma.cc/HX2S-MTZD>].
 5 The article details how the individuals—who had court orders preventing them from
 6 being returned to their home countries—did not know they were being sent to
 7 Cameroon “until they were handcuffed and chained on a Department of Homeland
 8 Security flight[.]” *Id.* Since arrival, they have been detained in a state-owned compound
 9 and told by authorities “they cannot leave the facility unless they agree to return to their
 10 home countries, from which they fled to escape war or persecution.” *Id.*

11 XII. The Law Governing Punitive Removal Practices

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

18 Importantly, the Court distinguished deportation, which the Court reasoned is
 19 “not a ‘banishment,’ in the sense in which that word is often applied to the expulsion of
 20 a citizen from his country by way of punishment,” from government actions aimed at
 21 punishment, such as imprisonment at hard labor in addition to deportation. *Id.* at 236.
 22 The Court explained that deportation “is but a method of enforcing the return to his own
 23 country of [a noncitizen] who has not complied with the conditions upon the
 24 performance of which the government of the nation, acting within its constitutional
 25 authority and through the proper departments, has determined that his continuing to
 26 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: Petitioner’s Continued Detention in Immigration Custody Violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution Because There Is No Significant Likelihood that Petitioner Will Be Removed in the Reasonably Foreseeable Future.

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

Because Petitioner’s removal order became final on August 6, 2025, the removal period has long since expired, and detention is no longer required under 8 U.S.C. § 1231. In addition, the presumptively reasonable period of six months has passed.

There is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]” *Zadvydas*, 533 U.S. at 701. Mr. Nguyen cannot be removed to Vietnam and upon information and belief, no other country has agreed to accept him.

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

5 **Ground Two: Procedural Due Process**

6 The allegations in the above paragraphs are realleged and incorporated herein.
7 Petitioner has a liberty interest in not being re-detained. Applying the three-
8 factor test of *Mathews*, that interest is high. The risk of any erroneous deprivation is
9 also high, because he is not a flight risk or a danger to the community. *Cf., Ledesma*
10 *Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *8 (W.D.
11 Wash. Oct. 7, 2025), “ICE revoked that release without any reassessment of those
12 factors.” 2025 WL 2841574, at *8.

13 In addition, the cost to the government of providing a hearing is low and
14 significantly outweighed by the other factors. Any re-detention without this process will
15 violate his constitutional rights and would therefore be unlawful.

16 As to Petitioner’s prayer for injunctive relief barring a new re-detention absent
17 due process, the requirements for injunctive relief are met. His prospective unlawful re-
18 detention would constitute an irreparable injury that could not be redressed by an award
19 of damages. Second, the balance of hardships is completely in Petitioner’s favor:
20 Petitioner risks unlawful re-detention, while Respondents suffer no hardship by being
21 prevented from following their unlawful re-detention practices. Finally, the public
22 interest affirmatively would be served by barring Respondents’ unlawful practice.

23 Furthermore, there is a significant likelihood that Respondents would seek again
24 to re-detain Petitioner unlawfully. Respondents have a policy to round up as many
25 noncitizens as possible. *See, e.g., Jose Olivares*, “Trump administration sets quota to
26 arrest 3,000 people a day in anti-immigration agenda,” *The Guardian* (May 29, 2025),

1 <https://www.theguardian.com/us-news/2025/may/29/trump-ice-arrest-quota>
2 [<https://perma.cc/6P5L-NUDM>].

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

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

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

17 Prior to any third-country removal, Petitioner must be provided with
18 constitutionally and statutorily compliant notice and an opportunity to respond and
19 contest that removal if he has a fear of persecution or torture in that country in reopened
20 removal proceedings. *See Nguyen*, 796 F. Supp. 3d 703, 739 (granting preliminary
21 injunction against “removing Petitioner to a country other than [home country] without
22 notice and a meaningful opportunity to be heard in reopened removal proceedings with
23 a hearing before an immigration judge”).

24 Furthermore, the requirements for injunctive relief are met. Petitioner's
25 prospective unlawful re-detention would constitute an irreparable injury that could not
26 be redressed by an award of damages. Second, the balance of hardships is completely in
Petitioner's favor: Petitioner risks unlawful removal to a third country, while

1 Respondents suffer no hardship by being prevented from following their unlawful re-
2 detention practices. Finally, the public interest would affirmatively be served by barring
3 Respondents' unlawful practice.

4 In addition, the matter is ripe. The facts set forth above—including Respondents'
5 stated policy regarding third-country removals—make it reasonably likely that
6 Respondents would seek to remove Petitioner to a third country without complying
7 with their regulatory and constitutional obligations to provide Petitioner with notice and
8 an opportunity to be heard.

9 **Ground Four: Punitive Third-Country Banishment; Violation of Fifth and**
10 **Eighth Amendments**

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

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

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

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

23 Mr. Nguyen is removable from the United States, but his history provides no
24 reason or authorization to the government to inflict, as a matter of executive policy and
25 discretion, additional punishment on him. Respondents' third-country removal program
26 is punitive in both its nature and its execution.

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

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

17 Respondents may not seek to remove Petitioner to a third country under their
18 punitive banishment policy and practices. *See Nguyen*, 796 F. Supp. 3d at 739 (granting
19 preliminary injunction against "removing Petitioner to any country where he is likely to
20 face imprisonment upon arrival").

21 The criteria for an injunction in this case are met. First, unlawful removal to a
22 third country risks irreparable injury that could not be redressed by an award of
23 damages. Second, the balance of hardships is completely in Petitioner's favor:
24 Petitioner risks removal to a third country where unwarranted punishment may result,
25 and Respondents suffer no hardship by being prevented from following their unlawful
26 removal policies. Finally, the public interest would affirmatively be served by barring

1 Respondents' unlawful policies. Given the potential for Respondents to attempt a rapid
2 and unlawful removal, Petitioner would have no opportunity to seek injunctive relief at
3 that time.

4 Furthermore, the matter is ripe. The facts set forth above—including
5 Respondents' stated policy regarding third-country removals—make it reasonably
6 likely that Respondents would seek to remove Petitioner to a third country with a
7 punitive intent and punitive result.

8 **Prayer for Relief**

9 Petitioner respectfully requests that this Court:

- 10 (a) Assume jurisdiction over this action;
- 11 (b) Order Respondents to immediately release Petitioner from custody;
- 12 (c) Order Respondents to, within 24 hours of his release, provide the Court
13 with a declaration confirming that Petitioner has been released from custody;
- 14 (d) Order that Respondents may not re-detain Petitioner without first holding
15 a hearing before a neutral decisionmaker at which the government bears the burden of
16 establishing flight risk or danger to the community by clear and convincing evidence
17 based on changed circumstances since Petitioner was previously released;
- 18 (e) Order that the government may not otherwise re-detain Petitioner unless
19 the government:
- 20 (1) obtains a valid travel document for him,
- 21 (2) provides the valid travel document to him and his counsel,
- 22 (3) offers Petitioner the opportunity to leave on his own within two months,
23 and
- 24 (4) Petitioner does not leave. Under such circumstances, the government may
25 be permitted to re-detain Petitioner provided it has already made concrete
26

1 arrangements for him to be put on a flight to a third country in the
2 reasonably foreseeable future.

3 *See Do v. Scott*, No. C25-2187RSL, 2025 WL 3496909, at *6 (W.D. Wash. Dec. 5,
4 2025); *Tang*, 2025 WL 3551381, at *3.

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

8 (g) Order that Respondents may not remove Petitioner to any third country
9 where he is likely to face imprisonment or other punishment upon arrival; 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 Petitioner. It does not
13 personally bear Petitioner's signature because of the significant difficulty for counsel in
14 meeting with Petitioner in person and because mailing the petition to Petitioner and
15 having it mailed back would cause delay that would only extend the period of his
16 unlawful detention. Counsel knows the facts asserted above or alleges them on
17 information and belief, based on information obtained from the government and/or
18 Petitioner.

19 DATED this 18th day of March 2026.

20 Respectfully submitted,

21 *s/ Vicki W.W. Lai*
22 Assistant Federal Public Defender
23 Attorney for Phuong Dong Nguyen
24
25
26