

ORIGINAL

1 **Ali Ghafouri**

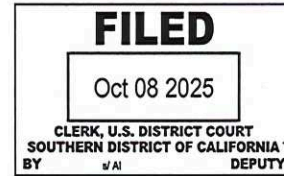
2 A#

Otay Mesa Detention Center

3 P.O. Box 439049

4 San Diego, CA 92143-9049

5 Pro Se¹



6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **ALI GHAFOURI,**

11 **Petitioner,**

12 **v.**

13 **KRISTI NOEM, Secretary of the**
14 **Department of Homeland Security,**
15 **PAMELA JO BONDI, Attorney General,**
16 **TODD M. LYONS, Acting Director,**
17 **Immigration and Customs Enforcement,**
18 **JESUS ROCHA, Acting Field Office**
19 **Director, San Diego Field Office,**
20 **CHRISTOPHER LAROSE, Warden at**
21 **Otay Mesa Detention Center,**

22 **Respondents.**

CIVIL CASE NO.: '25CV2675 RBM BLM

Petition for Writ
of
Habeas Corpus

[Civil Immigration Habeas Petition
Under 28 U.S.C. § 2241]

23
24
25 ¹ Mr. Ghafouri is filing this petition for a writ of habeas corpus with the assistance
26 of the Federal Defenders of San Diego, Inc., who drafted the instant petition. That
27 same counsel also assisted the petitioner in preparing and submitting his request
28 for the appointment of counsel, which has been filed concurrently with this
petition, and all other documents supporting the petition. Federal Defenders has
consistently used this procedure in seeking appointment for immigration habeas
cases. The Declaration of Katie Hurrelbrink in Support of Appointment Motion
attaches case examples.

INTRODUCTION

This civil immigration habeas petition seeks three grounds of relief. First, it seeks to prevent Mr. Ghafouri's indefinite detention pending deportation to Iran absent the basic regulatory and due process guarantees of 8 C.F.R. §§ 241.4(l) and 241.13(i). Second, it seeks to prevent his indefinite detention pending deportation to Iran absent the basic statutory and due process guarantees outlined in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Third, it seeks to prevent his deportation to an unidentified third country without him first receiving basic due process guarantees of notice and opportunity to be heard as to his statutory rights to seek withholding of removal and Convention Against Torture relief.

Mr. Ghafouri was ordered removed to Iran in 2003. It is very hard to deport people to Iran. Mr. Ghafouri has now cumulatively spent over a year in immigration custody after the issuance of his removal order. ICE re-arrested Mr. Ghafouri in May 2025, and in the five months that have followed, ICE has provided Mr. Ghafouri no information indicating that he will be removed to Iran in the reasonably foreseeable future. If the government is currently detaining Mr. Ghafouri with plans to instead deport him to an unidentified third country, as it has other Iranians, its policies and actions during recent third-country removals violate the core procedural protections this country has adopted to ensure it does not send people off to be tortured.

This Court should order Mr. Ghafouri released from immigration custody and enjoin the government from deporting Mr. Ghafouri to a third country without first providing sufficient notice and an opportunity to be heard.

Judge Huie and district courts around the country have ordered Iranians released from ICE custody for the same reasons. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025) (granting habeas petition and ordering Iranian citizen released due to regulatory violations); *Grigorian v. Bondi*, No. 25-cv-22914-RAR, 2025 WL 2604573 (S.D. Fl. Sept. 9,

2025) (granting habeas petition and ordering Iranian citizen released due to regulatory violations); *Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL 2592543 (D. Md. Sept. 8, 2025) (granting habeas petition and ordering Iranian citizen released due to *Zadvydass* violations); *Delkash v. Noem*, No. 25-cv-1675-HDV-AGR, 2025 WL 2683988 (C.D. Cal. Aug. 28, 2025) (granting habeas petition and ordering Iranian citizen released due to regulatory violations, and enjoining the government from re-detaining or removing him to a third country without notice and an opportunity to be heard).

When doing so, one court underlined, “Rules matter. Hearings matter. In recognition of this cornerstone principle of our jurisprudence, a growing chorus of district courts have found that—in similar cases—the government’s unlawful detention warrants immediate release.” *Delkash*, 2025 WL 2683988 at *1.

STATEMENT OF FACTS

I. Mr. Ghafouri lives under supervision for over a decade and a half without incident, and is re-detained in May 2025 without an individualized reason for detention and without an opportunity to contest his re-detention.

In 1984, when he was twelve years old, Ali Ghafouri and his family fled political persecution in Iran. Declaration of Ali Ghafouri ¶ 1 (Exhibit A). They soon obtained green cards. *Id.* ¶¶ 1, 10.

In his teens and twenties, Mr. Ghafouri sustained several convictions. *Id.* ¶ 2. He was ordered removed as a result in June 2003. *Id.*² In 2003 and 2004, ICE detained Mr. Ghafouri for a total of about seven months after he was ordered removed—first for about 89 days, and then after his transfer to and from state custody, another 120 days. Exhibit A ¶ 3. Because the government could not remove him to Iran, it released him. *Id.*

² See also EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/> (reporting that Mr. Ghafouri is Iranian and was ordered removed by an immigration judge on June 5, 2003, in San Diego).

1 Mr. Ghafouri remained on an order of supervision for the next two decades.
 2 *Id.* ¶¶ 3–4, 8; *see* Exhibit B (Mr. Ghafouri’s order of supervision). Since 2009,
 3 Mr. Ghafouri has sustained no convictions and has always checked in with ICE as
 4 scheduled. Exhibit A ¶ 4; Exhibit B at 2. He has four kids and one young
 5 grandson; two of his kids are still teenagers, and he is the sole provider for his
 6 family. Exhibit A ¶ 9. He is also engaged. *Id.* All of his kids and his fiancée are
 7 U.S. citizens. *Id.* So are his parents, sister, aunts, uncles, and grandparents. *Id.*
 8 ¶ 10.

9 On May 15, 2025, Mr. Ghafouri appeared at one of his ICE check-ins as
 10 scheduled. *Id.* ¶ 5. He was re-detained, leaving his fiancée to care for their kids by
 11 herself. *Id.* ¶ 9. She has had to sell their cars to cover the bills. *Id.* ¶ 11.

12 At his check-in, the ICE agent who arrested him said “they had orders to
 13 pull in anyone with a felony and an order of supervision.” *Id.* ¶ 5. Since then,
 14 Mr. Ghafouri has not had any meetings with a deportation officer. *Id.* ¶ 6. He has
 15 spoke to him “in passing when he’s in [his] pod” in the Otay Mesa Detention
 16 Center. *Id.* But Mr. Ghafouri explains, “no one has ever told me why I was re-
 17 detained, except for what the ICE agent said at my arrest; no one has offered me
 18 an informal interview; I have not had the chance to contest my re-detention; and
 19 no one has told me what changed to make my removal more likely.” *Id.*

20 **II. The government is deporting Iranians who have illegally entered to**
 21 **Iran, but has deported others like Mr. Ghafouri who legally entered**
 22 **to third countries without providing sufficient notice and**
 23 **opportunity to be heard.**

24 The United States has not had normalized relations with Iran since the
 25 Islamic Revolution of 1979. *See generally* Council on Foreign Relations, 1953–
 26 2025: *U.S. Relations With Iran*.³ It currently lacks diplomatic and consular
 27

28 ³ Available at <https://www.cfr.org/timeline/us-relations-iran-1953-2025>.

1 relations. U.S. Department of State, Bureau of Consular Affairs, *Iran Travel*
 2 *Advisory*, March 31, 2025.⁴

3 As President Trump found earlier this year when banning the entry of
 4 Iranian nationals into the United States, Iran “has historically failed to accept back
 5 its removable nationals.” Presidential Proclamation, *Restricting the Entry of*
 6 *Foreign Nationals to Protect the United States from Foreign Terrorists and Other*
 7 *National Security and Public Safety Threats*, June 4, 2025.⁵ Iran has long been
 8 among the absolute most uncooperative countries the United States faces when
 9 seeking to repatriate immigrants it has ordered deported, alongside countries like
 10 Eritrea and Cuba. *See* Office of Inspector General, Department of Homeland
 11 Security, *ICE Faces Barriers in Timely Repatriation of Detained Aliens*, March
 12 11, 2019, at 30; Memorandum from ICE ERO, November 2024, at 3, 7.⁶ The
 13 State Department places Iran at the highest level travel advisory, “level 4,”
 14 warning that having “connections to the United States can be reason enough for
 15 Iranian authorities to detain someone.” U.S. Department of State, Bureau of
 16 Consular Affairs, *Iran Travel Advisory*, *supra*.

17 When immigrants cannot be removed to their home country—including to
 18 Iran—ICE has begun deporting those individuals to prisons in third countries
 19 without adequate notice or a hearing. The Trump administration reportedly has
 20 negotiated with at least 58 countries to accept deportees from other nations.

21
 22
 23 ⁴ Available at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/iran-travel-advisory.html>

24 ⁵ Available at <https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/>.

25 ⁶ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf>;
 26 <https://static.foxnews.com/foxnews.com/content/uploads/2024/12/get-backs-re-non-detained-docket-1.pdf>.

1 Edward Wong et al., *Inside the Global Deal-Making Behind Trump's Mass*
 2 *Deportations*, The New York Times (June 25, 2025).⁷ This summer and fall, ICE
 3 has carried out highly publicized third country deportations to prisons in South
 4 Sudan, Eswatini, Ghana, and Rwanda. Nokukhanya Musi & Gerald Imray, *10*
 5 *more deportees from the US arrive in the African nation of Eswatini*, Associated
 6 Press (Oct. 6, 2025).⁸ At least four men deported to Eswatini in July have
 7 remained in a maximum-security prison there for nearly three months without
 8 charge and without access to counsel; another six men remain detained
 9 incommunicado in South Sudan, and another seven are being held in an
 10 undisclosed facility in Rwanda. *Id.*

11 In February, Panama and Costa Rica imprisoned hundreds of deportees—
 12 including Iranians—in hotels, a jungle camp, and a detention center. *Id.*; Vanessa
 13 Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*,
 14 BBC (Jun. 25, 2025); Human Rights Watch, *'Nobody Cared, Nobody Listened':*
 15 *The US Expulsion of Third-Country Nationals to Panama*, Apr. 24, 2025 (quoting
 16 an Iranian national deported to and imprisoned in Panama).⁹ The government paid
 17 El Salvador about \$5 million to imprison more than 200 deported Venezuelans in
 18 a maximum-security prison notorious for gross human rights abuses, known as
 19 CECOT. *See* Wong et al., *supra*.

20 On July 9, 2025, ICE rescinded previous guidance meant to give
 21 immigrants a “‘meaningful opportunity’ to assert claims for protection under the
 22 Convention Against Torture (CAT) before initiating removal to a third country”
 23 like the ones just described. Exhibit C. Instead, under new guidance, ICE may
 24

25 ⁷ Available at [https://www.nytimes.com/2025/06/25/us/politics/trump-](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html)
 26 [immigrants-deportations.html](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html).

27 ⁸ Available at [https://apnews.com/article/eswatini-deportees-us-trump-](https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2)
 28 [immigration-74b2f942003a80a21b33084a4109a0d2](https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2).

⁹ Available at [https://www.hrw.org/report/2025/04/24/nobody-cared-nobody-](https://www.hrw.org/report/2025/04/24/nobody-cared-nobody-listened/the-us-expulsion-of-third-country-nationals-to)
[listened/the-us-expulsion-of-third-country-nationals-to](https://www.hrw.org/report/2025/04/24/nobody-cared-nobody-listened/the-us-expulsion-of-third-country-nationals-to).

1 remove any immigrant to a third country “without the need for further
2 procedures,” as long as—in the view of the State Department—the United States
3 has received “credible” “assurances” from that country that deportees will not be
4 persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to
5 persecute or torture releasees, ICE may still remove immigrants there with
6 minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’ notice. But “[i]n
7 exigent circumstances,” a removal may take place in as little as six hours, “as long
8 as the alien is provided reasonably means and opportunity to speak with an
9 attorney prior to the removal.” *Id.*

10 Upon serving notice, ICE “will not affirmatively ask whether the alien is
11 afraid of being removed to the country of removal.” *Id.* (emphasis original). If the
12 noncitizen “does not affirmatively state a fear of persecution or torture if removed
13 to the country of removal listed on the Notice of Removal within 24 hours, [ICE]
14 may proceed with removal to the country identified on the notice.” *Id.* at 2. If the
15 noncitizen “does affirmatively state a fear if removed to the country of removal”
16 then ICE will refer the case to U.S. Citizenship and Immigration Services
17 (“USCIS”) for a screening for eligibility for withholding of removal and
18 protection under the Convention Against Torture (“CAT”). *Id.* at 2. “USCIS will
19 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen
20 does not meet the standard, the individual will be removed. *Id.* If USCIS
21 determines that the noncitizen has met the standard, then the policy directs ICE to
22 either move to reopen removal proceedings “for the sole purpose of determining
23 eligibility for [withholding of removal protection] and CAT” or designate another
24 country for removal. *Id.*

25 Under this policy, the United States has deported noncitizens to prisons and
26 military camps in Rwanda, Eswatini, South Sudan, and Ghana. Many are still
27 detained to this day, in countries to which they have never been, without charge.
28 *See Musi & Gerald Imray, supra.*

1 **CLAIMS FOR RELIEF**

2 This Court should grant this petition and order two forms of relief.

3 First, it should order Mr. Ghafouri's immediate release. ICE failed to
4 follow its own regulations requiring changed circumstances before re-detention,
5 as well as a chance to promptly contest a re-detention decision. And *Zadvydas v.*
6 *Davis* holds that immigration statutes do not authorize the government to detain
7 immigrants like Mr. Ghafouri, for whom there is "no significant likelihood of
8 removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001).

9 Second, it should enjoin the Respondents from removing Mr. Ghafouri to a
10 third country without first providing notice and a sufficient opportunity to be
11 heard before an immigration judge.

12 **I. Count 1: ICE failed to comply with its own regulations before re-**
13 **detaining Mr. Ghafouri, violating his rights under applicable**
14 **regulations and the Fifth Amendment.**

15 Two regulations establish the process due to someone who is re-detained in
16 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
17 re-detention generally. 8 C.F.R. § 241.13(i) applies to persons released after
18 providing good reason to believe that they will not be removed in the reasonably
19 foreseeable future, as Mr. Ghafouri was. *See Rokhfirooz*, No. 25-CV-2053-RSH-
20 VET, 2025 WL 2646165 at *2 (order from Judge Huie explaining this regulatory
21 framework and granting a habeas petition for ICE's failure to follow these
22 regulations as to an Iranian citizen).

23 These regulations permit an official to "return [the person] to custody"
24 because they "violate[d] any of the conditions of release." 8 C.F.R. § 241.13(i)(1);
25 *see also* § 241.4(l)(1).

26 Otherwise, they contain four major regulatory protections for people like
27 Mr. Ghafouri, who did not violate any condition of release. They permit
28 revocation of release only if the appropriate official (1) "determines that there is a

1 significant likelihood that the alien may be removed in the reasonably foreseeable
2 future,” § 241.13(i)(2), and (2) makes that finding “on account of changed
3 circumstances.” *Id.* No matter the reason for re-detention, (3) the re-detained
4 person is entitled to “an initial informal interview promptly,” during which they
5 “will be notified of the reasons for revocation.” §§ 241.4(l)(1); 241.13(i)(3). The
6 interviewer must (4) “afford[] the [person] an opportunity to respond to the
7 reasons for revocation,” allowing them to “submit any evidence or information”
8 relevant to re-detention and evaluating “any contested facts.” *Id.*

9 ICE is required to follow its own regulations. *United States ex rel. Accardi*
10 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); see *Alcaraz v. INS*, 384 F.3d 1150,
11 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
12 abide by certain internal policies is well-established.”). A court may review a re-
13 detention decision for compliance with the regulations, and “where ICE fails to
14 follow its own regulations in revoking release, the detention is unlawful and the
15 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at *4
16 (collecting cases).

17 ICE followed none of its four regulatory prerequisites to re-detention here.
18 Mr. Ghafouri was not returned to custody because of a conditions violation. There
19 are no changed circumstances that justify re-detaining him, and no record of a
20 determination before or after his arrest that “there is a significant likelihood that
21 [Petitioner] may be removed in the reasonably foreseeable future.” *Id.* at *3
22 (quoting 8 C.F.R. § 241.13(i)(3)(1)). Absent any evidence for “why obtaining a
23 travel document is more likely this time around[,] Respondents’ intent to
24 eventually complete a travel document request for Petitioner does not constitute a
25 changed circumstance.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
26 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL,
27 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Nor has Mr. Ghafouri
28 received the interview required by regulation, or been afforded a meaningful

1 opportunity to respond to the reasons for revocation. Exhibit A, ¶ 6. No one from
2 ICE has ever invited him to contest his detention. *Id.*

3 Numerous courts have released re-detained immigrants after finding that
4 ICE failed to comply with applicable regulations this summer and fall. *See, e.g.,*
5 *Rokhfirooz*, 2025 WL 2646165; *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*,
6 2025 WL 2683988; *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y.
7 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v.*
8 *Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-
9 06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v.*
10 *Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21,
11 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3
12 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025
13 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2;
14 *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

15 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
16 the applicable regulations, that revocation has no effect, and [Mr. Ghafouri] is
17 entitled to his release (subject to the same Order of Supervision that governed his
18 most recent release).” *Liu*, 2025 WL 1696526, at *3.

19 **I. Count 2: Mr. Ghafouri’s detention violates *Zadvydas* and 8 U.S.C.**
20 **§ 1231.**

21 **A. Legal background**

22 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
23 a problem affecting people like Mr. Ghafouri: Federal law requires ICE to detain
24 an immigrant during the “removal period,” which typically spans the first 90 days
25 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-
26 day removal period expires, detention becomes discretionary—ICE may detain
27 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
28 this scheme would not lead to excessive detention, as removal happens within

1 days or weeks. But some detainees cannot be removed quickly. Perhaps their
2 removal “simply require[s] more time for processing,” or they are “ordered
3 removed to countries with whom the United States does not have a repatriation
4 agreement,” or their countries “refuse to take them,” or they are “effectively
5 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,
6 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained
7 immigrants can find themselves trapped in detention for months, years, decades,
8 or even the rest of their lives.

9 If federal law were understood to allow for “indefinite, perhaps permanent,
10 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at
11 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by
12 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

13 As an initial matter, *Zadvydas* held that detention is “presumptively
14 reasonable” for at least six months. *Id.* at 701. This presumption is, in some
15 circumstances even before the running of six months, “rebuttable.” *See Zavvar*,
16 2025 WL 2592543 at *5–*6 (explaining this point when granting *Zadvydas*
17 habeas relief to an Iranian national last month).

18 Courts must use a burden-shifting framework to decide whether detention
19 remains authorized. First, the petitioner must make a prima facie case for relief:
20 He must prove that there is “good reason to believe that there is no significant
21 likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at
22 689.

23 If he does so, the burden shifts to “the Government [to] respond with
24 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of
25 proof rests with the government: The government must prove that there is a
26 “significant likelihood of removal in the reasonably foreseeable future,” or the
27 immigrant must be released. *Id.*
28

1 To underline the government's burden, good faith is beside the point.
2 "[U]nder *Zadvydas*, the reasonableness of Petitioner's detention does not turn on
3 the degree of the government's good faith efforts. Indeed, the *Zadvydas* court
4 explicitly rejected such a standard. Rather, the reasonableness of Petitioner's
5 detention turns on whether and to what extent the government's efforts are likely
6 to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5
7 (W.D.N.Y. Jan. 2, 2019). Accordingly, "the Government is required to
8 demonstrate the likelihood of not only the *existence* of untapped possibilities, but
9 also of a probability of success in such possibilities." *Elashi v. Sabol*, 714 F.
10 Supp. 2d 502, 506 (M.D. Pa. 2010).

11 Using this framework, Mr. Ghafouri can make all the threshold showings
12 needed to shift the burden to the government.

13 **B. The six-month grace period expired in 2003.**

14 As an initial matter, the six-month grace period has long since ended. The
15 *Zadvydas* grace period lasts for "*six months* after a final order of removal—that is,
16 *three months* after the statutory removal period has ended." *Kim Ho Ma v.*
17 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Ghafouri's order of
18 removal was entered in June 2003. Exhibit A ¶ 2. Accordingly, his 90-day
19 removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period
20 thus expired three months after the removal period ended, in December 2003.
21 Furthermore, Mr. Ghafouri was detained for a total of about seven months in 2003
22 and 2004, and he has been detained for another five months in 2025. Exhibit A
23 ¶¶ 3, 5. Thus, this threshold requirement is met.¹⁰
24

25
26 ¹⁰ The government has sometimes argued that release and rearrest resets the six-
27 month grace period completely, taking the clock back to zero. "Courts . . . broadly
28 agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6
(W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL
6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-

1 **C. There is good reason to believe that there is no significant**
2 **likelihood of Mr. Ghafouri's removal in the reasonably**
3 **foreseeable future.**

4 Because the six-month grace period has passed, this Court must evaluate
5 Mr. Ghafouri's *Zadvydas* claim using the burden-shifting framework. At the first
6 stage of the framework, there must be "good reason to believe that there is no
7 significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*,
8 533 U.S. at 701. This standard can be broken down into three parts.

9 **"Good reason to believe."** The "good reason to believe" standard is a
10 relatively forgiving one. "A petitioner need not establish that there exists no
11 possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
12 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "[g]ood reason to
13 believe' . . . place a burden upon the detainee to demonstrate no reasonably
14 foreseeable, significant likelihood of removal or show that his detention is
15 indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW,
16 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
17 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
18 Petitioners need only give a "good reason"—not prove anything to a certainty.

19 **"No significant likelihood of removal."** This component focuses on
20 whether Mr. Ghafouri will likely be removed: Continued detention is permissible
21 only if it is "significant[ly] like[ly]" that ICE will be able to remove him.
22 *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the *existence* of
23 untapped possibilities, but also [the] probability of *success* in such possibilities."
24 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis

25 _____
26 LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases). This
27 proposal would create an obvious end run around *Zadvydas*, because ICE could
28 detain an immigrant indefinitely by releasing and quickly rearresting them every
 six months.

1 added). In other words, even if “there remains *some* possibility of removal,” a
2 petitioner can still meet its burden if there is good reason to believe that
3 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
4 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

5 “**In the reasonably foreseeable future.**” This component of the test
6 focuses on when Mr. Ghafouri will likely be removed: Continued detention is
7 permissible only if removal is likely to happen “in the reasonably foreseeable
8 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
9 removal efforts. If the Court has “no idea of when it might reasonably expect
10 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
11 is likely to occur—or even that it might occur—in the reasonably foreseeable
12 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
13 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
14 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
15 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Ghafouri
16 “would *eventually* receive” a travel document, he can still meet his burden by
17 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
18 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

19 Mr. Ghafouri readily satisfies the above standards for two reasons.

20 *First*, Respondents have had 22 years to try and remove Mr. Ghafouri.
21 They have so far been unable to. Mr. Ghafouri has fully cooperated with ICE’s
22 removal efforts, including at his scheduled check-ins. Exhibit A ¶ 8. Yet ICE has
23 proved unable to remove him. This, alone, provides good reason to shift the
24 burden to the government to prove there is a significant likelihood of Mr.
25 Ghafouri’s removal in the reasonably foreseeable future.

26 *Second*, there is not a significant likelihood that an Iranian in
27 Mr. Ghafouri’s situation will be removed in the reasonably foreseeable future.
28 This year, after months of diplomatic negotiations, the United States successfully

1 deported about 100 of the more than 2,600 Iranians who had a final order of
2 removal. *See* Farnaz Fassihi & Hamed Aleaziz, *U.S. Departs Planeload of*
3 *Iranians After Deal With Tehran, Officials Say*, *The New York Times* (Sept. 30,
4 2025).¹¹ Iran has reported that it may accept a few hundred more, at some time.
5 *See* Maria Sacchetti & Susannah George, *U.S. to deport immigrants to Iran,*
6 *Tehran says, raising human rights concerns*, *The Washington Post* (Sept. 30,
7 2025).¹²

8 None of this information indicates that *Mr. Ghafouri* is likely to be
9 removed. And none of this information establishes that those 300 people will be
10 removed any time in the *reasonably foreseeable* future. Indeed, the United States
11 government has been unwilling to confirm even the existence of an agreement
12 with Iran regarding deportees, not to mention the contents of that agreement,
13 including who among Iranian nationals would be deported. So far, deportees have
14 largely been people who illegally entered the United States earlier this year, *see*
15 Fassihi & Aleaziz, *supra* —not people like *Mr. Ghafouri*, who fled in the 1980s.

16 Thus, *Mr. Ghafouri* has met his initial burden, and the burden shifts to the
17 government. Unless the government can prove a “significant likelihood of
18 removal in the reasonably foreseeable future,” *Mr. Ghafouri* must be released.
19 *Zadvydas*, 533 U.S. at 701.

20 **D. *Zadvydas* unambiguously prohibits this Court from denying**
21 ***Mr. Ghafouri’s* petition because of his criminal history.**

22 If released on supervision, *Mr. Ghafouri* poses no risk of danger or flight.
23 He has been on supervision for two decades. Exhibit A ¶¶ 3–4. During that time,
24 he has committed himself to being a dad, granddad, and partner, and all of his
25

26
27 ¹¹ Available at <https://www.nytimes.com/2025/09/30/world/middleeast/us-iran-deportation-flight.html>.

28 ¹² Available at <https://www.washingtonpost.com/immigration/2025/09/30/us-iran-deport-immigrants/>.

1 family and extended family are here in the United States. *Id.* ¶¶ 9–10. For the last
2 fifteen years, he has checked in regularly with ICE. *Id.* ¶ 4.

3 Regardless, *Zadvydas* squarely holds that risk of danger or flight are not
4 grounds for detaining an immigrant when there is no reasonable likelihood of
5 removal in the reasonably foreseeable future. 533 U.S. at 684–91.

6 The two petitioners in *Zadvydas* both had significant criminal history.
7 Mr. Zadvydas himself had “a long criminal record, involving drug crimes,
8 attempted robbery, attempted burglary, and theft,” as well as “a history of flight,
9 from both criminal and deportation proceedings.” *Id.* at 684. The other petitioner,
10 Kim Ho Ma, was “involved in a gang-related shooting [and] convicted of
11 manslaughter.” *Id.* at 685. The government argued that both men could be detained
12 regardless of their likelihood of removal, because they posed too great a risk of
13 danger or flight. *Id.* at 690–91.

14 The Supreme Court rejected that argument. The Court appreciated the
15 seriousness of the government’s concerns. *Id.* at 691. But the Court found that the
16 immigrant’s liberty interests were weightier. *Id.* The Court had never
17 countenanced “potentially permanent” “civil confinement,” based only on the
18 government’s belief that the person would misbehave in the future. *Id.*

19 The Court also noted that the government was free to use the many tools at
20 its disposal to mitigate risk: “[O]f course, the alien’s release may and should be
21 conditioned on any of the various forms of supervised release that are appropriate
22 in the circumstances, and the alien may no doubt be returned to custody upon a
23 violation of those conditions.” *Id.* at 700. The Ninth Circuit later elaborated, “All
24 aliens ordered released must comply with the stringent supervision requirements
25 set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration
26 officer periodically, answer certain questions, submit to medical or psychiatric
27 testing as necessary, and accept reasonable restrictions on [their] conduct and
28 activities, including severe travel limitations. More important, if [they] engage[]

1 in any criminal activity during this time, including violation of [their] supervisory
2 release conditions, [they] can be detained and incarcerated as part of the normal
3 criminal process.” *Ma*, 257 F.3d at 1115.

4 These conditions have proved sufficient to protect the public over the last
5 two decades. They will continue to do so while ICE keeps trying to deport
6 Mr. Ghafouri.

7 **II. Count 3: ICE may not remove Mr. Ghafouri to a third country without**
8 **adequate notice and an opportunity to be heard.**

9 In addition to unlawfully detaining him, ICE’s policies threaten his removal
10 to a third country without adequate notice and an opportunity to be heard. These
11 policies violate the Fifth Amendment, the Convention Against Torture, and
12 implementing regulations.

13 **A. Legal background**

14 U.S. law enshrines protections against dangerous and life-threatening
15 removal decisions. By statute, the government is prohibited from removing an
16 immigrant to any third country where they may be persecuted or tortured, a form
17 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
18 The government “may not remove [a noncitizen] to a country if the Attorney
19 General decides that the [noncitizen’s] life or freedom would be threatened in that
20 country because of the [noncitizen’s] race, religion, nationality, membership in a
21 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
22 1208.16. Withholding of removal is a mandatory protection.

23 Similarly, Congress codified protections enshrined in the CAT prohibiting
24 the government from removing a person to a country where they would be
25 tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be
26 the policy of the United States not to expel, extradite, or otherwise effect the
27 involuntary return of any person to a country in which there are substantial
28 grounds for believing the person would be in danger of being subjected to torture,

1 regardless of whether the person is physically present in the United States.”); 28
2 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
3 mandatory.

4 To comport with the requirements of due process, the government must
5 provide notice of the third country removal and an opportunity to respond. Due
6 process requires “written notice of the country being designated” and “the
7 statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2).”
8 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *see Andriasian v.*
9 *INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (laying out this requirement).

10 The government must also “ask the noncitizen whether he or she fears
11 persecution or harm upon removal to the designated country and memorialize in
12 writing the noncitizen’s response. This requirement ensures DHS will obtain the
13 necessary information from the noncitizen to comply with section 1231(b)(3) and
14 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.
15 3d at 1019. “Failing to notify individuals who are subject to deportation that they
16 have the right to apply for asylum in the United States and for withholding of
17 deportation to the country to which they will be deported violates both INS
18 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at
19 1041.

20 If the noncitizen claims fear, measures must be taken to ensure that the
21 noncitizen can seek asylum, withholding, and relief under CAT before an
22 immigration judge in reopened removal proceedings. The amount and type of
23 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
24 circumstances, he would have a reasonable opportunity to raise and pursue his
25 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
26 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
27 F.3d 405, 408 (7th Cir. 1998)).

28 “[L]ast minute” notice of the country of removal will not suffice,

1 *Andriasian*, 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App'x 724 (9th
2 Cir. 2016), and for good reason: To have a meaningful opportunity to apply for
3 fear-based protection from removal, immigrants must have time to prepare and
4 present relevant arguments and evidence. Merely telling a person where they may
5 be sent, without giving them a chance to look into country conditions, does not
6 give them a meaningful chance to determine whether and why they have a
7 credible fear. !

8 **B. The June 6, 2025 memo's removal policies violate the Fifth**
9 **Amendment, 8 U.S.C. § 1231, the Conviction Against Torture, and**
10 **Implementing Regulations.**

11 The policies in the June 6, 2025 memo do not adhere to these statutory and
12 due process requirements. The memo "contravenes Ninth Circuit law." *Nguyen v.*
13 *Scott*, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025)
14 (explaining how the July 9, 2025 ICE memo contravenes Ninth Circuit law on the
15 process due to noncitizens in detail).

16 First, under the policy, ICE need not give immigrants *any* notice or *any*
17 opportunity to be heard before removing them to a country that—in the State
18 Department's estimation—has provided "credible" "assurances" against
19 persecution and torture. Exhibit C. By depriving immigrants of any chance to
20 challenge the State Department's view, this policy violates "[t]he essence of due
21 process," "the requirement that a person in jeopardy of serious loss be given
22 notice of the case against him and opportunity to meet it." *Mathews*, 424 U.S. at
23 348 (cleaned up).

24 Second, even when the government has obtained no credible assurances
25 against persecution and torture, the government can still remove the person with
26 between 6 and 24 hours' notice, depending on the circumstances. Exhibit C.
27 Practically speaking, there is not nearly enough time for a detained person to
28 assess their risk in the third country and martial evidence to support any credible

1 fear—let alone a chance to file a motion to reopen with an IJ.

2 An immigrant may know nothing about a third country, like Eswatini or
3 South Sudan, when they are scheduled for removal there. Yet if given the
4 opportunity to investigate conditions, immigrants would find credible reasons to
5 fear persecution or torture—like patterns of keeping deportees indefinitely and
6 without charge in solitary confinement or extreme instability raising a high
7 likelihood of death—in many of the third countries that have agreed to removal
8 thus far.

9 Due process requires an adequate chance to identify and raise these threats
10 to health and life. Because “[f]ailing to notify individuals who are subject to
11 deportation that they have the right to apply . . . for withholding of deportation to
12 the country to which they will be deported violates both INS regulations and the
13 constitutional right to due process,” *Adriasian*, 180 F.3d at 1041, this Court must
14 prohibit the government from removing Mr. Ghafouri without these due process
15 safeguards.

16 **III. This Court must hold an evidentiary hearing on any disputed facts.**

17 Resolution of a prolonged-detention habeas petition may require an
18 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).
19 Mr. Ghafouri hereby requests such a hearing on any material, disputed facts.
20

21 **IV. Prayer for relief**

22 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 23 1. Order and enjoin Respondents to immediately release Petitioner from
24 custody;
- 25 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
26 § 1231(a)(6) unless and until Respondents obtain a travel document for
27 his removal;
28

- 1 3. Enjoin Respondents from re-detaining Petitioner without first following
2 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other
3 applicable statutory and regulatory procedures;
- 4 4. Enjoin Respondents from removing Petitioner to any country other than
5 Iran, unless they provide the following process, *see D.V.D. v. U.S. Dep't*
6 *of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1
7 (D. Mass. May 21, 2025):
 - 8 a. written notice to both Petitioner and Petitioner's counsel in a
9 language Petitioner can understand;
 - 10 b. a meaningful opportunity, and a minimum of ten days, to raise a
11 fear-based claim for CAT protection prior to removal;
 - 12 c. if Petitioner is found to have demonstrated "reasonable fear" of
13 removal to the country, Respondents must move to reopen
14 Petitioner's immigration proceedings;
 - 15 d. if Petitioner is not found to have demonstrated a "reasonable fear"
16 of removal to the country, a meaningful opportunity, and a
17 minimum of fifteen days, for the Petitioner to seek reopening of
18 his immigration proceedings.
- 19 5. Order all other relief that the Court deems just and proper.
20
21
22
23
24
25
26
27
28

Conclusion

For those reasons, this Court should grant this habeas petition.

DATED: 9-28-25

Respectfully submitted,



ALI GHAFOURI

Petitioner

1 **Ali Ghafouri**

2 A 

3 Otay Mesa Detention Center

4 P.O. Box 439049

5 San Diego, CA 92143-9049

6 Pro Se¹

7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 **ALI GHAFOURI,**

10 Petitioner,

11 v.

12 **KRISTI NOEM**, Secretary of the
13 Department of Homeland Security,
14 **PAMELA JO BONDI**, Attorney General,
15 **TODD M. LYONS**, Acting Director,
16 Immigration and Customs Enforcement,
17 **JESUS ROCHA**, Acting Field Office
Director, San Diego Field Office,
18 **CHRISTOPHER LAROSE**, Warden at
Otay Mesa Detention Center,

19 Respondents.

CIVIL CASE NO.:

**Declaration of Ali Ghafouri in
support of petition for writ of
habeas corpus [28 U.S.C. § 2241]**

20 I, Ali Ghafouri, declare the following is true and correct under penalty of perjury:

21 1. I came to the United States in September 1984, when I was about 12
22 years old. My family was fleeing political persecution in Iran. I got a green card.

23 2. As a young man, I got several convictions. Eventually, I ended up in
24 immigration court, and I was ordered removed on June 5, 2003.

25 3. After I was ordered removed, I was in ICE custody for about 89
26 days. State prosecutors then filed some additional charges against me, and I was
27 transferred to state custody. I went to prison. Later on—I believe it was in 2004—

28 ¹ Mr. Ghabouri is filing with the assistance of the Federal Defenders of San Diego, Inc., Counsel also assisted the petitioner in preparing and submitting his request for the appointment of counsel, which has been filed concurrently with this petition, and all other documents supporting the petition.

1 I was re-detained for over 120 days. ICE released me because they could not
2 remove me to Iran.

3 4. My dad passed away in 2009. Right before he died, he had a serious
4 talk with me about getting my life on the right track. I took it to heart. Since 2009,
5 I have had no convictions, and I have always checked in with ICE as scheduled.

6 5. On May 15, 2025, ICE re-detained me at my check-in. The ICE
7 agent who arrested me said that they had orders to pull in anyone with a felony
8 and an order of supervision. I have been in ICE custody since then.

9 6. I have only spoken with my deportation officer in passing when he's
10 in my pod. A different ICE officer took my picture about 4 months ago.

11 7. To the best of my understanding, no one has ever told me why I was
12 re-detained, except for what the ICE agent said at my arrest; no one has offered
13 me an informal interview; I have not had the chance to contest my re-detention;
14 and no one has told me what changed to make my removal more likely.

15 8. I have never refused to do something that ICE asked me to do.

16 9. I have four children, ages 31, 29, 17, and 14. My grandson is 3-and-
17 a-half. My youngest two children live with me and my fiancée. Their mom is out
18 of the picture—I'm the only parent in their lives. My fiancée is not working
19 currently. I am the sole provider for my family. All of my kids and my fiancée are
20 U.S. citizens.

21 10. My mom, dad, sister, two aunts, three uncles, and grandparents are
22 all in the United States. All of them are U.S. citizens except me.

23 11. I have no savings. My fiancée has sold two of our cars to pay the
24 bills. My laundry job in custody pays me \$5 per week. I cannot afford an attorney.

25 12. I have no legal training. I know nothing about immigration law. I
26 also do not have unrestricted access to the internet to look up the latest
27 information about ICE's and Iran's policies.
28

1 I declare under penalty of perjury that the foregoing is true and correct,
2 executed on 9-28-25, in San Diego, California.
3

4 
5 **ALI GHAFOURI**
6 Declarant
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
ORDER OF SUPERVISION

File No.: [REDACTED]

Date: 05/16/2016

Name: Ali Ghafouri

On 06/05/2003, you were ordered:
(Date of Final Order)

- ☐ Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.
☒ Removed pursuant to proceedings commenced on or after April 1, 1997.

Because the agency has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

- ☒ That you appear in person at the time and place specified, upon each and every request of the agency, for identification and for deportation or removal.
- ☒ That upon request of the agency, you appear for medical or psychiatric examination at the expense of the United States Government.
- ☒ That you provide information under oath about your nationality, circumstances, habits, associations and activities and such other information as the agency considers appropriate.
- ☒ That you do not travel outside state of California for more than 48 hours without first having notified
(Specify geographic limits, if any)
- ☒ This agency office of the dates and places, and obtaining approval from this agency office of such proposed travel.
- ☒ That you furnish written notice to this agency office of any change of residence or employment 48 hours prior to such change.
- ☒ That you report in person on to be determined to this agency office at:
(Day/Date/Time)
to be determined
(Reporting Address)
- ☒ That you assist U.S. Immigration and Customs Enforcement in obtaining any necessary travel documents.
- ☐ Other: _____
- ☐ See attached sheet containing other specified conditions (Continue on separate sheet if required)

[Signature]
(Signature of ICE Official)

Gregory J. Archambeault/FSD
(Print Name and Title of ICE Official)

Alien's Acknowledgement of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the English language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

[Signature]
(Signature of ICE Official Serving Order)

[Signature]
(Signature of Alien)

05/16/2016
Date

Exhibit C

PLAINTIFFS' EXHIBIT NO. 2

CASE NO. PX 25-951

IDENTIFICATION: JUL 10 2025

ADMITTED: 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