

1 **Inpone Omdara**

2 A# 

3 Otay Mesa Detention Center

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6 Pro Se¹

FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *s/ danielmartinez* DEPUTY

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

10 **INPONE OMDARA,**

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.:

'25CV2834 BAS MMP

Petition for Writ
of
Habeas Corpus

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

23
24 ¹ Mr. Omdara is filing this petition for a writ of habeas corpus with the assistance
25 of the Federal Defenders of San Diego, Inc., who drafted the instant petition. That
26 same counsel also assisted the petitioner in preparing and submitting his request
27 for the appointment of counsel, which has been filed concurrently with this
28 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 Kara Hartzler in Support of Appointment Motion
attaches case examples.

INTRODUCTION

Mr. Omdara was born in a refugee camp in Thailand, the son of Laotian immigrants. He came to the United States in 1982 and soon after became a lawful permanent resident. In 2004, he was ordered removed. But when Laos would not accept him after about three months of detention, Mr. Omdara was released on an order of supervision.

Mr. Omdara remained on supervision for the next 21 years. He checked in with ICE every year without incident. But when he went for his annual check-in on August 12, 2025, ICE re-detained him. Contrary to regulation, ICE did not notify Mr. Omdara of any changed circumstances that made his removal more likely. Nor did it give Mr. Omdara an informal interview or an opportunity to contest his re-detention. He has now been detained for over two months, with no information about whether ICE has sought a travel document or even begun the process of seeking his deportation. Worse yet, on July 9, 2025, ICE adopted a new policy permitting removals to third countries with no notice, six hours' notice, or 24 hours' notice depending on the circumstances, providing no meaningful opportunity to make a fear-based claim against removal.

Mr. Omdara's detention violates his statutory and regulatory rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. Courts in this district have agreed in similar circumstances as to each of Mr. Omdara's three claims. Specifically:

(1) *Regulatory and due process violations*: Mr. Omdara must be released because ICE's failure to follow its own regulations about notice and an opportunity to be heard violate due process. *See, e.g., Constantinovici v. Bondi*, ___ F. Supp. 3d ___, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3-*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-

1 2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No.
2 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-
3 02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*,
4 No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025) (all either
5 granting temporary restraining orders releasing noncitizens, or granting habeas
6 petitions outright, due to ICE regulatory violations during recent re-detentions of
7 released noncitizens previously ordered removed).

8 (2) *Zadvydas* violations: Mr. Omdara must also be released under *Zadvydas*
9 because—having proved unable to remove him for the last 14 years—the
10 government cannot show that there is a “significant likelihood of removal in the
11 reasonably foreseeable future.” *Id.* at 701. *See, e.g., Conchas-Valdez*, 2025 WL
12 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No.
13 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas
14 petitions releasing noncitizens due to *Zadvydas* violations).

15 (3) *Third-country removal statutory and due process violations*: This Court
16 should enjoin ICE from removing Mr. Omdara to a third country without
17 providing an opportunity to assert fear of persecution or torture before an
18 immigration judge. *See, e.g., Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No.
19 13; *Van Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-
20 cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*,
21 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025) (all either
22 granting temporary restraining orders or habeas petitions ordering the government
23 to not remove petitioners to third countries pending litigation or reopening of their
24 immigration cases).

25 This Court should grant this habeas petition and issue appropriate
26 injunctive relief on all three grounds.
27
28

STATEMENT OF FACTS

I. **Mr. Omdara is ordered removed, held in ICE custody, and released as ICE proves unable to deport him for the next 21 years, until he is arrested at his annual ICE check-in.**

Inpone Omdara was born in a refugee camp in Thailand and came to the United States as a refugee with his family in 1982. Exhibit A, "Omdara Declaration," at ¶ 1. When they arrived in the U.S., they all became lawful permanent residents. *Id.*

In 1997, when he was about 18 years old, Mr. Omdara was convicted of breaking and entering in Massachusetts. *Id.* at ¶ 2. He was also convicted of an offense that he believes was related to car burglary in 2003. As a result of this conviction, Mr. Omdara was placed in removal proceedings. *Id.* at ¶ 2. An immigration judge ordered him removed on April 2, 2004. *Id.* at ¶ 3.

But ICE was not able to effectuate Mr. Omdara's removal to Laos. For approximately the next three months, ICE tried and failed to obtain travel documents for him. *Id.* at ¶ 4. Finally, ICE gave up and released him on an order of supervision in 2004. *Id.*

On August 12, 2025, ICE officials arrested Mr. Omdara during his annual check in appointment. *Id.* at ¶ 6. They did not provide him any notice or give him an interview or an opportunity to contest his detention. *Id.*

Mr. Omdara helps care for his elderly^{ly} mother and his great niece. *Id.* at ¶ 7. His absence is putting a heavy strain on the family. *Id.*

II. **Laos has no repatriation agreement with the United States and a longstanding policy of refusing to accept deportees.**

The Lao People's Democratic Republic is an authoritarian state and one of the poorest nations in Asia. See Congressional Research Service, *In Focus: Laos* (Dec. 2, 2024) ("2024 CRS").² When the communist party came to power in Laos

² <https://www.congress.gov/crs-product/IF10236>.

1 in 1975, hundreds of thousands of refugees fled, including many who had fought
 2 alongside the U.S. government in the Vietnam War. *Id.*; see The Economist,
 3 *America's secret war in Laos* (Jan. 21, 2017).³ During the war, the United States
 4 had dropped over 2.5 million tons of bombs on Laos in what remains the largest
 5 bombardment of any country in history. *Id.*

6 No repatriation agreement exists between Laos and the United States. Laos
 7 has also been historically unwilling to accept deportees from the United States
 8 through informal negotiations. As a result, there are around 4,800 nationals of
 9 Laos living in the United States with final removal orders who have not been
 10 removed. Asian Law Caucus, *Status of Ice Deportations to Southeast Asian*
 11 *Countries: Laos* (July 29, 2025).⁴ Last year, zero people were removed to Laos; in
 12 the five years before that, between 0 and 11 people were removed per year. See
 13 U.S. Immigration and Customs Enforcement, *Annual Report: Fiscal Year 2024*, at
 14 100 (Dec. 19, 2024).⁵

15 In 2018, the United States issued visa sanctions on Laos “due to lack of
 16 cooperation in accepting their citizens who have been ordered removed.”⁶ The
 17 federal government explained that Laos had not “established repeatable processes
 18 for issuing travel documents to their nationals ordered removed from the United
 19 States.” *Id.*

20 In June of this year, President Trump reiterated, “Laos has historically
 21 failed to accept back its removable nationals.” See Presidential Proclamation,
 22 *Restricting the Entry of Foreign Nationals to Protect the United States from*
 23

24 ³ [https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-](https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-laos)
 25 [laos](https://www.economist.com/books-and-arts/2017/01/21/americas-secret-war-in-laos).

26 ⁴ [https://www.asianlawcaucus.org/news-resources/guides-reports/resources-](https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation)
 27 [southeast-asian-refugees-facing-deportation](https://www.asianlawcaucus.org/news-resources/guides-reports/resources-southeast-asian-refugees-facing-deportation).

28 ⁵ <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

⁶ [https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-](https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-visa-sanctions)
[visa-sanctions](https://www.dhs.gov/archive/news/2018/07/10/dhs-announces-implementation-visa-sanctions).

1 *Foreign Terrorists and Other National Security and Public Safety Threats*,
 2 § 3(c)(i) (June 4, 2025).⁷ As a result, he included Laos as one of 19 countries in
 3 his travel ban, banning all Lao immigrant, tourist, student, and exchange visitors
 4 from the United States. *Id.*; see American Immigration Council, *Trump's 2025*
 5 *Travel Ban* (Aug. 6, 2025).⁸ In response, the Lao government has issued travel
 6 documents to a few dozen nationals of Laos with final removal orders. See Ben
 7 Warren, *Hmong refugees from Michigan among those deported to Laos, despite*
 8 *calls for release*, The Detroit News (Aug. 15, 2025) (noting 32 Laotian nationals
 9 were deported on a flight in August).⁹

10 Since then, several courts have rejected the Trump administration's efforts
 11 to re-detain a Laotian immigrant without following its own regulations. See
 12 *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal.
 13 Oct. 9, 2025) (granting habeas for Laotian citizen and ordering immediate
 14 release); *Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL 2579569 (W.D.
 15 Wash. Sept. 5, 2025) (granting TRO to Laotian national in light of the
 16 government's failure to follow its regulations regarding re-detention and
 17 questions regarding the validity of his underlying criminal conviction).

18 **III. The government is carrying out deportations to third countries without**
 19 **providing sufficient notice and opportunity to be heard.**

20 When immigrants cannot be removed to their home country, ICE has begun
 21 deporting those individuals to third countries without adequate notice or a
 22 hearing. See Edward Wong et al, *Inside the Global Deal-Making Behind Trump's*
 23 *Mass Deportations*, N.Y. Times, June 25, 2025. This summer and fall, ICE has
 24

25 ⁷ [https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-](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/)
 26 [of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-](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/)
 27 [other-national-security-and-public-safety-threats/](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/)

27 ⁸ <https://www.americanimmigrationcouncil.org/report/trump-2025-travel-ban/>.

28 ⁹ [https://www.detroitnews.com/story/news/local/michigan/2025/08/15/hmong-](https://www.detroitnews.com/story/news/local/michigan/2025/08/15/hmong-refugees-among-those-deported-to-laos/85680464007/)
[refugees-among-those-deported-to-laos/85680464007/](https://www.detroitnews.com/story/news/local/michigan/2025/08/15/hmong-refugees-among-those-deported-to-laos/85680464007/).

1 carried out highly publicized third country deportations to prisons in South Sudan,
 2 Eswatini, Ghana, and Rwanda. Nokukhanya Musi & Gerald Imray, *10 more*
 3 *deportees from the US arrive in the African nation of Eswatini*, Associated Press
 4 (Oct. 6, 2025).¹⁰ At least four men deported to Eswatini have remained in a
 5 maximum-security prison there for nearly three months without charge and
 6 without access to counsel; another six are detained incommunicado in South
 7 Sudan, and another seven are being held in an undisclosed facility in Rwanda. *Id.*

8 In February, Panama and Costa Rica imprisoned hundreds of deportees in
 9 hotels, a jungle camp, and a detention center. Vanessa Buschschluter, *Costa Rican*
 10 *court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025)¹¹;
 11 Human Rights Watch, *'Nobody Cared, Nobody Listened': The US Expulsion of*
 12 *Third-Country Nationals to Panama*, Apr. 24, 2025.¹²

13 On July 9, 2025, ICE rescinded previous guidance meant to give
 14 immigrants a “‘meaningful opportunity’ to assert claims for protection under the
 15 Convention Against Torture (CAT) before initiating removal to a third country”
 16 like the ones just described. Exh. B. Instead, under new guidance, ICE may
 17 remove any immigrant to a third country “without the need for further
 18 procedures,” as long as—in the view of the State Department—the United States
 19 has received “credible” “assurances” from that country that deportees will not be
 20 persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to
 21 persecute or torture releasees, ICE may still remove immigrants there with
 22 minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’ notice. But “[i]n
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25 ¹⁰ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

26 ¹¹ Available at <https://www.bbc.com/news/articles/cwyrn42kp7no>.

27 ¹² Available at <https://www.hrw.org/report/2025/04/24/nobody-cared-nobody-listened/the-us-expulsion-of-third-country-nationals-to>.

1 exigent circumstances,” a removal may take place in as little as six hours, “as long
2 as the alien is provided reasonable means and opportunity to speak with an
3 attorney prior to the removal.” *Id.*

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

8 CLAIMS FOR RELIEF

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

10 First, it should order Mr. Omdara’s immediate release. ICE failed to follow
11 its own regulations requiring changed circumstances before re-detention, as well
12 as a chance to promptly contest a re-detention decision. And *Zadvydas v. Davis*
13 holds that immigration statutes do not authorize the government to detain
14 immigrants like Mr. Omdara, for whom there is “no significant likelihood of
15 removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001).

16 Second, it should enjoin the Respondents from removing Mr. Omdara to a
17 third country without first providing notice and a sufficient opportunity to be
18 heard before an immigration judge.

19 I. Claim One: ICE failed to comply with its own regulations before re- 20 detaining Mr. Omdara, violating his rights under applicable 21 regulations and due process.

22 Two regulations establish the process due to someone who is re-detained in
23 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
24 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
25 framework to persons released upon good reason to believe that they will not be
26 removed in the reasonably foreseeable future, as Mr. Omdara was. *See Phan v.*
27 *Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct.
28 10, 2025) (explaining this regulatory framework and granting a habeas petition for

1 ICE's failure to follow these regulations); *Rokhfirooz*, No. 25-CV-2053-RSH-
2 VET, 2025 WL 2646165 at *2 (same as to an Iranian national).

3 These regulations permit an official to "return [the person] to custody" only
4 when the person "violate[d] any of the conditions of release," 8 C.F.R.
5 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official
6 "determines that there is a significant likelihood that the alien may be removed in
7 the reasonably foreseeable future," and makes that finding "on account of
8 changed circumstances," 8 C.F.R. § 241.13(i)(2).

9 No matter the reason for re-detention, the re-detained person is entitled to
10 certain procedural protections. For one, "[u]pon revocation," the noncitizen "will
11 be notified of the reasons for revocation of his or her release or parole." *Phan*,
12 2025 WL 2898977 at *3, *4 (quoting 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3)).
13 Further, the person "will be afforded an initial informal interview promptly after
14 his or her return" to be given "an opportunity to respond to the reasons for
15 revocation stated in the notification." *Id.*

16 In the case of someone released under § 241.13(i), the regulations also
17 explicitly require the interviewer to allow the re-detained person to "submit any
18 evidence or information that he or she believes shows there is no significant
19 likelihood he or she be removed in the reasonably foreseeable future, or that he or
20 she has not violated the order of supervision." § 241.13(i)(3).

21 ICE is required to follow its own regulations. *United States ex rel. Accardi*
22 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); see *Alcaraz v. INS*, 384 F.3d 1150,
23 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to
24 abide by certain internal policies is well-established."). A court may review a re-
25 detention decision for compliance with the regulations, and "where ICE fails to
26 follow its own regulations in revoking release, the detention is unlawful and the
27 petitioner's release must be ordered." *Rokhfirooz*, 2025 WL 2646165 at *4
28 (collecting cases); accord *Phan*, 2025 WL 2898977 at *5.

1 ICE followed none of its regulatory prerequisites to re-detention here.

2 First, ICE did not identify a proper reason under the regulations to re-detain
3 Mr. Omdara. Mr. Omdara was not returned to custody because of a conditions
4 violation, and there was apparently no determination before or at his arrest that
5 there are “changed circumstances” such that there is “a significant likelihood that
6 [Mr. Omdara] may be removed in the reasonably foreseeable future.” 8 C.F.R.
7 § 241.13(i)(2).

8 Second, ICE did not notify Mr. Omdara of the reasons for his re-detention
9 upon revocation of release. See 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He was re-
10 detained on August 12, 2025. Exh. A at ¶ 5. As he has explained, “[t]hey did not
11 tell me why they were revoking my supervision.” *Id.* at ¶ 6.

12 Third, Mr. Omdara has yet to receive the informal interview required by
13 regulation. Nor has he been afforded a meaningful opportunity to respond to the
14 reasons for revocation or submit evidence rebutting his re-detention. Exh. A at
15 ¶ 6. No one from ICE has ever invited him to contest his detention. *Id.*

16 Numerous courts have released re-detained immigrants after finding that
17 ICE failed to comply with applicable regulations this summer and fall. These have
18 included courts in this district,¹³ as well as courts outside this district.¹⁴

19
20 ¹³ *Constantinovici v. Bondi*, ___ F. Supp. 3d ___, 2025 WL 2898985, No. 25-cv-
21 2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-
22 RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL
23 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v.*
24 *Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van*
Tran v. Noem, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29,
2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10,
2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D.
Cal. Oct. 9, 2025).

25 ¹⁴ *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v.*
26 *Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.
27 Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387
28 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at
*7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025
WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-
00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v.*
Becerra, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16,

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

5 **II. Claim Two: Mr. Omdara’s detention violates *Zadvydas* and 8 U.S.C.**
6 **§ 1231.**

7 **A. Legal background**

8 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
9 a problem affecting people like Mr. Omdara: Federal law requires ICE to detain
10 an immigrant during the “removal period,” which typically spans the first 90 days
11 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-
12 day removal period expires, detention becomes discretionary—ICE may detain
13 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
14 this scheme would not lead to excessive detention, as removal happens within
15 days or weeks. But some detainees cannot be removed quickly. Perhaps their
16 removal “simply require[s] more time for processing,” or they are “ordered
17 removed to countries with whom the United States does not have a repatriation
18 agreement,” or their countries “refuse to take them,” or they are “effectively
19 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,
20 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained
21 immigrants can find themselves trapped in detention for months, years, decades,
22 or even the rest of their lives. If federal law were understood to allow for
23 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional
24 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
25 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.

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28 _____
2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at
*3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

1 *Id.* at 689.

2 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to
3 detain an immigrant for 180 days after his or her removal order becomes final.
4 After those 180 days have passed, the immigrant must be released unless his or
5 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six
6 months have passed, the petitioner must only make a prima facie case for relief—
7 there is “good reason to believe that there is no significant likelihood of removal
8 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the
9 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*¹⁵
10 Mr. Omdara can make all the threshold showings needed to shift the burden to the
11 government.

12 **B. The six-month grace period has expired.**

13 The six-month grace period has long since ended. The *Zadvydas* grace
14 period is linked to the date the final order of removal is issued. It lasts for “six
15 months after a final order of removal—that is, *three months* after the statutory
16 removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th
17 Cir. 2001). Indeed, the statute defining the beginning of the removal period is
18 linked to the latest of three dates, all of which relevant here are tied to when the
19 removal order is issued. 8 U.S.C. § 1231(a)(1)(B).¹⁶
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22
23 ¹⁵ Further, even before the 180 days have passed, the immigrant must still be
24 released if he *rebutts* the presumption that his detention is reasonable. *See, e.g.,*
25 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases
on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar*,
2025 WL 2592543 at *6 (finding the presumption rebutted for a person who was
released and, years later, re-detained for less than six months).

26 ¹⁶ Those dates are, specifically, (1) “[t]he date the order of removal becomes
27 administratively final;” (2) “[i]f the removal order is judicially reviewed and if a
28 court orders a stay of the removal of the alien, the date of the court’s final order;”
or (3) “[i]f the alien is detained or confined (except under an immigration
process), the date the alien is released from detention or confinement.” *Id.*

1 Here, Mr. Omdara's order of removal was entered in April 2004. Exh. A at
2 ¶ 3.¹⁷ Accordingly, his 90-day removal period began then. 8 U.S.C.
3 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in October 2004, three
4 months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL
5 1678501, No. 25-cv-4108(EP), *2-*3.

6 Regardless, Mr. Omdara was detained for about three months after he was
7 ordered removed, and he has been detained for more than two months this year.
8 Exh. A at ¶¶ 4, 6. By the time this Court resolves this case, Mr. Omdara will have
9 been detained for a total of six months, if not more; ICE will also, of course, have
10 had 21 years since his removal order issued to remove him.¹⁸

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14 ¹⁷ EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

15 ¹⁸ The government has sometimes argued that release and rearrest resets the six-
16 month grace period completely, taking the clock back to zero. "Courts . . . broadly
17 agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6
18 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL
19 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-
20 LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases).

21 It has also sometimes argued that rearrest creates a new three-month grace
22 period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with
23 the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV
24 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). "Pursuant to the
25 statute, the removal period, and in turn the [six-month] presumptively reasonable
26 period, begins from the latest of 'the date the order of removal becomes
27 administratively final,' the date of a reviewing court's final order where the
28 removal order is judicially removed and that court orders a stay of removal, or the
alien's release from detention or confinement where he was detained for reasons
other than immigration purposes at the time of his final order of removal." *Id.*
None of these statutory starting points have anything to do with whether or when
an immigrant is detained. *See id.* Because the statutorily-defined removal period
has nothing to do with release and rearrest, releasing and rearresting the
immigrant cannot reset the removal period.

1 **C. Laos's refusal to accept Mr. Omdara, along with its longstanding**
2 **policy of not accepting deportees, provides good reason to believe**
3 **that Mr. Omdara will not likely be removed in the reasonably**
4 **foreseeable future.**

5 This Court uses a burden-shifting framework to evaluate Mr. Omdara's
6 *Zadvydas* claim. At the first stage of the framework, Mr. Omdara must "provide[]
7 good reason to believe that there is no significant likelihood of removal in the
8 reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be
9 broken down into three parts.

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

20 **"Significant likelihood of removal."** This component focuses on whether
21 Mr. Omdara will likely be removed: Continued detention is permissible only if it
22 is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533
23 U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities,
24 but also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F.
25 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,
26 even if "there remains *some* possibility of removal," a petitioner can still meet its
27 burden if there is good reason to believe that successful removal is not
28

1 significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL
2 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

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

17 Mr. Omdara satisfies this standard for two reasons.

18 *First*, as explained above, Laos generally does not accept deportees. Last
19 year, zero people were removed to Laos; in the five years before that, between 0
20 and 11 people were removed per year. *See* U.S. Immigration and Customs
21 Enforcement, *Annual Report: Fiscal Year 2024*, at 100 (Dec. 19, 2024).¹⁹
22 Although President Trump has pressured Laos to begin accepting deportees, that
23 has resulted in Laos issuing travel documents for only a few dozen nationals out
24 of thousands of Laotians. And since then, multiple courts have rejected the Trump
25 administration’s efforts to re-detain Laotian immigrants without following its own
26 regulations. *See, e.g., Khambounheuang*, No. 25-cv-02575-JO-SBC, ECF No. 12

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28 ¹⁹ <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

1 (S.D. Cal. Oct. 9, 2025); *Phetsadakone v. Scott*, No. 25-cv-1678-JNW, 2025 WL
2 2579569 (W.D. Wash. Sept. 5, 2025).

3 *Second*, Mr. Omdara's own experience bears this out. ICE has now had 21
4 years to deport him. He has cooperated with ICE's removal efforts throughout
5 that time, including by attending yearly check-ins. Exh. A at ¶ 5. Yet ICE has
6 proved unable to remove him.

7 Thus, Mr. Omdara has met his initial burden, and the burden shifts to the
8 government. Unless the government can prove a "significant likelihood of
9 removal in the reasonably foreseeable future," Mr. Omdara must be released.
10 *Zadvydas*, 533 U.S. at 701.

11 **D. *Zadvydas* unambiguously prohibits this Court from denying**
12 **Mr. Omdara's petition because of his criminal history.**

13 If released on supervision, Mr. Omdara poses no risk of danger or flight. He
14 has been on supervision for 21 years. Exh. A at ¶ 4. He has sustained no new
15 convictions in the last 12 years. *Id.* at ¶ 5. And he has checked in regularly with
16 ICE during this time. *Id.* at ¶ 5.

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

20 The two petitioners in *Zadvydas* both had significant criminal history.
21 Mr. Zadvydas himself had "a long criminal record, involving drug crimes,
22 attempted robbery, attempted burglary, and theft," as well as "a history of flight,
23 from both criminal and deportation proceedings." *Id.* at 684. The other petitioner,
24 Kim Ho Ma, was "involved in a gang-related shooting [and] convicted of
25 manslaughter." *Id.* at 685. The government argued that both men could be
26 detained regardless of their likelihood of removal, because they posed too great a
27 risk of danger or flight. *Id.* at 690–91.

28

1 The Supreme Court rejected that argument. The Court appreciated the
2 seriousness of the government's concerns. *Id.* at 691. But the Court found that the
3 immigrant's liberty interests were weightier. *Id.* The Court had never
4 countenanced "potentially permanent" "civil confinement," based only on the
5 government's belief that the person would misbehave in the future. *Id.*

6 The Court also noted that the government was free to use the many tools at
7 its disposal to mitigate risk: "[O]f course, the alien's release may and should be
8 conditioned on any of the various forms of supervised release that are appropriate
9 in the circumstances, and the alien may no doubt be returned to custody upon a
10 violation of those conditions." *Id.* at 700. The Ninth Circuit later elaborated, "All
11 aliens ordered released must comply with the stringent supervision requirements
12 set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration
13 officer periodically, answer certain questions, submit to medical or psychiatric
14 testing as necessary, and accept reasonable restrictions on [their] conduct and
15 activities, including severe travel limitations. More important, if [they] engage[]
16 in any criminal activity during this time, including violation of [their] supervisory
17 release conditions, [they] can be detained and incarcerated as part of the normal
18 criminal process." *Ma*, 257 F.3d at 1115.

19 These conditions have proved sufficient to protect the public over the last
20 21 years. They will continue to do so while ICE keeps trying to deport
21 Mr. Omdara.

22 **III. Claim Three: ICE may not remove Mr. Omdara to a third country**
23 **without adequate notice and an opportunity to be heard.**

24 In addition to unlawfully detaining him, ICE's policies threaten his removal
25 to a third country without adequate notice and an opportunity to be heard. These
26 policies violate the Fifth Amendment, the Convention Against Torture, and
27 implementing regulations.

1 **A. Legal background**

2 U.S. law enshrines protections against dangerous and life-threatening
3 removal decisions. By statute, the government is prohibited from removing an
4 immigrant to any third country where they may be persecuted or tortured, a form
5 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
6 The government “may not remove [a noncitizen] to a country if the Attorney
7 General decides that the [noncitizen’s] life or freedom would be threatened in that
8 country because of the [noncitizen’s] race, religion, nationality, membership in a
9 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
10 1208.16. Withholding of removal is a mandatory protection.

11 Similarly, Congress codified protections enshrined in the CAT prohibiting
12 the government from removing a person to a country where they would be
13 tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be
14 the policy of the United States not to expel, extradite, or otherwise effect the
15 involuntary return of any person to a country in which there are substantial
16 grounds for believing the person would be in danger of being subjected to torture,
17 regardless of whether the person is physically present in the United States.”); 28
18 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
19 mandatory.

20 To comport with the requirements of due process, the government must
21 provide notice of the third country removal and an opportunity to respond. Due
22 process requires “written notice of the country being designated” and “the
23 statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2).”
24 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v.*
25 *U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1
26 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
27 1999).

28 The government must also “ask the noncitizen whether he or she fears

1 persecution or harm upon removal to the designated country and memorialize in
2 writing the noncitizen's response. This requirement ensures DHS will obtain the
3 necessary information from the noncitizen to comply with section 1231(b)(3) and
4 avoids [a dispute about what the officer and noncitizen said]." *Aden*, 409 F. Supp.
5 3d at 1019. "Failing to notify individuals who are subject to deportation that they
6 have the right to apply for asylum in the United States and for withholding of
7 deportation to the country to which they will be deported violates both INS
8 regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at
9 1041.

10 If the noncitizen claims fear, measures must be taken to ensure that the
11 noncitizen can seek asylum, withholding, and relief under CAT before an
12 immigration judge in reopened removal proceedings. The amount and type of
13 notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and
14 circumstances, he would have a reasonable opportunity to raise and pursue his
15 claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009
16 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
17 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at *1 (requiring the
18 government to move to reopen the noncitizen's immigration proceedings if the
19 individual demonstrates "reasonable fear" and to provide "a meaningful
20 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening
21 of their immigration proceedings" if the noncitizen is found to not have
22 demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice
23 and time for a respondent to file a motion to reopen and seek relief).

24 "[L]ast minute" notice of the country of removal will not suffice,
25 *Andriasian*, 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App'x 724 (9th
26 Cir. 2016), and for good reason: To have a meaningful opportunity to apply for
27 fear-based protection from removal, immigrants must have time to prepare and
28 present relevant arguments and evidence. Merely telling a person where they may

1 be sent, without giving them a chance to look into country conditions, does not
2 give them a meaningful chance to determine whether and why they have a
3 credible fear.

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

7 The policies in the June 6, 2025 memo do not adhere to these requirements.
8 The memo "contravenes Ninth Circuit law." *Nguyen v. Scott*, No. 25-CV-1398,
9 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9,
10 2025 ICE memo contravenes Ninth Circuit law on the process due to noncitizens
11 in detail); *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-
12 MSB (S.D. Cal. Sept. 29, 2025) (granting temporary restraining order preventing
13 a noncitizen's deportation to a third country pending litigation in light of due
14 process problems); *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM-BLM, ECF No.
15 6 (S.D. Cal. Sept. 18, 2025) (same).

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. Exh. B. 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 v. Eldridge*,
23 424 U.S. 319, 348 (1976) (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. Exh. B.
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. This Court must prohibit the government from removing Mr.
11 Omdara without these due process safeguards.

12 **IV. This Court must hold an evidentiary hearing on any disputed facts.**

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

16 **V. Prayer for relief**

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

- 18 1. Order and enjoin Respondents to immediately release Petitioner from
19 custody;
20 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
21 § 1231(a)(6) unless and until Respondents obtain a travel document for
22 his removal;
23 3. Enjoin Respondents from re-detaining Petitioner without first following
24 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other
25 applicable statutory and regulatory procedures;
26 4. Enjoin Respondents from removing Petitioner to any country other than
27 Laos, unless they provide the following process, *see D.V.D. v. U.S.*
28

1 *Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at
2 *1 (D. Mass. May 21, 2025):

- 3 a. written notice to both Petitioner and Petitioner's counsel in a
4 language Petitioner can understand;
5 b. a meaningful opportunity, and a minimum of ten days, to raise a
6 fear-based claim for CAT protection prior to removal;
7 c. if Petitioner is found to have demonstrated "reasonable fear" of
8 removal to the country, Respondents must move to reopen
9 Petitioner's immigration proceedings;
10 d. if Petitioner is not found to have demonstrated a "reasonable fear"
11 of removal to the country, a meaningful opportunity, and a
12 minimum of fifteen days, for the Petitioner to seek reopening of
13 his immigration proceedings.
14 5. Order all other relief that the Court deems just and proper.
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Conclusion

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

DATED: 10-19-25

Respectfully submitted,



INPONE OMDARA

Petitioner

PROOF OF SERVICE

I, the undersigned, caused to be served this Petition for Writ of Habeas Corpus
by e-mail to:

U.S. Attorney's Office, Southern District of California
Civil Division
880 Front Street
Suite 6253
San Diego, CA 92101

Date:

10-22-25


Kara Hartzler

EXHIBIT A

Inpone Omdara

A# 

Otay Mesa Detention Center

P.O. Box 439049

San Diego, CA 92143-9049

Pro Se¹

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

INPONE OMDARA,

Petitioner,

v.

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

Respondents.

Civil Case No.:

**Declaration of
Inpone Omdara
in Support of Petition
for a Writ of Habeas Corpus**

¹ Mr. Omdara is filing this petition for a writ of habeas corpus and all associated documents with the assistance of the Federal Defenders of San Diego, Inc. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Kara Hartzler in Support of Appointment Motion attaches case examples.

1 I, Inpone Omdara, declare:

- 2
- 3 1. I was born in a refugee camp in Thailand; my parents were originally from
- 4 Laos. I entered the United States with my family as a refugee in 1982. We
- 5 all became lawful permanent residents soon after we arrived.
- 6 2. In approximately 1997, when I was about 18, I was convicted of breaking
- 7 and entering in Massachusetts. Around 2003, I was also convicted of an
- 8 offense in California that I believe was related to car burglary. As a result
- 9 of this conviction, I was put into removal proceedings.
- 10 3. On April 2, 2004, an immigration judge ordered me removed on the basis
- 11 of this conviction.
- 12 4. After I was ordered removed, ICE tried to deport me to Laos. However,
- 13 Laos did not issue me travel documents. ICE continued to detain me for
- 14 about three months before releasing me on an order of supervision.
- 15 5. My last criminal conviction was in 2013. Since then, I have not violated the
- 16 conditions of my supervised release and have no new criminal convictions.
- 17 6. On August 12, 2025, I went to the ICE office for my annual check in. At
- 18 that appointment, ICE took me into custody. They did not tell me why they
- 19 were revoking my supervision, nor did they give me an informal interview
- 20 or a chance to contest my detention.
- 21 7. I live with and help to care for my elderly mother and my great niece, and
- 22 my incarceration is putting a heavy strain on my family. Neither myself nor
- 23 my family have sufficient funds to hire a lawyer for me.
- 24 8. I have no legal education or training. I also do not have free access to the
- 25 internet in custody.
- 26
- 27
- 28

1 I declare under penalty of perjury that the foregoing is true and correct,
2
3 executed on 10-19-25, in San Diego, California.

4 *J. Omdara*
5 **INPONE OMDARA**
6 Declarant
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EXHIBIT B

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