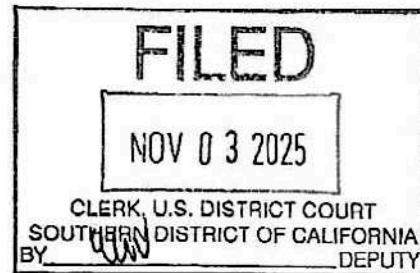


ORIGINAL

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Pro Se¹



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

ABDALKARIM AL KHATIB,

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.: '25CV2978 LL VET

**Petition for Writ
of
Habeas Corpus**

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

¹ Mr. Al Khatib is filing this petition for a writ of habeas corpus with the assistance of the Federal Defenders of San Diego, Inc., who drafted the instant petition. That same 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. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases.

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1 **I. Introduction**

2 Abdalkarim Al Khatib is a Palestinian who came to the United States on a
3 green card from the West Bank. In 2004, he was ordered removed. It is very hard
4 to remove Palestinians from the West Bank. After Israel occupied the West Bank
5 in 1967, Jordan continued to maintain administrative control until 1988. But
6 rarely will either country accept Palestinians who were born in the West Bank
7 between those two years. As a result, after repeated requests to Jordan, Israel, and
8 Palestine, the United States has remained unable to deport Mr. Al Khatib.

9 Despite Mr. Al Khatib's two decades of compliance with all immigration
10 supervision terms, the same king maintaining control over Jordan since Mr. Al
11 Khatib was ordered removed, and ongoing war and deteriorating conditions in the
12 West Bank this year, ICE arrested Mr. Al Khatib at his regular check-in this June.
13 In the four and a half months that have followed, it has provided Mr. Al Khatib no
14 information indicating that he will be removed to either Palestine or Jordan in the
15 reasonably foreseeable future.

16 Mr. Al Khatib's continued detention violates his statutory and regulatory
17 rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment.

18 This habeas petition raises the following three claims:

19 (1) *Regulatory and due process violations*: Mr. Al Khatib must be released
20 because ICE's failure to follow its own regulations—about timely notifying
21 noncitizens of the reason for re-detention, about promptly providing a meaningful
22 opportunity to be heard following re-detention, and about the limited reasons ICE
23 can invoke to re-detain someone who is complying with their conditions of
24 release—repeatedly violated due process. *See, e.g., Abuelhawa v. Noem*, No. ,
25 2025 WL 2937692 (S.D. Tex. Oct. 16, 2025) (granting preliminary injunction and
26 ordering Palestinian national released due to regulatory violations when he was
27 re-detained at annual check-in); *see also Bui v. Warden*, No. 25-cv-2111-JES,
28 ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Thai v. Noem*, No. 25-cv-2436-RBM, ECF

No. 10, 12 (S.D. Cal. Oct. 17, 2025); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 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, 17 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025) (all either granting temporary restraining orders releasing noncitizens, or granting habeas petitions outright, due to ICE regulatory violations during recent re-detentions of released noncitizens previously ordered removed under 8 C.F.R. §§ 241.13(i), 241.4(l)).

(2) *Zadvydas* violations: Mr. Al Khatib must also be released under *Zadvydas* because—having proved unable to remove him for the last two decades, and in the midst of a diplomatic relationship with Palestine that is getting worse, not better—the government cannot show that there is a “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701.

As a district court in Texas held earlier this month, “Suggestion of return in the reasonably foreseeable future of a Palestinian national to any of Jordan, Israel, or a Palestinian territory is objectively specious, especially where the record includes prior rejection of attempt at removal in times of less strife, paired with subsequent and recent rejection of requests, even if such rejections can be attributed to mere inaction of the putative receiving country.” *Abuelhawa*, 2025 WL 2937692, *8; *see also Ashqar v. LaRose*, No. 18-cv-1141, 2019 WL 1793000, *1–*7 (N.D. Ohio Mar. 26, 2019) (detailing ICE’s failed 18-month efforts to remove another Palestinian national from the West Bank that resulted in that noncitizen’s release from custody, mooted the petition); *see also Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025);

1 *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025)
 2 (granting habeas petitions releasing noncitizens due to *Zadvydas* violations).

3 (3) *Third-country removal statutory and due process violations*: This Court
 4 should enjoin ICE from removing Mr. Al Khatib to a third country not identified
 5 by an immigration judge and not appropriate under the third-country removal
 6 statute, 8 U.S.C. § 1231(b)(2)—and without providing an opportunity for him to
 7 assert fear of persecution or torture before an immigration judge. *See, e.g.*,
 8 *Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v. Noem*, 2025
 9 WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF No. 6
 10 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No. 25-cv-
 11 2502-JES, *4 (S.D. Cal. Oct. 9, 2025) (all either granting temporary restraining
 12 orders or habeas petitions ordering the government to not remove petitioners to
 13 third countries pending litigation or reopening of their immigration cases).

14 II. Statement of facts

15 A. **Mr. Al Khatib comes to the U.S. as a Palestinian from the West**
 16 **Bank, is ordered removed, and is released on an order of**
 17 **supervision for the next two decades, during which he develops**
 18 **complicated medical conditions.**

Abdalkarim Al Khatib is a Palestinian who was born in Ramallah in 1975.

19 Exhibit A (Declaration of Abdalkarim Al Khatib) ¶ 1.

20 Ramallah is a city of about 40,000 people in the West Bank. Between 1948
 21 and 1967, the West Bank was part of Jordan. *See* Exhibit B at 1 (Fact Sheet on
 22 Palestinian Governance from the Palestinian Academic Society for the Study on
 23 International Affairs (PASSIA)).² In 1967, Israel occupied the West Bank,
 24 including Ramallah. *Id.*; *see also* United Nations, *The Question of Palestine-*
 25 *Timeline of Events*.³ Over the next twenty years, Israel assumed some legislative,

26
 27 ² This fact sheet is included as an exhibit. More information about PASSIA can be
 found at <https://passia.org/>.

28 ³ Available at <https://www.un.org/unispal/timeline/>.

1 executive, military, and judicial powers over the West Bank, while Jordan
 2 simultaneously maintained partial administrative and legal power. Exhibit B at 1.
 3 In 1988, the King of Jordan severed all legal and administrative ties to the West
 4 Bank. *Id.*; see also Exhibit C at 2, 9–10, 17 (Human Rights Watch, *Stateless*
 5 *Again: Palestinian-Origin Jordanians Deprived of their Nationality* (2010)). As a
 6 result, “residents of the West Bank at the time lost their Jordanian nationality and
 7 citizenship rights, becoming instead stateless Palestinians under Israeli
 8 occupation.” Exhibit C at 10.

9 In the early 1990s, the Oslo Accords established the Palestinian Authority,
 10 and limited self-rule through it, in the West Bank. *Id.* Ramallah was formally
 11 divided into an area of control called “Area A,” which was and is designated as
 12 Palestinian-controlled “for civil affairs and internal security issues.” Kali
 13 Robinson, Council on Foreign Relations, *Who Governs the Palestinians?: Who’s*
 14 *in charge in the Gaza Strip and the West Bank?* (May 8, 2024).⁴ “Israel still
 15 retains authority over movement into and out of these areas.” Exhibit B at 1.

16 Meanwhile, Mr. Al Khatib got married in 1996. Exhibit A ¶ 3. His wife
 17 was a U.S. citizen, and the two moved to the United States. *Id.* Mr. Al Khatib got
 18 his green card in 1996. *Id.*

19 In 2002, Mr. Al Khatib was convicted of a domestic violence offense in
 20 Florida. *Id.* ¶ 4. He and his wife divorced. *Id.* On July 29, 2004, Mr. Al Khatib
 21 was ordered removed. *Id.*⁵ He was kept in custody about two and a half months
 22 after he was ordered removed. *Id.* ¶ 5. But ICE could not remove him to either
 23
 24
 25

26 ⁴ Available at <https://www.cfr.org/background/who-governs-palestinians#chapter-title-0-11>

27 ⁵ See also EOIR Automated Case Information, available at
 28 <https://acis.eoir.justice.gov/en/> (reporting Mr. Al Khatib’s nationality under
 Jordan and that he was ordered removed on July 29, 2004).

1 Palestine or Jordan, despite requesting travel documents from both. *Id.* Mr. Al
 2 Khatib was released on an order of supervision. *Id.*

3 Since 2004, Mr. Al Khatib has checked in with ICE as scheduled. *Id.* ¶ 7.
 4 He has always complied with his conditions of supervision. *Id.* He's complied
 5 with ICE's efforts to remove him, including requesting travel documents. *Id.* ¶ 6.
 6 In 2016, ICE put Mr. Al Khatib on an ankle monitor for two years. He never
 7 violated his conditions, and ICE eventually removed it. *Id.* ¶ 7.

8 On October 7, 2023, Hamas attacked Israel and war broke out. As of last
 9 month, there is a tenuous cease-fire in place. *See* Liam Stack & Bilal Shbair,
 10 *Israeli Strikes in Gaza Kill at Least 100, Local Health Officials Say*, N.Y. Times
 11 (Oct. 29, 2025).⁶ Simultaneously, as a peace deal is negotiated, the Israeli
 12 government passed legislation seeking to annex the West Bank. *See* Renata Brito
 13 & Matthew Lee, *Vance calls Israel's parliament vote on West Bank annexation*
 14 *an 'insult'*, Associated Press (Oct. 23, 2025).⁷ As the United Nations human rights
 15 office warned earlier this summer, "Palestinians in the occupied West Bank . . .
 16 are increasingly being subjected to forced displacement and land seizures." UN
 17 News, *UN rights office sounds the alarm over forced displacement in the West*
 18 *Bank* (June 26, 2025).⁸

19 At the same time, Mr. Al Khatib got sicker. He had a surgery on his liver,
 20 and he developed diabetes. Exhibit A ¶¶ 14–16.

21 In early summer 2025, Mr. Al Khatib went to his regularly scheduled ICE
 22 check-in. Exhibit A ¶ 9. ICE put him on an ankle monitor and told him to come
 23
 24
 25

26 ⁶ Available at <https://www.nytimes.com/2025/10/29/world/middleeast/gaza-israel-strikes-ceasefire.html>.

27 ⁷ Available at <https://apnews.com/article/jd-vance-israel-hamas-marco-rubio-ceasefire-press-gaza-26c272b2182c3d0acdcfc5e1e3339a34>.

28 ⁸ Available at <https://news.un.org/en/story/2025/06/1164971>.

1 back a few weeks later. *Id.* When he came back for his scheduled check-in on
2 June 16, 2025, ICE arrested him. *Id.* He has been in ICE custody ever since.

3 When Mr. Al Khatib was arrested this June, no one told him why his
4 release was being revoked. *Id.* ¶ 12. To this day, he has never been given the
5 opportunity in an interview to hear what has changed to make his removal more
6 likely, or to explain why he should not be re-detained. *Id.* ¶ 13.

7 Instead, several months into his detention, an ICE officer gave him “a
8 questionnaire asking for personal information about [his] life and [his] family.”
9 *Id.* ¶ 10. He filled it out and returned it, but “didn’t hear any more about it.” *Id.*

10 Meanwhile, Mr. Al Khatib was not given medication for his diabetes or his
11 other medications when he first arrived in custody. Exhibit A ¶ 16. His blood
12 sugar levels (his “A1C”) spiked to dangerous levels at several points this fall.
13 Exhibit E (medical record excerpts). He often had no Arabic interpreter. Exhibit
14 A ¶ 17. In the meantime, ICE facility’s medical staff began intensive treatment of
15 tuberculosis for Mr. Al Khatib. Over six weeks of treatment, Mr. Al Khatib
16 became seriously ill. Once tuberculosis treatment stopped—doctors eventually
17 confirmed he did not have tuberculosis—his symptoms improved. Exhibit E.

18 In early October, as he was getting better, Mr. Al Khatib asked his
19 deportation officer for an update on his case. “The deportation officer said that
20 they were trying to get [him] travel documents and to be patient.” *Id.* ¶ 11.

21 On October 28, an ICE officer gave Mr. Al Khatib a “Notice of Revocation
22 of Release.” *Id.* ¶ 12; *see* Exhibit F. The notice states, “This letter is to inform you
23 that your order of supervision has been revoked . . . based on a review of your
24 official alien file and a determination that there are changed circumstances in your
25 case.” Exhibit F. “ICE has determined that you can be expeditiously removed
26 from the United States pursuant to the outstanding order of removal against you.”
27 *Id.* “Your case is under current review for removal to the West Back [*sic*] and/or
28 an alternate country.” *Id.*

1 The notice informed Mr. Al Khatib that he “will promptly be afforded an
 2 informal interview at which you will be given an opportunity to respond to the
 3 reasons for the revocation.” *Id.* The officer who gave Mr. Al Khatib the
 4 document, Mr. Al Khatib explains, “knows I can’t read English well and so can’t
 5 understand the papers he gave me. When he asked me to sign the papers, I told
 6 him I don’t understand them. He asked me if I write English, and I said no.”
 7 Exhibit A ¶ 12.

8 The officer who gave Mr. Al Khatib the document told him “an officer
 9 would see [him] on Monday [November 3] for an interview.” Exhibit A ¶ 12. He
 10 did not tell Mr. Al Khatib if the officer would bring an Arabic interpreter. *Id.*

11 **B. The government has historically struggled to remove Palestinians**
 12 **from the West Bank, and as of this year, is carrying out**
 13 **deportations to third countries without providing sufficient**
 14 **notice and opportunity to be heard.**

15 Many Palestinians born in the West Bank the period of simultaneous Israeli
 16 and Jordanian control are extremely hard to remove. For example, when ordering
 17 a Palestinian man in this situation released earlier this month, a district court
 18 noted that despite being ordered to, the government did not provide “any
 19 evidence” that Israel, Jordan, or Palestine “have accepted a single Palestinian
 20 detainee at any recent time.” *Abuelhawa*, 2025 WL 2937692 at *9.

21 That is consistent with Mr. Al Khatib’s personal experience, as well as
 22 decades of experience of other Palestinians from the West Bank. *See Ashqar v.*
 23 *LaRose*, 2019 WL 1793000 at *1–*7 (describing the government’s failed efforts
 24 to remove a Palestinian from the West Bank to Palestine, Jordan, or Israel
 25 between 2017 and 2018 before ICE determined that his removal was not
 26 significantly likely in the foreseeable future and released him); *Elashi v. Sabol*,
 27 714 F. Supp. 2d 502, 505–08 (M.D. Pa. 2010) (granting *Zadvydas* petition as to
 28 Palestinian from Gaza because Israel, Jordan, Egypt, and the PLO all declined to
 issue travel documents to him between 2009 and 2010); *Abdel-Muhti v. Ashcroft*,

1 314 F. Supp. 2d 418, 421–27 (M.D. Pa. 2004) (granting *Zadvydas* petition as to
2 Palestinian born in the same city as Mr. Al Khatib, Ramallah, because Jordan,
3 Israel, and the PLO all declined to issue travel documents between 2002 and
4 2004).

5 However, this year, ICE began removing immigrants it could not
6 previously remove to third countries. Many of these countries are extremely
7 dangerous. A number have subjected, and continue to subject, immigrants to
8 imprisonment without sentence or charge. *See generally* Edward Wong et al,
9 *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times,
10 June 25, 2025.⁹ Several have “promptly deported noncitizens to the very countries
11 to which the United States had withheld removal due to the risk of persecution,
12 torture, or death.” *Santamaria Orellana v. Baker*, No. 25-1788-TDC, 2025 WL
13 2841886, *12 (D. Md. Oct.7, 2025).

14 In the last few months, ICE has carried out highly publicized third country
15 deportations to prisons in South Sudan, Eswatini, Ghana, and Rwanda.
16 Nokukhanya Musi & Gerald Imray, *10 more deportees from the US arrive in the*
17 *African nation of Eswatini*, Associated Press (Oct. 6, 2025).¹⁰ At least four men
18 deported to Eswatini in July have remained in a maximum-security prison there
19 for nearly three months without charge and without access to counsel; another six
20 men remain detained incommunicado in South Sudan, and another seven are
21 being held in an undisclosed facility in Rwanda. *Id.* Ghana has deported several
22 people to their countries of origin, for which those people held withholding-of-
23 removal orders. *Santamaria Orellana*, 2025 WL 2841886 at *12.

24
25
26 ⁹ Available at <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html>.

27 ¹⁰ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

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

10 On July 9, 2025, ICE rescinded previous guidance meant to give
11 immigrants a “‘meaningful opportunity’ to assert claims for protection under the
12 Convention Against Torture (CAT) before initiating removal to a third country”
13 like the ones just described. *See* Exhibit D (July 9, 2025, ICE third-country
14 removal guidance). Instead, under new guidance, ICE may remove any immigrant
15 to a third country “without the need for further procedures,” as long as—in the
16 view of the State Department—the United States has received “credible”
17 “assurances” from that country that deportees will not be persecuted or tortured.
18 *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees,
19 ICE may still remove immigrants there with minimal notice. *Id.* Ordinarily, ICE
20 must provide 24 hours’ notice. But “[i]n exigent circumstances,” a removal may
21 take place in as little as six hours, “as long as the alien is provided reasonably
22 means and opportunity to speak with an attorney prior to the removal.” *Id.*

23 Upon serving notice, ICE “will not affirmatively ask whether the alien is
24 afraid of being removed to the country of removal.” *Id.* (emphasis original). If the
25 noncitizen “does not affirmatively state a fear of persecution or torture if removed
26

27
28 ¹¹ Available at <https://www.hrw.org/report/2025/04/24/nobody-cared-nobody-listened/the-us-expulsion-of-third-country-nationals-to>.

1 to the country of removal listed on the Notice of Removal within 24 hours, [ICE]
2 may proceed with removal to the country identified on the notice.” *Id.* at 2. If the
3 noncitizen “does affirmatively state a fear if removed to the country of removal”
4 then ICE will refer the case to U.S. Citizenship and Immigration Services
5 (“USCIS”) for a screening for eligibility for withholding of removal and
6 protection under the Convention Against Torture (“CAT”). *Id.* at 2. “USCIS will
7 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen
8 does not meet the standard, the individual will be removed. *Id.* If USCIS
9 determines that the noncitizen has met the standard, then the policy directs ICE to
10 either move to reopen removal proceedings “for the sole purpose of determining
11 eligibility for [withholding of removal protection] and CAT” or designate another
12 country for removal. *Id.*

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

17 **III. This Court has jurisdiction.**

18 This Court has jurisdiction to consider Mr. Al Khatib’s claims of unlawful
19 detention and unlawful third-country removal under 28 U.S.C. § 2241.

20 The government’s recent argument otherwise, that 8 U.S.C. § 1252(g) strips
21 this Court of jurisdiction, lacks merit. Its argument “would eliminate judicial
22 review of immigration [detainees’] claims of unlawful detention . . . inconsistent
23 with *Jennings v. Rodriguez* and the history of judicial review of the detention of
24 noncitizens under 28 U.S.C. § 2241.” *Phan v. Noem*, No. 25-cv-2422-RBM, 2025
25 WL 2898977, *3 (S.D. Cal. Oct. 10, 2025) (collecting cases agreeing on this
26 jurisdictional point); *accord Sun v. Noem*, No. 25-cv-2433-CAB, 2025 WL
27 2800037, *2 (S.D. Cal. Sept. 30, 2025).
28

1 **IV. Legal analysis.**

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

3 First, it should order Mr. Al Khatib's immediate release. ICE failed to
4 follow its own regulations requiring notification at re-detention, a chance to
5 promptly and meaningfully contest a re-detention decision, and mandating
6 noncitizens in Mr. Al Khatib's position only be re-detained upon a proper
7 determination that "there is a significant likelihood that the [noncitizen] may be
8 removed in the reasonably foreseeable future." 8 C.F.R. §§ 241.13(i)(2); *see also*
9 241.4(l). Further, *Zadvydas v. Davis* holds that immigration statutes do not
10 authorize the government to detain immigrants like Mr. Al Khatib, whose
11 removal period ended two decades ago, who has been in immigration custody for
12 a cumulative total of seven months, and for whom there is "no significant
13 likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701
14 (2001).

15 Second, this Court should enjoin the Respondents from removing Mr. Al
16 Khatib to a third country without first providing notice and a sufficient
17 opportunity to be heard before an immigration judge. If the government is seeking
18 to deport Mr. Alkhatib to a country other than Jordan or Palestine, there are
19 extremely detailed statutory criteria it must follow. Its current policy of giving
20 noncitizens between zero and 24 hours' notice of which country it intends to
21 deport them to is insufficient as a regulatory, statutory, and due process matter.

22 **V. Claim 1: ICE failed to comply with its own regulations while re-**
23 **detaining Mr. Al Khatib, violating his rights under applicable**
24 **regulations and due process.**

25 Two regulations establish the process due to someone who is re-detained in
26 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
27 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
28 framework to persons released upon good reason to believe that they will not be
removed in the reasonably foreseeable future, as Mr. Al Khatib was. *See Phan v.*

1 *Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct.
2 10, 2025) (explaining this regulatory framework and granting a habeas petition for
3 ICE’s failure to follow these regulations for a refugee of Vietnam who entered the
4 United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL
5 2646165 at *2 (same as to an Iranian national).

6 These regulations establish important substantive limitations. Officials are
7 allowed to “return [the person] to custody” only when the person “violate[d] any
8 of the conditions of release,” 8 C.F.R. §§ 241.13(i)(1), 241.4(l)(1), or, in the
9 alternative, if an appropriate official “determines that there is a significant
10 likelihood that the alien may be removed in the reasonably foreseeable future,”
11 and makes that finding “on account of changed circumstances,” § 241.13(i)(2).

12 No matter the reason for re-detention, the re-detained person is also entitled
13 to certain procedural protections. First, “[u]pon revocation,” the noncitizen “will
14 be notified of the reasons for revocation of his or her release or parole.” *Phan*,
15 2025 WL 2898977 at *3, *4 (quoting §§ 241.4(l)(1), 241.13(i)(3)). Second, the
16 person “will be afforded an initial informal interview promptly after his or her
17 return” to be given “an opportunity to respond to the reasons for revocation stated
18 in the notification.” *Id.*

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

24 ICE is required to follow its own regulations. *United States ex rel. Accardi*
25 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
26 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
27 abide by certain internal policies is well-established.”). A court may review a re-
28 detention decision for compliance with the regulations, and “where ICE fails to

1 follow its own regulations in revoking release, the detention is unlawful and the
2 petitioner's release must be ordered." *Rokhfirooz*, 2025 WL 2646165 at *4
3 (collecting cases); *accord Phan*, 2025 WL 2898977 at *5.

4 ICE followed none of its substantive or procedural regulatory prerequisites
5 to re-detention or continued detention here.

6 First, ICE did not notify Mr. Al Khatib of the reasons for his re-detention
7 "upon revocation" of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3). He was
8 re-detained on June 16, 2025, at his annual check-in. Exhibit A at ¶ 9. ICE
9 provided its first notification of why it was re-detaining him, in a language he has
10 a "hard time communicating" in, on October 28, 2025, three and a half months
11 after it revoked his release. *Id.* ¶ 12; *see* Exhibit F (Notice of Revocation). This
12 was not "upon revocation." 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3).

13 Second, ICE does not have a proper reason to re-detain Mr. Al Khatib:
14 there is no reason to think that there is "a significant likelihood that [he] may be
15 removed in the reasonably foreseeable future," § 241.13(i)(2), and he has not
16 "violate[d] any of the conditions of release," § 241.13(i)(1). There is no indication
17 that ICE ever even made a determination that there is "a significant likelihood that
18 [he] may be removed in the reasonably foreseeable future" before it re-detained
19 him. *Id.*; Exhibit F. As a district court explained under this regulation regarding a
20 re-detained West Bank Palestinian earlier this month, "[s]uggestion of return in
21 the reasonably foreseeable future of a Palestinian national to any of Jordan, Israel,
22 or a Palestinian territory is objectively specious, especially where the record
23 includes prior rejection of attempt at removal in times of less strife." *Abuelhawa*,
24 2025 WL 2937692 at *8.

25 Third, Mr. Al Khatib is scheduled to receive the informal interview
26 required by regulation on November 3, the date of filing. §§ 241.13(i)(2);
27 241.4(l)(1). Such an interview would by no definition be a "prompt[]" one, as
28 required by regulation. *Id.*

1 Fourth, Mr. Al Khatib has not been afforded a meaningful opportunity to
2 respond to the reasons for revocation or submit evidence rebutting his re-
3 detention. §§ 241.13(i)(2); 241.4(l)(1); *see* Exhibit A ¶¶ 9–13. He was notified of
4 his revocation in a language he “can’t read . . . well,” that he does not
5 “understand.” Exhibit A ¶ 12. To this day, he explains, “[n]o one has ever told me
6 what changed to make my removal more likely.” *Id.* ¶ 13.

7 Numerous courts have released re-detained immigrants after finding that
8 ICE failed to comply with some or all of the applicable regulations this summer
9 and fall. *See, e.g., Villanueva v. Tate*, __ F. Supp. 3d __, 2025 WL 2774610 (S.D.
10 Tex. Sept. 26, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y.
11 2025); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9
12 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL
13 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-
14 00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v.*
15 *Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July
16 16, 2025); *Liu v. Carter*, 2025 WL 1696526, *2 (D. Kan. June 17, 2025); *M.Q. v.*
17 *United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025); *Bui v.*
18 *Warden*, No. 25-cv-2111-JES, ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Thai v.*
19 *Noem*, No. 25-cv-2436-RBM, ECF No. 10, 12 (S.D. Cal. Oct. 17, 2025);
20 *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-
21 RBM (S.D. Cal. Oct. 10, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-
22 2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Truong v. Noem*, No. 25-cv-
23 02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*,
24 No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*,
25 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v.*
26 *Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025);
27 *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept.
28 15, 2025).

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

VI. Claim 2: Mr. Al Khatib’s detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background: The statute, as interpreted by *Zadvydas*, renders detention mandatory for 90 days after removal is ordered, presumptively acceptable for six months after removal is ordered, and allowable after six months after removal is ordered only if there is a significant likelihood of removal in the reasonably foreseeable future.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Al Khatib: Federal law requires ICE to detain an immigrant during the “removal period,” which typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal “simply require[s] more time for processing,” or they are “ordered removed to countries with whom the United States does not have a repatriation agreement,” or their countries “refuse to take them,” or they are “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives. If federal law were understood to allow for “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

Zadvydas held that § 1231(a)(6) presumptively permits the government to detain an immigrant for six months after his or her removal order becomes final. After those six months have passed, the immigrant must be released unless his or her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six months have passed, the petitioner must only make a prima facie case for relief—there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the Government [to] respond with evidence sufficient to rebut that showing.” *Id.*¹² Mr. Al Khatib can make all the threshold showings needed to shift the burden to the government.

B. Mr. Al Khatib’s six-month grace period expired in January 2005, and regardless, he has now been in custody for a cumulative total of seven months.

The six-month grace period has long since ended. The *Zadvydas* grace period is linked to the date the final order of removal is issued. It lasts for “six months after a final order of removal—that is, three months after the statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Indeed, the statute defining the beginning of the removal period is linked to the latest of three dates, all of which relevant here are tied to when the removal order is issued. 8 U.S.C. § 1231(a)(1)(B).¹³

¹² Further, even before the six months have passed, the immigrant must still be released if he *rebutts* the presumption that his detention is reasonable. *See, e.g., 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).

¹³ Those dates are, specifically, (1) “[t]he date the order of removal becomes administratively final;” (2) “[i]f the removal order is judicially reviewed and if a 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 Mr. Al Khatib's order of removal was entered July 29, 2004. Exhibit A
2 ¶ 4.¹⁴ His *Zadvydas* grace period expired three months after the removal period
3 ended, on January 29, 2005. *See, e.g., Tadros v. Noem*, 2025 WL 1678501, No.
4 25-cv-4108(EP), *2-*3.

5 Regardless, Mr. Al Khatib has been detained for a total of seven months
6 and counting. He was detained for approximately two and a half months in 2004
7 after he was ordered removed. Exhibit A ¶ 5. He was arrested this year on June
8 16, 2025, and thus has been detained for another four and a half months. *Id.* ¶ 9.
9 *See, e.g., Abuelhawa*, 2025 WL 2937692 at *4 (noting that "[m]ost courts to
10 consider the issue have concluded that the *Zadvydas* [six-month] period is
11 cumulative, motivated by a concern that the federal government could otherwise
12 detain aliens indefinitely by continuously releasing and re-detaining them," and
13 agreeing that "a uniform rule that counts and sums prior time in detention is
14 appropriate"); *Nguyen v. Scott*, __ F. Supp. 3d __, 2025 WL 2419288, *13 (W.D.
15 Wash. 2025) (rejecting the argument that when "detention was not consecutive,
16 the clock . . . restart[s]).

17 Under either framework, the *Zadvydas* grace period has expired.

18
19 **C. Mr. Al Khatib's experience and the experience of other**
20 **Palestinians from the West Bank provides good reason to believe**
21 **that he will not likely be removed in the reasonably foreseeable**
22 **future.**

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

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

1 **“Good reason to believe.”** The “good reason to believe” standard is a
2 relatively forgiving one. “A petitioner need not establish that there exists no
3 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
4 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
5 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
6 foreseeable, significant likelihood of removal or show that his detention is
7 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
8 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
9 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
10 Petitioners need only give a “good reason”—not prove anything to a certainty.

11 **“Significant likelihood of removal.”** This component focuses on whether
12 Mr. Al Khatib will likely be removed: Continued detention is permissible only if
13 it is “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533
14 U.S. at 701. This inquiry targets “not only the *existence* of untapped possibilities,
15 but also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.
16 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added).

17 In other words, even if “there remains *some* possibility of removal,” a
18 petitioner can still meet its burden if there is good reason to believe that
19 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
20 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

21 **“In the reasonably foreseeable future.”** This component of the test
22 focuses on when Mr. Al Khatib will likely be removed: Continued detention is
23 permissible only if removal is likely to happen “in the reasonably foreseeable
24 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
25 removal efforts.

26 If the Court has “no idea of when it might reasonably expect [Petitioner] to
27 be repatriated, this Court certainly cannot conclude that his removal is likely to
28 occur—or even that it might occur—in the reasonably foreseeable future.” *Palma*

1 v. *Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July
2 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss.
3 Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y.
4 2019)). Thus, even if this Court concludes that Mr. Al Khatib “would *eventually*
5 receive” a travel document, he can still meet his burden by giving good reason to
6 anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2
7 (E.D. Mich. Nov. 14, 2016).

8 Mr. Al Khatib satisfies this standard for three reasons.

9 First, his own experience bears this out. ICE has now had twenty-one years
10 to deport him. He has cooperated with ICE’s removal efforts throughout that time.
11 Exhibit A ¶ 6. ICE tried to remove him to Jordan and Palestine in 2004 and failed.
12 *Id.* ¶ 4. It kept a closer eye on Mr. Al Khatib between 2016 and 2018 by placing
13 him on an ankle monitor; it would be extremely odd, during that period, if it had
14 not sought travel documents again from Jordan and Palestine during those years.
15 *Id.* ¶ 7. It has held Mr. Al Khatib to get travel documents for another four and a
16 half months this year. *Id.* ¶ 9. Yet ICE has proved unable to remove him.

17 Second, international human rights reports and the historic experience of
18 other Palestinians from the West Bank corroborate how hard it is to get travel
19 documents from Israel, Jordan, and Palestine. As has been extensively
20 documented, Palestinians like Mr. Al Khatib lost Jordanian citizenship and the
21 right to live in Jordan in 1988. *See* Exhibits B, C (reports on Jordanian withdrawal
22 from the West Bank). As Human Rights Watch explains, “residents of the West
23 Bank at the time lost their Jordanian nationality and citizenship rights, becoming
24 instead stateless Palestinians under Israeli occupation.” Exhibit C at 10. At least
25 three other similarly situated Palestinians have had *Zadvydas* relief granted and
26 documented on Westlaw. Those cases indicate how impossible it was for the
27 government to secure travel documents from Israel, Jordan, and the PLO. *see*
28 *Ashqar v. LaRose*, 2019 WL 1793000 at *1–*7 (describing the government’s

1 failed efforts to remove a Palestinian from the West Bank to Palestine, Jordan, or
2 Israel between 2017 and 2018); *Elashi*, 714 F. Supp. 2d at 505–08 (describing
3 Israel, Jordan, Egypt, and the PLO all declined to issue travel documents to a
4 Palestinian from Gaza between 2009 and 2010); *Abdel-Muhti*, 314 F. Supp. 2d at
5 421–27 (detailing that Palestinian born in Ramallah could not get travel
6 documents to Jordan, Israel, or through the PLO between 2002 and 2004).

7 Third, current country conditions in the West Bank, Israel, and Jordan make
8 Mr. Al Khatib’s removal even harder than they have ever been before. This year,
9 Jordan’s King clarified he is staunchly opposed to accepting Palestinians he does
10 not consider citizens, stating, “Palestine belongs to the Palestinians, and Jordan
11 belongs to the Jordanians.” Curtis Ryan, *For Jordan, Trump’s Latest*
12 *Pronouncements Threaten an Existential Disaster*, Arab Center Washington DC
13 (Feb. 7, 2025).¹⁵ Israel is in the midst of passing legislation to annex the West
14 Bank to Israel, while also engaging in significant efforts to move Palestinians
15 from parts of the West Bank. See Sam Sokol, *2 West Bank annexation bills get*
16 *initial nod, with MKs rebelling against PM as Vance Visits*, Times of Israel
17 (October 22, 2025);¹⁶ UN News, *Israel responsible for four genocidal acts in*
18 *Gaza, inquiry chair tells General Assembly* (October 28, 2025) (noting the UN
19 Commission of Inquiry’s conclusion that “since October 2023,” Israeli policies
20 “demonstrate clear intent to forcibly transfer Palestinians, expand Israeli Jewish
21 civilian presence and annex the majority of the West Bank”)¹⁷; UN News, *UN*
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23
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25

26 ¹⁵ Available at <https://arabcenterdc.org/resource/for-jordan-trumps-latest-pronouncements-threaten-an-existential-disaster/>.

27 ¹⁶ Available at <https://www.timesofisrael.com/2-west-bank-annexation-bills-get-initial-nod-with-mks-rebelling-against-pm-as-vance-visits/>.

28 ¹⁷ Available at <https://news.un.org/en/story/2025/10/1166201>.

1 *rights office sounds the alarm over forced displacement in the West Bank* (June
2 26, 2025)¹⁸.

3 Mr. Al Khatib has met his initial burden under *Zadvydas*. The burden shifts
4 to the government. Unless the government can prove a “significant likelihood of
5 removal in the reasonably foreseeable future,” Mr. Al Khatib must be released.
6 *Zadvydas*, 533 U.S. at 701.

7 **VII. Claim 3: ICE may not remove Mr. Al Khatib to a third country**
8 **without adequate notice and an opportunity to be heard.**

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

13 **A. Legal background: The Convention Against Torture, statutory**
14 **withholding of removal, and due process prohibit deportation to**
15 **third countries without meaningful notice and an opportunity to**
16 **be heard.**

17 U.S. law enshrines protections against dangerous and life-threatening
18 removal decisions. By statute, the government is prohibited from removing an
19 immigrant to any third country where they may be persecuted or tortured, a form
20 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
21 The government “may not remove [a noncitizen] to a country if the Attorney
22 General decides that the [noncitizen’s] life or freedom would be threatened in that
23 country because of the [noncitizen’s] race, religion, nationality, membership in a
24 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
25 1208.16. Withholding of removal is a mandatory protection.

26 Similarly, Congress codified protections enshrined in the CAT prohibiting
27 the government from removing a person to a country where they would be

28 ¹⁸ Available at <https://news.un.org/en/story/2025/06/1164971>.

1 tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be
2 the policy of the United States not to expel, extradite, or otherwise effect the
3 involuntary return of any person to a country in which there are substantial
4 grounds for believing the person would be in danger of being subjected to torture,
5 regardless of whether the person is physically present in the United States.”); 28
6 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
7 mandatory.

8 Finally, the third country removal statute involves a “four-stage inquiry set
9 forth in § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash.
10 2019) (summarizing cases on this point); *see also Hadera v. Gonzales*, 494 F.3d
11 1154, 1156–59 (9th Cir. 2007) (explaining the stages). The first step is a
12 noncitizen designates “one country to which the noncitizen wants to be removed.”
13 *Aden*, 409 F. Supp. 3d at 1006. If the noncitizen does not designate a country, or
14 that country does not accept them, then “the IJ may at step two designate a
15 country of which the noncitizen is a subject, national, or citizen.” *Id.* at 1007. If
16 “no country satisfies” that requirement, the step three allows designation and
17 removal to a number of other countries. 8 U.S.C. § 1231(b)(2)(E). The
18 government can proceed to the fourth stage—removal to “another country”—only
19 if it determines it is “impracticable, inadvisable, or impossible to remove the alien
20 to each country described” in the third stage. 8 U.S.C. § 1231(b)(2)(E)(vii).

21 When pursuing a third-country removal subject to all the above constraints,
22 the government must provide notice of the third country removal and an
23 opportunity to respond. Due process requires “written notice of the country being
24 designated” and “the statutory basis for the designation, i.e., the applicable
25 subsection of § 1231(b)(2).” *Aden*, 409 F. Supp. 3d at 1019; *see Andriasian v.*
26 *INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (laying out this requirement).

27 The government must also “ask the noncitizen whether he or she fears
28 persecution or harm upon removal to the designated country and memorialize in

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

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

17 "[L]ast minute" notice of the country of removal will not suffice,
18 *Andriasian*, 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App'x 724 (9th
19 Cir. 2016), and for good reason: To have a meaningful opportunity to apply for
20 fear-based protection from removal, immigrants must have time to prepare and
21 present relevant arguments and evidence. Merely telling a person where they may
22 be sent, without giving them a chance to look into country conditions, does not
23 give them a meaningful chance to determine whether and why they have a
24 credible fear.!

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

28 The policies in the June 6, 2025 memo do not adhere to these requirements.

1 The memo “contravenes Ninth Circuit law.” *Nguyen v. Scott*, __ F. Supp. 3d __,
2 No. 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025)
3 (explaining how the July 9, 2025 ICE memo contravenes Ninth Circuit law on the
4 process due to noncitizens in detail); *see also Van Tran v. Noem*, 2025 WL
5 2770623, No 25-cv-2334-JES-MSB (S.D. Cal. Sept. 29, 2025) (granting
6 temporary restraining order preventing a noncitizen’s deportation to a third
7 country pending litigation in light of due process problems); *Nguyen Tran v.*
8 *Noem*, No. 25-cv-2391-BTM-BLM, ECF No. 6 (S.D. Cal. Sept. 18, 2025) (same).

9 First, under the policy, ICE need not give immigrants *any* notice or *any*
10 opportunity to be heard before removing them to a country that—in the State
11 Department’s estimation—has provided “credible” “assurances” against
12 persecution and torture. Exhibit D. By depriving immigrants of any chance to
13 challenge the State Department’s view, this policy violates “[t]he essence of due
14 process,” “the requirement that a person in jeopardy of serious loss be given
15 notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*,
16 424 U.S. 319, 348 (1976) (cleaned up).

17 Second, even when the government has obtained no credible assurances
18 against persecution and torture, the government can still remove the person with
19 between 6 and 24 hours’ notice, depending on the circumstances. *See* Exhibit D.
20 Practically speaking, there is not nearly enough time for a detained person to
21 assess their risk in the third country and marshal evidence to support any credible
22 fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may
23 know nothing about a third country, like Eswatini or South Sudan, when they are
24 scheduled for removal there.

25 Yet if given the opportunity to investigate conditions, immigrants would
26 find credible reasons to fear persecution or torture—like patterns of keeping
27 deportees indefinitely and without charge in solitary confinement, or extreme
28 instability raising a high likelihood of death—in many of the third countries that

1 have agreed to removal thus far.

2 Immigrants may also have ample reason to challenge DHS's determination
3 under § 1231(b)(2)(E)(vii) that each other country with which the immigrant has
4 connections is "impracticable, inadvisable, or impossible to remove the alien to."
5 DHS must consider whether to remove him there before proceeding to the final
6 step of the third-country removal statute. *See Hadera*, 494 F.3d at 1156–59
7 (explaining this process).

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

15 **VIII. This Court must hold an evidentiary hearing on any disputed facts.**

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

19 **IX. Prayer for relief**

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

- 21 1. Order and enjoin Respondents to immediately release Petitioner from
22 custody;
23 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.

24 § 1231(a)(6) unless and until Respondents obtain a travel document for
25 his removal;
26
27
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 unless they provide the
5 following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV
6 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
 - 7 a. written notice to both Petitioner and Petitioner's counsel in a
8 language Petitioner can understand;
 - 9 b. a meaningful opportunity, and a minimum of ten days, to raise a
10 fear-based claim for CAT protection prior to removal;
 - 11 c. if Petitioner is found to have demonstrated "reasonable fear" of
12 removal to the country, Respondents must move to reopen
13 Petitioner's immigration proceedings;
 - 14 d. if Petitioner is not found to have demonstrated a "reasonable fear"
15 of removal to the country, a meaningful opportunity, and a
16 minimum of fifteen days, for the Petitioner to seek reopening of
17 his immigration proceedings.
- 18 5. Order all other relief that the Court deems just and proper.

Conclusion

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

DATED: 11-2-2025

Respectfully submitted,

A handwritten signature, appearing to be "AB", is written over a horizontal line.

Petitioner