

1 **Jessie Agatstein**  
2 Cal. Bar No. 319817  
3 **Federal Defenders of San Diego, Inc.**  
4 225 Broadway, Suite 900  
5 San Diego, California 92101-5030  
6 Telephone: (619) 234-8467  
7 Facsimile: (619) 687-2666  
8 jessie\_agatstein@fd.org

9 Attorneys for Mr. Al Khatib

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

12 **ABDALKARIM AL KHATIB,**  
13 **Petitioner,**

14 v.

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

24 **Respondents.**

Case No.: 25-cv-2978-LL-VET

**Traverse in**  
**Support of**  
**Petition for Writ of**  
**Habeas Corpus and**  
**Reply in Support of Temporary**  
**Restraining Order**

1  
2 **I. Introduction**

3 The government's return and opposition includes the following evidence:

- 4 • A notice of revocation of release provided to Mr. Al Khatib four and  
5 a half months after ICE revoked his release, alleging the changed  
6 circumstance warranting revocation was that his case was "under  
7 current review for removal to the West Bank [*sic*] and/or an alternate  
8 country," ECF No. 12, Exhibit 1; and
- 9 • A declaration from a San Diego deportation officer declaring that:
  - 10 ○ ICE has previously tried and been "unable to repatriate [Mr. Al  
11 Khatib] to the West Bank";
  - 12 ○ ICE first submitted a travel document request to Palestine and  
13 travel permission request to Israel three months after it had re-  
14 detained Mr. Al Khatib;
  - 15 ○ ICE has not yet received a response from Palestine or Israel in  
16 the two months since; and
  - 17 ○ ICE plans to remove five Palestinians to the West Bank later  
18 this month, without further information as to whether they  
19 were born during the time Jordan maintained administrative  
20 control over the West Bank like Mr. Al Khatib, and without  
21 further information as to how long it took for both Palestine  
22 and Israel to process their travel document requests, ECF No.  
23 12, Declaration of Marcus Verz, ¶¶ 7–12.

24 This evidence does not rebut Mr. Al Khatib's claims that he was re-  
25 detained in violation of his regulatory and due process rights, and that there is not  
26 a significant likelihood of his removal to the West Bank in the foreseeable future.  
27 This Court should grant Mr. Al Khatib's petition on all three claims, or, in the  
28 alternative, grant a temporary restraining order or preliminary injunction.

1 **II. Mr. Al Khatib’s claims succeed on the merits.**

2 **A. Claim One: ICE did not adhere to any of the regulations**  
3 **governing re-detention, warranting release.**

4 The government does not claim to have complied with 8 C.F.R. §§ 241.4  
5 and 241.13. For Mr. Al Khatib, those regulations permit his re-detention only if  
6 ICE: (1) “determines that there is a significant likelihood that the alien may be  
7 removed in the reasonably foreseeable future,” § 241.13(i)(2); (2) makes that  
8 finding “on account of changed circumstances,” *id.*; (3) “upon revocation,”  
9 “notifie[s]” the noncitizen “of the reasons for revocation of his or her release,”  
10 § 241.13(i)(2)(iii), 241.13(l)(1); (4) provides “an initial informal interview  
11 promptly,” *id.* §§ 241.4(l)(1), 241.13(i)(3); and (5) “affords the [person] an  
12 opportunity to respond to the reasons for revocation,” *id.*

13 The government’s evidence indicates it notified Mr. Al Khatib of his  
14 revocation of release on October 28, 2025, four and a half months after it was  
15 revoked on June 18, 2025. ECF No. 12, Exhibit 1. A four-and-a-half-month-late  
16 notice is not one given “upon revocation.” §§ 241.13(i)(2)(iii), 241.4(l)(1).

17 Further, while Mr. Al Khatib was informed there would be an informal  
18 interview scheduled for November 3, 2025, there is no evidence that this  
19 interview actually happened.

20 Even it had, it would not have been “prompt[.]” §§ 241.4(l)(1),  
21 241.13(i)(3). The “common understanding of the word [promptly] . . . means  
22 ‘[q]uickly; without delay’ or ‘[a]s soon as practicable.’” *Soryadvongsa v. Noem*,  
23 No. 25-cv-2663-AGS, 2025 WL 3125821, \*3 (S.D. Cal. Nov. 8, 2025) (quoting  
24 Black’s Law Dictionary (12th ed. 2024)). “The chance to advocate for release  
25 must ordinarily come within days of a criminal arrest. Surely, it must happen at  
26 least that quickly in the more constitutionally protected civil-arrest arena, too.” *Id.*  
27 at \*2.  
28

1 Next, ICE’s reasons for revocation are insufficient: it did not request travel  
2 documents from Palestine or Israel until three months after it revoked Mr. Al  
3 Khatib’s supervision. ECF No. 12, Declaration of Marcus Vera, ¶¶ 8–10. There  
4 were no “changed circumstances” supporting a determination that “there is a  
5 significant likelihood that the alien may be removed in the reasonably foreseeable  
6 future.” § 241.13(i)(2). Two months after it sent travel requests to both Israel and  
7 Palestine—both of which need to respond before Mr. Al Khatib could be  
8 deported—neither country has even responded. ECF No. 12, Declaration of David  
9 Marcus Vera, ¶¶ 10–11. That’s consistent with what happened the last time ICE  
10 requested travel documents for Mr. Al Khatib. *Id.* ¶ 7.

11 In the last two months, multiple judges from this district have ordered  
12 release for failure to follow these regulations on records less egregious than this  
13 one. *See, e.g., Soryadvongsa*, 2025 WL 3125821; *Ghafouri v. Noem*, No. 25-cv-  
14 2675-RBM, ECF No. 11 (S.D. Cal. Nov. 4, 2025); *Phan v. Noem*, 2025 WL  
15 2898977, No. 25-cv-2422-RBM-MSB, \*3–\*5 (S.D. Cal. Oct. 10, 2025);  
16 *Constantinovici v. Bondi*, \_\_ F. Supp. 3d \_\_, 2025 WL 2898985, No. 25-cv-2405-  
17 RBM (S.D. Cal. Oct. 10, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No.  
18 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-  
19 SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *Rokhfirooz v. Larose*, No. 25-cv-  
20 2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Sun v. Noem*, 2025 WL  
21 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*,  
22 2025 WL 2770623, No. 25-cv-2334-JES, \*3 (S.D. Cal. Sept. 29, 2025). This  
23 Court should do the same.

24 The government’s two remaining arguments on Mr. Al Khatib’s regulatory  
25 claims—that Mr. Al Khatib must show prejudice, and that the regulations do not  
26 implement due process and protected liberty interests—also fail.

27 First, Mr. Al Khatib need not show prejudice from these regulatory claims.  
28 “[T]he ‘norm’ when ICE fails to conduct an ‘informal interview promptly’ is that

1 ‘courts across the country have ordered the release of individuals stemming from  
2 ICE’s illegal detention.’ *Soryadvongsa*, 2025 WL 3125821 at \*3 (quoting  
3 To be more specific, “[t]here are two types of regulations: (1) those that  
4 protect fundamental due process rights, and (2) and those that do not.” *Martinez v.*  
5 *Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). “A violation of the  
6 first type of regulation . . . implicates due process concerns even without a  
7 prejudice inquiry.” *Id.* (cleaned up). Here, “[t]here can be little argument that  
8 ICE’s requirement that noncitizens be afforded an informal interview—arguably  
9 the most bare-bones form of an opportunity to be heard—derives from the  
10 fundamental constitutional guarantee of due process.” *Ceesay v. Kurzdorfer*, 781  
11 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. May 2, 2025). No showing of prejudice is  
12 required.

13 Regardless, a violation of a regulation is prejudicial where, as here, “the  
14 merits” of an immigrant’s case for relief “were never considered by the agency at  
15 all.” *Arizmendi-Medina v. Garland*, 69 F.4th 1043, 1052 (9th Cir. 2023). Faced  
16 with that total deprivation, a petitioner need not point to the specific “evidence  
17 [he] would have presented to support [his] assertions” or make “any allegations as  
18 to what the petitioner or his witnesses might have said.” *Id.* (cleaned up).

19 And Mr. Al Khatib could “present plausible scenarios in which the outcome  
20 of the proceedings would have been different if a more elaborate process were  
21 provided.” *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007)  
22 (cleaned up). He would have had a very strong argument against re-detention had  
23 ICE given him notice and an opportunity to respond. Importantly, ICE is fully  
24 capable of trying to get a travel document while Mr. Al Khatib remained at  
25 liberty. Detaining him is therefore unnecessary. Mr. Al Khatib deserved a chance  
26 to make that case upon his re-detention. Because ICE did not make any of the  
27 proper findings, let alone give Mr. Al Khatib timely notice and a chance to contest  
28 them, he must be released.

1 Second, of course § 241.13(i) and § 241.4(I)(1) implement the basic due  
2 process protections of notice and an opportunity to be heard before being detained  
3 indefinitely. Their violation is an enforceable violation of a protected interest in  
4 being free from indefinite detention. “When someone’s most basic right of  
5 freedom is taken away, that person is entitled to at least some minimal process;  
6 otherwise, we all are at risk to be detained—and perhaps deported—because  
7 someone in the government thinks we are not supposed to be here.” *Ceesay*, 781  
8 F. Supp. 3d at 165.

9 In arguing otherwise, the government “confuses [Mr. Al Khatib’s] right to  
10 an order of supervision, which ICE indeed has discretion to grant or deny, with  
11 his right not to be detained without adequate—in fact, without *any*—process. The  
12 right to be free from detention can never be dismissed as discretionary.” *Id.* (citing  
13 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)).

14 “When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it  
15 explained that the regulation was intended to provide aliens procedural due  
16 process, stating that § 241.4 ‘has the procedural mechanisms that . . . courts have  
17 sustained against due process challenges.’” *Jimenez v. Cronen*, 317 F. Supp. 3d  
18 626, 641 (D. Mass. 2018) (quoting *Detention of Aliens Ordered Removed*, 65 FR  
19 80281-01). And “[s]ection 241.13(i) includes provisions modeled on § 241.4(I)  
20 to govern determinations to take an alien back into custody,” *Continued Detention*  
21 *of Aliens Subject to Final Orders of Removal*, 66 FR 56967-01, meaning that it  
22 addresses the same due process concerns as 241.4(I). “The procedures in § 241.4”  
23 and § 241.13 therefore “are not meant merely to facilitate internal agency  
24 housekeeping, but rather afford important and imperative procedural safeguards to  
25 detainees.” *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R.  
26 §§ 241.4, 241.13 are “intended to provide due process to individuals in [Mr. Al  
27 Khatib’s] position,” *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025  
28 WL 2444087, \*6 (D. Md. Aug. 25, 2025), they are enforceable.

1 Because the government utterly failed to comply with each requirement of  
2 § 241.4 and § 241.13 when revoking Mr. Al Khatib’s release, it should, “[l]ike  
3 many other district courts within this circuit,” “find[] that these failures constitute  
4 a violation of Petitioner’s due process rights and justif[y] his release.” *Bui v.*  
5 *Noem*, No. 25-cv-2111, 2025 WL 2988356, \*5 (S.D. Cal. Oct. 23, 2025).

6 **B. Claim Two: The government has not proved that there is a**  
7 **significant likelihood of removal in the reasonably foreseeable**  
8 **future under *Zadvydas*.**

9 Next, government provides no evidence that Mr. Al Khatib will likely be  
10 removed to the West Bank in the reasonably foreseeable future.

11 As the government does not dispute, the six-month grace period has passed.  
12 Mr. Al Khatib was ordered removed in 2004, and he has been detained for more  
13 than eight months cumulatively.<sup>1</sup> The government also does not deny that Mr. Al  
14 Khatib has provided “good reason” to doubt his reasonably foreseeable removal.  
15 *See Moallin v. Cangemi*, 427 F. Supp. 2d 908, 928 (D. Minn. 2006).

16 The burden has therefore shifted to the government to prove that there is a  
17 “significant likelihood of removal in the reasonably foreseeable future.”  
18 *Zadvydas*, 533 U.S. at 701. That standard has a success element (“significant  
19 likelihood of removal”) and a timing element (“in the reasonably foreseeable  
20 future”). The government meets neither.

21 **1. The government provides no evidence to support a**  
22 **“significant likelihood of removal” to Iran.**

23 As an initial matter, the government has not shown that Mr. Al Khatib’s  
24 removal to the West Bank is “significant[ly] like[ly].” *Zadvydas*, 533 U.S. at 701.

25 Deportation Officer Vera notes that ICE plans to remove five Palestinians  
26 to the West Bank later this month. *Id.* ¶ 12. He does not mention how many

27 <sup>1</sup> This total time is calculated based on the Declaration of Marcus Vera, including  
28 the time Mr. Al Khatib was detained in ICE custody post removal period from  
August 30, 2004 to December 21, 2004 (3 months, 21 days), and June 18, 2025 to  
present (4 months, 26 days). ECF No. 12, Declaration ¶¶ 6–8.

1 Palestinians from the West Bank are currently in the United States but have been  
2 unable to be deported; five people out of hundreds or thousands is not a  
3 significant likelihood of removal. *Id.* Nor does he mention whether any of the five  
4 Palestinians he identifies were born in the tricky twenty-year period in which  
5 Jordan maintained administrative control over the West Bank, *id.*, as Mr. Al  
6 Khatib was.

7       Regardless, courts have “demanded an individualized analysis” of why *this*  
8 person—Mr. Al Khatib—will likely be removed. *Nguyen v. Scott*, \_\_ F. Supp. 3d  
9 \_\_, 2025 WL 2419288, \*17 (W.D. Wash. 2025) (citing *Nguyen v. Hyde*, 2025 WL  
10 1725791, \*4 (D. Mass. June 20, 2025)). Because “[t]he government has not  
11 provided any evidence of [Palestine’s and Israel’s] eligibility criteria or why it  
12 believes Petitioner now meets it,” and because the only individualized evidence  
13 indicates that both countries have already declined to provide travel documents to  
14 Mr. Al Khatib, ECF No. 12, Vera Declaration ¶ 7, the government’s evidence is  
15 insufficient. *Id.* at \*18.

16       Importantly, good faith efforts to secure a travel document do not  
17 themselves satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a “Fifth  
18 Circuit h[olding] [that] [the petitioner’s] continued detention [was] lawful as long  
19 as good faith efforts to effectuate deportation continue and [the petitioner] failed  
20 to show that deportation will prove impossible.” 533 U.S. at 702 (cleaned up).  
21 The Supreme Court reversed, finding that the Fifth Circuit’s good-faith-efforts  
22 standard “demand[ed] more than our reading of the statute can bear.” *Id.*

23       Thus, “under *Zadvydas*, the reasonableness of Petitioner's detention does  
24 not turn on the degree of the government's good faith efforts. Indeed, the  
25 *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of  
26 Petitioner's detention turns on whether and to what extent the government's efforts  
27 are likely to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL  
28 78984, at \*5 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is required

1 to demonstrate the likelihood of not only the *existence* of untapped possibilities,  
2 but also of a probability of success in such possibilities.” *Elashi v. Sabol*, 714 F.  
3 Supp. 2d 502, 506 (M.D. Pa. 2010).

4 Here, then, “[w]hile the respondent asserts that [Mr. Al Khatib’s] travel  
5 document requests with [the Palestinian and Israeli] Consulates” remain pending,  
6 “this is insufficient. It is merely an assertion of good-faith efforts to secure  
7 removal; it does not make removal likely in the reasonably foreseeable future.”  
8 *Gilali v. Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at \*5  
9 (E.D. Wis. Oct. 15, 2019); *accord Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186,  
10 1189 (W.D. Wash. 2006) (holding evidence that the petitioner’s case was “still  
11 under review and pending a decision” did not meet respondents’ burden); *Islam v.*  
12 *Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at \*3 (D. Ariz. Aug. 30,  
13 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept.  
14 20, 2011) (“Repeated statements from the Bangladesh Consulate that the travel  
15 document request is pending does not provide any insight as to when, or if, that  
16 request will be fulfilled.”); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D.  
17 Ala. 2011) (granting petition despite pending travel document request, where  
18 “[t]he government offers nothing to suggest when an answer might be  
19 forthcoming or why there is reason to believe that he will not be denied travel  
20 documents”); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at \*1  
21 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document  
22 request).

23 **2. The government provides no evidence to support that any**  
24 **removal will occur “in the reasonably foreseeable future.”**

25 Additionally, even if ICE will eventually remove Mr. Al Khatib, the  
26 government provides zero evidence that removal will happen “in the reasonably  
27 foreseeable future.” *Zadvydas*, 533 U.S. at 701. Officer Vera provides no  
28 timetable for how long travel document requests like his typically take.

1 That is fatal. “[D]etention may not be justified on the basis that removal to  
2 a particular country is likely *at some point* in the future; *Zadvydas* permits  
3 continued detention only insofar as removal is likely in the *reasonably*  
4 *foreseeable* future.” *Hassoun*, 2019 WL 78984, at \*6. “The government’s active  
5 efforts to obtain travel documents from the Embassy are not enough to  
6 demonstrate a likelihood of removal in the reasonably foreseeable future where  
7 the record before the Court contains no information to suggest a timeline on  
8 which such documents will actually be issued.” *Rual v. Barr*, No. 6:20-CV-06215  
9 EAW, 2020 WL 3972319, at \*4 (W.D.N.Y. July 14, 2020). “[I]f DHS has no idea  
10 of when it might reasonably expect [Mr. Al Khatib] to be repatriated, this Court  
11 certainly cannot conclude that his removal is likely to occur—or even that it *might*  
12 occur—in the reasonably foreseeable future.” *Singh v. Whitaker*, 362 F. Supp. 3d  
13 93, 102 (W.D.N.Y. 2019).

14 Courts have routinely granted habeas petitions where, as here, the  
15 government does not establish *Zadvydas*’s timing element. *See, e.g., Balza v.*  
16 *Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at \*5 (W.D. La. Sept. 17, 2020),  
17 *report and recommendation adopted*, No. 6:20-CV-00866, 2020 WL 6064881  
18 (W.D. La. Oct. 14, 2020) (“[A] theoretical possibility of eventually being  
19 removed does not satisfy the government’s burden[.]”); *Eugene v. Holder*, No.  
20 408CV346-RH WCS, 2009 WL 931155, at \*4 (N.D. Fla. Apr. 2, 2009) (“While  
21 Respondents contend Petitioner *could* be removed to Haiti, it has not been shown  
22 that it is significantly likely that Petitioner *will* be removed in the *reasonably*  
23 *foreseeable* future.”); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 426 (M.D.  
24 Pa. 2004) (granting petition because even if “Petitioner’s removal will ultimately  
25 be effected . . . the Government has not rebutted the presumption that removal is  
26 not likely to occur in the reasonably foreseeable future”); *Seretse-Khama v.*  
27 *Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C. 2002) (granting petition where the  
28

1 government had not provided any “evidence . . . that travel documents will be  
2 issued in a matter of days or weeks or even months”).

3 In sum, there could be “some possibility that [Israel and Palestine] will  
4 accept Petitioner at some point. But that is not the same as a significant likelihood  
5 that he will be accepted in the reasonably foreseeable future.” *Nguyen*, 2025 WL  
6 2419288, at \*16. Mr. Al Khatib therefore succeeds under *Zadvydas*, too.

7 **C. Claim Three: The government does not deny that ICE’s third-**  
8 **country removal policy violates due process, and this claim is**  
9 **justiciable.**

10 This Court should also prohibit ICE from removing Mr. Al Khatib to a third  
11 country without adequate notice. The government does not try to defend ICE’s  
12 third-country removal policy on the merits. Instead, the government says that a  
13 third-country removal challenge is not relevant because ICE professes no current  
14 plans to remove Mr. Al Khatib to a third country. ECF No. 12 at 3 n.2; *but see*  
15 ECF No. 12, Exhibit 1 (informing Mr. Al Khatib that his supervision is being  
16 revoked because “[y]our case is under current review for removal to the West  
17 Back and/or an alternate country”).

18 “There, so to speak, lies the rub.” *D.V.D. v. U.S. Dep’t of Homeland Sec.*,  
19 778 F. Supp. 3d 355, 389 n.44 (D. Mass. 2025). “[A]ccording to [Respondents],  
20 an individual must await notice of removal before his claim is ripe[.]” *Id.* But  
21 under ICE’s policy, “there is no notice” for certain removals and inadequate  
22 notice for others. *Id.* And if Mr. Al Khatib “is removed” before he can raise this  
23 challenge, Respondents will then argue that “there is no jurisdiction” to bring him  
24 back to the United States. *Id.*

25 This Court need not adopt that Kafkaesque view. The government has not  
26 denied that “the default procedural structure without an injunction” is “set forth in  
27 DHS’s March 30 and July 9, 2025 policy memoranda,” which provide for third-  
28 country removal with little or no notice. *Y.T.D. v. Andrews*, No. 1:25-CV-01100  
JLT SKO, 2025 WL 2675760, at \*5 (E.D. Cal. Sept. 18, 2025). And Mr. Al

1 Khatib has “point[ed] to numerous examples of cases involving individuals who  
2 DHS has attempted to remove to third countries with little or no notice or  
3 opportunity to be heard.” *Id.*; see ECF No. 1 at 4–6. “On balance,” then, “there is  
4 a sufficiently imminent risk that [Mr. Al Khatib] will be subjected to improper  
5 process in relation to any third country removal to warrant imposition of an  
6 injunction requiring additional process.” *Y.T.D.*, 2025 WL 2675760, at \*11;  
7 accord *Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v.*  
8 *Noem*, 2025 WL 2770623 at \*3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM,  
9 ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578,  
10 No. 25-cv-2502-JES, \*4 (S.D. Cal. Oct. 9, 2025) (granting temporary restraining  
11 orders or habeas petitions ordering the government to not remove petitioners to  
12 third countries).

13 The government also briefly argues that an injunction ordering the  
14 government to provide notice and an opportunity to be heard before removal to a  
15 third country would be reversed under the Supreme Court’s stay in *Dep’t of*  
16 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025).

17 However, “[t]he Supreme Court did not decide *D.V.D.* on the merits, nor  
18 did it even necessarily rule on the class’s likelihood of success on its due process  
19 and APA claims.” *Nguyen*, 2025 WL 2419288 at \*22. Because the Supreme Court  
20 did not issue a decision explaining its stay, courts “cannot ascertain from the  
21 Supreme Court’s emergency order whether it found the government likely to  
22 succeed on its jurisdictional or substantive claims.” *Id.* at \*23. This distinction  
23 matters because “one of the government’s primary arguments—that the *D.V.D.*  
24 court had no power to enter *classwide* injunctive relief—would have no bearing  
25 on the merits of individual habeas petition.” *Id.* Further, “absent ‘clear guidance  
26 from the Supreme Court’ that” existing law on third-country removals is “‘no  
27 longer good law,’ this Court must follow ‘well-established precedent.’” *Id.*  
28 (internal citations omitted); accord, e.g., *Louangmilith v. Noem*, No. 25-cv-2502-

1 JES, 2025 WL 2881578, \*4 (S.D. Cal. Oct. 9, 2025).

2 In fact, “[t]o dismiss Petitioner’s claims for preliminary injunctive relief at  
3 this time would effectively preclude him from the relief he seeks entirely and  
4 potentially foreclose any relief that he could be entitled to as part of the *D.V.D.*  
5 class if he is removed before the class-wide claims are resolved.” *Sagastizado v.*  
6 *Noem*, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2957002, \*8 (S.D. Tex. Oct. 2, 2025).

7 The government has no other argument on the merits against this Court’s  
8 issuance of a temporary restraining order and injunctive relief against third-  
9 country removal without adequate notice and an opportunity to be heard. For the  
10 reasons identified in Mr. Al Khatib’s petition and motion for temporary relief, this  
11 Court should enjoin Respondents from removing him to a third country absent the  
12 process identified in his prayer for relief.

13 **III. The remaining TRO factors decidedly favor Mr. Al Khatib, as the**  
14 **government does not dispute.**

15 This Court need not evaluate the other TRO factors—the Court may simply  
16 grant the petition outright. But if the Court does decide to evaluate irreparable  
17 harm, the balance of harms, and the public interest, Mr. Al Khatib should prevail.  
18 The government does not dispute that Mr. Al Khatib meets each of these prongs,  
19 and does not address them in its response. As a result, for reasons addressed in his  
20 motion for a TRO, each of the remaining TRO factors weigh in favor of Mr. Al  
21 Khatib.

22 **Conclusion**

23 For all these reasons, this Court should grant the petition or enter a  
24 temporary restraining order and injunction. In either case, the Court should  
25 (1) order Mr. Al Khatib’s immediate release; (2) prohibit Respondents from re-  
26 detaining Mr. Al Khatib unless and until Respondents obtain a travel document;  
27 without following all regulatory procedures; (3) prohibit Respondents from re-  
28 detaining Mr. Al Khatib without first following all regulatory procedures; and (4)

1 prohibit Respondents from removing Mr. Al Khatib to a third country without  
2 following the process laid out in his prayer for relief.

3  
4 Respectfully submitted,

5 Dated: November 13, 2025

*s/ Jessie Agatstein*

6 Jessie Agatstein  
7 Federal Defenders of San Diego, Inc.  
8 Attorneys for Mr. Al Khatib  
9 Email: [jessie\\_agatstein@fd.org](mailto:jessie_agatstein@fd.org)  
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