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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

12 JOHNNY AZZO,

13 Petitioner,

14 v.

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

20 Respondents.

Case No.: 25-cv-3122-RBM-BJW

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

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Table of Contents

- I. Introduction 1
- II. Mr. Azzo’s claims succeed on the merits..... 2
 - A. Claim One: ICE did not adhere to key regulations implementing the due process rights to notice and a meaningful opportunity to be heard, warranting release. 2
 - 1. Mr. Azzo did not receive notice of the reasons for his revocation or have an opportunity to contest those reasons. 2
 - 2. Mr. Azzo need not show prejudice, although he can, because the regulations implement the core due process guarantees of notice and an opportunity to be heard while being detained. 5
 - B. Claim Two: The government has not proved that there is a significant likelihood of removal in the reasonably foreseeable future under *Zadvydas* and § 1231..... 7
 - 1. The six-month grace period has passed and Mr. Azzo provided good reason to believe his individual removal is not likely in the foreseeable future. 8
 - 2. The government provides insufficient evidence to support a “significant likelihood of removal.” 8
 - 3. The government provides no evidence to support that any removal will occur “in the reasonably foreseeable future.” 9
 - C. Claim Three: The government does not deny that ICE’s third-country removal policy violates due process..... 10
- III. The remaining TRO factors decidedly favor Mr. Azzo..... 11
- IV. Conclusion..... 11

1 **I. Introduction**

2 The government’s return includes the following additional evidence:

- 3 • An internal DHS record indicating Mr. Azzo was arrested on October
4 21¹ in Santa Ana because “DHS is actively seeking third country
5 removal,” ECF No. 8, Exhibit 3 at 2;
- 6 • A record of an informal interview conducted 30 days later, ECF No.
7 8, Exhibit 4; and
- 8 • A declaration from a San Diego deportation officer declaring that:
- 9 ○ Eighteen years ago, ICE tried but was “unable to execute [Mr.
10 Azzo’s] removal order,” so after seven months of detaining
11 him in immigration custody, ICE released him on an order of
12 supervision;
- 13 ○ ICE first began its internal process to identify a third country
14 that would accept Mr. Azzo more than two weeks after his
15 arrest this year, when “local ERO contacted a Detention and
16 Deportation Officer (DDO) at ERO Headquarters” on
17 November 6; and
- 18 ○ As of November 21, “ERO Headquarters is still in the process
19 of identifying third countries that may be willing to accept
20 [Mr. Azzo],” Declaration of Hugo Lara Ramirez, ¶¶ 6–8, 10,

21 This evidence does not rebut Mr. Azzo’s claim that he was re-detained in
22 violation of his regulatory and due process rights to be notified of “the reasons for
23 revocation.” 8 C.F.R. § 241.13(i)(2)(iii), 241.13(l)(1). “[A] reason is what makes
24 an action intelligible, accounted for, or explained”—“the specific facts supporting
25

26 _____
27 ¹ Mr. Azzo agrees with the government he was re-detained on October 21. The
28 incorrect date appears to have been a typographical error from counsel that both
Mr. Azzo and counsel missed; counsel apologizes for the oversight and error,
which was then incorporated into the body of the habeas petition.

1 ICE’s decision.” *Sarail A. v. Bondi*, __ F. Supp. __, 2025 WL 2533673, *5–*6 (D.
2 Minn. 2025). Nor do they rebut Mr. Azzo’s claims that ICE never made a
3 determination before his re-detention that “there is a significant likelihood that
4 [he] may be removed in the reasonably foreseeable future,” § 241.13(i)(2), and
5 that he has not received a “prompt[]” informal interview, § 241.13(i)(3),
6 241.4(I)(1).

7 Nor does the government present evidence sufficient to rebut Mr. Azzo’s
8 claim that there is not an individualized, significant likelihood of his removal in
9 the foreseeable future. ICE has tried and failed to remove Mr. Azzo since 2005.
10 When it released him after seven months of detention in 2007, it informed him
11 that it would “continue to make efforts to obtain [his] travel document” while he
12 was on supervision. ECF No. 1, Exhibit C at 3. In the eighteen years since, it has
13 not succeeded.

14 Finally, the government does not defend its third-country removal policy
15 under the due process clause. As Mr. Azzo explained in his petition, and as courts
16 in this Circuit have concluded, the policy “contravenes Ninth Circuit law.”
17 *Nguyen v. Scott*, __ F. Supp. 3d __, 2025 WL 2419288, *19 (W.D. Wash. 2025).

18 This Court should grant Mr. Azzo’s petition, or, in the alternative, grant his
19 motion for temporary relief in full.

20 **II. Mr. Azzo’s claims succeed on the merits.**

21 **A. Claim One: ICE did not adhere to key regulations implementing**
22 **the due process rights to notice and a meaningful opportunity to**
23 **be heard, warranting release.**

24 1. Mr. Azzo did not receive notice of the reasons for his
25 revocation or have an opportunity to contest those reasons.

26 The government does not claim to have fully complied with 8 C.F.R.
27 §§ 241.4 and 241.13. *See* ECF No. 8 at 11–14. For Mr. Azzo, those regulations
28 permit his re-detention only if ICE: (1) “determines that there is a significant
likelihood that the alien may be removed in the reasonably foreseeable future,”

1 § 241.13(i)(2); (2) makes that finding “on account of changed circumstances,” *id.*;
2 (3) “upon revocation,” “notifie[s]” the noncitizen “of the reasons for revocation of
3 his or her release,” § 241.13(i)(3), 241.4(l)(1); and (4) “affords the [person] an
4 opportunity to respond to the reasons for revocation,” in a “prompt[]” “informal
5 interview, *id.*

6 As Mr. Azzo explained in his petition and motion, ICE did not comply with
7 these requirements.

8 First, the evidence before this Court indicates ICE did not determine that
9 there were “changed circumstances” in Mr. Azzo’s particular case such that,
10 unlike in 2007, when it began seeking to deport him to a third country, there is
11 now “a significant likelihood that [Mr. Azzo] may be removed in the reasonably
12 foreseeable future.” § 241.13(i)(2). ICE’s internal record for Mr. Azzo, its I-213,
13 indicates it revoked his detention solely because “DHS is actively seeking third
14 country removal.” ECF No. 8, Exhibit 3 at 2. ICE did not even begin its *internal*
15 process for seeking third-country removal until two weeks after it re-detained
16 him. ECF No. 8, Declaration of Hugo Lara Ramirez, ¶ 10. Over a month into Mr.
17 Azzo’s re-detention, ICE has not yet “identif[ied] third countries that may be
18 willing to accept [Mr. Azzo].” *Id.*

19 Next, upon Mr. Azzo’s revocation, ICE did not notify him of “the reasons
20 for revocation of his . . . release.” § 241.13(i)(2)(iii); § 241.4(l)(1). The written
21 notification he received that day informed him only that “your order of
22 supervision has been revoked . . . based on a review of your official alien file and
23 a determination that there are changed circumstances in your case. ICE has
24 determined there is a significant likelihood of removal in the reasonably
25 foreseeable future. . . . ICE has determined it is appropriate to enforce the removal
26 order and remove you to a third country.” ECF No. 1, Exhibit B; ECF No. 8,
27 Exhibit 2.

28

1 “ICE’s conclusory explanations for revoking Petitioner’s release ‘did not
2 offer him adequate notice of the basis for the revocation decision such that he
3 could meaningfully respond at the post-detention informal interview.’”

4 *Raskhamdee v. Noem*, No.25-cv-2816-RBM-DEB, 2025 WL 3102037, *4 (S.D.
5 Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No. 25-cv-1079-JLT-EPG, 2025 WL
6 2581575, *8 (E.D. Cal. Sept. 5, 2025)); accord *Quoc Anh Nguyen v. Noem*, No.
7 25-cv-2792-LL-VET, 2025 WL 3101979, *2 (S.D. Cal. Nov. 6, 2025) (holding
8 that a similarly “bare-bones explanation does not contain reasons for the
9 revocation of Petitioner’s release”). “Simply to say that circumstances had
10 changed . . . is not enough. Petitioner must be told *what* circumstances had
11 changed or *why* there was now a significant likelihood of removal in order to
12 meaningfully respond to the reasons and submit evidence in opposition, as
13 allowed under § 241.13(i)(3).” *Sarail A.*, __ F. Supp. 3d __, 2025 WL 2533673 at
14 *10 (emphasis in original).

15 Finally, ICE did not afford Mr. Azzo a “prompt[er]” informal interview.
16 § 241.13(i)(3); 241.4(l)(1). It conducted his informal interview on November 20,
17 2025, 30 days after his re-detention on October 21, 2025. Declaration of Hugo
18 Lara Ramirez, ¶¶ 6–8. As Judge Schopler has recently explained in a similar case,
19 when ICE had a “29-day delay” between arrest and initial interview, it “violated
20 the requirement to ‘conduct an initial interview promptly.’” *Soryadvongsa v.*
21 *Noem*, No. 25-cv-2663-AGS-DDL, 2025 WL 3126821, *3 (S.D. Cal. Nov. 8,
22 2025). So too here.

23 In the last two months, multiple judges from this district have ordered
24 release for failure to follow these regulations for similar reasons. *See, e.g.,*
25 *Soryadvongsa*, 2025 WL 3125821; *Ghafouri v. Noem*, No. 25-cv-2675-RBM,
26 ECF No. 11 (S.D. Cal. Nov. 4, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-
27 cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Constantinovici v. Bondi*,
28 __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10,

1 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10,
2 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D.
3 Cal. Oct. 9, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL
4 2646165 (S.D. Cal. Sept. 15, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-
5 2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Azzo v. Noem*, 2025 WL 2770623, No.
6 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025). This Court should do the same.

7 2. Mr. Azzo need not show prejudice, although he can, because
8 the regulations implement the core due process guarantees of
9 notice and an opportunity to be heard while being detained.

10 The government’s two remaining arguments on Mr. Azzo’s regulatory
11 claims—that Mr. Azzo must show prejudice, and that the regulations do not
12 implement due process and protected liberty interests—also fail.

13 First, Mr. Azzo need not show prejudice from these regulatory claims.
14 “[T]he ‘norm’ when ICE fails to conduct an ‘informal interview promptly’ is that
15 ‘courts across the country have ordered the release of individuals stemming from
16 ICE’s illegal detention.’ *Soryadvongsa*, 2025 WL 3125821 at *3 (quoting *KEO v.*
17 *Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, *6–*7 (W.D. Ky. Sept. 4,
18 2025)). “Especially in the context of civil detentions—when constitutional
19 safeguards are at their zenith—this Court is unwilling to import such a prejudice
20 analysis into regulations or binding caselaw that don’t mention it.” *Id.*

21 To flesh this point out, “[t]here are two types of regulations: (1) those that
22 protect fundamental due process rights, and (2) and those that do not.” *Martinez v.*
23 *Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). “A violation of the
24 first type of regulation . . . implicates due process concerns even without a
25 prejudice inquiry.” *Id.* (cleaned up). Here, “[t]here can be little argument that
26 ICE’s requirement that noncitizens be afforded an informal interview—arguably
27 the most bare-bones form of an opportunity to be heard—derives from the
28 fundamental constitutional guarantee of due process.” *Ceesay v. Kurzdorfer*, 781

1 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. May 2, 2025). No showing of prejudice is
2 required.

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

9 And Mr. Azzo could “present plausible scenarios in which the outcome of
10 the proceedings would have been different if a more elaborate process were
11 provided.” *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007)
12 (cleaned up). He would have had a very strong argument against re-detention had
13 ICE given him notice and an opportunity to respond. Importantly, ICE is fully
14 capable of trying to get a travel document while Mr. Azzo remained at liberty.
15 Mr. Azzo has complied with ICE’s requests for more information while he
16 remained at liberty for the last eighteen years. ECF No. 1, Exhibit A ¶ 4.
17 Detaining him is therefore unnecessary. Mr. Azzo deserved a chance to make that
18 case upon his re-detention. Because ICE did not make any of the proper findings,
19 let alone give Mr. Azzo timely notice and a prompt chance to contest them, he
20 must be released.

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

1 “When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it
2 explained that the regulation was intended to provide aliens procedural due
3 process, stating that § 241.4 ‘has the procedural mechanisms that . . . courts have
4 sustained against due process challenges.’” *Jimenez v. Cronen*, 317 F. Supp. 3d
5 626, 641 (D. Mass. 2018) (quoting *Detention of Aliens Ordered Removed*, 65 FR
6 80281-01). And “[s]ection 241.13(i) includes provisions modeled on § 241.4(1)
7 to govern determinations to take an alien back into custody,” *Continued Detention*
8 *of Aliens Subject to Final Orders of Removal*, 66 FR 56967-01, meaning that it
9 addresses the same due process concerns as 241.4(l). “The procedures in § 241.4”
10 and § 241.13 therefore “are not meant merely to facilitate internal agency
11 housekeeping, but rather afford important and imperative procedural safeguards to
12 detainees.” *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R.
13 §§ 241.4, 241.13 are “intended to provide due process to individuals in
14 [Mr. Azzo’s] position,” *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC,
15 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable.

16 Because the government failed to comply with core requirements of § 241.4
17 and § 241.13 when revoking Mr. Azzo’s release, it should, “[l]ike many other
18 district courts within this circuit,” “find[] that these failures constitute a violation
19 of Petitioner’s due process rights and justif[y] his release.” *Bui v. Warden of Otay*
20 *Mesa Detention Facility*, No. 25-cv-2111-JES, 2025 WL 2988356, *5 (S.D. Cal.
21 Oct. 23, 2025).

22 **B. Claim Two: The government has not proved that there is a**
23 **significant likelihood of removal in the reasonably foreseeable**
24 **future under *Zadvydas* and § 1231.**

25 Next, government provides insufficient evidence to meet its burden to show
26 that Mr. Azzo will likely be removed to an as-yet unidentified third country in the
27 reasonably foreseeable future.
28

1 1. The six-month grace period has passed and Mr. Azzo
2 provided good reason to believe his individual removal is not
3 likely in the foreseeable future.

4 The government does not dispute that the six-month *Zadvydas* grace period
5 has passed. *See* ECF No. 8 at 3. Mr. Azzo was detained for more than six months
6 after he was ordered removed, and two decades have passed since his removal
7 order became final. *Id.*, Declaration of Hugo Lara Ramirez, ¶¶ 5–7.

8 The burden has therefore shifted to the government to prove via evidence
9 that there is a “significant likelihood of removal in the reasonably foreseeable
10 future.” *Zadvydas*, 533 U.S. at 701. That standard has a success element
11 (“significant likelihood of removal”) and a timing element (“in the reasonably
12 foreseeable future”). The government meets neither.

13 2. The government provides insufficient evidence to support a
14 “significant likelihood of removal.”

15 The government has not shown that Mr. Azzo’s removal to an unidentified
16 third country is “significant[ly] like[ly].” *Zadvydas*, 533 U.S. at 701. It has
17 submitted a declaration that “ERO Headquarters is still in the process of
18 identifying third countries that may be willing to accept Petitioner for removal.”
19 Exhibit 8, Declaration of Hugo Lara Ramirez, ¶ 10. It has not submitted any
20 evidence that ICE has requested travel documents from any country, or that it
21 thinks it likely that any particular country will issue them. *See id.*

22 This is not enough to meet the government’s burden under *Zadvydas*. *See,*
23 *e.g., Gharakhan v. Noem*, No. 25-cv-2879-DMS-AHG, 2025 WL 3097933, *1,
24 *3–*4 (S.D. Cal. Nov. 5, 2025) (granting TRO and ordering release because the
25 petitioner had been detained for more than six months, and the only evidence the
26 government submitted as to her *Zadvydas* claim was that it had submitted third-
27 country removal requests to unidentified countries that remained “pending”).

28 Good faith efforts to secure a travel document do not themselves satisfy
Zadvydas. In fact, the petitioner in *Zadvydas* appealed a “Fifth Circuit h[olding]

1 [that] [the petitioner's] continued detention [was] lawful as long as good faith
2 efforts to effectuate deportation continue and [the petitioner] failed to show that
3 deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme
4 Court reversed, finding that the Fifth Circuit's good-faith-efforts standard
5 "demand[ed] more than our reading of the statute can bear." *Id.*

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

15 Here, then, "[w]hile the respondent asserts that [Mr. Azzo's]" case remains
16 pending, "this is insufficient. It is merely an assertion of good-faith efforts to
17 secure removal; it does not make removal likely in the reasonably foreseeable
18 future." *Gilali v. Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251,
19 at *5 (E.D. Wis. Oct. 15, 2019).

20 3. The government provides no evidence to support that any
21 removal will occur "in the reasonably foreseeable future."

22 Additionally, even if ICE will eventually remove Mr. Azzo, the
23 government provides little evidence that removal will happen "in the reasonably
24 foreseeable future." *Zadvydas*, 533 U.S. at 701. Officer Ramirez provides no
25 timetable for how long third-country internal deportation processes in cases like
26 Mr. Azzo's typically take.

27 That is fatal. "[D]etention may not be justified on the basis that removal to
28 a particular country is likely *at some point* in the future; *Zadvydas* permits

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

12 In sum, there could be “some possibility that [some country] will accept
13 Petitioner at some point. But that is not the same as a significant likelihood that he
14 will be accepted in the reasonably foreseeable future.” *Nguyen*, 2025 WL
15 2419288 at *16. Mr. Azzo therefore succeeds under *Zadvydas*, too.

16 **C. Claim Three: The government does not deny that ICE’s third-**
17 **country removal policy violates due process.**

18 This Court should also prohibit ICE from removing Mr. Azzo to a third
19 country without adequate notice. The government identifies certain components
20 of the third-country removal policy challenged in Mr. Azzo’s habeas petition, *see*
21 ECF No. 1 at 4–7, 17–21, Exhibit D. But it does not explain how this policy
22 complies with due process or Ninth Circuit law. As Mr. Azzo explained in his
23 habeas petition, “This policy contravenes Ninth Circuit law.” *Nguyen*, ___ F. Supp.
24 3d ___, 2025 WL 2419288 at *19. “It would be impossible to comply both with
25 Ninth Circuit precedent and the policy.” *Id.* “Failing to notify individuals who are
26 subject to deportation that they have the right to apply . . . for withholding of
27 deportation to the country to which they will deported violates both INS
28

1 regulations and the constitutional right to due process.” *Id.* at *18 (quoting
2 *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

3 For the reasons identified in Mr. Azzo’s petition and motion for temporary
4 relief, this Court should enjoin Respondents from removing him to a third country
5 absent the process identified in his prayer for relief.

6 **III. The remaining TRO factors decidedly favor Mr. Azzo.**

7 This Court need not evaluate the other TRO factors—the Court may simply
8 grant the petition outright. But if the Court does decide to evaluate irreparable
9 harm, the balance of harms, and the public interest, Mr. Azzo should prevail. The
10 government does not dispute that Mr. Azzo meets each of these prongs, and it
11 does not address them in its response. As a result, for the reasons addressed in his
12 motion for a TRO, each of the remaining TRO factors weigh in favor of Mr.
13 Azzo.

14 **IV. Conclusion**

15 For all these reasons, this Court should grant the petition or enter a
16 temporary restraining order and injunction. In either case, the Court should
17 (1) order Mr. Azzo’s immediate release; (2) prohibit Respondents from re-
18 detaining Mr. Azzo unless and until Respondents obtain a travel document;
19 without following all regulatory procedures; (3) prohibit Respondents from re-
20 detaining Mr. Azzo without first following all regulatory procedures; and
21 (4) prohibit Respondents from removing Mr. Azzo to a third country without
22 following the process laid out in his prayer for relief.

23 Respectfully submitted,

24 Dated: November 24, 2025

25 *s/ Jessie Agatstein*

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