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

12 REZA AGHAJAVADYHA,
13
14 Petitioner,

15 v.

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

Civil Case No.: '25CV3246 BTM BJW

**Petition for Writ
of
Habeas Corpus**

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

26 _____
27 ¹ Federal Defenders of San Diego, Inc., is filing the instant petition with
28 provisional appointment under Chief Judge Order No. 134. Mr. Aghajavadyha's
financial eligibility for representation is included in a sworn statement attached to
this petition.

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1 **I. Introduction**

2 This civil immigration habeas petition seeks three grounds of relief. First, it
3 seeks to prevent Mr. Aghajavadyha's indefinite detention pending deportation to
4 Iran absent the basic regulatory and due process guarantees of 8 C.F.R.
5 §§ 241.4(l), 241.13(i), and *United States ex rel. Accardi v. Shaughnessy*, 347 U.S.
6 260, 268 (1954). Second, it seeks to prevent his indefinite detention pending
7 deportation to Iran absent the basic statutory and due process guarantees outlined
8 in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Third, it seeks to prevent his
9 deportation to an unidentified third country without him first receiving basic due
10 process guarantees of notice and opportunity to be heard as to his statutory rights
11 to seek withholding of removal and Convention Against Torture relief.

12 Mr. Aghajavadyha was ordered removed to Iran in 2003. It is very hard to
13 deport people to Iran. So ICE released him. In the two decades since,
14 Mr. Aghajavadyha has never missed a check-in and has always cooperated with
15 ICE. Between two and three years ago, he had a heart surgery and complications
16 so severe he lost most of his memory; he is only now beginning to recover, and he
17 still has a hard time remembering and understanding things.

18 Despite Mr. Aghajavadyha's long history of compliance, ICE re-arrested
19 Mr. Aghajavadyha on November 6, 2025, at a check-in. In the two weeks that
20 have followed, ICE has provided Mr. Aghajavadyha no information indicating
21 that he will be removed to Iran in the reasonably foreseeable future. If the
22 government is currently detaining Mr. Aghajavadyha with plans to instead deport
23 him to an unidentified third country, as it has other Iranians, its policies and
24 actions during recent third-country removals violate the core procedural
25 protections this country has adopted to ensure it does not send people off to be
26 tortured. This Court should order Mr. Aghajavadyha released from immigration
27 custody and enjoin the government from deporting Mr. Aghajavadyha to a third
28 country without first providing sufficient notice and an opportunity to be heard.

1 Courts in this district and around the country have ordered Iranians released
2 from ICE custody for the same reasons. *See Gharakhan v. Noem*, No. 25-cv-2879-
3 DMS-AHG, 2025 WL 3097933 (S.D. Cal. Nov. 5, 2025) (granting motion for
4 temporary training order and ordering Iranian citizen released due to *Zadvydas*
5 violation); *Ghafouri v. Noem*, No. 25-cv-2675-RBM-BLM, 2025 WL 3085726
6 (S.D. Cal. Nov. 4, 2025) (granting habeas petition and ordering Iranian citizen
7 released due to regulatory violations); *Rokhfirooz v. Larose*, No. 25-CV-2053-
8 RSH-VET, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025) (granting habeas
9 petition and ordering Iranian citizen released due to regulatory violations);
10 *Grigorian v. Bondi*, No. 25-cv-22914-RAR, 2025 WL 2604573 (S.D. Fl. Sept. 9,
11 2025) (granting habeas petition and ordering Iranian citizen released due to
12 regulatory violations); *Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL 2592543 (D.
13 Md. Sept. 8, 2025) (granting habeas petition and ordering Iranian citizen released
14 due to *Zadvydas* violations); *Delkash v. Noem*, No. 25-cv-1675-HDV-AGR, 2025
15 WL 2683988 (C.D. Cal. Aug. 28, 2025) (granting habeas petition and ordering
16 Iranian citizen released due to regulatory violations, and enjoining the government
17 from re-detaining or removing him to a third country without notice and an
18 opportunity to be heard).

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

1 **II. Statement of Facts**

2 **A. Mr. Aghajavadyha lives under supervision for two decades,**
3 **becomes very ill, and then is re-detained without an**
4 **individualized reason for detention and without an opportunity**
5 **to contest his re-detention.**

6 In about 1997 or 1998, Reza Aghajavadyha came to the United States from
7 Iran. Exhibit A, Declaration of Reza Aghajavadyha ¶ 2. He was ordered removed
8 on August 4, 2003. *Id.* ¶ 3.² ICE detained him for what he remembers to be about
9 two months after that. *Id.* Because the government could not remove him to Iran,
10 it released him. *Id.*

11 Mr. Aghajavadyha remained on an order of supervision for the next two
12 decades. *Id.* ¶¶ 4–6. He has always checked in with ICE as scheduled, and
13 cooperated with whatever ICE has asked him to do. *Id.* ¶ 4.

14 In the meantime, between two and three years ago, Mr. Aghajavadyha
15 became very ill and had heart surgery. *Id.* ¶ 9. He lost much of his memory during
16 his illness, and has been slowly recovering since. *Id.* He still has poor memory
17 and often has a hard time understanding things. *Id.* He takes about eleven
18 medications a day for his heart and related complications. *Id.*

19 On November 6, 2025, Mr. Aghajavadyha appeared at one of his ICE
20 check-ins as scheduled. *Id.* ¶ 6. He was re-detained. *Id.* ICE showed him “some
21 papers,” but he has a hard time remembering and understanding things, and he
22 does not remember what they said. *Id.* He remembers that the officers “said they
23 were arresting me because I was eligible for deportation and that they had to
24 arrange for a travel document.” *Id.*

25 Since then, Mr. Aghajavadyha has remained detained at the Otay Mesa
26 Detention Center, but has not been able to talk to an ICE officer. *Id.* ¶ 7. At no

27 ² See also EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>
28 (reporting that Mr. Aghajavadyha is Iranian and was ordered removed by an
immigration judge on August 4, 2003, in San Diego).

1 point has ICE “given [him] a chance to fight [his] arrest.” *Id.* He explains, “No
2 one has told me what changed to make it possible to deport me to Iran. I don’t
3 know what’s changed between 2003 and 2025. It’s the same situation.” *Id.*

4 **B. The government lacks normalized relations with Iran and has**
5 **deported Iranians to third countries without providing sufficient**
6 **notice and opportunity to be heard.**

7 The United States has not had normalized relations with Iran since the
8 Islamic Revolution of 1979. *See generally* Council on Foreign Relations, *1953–*
9 *2025: U.S. Relations With Iran.*³ It currently lacks diplomatic and consular
10 relations. U.S. Department of State, Bureau of Consular Affairs, *Iran Travel*
11 *Advisory*, March 31, 2025.⁴

12 As President Trump found earlier this year when banning the entry of
13 Iranian nationals into the United States, Iran “has historically failed to accept back
14 its removable nationals.” Presidential Proclamation, *Restricting the Entry of*
15 *Foreign Nationals to Protect the United States from Foreign Terrorists and Other*
16 *National Security and Public Safety Threats*, June 4, 2025.⁵ Iran has long been
17 among the absolute most uncooperative countries the United States faces when
18 seeking to repatriate immigrants it has ordered deported, alongside countries like
19 Eritrea and Cuba. *See* Office of Inspector General, Department of Homeland
20 Security, *ICE Faces Barriers in Timely Repatriation of Detained Rezaens*, March
21 11, 2019, at 30; Memorandum from ICE ERO, November 2024, at 3, 7.⁶ The

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

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

25 ⁵ Available at [https://www.whitehouse.gov/presidential-](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)
26 [actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)
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28 [threats/](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/).

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

1 State Department places Iran at the highest level travel advisory, “level 4,”
2 warning that having “connections to the United States can be reason enough for
3 Iranian authorities to detain someone.” U.S. Department of State, Bureau of
4 Consular Affairs, *Iran Travel Advisory, supra*.

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

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

19 In February, Panama and Costa Rica imprisoned hundreds of deportees—
20 including Iranians—in hotels, a jungle camp, and a detention center. *Id.*; Vanessa
21 Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*,
22 BBC (Jun. 25, 2025); Human Rights Watch, *‘Nobody Cared, Nobody Listened’:*
23 *The US Expulsion of Third-Country Nationals to Panama*, Apr. 24, 2025 (quoting
24 an Iranian national deported to and imprisoned in Panama).⁹ The government paid
25

26 ⁷ Available at <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html>.

27 ⁸ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

28 ⁹ Available at <https://www.hrw.org/report/2025/04/24/nobody-cared-nobody->

1 El Salvador about \$5 million to imprison more than 200 deported Venezuelans in
2 a maximum-security prison notorious for gross human rights abuses, known as
3 CECOT. *See Wong et al., supra.*

4 On July 9, 2025, ICE rescinded previous guidance meant to give
5 immigrants a “‘meaningful opportunity’ to assert claims for protection under the
6 Convention Against Torture (CAT) before initiating removal to a third country”
7 like the ones just described. *See Exhibit B (currently operative third-country*
8 *removal ICE policy).* Instead, under new guidance, ICE may remove any
9 immigrant to a third country “without the need for further procedures,” as long
10 as—in the view of the State Department—the United States has received
11 “credible” “assurances” from that country that deportees will not be persecuted or
12 tortured. *Id.* at 1.

13 If a country fails to credibly promise not to persecute or torture releasees,
14 under current policy, ICE may still remove immigrants there with minimal notice.
15 *Id.* Ordinarily, ICE must provide 24 hours’ notice. But “[i]n exigent
16 circumstances,” a removal may take place in as little as six hours, “as long as the
17 alien is provided reasonably means and opportunity to speak with an attorney
18 prior to the removal.” *Id.*

19 Upon serving notice, ICE “will not affirmatively ask whether the alien is
20 afraid of being removed to the country of removal.” *Id.* (emphasis original). If the
21 noncitizen “does not affirmatively state a fear of persecution or torture if removed
22 to the country of removal listed on the Notice of Removal within 24 hours, [ICE]
23 may proceed with removal to the country identified on the notice.” *Id.* at 2. If the
24 noncitizen “does affirmatively state a fear if removed to the country of removal”
25 then ICE will refer the case to U.S. Citizenship and Immigration Services
26 (“USCIS”) for a screening for eligibility for withholding of removal and

27
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listened/the-us-expulsion-of-third-country-nationals-to.

1 protection under the Convention Against Torture (“CAT”). *Id.* at 2. “USCIS will
2 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen
3 does not meet the standard, the individual will be removed. *Id.* If USCIS
4 determines that the noncitizen has met the standard, then the policy directs ICE to
5 either move to reopen removal proceedings “for the sole purpose of determining
6 eligibility for [withholding of removal protection] and CAT” or designate another
7 country for removal. *Id.*

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

12 **III. Claims for Relief**

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

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

21 Second, it should enjoin the Respondents from removing
22 Mr. Aghajavadyha to a third country without first providing notice and a
23 sufficient opportunity to be heard before an immigration judge.

24 **IV. This Court has jurisdiction.**

25 This Court has jurisdiction to consider Mr. Nikolayev’s claims of unlawful
26 detention and unlawful third-country removal under 28 U.S.C. § 2241.

27 The government’s recent argument otherwise, that 8 U.S.C. § 1252(g) strips
28 this Court of jurisdiction, “has been repeatedly ‘rejected as implausible’ by the

1 Supreme Court.” *Soryadvongsa v. Noem*, No. 25-cv-2663-AGS, 2025 WL
2 316821, *1 (S.D. Cal. Nov. 8, 2025) (quoting *Department of Homeland Sec. v.*
3 *Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). The government’s argument
4 “would eliminate judicial review of immigration [detainees’] claims of unlawful
5 detention . . . inconsistent with *Jennings v. Rodriguez* and the history of judicial
6 review of the detention of noncitizens under 28 U.S.C. § 2241.” *Phan v. Noem*,
7 No. 25-cv-2422-RBM, 2025 WL 2898977, *3 (S.D. Cal. Oct. 10, 2025)
8 (collecting cases agreeing on this jurisdictional point).

9 **V. Claim 1: ICE failed to comply with its own regulations before re-**
10 **detaining Mr. Aghajavadyha, violating his rights under applicable**
11 **regulations and the Fifth Amendment.**

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

20 These regulations establish important substantive limitations before a
21 noncitizen’s re-detention. Officials are allowed to “return [the person] to custody”
22 only when the person “violate[d] any of the conditions of release,” 8 C.F.R.
23 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official
24 “determines that there is a significant likelihood that the alien may be removed in
25 the reasonably foreseeable future,” and makes that finding “on account of
26 changed circumstances,” § 241.13(i)(2). Section “241.13(i)(2) requires that this
27 determination is made before the removable alien has had his release revoked.”
28 *Quoc Anh Nugyen*, No. 25-cv-2792-LL, ECF No. 10 at 3 (quoting *Tran*, 2025 WL
3005347 at *2).

1 No matter the reason for re-detention, the re-detained person is also entitled
2 to certain procedural protections during and after re-detention.

3 First, “[u]pon revocation,’ the noncitizen ‘will be notified of the reasons
4 for revocation of his or her release or parole.’” *Phan*, 2025 WL 2898977 at *3, *4
5 (quoting §§ 241.4(l)(1), 241.13(i)(3)). A noncitizen must receive “adequate notice
6 of the basis for the revocation decision such that he c[an] meaningfully respond at
7 the post-detention informal interview.” *Rasakhamdee v. Noem*, No. 25-cv-2817-
8 RBM, ECF No. 10 at 7 (S.D. Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No.
9 25-cv-1079-JLT, 2025 WL 2581575, *8 (E.D. Cal. Sept. 5, 2025)).

10 Second, the person “‘will be afforded an initial informal interview promptly
11 after his or her return’ to be given ‘an opportunity to respond to the reasons for
12 revocation stated in the notification.’” 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1).
13 “[P]romptly,” commonly understood, “means ‘[q]uickly; without delay’ or ‘[a]s
14 soon as practicable.’” *Soryadvongsa*, No. 25-cv-2663-AGS, ECF No. 11 at 4
15 (quoting *Promptly*, Black’s Law Dictionary (12th ed. 2024)). “The chance to
16 advocate for release must ordinarily come within days of a criminal arrest. Surely,
17 it must happen at least that quickly in the more constitutionally protected civil-
18 arrest arena, too.” *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 few to none of its substantive or procedural regulatory
5 prerequisites to re-detention or continued detention here.

6 First, ICE did not make a determination that it had a proper reason to re-
7 detain Mr. Aghajavadyha: there is no reason to think that there is “a significant
8 likelihood that [he] may be removed in the reasonably foreseeable future,”
9 § 241.13(i)(2), and he has not “violate[d] any of the conditions of release,”
10 § 241.13(i)(1). There is no reason to think that, having been unable to remove
11 Mr. Aghajavadyha to Iran for the two decades, ICE is likely to do so in the
12 foreseeable future.

13 Second, ICE did not notify Mr. Aghajavadyha of the “reasons” for his re-
14 detention “upon revocation” of release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3).
15 He was re-detained on November 6, 2025, at a check-in. Exhibit A ¶ 6. ICE
16 “showed [him] some papers,” but told him only that he was being arrested
17 “because [he] was eligible for deportation and that they had to arrange for a travel
18 document.” *Id.* That information alone is not sufficient—actual “reasons”—
19 explaining why his detention was being revoked. “Simply to say that
20 circumstances had changed . . . is not enough.” *Sarail A. v. Bondi*, ___ F. Supp. 3d
21 ___, 2025 WL 2533673, *10 (D. Minn. 2025). “Petitioner must be told *what*
22 circumstances had changed or *why* there was now a significant likelihood of
23 removal in order to meaningfully respond to the reasons and submit evidence in
24 opposition.” *Id.* The notice Mr. Aghajavadyha received apparently included no
25 information about what had changed or why; he was notified that he was
26 deportable, as he has been since 2003. Exhibit A ¶ 6.

27 Third, it is unclear whether Mr. Aghajavadya received the informal
28 interview required by regulation. §§ 241.13(i)(2); 241.4(l)(1).

1 But fourth, even if he did, he was not been afforded a meaningful
2 opportunity to respond to the reasons for revocation. §§ 241.13(i)(2); 241.4(l)(1);
3 *see* Exhibit A ¶¶ 6–7. ICE did not give him “a chance to fight [his] arrest” during
4 that interview, and “[n]o one has told [him] what changed to make it possible to
5 deport [him] to Iran.” *Id.* ¶ 7.

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

28

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

5 **VI. Claim 2: Mr. Aghajavadyha’s detention violates *Zadvydas* and 8 U.S.C.
6 § 1231.**

7 **A. Legal background**

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

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

27 As an initial matter, *Zadvydas* held that detention is “presumptively
28 reasonable” for at least six months. *Id.* at 701. This presumption is, in some

1 circumstances even before the running of six months, “rebuttable.” *See Zavvar*,
2 2025 WL 2592543 at *5–*6 (explaining this point when granting *Zadvydas*
3 habeas relief to an Iranian national last month).

4 Courts must use a burden-shifting framework to decide whether detention
5 remains authorized. First, the petitioner must make a prima facie case for relief:
6 He must prove that there is “good reason to believe that there is no significant
7 likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at
8 689.

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

14 To underline the standard, regardless of whose burden it is, good faith is
15 beside the point. “[U]nder *Zadvydas*, the reasonableness of Petitioner’s detention
16 does not turn on the degree of the government’s good faith efforts. Indeed, the
17 *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of
18 Petitioner’s detention turns on whether and to what extent the government’s efforts
19 are likely to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL
20 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, the standard concerns the
21 “likelihood of not only the *existence* of untapped possibilities, but also of a
22 probability of success in such possibilities.” *Elashi v. Sabol*, 714 F. Supp. 2d 502,
23 506 (M.D. Pa. 2010).

24 Using this framework, Mr. Aghajavadyha can make all relevant showings.

25 **B. The six-month grace period expired in 2004.**

26 As an initial matter, the six-month grace period has long since ended. The
27 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,
28 *three months* after the statutory removal period has ended.” *Kim Ho Ma v.*

1 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Aghajavadyha’s
2 order of removal was entered in August 2003, and he was detained for about two
3 months after that. Exhibit A ¶ 3.¹⁰ Accordingly, his 90-day removal period began
4 then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired three
5 months after the removal period ended, in November 2003.¹¹

6 **C. There is good reason to believe that there is no significant**
7 **likelihood of Mr. Aghajavadyha’s removal in the reasonably**
8 **foreseeable future.**

9 Because the six-month grace period has passed, this Court should evaluate
10 Mr. Aghajavadyha’s *Zadvydas* claim using the burden-shifting framework. At the
11 first stage of the framework, there must be “good reason to believe that there is no
12 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
13 533 U.S. at 701. This standard can be broken down into three parts.

14 **“Good reason to believe.”** The “good reason to believe” standard is a
15 relatively forgiving one. “A petitioner need not establish that there exists no
16 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
17 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
18 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
19 foreseeable, significant likelihood of removal or show that his detention is

20 _____
21 ¹⁰ See also EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>
(reporting that Mr. Aghajavadyha is Iranian and was ordered removed by an
immigration judge on August 4, 2003, in San Diego).

22 ¹¹ The government has sometimes argued that release and rearrest resets the six-
23 month grace period completely, taking the clock back to zero. “Courts . . . broadly
24 agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6
25 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL
26 6037220 (W.D. La. Nov. 13, 2019); see also *Sied v. Nielsen*, No. 17-CV-06785-
27 LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases). This
28 proposal would create an obvious end run around *Zadvydas*, because ICE could
detain an immigrant indefinitely by releasing and quickly rearresting them every
six months.

1 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
2 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
3 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
4 Petitioners need only give a “good reason”—not prove anything to a certainty.

5 **“No significant likelihood of removal.”** This component focuses on
6 *whether* Mr. Aghajavadyha will likely be removed: Continued detention is
7 permissible only if it is “significant[ly] like[ly]” that ICE will be able to remove
8 him. *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of
9 untapped possibilities, but also [the] probability of *success* in such possibilities.”
10 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis
11 added). In other words, even if “there remains *some* possibility of removal,” a
12 petitioner can still meet its burden if there is good reason to believe that
13 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
14 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

15 **“In the reasonably foreseeable future.”** This component of the test
16 focuses on *when* Mr. Aghajavadyha will likely be removed: Continued detention
17 is permissible only if removal is likely to happen “in the reasonably foreseeable
18 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
19 removal efforts. If the Court has “no idea of when it might reasonably expect
20 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
21 is likely to occur—or even that it might occur—in the reasonably foreseeable
22 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
23 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
24 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
25 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that
26 Mr. Aghajavadyha “would *eventually* receive” a travel document, he can still
27 meet his burden by giving good reason to anticipate sufficiently lengthy delays.
28 *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

1 Mr. Aghajavadyha readily satisfies the above standards.

2 Respondents have had 22 years to try and remove Mr. Aghajavadyha. They
3 have so far been unable to. Mr. Aghajavadyha has fully cooperated with ICE’s
4 removal efforts, including at his scheduled check-ins. Exhibit A ¶ 4. Yet ICE has
5 proved unable to remove him. This, alone, provides good reason to shift the
6 burden to the government to prove there is a significant likelihood of Mr.
7 Aghajavadyha’s removal in the reasonably foreseeable future. Thus,
8 Mr. Aghajavadyha has met his initial burden, and the burden shifts to the
9 government. Unless the government can prove a “significant likelihood of
10 removal in the reasonably foreseeable future,” Mr. Aghajavadyha must be
11 released. *Zadvydas*, 533 U.S. at 701.

12 In fact, Mr. Aghajavadyha’s individualized experience—especially when
13 combined with the United States’s lack of normalized relations with Iran and
14 President Trump’s proclamation that Iran “has historically failed to accept back its
15 removable nationals,” Presidential Proclamation, *Restricting the Entry of Foreign*
16 *Nationals to Protect the United States from Foreign Terrorists and Other*
17 *National Security and Public Safety Threats*, June 4, 2025¹²—is enough to prove
18 that there is no significant likelihood of his removal in the reasonably foreseeable
19 future outright.

20 **VII. Claim 3: ICE may not remove Mr. Aghajavadyha to a third country**
21 **without adequate process.**

22 In addition to unlawfully detaining him, ICE’s currently operative policies
23 threaten his removal to a third country without adequate notice and an opportunity
24

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26
27 ¹² Available at [https://www.whitehouse.gov/presidential-](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)
28 [actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)
[states-from-foreign-terrorists-and-other-national-security-and-public-safety-](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)
[threats/](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/).

1 to be heard. These policies violate the Fifth Amendment, the Convention Against
2 Torture, and implementing regulations.

3 **A. Legal background**

4 U.S. law enshrines protections against dangerous and life-threatening
5 removal decisions. By statute, the government is prohibited from removing an
6 immigrant to any third country where they may be persecuted or tortured, a form
7 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
8 The government “may not remove [a noncitizen] to a country if the Attorney
9 General decides that the [noncitizen’s] life or freedom would be threatened in that
10 country because of the [noncitizen’s] race, religion, nationality, membership in a
11 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
12 1208.16. Withholding of removal is a mandatory protection.

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

22 To comport with the requirements of due process, the government must
23 provide notice of the third country removal and an opportunity to respond. Due
24 process requires “written notice of the country being designated” and “the
25 statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2).”
26 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *see Andriasian v.*
27 *INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (laying out this requirement).
28

1 The government must also “ask the noncitizen whether he or she fears
2 persecution or harm upon removal to the designated country and memorialize in
3 writing the noncitizen’s response. This requirement ensures DHS will obtain the
4 necessary information from the noncitizen to comply with section 1231(b)(3) and
5 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.
6 3d at 1019. “Failing to notify individuals who are subject to deportation that they
7 have the right to apply for asylum in the United States and for withholding of
8 deportation to the country to which they will be deported violates both INS
9 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at
10 1041.

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

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

27
28

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

4 The currently operative policies in the June 6, 2025 memo do not adhere to
5 these statutory and due process requirements. The memo “contravenes Ninth
6 Circuit law.” *Nguyen v. Scott*, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D.
7 Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE memo contravenes
8 Ninth Circuit law on the process due to noncitizens in detail).

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 B. 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*, 424 U.S. at
16 348 (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. Exhibit B.
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.

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

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

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

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

12 **IX. Prayer for relief**

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

- 14 1. Order and enjoin Respondents to immediately release Petitioner from
15 custody;
- 16 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
17 § 1231(a)(6) unless and until Respondents obtain a travel document for
18 his removal;
- 19 3. Enjoin Respondents from re-detaining Petitioner without first following
20 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other
21 applicable statutory and regulatory procedures;
- 22 4. Enjoin Respondents from removing Petitioner to any country other than
23 Iran, unless they provide the following process:
 - 24 a. written notice to both Petitioner and Petitioner’s counsel in a
25 language Petitioner can understand;
 - 26 b. a meaningful opportunity, and a minimum of ten days, to raise a
27 fear-based claim for CAT protection prior to removal;

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- c. if Petitioner is found to have demonstrated “reasonable fear” of removal to the country, Respondents must move to reopen Petitioner’s immigration proceedings;
- d. if Petitioner is not found to have demonstrated a “reasonable fear” of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings; and

5. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: November 21, 2025

s/ Jessie Agatstein
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Aghajavadyha
Email: jessie_agatstein@fd.org

Exhibit A

1 **Jessie Agatstein**
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6 Telephone: (619) 234-8467
7 Facsimile: (619) 687-2666
8 jessie_agatstein@fd.org

9 Attorneys for Mr. Aghajavadyha¹

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

12 **REZA AGHAJAVADYHA,**
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.**


Civil Case No.:

Declaration of Reza Aghajavadyha
in support of petition for writ of
habeas corpus

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

25
26
27 ¹ Federal Defenders of San Diego, Inc., is filing with provisional appointment
28 under Chief Judge Order No. 134. Mr. Aghajavadyha's financial eligibility for
representation is included in this sworn statement.

1 I, Reza Aghjavadyha, declare the following is true and correct under penalty
2 of perjury:

- 3 1. My name is Reza Aghjavdyha. I have less than \$1,000 in savings in
4 the bank, and probably just a few hundred. Before I was arrested, I
5 was working repairing cars at an auto body shop, making about
6 \$2,000 a month. My rent is \$1,000, and then I had \$1,000 left for all
7 my other expenses for the month. I cannot afford an attorney.
- 8 2. My A-number is  I came to the United States from Iran
9 through Canada in about 1997 or 1998.
- 10 3. I was ordered removed in 2003. I was detained about two months
11 after that. ICE then released me on an order of supervision because
12 they weren't able to deport me to Iran.
- 13 4. I've never missed a check-in with ICE since 2003. I check in every
14 time they asked me to. I've always cooperated with whatever ICE
15 asked me to do.
- 16 5. I went to my regular annual check-in about two weeks before I was
17 arrested. An ICE officer asked for all my prescriptions and then
18 released me and told me to come back in two weeks.
- 19 6. On November 6, 2025, ICE arrested me at my check-in. I had
20 brought all my prescriptions. ICE showed me some papers, but I
21 don't remember what the papers said. I did not want to sign without
22 talking to a lawyer. The officer said they were arresting me because I
23 was eligible for deportation and that they had to arrange for a travel
24 document.
- 25 7. As of today, ICE has not given me a chance to fight my arrest. No
26 one has told me what changed to make it possible to deport me to
27 Iran. I don't know what's changed between 2003 and 2025. It's the
28 same situation. I haven't been able to talk to an ICE officer since the

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day I was arrested.

- 8. I didn't get any of my medications when I was in Otay Mesa for the first two days I was here.
- 9. I had heart surgery about two to three years ago. I was so sick I lost a lot of my memory, and I've only since been getting better slowly. My memory is still bad. I have a hard time understanding things. I take eleven medications a day for my heart; five or six in the morning, and four or five at night. I have a cardiology appointment scheduled on December 1, 2025.

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I declare under penalty of perjury that the foregoing is true and correct,
executed on 11 19 25, in San Diego, California.

 _____

Declarant

Exhibit B

CASE NO. PX 25-951
IDENTIFICATION: JUL 10 2025
ADMITTED: JUL 10 2025

To All ICE Employees
July 9, 2025

Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the district court's nationwide preliminary injunction in *D.V.D. v. Department of Homeland Security*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required certain procedures related to providing a "meaningful opportunity" to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country. Accordingly, all previous guidance implementing the district court's preliminary injunction related the third country removals issued in *D.V.D.* is hereby rescinded. Absent additional action by the Supreme Court, the stay will remain in place until any writ of certiorari is denied or a judgment following any decision issues.

Effective immediately, when seeking to remove an alien with a final order of removal—other than an expedited removal order under section 235(b) of the Immigration and Nationality Act (INA)—to an alternative country as identified in section 241(b)(1)(C) of the INA, ICE must adhere to Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, *Guidance Regarding Third Country Removals*, as detailed below. A "third country" or "alternative country" refers to a country other than that specifically referenced in the order of removal.

If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures. ICE will seek written confirmation from the Department of State that such diplomatic assurances were received and determined to be credible. HSI and ERO will be made aware of any such assurances. In all other cases, ICE must comply with the following procedures:

- An ERO officer will serve on the alien the attached Notice of Removal. The notice includes the intended country of removal and will be read to the alien in a language he or she understands.
- ERO will not affirmatively ask whether the alien is afraid of being removed to the country of removal.
- ERO will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal.
 - Any determination to execute a removal order under exigent circumstances less than 24 hours following service of the Notice of Removal must be approved by the DHS General Counsel, or the Principal Legal Advisor where the DHS General Counsel is not available.

- If the alien does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, ERO may proceed with removal to the country identified on the notice. ERO should check all systems for motions as close in time as possible to removal.
- If the alien does affirmatively state a fear if removed to the country of removal listed on the Notice of Removal, ERO will refer the case to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under section 241(b)(3) of the INA and the Convention Against Torture (CAT). USCIS will generally screen the alien within 24 hours of referral.
 - USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.
 - If USCIS determines that the alien has not met this standard, the alien will be removed.
 - If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the immigration court, USCIS will refer the matter to the immigration court for further proceedings. In cases where the alien was previously in proceedings before the immigration court, USCIS will notify the referring immigration officer of its finding, and the immigration officer will inform ICE. In such cases, ERO will alert their local Office of the Principal Legal Advisor (OPLA) Field Location to file a motion to reopen with the immigration court or the Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under section 241(b)(3) of the INA and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.

Notably, the Supreme Court's stay of removal does not alter any decisions issued by any other courts as to individual aliens regarding the process that must be provided before removing that alien to a third country.

Please direct any questions about this guidance to your OPLA field location.

Thank you for all you continue to do for the agency.

Todd M. Lyons
Acting Director
U.S. Immigration and Customs Enforcement

Attachments:

- U.S. Supreme Court Order
- Secretary Noem's Memorandum
- Notice of Removal