

1 **Armilla Staley-Ngomo**
2 California State Bar No. 259686
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 Armilla_Staley-Ngomo@fd.org

9
10 Attorneys for Petitioner¹
11 **FELIX ENI**

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FELIX ENI,

Petitioner,

v.

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

Respondents.

Civil Case No.: '25CV3524 JLS DEB

**Petition for Writ
of
Habeas Corpus**

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

¹ Federal Defenders of San Diego, Inc., is filing the instant petition and associated motion for temporary restraining order with provisional appointment under Chief Judge Order No. 134. Mr. Eni's financial eligibility for representation is included in a sworn statement attached to this petition.

1 INTRODUCTION

2 Felix Eni is a 68-year-old man with significant physical health
3 issues. He was born in Lagos, Nigeria in early-1957. [REDACTED]

4 [REDACTED]
5 [REDACTED] He thus needs to be cautious about his diet and exercise,
6 which has been difficult to do while detained at the Otay Mesa
7 Detention Center for the past month and a half, since October 31,
8 2025.

9 Mr. Eni first came to the United States in March 1980 on a
10 student visa. He studied mechanical engineering at Snow College in
11 Ephraim, Utah for two years, and obtained his Associate of Science
12 Degree there in 1982. He then transferred to Morehead State
13 University for one semester, followed by the University of Kentucky for
14 about one year. He attended all three schools full time.

15 While attending the University of Kentucky, Mr. Eni took out a
16 \$2,500 student loan and worked as a dishwasher at a restaurant. One
17 day, ICE officers picked him up from the restaurant where he worked.
18 When he was arrested, the officers said he could not work while in the
19 United States on a student visa. They drove him to his residence and
20 told him to give them his passport. Mr. Eni was later told he could not
21 take out a student loan while in the United States on a student visa,
22 either.

23 Mr. Eni was then taken to immigration detention and transferred
24 to county jail for the student loan. He was eventually convicted of
25 misdemeanor theft by deception for the student loan in a Kentucky
26 state court located in Fayette County in 1985 or 1986. He was
27 sentenced to one year in county jail before he was released.
28

1 A few months later, ICE officers came to Mr. Eni's home again to
2 arrest him. He was taken to immigration detention before being
3 removed to Nigeria in or around the year 1988. The immigration judge
4 ordered he be removed based on working without permission while on
5 a student visa. Mr. Eni was held in immigration custody in the states
6 of Kentucky, Louisiana, and Texas for more than a year total before
7 being deported from Houston, Texas, to Lagos, Nigeria.

8 In 2001, Mr. Eni returned to the United States. In 2008, he was
9 working as a nurse at a hospital and was assigned to care for a hospice
10 patient at their home. In early-2008, Mr. Eni was driving through
11 Point Loma when he tried to make a U-turn in front of a military gate.
12 The guards there asked him for his driver's license, which he did not
13 have on him at the time. They also asked if he had a green card or was
14 a U.S. citizen, and he responded he did not. They then called the U.S.
15 Department of Homeland Security, followed by ICE.

16 Mr. Eni was arrested and held in immigration custody for about
17 six months before an immigration judge ordered him removed on
18 September 18, 2008. [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 [REDACTED] He was released on an
27 Order of Supervision and told to check in every six months, which
28 eventually changed to once per year in 2012. Critically, Mr. Eni has

1 never missed a check-in appointment. He has gone to the downtown
2 San Diego ICE office for his check-in appointments without issue for
3 the past 17 years. Indeed, he most recently checked in on October 10,
4 2025, and was given a check-in date for October 13, 2026. He has also
5 had a work permit since 2008, just having renewed it last year for five
6 more years. His driver's license was also renewed last year.

7 Mr. Eni retired from nursing about a year ago and started
8 working for Lyft and Uber. He also occasionally performs in-home care
9 work to help financially support himself.

10 On Friday, October 31, 2025, Mr. Eni was hired as a Lyft driver
11 to drop a person off at Camp Pendleton. Mr. Eni had gone to Camp
12 Pendleton and the Marine Corps Recruit Depot (MCRD) in San Diego
13 several times to pick up family members of the recruits without issue,
14 and never had any fear of being arrested there. When he arrived to the
15 military base, the guards checked his identification and told him to
16 park on the side of the road. They said they were going to run a check
17 on him because they saw a sign on his driver's license that said
18 "limited," which meant that he was not a U.S. citizen. They also looked
19 at his work permit. They then asked if he had a green card, and he
20 said no.

21 The guards did not tell Mr. Eni why he was being re-detained.
22 They simply said that once his identification is flagged, they had to do
23 additional background checks on him. They then took his car
24 registration, keys, and fingerprints.

25 The guards then drove Mr. Eni from Camp Pendleton to another
26 military installation, where he was met by ICE officers. [REDACTED]

27 [REDACTED]
28 [REDACTED]

1 [REDACTED] They said that was the
2 “new order.”

3 Contrary to regulation, Mr. Eni did not receive notice from ICE
4 about why he was being re-detained. Nor did ICE notify him of any
5 changed circumstances that made his removal more likely. He has not
6 had an opportunity to contest his re-detention. And no one has told
7 him whether he violated the conditions of his release. Mr. Eni has now
8 been detained over a month, with no information about whether ICE
9 has obtained travel documents. Worse yet, on July 9, 2025, ICE
10 adopted a new policy permitting removals to third countries with no
11 notice, six hours’ notice, or 24 hours’ notice depending on the
12 circumstances, providing no meaningful opportunity to make a fear-
13 based claim against removal. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 Mr. Eni’s detention violates his statutory and regulatory rights,
18 *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment.
19 Courts in this district have agreed in similar circumstances as to each
20 of Mr. Eni’s claims. Specifically:

21 (1) *Regulatory and due process violations*: Mr. Eni must be
22 released because ICE’s failure to follow its own regulations about
23 notice and an opportunity to be heard violate due process. *See, e.g.,*
24 *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-
25 cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Phan v. Noem*, 2025 WL
26 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025);
27 *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10,
28 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No.

1 12 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-
2 2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL
3 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Rokhfirooz*
4 *v. Larose*, 2025 WL 2646165, No. 25-cv-2053-RSH (S.D. Cal. Sept. 15,
5 2025) (all either granting temporary restraining orders releasing
6 noncitizens, or granting habeas petitions outright, due to ICE
7 regulatory violations during recent re-detentions of released
8 noncitizens previously ordered removed).

9 (2) *Zadvydas* violations: Mr. Eni must also be released under
10 *Zadvydas* because—having proved unable to remove him for the past
11 17 years—the government cannot show that there is a “significant
12 likelihood of removal in the reasonably foreseeable future.” 533 U.S. at
13 701. *See, e.g., Conchas-Valdez v. Casey, et al.*, 2025 WL 2884822, No.
14 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No. 25-cv-
15 2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas
16 petitions releasing noncitizens due to *Zadvydas* violations).

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

28

1 This Court should grant this habeas petition and issue
2 appropriate injunctive relief on all three grounds.

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 He was released from immigration custody about a month later, on
11 October 28, 2008, and placed on an Order of Supervision. *Id.* at ¶ 13;
12 *see also* Order of Supervision, Exhibit B (“Exh. B”). [REDACTED]
13 [REDACTED] he was held in immigration custody for about six months.
14 Exh. A at ¶ 11. He has been in immigration custody for almost a month
15 in a half since being re-detained on October 31, 2025. *Id.* at ¶ 17.

16 While under the supervision order, Mr. Eni attended check-in
17 appointments at the ICE office in downtown San Diego every six
18 months, which eventually decreased to once per year in 2012. *Id.* at
19 ¶ 13–14; *see also* Exh. B (personal report record). Indeed, he hasn’t
20 missed a check-in appointment in 17 years. Exh. A at ¶ 14; *see also*
21 Exh. B. His last check-in was on October 10, 2025, less than a month
22 before he was arrested on October 31, 2025. Exh. A at ¶¶ 14, 17–19.
23 During his last check-in appointment, he was given his next reporting
24 date of October 13, 2026. *Id.* at ¶ 14; *see also* Exh. B.

25 On Friday, October 31, 2025, Mr. Eni was hired as a Lyft driver
26 to drop a person off at Camp Pendleton. Exh. A at ¶ 17. Mr. Eni had
27 gone to Camp Pendleton and the Marine Corps Recruit Depot (MCRD)

28 _____
² EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

1 in San Diego several times to pick up family members of the recruits
2 without issue, and never had any fear of being arrested there. *Id.* at
3 ¶ 21. When he arrived there, the guards checked his identification and
4 told him to park on the side of the road. *Id.* at ¶ 17. They said they
5 were going to run a check on him because they saw a sign on his
6 driver's license that said "limited," which meant that he was not a U.S.
7 citizen. *Id.* They also looked at his work permit. *Id.* They then asked if
8 he had a green card, and he said no. *Id.*

9 The guards did not tell him why he was being re-detained. *Id.* at
10 ¶ 18. They simply said that once his identification is flagged, they had
11 to do additional background checks on him. *Id.* They then took his car
12 registration, keys, and fingerprints. *Id.*

13 The guards then drove him from Camp Pendleton to another
14 military instillation, where he was met by ICE officers. *Id.* at ¶ 19. [REDACTED]

15 [REDACTED]
16 [REDACTED] They said that was the "new
17 order." *Id.*

18 Mr. Eni never received notice from ICE about why he was being
19 re-detained. *Id.* ¶ 24. No one told him why he was being re-detained, or
20 what had changed to make it more likely he could be removed. *Id.* He
21 has never been offered an informal interview or a chance to contest his
22 re-detention with ICE. *Id.* And no one has told him that he violated the
23 conditions of his release. *Id.*

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] And he

5 must be very cautious about his diet and exercise, which has been
6 difficult to do while in immigration custody. *Id.*

7 **II. The government is carrying out deportations to third**
8 **countries without providing sufficient notice and**
9 **opportunity to be heard.**

10 When immigrants cannot be removed to their home country, ICE
11 has begun deporting those individuals to third countries without
12 adequate notice or a hearing. *See* Edward Wong et al., *Inside the*
13 *Global Deal-Making Behind Trump's Mass Deportations*, N.Y. TIMES
14 (June 25, 2025).³ The Administration reportedly has negotiated with at
15 least 58 countries to accept deportees from other nations. *Id.* On June
16 25, 2025, the New York Times reported that seven countries—Costa
17 Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
18 Rwanda—had agreed to accept deportees who are not their own
19 citizens. *Id.*

20 This summer and fall, ICE has carried out highly publicized third
21 country deportations to prisons in South Sudan, Eswatini, Ghana, and
22 Rwanda. Nokukhanya Musi & Gerald Imray, *10 more deportees from*
23 *the US arrive in the African nation of Eswatini*, Associated Press (Oct.
24 6, 2025).⁴ At least four men deported to Eswatini have remained in a
25 maximum-security prison there for nearly three months without

26 ³ Available at [https://www.nytimes.com/2025/06/25/us/politics/trump-](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html)
27 [immigrants-deportations.html](https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html) (updated June 26, 2025).

28 ⁴ Available at [https://apnews.com/article/eswatini-deportees-us-trump-](https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2)
[immigration-74b2f942003a80a21b33084a4109a0d2](https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2).

1 charge and without access to counsel; another six are detained
2 incommunicado in South Sudan, and another seven are being held in
3 an undisclosed facility in Rwanda. *Id.*

4 The Administration has reportedly negotiated with countries to
5 have many of these deportees imprisoned in prisons, camps, or other
6 facilities. The government paid El Salvador about \$5 million to
7 imprison more than 200 deported Venezuelans in a maximum-security
8 prison notorious for gross human rights abuses, known as CECOT. *See*
9 *id.* In February, Panama and Costa Rica took in hundreds of deportees
10 from countries in Africa and Central Asia and imprisoned them in
11 hotels, a jungle camp, and a detention center. *Id.*; Vanessa
12 Buschschluter, *Costa Rican court orders release of migrants deported*
13 *from U.S.*, BBC (Jun. 25, 2025).⁵ On July 4, 2025, ICE deported eight
14 men to South Sudan. *See Wong, supra.* On July 15, ICE deported five
15 men to the tiny African nation of Eswatini where they are reportedly
16 being held in solitary confinement. Gerald Imray, *3 Deported by US*
17 *held in African Prison Despite Completing Sentences, Lawyers Say*,
18 PBS (Sept. 2, 2025).⁶ Many of these countries are known for human
19 rights abuses or instability. For instance, conditions in South Sudan
20 are so extreme that the U.S. State Department website warns
21 Americans not to travel there, and if they do, to prepare their will,
22 make funeral arrangements, and appoint a hostage-taker negotiator
23 first. *See Wong, supra.*

24 On June 23 and July 3, 2025, the Supreme Court issued a stay of
25 a national class-wide preliminary injunction issued in *D.V.D. v. U.S.*

26 _____
27 ⁵ Available at <https://www.bbc.com/news/articles/cwyrn42kp7no>.

28 ⁶ Available at <https://www.pbs.org/newshour/nation/3-deported-by-u-s-held-in-african-prison-despite-completing-sentences-lawyers-say>.

1 *Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL
2 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), which required ICE to
3 follow statutory and constitutional requirements before removing an
4 individual to a third country. *U.S. Dep’t of Homeland Sec. v. D.V.D.*,
5 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186
6 (U.S. July 3, 2025).⁷ On July 9, 2025, ICE rescinded previous guidance
7 meant to give immigrants a “‘meaningful opportunity’ to assert claims
8 for protection under the Convention Against Torture (CAT) before
9 initiating removal to a third country” like the ones just described.
10 Third Country Removal Policy, Exhibit C (“Exh. C”).

11 Under the new guidance, ICE may remove any immigrant to a
12 third country “without the need for further procedures,” as long as—in
13 the view of the State Department—the United States has received
14 “credible” “assurances” from that country that deportees will not be
15 persecuted or tortured. *Id.* at 1. If a country fails to credibly promise
16 not to persecute or torture releasees, ICE may still remove immigrants
17 there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’
18 notice. But “[i]n exigent circumstances,” a removal may take place in
19 as little as six hours, “as long as the alien is provided reasonably
20
21
22

23 ⁷ Though the Supreme Court’s order was unreasoned, the dissent noted
24 that the government had sought a stay based on procedural arguments
25 applicable only to class actions. *Dep’t of Homeland Sec. v. D.V.D.*, 145
26 S. Ct. 2153, 2160 (2025) (Sotomayor, J., dissenting). Thus, “even if the
27 Government [was] correct that classwide relief was impermissible” in
28 *D.V.D.*, Respondents still “remain[] obligated to comply with orders
enjoining [their] conduct with respect to individual plaintiffs” like
Mr. Eni. *Id.* In short, the Supreme Court’s decision does not override
this Court’s authority to grant individual injunctive relief. See *Nguyen*
v. Scott, No. 2:25-CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash.
Aug. 21, 2025).

1 means and opportunity to speak with an attorney prior to the
2 removal.” *Id.*

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

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

24 Based on the facts of Mr. Eni’s individual case, it is evident that
25 ICE has not obtained travel documents from any third country. This is
26 evident because ICE has had more than 17 years to obtain travel
27 documents and has not done so. Indeed, Mr. Eni has now been in ICE
28 custody for over a month, and there is no indication that ICE

1 anticipates receiving travel documents any time in the reasonably
2 foreseeable future.

3 **CLAIMS FOR RELIEF**

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

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

13 Second, it should enjoin the Respondents from removing Mr. Eni
14 to a third country without first providing notice and a sufficient
15 opportunity to be heard before an immigration judge.

16 **III. Claim 1: ICE failed to comply with its own regulations**
17 **before re-detaining Mr. Eni, violating his rights under**
18 **applicable regulations and due process.**

19 Two regulations establish the process due to someone who is re-
20 detained in immigration custody following a period of release. 8 C.F.R.
21 § 241.4(l) applies to all re-detentions, generally. 8 C.F.R. § 241.13(i)
22 applies as an added, overlapping framework to persons released upon
23 good reason to believe that they will not be removed in the reasonably
24 foreseeable future, as Mr. Eni was. *See Phan v. Noem*, 2025 WL
25 2898977, No. 25-CV-2422-RBM-MSB, *3-*5 (S.D. Cal. Oct. 10, 2025)
26 (explaining this regulatory framework and granting a habeas petition
27 for ICE's failure to follow these regulations for a refugee of Vietnam
28 who entered the United States before 1995); *Rokhfirooz*, No. 25-CV-
2053-RSH-VET, 2025 WL 2646165 at *2 (same as to an Iranian

1 national).

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

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

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

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

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

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

6 First, ICE did not identify a proper reason under the regulations
7 to re-detain Mr. Eni. Mr. Eni was not returned to custody because of a
8 conditions violation, and there was apparently no determination before
9 or at his re-detention that there are "changed circumstances" such that
10 there is "a significant likelihood that [Mr. Eni] may be removed in the
11 reasonably foreseeable future." § 241.13(i)(2).

12 Second, ICE did not notify Mr. Eni of the reasons for his re-
13 detention upon revocation of release. *See* §§ 241.4(l)(1), 241.13(i)(3). He
14 was re-detained on October 31, 2025. Exh. A at ¶ 17. As he explained
15 on November 6, 2025, "[n]o one told me why I was re-detained." *Id.* at
16 ¶ 24.

17 Third, Mr. Eni has yet to receive the informal interview required
18 by regulation. *Id.* Nor has he been afforded a meaningful opportunity
19 to respond to the reasons for revocation or submit evidence rebutting
20 his re-detention. *Id.* No one from ICE has ever invited him to contest
21 his detention. *Id.*

22 Numerous courts have released re-detained immigrants after
23 finding that ICE failed to comply with applicable regulations this
24 summer and fall. *See, e.g., Phan*, 2025 WL 2898977 at *5; *Rokhfirooz*,
25 2025 WL 2646165; *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*,
26 2025 WL 2683988; *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166
27 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y.
28 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu*

1 *v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9
2 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA,
3 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v.*
4 *Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex.
5 July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL
6 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2;
7 *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar.
8 31, 2025).

9 “[B]ecause officials did not properly revoke petitioner’s release
10 pursuant to the applicable regulations, that revocation has no effect,
11 and [Mr. Eni] is entitled to his release (subject to the same Order of
12 Supervision that governed his most recent release).” *Liu*, 2025 WL
13 1696526, at *3.

14 **IV. Claim 2: Mr. Eni’s detention violates *Zadvydas* and**
15 **8 U.S.C. § 1231.**

16 **A. Legal background**

17 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court
18 considered a problem affecting people like Mr. Eni: Federal law
19 requires ICE to detain an immigrant during the “removal period,”
20 which typically spans the first 90 days after the immigrant is ordered
21 removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period
22 expires, detention becomes discretionary—ICE may detain the migrant
23 while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
24 this scheme would not lead to excessive detention, as removal happens
25 within days or weeks. But some detainees cannot be removed quickly.
26 Perhaps their removal “simply require[s] more time for processing,” or
27 they are “ordered removed to countries with whom the United States
28 does not have a repatriation agreement,” or their countries “refuse to

1 take them,” or they are “effectively ‘stateless’ because of their race
2 and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th
3 Cir. 2001). In these and other circumstances, detained immigrants can
4 find themselves trapped in detention for months, years, decades, or
5 even the rest of their lives. If federal law were understood to allow for
6 “indefinite, perhaps permanent, detention,” it would pose “a serious
7 constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the
8 Supreme Court avoided the constitutional concern by interpreting
9 § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

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

20 Mr. Eni can make all the threshold showings needed to shift the
21 burden to the government.

22
23
24
25 ⁸ Further, even before the 180 days have passed, the immigrant must
26 still be released if he *rebutts* the presumption that his detention is
27 reasonable. See, e.g., *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D.
28 Cal. 2020) (collecting cases on rebutting the *Zadvydas* presumption
before six months have passed); *Zavvar*, 2025 WL 2592543 at *6
(finding the presumption rebutted for a person who was released and,
years later, re-detained for less than six months).

1 **B. The six-month grace period expired in March 2009.**

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

10 Here, Mr. Eni’s order of removal was entered on September 18,
11 2008. Exh. A at ¶ 11; *see also* Exh. B (order of supervision).¹⁰
12 Accordingly, his 90-day removal period began then. 8 U.S.C.
13 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in March
14 2009, three months after the removal period ended. *See, e.g., Tadros v.*
15 *Noem*, 2025 WL 1678501, No. 25-cv-4108(EP), *2–*3.

16 The government sometimes claims that the immigrant must
17 actually be *detained* for a cumulative six months—if the immigrant is
18 released, the clock pauses, resuming only when the immigrant is re-
19 detained. *See, e.g., Nhean v. Brott*, No. CV 17-28 (PAM/FLN), 2017 WL
20 2437268, at *2 (D. Minn. May 2, 2017), *report and recommendation*
21 *adopted*, 2017 WL 2437246 (D. Minn. June 5, 2017) (adopting this
22 view). That misconstrues *Zadvydas*. As the Ninth Circuit has

23
24
25 ⁹ Those dates are, specifically, (1) “[t]he date the order of removal
26 becomes administratively final;” (2) “[i]f the removal order is judicially
27 reviewed and if a court orders a stay of the removal of the alien, the
28 date of the court’s final order;” or (3) “[i]f the alien is detained or
confined (except under an immigration process), the date the alien is
released from detention or confinement.” *Id.*

¹⁰ EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

1 recognized, the six-month grace period is pegged to the start of the
2 removal period. *See Ma*, 257 F.3d at 1102 n.5 (“[I]n *Zadvydas*, the
3 Supreme Court read the statute to permit a ‘presumptively reasonable’
4 detention period of *six months* after a final order of removal—that is,
5 *three months* after the statutory removal period has ended.”);
6 *Rodriguez v. Hayes*, 591 F.3d 1105, 1115 (9th Cir. 2010), *overruled in*
7 *other part by Jennings v. Rodriguez*, 583 U.S. 281 (2018) (“The
8 [*Zadvydas*] Court determined that for six months following the
9 beginning of the removal period an alien’s detention was
10 presumptively authorized.”). It is not calculated based on the length of
11 detention. *See Bailey*, 2016 WL 5791407, at *2 (adopting the correct
12 view).

13 The government’s contrary view runs afoul of *Zadvydas*’s
14 reasoning. *Zadvydas* established the six-month grace period to give
15 ICE a fair chance to effectuate the removal before a court gets
16 involved. 533 U.S. at 700–01. That was why the Court chose to expand
17 the grace period beyond the 90-day statutory removal period: because
18 Congress likely did not “believe[] that all reasonably foreseeable
19 removals could be accomplished in that time.” *Id.* at 701. But in
20 Mr. Eni’s case, ICE has already had more than 17 years to effectuate
21 the removal. They have had a final removal order in hand since
22 September 18, 2008. *See* Exh. A at ¶ 11; *see also* Exh. B. [REDACTED]
23 [REDACTED] ICE could just
24 as effectively take steps to arrange his removal whether he was in a
25 cell or on the street.

26 Indeed, even while released, Mr. Eni had returned to ICE bi-
27 annually and annually for his check-ins. *Id.* at ¶¶ 13–14. He never
28 missed an appointment. *Id.* at ¶ 14. His last appointment was on

1 October 10, 2025, less than a month before he was arrested on October
2 31, 2025. *Id.* During the past 17 years, ICE could have obtained any
3 necessary information or assistance to remove Mr. Eni. Yet, they never
4 succeeded. Having already been given much more than six months to
5 try to remove him, there is no principled reason to give ICE an
6 additional grace period.

7 Finally, even if the grace period had not passed, Mr. Eni could
8 still file this petition. That’s because the six-month grace period is only
9 “*presumptively* reasonable.” *Zadvydas*, 533 U.S. at 701 (emphasis
10 added). Several courts have concluded that an immigrant may rebut
11 that presumption with sufficiently compelling evidence that his
12 removal is not foreseeable. *See Trinh v. Homan*, 466 F. Supp. 3d 1077,
13 1092 (C.D. Cal. 2020) (collecting cases). Such evidence exists here. ICE
14 almost certainly released Mr. Eni back in 2008 because it recognized
15 that it could not remove him. Exh. A at ¶¶ 11–12; *see also* Exh. B. ICE
16 has indeed made no progress in removing him, despite having a final
17 removal order for more than 17 years. *See generally* Exh. B. ICE re-
18 detained Mr. Eni only to implement an across-the-board policy—not
19 because of any movement in his particular removal case. Exh. C.

20 Regardless, Mr. Eni has now been detained for over a month.
21 Exh. A at ¶ 9. And ICE, of course, has had more than 17 years since his
22 removal order was issued. *Id.* at ¶¶ 2, 17. Mr. Eni’s personal
23 experience provides good reason to believe he will not likely be
24 removed in the reasonably foreseeable future. *See generally*, Exhs. A &
25 B.

26 This Court uses a burden-shifting framework to evaluate
27 Mr. Eni’s *Zadvydas* claim. At the first stage of the framework, Mr. Eni
28 must “provide[] good reason to believe that there is no significant

1 likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
2 533 U.S. at 701. This standard can be broken down into three parts.

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

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

26 **“In the reasonably foreseeable future.”** This component of
27 the test focuses on when Mr. Eni will likely be removed: Continued
28 detention is permissible only if removal is likely to happen “in the

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

14 Mr. Eni satisfies this standard. ICE has now had more than 17
15 years to deport him—since September 2008. Exh. A at ¶ 11; Exh. B. He
16 has also been in immigration custody more than one month—since
17 October 31, 2025. Exh. A at ¶ 17. He cooperated with ICE by attending
18 annual and bi-annual check-ins for the past 17 years. *Id.* at ¶¶ 13–14.
19 And his last check-in took place on October 10, 2025, less than a month
20 before he was re-detained by ICE. *Id.* at ¶¶ 13, 17. Once again, ICE
21 has proved unable to remove him during the month and a half since he
22 was re-detained on October 31, 2025. *Id.* at ¶ 17. ICE has not informed
23 him of any likelihood of obtaining travel documents from any country
24 during that time. *Id.* at ¶¶ 19, 24.

25 Thus, Mr. Eni has met his initial burden, and the burden shifts
26 to the government. Unless the government can prove a “significant
27 likelihood of removal in the reasonably foreseeable future,” Mr. Eni
28 must be released. *Zadvydas*, 533 U.S. at 701.

1 **C. *Zadvydas* unambiguously prohibits this Court from**
2 **denying Mr. Eni’s petition because of his criminal**
3 **history.**

4 If released on supervision, Mr. Eni poses no risk of danger or
5 flight. He has remained in the United States since he was ordered
6 removed in September 2008. Exh. A at ¶¶ 11–16, 21–22. When not in
7 custody, he attended annual and bi-annual check-ins at the ICE office
8 located in downtown San Diego, further supporting he poses no risk of
9 danger or flight. *Id.* at ¶¶ 13–14.

10 While in the United States, Mr. Eni worked as a nurse for more
11 than 22 years total, at a hospital, nursing home, hospice care, and in-
12 home care. *Id.* at ¶ 22. He receives \$1,005 for social security every
13 month, and was supplementing that with rideshare and in-home care.
14 *Id.* He supports himself and his three adult children back in Nigeria.
15 *Id.* He also has a son in Canada who is obtaining his master’s degree.
16 *Id.* With that money, he pays \$1,007 in rent, a \$900 car payment, \$200
17 for car insurance, and cell phone, gas, food, and other miscellaneous
18 expenses and household supplies every month. *Id.* He does not have
19 any savings and cannot afford an attorney. *Id.*

20 Regardless, *Zadvydas* squarely holds that danger or flight are
21 not grounds for detaining an immigrant when there is no reasonable
22 likelihood of removal in the reasonably foreseeable future. 533 U.S. at
23 684–91.

24 The two petitioners in *Zadvydas* both had significant criminal
25 history. Mr. *Zadvydas* himself had “a long criminal record, involving
26 drug crimes, attempted robbery, attempted burglary, and theft,” as
27 well as “a history of flight, from both criminal and deportation
28 proceedings.” *Id.* at 684. The other petitioner, Kim Ho Ma, was
“involved in a gang-related shooting [and] convicted of manslaughter.”

1 *Id.* at 685. The government argued that both men could be detained
2 regardless of their likelihood of removal, because they posed too great a
3 risk of danger or flight. *Id.* at 690–91.

4 The Supreme Court rejected that argument. The Court
5 appreciated the seriousness of the government’s concerns. *Id.* at 691.
6 But the Court found that the immigrant’s liberty interests were
7 weightier. *Id.* The Court had never countenanced “potentially
8 permanent” “civil confinement,” based only on the government’s belief
9 that the person would misbehave in the future. *Id.*

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

25 These conditions have proved sufficient to protect the public over
26 the past 17 years. They will continue to do so while ICE keeps trying to
27 deport Mr. Eni.

28

1 **V. Claim 3: ICE may not remove Mr. Eni to a third country**
2 **without adequate notice and an opportunity to be heard.**

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

7 **A. Legal background: The Convention Against Torture,**
8 **statutory withholding of removal, and due process**
9 **prohibit deportation to third countries without**
10 **meaningful notice and an opportunity to be heard.**

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

22 Similarly, Congress codified protections enshrined in the CAT
23 prohibiting the government from removing a person to a country where
24 they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C.
25 § 1231 note) (“It shall be the policy of the United States not to expel,
26 extradite, or otherwise effect the involuntary return of any person to a
27 country in which there are substantial grounds for believing the person
28 would be in danger of being subjected to torture, regardless of whether
the person is physically present in the United States.”); 28 C.F.R.

1 § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
2 mandatory.

3 To comport with the requirements of due process, the government
4 must provide notice of the third country removal and an opportunity to
5 respond. Due process requires “written notice of the country being
6 designated” and “the statutory basis for the designation, i.e., the
7 applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d
8 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep’t of Homeland*
9 *Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21,
10 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

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

22 If the noncitizen claims fear, measures must be taken to ensure
23 that the noncitizen can seek asylum, withholding, and relief under
24 CAT before an immigration judge in reopened removal proceedings.
25 The amount and type of notice must be “sufficient” to ensure that
26 “given [a noncitizen’s] capacities and circumstances, he would have a
27 reasonable opportunity to raise and pursue his claim for withholding of
28 deportation.” *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v.*

1 *Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405,
2 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the
3 government to move to reopen the noncitizen’s immigration
4 proceedings if the individual demonstrates “reasonable fear” and to
5 provide “a meaningful opportunity, and a minimum of fifteen days, for
6 the non-citizen to seek reopening of their immigration proceedings” if
7 the noncitizen is found to not have demonstrated “reasonable fear”);
8 *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a
9 respondent to file a motion to reopen and seek relief).

10 “[L]ast minute” notice of the country of removal will not suffice,
11 *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x
12 724 (9th Cir. 2016), and for good reason: To have a meaningful
13 opportunity to apply for fear-based protection from removal,
14 immigrants must have time to prepare and present relevant
15 arguments and evidence. Merely telling a person where they may be
16 sent, without giving them a chance to look into country conditions,
17 does not give them a meaningful chance to determine whether and why
18 they have a credible fear.

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

21 The policies in the June 6, 2025 memo do not adhere to these
22 requirements. The memo “contravenes Ninth Circuit law.” *Nguyen v.*
23 *Scott*, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21,
24 2025) (explaining how the July 9, 2025 ICE memo contravenes Ninth
25 Circuit law on the process due to noncitizens in detail); *see also Van*
26 *Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D. Cal.
27 Sept. 29, 2025) (granting temporary restraining order preventing a
28 noncitizen’s deportation to a third country pending litigation in light of

1 due process problems); *Nguyen Tran*, No. 25-cv-2391-BTM-BLM, ECF
2 No. 6 (S.D. Cal. Sept. 18, 2025) (same).

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

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

21 Yet if given the opportunity to investigate conditions, immigrants
22 would find credible reasons to fear persecution or torture—like
23 patterns of keeping deportees indefinitely and without charge in
24 solitary confinement or extreme instability raising a high likelihood of
25 death—in many of the third countries that have agreed to removal
26 thus far.

27 Due process requires an adequate chance to identify and raise
28 these threats to health and life. This Court must prohibit the

1 government from removing Mr. Eni without these due process
2 safeguards.

3 **VI. This Court must hold an evidentiary hearing on any**
4 **disputed facts.**

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

9 **VII. Prayer for relief**

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

- 12 1. Order and enjoin Respondents to immediately release
13 Petitioner from custody;
- 14 2. Enjoin Respondents from re-detaining Petitioner under 8
15 U.S.C. § 1231(a)(6) unless and until Respondents obtain a
16 travel document for his removal;
- 17 3. Enjoin Respondents from re-detaining Petitioner without first
18 following all procedures set forth in 8 C.F.R. §§ 241.4(l),
19 241.13(i), and any other applicable statutory and regulatory
20 procedures;
- 21 4. Enjoin Respondents from removing Petitioner to any country
22 other than Nigeria, unless they provide the following process,
23 *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-
24 BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
 - 25 a. written notice to both Petitioner and Petitioner's counsel
26 in a language Petitioner can understand;

27
28

PROOF OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, the undersigned, caused to be served the within Petition for Writ of Habeas Corpus by email, at the request of Janet Cabral, Chief of the Civil Division, to:

U.S. Attorney's Office, Southern District of California
Civil Division
USACAS.Habeas2241@usdoj.gov

Date: December 11, 2025

/s/ Armilla Staley-Ngomo
Armilla Staley-Ngomo

Exhibit A
Under Seal

Exhibit B

Under Seal

Exhibit C

CASE NO. 

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