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

12 ALBUSHRA MOHAMMED,

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 JEREMY CASEY, Warden at Imperial
23 Regional Detention Center,

24 Respondents.

CIVIL CASE NO.: '25CV3724 LL DEB

**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. Mohammed's financial eligibility for
representation is included in this sworn statement.

1 **I. Introduction**

2 This civil immigration habeas petition seeks two grounds of relief. First, it
3 seeks to prevent Mr. Mohammed's indefinite detention in the Imperial Regional
4 Detention Facility pending deportation to Sudan absent the basic statutory and
5 due process guarantees outlined in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

6 Second, it seeks to prevent his deportation to an unidentified third country without
7 him first receiving basic due process guarantees of notice and opportunity to be
8 heard as to his statutory rights to seek withholding of removal and Convention
9 Against Torture relief.

10 Mr. Mohammed was ordered removed to Sudan on February 7, 2025. It can
11 be very hard to deport people to Sudan. Sudan is two and a half years into a brutal
12 civil war, resulting in one of the world's worst current humanitarian crises. It
13 lacks a functioning central authority for issuing passports and civil documents. Its
14 capital city airport, Khartoum International, is closed to commercial flights for the
15 foreseeable future. Its smaller other airport is also regularly closed to commercial
16 flights due to drone strikes.

17 Mr. Mohammed has now spent ten months in immigration custody after the
18 issuance of his removal order, with no end in sight. If the government has given
19 up on deporting him Sudan, and is instead detaining him with plans to instead
20 deport him to an unidentified third country, its operative third-country removal
21 policies violate the core procedural protections this country has adopted to ensure
22 it does not send people off to be persecuted and tortured.

23 This Court should order Mr. Mohammed released from immigration
24 custody and enjoin the government from deporting him to a third country without
25 first providing sufficient notice and an opportunity to be heard.

1 **II. Statement of Facts**

2 **A. Mr. Mohammed comes to the border in December 2024, is**
3 **ordered removed in February 2025, and yet remains in**
4 **detention.**

5 Albushra Mohammed fled the war in Sudan and came to the United States
6 border on December 21, 2024. Exhibit A (Declaration of Albushra Mohammed)
7 ¶¶ 1–3. He was detained. *Id.* ¶¶ 1–2. On February 7, 2025, Mr. Mohammed was
8 ordered removed to Sudan. *Id.* ¶ 3.² He has remained at the Imperial Regional
9 Detention Center in Calexico, California. *Id.* ¶ 2.

10 In the last ten months, ICE has not been able to deport Mr. Mohammed
11 back to Sudan. *Id.* ¶ 4. Mr. Mohammed explains,

12 I’ve spoken to ICE multiple times. I’ve asked to be sent back to
13 Sudan, so at least I can look for my mother and siblings. I do not
14 know if they are okay or where they are. The ICE officers have told
15 me there is no government in Sudan and no embassy to talk to. They
16 have said there’s nothing they can do to get me to Sudan.

17 I have cooperated with ICE and tried to help them get me back to
18 Sudan. I want to get back to my family.

19 *Id.* ¶¶ 4–5.

20 **B. Sudan lacks a functioning central authority for issuing travel**
21 **documents and passports and is in the midst of a brutal civil war**
22 **and humanitarian crisis, making deportations to Sudan**
23 **extremely difficult.**

24 As President Trump found earlier this year when banning the entry of
25 Sudanese nationals into the United States, Sudan “lacks a competent or
26 cooperative central authority for issuing passports or civil documents.”
27 Presidential Proclamation, *Restricting the Entry of Foreign Nationals to Protect*

28 ² See also EOIR Case Look-Up, <https://acis.eoir.justice.gov/en/caseInformation>
(searching by Mr. Mohammed’s A-number [REDACTED] noting the immigration
court in Imperial, California, issued a final decision in his case on February 7,
2025, and no appeal was filed).

1 *the United States from Foreign Terrorists and Other National Security and Public*
2 *Safety Threats*, June 4, 2025.³

3 Sudan has long been a challenging place to repatriate immigrants ordered
4 deported. It was on a list of countries “at risk of noncompliance” with their
5 obligations to receive nationals in 2016, 2017, and 2018, and in late 2024, there
6 were over 1,000 Sudanese people with final orders of removal in the United States
7 whom the United States was unable to deport. *See* Office of Inspector General,
8 Department of Homeland Security, *ICE Faces Barriers in Timely Repatriation of*
9 *Detained Aliens*, March 11, 2019, at 30; Memorandum from ICE ERO, November
10 2024, at 5.⁴

11 The situation will not improve in the near future. The State Department
12 suspended the operations of the U.S. Embassy in Karthoum in April 2023 “due to
13 the outbreak of armed conflict,” which “continues,” and State still places Sudan at
14 the highest level travel advisory, “Level 4: Do not travel.” U.S. Department of
15 State, *Sudan Travel Advisory* (Oct. 15, 2025).⁵ “The situation is violent, volatile,
16 and extremely unpredictable.” *Id.* The capital city’s airport is “currently closed to
17 commercial traffic,” and the other airport’s commercial traffic has been “limited
18 at times due to drone strikes.” *Id.*

19 International observers agree that, currently, “Sudan is experiencing the
20 world’s worst humanitarian crisis, driven by a brutal [civil] war.” Jeffrey Feltman
21

22 ³ 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/)
23 [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/)
24 [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/).

25 ⁴ 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)
26 [28-Mar19.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf);
27 [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).

28 ⁵ Available at [https://travel.state.gov/en/international-travel/travel-](https://travel.state.gov/en/international-travel/travel-advisories/sudan.html)
[advisories/sudan.html](https://travel.state.gov/en/international-travel/travel-advisories/sudan.html).

1 & Michael E. O’Hanlon, *The catastrophe in Sudan*, The Current: Brookings
2 (Nov. 24, 2025).⁶ “As the war rages on, Sudan is enduring the world’s largest and
3 fastest-growing internal displacement crisis, with several rights groups and the
4 United States describing the violence—particularly in Darfur—as genocide.”
5 Mariel Ferragamo & Diana Roy, *What is the Extent of Sudan’s Humanitarian*
6 *Crisis?*, Council on Foreign Relations (Nov. 6, 2025).⁷

7 **C. ICE has adopted a new third-country removal policy that does**
8 **not require ICE to inform noncitizens of their rights to apply for**
9 **asylum, withholding, and CAT relief, resulting in several dozen**
10 **noncitizens being deported to and detained indefinitely in foreign**
11 **prisons and military camps.**

12 This year, ICE began removing a very small number of immigrants it could
13 not previously remove to third countries. It implemented new policies this
14 summer to do so. On July 9, 2025, ICE rescinded previous guidance meant to give
15 immigrants a “‘meaningful opportunity’ to assert claims for protection under the
16 Convention Against Torture before initiating removal to a third country.” Exhibit
17 B (July 9, 2025, ICE third-country removal guidance).

18 Now, ICE may remove any immigrant to a third country without any
19 notice. It may do so if, in the sole view of the State Department, the United States
20 has received “credible” “assurances” from that country that deportees will not be
21 persecuted or tortured. *Id.* at 1.

22 If a country fails to credibly promise not to persecute or torture releasees,
23 ICE may remove immigrants with only 24 hours’ notice. “In exigent
24 circumstances,” a removal may take place in six hours, “as long as the alien is
25 provided reasonably means and opportunity to speak with an attorney prior to the
26 removal.” *Id.*

27 ⁶ Available at <https://www.brookings.edu/articles/the-catastrophe-in-sudan/>.

28 ⁷ Available at <https://www.cfr.org/in-brief/what-extent-sudans-humanitarian-crisis>.

1 Under this policy, ICE “will not affirmatively ask whether the alien is
2 afraid of being removed to the country of removal.” *Id.* (emphasis original). If the
3 noncitizen “does not affirmatively state a fear of persecution or torture if removed
4 to the country of removal listed on the Notice of Removal within 24 hours, [ICE]
5 may proceed with removal to the country identified on the notice.” *Id.* at 2.

6 Under this policy, the United States has deported several dozen noncitizens
7 to prisons and military camps in Rwanda, Eswatini, South Sudan, and Ghana.
8 Many are still detained to this day, in countries to which they have never been,
9 without charge. Nokukhanya Musi & Gerald Imray, *10 more deportees from the*
10 *US arrive in the African nation of Eswatini*, Associated Press (Oct. 6, 2025)⁸; *see*
11 *also* Gerald Imray, *A Cuban man deported by the US to Africa is on a hunger*
12 *strike in prison, his lawyer says*, Associated Press (Oct. 23, 2025)⁹; Frank
13 Chothia, *Eswatini confirms receiving \$5.1m from the US for accepting deportees*,
14 BBC (Nov. 18, 2025).¹⁰

15 **III. Claims for Relief**

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

17 First, it should order Mr. Mohammed’s immediate release. *Zadvydas v.*
18 *Davis* holds that immigration statutes do not authorize the government to detain
19 immigrants like Mr. Mohammed, for whom there is “no significant likelihood of
20 removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001).

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

24
25 _____
26 ⁸ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

27 ⁹ Available at <https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859>.

28 ¹⁰ Available at <https://www.bbc.com/news/articles/cq50vjdx368o>.

1 **I. Claim 1: Mr. Mohammed’s detention violates *Zadvydas* and 8 U.S.C.**
2 **§ 1231.**

3 **A. Legal background**

4 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
5 a problem affecting people like Mr. Mohammed: Federal law requires ICE to
6 detain an immigrant during the “removal period,” which typically spans the first
7 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After
8 that 90-day removal period expires, detention becomes discretionary—ICE may
9 detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6).
10 Ordinarily, this scheme would not lead to excessive detention, as removal
11 happens within days or weeks. But some detainees cannot be removed quickly.
12 Perhaps their removal “simply require[s] more time for processing,” or they are
13 “ordered removed to countries with whom the United States does not have a
14 repatriation agreement,” or their countries “refuse to take them,” or they are
15 “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v.*
16 *Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances,
17 detained immigrants can find themselves trapped in detention for months, years,
18 decades, or even the rest of their lives.

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

23 As an initial matter, *Zadvydas* held that detention is “presumptively
24 reasonable” for at least six months. *Id.* at 701. After six months, courts must use a
25 burden-shifting framework to decide whether detention remains authorized.

26 First, the petitioner must make a prima facie case for relief: He must prove
27 that there is “good reason to believe that there is no significant likelihood of
28 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 689.

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

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

16 Using this framework, Mr. Mohammed can make all the threshold
17 showings needed to shift the burden to the government.

18 **B. The six-month grace period expired in August 2025.**

19 The *Zadvydas* grace period lasts for “six months after a final order of
20 removal.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here,
21 Mr. Mohammed’s order of removal was entered on February 7, 2025. Exhibit A
22 ¶ 3. The *Zadvydas* grace period thus expired in August 2025.

23 **C. There is good reason to believe that there is no significant**
24 **likelihood of Mr. Mohammed’s removal in the reasonably**
25 **foreseeable future.**

26 Because the six-month grace period has passed, this Court must evaluate
27 Mr. Mohammed’s *Zadvydas* claim using the burden-shifting framework. At the
28 first stage of the framework, there must be “good reason to believe that there is no

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

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

23 **“In the reasonably foreseeable future.”** This component of the test
24 focuses on when Mr. Mohammed will likely be removed: Continued detention is
25 permissible only if removal is likely to happen “in the reasonably foreseeable
26 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
27 removal efforts. If the Court has “no idea of when it might reasonably expect
28 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal

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

9 Mr. Mohammed readily satisfies the above standards for two reasons.

10 *First*, Respondents have had ten months to try to remove Mr. Mohammed.
11 They have so far been unable to. Mr. Mohammed has fully cooperated with ICE’s
12 removal efforts. Exhibit A ¶¶ 4–5. Yet ICE has proved unable to remove him. *Id.*
13 This, alone, provides good reason to shift the burden to the government to prove
14 there is a significant likelihood of Mr. Mohammed’s removal in the reasonably
15 foreseeable future.

16 *Second*, the United States has historically had trouble deporting people to
17 Sudan, and the situation has only deteriorated in recent years due to civil war.
18 President Trump declared earlier this year that Sudan “lacks a competent or
19 cooperative central authority for issuing passports or civil documents.”
20 Presidential Proclamation, *supra*. As Mr. Mohammed has demonstrated in this
21 petition, the war continues to rage, further reducing the likelihood there will be a
22 functioning government to coordinate his return. *See supra* section II(B).

23 As the ICE officers in Mr. Mohammed’s case have told him, “there is no
24 government in Sudan and no embassy to talk to.” Exhibit A ¶ 4. His ICE officers
25 have explained “there’s nothing they can do to get me to Sudan.” *Id.*

26 Thus, Mr. Mohammed has met his initial burden, and the burden shifts to
27 the government. Unless the government can prove a “significant likelihood of
28

1 removal in the reasonably foreseeable future,” Mr. Mohammed must be released.
2 *Zadvydas*, 533 U.S. at 701.

3 **II. Claim 2: ICE must provide adequate notice and an opportunity to be**
4 **heard before removing Mr. Mohammed to a third country.**

5 In addition to unlawfully detaining him, ICE’s policies threaten
6 Mr. Mohammed’s unlikely, but potentially immediate, removal to an unidentified
7 third country without adequate notice and an opportunity to be heard. These
8 policies violate the Fifth Amendment, the Convention Against Torture, and
9 implementing regulations.

10 **A. Legal background: Due process requires notice and an**
11 **opportunity to be heard before deportation to third countries.**

12 As noted, U.S. law enshrines mandatory protections against dangerous and
13 life-threatening removal decisions through the withholding of removal statute and
14 implementations of the Convention Against Torture. *See* 8 U.S.C.
15 § 1231(b)(3)(A); 8 C.F.R. §§ 208.16, 1208.16 (withholding); FARRA 2681-822
16 (codified as 8 U.S.C. § 1231 note; 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18,
17 1208.16-1208.18 (CAT).

18 And the third country removal statute involves a “four-stage inquiry set
19 forth in § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash.
20 2019) (summarizing cases on this point); *see also Hadera v. Gonzales*, 494 F.3d
21 1154, 1156–59 (9th Cir. 2007) (explaining the stages). The first step is a
22 noncitizen designates “one country to which the noncitizen wants to be removed.”
23 *Aden*, 409 F. Supp. 3d at 1006. If the noncitizen does not designate a country, or
24 that country does not accept them, then “the IJ may at step two designate a
25 country of which the noncitizen is a subject, national, or citizen.” *Id.* at 1007. If
26 “no country satisfies” that requirement, the step three allows designation and
27 removal to a number of other countries. 8 U.S.C. § 1231(b)(2)(E). The
28 government can proceed to the fourth stage—removal to “another country”—only

1 if it determines it is “impracticable, inadvisable, or impossible to remove the alien
2 to each country described” in the third stage. 8 U.S.C. § 1231(b)(2)(E)(vii).

3 When pursuing a third-country removal subject to all the above constraints,
4 the government must provide notice of the third country removal and an
5 opportunity to respond. Due process requires “written notice of the country being
6 designated” and “the statutory basis for the designation, i.e., the applicable
7 subsection of § 1231(b)(2).” *Aden*, 409 F. Supp. 3d at 1019.

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

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

25 “[L]ast minute” notice of the country of removal will not suffice,
26 *Andriasian*, 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App’x 724 (9th
27 Cir. 2016), and for good reason: To have a meaningful opportunity to apply for
28 fear-based protection from removal, immigrants must have time to prepare and

1 present relevant arguments and evidence. Telling a person where they may be
2 sent, without giving them a chance to look into country conditions, does not give
3 them a meaningful chance to determine whether and why they have a credible
4 fear.

5 **B. The July 6, 2025 memo’s removal policies violate the Fifth**
6 **Amendment, 8 U.S.C. § 1231, the Convention Against Torture,**
7 **and implementing regulations.**

8 The policies in the currently effective July 6, 2025 memo do not adhere to
9 these requirements. The operative memo “contravenes Ninth Circuit law.” *Nguyen*
10 *v. Scott*, __ F. Supp. 3d __, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D.
11 Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE memo contravenes
12 Ninth Circuit law on the process due to noncitizens in detail); *see also Van Tran*
13 *v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D. Cal. Sept. 29, 2025)
14 (granting temporary restraining order preventing a noncitizen’s deportation to a
15 third country pending litigation in light of due process problems); *Nguyen Tran v.*
16 *Noem*, No. 25-cv-2391-BTM-BLM, ECF No. 6 (S.D. Cal. Sept. 18, 2025) (same).

17 First, under the policy, ICE need not give immigrants *any* notice or *any*
18 opportunity to be heard before removing them to a country that—in the State
19 Department’s estimation—has provided “credible” “assurances” against
20 persecution and torture. Exhibit B. By depriving immigrants of any chance to
21 challenge the State Department’s view, this policy violates “[t]he essence of due
22 process,” “the requirement that a person in jeopardy of serious loss be given
23 notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*,
24 424 U.S. 319, 348 (1976) (cleaned up).

25 Second, even when the government has obtained no credible assurances
26 against persecution and torture, the government can still remove the person with
27 between 6 and 24 hours’ notice, depending on the circumstances. *See* Exhibit B.
28 Practically speaking, there is not nearly enough time for a detained person to
assess their risk in the third country and marshal evidence to support any credible

1 fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may
2 know nothing about a third country, like Eswatini or South Sudan, when they are
3 scheduled for removal there.

4 If given the opportunity to investigate conditions, immigrants would find
5 credible reasons to fear persecution or torture—like patterns of keeping deportees
6 indefinitely and without charge in solitary confinement, or extreme instability
7 raising a high likelihood of death—in many of the third countries that have agreed
8 to removal of thus far.

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

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

22 **III. This Court must hold an evidentiary hearing on any disputed facts.**

23 Resolution of a prolonged-detention habeas petition may require an
24 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).
25 Mr. Mohammed hereby requests such a hearing on any material, disputed facts.
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1 **IV. Prayer for relief**

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

- 3 1. Order and enjoin Respondents to immediately release Petitioner from
4 custody;
- 5 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
6 § 1231(a)(6) unless and until Respondents obtain a travel document
7 for his removal;
- 8 3. Enjoin Respondents from re-detaining Petitioner without first
9 following all procedures set forth in 8 C.F.R. § 241.13(i), and any
10 other applicable statutory and regulatory procedures;
- 11 4. Enjoin Respondents from removing Petitioner unless they provide
12 the following process:
- 13 a. written notice to both Petitioner and Petitioner’s counsel in a
14 language Petitioner can understand;
- 15 b. a meaningful opportunity, and a minimum of ten days, to raise
16 a fear-based claim for CAT protection prior to removal;
- 17 c. if Petitioner is found to have demonstrated “reasonable fear”
18 of removal to the country, Respondents must move to reopen
19 Petitioner’s immigration proceedings;
- 20 d. if Petitioner is not found to have demonstrated a “reasonable
21 fear” of removal to the country, a meaningful opportunity, and
22 a minimum of fifteen days, for the Petitioner to seek reopening
23 of his immigration proceedings.
- 24 5. Order all other relief that the Court deems just and proper.

25 Respectfully submitted,

26 Dated: December 22, 2025

27 *s/ Jessie Agatstein*

28 Federal Defenders of San Diego, Inc.
Attorneys for Mr. Mohammed
Email: jessie_agatstein@fd.org

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PROOF OF SERVICE

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney’s Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Dated: December 22, 2025 s/ Jessie Agatstein
Jessie Agatstein

Exhibit A

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

9 Attorneys for Mr. Mohammed¹

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

12 **ALBUSHRA MOHAMMED,**
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 **JEREMY CASEY, Warden at Imperial**
23 **Regional Detention Center,**
24 **Respondents.**

Civil Case No.:

Declaration of
in support of petition for writ of
habeas corpus
[Civil Immigration Habeas Petition
Under 28 U.S.C. § 2241]

25 I, Albushra Mohammed, declare the following is true and correct under penalty of
26 perjury:

- 27 1. My name is Albushra Mohammed. I do not have any money saved. I
28 don't own a car or anything else. I have been detained since
December 21, 2024. I cannot afford an attorney.

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

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2. My A-number is [REDACTED] I came to the United States border from a camp for displaced people in Sudan. I have been in ICE detention for the last year. I am currently detained at the Imperial Regional Detention Center, which is in Calexico, California.
3. I fled Sudan because of the war. The immigration judge ordered me removed to Sudan on February 7, 2025. I did not appeal.
4. I've spoken to ICE multiple times. I've asked to be sent back to Sudan, so at least I can at least look for my mother and siblings. I do not know if they are okay or where they are. The ICE officers have told me there is no government in Sudan and no embassy to talk to. They have said there's nothing they can do to get me to Sudan.
5. I have cooperated with ICE and tried to help them get me back to Sudan. I want to get back to my family.
6. The foregoing declaration was read to me in its entirety in Arabic, one of my languages.

I declare that Mr. Mohammed gave me authority to sign on his behalf via video-teleconference that the foregoing is true and correct under penalty of perjury, on December 22, 2025, at 12:43 PM, in Calexico and San Diego, California,

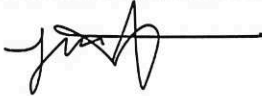
/s/ Jessie Agatstein


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