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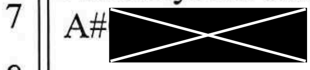
7 A# 
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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 JEMAL ADAM, 13 Petitioner, 14 v. 15 KRISTI NOEM, Secretary of the 16 Department of Homeland Security, PAMELA JO BONDI, Attorney General, 17 TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, 18 JESUS ROCHA, Acting Field Office Director, San Diego Field Office, 19 CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center, 20 Respondents.	CIVIL CASE NO.: '25CV3854 JLS BJW **Petition for Writ of Habeas Corpus** **[28 U.S.C. § 2241]**

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INTRODUCTION

2 Jemal Adam received withholding of removal to his native country of
3 Sudan and his parents' native country of Ethiopia in 2012. When ICE proved
4 unable to remove him to any other country, ICE released him on an order of
5 supervision. While on supervision, he was diagnosed with serious mental health
6 conditions, including schizophrenia and bipolar. But he was able to get on
7 medication that worked for him, and he managed to comply perfectly with his
8 order of supervision for the next 13 years.

9 Nevertheless, ICE detained him on December 18, 2025. ICE gave him a
10 vague notice saying that "changed circumstances" justified re-detention but did
11 not say what those circumstances were. That's probably because there are no
12 changed circumstances. Mr. Adam still can't be removed to any country to which
13 he or his family has any connection, and there is no indication that any other
14 country will take him, either. Mr. Adam got no chance to make this case to ICE,
15 because as far as Mr. Adam understood, ICE did not give him an opportunity to
16 contest his redetention. Worse yet, if—despite all indications to the contrary—
17 ICE were able to remove him, they could do so with no notice, six hours' notice,
18 or 24 hours' notice, depending on the circumstances.

19 Mr. Adam must be released. ICE gave him no adequate notice or opportunity
20 to contest re-detention, violating their own regulations. "[T]here is no significant
21 likelihood of removal in the reasonably foreseeable future," meaning that
22 Mr. Adam's detention is not statutorily authorized. *Zadvydas v. Davis*, 533 U.S.
23 678 (2001). And if ICE is able to remove him to a third country, ICE threatens to
24 do so in violation of the Fifth Amendment's Due Process Clause. This Court should
25 grant this petition on all three grounds.
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STATEMENT OF FACTS

I. Mr. Adam came to the United States seeking asylum from Sudan, and an immigration judge granted him withholding of removal.

Jemal Adam was born in Sudan to Ethiopian parents in 1981. Exh. A at ¶¶ 1, 6. In 1984, his family fled war, entering the United States as refugees. *Id.* They were granted asylum and got green cards. *Id.*

As an adult, Mr. Adam sustained a conviction that caused him to lose his green card. *See id.* at ¶ 2. On February 8, 2012, an immigration judge ordered Mr. Adam removed, while granting withholding of removal to Sudan and Ethiopia. Exh. C. Mr. Adam was then released on an order of supervision. Exh. A at ¶ 2.

Mr. Adam lived free in the community for the next 13 years. *Id.* at ¶ 3. During that time, he was diagnosed with schizophrenia and bipolar, and he was prescribed medications to help him manage those conditions. *Id.* With his mental disorders under control, he was able to live a law-abiding life. *Id.* He always checked in with ICE as ordered, and he did not get any other convictions. *Id.*

Nevertheless, ICE redetained him on December 18, 2025. *Id.* at ¶ 4. ICE gave Mr. Adam a Notice of Revocation that purported to explain the re-detention decision. But the Notice said only that revocation was "based on a review of your official alien file and a determination that there are changed circumstances in your case." *Id.* at ¶ 4. It did not say what exactly had changed to make his removal more likely, when ICE has not been able to remove him for the last 13 years. *Id.* Mr. Adam never received an informal interview at which he could contest his removal. *Id.* at ¶¶ 4-5.

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

ICE's inability to remove Mr. Adam, and the lack of changed circumstances in his case, makes it highly unlikely that ICE can remove

1 Mr. Adam to a third country in the reasonably foreseeable future. But should
2 something unexpectedly change, and ICE does succeed in removing Mr. Adam to
3 a third country, he is in grave danger of removal without due process.
4 The Trump administration reportedly has negotiated with at least 58
5 countries to accept deportees from other nations. Edward Wong et al, *Inside the*
6 *Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25,
7 2025. On June 25, 2025, the New York Times reported that seven countries—
8 Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—
9 had agreed to accept deportees who are not their own citizens. *Id.* Since then, ICE
10 has carried out highly publicized third country deportations to South Sudan and
11 Eswatini.
12 The Administration has reportedly negotiated with countries to have many
13 of these deportees imprisoned in prisons, camps, or other facilities. The
14 government paid El Salvador about $5 million to imprison more than 200
15 deported Venezuelans in a maximum-security prison notorious for gross human
16 rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica
17 took in hundreds of deportees from countries in Africa and Central Asia and
18 imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa
19 Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*,
20 BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men, including one
21 pre-1995 Vietnamese refugee, to South Sudan. *See* Wong, *supra*. On July 15, ICE
22 deported five men to the tiny African nation of Eswatini, including one man from
23 Vietnam, where they are reportedly being held in solitary confinement. Gerald
24 Imray, *3 Deported by US held in African Prison Despite Completing Sentences,*
25 *Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human
26 rights abuses or instability. For instance, conditions in South Sudan are so
27 extreme that the U.S. State Department website warns Americans not to travel
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there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first. *See* Wong, *supra*.

On June 23 and July 3, 2025, the Supreme Court issued a stay of a national class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional requirements before removing an individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).[1] On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a "'meaningful opportunity' to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country" like the ones just described. Exh. B.

Under the new guidance, ICE may remove any immigrant to a third country "without the need for further procedures," as long as—in the view of the State Department—the United States has received "credible" "assurances" from that country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees, ICE may still remove immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours' notice. But "[i]n exigent circumstances," a removal may take place in as little as

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[1] Though the Supreme Court's order was unreasoned, the dissent noted that the government had sought a stay based on procedural arguments applicable only to class actions. *Dep't of Homeland Sec. v. D.V.D.,* 145 S. Ct. 2153, 2160 (2025) (Sotomayor, J., dissenting). Thus, "even if the Government [was] correct that classwide relief was impermissible" in *D.V.D.*, Respondents still "remain[] obligated to comply with orders enjoining [their] conduct with respect to individual plaintiffs" like Mr. Adam. *Id.* Thus, the Supreme Court's decision does not override courts' 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).

six hours, "as long as the alien is provided reasonably means and opportunity to speak with an attorney prior to the removal." *Id.*

Upon serving notice, ICE "will not affirmatively ask whether the alien is afraid of being removed to the country of removal." *Id.* (emphasis original). If the noncitizen "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, [ICE] may proceed with removal to the country identified on the notice." *Id.* at 2. If the noncitizen "does affirmatively state a fear if removed to the country of removal" then ICE will refer the case to U.S. Citizenship and Immigration Services ("USCIS") for a screening for eligibility for withholding of removal and protection under the Convention Against Torture ("CAT"). *Id.* at 2. "USCIS will generally screen within 24 hours." *Id.* If USCIS determines that the noncitizen does not meet the standard, the individual will be removed. *Id.* If USCIS determines that the noncitizen has met the standard, then the policy directs ICE to either move to reopen removal proceedings "for the sole purpose of determining eligibility for [withholding of removal protection] and CAT" or designate another country for removal. *Id.*

CLAIMS FOR RELIEF

This Court should grant this petition and order Mr. Adam's immediate release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Mr. Adam, for whom there is "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001). ICE's own regulations require changed circumstances before re-detention, as well as notice and a chance to contest a re-detention decision. And due process requires ICE to provide notice and an opportunity to be heard before any removal to a third country.

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I. Count 1: ICE failed to comply with its own regulations before re-detaining Mr. Adam, violating his rights under the Fifth Amendment and the Administrative Procedures Act.

The Department of Homeland Security has enacted a series of regulations to protect the due process rights of someone who, like Mr. Adam, is re-detained following a period of release. Title 8 C.F.R. § 241.4(*l*) applies to re-detention generally, while 8 C.F.R. § 241.13(i) applies to persons released after providing good reason to believe that they will not be removed in the reasonably foreseeable future, *see Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025), as Mr. Adam was.

ICE is required to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established."). A court may review a re-detention decision for compliance with the regulations. *See Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)). Many judges in this district have granted habeas petitions or temporary restraining orders when ICE failed to follow 8 C.F.R. §§ 241.4(l), 241.13(i). *See, e.g., Constantinovici v. Bondi*, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF

No. 12 (S.D. Cal. Oct. 9, 2025).[2]

Here, ICE violated § 241.13 in at least three respects.[3]

First, ICE did not comply with § 241.13(i)'s informal interview requirement. No matter the reason for re-detention, the re-detained person is entitled to "an initial informal interview promptly," during which they "will be notified of the reasons for revocation." *Id.* §§ 241.4(*l*)(1), 241.13(i)(3). The interviewer must "afford[] the [person] an opportunity to respond to the reasons for revocation," allowing them to "submit any evidence or information" relevant to re-detention and evaluating "any contested facts." *Id.* But Mr. Adam has yet to receive the interview required by regulation. Exh. A at ¶¶ 4–5. Any interview conducted now would not be prompt. *See, e.g.*, *M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025) (27-day delay not prompt); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (two-month delay not prompt); *Soryadvongsa v. Noem*, 24-cv-2663-AGS-DDL, 2025 WL 3126821, at *1 (S.D. Cal. Nov. 8, 2025) (29-day delay not prompt). That alone is enough to grant the petition.

Second, the untimely notice is far too vague to "notif[y] [Mr. Seyam] of the reasons for revocation of his [] release." 8 C.F.R. § 241.13(i)(2). The notice simply

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[2] Courts in other districts have done the same. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3fd 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

[3] Some of these violations also constitute § 241.4(*l*) violations, but because § 241.13(i) is more comprehensive, Mr. Adam focuses his arguments on that regulation.

says that the decision was made based on a review of Mr. Seyam's file and changed circumstances, "without any explanation" of why the file supported revocation or what the changed circumstances were. *Sarail A. v. Bondi*, No. 25-CV-2144 (ECT/JFD), 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025). "This bare-bones explanation does not contain reasons for the revocation of Petitioner's release, thus it does not satisfy the 'the due-process notification requirement of § 241.13(i)(3).'" *Anh Nguyen v. Noem*, 25-CV-2792-LL, Dkt. 10 at 4 (S.D. Cal. Nov. 6, 2025) (quoting *Tran v. Noem*, No. 25-cv-2391-BTM-BLM, 2025 WL 3005347, at *2 (S.D. Cal. Oct. 27, 2025)).

Third, ICE did not revoke Mr. Adam's release for a permissible reason. He was not returned to custody because of a conditions violation. Exh. A at ¶ 3. And there are no changed circumstances that justify re-detaining him. Mr. Adam received withholding of removal to Sudan and Ethiopia over a decade ago. Exh. C. And ICE proved unable to remove him to a third country, hence why they released him. Exh. A at ¶ 2. Absent any evidence for "why obtaining a travel document is more likely this time around[,] Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)).

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

II. Count 2: Mr. Adam's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background

Mr. Adam's indefinite detention also violates the statute authorizing detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the

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

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

As an initial matter, *Zadvydas* held that detention is "presumptively reasonable" for at least six months. *Id.* at 701. This acts as a kind of grace period for effectuating removals.

Following the six-month grace period, courts must use a burden-shifting framework to decide whether detention remains authorized. First, the petitioner must make a prima facie case for relief: He must prove that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

If he does so, the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.* Ultimately, then, the burden of

proof rests with the government: The government must prove that there is a "significant likelihood of removal in the reasonably foreseeable future," or the immigrant must be released. *Id.*

A. The six-month grace period expired in 2012.

As an initial matter, the six-month grace period has long since ended. The *Zadvydas* grace period lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Adam was ordered removed on February 8, 2012. Exh. C. Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six months after the removal period began, in August 2012. The threshold requirement is therefore met. Even if it somehow were not met, Mr. Adam would still be able to rebut the presumption that his detention remains reasonable, given that ICE has tried without success to remove him for over 13 years. *See Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025) (collecting cases). Either way, Mr. Adam can proceed with his *Zadvydas* claim.

B. There is good reason to believe that there is no significant likelihood of Mr. Adam removal in the reasonably foreseeable future.

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

"Good reason to believe." The "good reason to believe" standard is a relatively forgiving one. "A petitioner need not establish that there exists no possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL

1 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "'[g]ood reason to
2 believe' . . . place a burden upon the detainee to demonstrate no reasonably
3 foreseeable, significant likelihood of removal or show that his detention is
4 indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW,
5 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
6 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
7 Petitioners need only give a "good reason"—not prove anything to a certainty.

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

18 **"In the reasonably foreseeable future."** This component of the test
19 focuses on when Mr. Adam will likely be removed: Continued detention is
20 permissible only if removal is likely to happen "in the reasonably foreseeable
21 future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's
22 removal efforts. If the Court has "no idea of when it might reasonably expect
23 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
24 is likely to occur—or even that it might occur—in the reasonably foreseeable
25 future." *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
26 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
27 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
28 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Adam

1 "would *eventually* receive" a travel document, he can still meet his burden by
2 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
3 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).
4 Mr. Adam readily satisfies the above standards for three reasons. *First*, ICE
5 has not been able to remove him for the last 13 years. That track record strongly
6 suggests that ICE will not be able to remove him now.
7 *Second*, there is an obvious explanation for ICE's inability to remove him:
8 The IJ's order prohibits Mr. Adam's removal to his home country of Sudan, "which
9 is the only country to which he has a claim to citizenship or legal immigration
10 status." *Villanueva*, 2025 WL 2774610, at *10. It also prohibits his removal to
11 Ethiopia, the only other country to which his family has any connection. "This
12 substantially increases the difficulty of removing him." *Munoz-Saucedo*, 789 F.
13 Supp. 3d at 398.
14 That's because "alternative-country removal is rare." *Johnson v. Guzman-*
15 *Chavez*, 594 U.S. 523, 537 (2021). Between 2020 and 2023, data apparently show
16 that "ICE removed . . . only *five* non-citizens granted withholding or CAT relief to
17 alternative countries." *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J.
18 2025) (emphasis original). In fiscal year 2017, there were at most 21 people of the
19 thousands with withholding of removal deported to *any* country; that number
20 includes dual citizens who only received withholding from one of their two other
21 countries of origin. *See* American Immigration Council & National Immigrant
22 Justice Center, *The Difference Between Asylum and Withholding of Removal*, 7
23 (Oct. 2020)[4] (cited in *Guzman-Chavez*, 594 U.S. at 537). That means that "less than
24 two percent of those granted withholding of removal were deported to a third
25 country." *Puertas-Mendoza*, 2025 WL 3142089 at *3 (citing American
26
27 [4]Available at https://www.americanimmigrationcouncil.org/wp-
28 content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf

Immigration Council & National Immigrant Justice Center, *supra*).

"[T]hat is not simply a matter of United States policy—foreign governments 'routinely deny' requests to receive people who lack a connection to the would-be receiving country." *Puertas-Mendoza*, 2025 WL 3142089 at *3. "The reason so few people are deported to third countries is because," while "customary international law holds that a country has a duty to accept the return of its nationals," usually, "countries have no incentive to accept non-citizens." American Immigration Council & National Immigrant Justice Center, *supra*, at 7.

Because third country removal is exceedingly rare, and ICE has not been able to remove Mr. Adam to a third country for the last 13 years, Mr. Adam has met his initial burden. Thus, unless the government can prove a "significant likelihood of removal in the reasonably foreseeable future," Mr. Adam must be released. *Zadvydas*, 533 U.S. at 701.

III. Count 3: ICE may not remove Mr. Adam to a third country without adequate notice and an opportunity to be heard.

There is therefore no current likelihood that Mr. Adam will be removed to a third country. But ICE presumably detained Mr. Adam to try to do just that, and in this rapidly evolving removal landscape, something unforeseen could suddenly change to make that feasible. ICE's "credible threat of enforcement" of this third-country removal plan is sufficient to make this claim justiciable, even ICE does not have any current feasible plan to remove Mr. Adam to a third country. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 156–57, 161 (2014) (finding standing, even though the politician seeking enforcement of an unconstitutional law was no longer running for office). And if ICE did suddenly prove able to remove Mr. Adam to a third country, it would do so under a policy that violates the Fifth Amendment, the Convention Against Torture, and implementing regulations.

A. Legal background

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

Similarly, Congress codified protections enshrined in the CAT prohibiting the government from removing a person to a country where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person 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. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

The government must also "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in

writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what was said]." *Aden*, 409 F. Supp. 3d at 1019. "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at 1041.

If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. The amount and type of notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen the noncitizen's immigration proceedings if the individual demonstrates "reasonable fear" and to provide "a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings" if the noncitizen is found to not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

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

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

The policies in the June 6, 2025 memo do not adhere to these requirements. First, under the policy, ICE need not give immigrants *any* notice or hearing before removing them to a country that—in the State Department's estimation—has provided "credible" "assurances" against persecution and torture. Exh. B. By depriving immigrants of any chance to challenge the State Department's view, this policy violates "[t]he essence of due process," "the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

Second, even when the government has obtained no credible assurances against persecution and torture, the government can still remove the person with between 6 and 24 hours' notice, depending on the circumstances. Exh. B. Practically speaking, there is not nearly enough time for a detained person to assess their risk in the third country and martial evidence to support any credible fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may know nothing about a third country, like Eswatini or South Sudan, when they are scheduled for removal there. Yet if given the opportunity to investigate conditions, immigrants would find credible reasons to fear persecution or torture—like patterns of keeping deportees indefinitely and without charge in solitary confinement or extreme instability raising a high likelihood of death—in many of the third countries that have agreed to removal thus far. Due process requires an adequate chance to identify and raise these threats to health and life. This Court must prohibit the government from removing Mr. Adam without these due process safeguards.

IV. This Court must hold an evidentiary hearing on any disputed facts.

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

V. Prayer for relief

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

1. Order Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from removing Petitioner unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
   a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
   b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
   c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
   d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.
4. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: December 31, 2025

s/ Katie Hurrelbrink

KATIE HURRELBRINK
Federal Defenders of San Diego, Inc.
Email: Katie_Hurrelbrink@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.

Date: 12/31/2025

/s/ *Katie Hurrelbrink*
Katie Hurrelbrink

Exhibit A

Katie Hurrelbrink
Federal Defenders of San Diego, Inc.
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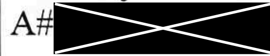
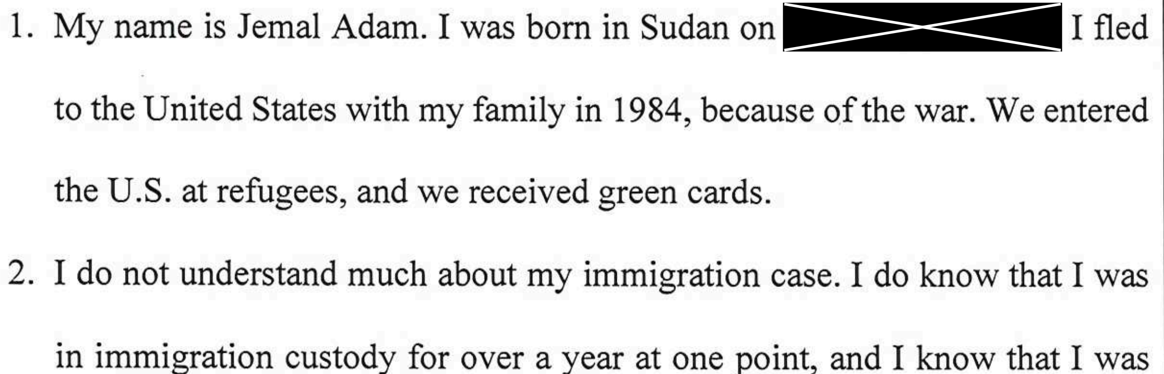
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
katie_hurrelbrink@fd.org

Attorneys for Mr. Adam
A# 

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEMAL ADAM, 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.: **First Declaration of Jemal Adam**

I, Jemal Adam, declare:



1. My name is Jemal Adam. I was born in Sudan on [redacted] I fled to the United States with my family in 1984, because of the war. We entered the U.S. at refugees, and we received green cards.

2. I do not understand much about my immigration case. I do know that I was in immigration custody for over a year at one point, and I know that I was

released on an order of supervision.

3. I was free in the community on the order of supervision for over 13 years. During that time, I was diagnosed with schizophrenia and bipolar, and I got on medication that worked for me. With my conditions under control, I was able to live a law-abiding life. I always checked in with ICE as ordered, and I did not get any other convictions.
4. Nevertheless, ICE redetained me on December 18, 2025. ICE gave me a Notice of Revocation on that day. The Notice of Revocation says that "based on a review of your official alien file and a determination that there are changed circumstances in your case," my release would be revoked. The notice did not say what the changed circumstances were. The Notice also said that I would get an informal interview on that same day, but as far as I understood it, I did not get an informal interview. ICE didn't talk to me much while I was being arrested. An ICE officer asked me "what am I in for," and I tried to answer. Other than that, I didn't talk to them at all.
5. I have not had any meetings with ICE since I've been at Otay Mesa. I have never gotten a chance to explain why I should be free in the community instead of at Otay Mesa. ICE never explained what changed to make it more likely that I will be removed to a third country.
6. I am not a citizen of any country other than Sudan. As far as I remember, I did not live anywhere other than Sudan before coming to the United States.

1 My parents are from Ethiopia.
2
3 7. I have about $4,000 in a bank account. I am not making any income while at
4 Otay Mesa Detention Center. I do not have a house, a car, or any other assets.
5 Before being detained, I worked part time as a janitor. I don't think I can
6 afford an attorney.
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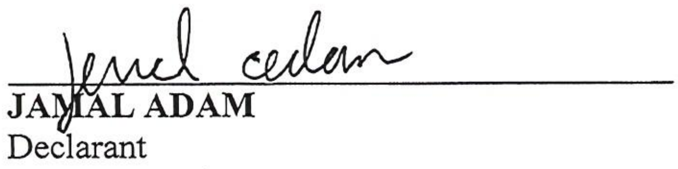
I declare under penalty of perjury that the foregoing is true and correct, executed on this date, Dec 30, 2025, in San Diego, California.



JAMAL ADAM
Declarant

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Exhibit B

PLAINTIFFS' EXHIBIT NO. 2

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

This is a summary of the oral decision entered on *February 8, 2012*.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to ETHIOPIA or in the alternative to SUDAN.
[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to ETHIOPIA or in the alternative to SUDAN.
[ ] Respondent's application for voluntary departure was granted until ______ upon posting a bond in the amount of $ ______ with an alternate order of removal to ETHIOPIA.

Respondent's application for:
[✓] Asylum was ( )granted (✓)denied( )withdrawn.
[✓] Withholding of removal was (✓)granted ( )denied ( )withdrawn. *Ethiopia Sudan*
[ ] A Waiver under Section _____ was ( )granted ( )denied ( )withdrawn.
[ ] Cancellation of removal under section 240A(a) was ( )granted ( )denied ( )withdrawn.

Respondent's application for:
[ ] Cancellation under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Cancellation under section 240A(b) (2) was ( )granted ( )denied ( )withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
[ ] Adjustment of Status under Section ____ was ( )granted ( )denied ( )withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
[✓] Respondent's application of (✓) withholding of removal (✓) deferral of removal under Article III of the Convention Against Torture was ( ) granted (✓) denied ( ) withdrawn.
[ ] Respondent's status was rescinded under section 246.
[ ] Respondent is admitted to the United States as a _____ until _____.
[ ] As a condition of admission, respondent is to post a $ ________ bond.
[ ] Respondent knowingly filed a frivolous asylum application after proper notice.
[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
[✓] Proceedings were terminated.
[✓] Other: *Withholding for Both Ethiopia and Sudan*

Date: Feb 8, 2012

[signature]
JESUS CLEMENTE
Immigration Judge

Appeal: Waived/Reserved *(Waived circled, initialed)* Appeal Due By: