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

KHALID MATAN,

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.: '26CV0024 BAS DDL

**Petition for Writ
of
Habeas Corpus
[28 U.S.C. § 2241]**

1 **INTRODUCTION**

2 Khalid Matan received withholding of removal to his native country of
3 Somalia in 2018. Since then, he remained on release because ICE could not
4 remove him to any other country. He performed perfectly on supervision. And in
5 2023, he and his U.S. citizen wife filed a family petition to allow him to get his
6 green card.

7 Nevertheless, ICE detained him on December 17, 2025. ICE generated a
8 written notice purportedly explaining his redetention but—after ordering him to
9 sign it (he declined without a lawyer reviewing it)—ICE took it away without
10 letting him read it or giving him a copy. There are no changed circumstances
11 justifying this return to custody. Mr. Matan still can't be removed to his country
12 of origin, and there is no indication that any other country will take him, either.
13 And Mr. Matan got no chance to make this case to ICE, because ICE did not give
14 him an opportunity to contest his redetention at an informal interview. Worse yet,
15 if—despite all indications to the contrary—ICE were able to remove him, ICE
16 policy allows them to do so with no notice, six hours' notice, or 24 hours' notice,
17 depending on the circumstances.

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

I. Mr. Matan came to the United States fleeing civil war in Somalia, and an immigration judge granted him withholding of removal.

Khalid Matan was born in Somalia in 1979. Exh. A at ¶ 1. He fled the country when Somalia descended into civil war. *Id.* He came to the United States seeking asylum on December 2, 2015. *Id.* at ¶ 2. He was on bond throughout his asylum proceedings and appeal. *Id.* at ¶¶ 2–3. In June 2018, an immigration judge entered a final order denying his asylum claim and granting withholding to Somalia. *Id.* at ¶ 3.

Mr. Matan continued on release. *Id.* at ¶ 4. In December 12, 2022, he married his U.S. citizen wife. *Id.* The couple filed a family petition for Mr. Matan in November 2023. *Id.* Over two years later, it is still pending. *Id.*

Meanwhile, Mr. Matan performed perfectly on release. *Id.* at ¶ 5. He consistently checked in with ICE. *Id.* And he violated no laws—he did not even get a traffic ticket. *Id.*

Nevertheless, ICE arrested him at a check in on December 17, 2025. *Id.* at ¶ 6. During the arrest, ICE presented him with a Notice of Revocation and asked him to sign it. *Id.* He said that he was not comfortable signing without a lawyer. *Id.* ICE then took the notice away, without giving him an opportunity to read it or giving him a copy. *Id.* No one has ever told him why his release was being revoked. *Id.* No one has ever told him what changed to make his removal more likely. *Id.* No one has given him a chance to explain why his release should not be revoked. *Id.* No one has met with him about his removal at all. *Id.* at ¶ 7.

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

The evidence shows that ICE cannot remove Mr. Matan to a third country in the reasonably foreseeable future. But should something unexpectedly change,

1 and ICE does succeed in removing Mr. Matan to a third country, he is in grave
2 danger of removal without due process.

3 The Trump administration reportedly has negotiated with at least 58
4 countries to accept deportees from other nations. Edward Wong et al, *Inside the*
5 *Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25,
6 2025. On June 25, 2025, the New York Times reported that seven countries—
7 Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—
8 had agreed to accept deportees who are not their own citizens. *Id.* Since then, ICE
9 has carried out highly publicized third country deportations to South Sudan and
10 Eswatini.

11 The Administration has reportedly negotiated with countries to have many
12 of these deportees imprisoned in prisons, camps, or other facilities. The
13 government paid El Salvador about \$5 million to imprison more than 200
14 deported Venezuelans in a maximum-security prison notorious for gross human
15 rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica
16 took in hundreds of deportees from countries in Africa and Central Asia and
17 imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa
18 Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*,
19 BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men, including one
20 pre-1995 Vietnamese refugee, to South Sudan. *See Wong, supra.* On July 15, ICE
21 deported five men to the tiny African nation of Eswatini, including one man from
22 Vietnam, where they are reportedly being held in solitary confinement. Gerald
23 Imray, *3 Deported by US held in African Prison Despite Completing Sentences,*
24 *Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human
25 rights abuses or instability. For instance, conditions in South Sudan are so
26 extreme that the U.S. State Department website warns Americans not to travel
27 there, and if they do, to prepare their will, make funeral arrangements, and appoint
28 a hostage-taker negotiator first. *See Wong, supra.*

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

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

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

1 Upon serving notice, 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. If the
6 noncitizen “does affirmatively state a fear if removed to the country of removal”
7 then ICE will refer the case to U.S. Citizenship and Immigration Services
8 (“USCIS”) for a screening for eligibility for withholding of removal and
9 protection under the Convention Against Torture (“CAT”). *Id.* at 2. “USCIS will
10 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen
11 does not meet the standard, the individual will be removed. *Id.* If USCIS
12 determines that the noncitizen has met the standard, then the policy directs ICE to
13 either move to reopen removal proceedings “for the sole purpose of determining
14 eligibility for [withholding of removal protection] and CAT” or designate another
15 country for removal. *Id.*

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17 **CLAIMS FOR RELIEF**

18 This Court should grant this petition and order Mr. Matan’s immediate
19 release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the
20 government to detain immigrants like Mr. Matan, for whom there is “no
21 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
22 678, 701 (2001). ICE’s own regulations require changed circumstances before re-
23 detention, as well as notice and a chance to contest a re-detention decision. And
24 due process requires ICE to provide notice and an opportunity to be heard before
25 any removal to a third country.
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1 **I. Count 1: ICE failed to comply with its own regulations before re-**
2 **detaining Mr. Matan, violating his rights under the Fifth Amendment**
3 **and the Administrative Procedures Act.**

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

11 ICE is required to follow its own regulations. *United States ex rel. Accardi*
12 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162
13 (9th Cir. 2004) (“The legal proposition that agencies may be required to abide by
14 certain internal policies is well-established.”). A court may review a re-detention
15 decision for compliance with the regulations. *See Phan v. Beccerra*, No. 2:25-CV-
16 01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No.
17 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong*
18 *v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)). Many judges in this district
19 have granted habeas petitions or temporary restraining orders when ICE failed to
20 follow 8 C.F.R. §§ 241.4(l), 241.13(i). *See, e.g., Constantinovici v. Bondi*, 2025
21 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v.*
22 *Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan*
23 *v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct.
24 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept.
25 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D.
26 Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D.
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1 Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF
2 No. 12 (S.D. Cal. Oct. 9, 2025).²

3 Here, ICE violated §§ 241.4(l), 241.13(i) in at least three respects.

4 First, ICE did not comply with § 241.13(i)'s informal interview requirement.
5 No matter the reason for re-detention, the re-detained person is entitled to “an initial
6 informal interview promptly,” during which they “will be notified of the reasons
7 for revocation.” *Id.* §§ 241.4(l)(1), 241.13(i)(3). The interviewer must “afford[] the
8 [person] an opportunity to respond to the reasons for revocation,” allowing them to
9 “submit any evidence or information” relevant to re-detention and evaluating “any
10 contested facts.” *Id.* But Mr. Matan has yet to receive the interview required by
11 regulation. Exh. A at ¶ 6. Any interview conducted now would not be prompt. *See*,
12 *e.g.*, *M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D.
13 Or. Aug. 21, 2025) (27-day delay not prompt); *Yang v. Kaiser*, No. 2:25-cv-02205-
14 DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (two-month
15 delay not prompt); *Soryadvongsa v. Noem*, 24-cv-2663-AGS-DDL, 2025 WL
16 3126821, at *1 (S.D. Cal. Nov. 8, 2025) (29-day delay not prompt). That alone is
17 enough to grant the petition.

18 Second, ICE did not comply with §§ 241.4(l), 241.13(i)'s requirement that,
19 “upon revocation,” the re-detained person be “notified of the reasons for
20 revocation.” As Judge Moskowitz recently explained, the regulation’s text and due
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23 ² Courts in other districts have done the same. *Ceesay v. Kurzdorfer*, 781 F. Supp.
24 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y.
25 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*,
26 No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025);
27 *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or.
28 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).

1 process require that the notice be written. *Tran v. Noem*, 25-cv-2391-BTM, Dkt.
2 16, at 5–6 (S.D. Cal. Oct. 27, 2025). Here, ICE generated a written notice for
3 Mr. Matan, but when he declined to sign it without a lawyer, ICE took it away. Exh.
4 A at ¶ 6. ICE neither gave him a chance to read it nor provided him with a copy. *Id.*
5 He therefore did not receive actual notice of why his release was being revoked. *Id.*

6 Third, ICE did not revoke Mr. Matan’s release for a permissible reason. He
7 was not returned to custody because of a conditions violation. Exh. A at ¶ 5. And
8 there are no changed circumstances that justify re-detaining him. Mr. Matan
9 received withholding of removal to Somalia over 7 years ago. *Id.* at ¶ 3. In all that
10 time, ICE never proved able to remove him. Absent any evidence for “why
11 obtaining a travel document is more likely this time around[,] Respondents’ intent
12 to eventually complete a travel document request for Petitioner does not constitute
13 a changed circumstance.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025
14 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-
15 JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Indeed, there is no
16 indication that ICE even made a pre-arrest determination that changed
17 circumstances made Mr. Matan’s removal likely. If the government is unable to
18 produce “any documented determination, made prior to Petitioner’s arrest,” that any
19 of the prerequisites to re-detention were met, then Mr. Matan must be released on
20 those grounds, too. *Rokhfirooz v. Larose*, 2025 WL 2646165, at *3 (S.D. Cal. Sept.
21 15, 2025).

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

26 Finally, out of an abundance of caution, Mr. Matan preserves the claim that
27 his bond was wrongly revoked. The government may try to distinguish Mr. Matan’s
28 case from others arising under §§ 241.4, 241.13 because Mr. Matan got out on bond

1 initially, continuing on release after receiving his final order. Exh. A at ¶¶ 2–4. That
2 makes no legal difference. He is now detained under 8 U.S.C. § 1231, and the
3 implementing regulations for that section do not give Mr. Matan less protection just
4 because he proved an excellent candidate for release from the start. But even if this
5 were a case about a bond revocation, rather than about a §§ 241.4, 241.13 violation,
6 ICE still would lack authorization to revoke bond. At best, § 1226(b) gave ICE
7 authority to revoke bond only if Mr. Matan violated the terms of the bond. *See dos*
8 *Santos v. Noem*, No. 1:25-CV-12052-JEK, 2025 WL 2370988, at *9 (D. Mass. Aug.
9 14, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019). And at
10 worst, ICE had no authority to revoke bond, because—as an arriving noncitizen—
11 Mr. Matan was not released under §§ 1226(a), (b) in the first place. This Court need
12 not engage these arguments, however, because §§ 241.4, 241.13 apply here.

13 **II. Count 2: Mr. Matan’s detention violates *Zadvydas* and 8 U.S.C. § 1231.**

14 **A. Legal background**

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

1 other circumstances, detained immigrants can find themselves trapped in
2 detention for months, years, decades, or even the rest of their lives.

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

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

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

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

20
21 **A. The six-month grace period expired in 2018.**

22 As an initial matter, the six-month grace period has long since ended. The
23 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,
24 *three months* after the statutory removal period has ended.” *Kim Ho Ma v.*
25 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Matan received a
26 final order of removal in June 2018. Exh. A at ¶ 3. Accordingly, his 90-day
27 removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period
28 therefore expired three months after the removal period ended, in December 2018.

1 Thus, the threshold requirement is met. Even if it somehow were not met,
2 Mr. Matan would still be able to rebut the presumption that his detention remains
3 reasonable, given that ICE has had over 7 years to try to remove him. *See Zavvar*
4 *v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025)
5 (collecting cases). Either way, Mr. Matan can proceed with his *Zadvydas* claim.

6
7 **B. There is good reason to believe that there is no significant**
8 **likelihood of Mr. Matan removal in the reasonably foreseeable**
9 **future.**

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

14 “**Good reason to believe.**” The “good reason to believe” standard is a
15 relatively forgiving one. “A petitioner need not establish that there exists no
16 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
17 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
18 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
19 foreseeable, significant likelihood of removal or show that his detention is
20 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
21 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
22 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
23 Petitioners need only give a “good reason”—not prove anything to a certainty.

24 “**No significant likelihood of removal.**” This component focuses on
25 whether Mr. Matan will likely be removed: Continued detention is permissible
26 only if it is “significant[ly] like[ly]” that ICE will be able to remove him.
27 *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of
28 untapped possibilities, but also [the] probability of *success* in such possibilities.”

1 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis
2 added). In other words, even if “there remains *some* possibility of removal,” a
3 petitioner can still meet its burden if there is good reason to believe that
4 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
5 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

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

20 Mr. Matan readily satisfies the above standards for two reasons. *First*, ICE
21 has not been able to remove him for the last 7 years. That track record strongly
22 suggests that ICE will not be able to remove him now.

23 *Second*, there is an obvious explanation for ICE’s inability to remove him:
24 The IJ’s order prohibits Mr. Matan’s removal to his home country of Somalia,
25 “which is the only country to which he has a claim to citizenship or legal
26 immigration status.” *Villanueva*, 2025 WL 2774610, at *10. “This substantially
27 increases the difficulty of removing him.” *Munoz-Saucedo*, 789 F. Supp. 3d at 398.

28

1 That’s because “alternative-country removal is rare.” *Johnson v. Guzman-*
2 *Chavez*, 594 U.S. 523, 537 (2021). Between 2020 and 2023, data apparently show
3 that “ICE removed . . . only *five* non-citizens granted withholding or CAT relief to
4 alternative countries.” *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J.
5 2025) (emphasis original). In fiscal year 2017, there were at most 21 people of the
6 thousands with withholding of removal deported to *any* country; that number
7 includes dual citizens who only received withholding from one of their two other
8 countries of origin. See American Immigration Council & National Immigrant
9 Justice Center, *The Difference Between Asylum and Withholding of Removal*, 7
10 (Oct. 2020)³ (cited in *Guzman-Chavez*, 594 U.S. at 537). That means that “less than
11 two percent of those granted withholding of removal were deported to a third
12 country.” *Puertas-Mendoza*, 2025 WL 3142089 at *3 (citing American
13 Immigration Council & National Immigrant Justice Center, *supra*).

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

21 Because third country removal is exceedingly rare, and ICE has not been able
22 to remove Mr. Matan to a third country for the last 7 years, Mr. Matan has met his
23 initial burden. Thus, unless the government can prove a “significant likelihood of
24 removal in the reasonably foreseeable future,” Mr. Matan must be released.
25 *Zadvydas*, 533 U.S. at 701.

26
27 ³Available at [https://www.americanimmigrationcouncil.org/wp-](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the-difference-between-asylum-and-withholding-of-removal.pdf)
28 [content/uploads/2025/01/the-difference-between-asylum-and-withholding-of-r](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the-difference-between-asylum-and-withholding-of-removal.pdf)
[emoval.pdf](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the-difference-between-asylum-and-withholding-of-removal.pdf)

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

3 The government therefore will not be able to meet their burden to prove a
4 significant likelihood that Mr. Matan will be removed to a third country in the
5 reasonably foreseeable future. But ICE would certainly do so if they could, and in
6 this rapidly evolving removal landscape, something unforeseen could suddenly
7 change to make that feasible. ICE’s “credible threat of enforcement” of this third-
8 country removal plan is sufficient to make this claim justiciable, even ICE does not
9 have any current feasible plan to remove Mr. Matan to a third country. *See Susan*
10 *B. Anthony List v. Driehaus*, 573 U.S. 149, 156–57, 161 (2014) (finding standing,
11 even though the politician seeking enforcement of an unconstitutional law was no
12 longer running for office). And if ICE did suddenly prove able to remove Mr. Matan
13 to a third country, it could do so under a policy that violates the Fifth Amendment,
14 the Convention Against Torture, and implementing regulations.

15 **A. Legal background**

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

25 Similarly, Congress codified protections enshrined in the CAT prohibiting
26 the government from removing a person to a country where they would be tortured.
27 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of
28

1 the United States not to expel, extradite, or otherwise effect the involuntary return
2 of any person to a country in which there are substantial grounds for believing the
3 person would be in danger of being subjected to torture, regardless of whether the
4 person is physically present in the United States.”); 28 C.F.R. § 200.1; *id.*
5 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

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

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

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

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

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

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

26 Second, even when the government has obtained no credible assurances
27 against persecution and torture, the government can still remove the person with
28 between 6 and 24 hours’ notice, depending on the circumstances. Exh. B.

1 Practically speaking, there is not nearly enough time for a detained person to assess
2 their risk in the third country and martial evidence to support any credible fear—let
3 alone a chance to file a motion to reopen with an IJ. An immigrant may know
4 nothing about a third country, like Eswatini or South Sudan, when they are
5 scheduled for removal there. Yet if given the opportunity to investigate conditions,
6 immigrants would find credible reasons to fear persecution or torture—like patterns
7 of keeping deportees indefinitely and without charge in solitary confinement or
8 extreme instability raising a high likelihood of death—in many of the third
9 countries that have agreed to removal thus far. Due process requires an adequate
10 chance to identify and raise these threats to health and life. This Court must prohibit
11 the government from removing Mr. Matan without these due process safeguards.

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

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

16 **V. Prayer for relief**

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

- 18 1. Order Respondents to immediately release Petitioner from custody;
- 19 2. Enjoin Respondents from re-detaining Petitioner unless ICE copies with
20 all requirements of 8 C.F.R. §§ 241.4, 241.13;
- 21 3. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
22 § 1231(a)(6) unless and until Respondents obtain a travel document for
23 his removal;
- 24 4. Enjoin Respondents from removing Petitioner unless they provide the
25 following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV
26 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
 - 27 a. written notice to both Petitioner and Petitioner’s counsel in a
28 language Petitioner can understand;

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- 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.

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

Respectfully submitted,

Dated: January 4, 2026

s/ Katie Hurrelbrink

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

PROOF OF SERVICE

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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: January 4, 2025

/s/ Katie Hurrelbrink
Katie Hurrelbrink

Exhibit A

1 **Katie Hurrelbrink**
2 Federal Defenders of San Diego, Inc.
3 225 Broadway, Suite 900
4 San Diego, California 92101-5030
5 Telephone: (619) 234-8467
6 Facsimile: (619) 687-2666
7 katie_hurrelbrink@fd.org

8 Attorneys for Mr. Matan

9 A# 

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

12 **KHALID MATAN,**
13 **Petitioner,**

CIVIL CASE NO.:


14 **v.**

First Declaration
15 **of**
16 **Khalid Matan**

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

26 **Respondents.**

27 I, Khalid Matan, declare:

- 28
1. My name is Khalid Matan. I was born in Somalia on  My family fled Somalia because of the civil war.
 2. I came to the United States seeking asylum on December 2, 2015. I presented myself to border patrol. After six months in detention, I got out on bond.
 3. In April 2017, an immigration judge denied my asylum claim but gave me

1 withholding of removal to Somalia. I appealed the decision. The Board of
2 Immigration Appeals remanded the case back to the immigration judge. But
3 in June 2018, the judge denied my asylum claim again and again granted
4 withholding. I did not appeal a second time.
5

6
7 4. ICE did not take me into custody after that. I continued on release. I legally
8 married a U.S. on December 12, 2022. My wife and I prepared a petition for
9 me to get a green card. It was received on November 1, 2023. It is still
10 pending. It's been over two years with no answer.
11

12 5. While on release, I have always checked in with ICE as ordered. I have never
13 missed a check in. I have no criminal history, not even a traffic ticket.
14

15 6. I was arrested at a check-in on December 17, 2025. I was presented with a
16 Notice of Revocation, and the ICE officer told me to sign it. I said that I was
17 not comfortable signing without a lawyer. I did not get a copy of it, and I did
18 not have an opportunity to read it. No one told me why ICE was revoking
19 my release. No one told me what changed to make my removal more likely.
20 To this day, no one has given me an opportunity to explain why my release
21 should not be revoked.
22
23

24 7. Since then, I have not had any meetings with ICE agents. The last ICE agent
25 I saw was the person who transported me to Otay Mesa Detention Center.
26

27 8. I am not a citizen of any country other than Somalia, and I have no permission
28 to live in any country other than Somalia. The only place I have lived other

1 than Somalia is Kenya. I lived in a refugee camp there. But I was not given
2 any status in Kenya.

3
4 9. I was supposed to have hip replacement surgery this year. But I cannot get it
5 while detained. ICE gives me pain killers, but it does not help much.

6
7 10. I have a couple of bank accounts, but they are both empty. (I worked for Uber
8 and Lyft, so it's possible that they have deposited a small amount of money
9 since I've been detained.) My family and I live in low-income housing. I own
10 a 2012 Toyota Prius. I am the sole provider for me, my wife, and my step
11 children. I do not know how they will pay the bills without me. I do not think
12 I can afford a lawyer.

13
14 11. A Somali interpreter read me every line of this declaration in Somali, and I
15 confirmed that it was true and correct.

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I declare under penalty of perjury that the foregoing is true and correct,
executed on this date, 12 - 30 - 25, in San Diego, California.

Khalid

KHALID MATAN

Declarant

Exhibit B

CASE NO. PX 25-951

IDENTIFICATION: JUL 10 2025

ADMITTED: JUL 10 2025

To All ICE Employees
July 9, 2025

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

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

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

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

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

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

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

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

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

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

Attachments:

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