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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANGELA THERESA VELASQUEZ CHINGA,

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.: '26CV0105 RBM KSC

Petition for Writ of Habeas Corpus

[28 U.S.C. § 2241]

INTRODUCTION

Angela Velasquez-Chinga came with her month-old baby to the United States in 2016, seeking asylum. She was immediately paroled into the country. She stayed on release, complying with all conditions, until her asylum claim and all appeals were denied in early 2022. ICE then kept her on parole for nearly four years. Though she kept checking in, ICE was never able to remove her in all that time.

On November 5, 2025, ICE took her into custody at her check-in. No one told her why she was being re-detained, and no one gave her any written notice stating whether or why her parole had been revoked. Instead, ICE took her to the U.S.-Mexico border, where Mexican officials refused to accept her. ICE then dropped her back off at Otay Mesa Detention Center. ICE has never met with her about her removal since then.

Ms. Velasquez-Chinga must be released. The purposes of parole have not been served, and ICE gave her no written notice of parole revocation, violating their own regulations. "[T]here is no significant likelihood of removal in the reasonably foreseeable future," meaning that Ms. Velasquez-Chinga's detention is not statutorily authorized. *Zadvydas v. Davis*, 533 U.S. 678 (2001). And if—despite all evidence to the contrary—ICE is able to remove her to a third country, ICE threatens to do so in violation of the Fifth Amendment's Due Process Clause. This Court should grant this petition on all three grounds.

STATEMENT OF FACTS

I. Ms. Velasquez-Chinga fled Ecuador and came to the United States seeking asylum in 2016.

Angela Velasquez-Chinga was born in Ecuador in 1986. Exh. A at ¶ 1. She fled the country in 2016. She presented herself at the border with her one-and-a-half-month-old son. *Id.* She immediately surrendered to border patrol, and border patrol released her on parole. *Id.*; Exh. C. Over the following years, she

unsuccessfully pursued asylum. Exh. A at ¶ 1. She lost her appeal to the BIA in 2020, *id.*, and the Ninth Circuit denied a petition for review in January 2022, *Velasquez Chinga v. Garland*, No. 20-72869, 2022 WL 193196, at *1 (9th Cir. Jan. 21, 2022). She remained on parole for nearly four years after that. Exh. A at ¶ 3. She has always checked in as ordered, and ICE has never removed her to Ecuador. *Id.* at ¶ 2.

On November 5, 2025, Ms. Velasquez-Chinga went to her regular check in. *Id.* at ¶ 3. She was arrested. *Id.* No one told her why she was being arrested or gave her any paperwork explaining the revocation. To date, so far as she knows, she has never gotten any paperwork saying whether or why her parole was revoked. *Id.* And no one explained what happened to make her removal more likely, when she had not been removed for years prior. *Id.*

Instead, ICE immediately took her to the U.S.-Mexico border. *Id.* at ¶ 4. A Mexican official on the other side of the border asked her whether she was Mexican. She said that she was not. *Id.* The official refused to let her in. *Id.* The officers were mad at Ms. Velasquez-Chinga, saying, "I told you to say that you were Mexican." *Id.* But she would not lie. *Id.* ICE put her back in the van and took her to Otay Mesa Detention Center. *Id.*

ICE has not met with Ms. Velasquez-Chinga about her deportation since then. She has never even met her deportation officer. *Id.* at ¶ 5.

Every day that Ms. Velasquez-Chinga is in custody impacts her family and her health. Her son is now 9 years old. *Id.* at ¶ 6. He has ADHD and autism, which is so severe that he can't yet use the bathroom independently. *Id.* He barely speaks, he doesn't interact with or play with other kids, and he has a hand tremor. *Id.* Ms. Velasquez-Chinga's detention has worsened her son's condition. He cries every time he talks to her. He says that he doesn't have any more fingers to count the days that she'll be gone. And he cannot focus at school. He just cries. *Id.*

Ms. Velasquez-Chinga also has a uterine myoma. She missed a surgery for that problem while she was in custody. *Id.* at ¶ 7.

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

There is no evidence that ICE will be able to remove Ms. Velasquez-Chinga to Ecuador or any third country. But should something unexpectedly change, and ICE does succeed in removing Ms. Velasquez-Chinga to a third country, she is in grave danger of removal without due process.

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

The Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to South Sudan. *See* Wong, *supra*. On July 15, ICE deported five men to the tiny African nation of Eswatini, including one man from Vietnam, where they are reportedly being held in solitary confinement. Gerald

Imray, *3 Deported by US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human rights abuses or instability. For instance, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel 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

[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 Ms. Velasquez-Chinga. *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).

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 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 Ms. Velasquez-Chinga's immediate release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Ms. Velasquez-Chinga, 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 written notice

before parole revocations. And due process requires ICE to provide notice and an opportunity to be heard before any removal to a third country.

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

First, Ms. Velasquez-Chinga must be released because ICE failed to comply with its own regulations before revoking her parole.

A person shall only be "returned to the custody from which he was paroled" when "the purposes of such parole . . . have been served." 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e) (parole may only be terminated "upon accomplishment of the purpose for which parole was authorized"); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *12 (D. Or. July 9, 2025) (noncitizen should not be returned to custody unless the purposes of the parole have been served). Additionally, parole shall only be "terminated upon written notice to the alien." 8 C.F.R. § 212.5(e)(2)(i). So under the statute and the regulations, parole revocation (and thus the noncitizen's re-detention) only occurs when the parole's purpose is served and the noncitizen receives written notice of the revocation.

Here, neither occurred. Ms. Velasquez-Chinga was initially paroled into the United States to seek asylum. But she lost her asylum claim and all appeals nearly four years ago. *See Velasquez Chinga v. Garland*, No. 20-72869, 2022 WL 193196, at *1 (9th Cir. Jan. 21, 2022). ICE kept her on parole for years, presumably because she could not be removed to Ecuador during that time. Exh. A at ¶ 2. And there is no indication that she can be removed to Ecuador now. After all, ICE tried to pass her off as a Mexican citizen in hopes that Mexico would receive her for removal—an unlikely strategy if Ecuador was ready to receive her. Exh. A at ¶ 4. Thus, the current "purposes of such parole" have not yet "been served" because she is still awaiting removal. 8 U.S.C. § 1182(d)(5)(A).

Moreover, there was no proper notice as the regulations require. 8 C.F.R. § 212.5(e). At a minimum, parole revocation "requires an individualized determination," which the government had not provided because it failed to explain "why the Petitioner would now be considered a flight risk or danger to the community." *Noori*, 2025 WL 2800149 at 13. Here, Ms. Velasquez-Chinga was given no notice of parole revocation, let alone an explanation of why revocation was appropriate. Exh. A at ¶ 3.

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).

"[B]ecause officials did not properly revoke petitioner's release pursuant to the applicable regulations, that revocation has no effect, and [Ms. Velasquez-Chinga] is entitled to his release (subject to the same [parole order] that governed

[the] most recent release)." *Liu*, 2025 WL 1696526, at *3.

II. Count 2: Ms. Velasquez-Chinga's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background

Ms. Velasquez-Chinga'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 Ms. Velasquez-Chinga. 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 2022.

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, Ms. Velasquez-Chinga's removal period began after the Ninth Circuit order rejecting her appeal became final in March 2022.[2] 8 U.S.C. § 1231(a)(1)(B); *Velasquez Chinga*, 2022 WL 193196, at *1. The *Zadvydas* grace period thus expired three months after the removal period ended, in September 2022. Thus, the threshold requirement is met. Even if it somehow were not met, Ms. Velasquez-Chinga would still be able to rebut the presumption that his detention remains reasonable, given that ICE has had near 4 years to try to remove her. *See Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025) (collecting cases). Either way, Ms. Velasquez-Chinga can proceed with her *Zadvydas* claim.

[2] A review of the Ninth Circuit docket shows that that is when the mandate issued.

B. There is good reason to believe that there is no significant likelihood of Ms. Velasquez-Chinga removal in the reasonably foreseeable future.

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

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

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

Ms. Velasquez-Chinga readily satisfies the above standards for two reasons. *First*, ICE has not been able to remove her for nearly 4 years. That track record strongly suggests that ICE will not be able to remove him now.

Second, ICE tried unsuccessfully to remove Ms. Velasquez-Chinga to Mexico. Exh. A at ¶ 4. If ICE were readily able to remove her to Ecuador, ICE likely would not bother with an attempted third-country removal.

Nor is it likely that ICE will succeed in any effort to remove her to a third country. That's because "alternative-country removal is rare." *Johnson v. Guzman-Chavez*, 594 U.S. 523, 537 (2021). Between 2020 and 2023, data apparently show that "ICE removed . . . only *five* non-citizens granted withholding or CAT relief to alternative countries." *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025) (emphasis original). In fiscal year 2017, there were at most 21 people of the thousands with withholding of removal deported to *any* country; that number includes dual citizens who only received withholding from one of their two other

countries of origin. *See* American Immigration Council & National Immigrant Justice Center, *The Difference Between Asylum and Withholding of Removal*, 7 (Oct. 2020)[3] (cited in *Guzman-Chavez*, 594 U.S. at 537). That means that "less than two percent of those granted withholding of removal were deported to a third country." *Puertas-Mendoza*, 2025 WL 3142089 at *3 (citing American 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 ICE has not been able to remove Ms. Velasquez-Chinga to Ecuador for years, and the attempted removal to Mexico suggests that ICE is not confident in its ability to do so now, Ms. Velasquez-Chinga has met her initial burden. Thus, unless the government can prove a "significant likelihood of removal in the reasonably foreseeable future," Ms. Velasquez-Chinga must be released. *Zadvydas*, 533 U.S. at 701.

III. Count 3: ICE may not remove Ms. Velasquez-Chinga to a third country without adequate notice and an opportunity to be heard.

There is therefore no current likelihood that Ms. Velasquez-Chinga will be removed to a third country. But ICE has at least attempted to remove Ms. Velasquez-Chinga to a third country, Exh. A at ¶ 4, and in this rapidly evolving removal landscape, something unforeseen could suddenly change to make that

[3]Available at https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf

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 Ms. Velasquez-Chinga 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 Ms. Velasquez-Chinga 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.

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 Ms. Velasquez-Chinga 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). Ms. Velasquez-Chinga 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 to any country other than Ecuador 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: January 8, 2026

s/ Katie Hurrelbrink

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

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: 1/8/2026

/s/ *Katie Hurrelbrink*
Katie Hurrelbrink

Exhibit A

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

Attorneys for Ms. Velasquez-Chinga

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANGELA THERESA VELASQUEZ CHINGA,

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 Angela Theresa Velazquez-Chinga

I, Angela Theresa Velasquez-Chinga, declare:

1. My name is Angela Theresa Velasquez-Chinga. I was born in Ecuador on [redacted] 1986. I fled Ecuador in 2016, and I came to the United States to seek asylum with my one-and-a-half-month-old baby. I immediately surrendered to border patrol, and they immediately released me while I sought asylum. I did not get asylum. I was ordered removed. I appealed to

the Ninth Circuit and lost in 2020.

2. Since 2020, I have been checking in every six months with ICE as ordered. ICE has not removed me in all that time.

3. On November 5, 2025, I went to my ICE check-in as usual. I was arrested. No one told me why I was being arrested. They did not give me any paperwork explaining why my release was being revoked. So far as I understand it, I have never gotten a written notice explaining why my release was being revoked. I was never offered the chance to explain why I should not be re-detained. No one told me what changed to make my removal more likely. Instead, the officers made fun of my last name.

4. Immediately, on November 5, 2025, ICE took me to the Mexican border. There was a Mexican official on the other side of the border. He asked me whether I was Mexican. I told him that I'm not Mexican. I'm from Ecuador. He said he wasn't going to let me in. He went to talk to the ICE officials, and they put me back in the van. The ICE officers were very angry with me. One of them said, "I told you to say that you were Mexican." But I wouldn't lie. So he put me back in the van and brought me to Otay Mesa Detention Center.

5. I have not had any meetings with ICE about my removal since I got to the detention center. When ICE officers come into my pod, I try to ask about my case. They tell me they don't know anything but that my deportation officer is Rodriguez. I have never met Rodriguez.

6. My son is 9 years old. He has been diagnosed with autism and ADHD. His autism is severe enough that he can't go to the bathroom himself. He barely speaks. He doesn't interact with or play with other kids. His hand trembles—we're not sure why. He is currently on an Individualized Education Plan. Since I've been detained, my son's condition has gotten much worse. He cries every time he calls me. He says that he doesn't have any more fingers to count that days that I'll be gone. The teachers can't make him focus. He just cries.

7. I have serious health problems. I have myoma in my uterus, which causes me to bleed a lot. My blood pressure fluctuates. I've already had to go to the hospital once since I've been here. I was scheduled for surgery on my uterus December 23, but I missed the surgery because I was detained. I got a bacterial infection while in custody. I had to ask again and again for a medical appointment before I got one. I was finally prescribed antibiotics.

8. My husband and I have no savings. I've spent all the money I have on lawyers to try to fix my immigration status. I am not making any income while in detention. My husband lost his job a month and a half ago because he was taking so much time off to go to medical appointments and appointments related to my immigration status. He does odd jobs. I'm going to lose my car because we haven't been making payments. We also must take care of my 9 year old son and mother.

9. A Spanish interpreter read every line of this declaration to me in Spanish, and I confirmed that it was true and correct.

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

ANGELA VELASQUEZ CHINGA
Declarant

Exhibit B

PLAINTIFFS' EXHIBIT NO. 2
CASE NO. [redacted]
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

Exhibit C

Notice of Release and Proof of Service

To: VELASQUEZ-CHINGA, ANGELA TERESA
[redacted]

ORIGINAL

Date: November 6, 2016
File: A[redacted]
Bond: **(Parole with Reporting Requirements)**

You have been released from service custody pending a final decision in your exclusion/deportation hearing. It is understood that you will be residing at the above address. The law requires you notify the Immigration Judge (at the address shown below) of any address correction or address change. When doing so, be sure to include your name and the File Number shown above in your written communication. The attached form, EOIR-33 can be used for this purpose.

Office of the Immigration Judge
401 West A Street, Suite 800
San Diego, CA 92101

If you have already appeared before the Immigration Judge, you have been told when to appear for a further hearing. If you have yet to appear before the Judge, a notice of hearing will soon be sent to you at the above address. If you do not appear for the hearing, three (3) actions can be taken in your case:

1. Your deportation hearing may be held in your absence.
2. If a bond has been paid, it may be breached.
3. A warrant for your arrest may be issued.

DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
NOV 14 2016
FILED WITH
IMMIGRATION COURT
SAN DIEGO, CA

You must report in person to Non-Detained Office/ATD Office 619-557-6117
(Name and Title of Case Officer), Deportation Officer

At 880 Front Street, Suite 2242
San Diego, CA 92101
on NOVEMBER 10, 2016 10:00 a.m.

I certify that the address listed above, furnished by me to the Service, is correct, and that a copy of this notice has been received by me this date

Signature of Respondent — November 6, 2016 Date

PROOF OF SERVICE

I certify that, on this date, I served the attached Form I-830 and release notice on the respondent by the following method (as checked):

__X__ Hand delivery.

_____ By first class mail, postage prepaid, to the following address:

_____

_____

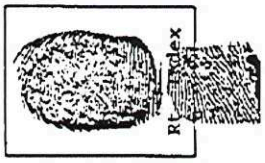
_____

_____ Service by mail on respondent's counsel of record at the following address:

_____

_____

_____



JOHNSON/DO November 6, 2016
Signature and Title of ICE Employee Date

DRO May 22, 2002

Distribution: EOIR / A File / Alien

Ex 2

U.S. Department of Homeland Security
U. S. Immigration and Customs Enforce

Notice to EOIR: Alien Address

Date: November 6, 2016 File No: A [redacted]

To: Office of the Immigration Judge
Executive Office for Immigration Review
401 West A Street, Suite 800
San Diego, CA 92101

From: Office of the Field Director
U. S. Immigration and Customs Enforcement
880 Front Street, Suite 2242
San Diego, CA 92101

Respondent: VELASQUEZ-CHINGA, ANGELA TERESA

This is to notify you that this respondent is:

☐ Currently incarcerated by other than ICE. A charging document has been served on the respondent, and an Immigration Detainer-Notice of Action by the ICE (Form I-247) has been filed with the institution shown below. He/she is incarcerated at:

His/her anticipated release date is:

☐ Currently detained by ICE at:

☐ Currently detained by ICE and transferred this date to a new location:

DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
NOV 14 2016
FILED WITH
IMMIGRATION COURT
SAN DIEGO, CA

ICE Motion for Change of Venue attached. ☐ **Yes** ☒ **NO**

☒ Released from ICE custody on the following condition(s):

- ☐ Personal Recognizance
- ☐ Order of Recognizance (Form I-220A)
- ☐ Bond in the amount of $ ☐ Surety bond ☐ Cash bond
- ☒ Other Paroled pursuant to 8 CFR 212.5.

☒ Upon release from ICE custody, the respondent reported his/her address and telephone number will be:

VELASQUEZ-CHINGA, ANGELA TERESA
[redacted]

☒ Upon release from ICE custody, the respondent was reminded of the requirements contained in Section 239 (a)(1)(F)(ii) of the Immigration and Nationality Act and was provided with an EOIR change of address form (EOIR-33).

Signature-ICE Officer	DEPORTATION OFFICER *Title-ICE Officer*
JOHNSON/DO *Printed Name of ICE Officer*	San Diego, CA *Location*

Form I-830 (Rev. 08/01/2007)N