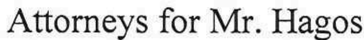
Katie Hurrelbrink
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
katie_hurrelbrink@fd.org

Attorneys for Mr. Hagos


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TESFAY GEBREMDHIM HAGOS, 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.: 26-cv-150-JES **Traverse in Support of Petition for a Writ of Habeas Corpus**

ICE has not been able to remove Mr. Hagos to Eritrea for the last 15 years. That is consistent with Eritrea's longstanding pattern of not cooperating with removals. **As of 2024, there were 973 non-detained Eritrean citizens with final orders living in the United States, and Eritrea was among the world's top 15 most uncooperative countries when it comes to repatriation**. Exh. A at 2, 7. Yet in claiming that Mr. Hagos can be removed, the government submits only a conclusory declaration stating that ICE "routinely" obtains travel documents for Eritreans and that "several" Eritrean citizens were removed last month. The

1 government does not even try to claim that removal patterns now are any different
2 from what they were over the last 15 years.
3 The government has therefore neither established a significant likelihood of
4 removal in the reasonably foreseeable future, nor that any changed circumstances
5 justify Mr. Hagos's re-detention. Those failures—combined with procedural
6 problems with Mr. Hagos's redetention—require Mr. Hagos's release.
7
8 **ARGUMENT**

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

11 Mr. Hagos's petition pointed out several regulatory issues with his re-
12 detention. With the government's evidence in hand, at least three remain.
13 *First*, though the government now produces a Notice of Revocation,
14 Mr. Hagos declared that he was never allowed to read any such notice or given a
15 copy of it. Doc. 1-1 at ¶¶ 5–6. And DO Townsend cannot dispute that claim,
16 because he was not the officer who purportedly provided the notice. An "N. Farfan"
17 was. Doc. 5-2 at 17. Thus, this claim is either undisputed or raises a factual dispute
18 that must be resolved at an evidentiary hearing (unless this Court grants on other
19 grounds). Of course, if Mr. Hagos was never given a chance to learn what the
20 document said, then it did not provide notice at all.
21 *Second*, the notice is facially deficient. It begins by saying that Mr. Hagos is
22 being detained because of "changed circumstances in [his] case." Doc. 5-2 at 16.
23 This Court and others in this district have deemed such "wholly conclusory" notices
24 insufficient. *Saengphet v. Noem,* No. 3:25-CV-2909-JES-BLM, 2025 WL 3240808,
25 at *5 (S.D. Cal. Nov. 20, 2025). "This is because Respondents fail to indicate which
26 facts contained within Petitioner's alien file—or what specific circumstances, that
27 are relevant to Petitioner, have changed and therefore—justify the revocation of
28 Petitioner's release." *Id.*; *see, e.g.*, *Van Ngo v. Noem*, No. 25-CV-3234 JLS (MMP),

2025 WL 3470438, at *3 (S.D. Cal. Dec. 3, 2025) (same); *Arostegui-Campo v. Noem*, No. 25-CV-3064 JLS (MMP), 2025 WL 3280886, at *3 (S.D. Cal. Nov. 25, 2025) (same); *Dipraseuth v. Noem*, No. 25-CV-3471 JLS (BJW), 2025 WL 3677674, at *2 (S.D. Cal. Dec. 18, 2025) (same).

The notice goes on to say that "ICE is now able to obtain valid travel documents for removal to Eritrea." Doc. 5-2 at 16. But that, too, is devoid of any information that would let Mr. Hagos contest the claim. *Why* does ICE think it can suddenly obtain travel documents now, when it couldn't for the last 15 years? "Petitioner must be told *what* circumstances had changed or *why* there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3)." *Sarail A. v. Bondi*, No. 25-CV-2144 (ECT/JFD), 2025 WL 2533673, at *10 (D. Minn. Sept. 3, 2025). "Thus, while an informal interview apparently occurred, Petitioner could not have responded to the reasons for revocation, because they were not given." *Id.*

Finally, the notice says that ICE "will be working on obtaining travel documents and a removal flight to Eritrea." Doc. 5-2 at 16. But "Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025). Thus, nothing in the document identifies the changed circumstances supposedly justifying the revocation.

Third, procedure aside, the government has not show that there actually *are* any changed circumstances here. ICE has not been able to remove Mr. Hagos to Eritrea for the last 15 years. For Mr. Hagos to be taken back into custody, it must be the case that something actually *changed* that makes his removal more likely—that is, current circumstances differ from past circumstances. Yet "Respondents have not provided any details about why a travel document could not be obtained in the past, nor have they attempted to show why obtaining a travel document is

1 more likely this time around." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025
2 WL 1993771, at *4 (E.D. Cal. July 16, 2025). Instead, DO Townsend makes two,
3 conclusory assertions about removal to Eritrea: (1) "ICE routinely obtains travel
4 documents for Eritrean citizens," and (2) "ICE has removed several Eritrean citizen
5 to Eritrea as recently as December 2025." He says nothing to suggest that ICE has
6 a higher success rate in in removals to Eritrea than they had previously. And he
7 does not even assert that the removed citizens are in any way similarly situated to
8 Mr. Hagos, even though the "regulation require[s] . . . an individualized
9 determination." *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023).

10 For all of these reasons, ICE failed to comply with its own regulations before
11 detaining Mr. Hagos. And contrary to the government's arguments, these lapses
12 violate due process and entitle Mr. Hagos to release without a showing of prejudice,
13 as courts in this district have repeatedly found. *See, e.g.*, *Ghafouri v. Noem*, 25-cv-
14 2675-RBM, Dkt. 11 at 9–12 (S.D. Cal. Nov. 4, 2025); 25-cv-2740-BJC, Doc. 13 at
15 8 (S.D. Cal. Nov. 13, 2025); *Soryadvongsa v. Noem*, 25-cv-2663-AGS, Dkt. 11 at
16 4–5 (S.D. Cal. Nov. 8, 2025). "There are two types of regulations: (1) those that
17 protect fundamental due process rights, and (2) and those that do not." *Martinez v.*
18 *Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). "A violation of the first
19 type of regulation . . . implicates due process concerns even without a prejudice
20 inquiry." *Id.* (cleaned up). Here, "[t]here can be little argument that ICE's
21 requirement that noncitizens be afforded an informal interview—arguably the most
22 bare-bones form of an opportunity to be heard—derives from the fundamental
23 constitutional guarantee of due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d
24 137, 165 n.26 (W.D.N.Y. 2025); *see also Jimenez v. Cronen*, 317 F. Supp. 3d 626,
25 641 (D. Mass. 2018) (citing Detention of Aliens Ordered Removed, 65 FR 80281-
26 01 for the proposition that § 241.4(*l*) was intended to protect due process);
27 Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-
28 01 (§ 241.13(i) was modeled after § 241.4(*l*)). Thus, these regulations fall squarely

into the first category requiring no prejudice showing.

If Mr. Hagos did need to show prejudice, however, he could, because he has a very good argument that there are no changed circumstances in his case. There is therefore a "plausible scenario[] in which the outcome of the proceedings would have been different if a more elaborate process were provided," *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up).

II. Count 2: The government's Return confirms that ICE has no reason to think Mr. Hagos can be removed in the reasonably foreseeable future.

Mr. Hagos must also be released under *Zadvydas v. Davis*, because there is "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001).

A. The six-month grace period extends for six months from the date of the removal order—it does not require six months of detention.

The government claims that the *Zadvydas* grace period has not yet passed in Mr. Hagos's case. According to the government, the immigrant must actually be *detained* for a cumulative six months—if the immigrant is released, the clock pauses, resuming only when the immigrant is rearrested. *See, e.g.*, *Nhean v. Brott*, No. CV 17-28 (PAM/FLN), 2017 WL 2437268, at *2 (D. Minn. May 2, 2017), *report and recommendation adopted*, 2017 WL 2437246 (D. Minn. June 5, 2017) (adopting this view). According to the dates provided with the government's return, Mr. Hagos has been detained for 169 days. Doc. 5-1. Thus, worst case scenario, Mr. Hagos would have to wait another 11 days to bring his *Zadvydas* claim, and this Court could hold the petition until then.

But the government is wrong to say that the person must actually be detained for a full six months. That misconstrues *Zadvydas*. As the Ninth Circuit has recognized, the six-month grace period is pegged to the start of the removal period. *See Ma*, 257 F.3d at 1102 n.5 ("[I]n *Zadvydas*, the Supreme Court read the statute to permit a 'presumptively reasonable' detention period of *six months* after a final

1 order of removal—that is, *three months* after the statutory removal period has
2 ended."); *Rodriguez v. Hayes*, 591 F.3d 1105, 1115 (9th Cir. 2010), *overruled in*
3 *other part by Jennings v. Rodriguez*, 583 U.S. 281 (2018) ("The [*Zadvydas*] Court
4 determined that for six months following the beginning of the removal period an
5 alien's detention was presumptively authorized."). It is not calculated based on the
6 length of detention. *See Bailey*, 2016 WL 5791407, at *2 (adopting the correct
7 view). Here, Mr. Hagos was ordered removed on June 16, 2010. Doc. 5-1 at ¶ 4.
8 Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The
9 *Zadvydas* grace period thus expired six months after the removal period began, in
10 December 2010. The grace period has therefore long since run.

11 The government's contrary view not only runs afoul of Ninth Circuit
12 precedent, but it also makes little sense in light of *Zadvydas*'s reasoning. *Zadvydas*
13 established the six-month grace period to give ICE a fair chance to effectuate the
14 removal before a court gets involved. 533 U.S. at 700–01. That was why the Court
15 chose to expand the grace period beyond the 90-day statutory removal period:
16 because Congress likely did not "believe[] that all reasonably foreseeable removals
17 could be accomplished in that time." *Id.* at 701. But in Mr. Hagos's case, ICE has
18 already had much more than six months effectuate the removal. They have had a
19 final removal order in hand for over a decade, during which time they had no
20 success in removing him. That Mr. Hagos was on release for most of that time
21 makes no difference. ICE could just as effectively take steps to arrange his removal
22 whether he was in a cell or on the street. While released, Mr. Hagos was required
23 to attend yearly check-ins, giving ICE every opportunity to enlist his help in
24 applying for travel documents. Yet, they never succeeded. Having already been
25 given much more than six months to try to remove Mr. Hagos, there is no principled
26 reason to give ICE an additional grace period.

27 Finally, even if the grace period had not passed, Mr. Hagos could still file
28 this petition. That's because the six-month grace period is only "*presumptively*

reasonable." *Zadvydas*, 533 U.S. at 701 (emphasis added). Several courts have concluded that an immigrant may rebut that presumption with sufficiently compelling evidence that his removal is not foreseeable. *See Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases). And where, as here, ICE has had years to remove the person while they remained on supervision, plus over five-and-a-half months cumulative detained time, the presumption is readily rebutted. *See Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025).

For all these reasons, the six-month grace period poses no barrier to granting this *Zadvydas* petition.

B. The government's conclusory assertions are not evidence showing a significant likelihood of removal.

The government must therefore prove a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. The government has not done so, first, because it has not shown a "significant likelihood of removal" at all.

There are powerful reasons to think that Mr. Hagos will not be removed to Eritrea. Most notably, ICE could not remove him there for over 15 years.

That gels with others Eritreans' experience. In 2024, ICE reaffirmed that Eritrea was one of the world's 15 most "uncooperative" countries, because it was so unlikely to accept its citizens in a timely manner. Exh. A at 7; *see also* Congressional Research Service, *"Recalcitrant" Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals* (July 10, 2020), https://www.congress.gov/crs-product/IF11025 (deeming Eritrea "recalcitrant" in 2020 as well). As a result, there were 973 non-detained Eritrean citizens with final orders of removal in the United States in 2024. Exh. A at 2.

Against these powerful reasons to doubt that Mr. Hagos will be removed, DO Townsend makes two assertions: that (1) "ICE routinely obtains travel

documents for Eritrean citizens," and (2) "ICE has removed several Eritrean citizen to Eritrea as recently as December 2025." Doc. 5-1 at ¶¶ 10–11. These claims are extremely vague. How often is "routine"? Even if ICE were obtaining one travel document per month, that's 12 travel documents per year—a drop in the bucket, compared to the nearly 1,000 Eritreans in the United States. As for the "several" individuals removed in December, that could be as few as three. Mirriam-Webster, *Several*, https://www.merriam-webster.com/dictionary/several ("an idefinite number more than two and fewer than many"). Because DO Townsend provides no hard numbers, and his claims are consistent with a mere trickle of removals, this Court cannot find that any substantial proportion of the 973 Eritreans have been successfully removed.

Furthermore, DO Townsend does not even assert that a significant *proportion* of Eritrean citizens are successfully removed when ICE seeks travel documents. Without knowing "the total number of requests that were made to" Ertirea, this Court cannot "gauge how likely it is that Petitioner would be removed" as well. *Nguyen*, 2025 WL 1725791, at *4. After all, if ICE submitted "several" requests, and all were accepted, that would be a 100% success rate. If ICE submitted 973 requests, and "several" were granted, the success rate would be miniscule.

Finally, court have "demanded an individualized analysis" of why *this* person—Mr. Hagos—will likely be removed. *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *17 (W.D. Wash. Aug. 21, 2025) (citing *Nguyen*, 2025 WL 1725791, at *4). Yet DO Townsend's sparse declaration provides no hint that Mr. Hagos is at all similarly situated to others who have been successfully removed.

Given ICE 15-year failure to remove Mr. Hagos, Eritrea's longstanding recalcitrance, and DO Townsend's utterly conclusory declaration, this Court cannot find on this record that there is any significant likelihood of removal.

1
2
C. The government's unsupported expectation is not evidence showing that removal will happen in the reasonably foreseeable future.

3 Additionally, the government provides no actual evidence showing that
4 removal will happen in the "reasonably foreseeable future." *Zadvydas*, 533 U.S. at
5 701. The government says that it will finally request travel documents for Mr. Hadi
6 on January 19, 2026. Doc. 5-1 at ¶ 9. As to when that request will be answered, the
7 government says that (1) "processing times vary" but (2) ICE "expects to obtain a
8 Travel Document within a month from submission of the request." *Id.* That is not
9 "evidence" sufficient to meet the government's burden under *Zadvydas*, 533 U.S.
10 at 701.

11 First off, despite acknowledging that processing times vary, the government
12 doesn't define the processing time's outer bounds. Have past requests taken two
13 months? A year? To years? We don't know.

14 Secondly, the government provides no reason why—despite the conceded
15 variance in processing times—this request will likely take a month. DO Townsend
16 just asserts as much. His "unsubstantiated belief" does not meet the government's
17 burden under *Zadvydas*. *McKenzie*, 2020 WL 5536510, at *3.

18 All told, then, the only actual *fact* about timing provided in DO Townsend's
19 declaration is that it "varies," Doc. 5-1 at ¶ 9—that is, that we can't know (or that
20 DO Townsend hasn't provided any evidence that ICE can predict) how long any
21 given request will take.

22 That is fatal. "[D]etention may not be justified on the basis that removal to a
23 particular country is likely *at some point* in the future; *Zadvydas* permits continued
24 detention only insofar as removal is likely in the *reasonably foreseeable* future."
25 *Hassoun*, 2019 WL 78984, at *6. "The government's active efforts to obtain travel
26 documents from the Embassy are not enough to demonstrate a likelihood of
27 removal in the reasonably foreseeable future where the record before the Court
28 contains no information to suggest a timeline on which such documents will

1 actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319,
2 at *4 (W.D.N.Y. July 14, 2020). "[I]f DHS has no idea of when it might reasonably
3 expect [Mr. Phan] to be repatriated, this Court certainly cannot conclude that his
4 removal is likely to occur—or even that it *might* occur—in the reasonably
5 foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

6 **III. Count 3 is justiciable.**

7 The government does not try to defend ICE's third-country removal policy
8 on the merits. Instead, the government says that a third-country removal challenge
9 is nonjusticiable under Article III because ICE professes no current plans to remove
10 Mr. Hagos to a third country.

11 But "[t]here, so to speak, lies the rub." *D.V.D. v. U.S. Dep't of Homeland*
12 *Sec.*, 778 F. Supp. 3d 355, 389 n.44 (D. Mass. 2025). "[A]ccording to
13 [Respondents], an individual must await notice of removal before his claim is
14 ripe[.]" *Id.* But under ICE's policy, "there is no notice" for certain removals and
15 inadequate notice for others. *Id.* And if Mr. Hagos "is removed" before he can raise
16 this challenge, Respondents will then argue that "there is no jurisdiction" to bring
17 him back to the United States. *Id.*

18 This Court need not adopt that Kafkaesque view. The government has not
19 denied that "the default procedural structure without an injunction" is "set forth in
20 DHS's March 30 and July 9, 2025 policy memoranda," which provide for third-
21 country removal with little or no notice. *Y.T.D. v. Andrews*, No. 1:25-CV-01100
22 JLT SKO, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18, 2025). And Mr. Hagos has
23 "point[ed] to numerous examples of cases involving individuals who DHS has
24 attempted to remove to third countries with little or no notice or opportunity to be
25 heard." *Id.*; *see* Doc. 1 at 15-17. "On balance," then, "there is a sufficiently
26 imminent risk that [Mr. Hagos] will be subjected to improper process in relation to
27 any third country removal to warrant imposition of an injunction requiring
28 additional process." *Y.T.D.*, 2025 WL 2675760, at *11.

1 **IV. Section 1252(g) does not deprive this Court of jurisdiction on any issue**
2 **in this petition.**

3 Finally, contrary to the government's arguments, Doc. 5 at 4–5, § 1252(g)
4 does not bar review of "all claims arising from deportation proceedings." *Reno v.*
5 *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts
6 "have jurisdiction to decide a purely legal question that does not challenge the
7 Attorney General's discretionary authority." *Ibarra-Perez v. United States*, __ F.4th
8 __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up).

9 In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not
10 prohibit immigrants from asserting a "right to meaningful notice and an opportunity
11 to present a fear-based claim before [they] [are] removed," *id.* at *7[1]—the same
12 claim that Mr. Hagos raises here with respect to third-country removals. The Court
13 reasoned that "§ 1252(g) does not prohibit challenges to unlawful practices merely
14 because they are in some fashion connected to removal orders." *Id.* Instead, 1252(g)
15 is "limited . . . to actions challenging the Attorney General's discretionary decisions
16 to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v.*
17 *United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments
18 that the government "entirely lacked the authority, and therefore the discretion," to
19 carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to "discretionary
20 decisions that [the Secretary] actually has the power to make, as compared to the
21 violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

22 The same logic applies to all of Mr. Hagos's claims, because he challenges
23 only violations of ICE's mandatory duties under statutes, regulations, and the
24 Constitution. Accordingly, "[t]hough 8 U.S.C § 1252(g), precludes this Court from
25

26 [1] Mr. Ibarra-Perez raised this claim in a post-removal Federal Tort Claims Act
("FTCA") case, *id.* at *2, while this is a pre-removal habeas petition. But the
27 analysis under § 1252(g) remains the same, because both Mr. Ibarra-Perez and Mr.
Hagos are challenging the same kind of agency action. *See Kong*, 62 F.4th at 616–
28 17 (explaining that a decision about § 1252(g) in an FTCA case would also affect
habeas jurisdiction).

1 exercising jurisdiction over the executive's decision to 'commence proceedings,
2 adjudicate cases, or execute removal orders against any alien,' this Court has habeas
3 jurisdiction over the issues raised here, namely the lawfulness of [Mr. Hagos's]
4 continued detention and the process required in relation to third country removal."
5 *Y.T.D.*, 2025 WL 2675760, at *5. Many courts agree. *See, e.g.*, *Kong*, 62 F.4th at
6 617 ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness
7 of his detention," including ICE's "fail[ure] to abide by its own regulations");
8 *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not
9 bar courts from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172
10 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim concern[ing]
11 detention"); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3
12 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was "failing
13 to carry out non-discretionary statutory duties and provide due process"); *D.V.D. v.*
14 *U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025)
15 (1252(g) did not bar review of "the purely legal question of whether the
16 Constitution and relevant statutes require notice and an opportunity to be heard
17 prior to removal of an alien to a third country").
18
19
20 Respectfully submitted,
21
Dated: January 16, 2026

s/ Katie Hurrelbrink
22 **KATIE HURRELBRINK**
Federal Defenders of San Diego, Inc.
23 Email: Katie_Hurrelbrink@fd.org
24
25
26
27
28