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

11 MARWAN ABDULLAHI
12 ABDIRAHMAN,

13 Petitioner,

14 v.

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

24 Respondents.

CIVIL CASE NO.: 26-cv-177-RBM

**Traverse
in Support of
Petition for Writ
Of Habeas Corpus**

25 This Court should grant Mr. Abdirahman's petition on both grounds. The
26 government concedes that ICE currently has not identified any third country to
27 which Mr. Abdirahman can be removed, meaning that the government cannot meet
28 its burden under *Zadvydas*. And if—despite all evidence to the contrary—ICE is
able to remove Mr. Abdirahman to a third country, ICE must at a minimum give
him the process set forth in *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). Twenty-four

1 hours' notice is not near enough to satisfy the Constitution. This Court should
2 therefore grant this petition on both counts.

3
4 **ARGUMENT**

5 **I. Count 2: The government's Return confirms that ICE has no reason to**
6 **think Mr. Abdirahman can be removed in the reasonably foreseeable**
7 **future.**

8 Mr. Abdirahman must be released under *Zadvydas v. Davis*, because there is
9 "no significant likelihood of removal in the reasonably foreseeable future." 533
10 U.S. 678, 701 (2001). The government does not deny that Mr. Abdirahman has
11 been in custody for six months, meaning that the government has the burden to
12 prove he can be removed. But the government has not begun to do so. Deportation
13 Officer ("DO") Herrera admits that ICE has not even identified a third country that
14 might possibly take Mr. Abdirahman, let alone asked any country take him. Doc.
15 5-1 at ¶¶ 15–17. In fact, it appears that the ICE unit charged with third-country
16 removals, ERO Removal International Operations Division (HQRIO), has not even
17 responded to ICE messages. *Id.* at ¶ 16. ICE emailed HQRIO four times to request
18 updates on its efforts to identify a third country for Mr. Abdirahman. But it appears
19 that HQRIO did not provide any updates, as DO Herrera describes none in the
20 declaration.

21 Finally, ICE's complete failure to identify a plausible path to removal is
22 especially damning in light of the undisputed empirical evidence in the petition,
23 which establishes that "alternative-country removal is rare." *Johnson v. Guzman-*
24 *Chavez*, 594 U.S. 523, 537 (2021).

25 Furthermore, DO Herrera does not provide any evidence about how long a
26 third-country removal might take—no statistics, no anecdotes, no guesses, no
27 nothing. That, too, is fatal. "[D]etention may not be justified on the basis that
28 removal to a particular country is likely *at some point* in the future; *Zadvydas*
permits continued detention only insofar as removal is likely in the *reasonably*

1 foreseeable future.” *Hassoun*, 2019 WL 78984, at *6. “The government’s active
2 efforts to obtain travel documents from the Embassy are not enough to demonstrate
3 a likelihood of removal in the reasonably foreseeable future where the record before
4 the Court contains no information to suggest a timeline on which such documents
5 will actually be issued.” *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL
6 3972319, at *4 (W.D.N.Y. July 14, 2020). “[I]f DHS has no idea of when it might
7 reasonably expect [Mr. Abdirahman] to be repatriated, this Court certainly cannot
8 conclude that his removal is likely to occur—or even that it *might* occur—in the
9 reasonably foreseeable future.” *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102
10 (W.D.N.Y. 2019).

11 ICE’s plan to eventually request a travel document for Mr. Abdirahman does
12 not move the needle, because good faith efforts to secure a travel document do not
13 satisfy *Zadvydas*. The petitioner in *Zadvydas* appealed a “Fifth Circuit h[olding]
14 [that] [the petitioner’s] continued detention [was] lawful as long as good faith
15 efforts to effectuate deportation continue and [the petitioner] failed to show that
16 deportation will prove impossible.” 533 U.S. at 702 (cleaned up). The Supreme
17 Court reversed, finding that the Fifth Circuit’s good-faith-efforts standard
18 “demand[ed] more than our reading of the statute can bear.” *Id.*

19 Thus, “under *Zadvydas*, the reasonableness of Petitioner’s detention does not
20 turn on the degree of the government’s good faith efforts. Indeed, the *Zadvydas*
21 court explicitly rejected such a standard. Rather, the reasonableness of Petitioner’s
22 detention turns on whether and to what extent the government’s efforts are likely to
23 bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5
24 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is required to demonstrate
25 the likelihood of not only the *existence* of untapped possibilities, but also of a
26 probability of success in such possibilities.” *Elashi v. Sabol*, 714 F. Supp. 2d 502,
27 506 (M.D. Pa. 2010). Here, then, “[w]hile the respondent asserts that [Mr.
28 Abdirahman’s] travel document requests” with a third country will be lodged, “this

1 is insufficient. It is merely an assertion of good-faith efforts to secure removal; it
2 does not make removal likely in the reasonably foreseeable future.” *Gilali v.*
3 *Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis.
4 Oct. 15, 2019).

5 With no evidence of any likelihood of removal at any time, the government
6 has not met its burden, and this Court must grant the petition.

7 **II. Count 2: The government does not even try to defend ICE third country**
8 **removal policy, nor does the government promise that ICE won’t adhere**
9 **to that policy in Mr. Abdirahman’s case.**

10 The government does not try to defend ICE’s third-country removal process
11 or claim that it complies with due process. Nor does the government make any
12 promises about the kind of notice ICE will give in this case. In some recent habeas
13 petitions, the government has promised at least to give 24 hours notice before
14 removing someone to a third country. Here, the government does not even do that.
15 Instead, the government says that because ICE has met with Mr. Abdirahman a few
16 times during his detention, ICE will probably also inform him about third country
17 removal in time to satisfy due process. Doc. 5 at 6. That makes no sense, and it does
18 not provide near enough protection against removal without due process. This
19 Court should therefore require the government to provide the notice set forth in
20 *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL
21 1453640, at *1 (D. Mass. May 21, 2025), before removing Mr. Abdirahman to any
22 other third country.

23 Respectfully submitted,

24
25 Dated: January 22, 2026

s/ Katie Hurrelbrink

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