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

12 ISMAIL HADI,

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.: '26CV0255 RSH JLB

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

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1 INTRODUCTION

2 Ismail Hadi was ordered removed to Somalia in 2014. Since then, he
3 remained on release because ICE could not remove him. He performed perfectly
4 on supervision.

5 Nevertheless, ICE detained him on July 14, 2025. He received no
6 paperwork or verbal explanation of why he was being re-detained, other than that
7 it was on the President's orders. And no changed circumstances justify his re-
8 detention. **This administration has already tried and failed to remove him for**
9 **a full six months in 2025, just as ICE failed to do for a decade while Mr. Hadi**
10 **was on release.** Mr. Hadi got no chance to make this case to ICE, however,
11 because ICE did not give him an opportunity to contest his redetention at an
12 informal interview. Worse yet, if ICE gives up on removing him to Somalia and
13 tries to remove him to a third country, ICE policy allows them to do so with no
14 notice, six hours' notice, or 24 hours' notice, depending on the circumstances.

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

22 STATEMENT OF FACTS

23 **I. Mr. Hadi came to the United States fleeing civil war in Somalia, and**
24 **when ICE proved unable to remove him following his 2014 removal**
25 **order, he spent a decade on release.**

26 Mr. Hadi was born in Somalia on ~~XXXXXXXXXX~~ Exh. A at ¶ 1. He fled
27 Somalia's civil war in the early 2000s. *Id.* On August 2, 2006, he entered the
28 United States on a family sponsorship, and he soon received a green card. *Id.*

1 He was ordered removed due to a conviction on November 17, 2014. *Id.* at
2 ¶ 2. But ICE was not able to remove him to Somalia, so they released him on an
3 order of supervision. *Id.* While released, he sustained no further convictions, and
4 he came to every check-in as scheduled. *Id.* at ¶ 3.

5 Nevertheless, on July 14, 2025, he was arrested at his check-in. *Id.* at ¶ 4.
6 ICE did not give him any paperwork when he was arrested. *Id.* He asked what he
7 did wrong, but the people arresting him just said it was by order of the President.
8 *Id.* They put him in a holding cell and eventually transferred him to immigration
9 detention. *Id.* He is now at Imperial Regional Detention Center. *Id.* To date, ICE
10 still has not given him any paperwork explaining why he was re-detained, and he
11 has never gotten the chance to contest his re-detention. *Id.* at ¶ 5. No one has told
12 him what changed to make his removal more likely. *Id.*

13 Every time he tries to talk to ICE about his removal, ICE just says that he
14 needs to give them a Somali passport. *Id.* at ¶ 6. He does not have a Somali
15 passport. He fled Somalia during a civil war. *Id.* Whenever ICE has asked him to
16 do something that he actually can do, he does it. *Id.* He has never refused. *Id.* Yet
17 ICE seems to have made no progress in getting travel documents for him. *Id.*

18 Meanwhile, Mr. Hadi's wife and six kids suffer without him. *Id.* at ¶ 7.
19 Before his detention, he was going to school and providing childcare and
20 maintaining the home while his wife worked. *Id.* Now, his wife must handle all of
21 the childcare and support the family on her own. *Id.*

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

24 Where, as here, ICE cannot remove someone to their country of origin, they
25 have the option of removing them to a third country. The Trump administration
26 reportedly has negotiated with at least 58 countries to accept deportees from other
27 nations. Edward Wong et al, *Inside the Global Deal-Making Behind Trump's*
28 *Mass Deportations*, N.Y. Times, June 25, 2025. On June 25, 2025, the New York

1 Times reported that seven countries—Costa Rica, El Salvador, Guatemala,
2 Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are
3 not their own citizens. *Id.* Since then, ICE has carried out highly publicized third
4 country deportations to South Sudan and Eswatini.

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

23 On June 23 and July 3, 2025, the Supreme Court issued a stay of a national
24 class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of*
25 *Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D.
26 Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional
27 requirements before removing an individual to a third country. *U.S. Dep't of*
28 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025

1 WL 1832186 (U.S. July 3, 2025).¹ On July 9, 2025, ICE rescinded previous
2 guidance meant to give immigrants a “‘meaningful opportunity’ to assert claims
3 for protection under the Convention Against Torture (CAT) before initiating
4 removal to a third country” like the ones just described. Exh. B.

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

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

9 CLAIMS FOR RELIEF

10 This Court should grant this petition and order Mr. Hadi’s immediate
11 release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the
12 government to detain immigrants like Mr. Hadi, for whom there is “no significant
13 likelihood of removal in the reasonably foreseeable future.” 533 U.S. 678, 701
14 (2001). ICE’s own regulations require changed circumstances before re-detention,
15 as well as notice and a chance to contest a re-detention decision. And due process
16 requires ICE to provide notice and an opportunity to be heard before any removal
17 to a third country.
18

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

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

1 ICE is required to follow its own regulations. *United States ex rel. Accardi*
2 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162
3 (9th Cir. 2004) (“The legal proposition that agencies may be required to abide by
4 certain internal policies is well-established.”). A court may review a re-detention
5 decision for compliance with the regulations. *See Phan v. Beccerra*, No. 2:25-CV-
6 01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No.
7 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong*
8 *v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)). Many judges in this district
9 have granted habeas petitions or temporary restraining orders when ICE failed to
10 follow 8 C.F.R. §§ 241.4(l), 241.13(i). *See, e.g., Constantinovici v. Bondi*, 2025
11 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v.*
12 *Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan*
13 *v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct.
14 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept.
15 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D.
16 Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D.
17 Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF
18 No. 12 (S.D. Cal. Oct. 9, 2025).²

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

20 First, ICE did not comply with § 241.13(i)’s informal interview requirement.

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

14 Second, ICE did not comply with §§ 241.4(l), 241.13(i)’s requirement that,
15 “upon revocation,” the re-detained person be “notified of the reasons for
16 revocation.” As Judge Moskowitz recently explained, the regulation’s text and due
17 process require that the notice be written. *Tran v. Noem*, 25-cv-2391-BTM, Dkt.
18 16, at 5–6 (S.D. Cal. Oct. 27, 2025). Here, ICE has not given Mr. Hadi any written
19 or oral explanation for his re-detention. Exh. A at ¶ 5.

20 Third, ICE did not revoke Mr. Hadi’s release for a permissible reason. He
21 was not returned to custody because of a conditions violation. Exh. A at ¶ 3. And
22 there are no changed circumstances that justify re-detaining him. Mr. Hadi was
23 ordered removed to Somalia over a decade ago. *Id.* at ¶ 2. In all that time, ICE never
24 proved able to remove him. Absent any evidence for “why obtaining a travel
25 document is more likely this time around[,] Respondents’ intent to eventually
26 complete a travel document request for Petitioner does not constitute a changed
27 circumstance.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771,
28 at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL

1 1696526, at *2 (D. Kan. June 17, 2025)). Indeed, there is no indication that ICE
2 even made a pre-arrest determination that changed circumstances made Mr. Hadi's
3 removal likely. If the government is unable to produce "any documented
4 determination, made prior to Petitioner's arrest," that any of the prerequisites to re-
5 detention were met, then Mr. Hadi must be released on those grounds, too.
6 *Rokhfirooz v. Larose*, 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025).

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

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

12 **A. Legal background**

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

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

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

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

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

18
19 **A. The six-month grace period expired in 2018.**

20 As an initial matter, the six-month grace period has long since ended. The
21 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,
22 *three months* after the statutory removal period has ended.” *Kim Ho Ma v.*
23 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Hadi received a final
24 order of removal in November 2014. Exh. A at ¶ 2. Accordingly, his 90-day
25 removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period
26 therefore expired three months after the removal period ended, in May 2015. Plus,
27 he was detained for two, separate six-months periods in 2014 and 2015 and in
28 2025 and 2026. Exh. A at ¶¶ 2, 4. Thus, the threshold requirement is met.

1 **B. There is good reason to believe that there is no significant**
2 **likelihood of Mr. Hadi removal in the reasonably foreseeable**
3 **future.**

4 Because the six-month grace period has passed, this Court must evaluate
5 Mr. Hadi’s *Zadvydas* claim using the burden-shifting framework. At the first
6 stage of the framework, there must be “good reason to believe that there is no
7 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
8 533 U.S. at 701. This standard can be broken down into three parts.

9 **“Good reason to believe.”** The “good reason to believe” standard is a
10 relatively forgiving one. “A petitioner need not establish that there exists no
11 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
12 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
13 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
14 foreseeable, significant likelihood of removal or show that his detention is
15 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
16 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
17 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
18 Petitioners need only give a “good reason”—not prove anything to a certainty.

19 **“No significant likelihood of removal.”** This component focuses on
20 whether Mr. Hadi will likely be removed: Continued detention is permissible only
21 if it is “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*,
22 533 U.S. at 701. This inquiry targets “not only the *existence* of untapped
23 possibilities, but also [the] probability of *success* in such possibilities.” *Elashi v.*
24 *Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In
25 other words, even if “there remains *some* possibility of removal,” a petitioner can
26 still meet its burden if there is good reason to believe that successful removal is
27 not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL
28 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

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

15 Mr. Hadi readily satisfies the above standards. ICE could not remove him
16 during a seven-month detention period in 2014 and 2015. Exh. A at ¶ 2. ICE still
17 could not remove him during a decade of release. *Id.* at ¶¶ 2–4. And ICE has tried
18 and failed to remove him for yet another six-month detention period in 2025 and
19 2026. *Id.* at ¶ 4. There is therefore very good reason to believe that ICE cannot
20 remove him.

21 Mr. Hadi has met his initial burden. Thus, unless the government can prove
22 a “significant likelihood of removal in the reasonably foreseeable future,” Mr. Hadi
23 must be released. *Zadvydas*, 533 U.S. at 701.

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

26 Unable to remove Mr. Hadi to Somalia, ICE may try to remove him to a third
27 country. If so, it could do so under a policy that violates the Fifth Amendment, the
28 Convention Against Torture, and implementing regulations.

1 **A. Legal background**

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

11 Similarly, Congress codified protections enshrined in the CAT prohibiting
12 the government from removing a person to a country where they would be tortured.
13 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of
14 the United States not to expel, extradite, or otherwise effect the involuntary return
15 of any person to a country in which there are substantial grounds for believing the
16 person would be in danger of being subjected to torture, regardless of whether the
17 person is physically present in the United States.”); 28 C.F.R. § 200.1; *id.*
18 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

26 The government must also “ask the noncitizen whether he or she fears
27 persecution or harm upon removal to the designated country and memorialize in
28

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

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

22 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,
23 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App’x 724 (9th Cir. 2016), and
24 for good reason: To have a meaningful opportunity to apply for fear-based
25 protection from removal, immigrants must have time to prepare and present
26 relevant arguments and evidence. Merely telling a person where they may be sent,
27 without giving them a chance to look into country conditions, does not give them a
28 meaningful chance to determine whether and why they have a credible fear.

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

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

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

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

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

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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 unless ICE copies with all requirements of 8 C.F.R. §§ 241.4, 241.13;
3. 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;
4. Enjoin Respondents from removing Petitioner to any country other than Somalia 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.
5. Order all other relief that the Court deems just and proper.

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Respectfully submitted,

Dated: January 15, 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 15, 2026 /s/ Katie Hurrelbrink
Katie Hurrelbrink