

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

8
9 Attorneys for Mr. Gebremedhin

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

12 **MILLON GEBREMEDHIN,**
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,**
JESUS ROCHA, Acting Field Office
Director, San Diego Field Office,
JEREMY CASE, Warden at Imperial
Regional Detention Center,

20 **Respondents.**

Civil Case No.: 26-cv-322-TWR-DEB

Traverse in
Support of
Petition for Writ of
Habeas Corpus

21
22
23
24
25
26
27
28

1 INTRODUCTION

2 Having received the government’s Return and supporting evidence, this
3 Court should grant the petition. As to Claim One, the government provides no
4 evidence to satisfy the success element (“a significant likelihood of removal”) or
5 timing element (“in the reasonably foreseeable future”) of *Zadvydas v. Davis*, 533
6 U.S. 678, 701 (2001). Though Deportation Officer (“DO”) Arredondo asserts that
7 “ICE submitted a travel document request” to its D.C headquarters on October 22,
8 2025, and that headquarters “approved the travel document request” on December
9 18, 2025, Respondents do not claim that this request has *ever been sent to the*
10 *government of Ethiopia*. Dkt. 6-1 at ¶ 11, 12. Without such basic assurances—let
11 alone proof that Ethiopia has or will issue a travel document—Respondents
12 cannot meet their burden to show a significant likelihood of removal in the
13 reasonably foreseeable future.

14 Alternatively, the government never claims that it complied with its own
15 regulations. While the government argues that “Petitioner appears to have
16 contributed to his own re-detention by refusing to be placed on electronic
17 monitoring,” Dkt. 6 at 4, the government was still required to provide him notice
18 that his release was being revoked on this basis, as well as an informal interview.
19 *See* 8 C.F.R. § 241.4(l)(1); 8 C.F.R. § 212.5(e)(2). The government submits no
20 evidence that it did either. Thus, the Court should grant the petition and order his
21 immediate release.

22 ARGUMENT

23 **I. The government has not proved that there is a significant likelihood of**
24 **removal in the reasonably foreseeable future.**

25 As an initial matter, DO Arredondo admits that Mr. Gebremedhin’s order
26 of removal “became final on July 20, 2025.” Dkt. 6-1 at ¶ 10. Thus, the
27 government admits that the six-month grace period under *Zadvydas* has passed.
28 *Zadvydas*, 533 U.S. at 701. Because the six-month grace period has passed, the

1 burden shifts to the government to prove that there is a “significant likelihood of
2 removal in the reasonably foreseeable future.” *Id.* That standard has a success
3 element (“significant likelihood of removal”) and a timing element (“in the
4 reasonably foreseeable future”). The government meets neither.

5 *First*, DO Arredondo asserts that “ICE submitted a travel document
6 request” to its D.C headquarters on October 22, 2025, and that headquarters
7 “approved the travel document request” on December 18, 2025. Dkt. 6-1 at ¶ 11,
8 12. But DO Arredondo never claims that this request has ever been submitted to
9 the government of Ethiopia. *Id.* Nor does DO Arredondo explain *why* it has not
10 been submitted to the government of Ethiopia or provide any information about
11 *when* this might occur. So it is difficult to believe that Mr. Gebremedhin’s
12 removal is “significantly likely” when Respondents have not even asked the
13 Ethiopian government to issue him a travel document.

14 *Second*, DO Arredondo asserts—with no evidence—that “[o]nce ICE
15 receives the travel document for Petitioner, his removal can be effectuated
16 promptly.” Dkt. 6-1 at ¶ 14. But ICE itself lists Ethiopia as one of the 15 most
17 “uncooperative” countries in terms of accepting their nationals for deportation.
18 *See* Exhibit A, ICE Report on Uncooperative Countries at 8. In 2024, ICE had
19 been unable to deport at least 1,713 Ethiopian nationals. *Id.* at 3. So even if ICE
20 *had* requested a travel document, it is doubtful whether Ethiopia would have
21 issued one.

22 Moreover, good faith efforts to secure a travel document do not themselves
23 satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a “Fifth Circuit
24 h[olding] [that] [the petitioner’s] continued detention [was] lawful as long as good
25 faith efforts to effectuate deportation continue and [the petitioner] failed to show
26 that deportation will prove impossible.” 533 U.S. at 702 (cleaned up). The
27 Supreme Court reversed, finding that the Fifth Circuit’s good-faith-efforts
28 standard “demand[ed] more than our reading of the statute can bear.” *Id.*

1 Thus, “under *Zadvydas*, the reasonableness of Petitioner's detention does
2 not turn on the degree of the government's good faith efforts. Indeed, the
3 *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of
4 Petitioner's detention turns on whether and to what extent the government's efforts
5 are likely to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL
6 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is required
7 to demonstrate the likelihood of not only the *existence* of untapped possibilities,
8 but also of a probability of success in such possibilities.” *Elashi v. Sabol*, 714 F.
9 Supp. 2d 502, 506 (M.D. Pa. 2010).

10 Many courts have agreed that requesting travel documents does not itself
11 make removal reasonably likely. *See, e.g., Andreatsyan v. Gonzales*, 446 F. Supp.
12 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner’s case
13 was “still under review and pending a decision” did not meet respondents’
14 burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D.
15 Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205
16 (D. Ariz. Sept. 20, 2011) (“Repeated statements from the Bangladesh Consulate
17 that the travel document request is pending does not provide any insight as to
18 when, or if, that request will be fulfilled.”); *Khader v. Holder*, 843 F. Supp. 2d
19 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document
20 request, where “[t]he government offers nothing to suggest when an answer might
21 be forthcoming or why there is reason to believe that he will not be denied travel
22 documents”); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1
23 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document
24 request).

25 Additionally, even if ICE will eventually remove Mr. Gebremedhin, the
26 government provides zero evidence that removal will happen “in the reasonably
27 foreseeable future.” *Zadvydas*, 533 U.S. at 701. DO Arredondo provides no
28 timetable for how long travel document requests like his typically take—stating

1 only that once it *is* received, removal “can be effectuated promptly.” Dkt. 6-1 at ¶
2 14.

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

16 Courts have routinely granted habeas petitions where, as here, the
17 government does not establish *Zadvydas*’s timing element. *See, e.g., Balza v.*
18 *Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020),
19 *report and recommendation adopted*, No. 6:20-CV-00866, 2020 WL 6064881
20 (W.D. La. Oct. 14, 2020) (“[A] theoretical possibility of eventually being
21 removed does not satisfy the government’s burden[.]”); *Eugene v. Holder*, No.
22 408CV346-RH WCS, 2009 WL 931155, at *4 (N.D. Fla. Apr. 2, 2009) (“While
23 Respondents contend Petitioner *could* be removed to Haiti, it has not been shown
24 that it is significantly likely that Petitioner *will* be removed in the *reasonably*
25 *foreseeable* future.”); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 426 (M.D.
26 Pa. 2004) (granting petition because even if “Petitioner’s removal will ultimately
27 be effected . . . the Government has not rebutted the presumption that removal is
28

1 not likely to occur in the reasonably foreseeable future”); *Seretse-Khama v.*
2 *Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C. 2002) (granting petition where the
3 government had not provided any “evidence . . . that travel documents will be
4 issued in a matter of days or weeks or even months”).

5 In sum, then, there could be “some possibility that [Ethiopia] will accept
6 Petitioner at some point. But that is not the same as a significant likelihood that he
7 will be accepted in the reasonably foreseeable future.” *Nguyen*, 2025 WL
8 2419288, at *16. Mr. Gebremedhin therefore succeeds under *Zadvydas*.

9 **II. Claim Two: ICE did not adhere to the regulations governing re-**
10 **detention.**

11 In his habeas petition, Mr. Gebremedhin argued in the alternative that
12 ICE’s failure to follow its own regulations required his immediate release. Dkt. 1
13 at 4–9. Specifically, these regulations state that: 1) ICE may only revoke an
14 individual’s order of supervised release if there are changed circumstances or a
15 conditions violation; 2) ICE must notify the person upon revocation of the reasons
16 for their redetention; and 3) ICE must provide an informal interview with a
17 meaningful opportunity to contest redetention. Dkt. 1 at 5–6. Because ICE did not
18 comply with any of these regulations, Mr. Gebremedhin argued that this Court
19 should order his immediate release.

20 In a single sentence, the government argues that “Petitioner appears to have
21 contributed to his own re-detention by refusing to be placed on electronic
22 monitoring,” Dkt. 6 at 4. But even assuming that this constituted a violation of the
23 conditions of release, the government was still required to provide him notice that
24 his release was being revoked *on this basis*. See 8 C.F.R. § 241.4(l)(1); 8 C.F.R. §
25 212.5(e)(2). The government still also had to provide him an informal interview
26 with an opportunity to respond to the reasons for revocation. 8 C.F.R.
27 §§ 241.4(l)(1), 241.13(i)(3)). The government has never claimed that it provided
28

1 either of these. So even assuming that that the first regulatory violation fails, this
2 Court should order release on the second or third regulatory violation.

3 The government next argues that “even if the agency’s compliance with the
4 regulations fell short, Petitioner has not established prejudice nor a constitutional
5 violation.” Dkt. 6 at 5. But “the government offers no compelling authority that a
6 habeas petitioner must demonstrate this form of prejudice.” *Soryadvongsa v.*
7 *Noem*, No. 25-CV-2663-AGS-DDL, 2025 WL 3126821, at *3 (S.D. Cal. Nov. 8,
8 2025). “Especially in the context of civil detentions—when constitutional
9 safeguards are at their zenith,” courts have been “unwilling to import such a
10 prejudice analysis into regulations or binding caselaw that don’t mention it.” *Id.*
11 Indeed, a violation of a regulation that protects fundamental due process rights
12 “implicates due process concerns even without a prejudice inquiry.” *Touch v.*
13 *Noem*, No. 3:25-CV-03118-RBM-AHG, 2025 WL 3296280, at *1 (S.D. Cal. Nov.
14 26, 2025) (quotations omitted).

15 Courts in this district have held that when “ICE violated regulations
16 intended to provide due process protections,” the petitioner “was prejudiced.” *Id.*
17 That is because “[r]egulations such as 8 C.F.R. §§ 241.4(l) and 241.13(i), which
18 provide notice and an opportunity to be heard before indefinite detention, . . .
19 serve as the minimal process due before depriving a person of liberty.” *Martinez*
20 *v. Noem*, No. 25-CV-2740-BJC-BJW, 2025 WL 3171738, at *4 (S.D. Cal. Nov.
21 13, 2025). Thus, such claims are “actionable” regardless of whether a petitioner
22 “demonstrates prejudice.” *Id.*

23 Moreover, “[i]t is well established that the deprivation of constitutional
24 rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695
25 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government’s arguments, the
26 Ninth Circuit has specifically recognized the “irreparable harms imposed on
27 anyone subject to immigration detention.” *Hernandez v. Sessions*, 872 F.3d 976,
28 995 (9th Cir. 2017). Thus, Mr. Gebremedhin need not show prejudice, and even if

1 he did, ten months of unjustified immigration detention certainly qualifies as
2 prejudicial.

3 Furthermore, these violations are of a constitutional nature. “When the INS
4 published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation
5 was intended to provide aliens procedural due process, stating that § 241.4 ‘has
6 the procedural mechanisms that . . . courts have sustained against due process
7 challenges.’” *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018)
8 (quoting *Detention of Aliens Ordered Removed*, 65 FR 80281-01). And
9 “[s]ection 241.13(i) includes provisions modeled on § 241.4(I) to govern
10 determinations to take an alien back into custody,” *Continued Detention of Aliens*
11 *Subject to Final Orders of Removal*, 66 FR 56967-01, meaning that it addresses
12 the same due process concerns as 241.4(I). “The procedures in § 241.4” and
13 § 241.13 therefore “are not meant merely to facilitate internal agency
14 housekeeping, but rather afford important and imperative procedural safeguards to
15 detainees.” *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R.
16 §§ 241.4, 241.13 are “intended to provide due process to individuals in
17 [Mr. Gebremedhin’s] position,” *Santamaria Orellana v. Baker*, No. CV 25-1788-
18 TDC, 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable. Thus,
19 this Court should order Mr. Gebremedhin immediately released given the
20 government’s regulatory violations.

21 **CONCLUSION**

22 For all these reasons, this Court should grant the petition, or at least enter a
23 temporary restraining order and injunction.

24 Respectfully submitted,

25
26 Dated: January 27, 2026

s/ Kara Hartzler

27 Kara Hartzler
28 Federal Defenders of San Diego, Inc.
Attorneys for Mr. Gebremedhin
Email: kara_hartzler@fd.org