

1 **Kara Hartzler**
2 Cal. Bar No. 293751
3 **Federal Defenders of San Diego, Inc.**
4 225 Broadway, Suite 900
5 San Diego, California 92101-5030
6 Telephone: (619) 234-8467
7 Facsimile: (619) 687-2666
8 Kara_hartzler@fd.org

9 Attorneys for Mr. Mehrpour¹

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

12 **SOHEIL MEHRPOUR,**
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**
Director, San Diego Field Office,
CHRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center,
21 **Respondents.**

Civil Case No.: **'26CV339 BJC VET**

Petition for Writ
of
Habeas Corpus

[Civil Immigration Habeas,
28 U.S.C. § 2241]

27 _____
28 ¹ Federal Defenders of San Diego, Inc., is filing with provisional appointment under Chief Judge Order No. 134.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Table of Contents

- I. Introduction 1**
- II. Statement of Facts 2**
 - A. Mr. Mehrpour comes to the United States, is ordered removed in 2008, and is re-detained by ICE in January 2026..... 2
 - B. It is extremely challenging to deport people to Iran even when it is not in the midst of a political crisis..... 3
 - C. Third-country removals for noncitizens granted removal relief are rare, but as of July 2025, third-country removals can happen with no or little notice..... 4
- III. Legal Analysis..... 7**
- IV. Claim One: ICE failed to comply with its own regulations while re-detaining Mr. Mehrpour, violating his rights under applicable regulations and due process. 7**
- V. Claim Two: Mr. Mehrpour’s detention violates *Zadvydas* and 8 U.S.C. § 1231..... 12**
- VI. Claim Three: ICE may not remove Mr. Mehrpour to a third country without adequate notice and an opportunity to be heard..... 15**
 - A. Legal background: Due process requires notice and an opportunity to be heard before deportation to third countries. 15
 - B. The July 6, 2025 memo’s removal policies violate the Fifth Amendment, 8 U.S.C. § 1231, the Convention Against Torture, and implementing regulations..... 17
- VII. This Court must hold an evidentiary hearing on any disputed facts..... 19**
- VIII. Prayer for relief 19**

1 **I. Introduction**

2 Soheil Mehrpour fled Iran as a young man because he wrote an anti-
3 government slogan on a school chalkboard and immediately became a target of
4 the state. He came to the United States in 1991 when he was 17 years old and
5 overstayed his visa.

6 Mr. Mehrpour was not able to become a lawful permanent resident and was
7 ordered removed on March 10, 2008. ICE continued to detain him but finally
8 released him on an order of supervision after about three months.

9 For the next 18 years, Mr. Mehrpou regularly attended his check in
10 appointments. He only missed two appointments—one in 2011 and one in
11 possibly 2013—because he got the dates confused. When this occurred, ICE did
12 not revoke his supervision or take him into custody. And in the last 13 years,
13 Mr. Mehrpour has not missed any other check-in appointments.

14 But on January 8, 2026, ICE arrested Mr. Mehrpour when we went for his
15 check-in appointment. They told him they were revoking his supervised release
16 because of “changed circumstances” but did not explain what had changed. They
17 also told him that he had a history of missing check-in appointments but did not
18 explain why they had waited 13 years since the last missed check in to revoke his
19 supervision.

20 ICE’s failure to provide a valid reason for revoking Mr. Mehrpour’s
21 supervised release or to explain it to him violated the regulations. He has never
22 been given a meaningful chance to contest his re-detention, as required under ICE
23 regulations. 8 C.F.R. §§ 241.13(i)(3), 241.4(l). It has been more than six months
24 since he was ordered removed, yet ICE has been unable to remove him. And,
25 under current policy, ICE intends to deport him to a third country without him
26 first having adequate time to investigate and, if needed, raise with a court, the
27 possibility of persecution in that that third country.

28

1 **II. Statement of Facts**

2 **A. Mr. Mehrpour comes to the United States, is ordered removed in**
3 **2008, and is re-detained by ICE in January 2026.**

4 Mr. Mehrpour was born in Iran. Exhibit A, Declaration of Soheil Mehrpour
5 at ¶ 1. When he was 12 years old, he escaped from Iran after writing an anti-
6 government slogan on the chalkboard at school. *Id.* at ¶ 1. He entered the United
7 States on a tourist visa and overstayed. *Id.* at ¶ 1.

8 Mr. Mehrpour never became a lawful permanent resident. After 9/11, he
9 was part of a group of men from certain countries who were required to register,
10 and ICE realized he had overstayed his visa. *Id.* at ¶ 2. He was granted voluntary
11 departure and tried to go to Mexico, but Mexico would not accept him, so he
12 returned to the United States. *Id.* at ¶ 2.

13 In 2005, Mr. Mehrpour went to a local shooting range, and when he came
14 out, he was arrested for being a noncitizen in possession of a firearm and
15 ammunition. *Id.* at ¶ 3. He was convicted under 18 U.S.C. § 922(g)(5) and
16 sentenced to time served. *Id.* at ¶ 3.

17 At some point after his conviction, Mr. Mehrpour was placed in removal
18 proceedings. An immigration judge ordered him removed from the United States
19 on March 10, 2008. *Id.* at ¶ 4.

20 After he was ordered removed, ICE held Mr. Mehrpour in custody for
21 approximately 90 days. But because they could not remove him to Iran or any
22 other country, they released him on an order of supervision. *Id.* at ¶ 5.

23 In 2011 and possibly 2013, Mr. Mehrpour believes he may have missed a
24 check in appointment because he put the wrong date on the calendar. *Id.* at ¶ 6.
25 When he then went to check in, the immigration officials did not revoke his
26 supervision or take him into custody but simply reminded him of the importance
27 of checking in. *Id.* at ¶ 6. In the 13 years since then, Mr. Mehrpour has checked in
28 every year and has no other criminal convictions. *Id.* at ¶ 6.

1 But when Mr. Mehrpour went to his check-in appointment on January 8,
2 2026, ICE took him into custody. *Id.* at ¶ 8. They told him that they were revoking
3 his supervised release because there were “changed circumstances,” but they
4 never told him what those changed circumstances were. *Id.* at ¶ 8. They also told
5 him that he had a “history of missed ICE appointments.” *Id.* at ¶ 8. But the ICE
6 officer never explained why Mr. Mehrpour was not taken into custody at the time
7 of these alleged violations 13 years ago.

8 **B. It is extremely challenging to deport people to Iran even when it**
9 **is not in the midst of a political crisis.**

10 The United States has not had normalized relations with Iran since the
11 Islamic Revolution of 1979. *See generally* Council on Foreign Relations, *1953–*
12 *2025: U.S. Relations With Iran.*² It currently lacks diplomatic and consular
13 relations. U.S. Department of State, Bureau of Consular Affairs, *Iran Travel*
14 *Advisory*, March 31, 2025.³

15 As President Trump found last year when banning the entry of Iranian
16 nationals into the United States, Iran “has historically failed to accept back its
17 removable nationals.” Presidential Proclamation, *Restricting the Entry of Foreign*
18 *Nationals to Protect the United States from Foreign Terrorists and Other*
19 *National Security and Public Safety Threats*, June 4, 2025⁴; accord Presidential
20 Proclamation, *Restricting and Limiting the Entry of Foreign Nationals to Protect*
21 *the Security of the United States*, Dec. 16, 2025.⁵

22 _____
23 ² Available at <https://www.cfr.org/timeline/us-relations-iran-1953-2025>.

24 ³ Available at
25 [https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/iran-](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/iran-travel-advisory.html)
26 [travel-advisory.html](https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/iran-travel-advisory.html)

27 ⁴ Available at [https://www.whitehouse.gov/presidential-](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)
28 [actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)
[states-from-foreign-terrorists-and-other-national-security-and-public-safety-](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)
[threats/.](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)

⁵ Available at [https://www.whitehouse.gov/presidential-](https://www.whitehouse.gov/presidential-actions/2025/12/restricting-and-limiting-the-entry-of-foreign-nationals-to-protect-the-security-of-the-united-states)
[actions/2025/12/restricting-and-limiting-the-entry-of-foreign-nationals-to-protect-](https://www.whitehouse.gov/presidential-actions/2025/12/restricting-and-limiting-the-entry-of-foreign-nationals-to-protect-the-security-of-the-united-states)
[the-security-of-the-united-states](https://www.whitehouse.gov/presidential-actions/2025/12/restricting-and-limiting-the-entry-of-foreign-nationals-to-protect-the-security-of-the-united-states)

1 Iran has long been among the top fifteen most uncooperative countries the
2 United States faces when seeking to repatriate immigrants it has ordered deported,
3 alongside other countries like Cuba. *See* Exhibit D at 30 (Office of Inspector
4 General, Department of Homeland Security, *ICE Faces Barriers in Timely*
5 *Repatriation of Detained Aliens*, March 11, 2019); Exhibit E at 3, 7
6 (Memorandum from ICE ERO, November 2024).

7 Iran is also currently in the midst of significant political upheaval. For the
8 last few weeks, there have been deadly protests throughout the country, resulting
9 in the government cutting off cellphone and Internet service for the last week.
10 Erika Solomon *et al.*, *'Shoot to Kill': Accounts of Brutal Crackdown Emerge from*
11 *Iran*, N.Y. Times (Jan. 13, 2026).⁶ Today, President Trump announced that he has
12 “cancelled ‘all meetings’ with Iranian officials,” and that “‘help is on the way.’”
13 Ali Harb & Edna Mohamed, *Iran protests live: Trump tells Iranians ‘keep*
14 *protesting, help on the way’*, Al Jazeera (Jan. 13, 2026).⁷

15 **C. Third-country removals for noncitizens granted removal relief**
16 **are rare, but as of July 2025, third-country removals can happen**
17 **with no or little notice.**

18 There are three main forms of relief available to noncitizens who will be
19 persecuted if they are returned to their home country: asylum, withholding of
20 removal, and Convention Against Torture (“CAT”) relief.

21 There are more restrictions on asylum, *see* 8 U.S.C. § 1158(a)(2), and
22 fewer restrictions on eligibility for withholding of removal and CAT relief, *see*
23 8 U.S.C. § 1231(b)(3)(B)(iii). However, an applicant for withholding of removal
24 and CAT relief must show a higher likelihood of persecution than what an asylum

25 [the-security-of-the-united-states/](https://www.dhs.gov/immigration-and-naturalization/visas/entry-requirements/entry-requirements-for-the-security-of-the-united-states/).

26 ⁶ Available at <https://www.nytimes.com/2026/01/13/world/middleeast/iran-protester-deaths.html>.

27 ⁷ Available at <https://www.aljazeera.com/news/liveblog/2026/1/13/iran-protests-live-tehran-says-its-prepared-for-any-move-by-trump>.

1 applicant must demonstrate—specifically, that it is “more likely than not that he
2 or she would be persecuted on account of race, religion, nationality, membership
3 in a particular social group, or political opinion upon removal to that country.”
4 8 C.F.R. § 1208.16(b)(2); *see INS v. Stevic*, 467 U.S. 407, 429–30 (1984).

5 When an immigration judge grants withholding or CAT relief, she issues a
6 removal order and simultaneously issues an order withholding removal with
7 respect to the country the person demonstrated a risk of persecution. *See Guzman-*
8 *Chavez*, 594 U.S. at 535–38. While ICE is authorized to remove that person to an
9 alternative countries, the removal statute specifies restrictive criteria for
10 identifying appropriate countries. *See* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f).
11 Further, “foreign governments ‘routinely deny’ requests to receive people who
12 lack a connection to the would-be receiving country.” *Puertas-Mendoza*, 2025
13 WL 3142089 at *3. “The reason so few people are deported to third countries is
14 because,” while “customary international law holds that a country has a duty to
15 accept the return of its nationals,” usually, “countries have no incentive to accept
16 non-citizens.” American Immigration Council & National Immigrant Justice
17 Center, *The Difference Between Asylum and Withholding of Removal*, Oct. 2020,
18 *available at*: [https://www.americanimmigrationcouncil.org/wp-](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf)
19 [content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_r](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf)
20 [emoval.pdf](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf).

21 If ICE identifies an appropriate third country of removal, the noncitizen
22 must then have notice and an opportunity to seek relief from removal to that new
23 country. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) (“If [non-citizens] would
24 face persecution or other mistreatment in the country designated under
25 § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1);
26 withholding of removal, § 1231(b)(3)(A); [and] relief under an international
27 agreement prohibiting torture.”); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
28 1999) (holding that “last minute” designation of alternative country without

1 meaningful opportunity to apply for protection “violate[s] a basic tenet of
2 constitutional due process”).

3 As a result of these restrictions and procedures, very few people who
4 receive withholding of removal or CAT relief are deported to a third country. That
5 said, this summer, ICE began removing more immigrants it could not previously
6 remove to third countries and implemented new policies to do so. On July 9,
7 2025, ICE rescinded previous guidance meant to give immigrants a “‘meaningful
8 opportunity’ to assert claims for protection under the Convention Against Torture
9 before initiating removal to a third country.” Exhibit B (July 9, 2025, ICE third-
10 country removal guidance).

11 Now, ICE may remove any immigrant to a third country without any
12 notice. It may do so if, in the sole view of the State Department, the United States
13 has received “credible” “assurances” from that country that deportees will not be
14 persecuted or tortured. *Id.* at 1.

15 If a country fails to credibly promise not to persecute or torture releasees,
16 ICE may remove immigrants with only 24 hours’ notice. “In exigent
17 circumstances,” a removal may take place in six hours, “as long as the alien is
18 provided reasonably means and opportunity to speak with an attorney prior to the
19 removal.” *Id.*

20 Under this policy, ICE “will not affirmatively ask whether the alien is
21 afraid of being removed to the country of removal.” *Id.* (emphasis original). If the
22 noncitizen “does not affirmatively state a fear of persecution or torture if removed
23 to the country of removal listed on the Notice of Removal within 24 hours, [ICE]
24 may proceed with removal to the country identified on the notice.” *Id.* at 2.

25 Under this policy, the United States has deported several dozen noncitizens
26 to prisons and military camps in Rwanda, Eswatini, South Sudan, and Ghana.
27 Many are still detained to this day, in countries to which they have never been,
28 without charge. Nokukhanya Musi & Gerald Imray, *10 more deportees from the*

1 *US arrive in the African nation of Eswatini*, Associated Press (Oct. 6, 2025)⁸; see
2 also Gerald Imray, *A Cuban man deported by the US to Africa is on a hunger*
3 *strike in prison, his lawyer says*, Associated Press (Oct. 23, 2025)⁹; Frank
4 Chothia, *Eswatini confirms receiving \$5.1m from the US for accepting deportees*,
5 BBC (Nov. 18, 2025)¹⁰.

6 **III. Legal Analysis.**

7 This Court should grant this petition and order two forms of relief.

8 First, it should order Mr. Mehrpour’s immediate release. ICE failed to
9 follow its own regulations requiring notification at re-detention of the reasons for
10 revoking supervision, as well as a meaningful opportunity to respond to those
11 reasons. 8 C.F.R. §§ 241.13(i), 241.4(l). Further, *Zadvydas v. Davis* holds that
12 immigration statutes do not authorize the government to detain immigrants like
13 Mr. Mehrpour for whom there is “no significant likelihood of removal in the
14 reasonably foreseeable future.” 533 U.S. 678, 701 (2001).

15 Second, this Court should enjoin the Respondents from removing
16 Mr. Mehrpour to a third country without first providing notice and a sufficient
17 opportunity to be heard before an immigration judge. Its current policy of giving
18 noncitizens between zero and 24 hours’ notice of which country it intends to
19 deport them to is insufficient as a regulatory, statutory, and due process matter.

20 **IV. Claim One: ICE failed to comply with its own regulations while re-**
21 **detaining Mr. Mehrpour, violating his rights under applicable**
22 **regulations and due process.**

23 Two regulations establish the process due to someone who is re-detained in
24 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to

25 _____
26 ⁸ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

27 ⁹ Available at <https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859>.

28 ¹⁰ Available at <https://www.bbc.com/news/articles/cq50vjdx368o>.

1 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
2 framework to persons released upon good reason to believe that they will not be
3 removed in the reasonably foreseeable future, as Mr. Mehrpour was. *See Phan v.*
4 *Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct.
5 10, 2025) (explaining this regulatory framework and granting a habeas petition for
6 ICE’s failure to follow these regulations for a refugee of Vietnam who entered the
7 United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL
8 2646165 at *2 (same as to an Iranian national).

9 These regulations permit an official to “return [the person] to custody”
10 when the person “violate[d] any of the conditions of release,” 8 C.F.R.
11 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official
12 “determines that there is a significant likelihood that the alien may be removed in
13 the reasonably foreseeable future,” and makes that finding “on account of
14 changed circumstances,” § 241.13(i)(2).

15 No matter the reason for re-detention, the re-detained person is entitled to
16 certain procedural protections. For one, “[u]pon revocation,’ the noncitizen ‘will
17 be notified of the reasons for revocation of his or her release.’” *Phan*, 2025 WL
18 2898977 at *3, *4 (quoting §§ 241.4(l)(1), 241.13(i)(3)). Further, the person
19 “‘will be afforded an initial informal interview promptly after his or her return’ to
20 be given ‘an opportunity to respond to the reasons for revocation stated in the
21 notification.’” *Id.*

22 In the case of someone released under § 241.13(i), the regulations also
23 explicitly require the interviewer to allow the re-detained person to “submit any
24 evidence or information that he or she believes shows there is no significant
25 likelihood he or she be removed in the reasonably foreseeable future, or that he or
26 she has not violated the order of supervision.” § 241.13(i)(3).

27 ICE is required to follow its own regulations. *United States ex rel. Accardi*
28 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,

1 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
2 abide by certain internal policies is well-established.”). A court may review a re-
3 detention decision for compliance with the regulations, and “where ICE fails to
4 follow its own regulations in revoking release, the detention is unlawful and the
5 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at *4
6 (collecting cases); *accord Phan*, 2025 WL 2898977 at *5.

7 ICE did not follow its regulatory prerequisites to re-detention here because
8 it did not meaningfully notify Mr. Mehrpour of the reasons for his re-detention
9 “upon revocation” of his release. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3).

10 First, although the Notice of Revocation stated that there were “changed
11 circumstances,” Exh. A at ¶ 8, the officer never said what had changed since ICE
12 was unable to deport Mr. Mehrpour to Iran in 2008. “Simply to say that
13 circumstances had changed or there was a significant likelihood of removal in the
14 foreseeable future is not enough.” *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL
15 2533673, at *3 (D. Minn. Sept. 3, 2025). Rather, “Petitioner must be told *what*
16 circumstances had changed or *why* there was now a significant likelihood of
17 removal in order to meaningfully respond to the reasons and submit evidence in
18 opposition, as allowed under § 241.13(i)(3).” *Id.* By “identif[ying] the category—
19 ‘changed circumstances’—but fail[ing] to notify [Petitioner] of the reason—the
20 circumstances that changed and created a significant likelihood of removal in the
21 reasonably foreseeable future—[ICE] failed to follow the relevant regulation.” *Id.*
22 This failure to identify any changed circumstances also means he has not been
23 afforded a meaningful opportunity to respond to the reasons for revocation or
24 submit evidence rebutting his re-detention.

25 Second, revoking Mr. Mehrpour’s supervision 13 years after his last alleged
26 violation is pretextual. Courts have consistently discounted agencies’ post hoc
27 justifications, generated during litigation, for decisions made long before. That
28 principle has taken a variety of forms, including: (1) the rule that “agency action

1 rises or falls on the agency’s own contemporaneous reasoning,” *Perez-Guzman v.*
2 *Lynch*, 835 F.3d 1066, 1079 (9th Cir. 2016); (2) “[t]he rule barring consideration
3 of post hoc agency rationalizations,” which “operates where an agency has
4 provided a particular justification for a determination at the time the determination
5 is made, but provides a different justification for that same determination when it
6 is later reviewed by another body,” *Indep. Min. Co. v. Babbitt*, 105 F.3d 502, 511
7 (9th Cir. 1997); and (3) the principle that courts will neither “accept . . . counsel’s
8 post hoc rationalizations for agency action” nor “supply a reasoned basis for the
9 agency’s action that the agency itself has not given.” *Hernandez-Cruz v. Holder*,
10 651 F.3d 1094, 1109 (9th Cir. 2011).

11 In *Seretse-Khama v. Ashcroft*, a district court rejected a similar post hoc
12 assertion of noncompliance under § 1231(a)(1)(C). 215 F. Supp. 2d 37, 52
13 (D.D.C. 2002). There, the government argued that the petitioner had failed to
14 cooperate with his removal by telling the Liberian government in 1998 that he did
15 not want to return to Liberia. *Id.* at 48. But in agency documentation created after
16 the petitioner made the statement, the INS had consistently asserted a different
17 cause for Liberia’s refusal, related to the petitioner’s lack of ties and economic
18 situation. *Id.* at 52–53. Though the INS had once *mentioned* the 1998 statement
19 during a custody review, it had never said that the statement was preventing
20 removal. *Id.* at 52. And in most documentation, it did not mention the statement at
21 all. *Id.* at 52–53. Given the circumstances—that the “purported reason d[id] not
22 appear in the earlier custody reviews,” that “the INS only focus[ed] on it three and
23 one-half years later,” and that “just two weeks after this habeas petition was filed
24 the INS ha[d] suddenly concluded” that the petitioner was not cooperating—the
25 district court found that “[t]he recent assertion of this additional explanation for
26 petitioner’s detention pending removal is not credible.” *Id.* at 53.

27 Here, ICE claims to be revoking Mr. Mehrpour’s supervision because he
28 failed to appear for a check-in 13 years ago. But if this constituted a violation,

1 ICE would have revoked his supervision at that time. So as in *Seretse-Khama*,
2 “[t]he recent assertion of this additional explanation for petitioner’s detention” is
3 “not credible.” *Id.* at 53.

4 Numerous courts have released re-detained immigrants after finding that
5 ICE failed to comply with some or all of the applicable regulations this summer
6 and fall. *See, e.g., Villanueva v. Tate*, __ F. Supp. 3d __, 2025 WL 2774610 (S.D.
7 Tex. Sept. 26, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y.
8 2025); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9
9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL
10 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-
11 00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v.*
12 *Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July
13 16, 2025); *Liu v. Carter*, 2025 WL 1696526, *2 (D. Kan. June 17, 2025); *M.Q. v.*
14 *United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025); *Bui v.*
15 *Warden*, No. 25-cv-2111-JES, ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Thai v.*
16 *Noem*, No. 25-cv-2436-RBM, ECF No. 10, 12 (S.D. Cal. Oct. 17, 2025);
17 *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-
18 RBM (S.D. Cal. Oct. 10, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-
19 2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Truong v. Noem*, No. 25-cv-
20 02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*,
21 No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*,
22 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v.*
23 *Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025);
24 *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept.
25 15, 2025).

26 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
27 the applicable regulations, that revocation has no effect, and [Mr. Mehrpour] is
28

1 entitled to [her] release (subject to the same Order of Supervision that governed
2 [her] most recent release).” *Liu*, 2025 WL 1696526, at *3.

3 **V. Claim Two: Mr. Mehrpour’s detention violates *Zadvydas* and 8 U.S.C.
4 § 1231.**

5 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
6 a problem affecting people like Mr. Mehrpour: Federal law requires ICE to detain
7 an immigrant during the “removal period,” which typically spans the first 90 days
8 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-
9 day removal period expires, detention becomes discretionary—ICE may detain
10 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
11 this scheme would not lead to excessive detention, as removal happens within
12 days or weeks. But some detainees cannot be removed quickly. Perhaps their
13 removal “simply require[s] more time for processing,” or they are “ordered
14 removed to countries with whom the United States does not have a repatriation
15 agreement,” or their countries “refuse to take them,” or they are “effectively
16 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,
17 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained
18 immigrants can find themselves trapped in detention for months, years, decades,
19 or even the rest of their lives. If federal law were understood to allow for
20 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional
21 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
22 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.
23 *Id.* at 689.

24 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to
25 detain an immigrant for six months after his or her removal order becomes final.
26 After those six months have passed, the immigrant must be released unless his or
27 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six
28 months have passed, the petitioner must only make a prima facie case for relief—

1 there is “good reason to believe that there is no significant likelihood of removal
2 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the
3 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*
4 Mr. Mehrpour can make all the threshold showings needed to shift the burden to
5 the government.

6 The six-month grace period has long since ended. The *Zadvydas* grace
7 period is linked to the date the final order of removal is issued. It lasts for “six
8 months after a final order of removal—that is, three months after the statutory
9 removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th
10 Cir. 2001). Indeed, the statute defining the beginning of the removal period is
11 linked to the latest of three dates, all of which relevant here are tied to when the
12 removal order is issued. 8 U.S.C. § 1231(a)(1)(B).¹¹

13 Mr. Mehrpour’s order of removal was entered in March 2008. Exhibit A
14 ¶ 4.¹² His *Zadvydas* grace period three months after the removal period ended, in
15 June 2008. *See, e.g., Tadros v. Noem*, 2025 WL 1678501, No. 25-cv-4108(EP),
16 *2–*3. Thus, the *Zadvydas* grace period has expired.

17 What’s more Mr. Mehrpour’s experience provides good reason to believe
18 that he will not be removed in the reasonably foreseeable future. This Court uses a
19 burden-shifting framework to evaluate Mr. Mehrpour *Zadvydas* claim. At the first
20 stage of the framework, Mr. Mehrpour must “provide[] good reason to believe
21 that there is no significant likelihood of removal in the reasonably foreseeable
22 future.” *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three
23 parts.

24
25 ¹¹ Those dates are, specifically, (1) “[t]he date the order of removal becomes
26 administratively final;” (2) “[i]f the removal order is judicially reviewed and if a
27 court orders a stay of the removal of the alien, the date of the court’s final order;”
28 or (3) “[i]f the alien is detained or confined (except under an immigration
process), the date the alien is released from detention or confinement.” *Id.*

¹² *See also* EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

1 **“Good reason to believe.”** The “good reason to believe” standard is a
2 relatively forgiving one. “A petitioner need not establish that there exists no
3 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
4 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
5 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
6 foreseeable, significant likelihood of removal or show that his detention is
7 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
8 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
9 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
10 Petitioners need only give a “good reason”—not prove anything to a certainty.

11 **“Significant likelihood of removal.”** This component focuses on whether
12 Mr. Mehrpour will likely be removed: Continued detention is permissible only if
13 it is “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533
14 U.S. at 701. This inquiry targets “not only the *existence* of untapped possibilities,
15 but also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.
16 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added).

17 In other words, even if “there remains *some* possibility of removal,” a
18 petitioner can still meet its burden if there is good reason to believe that
19 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
20 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

21 **“In the reasonably foreseeable future.”** This component of the test
22 focuses on when Mr. Mehrpour will likely be removed: Continued detention is
23 permissible only if removal is likely to happen “in the reasonably foreseeable
24 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
25 removal efforts.

26 If the Court has “no idea of when it might reasonably expect [Petitioner] to
27 be repatriated, this Court certainly cannot conclude that his removal is likely to
28 occur—or even that it might occur—in the reasonably foreseeable future.” *Palma*

1 *v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July
2 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss.
3 Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y.
4 2019)). Thus, even if this Court concludes that Mr. Mehrpour “would *eventually*
5 receive” a travel document, he can still meet his burden by giving good reason to
6 anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2
7 (E.D. Mich. Nov. 14, 2016).

8 Mr. Mehrpour’s own experience bears this out. ICE has now had 18 years
9 to deport him. Exhibit A at ¶ 4. Yet ICE has proved unable to remove him. Thus,
10 Mr. Mehrpour has met his initial burden, and the burden shifts to the government.
11 Unless the government can prove a “significant likelihood of removal in the
12 reasonably foreseeable future,” Mr. Mehrpour must be released. *Zadvydas*, 533
13 U.S. at 701.

14 **VI. Claim Three: ICE may not remove Mr. Mehrpour to a third country
15 without adequate notice and an opportunity to be heard.**

16 In addition to unlawfully detaining him, ICE’s policies threaten
17 Mr. Mehrpour’s unlikely, but potentially immediate, removal to an unidentified
18 third country without adequate notice and an opportunity to be heard. These
19 policies violate the Fifth Amendment, the Convention Against Torture, and
20 implementing regulations.

21 **A. Legal background: Due process requires notice and an
22 opportunity to be heard before deportation to third countries.**

23 As noted, U.S. law enshrines mandatory protections against dangerous and
24 life-threatening removal decisions through the withholding of removal statute and
25 implementations of the Convention Against Torture. *See* 8 U.S.C.
26 § 1231(b)(3)(A); 8 C.F.R. §§ 208.16, 1208.16 (withholding); FARRA 2681-822
27 (codified as 8 U.S.C. § 1231 note; 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18,
28 1208.16-1208.18 (CAT).

1 Further, the third country removal statute involves a “four-stage inquiry set
2 forth in § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash.
3 2019) (summarizing cases on this point); *see also Hadera v. Gonzales*, 494 F.3d
4 1154, 1156–59 (9th Cir. 2007) (explaining the stages). The first step is a
5 noncitizen designates “one country to which the noncitizen wants to be removed.”
6 *Aden*, 409 F. Supp. 3d at 1006. If the noncitizen does not designate a country, or
7 that country does not accept them, then “the IJ may at step two designate a
8 country of which the noncitizen is a subject, national, or citizen.” *Id.* at 1007. If
9 “no country satisfies” that requirement, the step three allows designation and
10 removal to a number of other countries. 8 U.S.C. § 1231(b)(2)(E). The
11 government can proceed to the fourth stage—removal to “another country”—only
12 if it determines it is “impracticable, inadvisable, or impossible to remove the alien
13 to each country described” in the third stage. 8 U.S.C. § 1231(b)(2)(E)(vii).

14 When pursuing a third-country removal subject to all the above constraints,
15 the government must provide notice of the third country removal and an
16 opportunity to respond. Due process requires “written notice of the country being
17 designated” and “the statutory basis for the designation, i.e., the applicable
18 subsection of § 1231(b)(2).” *Aden*, 409 F. Supp. 3d at 1019.

19 The government must also “ask the noncitizen whether he or she fears
20 persecution or harm upon removal to the designated country and memorialize in
21 writing the noncitizen’s response. This requirement ensures DHS will obtain the
22 necessary information from the noncitizen to comply with section 1231(b)(3) and
23 avoids [a dispute about what the officer and noncitizen said].” *Id.* “Failing to
24 notify individuals who are subject to deportation that they have the right to apply
25 for asylum in the United States and for withholding of deportation to the country
26 to which they will be deported violates both INS regulations and the constitutional
27 right to due process.” *Andriasian*, 180 F.3d at 1041.

28

1 If the noncitizen claims fear, measures must be taken to ensure that the
2 noncitizen can seek asylum, withholding, and relief under CAT before an
3 immigration judge in reopened removal proceedings. The amount and type of
4 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
5 circumstances, he would have a reasonable opportunity to raise and pursue his
6 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
7 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
8 F.3d 405, 408 (7th Cir. 1998)).

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

16 **B. The July 6, 2025 memo’s removal policies violate the Fifth**
17 **Amendment, 8 U.S.C. § 1231, the Convention Against Torture,**
and implementing regulations.

18 The policies in the currently effective July 6, 2025 memo do not adhere to
19 these requirements. The operative memo “contravenes Ninth Circuit law.” *Nguyen*
20 *v. Scott*, ___ F. Supp. 3d ___, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D.
21 Wash. Aug. 21, 2025) (explaining how the July 9, 2025 ICE memo contravenes
22 Ninth Circuit law on the process due to noncitizens in detail).

23 First, under the policy, ICE need not give immigrants *any* notice or *any*
24 opportunity to be heard before removing them to a country that—in the State
25 Department’s estimation—has provided “credible” “assurances” against
26 persecution and torture. Exhibit B. By depriving immigrants of any chance to
27 challenge the State Department’s view, this policy violates “[t]he essence of due
28 process,” “the requirement that a person in jeopardy of serious loss be given

1 notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*,
2 424 U.S. 319, 348 (1976) (cleaned up).

3 Second, even when the government has obtained no credible assurances
4 against persecution and torture, the government can still remove the person with
5 between 6 and 24 hours’ notice, depending on the circumstances. *See Exhibit B*.
6 Practically speaking, there is not nearly enough time for a detained person to
7 assess their risk in the third country and martial evidence to support any credible
8 fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may
9 know nothing about a third country, like Eswatini or South Sudan, when they are
10 scheduled for removal there.

11 If given the opportunity to investigate conditions, immigrants would find
12 credible reasons to fear persecution or torture—like patterns of sending deportees
13 back to their home countries regardless of their risk of persecution or torture
14 there, patterns of keeping deportees indefinitely and without charge in solitary
15 confinement, or extreme instability raising a high likelihood of death—in many of
16 the third countries that have agreed to removal of thus far.

17 Immigrants may also have ample reason to challenge DHS’s determination
18 under § 1231(b)(2)(E)(vii) that each other country with which the immigrant has
19 connections is “impracticable, inadvisable, or impossible to remove the alien to.”
20 DHS must consider whether to remove him there before proceeding to the final
21 step of the third-country removal statute. *See Hadera*, 494 F.3d at 1156–59
22 (explaining this process).

23 Due process requires an adequate chance to identify and raise these threats
24 to health and life. Because “[f]ailing to notify individuals who are subject to
25 deportation that they have the right to apply . . . for withholding of deportation to
26 the country to which they will be deported violates both INS regulations and the
27 constitutional right to due process,” *Adriasian*, 180 F.3d at 1041, this Court must
28

1 prohibit the government from removing Mr. Mehrpour without these due process
2 safeguards.

3 **VII. This Court must hold an evidentiary hearing on any disputed facts.**

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

7 **VIII. Prayer for relief**

8 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 9 1. Order and enjoin Respondents to immediately release Petitioner from
10 custody;
- 11 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
12 § 1231(a)(6) unless and until Respondents obtain a travel document
13 for his removal;
- 14 3. Enjoin Respondents from re-detaining Petitioner without first
15 following all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i),
16 and any other applicable statutory and regulatory procedures;
- 17 4. Enjoin Respondents from removing Petitioner unless they provide
18 the following process:
 - 19 a. written notice to both Petitioner and Petitioner’s counsel in a
20 language Petitioner can understand;
 - 21 b. a meaningful opportunity, and a minimum of ten days, to raise a fear-
22 based claim for CAT protection prior to removal;
 - 23 c. if Petitioner is found to have demonstrated “reasonable fear” of
24 removal to the country, Respondents must move to reopen
25 Petitioner’s immigration proceedings;
 - 26 d. if Petitioner is not found to have demonstrated a “reasonable fear” of
27 removal to the country, a meaningful opportunity, and a minimum of
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

fifteen days, for the Petitioner to seek reopening of his immigration proceedings.

5. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: January 20, 2026

s/ Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Mehrpour
Email: kara_hartzler@fd.org

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Proof of Service

I, the undersigned, will cause the attached Petition for 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.

Dated: January 20, 2026

s/ Kara Hartzler
Kara Hartzler