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

12 FAOUZI ZERMANE,  
13  
14 **Petitioner,**  
15  
16 v.  
17 KRISTI NOEM, Secretary of the  
18 Department of Homeland Security,  
19 PAMELA JO BONDI, Attorney General,  
20 TODD M. LYONS, Acting Director,  
21 Immigration and Customs Enforcement,  
22 JESUS ROCHA, Acting Field Office  
23 Director, San Diego Field Office,  
24 CHRISTOPHER LAROSE, Warden at  
25 Otay Mesa Detention Center,  
26  
27 **Respondents.**

Civil Case No.: '26CV0405 TWR KSC

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

27 <sup>1</sup> Federal Defenders of San Diego, Inc., is filing with provisional appointment  
28 under Chief Judge Order No. 134. Mr. Zermane's financial eligibility for  
representation is included in a sworn statement attached to this petition.

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1 **I. Introduction**

2 Faouzi Zermane is an Algerian citizen who fled persecution and settled in  
3 Mexico. Unfortunately, he experienced persecution in Mexico, too. In 2023, he  
4 arrived at the United States border and was released on an ankle monitor pending  
5 his immigration proceedings. On May 9, 2025, an immigration judge ordered him  
6 removed and granted withholding of removal to both Algeria and Mexico.

7 Because ICE had nowhere to remove him, it released him on an order of  
8 supervision, subject to the same conditions. ICE “said they would look for a third  
9 country to remove [him] to while he stayed out on electronic monitoring.” Exhibit  
10 A ¶ 4. Mr. Zermane has complied fully with the requirements of his order of  
11 supervision. He checked in twice a month without fail. He spent one day a month  
12 in home detention. *Id.* ¶ 5.

13 Despite his compliance all through 2025, ICE arrested Mr. Zermane at his  
14 check-in appointment on December 18, 2025. An officer asked for him to agree to  
15 be deported to Mexico in exchange for \$1,000. When he explained he had  
16 withholding of removal and spoke to a supervisor, the supervisor told him that  
17 “because [he] was ordered deported, they would arrest [him] . . . [and] look for  
18 third countries.” *Id.* ¶ 8. He told Mr. Zermane he’d receive documents “about all  
19 of this.” *Id.*

20 In the month that has followed, ICE has not provided Mr. Zermane with  
21 documents, an informal interview about them, or any other information. *Id.*  
22 Mr. Zermane is afraid that, under current policy, ICE will identify a third country  
23 and then immediately deport him to it, without giving him adequate time to  
24 investigate or offer evidence to challenge his removal. Mr. Zermane’s continued  
25 detention violates his statutory and regulatory rights, *Zadvydas v. Davis*, 533 U.S.  
26 678 (2001), and the Fifth Amendment.

27 This habeas petition raises the following three claims:  
28

1           **(1) Regulatory and due process violations:** Mr. Zermame must be released  
2 because ICE’s failure to follow its own regulations—about timely notifying  
3 noncitizens of the specific reasons for their re-detention, about promptly  
4 providing a meaningful opportunity to be heard following re-detention, and about  
5 the limited reasons ICE can invoke to re-detain someone who is complying with  
6 their conditions of release—repeatedly violated due process. *See, e.g., Nguyen v.*  
7 *Noem*, No. 25-cv-2791-BAS, ECF No. 12 (S.D. Cal. Nov. 7, 2025); *Nguyen v.*  
8 *Noem*, No. 25-cv-2792-LL, ECF No. 10 (S.D. Cal. Nov. 6, 2025); *Ghafouri v.*  
9 *Noem*, 25-cv-2675-RBM, ECF No. 11 (S.D. Cal. Nov. 4, 2025); *Tran v. Noem*,  
10 No. 25-cv-2391-BTM, 2025 WL 3005347 (S.D. Cal. Oct. 27, 2025); *Bui v.*  
11 *Warden*, No. 25-cv-2111-JES, ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Truong v.*  
12 *Noem*, No. 25-cv-2597-JES, 2025 WL 2988357 (S.D. Cal. Oct. 22, 2025); *Thai v.*  
13 *Noem*, No. 25-cv-2436-RBM, ECF No. 10, 12 (S.D. Cal. Oct. 17, 2025);  
14 *Constantinovici v. Bondi*, \_\_ F. Supp. 3d \_\_, 2025 WL 2898985, No. 25-cv-2405-  
15 RBM (S.D. Cal. Oct. 10, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-  
16 2422-RBM-MSB, \*3–\*5 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*,  
17 No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*,  
18 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Rokhfirooz*  
19 *v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025)  
20 (granting temporary restraining orders releasing noncitizens, or granting habeas  
21 petitions, due to ICE regulatory violations during recent re-detentions of released  
22 noncitizens previously ordered removed under 8 C.F.R. §§ 241.13(i), 241.4(l)).

23           **(2) Zadvydas violations:** Mr. Zermame must also be released under  
24 *Zadvydas* because—having proven unable to remove him to a third country in the  
25 last eight months since he was ordered removed and kept on electronic  
26 monitoring—the government cannot show that there is a “significant likelihood of  
27 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. *See,*  
28 *e.g., Gharakhan v. Noem*, No. 25-cv-2879-DMS, ECF No. 11 (S.D. Cal. Nov. 5,

1 2025); *Ho v. Noem*, No. 25-cv-2453-BAS, ECF No. 11 (S.D. Cal. Oct. 20, 2025);  
2 *Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6,  
3 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25,  
4 2025) (granting habeas petitions or TROs releasing noncitizens under *Zadvydas*);  
5 *see also Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387 (D.N.J. 2025) (granting  
6 habeas petition on same grounds for Mexican citizen with withholding of removal  
7 detained 90 days, released, and then re-detained for another two months);  
8 *Villanueva v. Tate*, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2774610 (S.D. Tex. 2025)  
9 (granting habeas petition on same grounds for Mexican citizen with withholding  
10 of removal detained fewer than six months); *Zavvar v. Scott*, No. cv-25-2104-  
11 TDC, 2025 WL 2592543 (D. Md. Sept. 8, 2025) (granting habeas petition on  
12 same grounds for Iranian citizen with withholding of removal detained fewer than  
13 six months total); *Puertas-Mendoza v. Bondi*, No. SA-25-CA-890-XR, 2025 WL  
14 3142089 (W.D. Tex. Oct. 22, 2025) (granting habeas petition on same grounds for  
15 Mexican citizen with withholding of removal detained fewer than six months  
16 total); *Gomez-Simeon v. Bondi*, No., 2025 WL 3470872 (W.D. Tex. Nov. 24,  
17 2025) (granting habeas petition on same grounds for Honduran citizen with  
18 withholding of removal detained for a month after revocation of his supervision).

19 **(3) *Third-country removal statutory and due process violations:*** In the  
20 unlikely event ICE does identify a third country, it will not provide Mr. Zermane  
21 with due process. ICE’s operative third-country removal policy “contravenes  
22 Ninth Circuit law.” *Nguyen v. Scott*, 796 F. Supp. 3d 703, 728 (W.D. Wash.  
23 2025). This Court should thus also enjoin the Respondents to adhere to basic  
24 requirements of notice and an opportunity to be heard before removing Mr.  
25 Zermane to a third country in which he could be persecuted or tortured—or from  
26 which he could be deported back to Mexico or Algeria, where he will be  
27 persecuted.  
28

1 **II. Statement of facts**

2 **A. Mr. Zermane comes to the U.S. from Nigeria, is granted**  
3 **withholding of removal, and is released on an order of**  
4 **supervision for over seven years before being re-detained.**

5 Mr. Zermane was born and raised in Algeria. Exhibit A, Declaration of  
6 Faouzi Zermane, ¶ 11. When police threatened to arrest him there for his political  
7 activism, he fled to Mexico and obtained permanent residency. *Id.* ¶ 11.

8 Unfortunately, he faced threats of persecution there, too. *Id.* He came to the  
9 American border on May 5, 2023, explained his situation, and was released on an  
10 ankle monitor pending his immigration proceedings. *Id.* ¶ 2.

11 On May 9, 2025, Mr. Zermane was ordered removed to either Mexico or  
12 Algeria. Exhibit B (summary of immigration judge order). However, because  
13 Mr. Zermane established that he was more likely than not to be persecuted if he  
14 were removed to either country, he was also granted statutory withholding of  
15 removal from Mexico and Algeria. *Id.*

16 That day, he went “straight to an order of supervision with [his] same ankle  
17 monitor.” Exhibit A ¶ 3. He “went to check in [with] ICE, and they said they  
18 would look for a third country to remove [him] to while [he] stayed out on  
19 electronic monitoring.” *Id.* ¶ 4. For the next seven months, he went to check-ins  
20 with an ICE contractor “twice a month, and another day once a month [he] was  
21 not allowed to leave [his] house for the day.” *Id.* ¶ 5. He “went to all [his] check-  
22 ins and complied with all [his] conditions.” *Id.*

23 On December 18, 2025, Mr. Zermane was arrested by ICE officers when he  
24 appeared for a check-in. *Id.* He explains his experience in the days that followed:

25 On December 18, 2025, I came in for a check-in and was arrested. I  
26 never received a copy of any paperwork explaining why I was being  
27 arrested. I saw a paper that was in English, but I couldn’t read it  
28 quickly enough because I am not fluent in English, and I didn’t get a  
copy. I speak Arabic and Spanish fluently, but not English.

The ICE officers told me they were arresting me because they  
wanted me to sign for my deportation to Mexico. An ICE officer

1 told me they would pay me \$1,000 to be deported to Mexico.<sup>2</sup> I told  
2 the officers I have withholding of removal to Mexico, and they told  
3 me they did not know about it. The first ICE officers I talked to then  
4 sent me to another officer.

5 The next officer said that, because I was ordered deported, they  
6 would arrest me, even though I also had withholding. He said they  
7 would look for third countries to deport me to[]. He also told me he  
8 would give me documents about all of this. But it's been a month  
9 and still I don't have any documents.

10 I don't know what's changed to make it more likely they can deport  
11 me. They haven't been able to deport me ever since I was released  
12 on an ankle monitor in May.

13 Exhibit A ¶¶ 6–9.

14 The week of January 12, 2026, an ICE officer came to talk to Mr. Zermane  
15 and “told [him] ICE couldn't find [his] passport.” *Id.* ¶ 10. When Mr. Zermane  
16 had arrived at the border in 2023, ICE confiscated his passport, and he has “never  
17 gotten it back.” *Id.* Since that conversation, “[n]o one from ICE has talked to  
18 [him] about anything else or told [him] why [he is] being detained.” *Id.*

19 **B. Third-country removals for noncitizens granted withholding of  
20 removal are rare, but as of July 2025, third-country removals  
21 can happen with no or little notice.**

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

25 There are more restrictions on asylum, *see* 8 U.S.C. § 1158(a)(2), and  
26 fewer restrictions on eligibility for withholding of removal, *see* 8 U.S.C.  
27 § 1231(b)(3)(B)(iii). However, an applicant for withholding of removal must  
28 show a higher likelihood of persecution than what an asylum applicant must  
demonstrate—specifically, that it is “more likely than not that he or he would be  
persecuted on account of race, religion, nationality, membership in a particular  
social group, or political opinion upon removal to that country.” 8 C.F.R.

<sup>2</sup> *See* DHS, *CBP Home: Assistance to Voluntarily Self-Deport* (now offering up to \$2,600 to those who self-deport), available at <https://www.dhs.gov/cbphome>.

1 § 1208.16(b)(2); *see INS v. Stevic*, 467 U.S. 407, 429–30 (1984).

2 About 1,000 people won withholding of removal each year between 2010  
3 and 2018. *See* Exhibit C at 6 (American Immigration Council & National  
4 Immigrant Justice Center, *The Difference Between Asylum and Withholding of*  
5 *Removal* (Oct. 2020)). In fiscal year 2024, about 2,500 people won withholding or  
6 deferral of removal. *See* Exhibit D at 2 (Congressional Research Service, *FY2024*  
7 *Immigration Court Data: Case Outcomes* (Feb. 3, 2025)).

8 When an immigration judge grants withholding relief, he issues a removal  
9 order and simultaneously issues an order withholding removal with respect to the  
10 country the person demonstrated a risk of persecution. *See Guzman-Chavez*, 594  
11 U.S. at 535–38. While ICE is authorized to remove that person granted  
12 withholding to an alternative countries, the removal statute specifies restrictive  
13 criteria for identifying appropriate countries. *See* 8 U.S.C. § 1231(b); 8 C.F.R.  
14 § 1208.16(f). Further, “foreign governments ‘routinely deny’ requests to receive  
15 people who lack a connection to the would-be receiving country.” *Puertas-*  
16 *Mendoza*, 2025 WL 3142089 at \*3. “The reason so few people are deported to  
17 third countries is because,” while “customary international law holds that a  
18 country has a duty to accept the return of its nationals,” usually, “countries have  
19 no incentive to accept non-citizens.” Exhibit C at 7.

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

1 constitutional due process”).

2 As a result of these restrictions and procedures, very few people who  
3 receive withholding of removal are deported to a third country. Between  
4 September 2023 and June 2025, ICE removed a total of eight people granted  
5 withholding or other CAT relief to alternative countries. Exhibit E (ICE removal  
6 data).<sup>3</sup> Between fiscal years 2020 and 2023, a total of five people granted  
7 withholding or other CAT relief were removed to alternative countries. *Id.*

8 That said, this summer, ICE began removing more immigrants it could not  
9 previously remove to third countries. It implemented new policies to do so. On  
10 July 9, 2025, ICE rescinded previous guidance meant to give immigrants a  
11 “‘meaningful opportunity’ to assert claims for protection under the Convention  
12 Against Torture before initiating removal to a third country.” Exhibit F (July 9,  
13 2025, ICE third-country removal guidance).

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

18 If a country fails to credibly promise not to persecute or torture releasees,  
19 ICE may remove immigrants with only 24 hours’ notice. “In exigent  
20

21 \_\_\_\_\_  
22 <sup>3</sup> The data in Exhibit E are collected from the Deportation Data Project, which  
23 “collects and posts public, anonymized U.S. government immigration  
24 enforcement datasets,” “primarily [obtained] through Freedom of Information Act  
25 requests.” For the complete raw data, one can visit  
26 <https://deportationdata.org/data/ice>, select “Removals,” and filter for each  
27 removal classified as “[5C] Relief Granted – Withholding of Deportation /  
28 Removal” or “[5D] Final Order of Deportation / Removal – Deferred Action  
Granted.” The chart attached as Exhibit G highlights all such cases in which the  
noncitizen was removed to a country other than their country of origin. The  
remaining unhighlighted noncitizens either won withholding or CAT relief with  
respect to a third country that was not their country of origin, including dual  
citizens; had withholding or CAT relief terminated; or agreed to return to their  
country of origin despite a grant of withholding or CAT relief.

1 circumstances,” a removal may take place in six hours, “as long as the alien is  
2 provided reasonably means and opportunity to speak with an attorney prior to the  
3 removal.” *Id.*

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

9 Under this policy, the United States has deported several dozen noncitizens  
10 to prisons and military camps in Rwanda, Eswatini, South Sudan, and Ghana.  
11 Some are still detained to this day, in countries to which they have never been,  
12 without charge. Nokukhanya Musi & Gerald Imray, *10 more deportees from the*  
13 *US arrive in the African nation of Eswatini*, Associated Press (Oct. 6, 2025)<sup>4</sup>; *see*  
14 *also* Gerald Imray, *A Cuban man deported by the US to Africa is on a hunger*  
15 *strike in prison, his lawyer says*, Associated Press (Oct. 23, 2025)<sup>5</sup>; Frank  
16 Chothia, *Eswatini confirms receiving \$5.1m from the US for accepting deportees*,  
17 BBC (Nov. 18, 2025).<sup>6</sup> Others have been returned to their home countries, even  
18 though they had received orders protecting them against their return under the  
19 Convention Against Torture. *See* Third Country Deportation Watch, *Ghana,*  
20 *Refugees International & Human Rights First* (Dec. 5, 2025).<sup>7</sup>

### 21 **III. This Court has jurisdiction.**

22 This Court has jurisdiction to consider Mr. Zermane’s claim of unlawful  
23 detention and unlawful third-country removal under 28 U.S.C. § 2241 while he is

24 \_\_\_\_\_  
25 <sup>4</sup> Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

26 <sup>5</sup> Available at <https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859>.

27 <sup>6</sup> Available at <https://www.bbc.com/news/articles/cq50vjdx368o>.

28 <sup>7</sup> Available at <https://www.thirdcountrydeportationwatch.org/ghana>.

1 in detention at the Otay Mesa Detention Center.

2 The government’s recent argument otherwise, that 8 U.S.C. § 1252(g) strips  
3 this Court of jurisdiction, “has been repeatedly ‘rejected as implausible’ by the  
4 Supreme Court.” *Soryadvongsa v. Noem*, No. 25-cv-2663-AGS, 2025 WL  
5 3126821, \*1 (S.D. Cal. Nov. 8, 2025) (quoting *Department of Homeland Sec. v.*  
6 *Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). The government’s argument  
7 “would eliminate judicial review of immigration [detainees’] claims of unlawful  
8 detention . . . inconsistent with *Jennings v. Rodriguez* and the history of judicial  
9 review of the detention of noncitizens under 28 U.S.C. § 2241.” *Phan v. Noem*,  
10 No. 25-cv-2422-RBM, 2025 WL 2898977, \*3 (S.D. Cal. Oct. 10, 2025)  
11 (collecting cases agreeing on this jurisdictional point).

12 Further, this Court has jurisdiction to consider and resolve constitutional  
13 questions of the process due to those threatened with removal in habeas  
14 proceedings. *See AARP v. Trump*, 605 U.S. 91, 94–99 (2025) (*per curiam*).

15 **IV. Legal analysis.**

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

17 First, it should order Mr. Zermame’s immediate release. ICE failed to follow  
18 its own regulations requiring notification at re-detention, notification of the  
19 specific reasons a noncitizen is being re-detained, a chance to promptly and  
20 meaningfully contest the reasons for a re-detention decision, and mandating  
21 noncitizens in Mr. Zermame’s position only be re-detained upon a proper  
22 determination that “there is a significant likelihood that the [noncitizen] may be  
23 removed in the reasonably foreseeable future.” 8 C.F.R. §§ 241.13(i)(2); *see also*  
24 241.4(l). Further, *Zadvydas v. Davis* holds that immigration statutes do not  
25 authorize the government to detain immigrants like Mr. Zermame, whose removal  
26 period has ended, and for whom there is “no significant likelihood of removal in  
27 the reasonably foreseeable future.” 533 U.S. 678, 701 (2001).

28

1 Second, this Court should enjoin the Respondents to adhere to basic  
2 requirements of notice and an opportunity to be heard before removing  
3 Mr. Zermame to a third country in which he could be persecuted or tortured—or  
4 sent back home to the countries in which an immigration judge has already found  
5 he will be persecuted or tortured. If the government is truly seeking to deport Mr.  
6 Zermame to an unidentified third country, there are extremely detailed statutory  
7 criteria it must follow. Its current policy of giving noncitizens between zero and  
8 24 hours’ notice of which country it intends to deport them to is insufficient as a  
9 regulatory, statutory, and due process matter.

10 **V. Claim 1: ICE failed to comply with its own regulations while re-**  
11 **detaining Mr. Zermame, violating his rights under applicable**  
12 **regulations and due process.**

12 Two regulations establish the process due to someone who is re-detained in  
13 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to  
14 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping  
15 framework to persons released upon good reason to believe that they will not be  
16 removed in the reasonably foreseeable future, as Mr. Zermame was. *See Azzo v.*  
17 *Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 3535208, \*5–\*6 (S.D. Cal. Dec. 10,  
18 2025) (explaining this regulatory scheme); *Rokhfirooz*, No. 25-CV-2053-RSH-  
19 VET, 2025 WL 2646165 at \*2 (same).

20 These regulations establish important substantive limitations before a  
21 noncitizen’s re-detention. Officials are allowed to “return [the person] to custody”  
22 only when the person “violate[d] any of the conditions of release,” 8 C.F.R.  
23 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official  
24 “determines that there is a significant likelihood that the alien may be removed in  
25 the reasonably foreseeable future,” and makes that finding “on account of  
26 changed circumstances,” § 241.13(i)(2). Section “241.13(i)(2) requires that this  
27 determination is made before the removable alien has had his release revoked.”  
28 *Nguyen v. Noem*, No. 25-cv-2792-LL-VET, 2025 WL 3101979, \*2 (S.D. Cal.

1 Nov. 6, 2025) (quoting *Tran v. Noem*, No. 25-CV-2391-BTM-BLM, 2025 WL  
2 3005347, \*2 (S.D. Cal. Oct. 27, 2025)).

3 No matter the reason for re-detention, the re-detained person is also entitled  
4 to certain procedural protections during and after re-detention.

5 First, “[u]pon revocation,’ the noncitizen ‘will be notified of the reasons  
6 for revocation of his or his release.’” *Phan v. Noem*, No. 25-cv-2422-RBM-MSB,  
7 2025 WL 2898977, \*3, \*4 (S.D. Cal. Oct. 10, 225) (quoting §§ 241.4(l)(1),  
8 241.13(i)(3)). A noncitizen must receive “adequate notice of the basis for the  
9 revocation decision such that he c[an] meaningfully respond at the post-detention  
10 informal interview.” *Rasakhamdee v. Noem*, No. 25-cv-2817-RBM, ECF No. 10  
11 at 7 (S.D. Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No. 25-cv-1079-JLT,  
12 2025 WL 2581575, \*8 (E.D. Cal. Sept. 5, 2025)).

13 Second, the person “‘will be afforded an initial informal interview promptly  
14 after his or his return’ to be given ‘an opportunity to respond to the reasons for  
15 revocation stated in the notification.’” 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1).  
16 “[P]romptly,” commonly understood, “means ‘[q]uickly; without delay’ or ‘[a]s  
17 soon as practicable.’” *Soryadvongsa*, 2025 WL 3126821 at \*3 (quoting *Promptly*,  
18 Black’s Law Dictionary (12th ed. 2024)). “The chance to advocate for release  
19 must ordinarily come within days of a criminal arrest. Surely, it must happen at  
20 least that quickly in the more constitutionally protected civil-arrest arena, too.” *Id.*

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

26 ICE is required to follow its own regulations. *United States ex rel. Accardi*  
27 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); see *Alcaraz v. INS*, 384 F.3d 1150,  
28 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to

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

6 ICE followed none of its substantive or procedural regulatory prerequisites  
7 to re-detention or continued detention here.

8 First, ICE does not have a proper reason to re-detain Mr. Zermane: there is  
9 no reason to think that there is “a significant likelihood that [he] may be removed  
10 in the reasonably foreseeable future,” § 241.13(i)(2), and he has not “violate[d]  
11 any of the conditions of release,” § 241.13(i)(1). There is no reason to think that,  
12 having been unable to remove Mr. Zermane to an unidentified third country since  
13 it started trying in May 2025, ICE is significantly likely to do so in the reasonably  
14 foreseeable future.

15 Second, ICE did not notify Mr. Zermane of the “reasons” for his re-  
16 detention “upon revocation” of release. *See* 8 C.F.R. §§ 241.13(i)(3), 241.4(l)(1).  
17 The day he was re-detained, ICE provided him with no written notice of why he  
18 was being re-detained in a language he could understand. Exhibit A ¶ 6. The  
19 initial reasons it told him orally were wrong. *Id.*

20 And, even if it had informed him in generalizations, “[s]imply to say that  
21 circumstances had changed or there was a significant likelihood of removal in the  
22 foreseeable future is not enough.” *Sarail A. v. Bondi*, \_\_ F. Supp. 3d \_\_, 2025 WL  
23 2533673, \*10 (D. Minn. 2025). “Petitioner must be told *what* circumstances had  
24 changed or *why* there was now a significant likelihood of removal in order to  
25 meaningfully respond to the reasons and submit evidence in opposition.” *Id.* The  
26 notice here included no information about what had changed or why.

27 Third, as of January 18, 2026, Mr. Zermane had not yet received the  
28 informal interview required by regulation. §§ 241.13(i)(2); 241.4(l)(1). If he were

1 to receive one now, such an interview would by no definition be a “prompt[]”  
2 one, as required by regulation. *Id.*

3 Fourth, Mr. Zermane has not been afforded a meaningful opportunity to  
4 respond to the reasons for revocation or submit evidence rebutting his re-  
5 detention. §§ 241.13(i)(2); 241.4(l)(1); *see* Exhibit A ¶¶ 6–0.

6 Numerous courts have released re-detained immigrants after finding that  
7 ICE failed to comply with some or all of the applicable regulations this summer  
8 and fall. *See, e.g., Villanueva v. Tate*, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2774610 (S.D.  
9 Tex. Sept. 26, 2025); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y.  
10 2025); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at \*7–9  
11 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL  
12 2430267, at \*10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-  
13 00182-MJT, 2025 WL 2491782, at \*2–3 (E.D. Tex. July 18, 2025); *Hoac v.*  
14 *Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July  
15 16, 2025); *Liu v. Carter*, 2025 WL 1696526, \*2 (D. Kan. June 17, 2025); *M.Q. v.*  
16 *United States*, 2025 WL 965810, at \*3, \*5 n.1 (S.D.N.Y. Mar. 31, 2025); *Bui v.*  
17 *Warden*, No. 25-cv-21111-JES, ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Thai v.*  
18 *Noem*, No. 25-cv-2436-RBM, ECF No. 10, 12 (S.D. Cal. Oct. 17, 2025);  
19 *Constantinovici v. Bondi*, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2898985, No. 25-cv-2405-  
20 RBM (S.D. Cal. Oct. 10, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-  
21 2422-RBM-MSB, \*3–\*5 (S.D. Cal. Oct. 10, 2025); *Truong v. Noem*, No. 25-cv-  
22 02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*,  
23 No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*,  
24 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v.*  
25 *Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, \*3 (S.D. Cal. Sept. 29, 2025);  
26 *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept.  
27 15, 2025).

28 “[B]ecause officials did not properly revoke petitioner’s release pursuant to

1 the applicable regulations, that revocation has no effect, and [Mr. Zermane] is  
2 entitled to his release (subject to the same Order of Supervision that governed  
3 h[er] most recent release).” *Liu*, 2025 WL 1696526, at \*3.

4 **VI. Claim 2: Mr. Zermane’s detention violates *Zadvydas* and 8 U.S.C.  
5 § 1231.**

6 **A. The statute, as interpreted by *Zadvydas*, renders detention  
7 mandatory for 90 days after removal is ordered and allowable  
8 six months after removal is ordered only if there is a significant  
9 likelihood of removal in the reasonably foreseeable future.**

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

*Zadvydas* held that § 1231(a)(6) presumptively permits the government to  
detain an immigrant for six months after his or his removal order becomes final.

1 After those six months have passed, the immigrant must be released unless his or  
2 his removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six  
3 months have passed, the petitioner must only make a prima facie case for relief—  
4 there is “good reason to believe that there is no significant likelihood of removal  
5 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the  
6 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*<sup>8</sup>

7 Mr. Zermane can make all the threshold showings needed to shift the  
8 burden to the government.

9 **B. Mr. Zermane’s six-month grace period expired in November  
10 2025.**

11 The six-month grace period has ended. The *Zadvydas* grace period is linked  
12 to the date the final order of removal is issued. It lasts for “six months after a final  
13 order of removal—that is, three months after the statutory removal period has  
14 ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Indeed,  
15 the statute defining the beginning of the removal period is linked to the latest of  
16 three dates, all of which relevant here are tied to when the removal order is issued.  
17 8 U.S.C. § 1231(a)(1)(B).<sup>9</sup>

18 Mr. Zermane’s order of removal was entered on May 9, 2025, and he  
19 waived his right to appeal on that day, so it became final immediately. Exhibit A  
20 ¶ 3; Exhibit B. His 90-day removal period thus ended on August 7, 2025, and his  
21 *Zadvydas* grace period expired three months after that, on November 7, 2025.

22  
23 <sup>8</sup> Further, even before the six months have passed, the immigrant must still be  
24 released if he rebuts the presumption that his detention is reasonable. *See, e.g.,*  
25 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases  
on rebutting the *Zadvydas* presumption before six months have passed).

26 <sup>9</sup> Those dates are, specifically, (1) “[t]he date the order of removal becomes  
27 administratively final;” (2) “[i]f the removal order is judicially reviewed and if a  
28 court orders a stay of the removal of the alien, the date of the court’s final order;”  
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.*

1           **C. Mr. Zermane’s experience and ICE’s historical experience**  
2           **provide good reason to believe that he will not likely be removed**  
3           **in the reasonably foreseeable future.**

4           This Court uses a burden-shifting framework to evaluate Mr. Zermane’s  
5           *Zadvydas* claim. At the first stage of the framework, Mr. Zermane must “provide[]  
6           good reason to believe that there is no significant likelihood of removal in the  
7           reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This standard can be  
8           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          **“Significant likelihood of removal.”** This component focuses on whether  
20          Mr. Zermane will likely be removed: Continued detention is permissible only if it  
21          is “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533  
22          U.S. at 701. This inquiry targets “not only the *existence* of untapped possibilities,  
23          but also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.  
24          Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added).

25          In other words, even if “there remains *some* possibility of removal,” a  
26          petitioner can still meet its burden if there is good reason to believe that  
27          successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-  
28          8019, 2002 WL 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. Zermane 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.

6           If the Court has “no idea of when it might reasonably expect [Petitioner] to  
7 be repatriated, this Court certainly cannot conclude that his removal is likely to  
8 occur—or even that it might occur—in the reasonably foreseeable future.” *Palma*  
9 *v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at \*3 (S.D. Miss. July  
10 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss.  
11 Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y.  
12 2019)). Thus, even if this Court concludes that Mr. Zermane “would *eventually*  
13 receive” a travel document, he can still meet his burden by giving good reason to  
14 anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at \*2  
15 (E.D. Mich. Nov. 14, 2016).

16           Mr. Zermane satisfies this standard for three reasons.

17           *First*, the IJ’s withholding of removal order prohibits Mr. Zermane’s  
18 removal to Algeria and Mexico, “which [are] the only countr[ies] to which he has  
19 a claim to citizenship or legal immigration status.” *Villanueva*, 2025 WL  
20 2774610, at \*10; *see* Exhibit B. “This substantially increases the difficulty of  
21 removing him.” *Munoz-Saucedo*, 789 F. Supp. 3d at 398.

22           Historical data back this difficulty of removal up. In the four and a half  
23 years between 2020 and mid-2025, ICE was able to successfully remove 13  
24 people who had been granted withholding to a third country. Exhibit E. Given that  
25 about 2,500 people received a grant of withholding of removal in fiscal year 2024  
26 *alone*, that indicates ICE has a very small percentage chance of success overall.

27 Exhibit D.  
28

1           *Second*, ICE has not made any progress in removing Mr. Zermane in the  
2 last eight months since his removal order became final. ICE has never met with  
3 him to discuss third-country removal, including when he was on release on an  
4 ankle monitor all of last year, checking in with ICE multiple times per month and  
5 staying at home the entirety of one day every month. Exhibit A ¶¶ 3–5. Yet he has  
6 never even learned which particular countries ICE is considering. *Id.* ¶¶ 8–10. The  
7 only update he’s received from ICE is that they may have lost his passport. *Id.*  
8 ¶ 10.

9           Given that third country removal is already exceedingly unlikely, a “lack of  
10 effort only reinforces the conclusion that the Petitioner’s removal is not likely to  
11 occur in the reasonably foreseeable future.” *Kacanic v. Elwood*, No. CIV.A. 02-  
12 8019, 2002 WL 31520362, at \*5 (E.D. Pa. Nov. 8, 2002); *see also Conchas-*  
13 *Valdez v. Casey*, 25-cv-2469-DMS, Dkt. 9, at 6 (S.D. Cal. Oct. 6, 2025) (granting  
14 a petition in part because “the Government’s minimal work on [the] case . . . [did]  
15 not instill confidence that it will be able to secure [CAT] Petitioner’s removal in  
16 the reasonably foreseeable future”).

17           *Third*, even if ICE could eventually remove Mr. Zermane to a third country,  
18 there is no reason to think that that will happen in the reasonably foreseeable  
19 future. The difficulty of third-country removal suggests that ICE will not quickly  
20 prove successful. And even if ICE received travel documents for a third country,  
21 Mr. Zermane “would be entitled to seek fear-based relief from removal to that  
22 country, which would require additional, lengthy proceedings.” *Munoz-Saucedo*,  
23 789 F. Supp. 3d at 399; *accord Villanueva*, 2025 WL 2774610, at \*10 (“[A]ny  
24 efforts to remove Villanueva to a third country would likely be delayed by  
25 proceedings contesting his removal to the third country finally identified.”).

26           For all of these reasons, Mr. Zermane has shown good reason to believe his  
27 removal is not significantly likely in the reasonably foreseeable future. Indeed, in  
28 light of this information, the government cannot rebut this showing, and this

1 Court should grant the petition.

2 **VII. Claim 3: ICE must provide adequate notice and an opportunity to be**  
3 **heard before removing Mr. Zermame to a third country.**

4 In addition to unlawfully detaining her, ICE’s policies threaten Mr.  
5 Zermame’s unlikely, but potentially abrupt, removal to an unidentified third  
6 country without adequate notice and an opportunity to be heard. These policies  
7 violate the Fifth Amendment, the Convention Against Torture, and implementing  
8 regulations.

9 **A. Due process requires notice and an opportunity to be heard**  
10 **before deportation to third countries.**

11 As noted, U.S. law enshrines mandatory protections against dangerous and  
12 life-threatening removal decisions through the withholding of removal statute and  
13 implementations of the Convention Against Torture. *See* 8 U.S.C.  
14 § 1231(b)(3)(A); 8 C.F.R. §§ 208.16, 1208.16 (withholding); FARRA 2681-822  
15 (codified as 8 U.S.C. § 1231 note; 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18,  
16 1208.16-1208.18 (CAT).

17 Further, the third country removal statute involves a “four-stage inquiry set  
18 forth in § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash.  
19 2019) (summarizing cases on this point); *see also Hadera v. Gonzales*, 494 F.3d  
20 1154, 1156–59 (9th Cir. 2007) (explaining the stages). The first step is a  
21 noncitizen designates “one country to which the noncitizen wants to be removed.”  
22 *Aden*, 409 F. Supp. 3d at 1006. If the noncitizen does not designate a country, or  
23 that country does not accept them, then “the IJ may at step two designate a  
24 country of which the noncitizen is a subject, national, or citizen.” *Id.* at 1007. If  
25 “no country satisfies” that requirement, the step three allows designation and  
26 removal to a number of other countries. 8 U.S.C. § 1231(b)(2)(E). The  
27 government can proceed to the fourth stage—removal to “another country”—only  
28 if it determines it is “impracticable, inadvisable, or impossible to remove the alien  
to each country described” in the third stage. 8 U.S.C. § 1231(b)(2)(E)(vii).

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

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

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

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

1 a meaningful chance to determine whether and why they have a credible fear.

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

5 The policies in the currently effective July 6, 2025 memo do not adhere to  
6 these requirements. The operative memo “contravenes Ninth Circuit law.” *Nguyen*  
7 796 F. Supp. 3d at 728 (explaining how the July 9, 2025 ICE memo contravenes  
8 Ninth Circuit law on the process due to noncitizens in detail); *see also Van Tran*  
9 *v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D. Cal. Sept. 29, 2025)  
10 (granting temporary restraining order preventing a noncitizen’s deportation to a  
11 third country pending litigation in light of due process problems); *Nguyen Tran v.*  
12 *Noem*, No. 25-cv-2391-BTM-BLM, ECF No. 6 (S.D. Cal. Sept. 18, 2025) (same).

13 First, under the policy, ICE need not give immigrants *any* notice or *any*  
14 opportunity to be heard before removing them to a country that—in the State  
15 Department’s estimation—has provided “credible” “assurances” against  
16 persecution and torture. Exhibit F. By depriving immigrants of any chance to  
17 challenge the State Department’s view, this policy violates “[t]he essence of due  
18 process,” “the requirement that a person in jeopardy of serious loss be given  
19 notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*,  
20 424 U.S. 319, 348 (1976) (cleaned up).

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

If given the opportunity to investigate conditions, immigrants would find

1 credible reasons to fear persecution or torture—like patterns of deporting third-  
2 country deportees back to their home countries despite CAT orders preventing  
3 that refoulement, patterns of keeping deportees indefinitely and without charge in  
4 solitary confinement, and extreme instability raising a high likelihood of death—  
5 in many of the third countries that have agreed to removal of thus far.

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

12 Due process requires an adequate chance to identify and raise these threats  
13 to health and life. Because “[f]ailing to notify individuals who are subject to  
14 deportation that they have the right to apply . . . for withholding of deportation to  
15 the country to which they will be deported violates both INS regulations and the  
16 constitutional right to due process,” *Adriasian*, 180 F.3d at 1041, this Court must  
17 prohibit the government from removing Mr. Zermane without these due process  
18 safeguards.

19 **VIII. This Court must hold an evidentiary hearing on any disputed facts.**

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

23 **IX. Prayer for relief**

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

- 25 1. Order and enjoin Respondents to immediately release Petitioner from  
26 custody on the same conditions as previously contained in his order  
27 of supervision;

28



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**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 22, 2026

s/ Jessie Agatstein  
Jessie Agatstein

# Exhibit A

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

12 FAOUZI ZERMANE,  
13  
14 Petitioner,

15 v.

16 KRISTI NOEM, Secretary of the  
17 Department of Homeland Security,  
18 PAMELA JO BONDI, Attorney General,  
19 TODD M. LYONS, Acting Director,  
20 Immigration and Customs Enforcement,  
21 JESUS ROCHA, Acting Field Office  
22 Director, San Diego Field Office,  
23 CHRISTOPHER LAROSE, Warden at  
24 Otay Mesa Detention Center,  
25  
26 Respondents.

Civil Case No.:

**Declaration of Faouzi Zermane  
in support of petition for writ of  
habeas corpus**

**[Civil Immigration Habeas Petition  
Under 28 U.S.C. § 2241]**

27 <sup>1</sup> Federal Defenders of San Diego, Inc., is filing with provisional appointment  
28 under Chief Judge Order No. 134. financial eligibility for representation is  
included in this sworn statement.

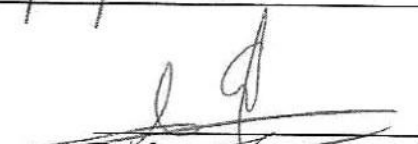
1 I declare the following is true and correct under penalty of perjury:

- 2 1. My name is Faouzi Zermane. I do not own a car or house or any  
3 other assets. Before I was detained, I was making about [REDACTED] a  
4 month. I have about [REDACTED] in the bank. I cannot afford a lawyer to  
5 file a habeas for me. My A-number is [REDACTED]
- 6 2. I entered the U.S. on May 5, 2023, and went to my sponsor's in  
7 Michigan. After that, I went to San Diego, and my case proceeded in  
8 San Diego with me released on an ankle monitor.
- 9 3. I was ordered removed to Algeria and Mexico, and granted  
10 withholding of removal from Algeria and Mexico, on May 9, 2025. I  
11 was not detained. I went straight to an order of supervision with my  
12 same ankle monitor.
- 13 4. After I got withholding, I went to check in ICE, and they said they  
14 would look for a third country to remove me to while I stayed out on  
15 electronic monitoring.
- 16 5. I went to my ISAP check-ins twice a month, and another day once a  
17 month I was not allowed to leave my house for the day. I went to all  
18 my check-ins and complied with all my conditions.
- 19 6. On December 18, 2025, I came in for a check-in and was arrested. I  
20 never received a copy of any paperwork explaining why I was being  
21 arrested. I saw a paper that was in English, but I couldn't read it  
22 quickly enough because I am not fluent in English, and I didn't get a  
23 copy. I speak Arabic and Spanish fluently, but not English.
- 24 7. The ICE officers told me they were arresting me because they  
25 wanted me to sign for my deportation to Mexico. An ICE officer told  
26 me they would pay me \$1,000 to be deported to Mexico. I told the  
27 officers I have withholding of removal to Mexico, and they told me  
28 they did not know about it. The first ICE officers I talked to then sent

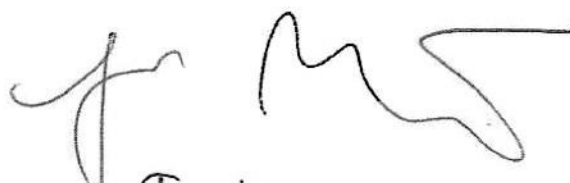
- 1 me to another officer.
- 2 8. The next officer said that, because I was ordered deported, they
- 3 would arrest me, even though I also had withholding. He said they
- 4 would look for third countries to deport me too. He also told me he
- 5 would give me documents about all of this. But it's been a month and
- 6 still I don't have any documents.
- 7 9. I don't know what's changed to make it more likely they can deport
- 8 me. They haven't been able to deport me ever since I was released on
- 9 an ankle monitor in May.
- 10 10. A week ago, an ICE officer came to talk to me and told me ICE
- 11 couldn't find my passport. But ICE took my passport from me in
- 12 2023, so they must have lost it, because I've never gotten it back
- 13 from them. No one from ICE has talked to me about anything else or
- 14 told me why I am being detained since then.
- 15 11. I was born in Algeria and am an Algerian citizen. My parents and
- 16 grandparents are all Algerian citizens. I moved from Algeria to
- 17 Mexico, and I have permanent residency in Mexico. In 2023, I
- 18 escaped from problems in Mexico and sought asylum here from both
- 19 countries. I don't have ties to any countries other than here, Mexico,
- 20 and Algeria.
- 21 12. When I left Algeria, the police wanted to arrest me for my political
- 22 activism. In Mexico, my wife and I had an issue with her ex-husband
- 23 who is a federal agent. That's why I was given withholding of
- 24 removal from both countries.
- 25 13. I lost my job and my apartment because of my ICE arrest. I don't
- 26 have anything because of the arrest.
- 27 14. The foregoing declaration was read to me in its entirety in Arabic,
- 28 my native language, by an Arabic interpreter.

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I declare under penalty of perjury that the foregoing is true and correct,  
executed on this date, 1/18/2026, in San Diego, California.

  
\_\_\_\_\_  
Declarant  
ZERMANE FAOUZI

The foregoing declaration was translated into Arabic by a virtual interpreter in my presence on this day, 1/18/26.

  
Jessie Agutstein

# **Exhibit B**



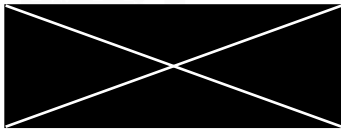
UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
SAN DIEGO IMMIGRATION COURT

Respondent Name:

ZERMANE, FAOUZI

To:

Nasseri, Saman



A-Number:



Riders:

In Removal Proceedings

Initiated by the Department of Homeland Security

Date:

05/09/2025

ORDER OF THE IMMIGRATION JUDGE

- This is a summary of the oral decision entered on . The oral decision in this case is the official opinion, and the immigration court issued this summary for the convenience of the parties.
- Both parties waived the issuance of a formal oral decision in this proceeding.

I. Removability

The immigration court found Respondent  removable  inadmissible under the following Section(s) of the Immigration and Nationality Act (INA or Act): 212 (a)(6)(A)(i).

The immigration court found Respondent  not removable  not inadmissible under the following Section(s) of the Act:

II. Applications for Relief

Respondent's application for:

A. Asylum/Withholding/Convention Against Torture

- Asylum was  granted  denied  withdrawn with prejudice  withdrawn without prejudice
- Withholding of Removal under INA § 241(b)(3) was  granted  denied  withdrawn with prejudice  withdrawn without prejudice
- Withholding of Removal under the Convention Against Torture was  granted  denied  withdrawn with prejudice  withdrawn without prejudice
- Deferral of Removal under the Convention Against Torture was  granted  denied  withdrawn with prejudice  withdrawn without prejudice
- Respondent knowingly filed a frivolous application for asylum after notice of the consequences. *See* INA § 208(d)(6); 8 C.F.R. §1208.20

B. Cancellation of Removal

- Cancellation of Removal for Lawful Permanent Residents under INA § 240A(a) was  granted  denied  withdrawn with prejudice  withdrawn without prejudice
- Cancellation of Removal for Nonpermanent Residents under INA § 240A(b)(1) was  granted  denied  withdrawn with prejudice  withdrawn without prejudice
- Special Rule Cancellation of Removal under INA § 240A(b)(2) was  granted  denied  withdrawn with prejudice  withdrawn without prejudice

C. Waiver

- A waiver under INA § was  granted  denied  withdrawn with prejudice  withdrawn without prejudice

D. Adjustment of Status

- Adjustment of Status under INA § was  granted  denied  withdrawn with prejudice  withdrawn without prejudice

E. Other

**III. Voluntary Departure**

- Respondent's application for  pre-conclusion voluntary departure under INA § 240B(a)  post-conclusion voluntary departure under INA § 240B(b) was  denied.
- Respondent's application for  pre-conclusion voluntary departure under INA § 240B(a)  post-conclusion voluntary departure under INA § 240B(b) was  granted, and Respondent is ordered to depart by . The respondent must post a \$ bond with DHS within five business days of this order. Failure to post the bond as required or to depart by the required date will result in an alternate order of removal to taking effect immediately.
- The respondent is subject to the following conditions to ensure his or her timely departure from the United States:
  - Further information regarding voluntary departure has been added to the record.
  - Respondent was advised of the limitation on discretionary relief, the consequences for failure to depart as ordered, the bond posting requirements, and the consequences of filing a post-order motion to reopen or reconsider:

If Respondent fails to voluntarily depart within the time specified or any extensions granted by the DHS, Respondent shall be subject to a civil monetary penalty as provided by relevant statute, regulation, and policy. *See* INA § 240B(d)(1). The immigration court has set

- the presumptive civil monetary penalty amount of \$3,000.00 USD
- \$ USD instead of the presumptive amount.

If Respondent fails to voluntarily depart within the time specified, the alternate order of removal shall automatically take effect, and Respondent shall be ineligible, for a period of

10 years, for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Act, to include cancellation of removal, adjustment of status, registry, or change of nonimmigrant status. *Id.* If Respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of such a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply.

If Respondent appeals this decision, Respondent must provide to the Board of Immigration Appeals (Board), within 30 days of filing an appeal, sufficient proof of having posted the voluntary departure bond. The Board will not reinstate the voluntary departure period in its final order if Respondent does not submit timely proof to the Board that the voluntary departure bond has been posted.

In the case of conversion to a removal order where the alternate order of removal immediately takes effect, where Respondent willfully fails or refuses to depart from the United States pursuant to the order of removal, to make timely application in good faith for travel or other documents necessary to depart the United States, to present himself or herself at the time and place required for removal by the DHS, or conspires to or takes any action designed to prevent or hamper Respondent's departure pursuant to the order of removal, Respondent may be subject to a civil monetary penalty for each day Respondent is in violation. If Respondent is removable pursuant to INA § 237(a), then he or she shall be further fined or imprisoned for up to 10 years.

#### IV. Removal

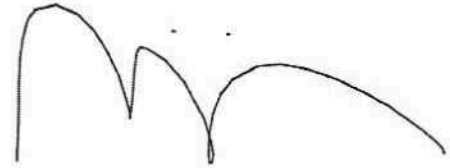
- Respondent was ordered removed to ALGERIA.
- In the alternative, Respondent was ordered removed to MEXICO.
- Respondent was advised of the penalties for failure to depart pursuant to the removal order:

If Respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, to present himself or herself at the time and place required for removal by the DHS, or conspires to or takes any action designed to prevent or hamper Respondent's departure pursuant to the order of removal, Respondent may be subject to a civil monetary penalty for each day Respondent is in violation. If Respondent is removable pursuant to INA § 237(a), then he or she shall be further fined or imprisoned for up to 10 years.

#### V. Other

- Proceedings were  dismissed  terminated with prejudice  terminated without prejudice  administratively closed.
- Respondent's status was rescinded under INA § 246.
- Other:

Withholding of Removal under INA § 241(b)(3) is granted as to both Algeria and Mexico.



Immigration Judge: Najjar, George 05/09/2025

Appeal: Department of Homeland Security:  waived  reserved  
Respondent:  waived  reserved

Appeal Due:

**Certificate of Service**

This document was served:

Via: [ M ] Mail | [ P ] Personal Service | [ E ] Electronic Service | [ U ] Address Unavailable

To: [ ] Noncitizen | [ ] Noncitizen c/o custodial officer | [ E ] Noncitizen's atty/rep. | [ E ] DHS

Respondent Name : ZERMANE, FAOUZI | A-Number : 

Riders:

Date: 05/12/2025 By: Regan, Lisa, Court Staff