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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 FAOUZI ZERMANE,

13 Petitioner,

14 v.

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

20 Respondents.
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Case No.: 26-cv-405-TWR-KSC

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

1 **I. Introduction**

2 In its return, the government submits evidence that ICE began its internal
3 process to find a third country for Mr. Zermane’s deportation four days after he
4 filed his habeas petition. That was over a month after it re-detained him, and nine
5 months after his removal order became final. So far, ICE has “added [him] to the
6 3rd country removal list.” ECF No. 5, Declaration of Denise Barroga, ¶¶ 14–15.
7 The government also submits the English-language notice of revocation
8 Mr. Zermane described in his declaration, as well as notes from a same-day
9 interview. Those notes appear to confirm that the ICE officer Mr. Zermane talked
10 to did not know he had received withholding of removal. *See* ECF No. 5-2
11 (“informal interview” notes that “subject claims he was granted withholding of
12 removal to Algeria and Mexico”); *see also* ECF No. 1, Exhibit A, Declaration of
13 Faouzi Zermane ¶¶ 6–8.

14 The notice of revocation also alleges that Mr. Zermane committed
15 “multiple violations of your ATD [Alternatives to Detention] reporting
16 conditions,” without any explanation of when and how. ECF No. 5-2 (Notice of
17 Revocation of Release). A deportation officer now alleges that since he has been
18 on his post-removal-order order of supervision he had violated once, by “fail[ing]
19 to call in” on December 9, 2025. ECF No. 5, Declaration of Denise Barroga, ¶ 12.
20 “Call[ing] in” is not one of his conditions. *Id.* He attends in-person check-ins
21 twice a month, and he is confined to his home one day a month. ECF No. 1,
22 Exhibit A ¶ 5. His most recent home confinement day was on December 10, with
23 which he complied. *See* Exhibit G, Second Declaration of Faouzi Zermane, ¶¶ 6–
24 10. Regardless, the officer also explains that Mr. Zermane was detained “to
25 effectuate removal to an alternate country”—not for a violation of conditions.
26 ECF No. 5, Declaration of Denise Barroga, ¶ 13. That is what Mr. Zermane was
27 told the day he was arrested. ECF No. 1, Exhibit A ¶ 7; *accord* Exhibit G ¶ 3.

28 None of this evidence rebuts Mr. Zermane’s claim that he was re-detained

1 in violation of his regulatory and due process rights to be notified of “the reasons
2 for revocation.” § 241.13(i)(2)(iii), 241.13(l)(1). “[A] reason is what makes an
3 action intelligible, accounted for, or explained”—“the specific facts supporting
4 ICE’s decision.” *Sarail A. v. Bondi*, __ F. Supp. __, 2025 WL 2533673, *5–*6 (D.
5 Minn. 2025). Those were absent in the notice ICE provided Mr. Zermane here:
6 The notice alleged he had violated his conditions, without any information
7 notifying him how, when, or why, so that he could explain that he had not.

8 Nor does the government’s evidence rebut Mr. Zermane’s *Accardi* claim
9 that ICE never made a determination before his re-detention that “there is a
10 significant likelihood that [he] may be removed in the reasonably foreseeable
11 future,” § 241.13(i)(2), or that ICE failed to conduct “an evaluation of any
12 contested facts relevant to the revocation,” or “determine[e] whether the facts as
13 determined warrant revocation and further denial of release.” § 241.13(i)(3). After
14 Mr. Zermane told the government that he had withholding of removal so that he
15 could not be quickly deported to Mexico, as the officers had hoped—and that he
16 had not violated any conditions of his supervision—there is no indication ICE
17 considered that information before deciding to keep him detained.

18 Nor does the government rebut Mr. Zermane’s claim that there is not an
19 individualized, significant likelihood of his removal in the foreseeable future. It
20 has been nine months since he was ordered removed and a month and a half since
21 he was re-detained. Yet the government has not identified a third country to try to
22 remove him to. Instead, it has put him on an internal list. ECF No. 5, Declaration
23 of Denise Barroga, ¶ 15. Even if the government eventually identifies a third
24 country, Mr. Zermane will be entitled to significant process to ensure that that
25 third country does not intend to remove him to Mexico or Algeria. *See Ndandu v.*
26 *Noem*, No. 25-cv-2969-RBM-MSB, 2026 WL 25848, *5 (S.D. Cal. Jan. 5, 2026)
27 (explaining this point when granting *Zadvydus* petition to noncitizen
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1 with Convention Against Torture relief who had been released on an order of
2 supervision and then re-detained for fewer than six months).

3 And, finally, the government does not have any legal response to
4 Mr. Zermane's claim that ICE's current third-country removal process violates his
5 due process and statutory rights to meaningful notice of the third country the
6 government intends to remove him to—as well as his right to apply for
7 Convention Against Torture and other forms of protection from removal to that
8 third country. *See, e.g., Esmaeili v. Noem*, No. 26-cv-230-GPC-JLB, 2026 WL
9 240661, *6 (S.D. Cal. Jan. 29, 2026) (explaining these violations in detail and
10 collecting cases on point).

11 **II. The government's return includes a generalized notice of revocation,**
12 **notes from a same-day interview indicating ICE did not know**
13 **Mr. Zermane had withholding of removal to Algeria and Mexico when**
14 **it re-detained him, and no indication the government considered the**
15 **information Mr. Zermane provided in his interview.**

16 The government's return includes the following evidence:

- 17 • The immigration judge's order from May 9, 2025, ordering Mr. Zermane
18 removed to Algeria and Mexico, and granting withholding of removal from
19 Algeria and Mexico, ECF No. 5-1; *accord* ECF No. 1, Exhibit B;
- 20 • The December 19, 2025, notice of revocation of release Mr. Zermane
21 described in his declaration, ECF No. 1, Exhibit A ¶ 6, which states that he
22 would be re-detained after “a review of your official alien file and a
23 determination that there are changed circumstances in your case”; “ICE has
24 determined that you can be expeditiously removed from the United States
25 pursuant to the outstanding order of removal against you”; “Due to multiple
26 violations of your ATD reporting conditions, you will be remanded into
27 custody”; and “ICE will attempted to remove you to an alternate third
28 country,” ECF No. 5-2;

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- Internal notes of an “initial informal interview” completed on December 19, 2025, by the same officer who gave Mr. Zermame his notice of revocation of release on the same day, noting that Mr. Zermame told the officer he “was granted withholding of removal to Algeria and Mexico,” and that he “hasn’t missed any appointments,” ECF No. 5-2; and
- A declaration from a San Diego deportation officer stating that:
 - Mr. Zermame was enrolled in an “Alternative to Detention (ATD) Program with a GPS bracelet” between August 2023 and May 2025 while his immigration case was pending, and failed to report for an in-person visit a single time during those two years, in March 2025;
 - On May 9, 2025, Mr. Zermame was ordered removed to and granted withholding of removal from Mexico and Algeria, and that decision became final that day;
 - On December 9, 2025, Mr. Zermame “failed to call in” under his conditions of release;
 - “On December 19, 2025, Petitioner reported for an in-person office visit where he was detained by ERO to effectuate removal to an alternate country”;
 - “On or about January 26, 2026,” four days after Mr. Zermame had filed his habeas petition, local ICE requested assistance from ICE headquarters “to identify a third country where Petitioner may be removed”;
 - “Headquarters RIO is actively working with Department of State and DHS on avenues to remove aliens to a third country,” and “[t]he Petitioner has been added to the 3rd country removal list”; and

1 o “At this time, ICE is still in the process of identifying third countries
2 that may be willing to accept Petitioner for removal.” ECF No. 5,
3 Declaration of Denise Barroga, ¶¶ 9–15.

4 As Mr. Zermane explains in detail in a supplemental declaration, he did not
5 violate his supervision conditions. *See* Exhibit G, Second Declaration of Faouzi
6 Zermane.

7 Mr. Zermane’s supervision is managed through a private contractor, ISAP,
8 which normally communicates with him through an app. Exhibit G ¶¶ 6–7. He
9 explains:

10 Normally, my days when I was required to be at home were on
11 Tuesdays. At the end of November, I got a notification through the
12 app that my stay-at-home day would be on a Wednesday, December
13 10. I remember this clearly because I had to change my work
14 schedule around with my manager, who was very annoyed that I
15 suddenly couldn’t work on a Wednesday, and so he asked me to
 come to work on a Tuesday, which I normally did not work.

16 It is not a condition of mine to pick up the phone every single time
17 the contractor calls me through the app or separately, even if I don’t
18 have an appointment. That wouldn’t make sense, because
19 sometimes I am at work and can’t answer the phone. I only have to
 answer the phone when I have appointments.

20 I remember I got a call on December 9 while I was at work, and I
21 couldn’t pick up. According to my schedule in my phone, my stay
22 at home day was Wednesday, December 10. And I did stay at home
23 all day on December 10, and someone from ISAP called me that
 day to confirm I was at home.

24 Exhibit G ¶¶ 8–10.

25 When Mr. Zermane went to his check-in on December 19 and was arrested,
26 he explains:

27 [T]he ICE officers told me I was being arrested so they could
28 deport me. The officers did not tell me they were arresting me
 because I was violating my conditions.

1 The day I was arrested, the ICE officers I talked to did not identify
2 any dates or specific information about how I had supposedly
3 violated my conditions. At some point when trying to explain why
4 they shouldn't arrest me, I must have told him I hadn't missed any
5 appointments, and that if I had, ISAP would have arrested me. He
6 didn't give me a chance to explain or go through my supervision
app to point out that I had complied or tried to comply on both days
they're now arguing I didn't.

7 Exhibit G ¶¶ 3–4.

8 **III. Claim One: ICE did not adhere to key regulations implementing the due**
9 **process rights to notice and a meaningful opportunity to be heard.**

10 The government claims to have fully complied with 8 C.F.R. §§ 241.4 and
11 241.13. *See* ECF No. 5 at 2–4. For Mr. Zermene, those regulations permit his re-
12 detention only if ICE: (1) “determines that there is a significant likelihood that the
13 alien may be removed in the reasonably foreseeable future,” “on account of
14 changed circumstances,” or determines the noncitizen has “violate[d] any of the
15 conditions of release,” § 241.13(i)(2), (i)(1); (2) “upon revocation,” “notifie[s]”
16 the noncitizen “of the reasons for revocation of his or her release,” § 241.13(i)(3);
17 (3) “affords the [person] an opportunity to respond to the reasons for revocation
18 stated in the notification,” *id.*; and (4) “evaluat[es] . . . any contested facts
19 relevant to the revocation” and “determine[e]s whether the facts as determined
20 warrant revocation and further denial of release,” *id.*

21 As Mr. Zermene explained in his petition, and contrary to the government's
22 arguments, ICE did not comply with these requirements.

23 **1. The evidence before this Court indicates ICE did not determine that**
24 **there were “changed circumstances” such that, unlike in May 2025 when it**
25 **released Mr. Zermene, there is now “a significant likelihood that [Mr.**
26 **Zermene] may be removed in the reasonably foreseeable future.” §**
27 **241.13(i)(2).** The evidence includes Mr. Zermene's declaration that “ICE
28 officers” first told him “they were arresting [him] because they wanted [him] to

1 sign for his deportation to Mexico.” ECF No. 1, Exhibit A. When he explained
2 that he has “withholding of removal to Mexico, they told [him] they did not know
3 about it.” *Id.* ICE’s record of its interview with Mr. Zermane that day suggests
4 that the ICE officers did not know he had withholding of removal. The officer
5 who interviewed him wrote with suspicion, “Subject claims he was granted
6 withholding of removal to Algeria and Mexico.” ECF No. 5-3. Indeed, ICE’s
7 evidence confirms it did not take any steps to begin processing Mr. Zermane’s
8 third-country removal until after he filed his habeas petition, ECF No. 5,
9 Declaration of Denise Barroga, ¶¶ 14–15, further indicating ICE had not made a
10 determination that he could be removed in the reasonably foreseeable future
11 before detaining him.

12 **2. Next, upon Mr. Zermane’s revocation, ICE did not notify him of**
13 **“the reasons for revocation of his . . . release.” § 241.13(i)(2)(iii); § 241.4(l)(1).**
14 As he explained in his declaration, “I don’t know what’s changed to make it more
15 likely they can deport me.” ECF No. 1, Exhibit A, ¶ 9. His declaration is
16 consistent with the written notification he received that day. It informed him that
17 “your order of supervision has been revoked . . . based on a review of your official
18 alien file and a determination that there are changed circumstances in your case.”
19 ECF No. 5-2. “ICE has determined that you can be expeditiously removed from
20 the United States pursuant to the outstanding order of removal against you. Due to
21 multiple violations of your ATD reporting conditions, you will be remanded into
22 custody. ICE will attempt to remove you to an alternate third country.” *Id.*

23 Further, Mr. Zermane never received a copy of the notice so that he could
24 understand it using his limited English, or that it was never provided to him in a
25 language he could quickly understand. ECF No. 1, Exhibit A ¶ 6.

26 Further, as Judge Montenegro recently explained as to an identically
27 worded written revocation notification regarding changed circumstances, “ICE’s
28 conclusory explanations for revoking Petitioner’s release ‘did not offer him

1 adequate notice of the basis for the revocation decision such that he could
2 meaningfully respond at the post-detention informal interview.” *Raskhamdee v.*
3 *Noem*, No.25-cv-2816-RBM-DEB, 2025 WL 3102037, *4 (S.D. Cal. Nov. 6,
4 2025) (quoting *Diaz v. Wofford*, No. 25-cv-1079-JLT-EPG, 2025 WL 2581575,
5 *8 (E.D. Cal. Sept. 5, 2025)); accord *Quoc Anh Nguyen v. Noem*, No. 25-cv-
6 2792-LL-VET, 2025 WL 3101979, *2 (S.D. Cal. Nov. 6, 2025) (holding that a
7 similarly “bare-bones explanation does not contain reasons for the revocation of
8 Petitioner’s release”). “Simply to say that circumstances had changed . . . is not
9 enough. Petitioner must be told *what* circumstances had changed or *why* there was
10 now a significant likelihood of removal in order to meaningfully respond to the
11 reasons and submit evidence in opposition, as allowed under § 241.13(i)(3).”
12 *Sarail A.*, __ F. Supp. 3d __, 2025 WL 2533673 at *10 (emphasis in original);
13 accord *Joseph v. Casey*, No. 25-cv-3560-JES-KSC, 2025 WL 3751705, *3 (S.D.
14 Cal. Dec. 29, 2025) (collecting cases).

15 The same problem applies to the allegations in the notice that Mr. Zermane
16 violated the conditions of his supervision. He was not informed in the notice how
17 ICE believed he had violated his conditions during the nine months he had been
18 on an order of supervision under 8 U.S.C. § 1231. See ECF No. 5-2. Instead, the
19 notice alleged, vaguely, “multiple violations of your ATD reporting conditions.”
20 *Id.* His conversation with an ICE officer the day of his arrest provided no more
21 information—what, exactly, had he violated, and when? See Exhibit G ¶ 4. The
22 officer did not tell him, so he could not respond. *Id.*

23 **3. Finally, there is no indication that ICE “evaluat[ed] . . . any**
24 **contested facts relevant to the revocation” and “determine[ed] whether the**
25 **facts as determined warrant revocation and further denial of release.” 8**
26 **C.F.R. § 241.13(i)(3).** Although he did not realize it would count as his “informal
27 interview,” Mr. Zermane explained to the ICE officers on the day he was re-
28 detained that they would not be able to quickly deport him, and that he had not

1 violated his conditions of release. He provided them specific facts: He had
2 received withholding of removal to Algeria and Mexico, he had never failed to
3 comply with his conditions. *See* ECF No. 1, Exhibit A, ¶¶ 6–9; ECF No. 5-2
4 (confirming ICE officers heard this information and wrote it down).

5 But ICE did not re-evaluate whether it would detain Mr. Zermame in light
6 of this new evidence, or reconsider any of the new facts Mr. Zermame presented.
7 When Mr. Zermame spoke to a supervisor after providing these facts, “[t]he next
8 officer said that, because [he] was ordered deported, they would arrest [him]”
9 anyways. ECF No. 1, Exhibit A ¶ 8. Had the officers actually evaluated contested
10 facts or determined whether they warranted revocation and further denial of
11 release, they would have released Mr. Zermame back to supervision.

12 Because the government failed to comply with core requirements of § 241.4
13 and § 241.13 when revoking Mr. Zermame’s release, it should, “[l]ike many other
14 district courts within this circuit,” “find[] that these failures constitute a violation
15 of Petitioner’s due process rights and justif[y] his release.” *Bui v. Warden of Otay*
16 *Mesa Detention Facility*, No. 25-cv-2111-JES, 2025 WL 2988356, *5 (S.D. Cal.
17 Oct. 23, 2025).

18 **IV. Claim Two: It has been eight months since Mr. Zermame was ordered**
19 **removed, and there is a significant likelihood of removal in the**
20 **reasonably foreseeable future.**

21 Next, government provides insufficient evidence to meet its burden to show
22 that Mr. Zermame will likely be removed to an unidentified third country in the
23 reasonably foreseeable future.

24 1. The government first argues that it can conclusively detain Mr. Zermame
25 because the six-month *Zadvydas* grace period, in which Mr. Zermame’s detention
26 is presumptively constitutionally reasonable, has not passed. ECF No. 5 at 4–6. It
27 agrees that Mr. Zermame was ordered removed in a final order nine months ago,
28 on May 9, 2025. *Id.* It also does not dispute that he was subsequently released
under 8 C.F.R. § 241.13, which applies only to noncitizens who “provide[] good

1 reason to believe there is no significant likelihood of removal to the country to
2 which he or she was ordered removed, or to a third country, in the reasonably
3 foreseeable future.” 8 C.F.R. § 241.13(a). But the government still argues that this
4 Court should begin counting the *Zadvydas* period from the time Mr. Zermane has
5 been in the Otay Mesa Detention Center, as of December 19, 2025, and not from
6 the time he has been on an ankle monitor subject to ICE supervision and
7 intermittent home detention following issuance of his final removal order,
8 beginning on May 9, 2025. *Id.* This argument fails for several reasons.

9 **First, the Ninth Circuit has clarified that the *Zadvydas* period is tied to**
10 **the statutory ninety-day removal period, and the statutory removal period is**
11 **tied to the date an order becomes final.** In *Kim Ho Ma*, the Ninth Circuit held
12 that the *Zadvydas* period is counted as a “detention period of *six months* after a
13 final order of removal—that is, *three months* after the statutory removal period
14 has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001).
15 Here, the 90-day removal period during which Mr. Zermane’s detention was
16 mandatory under the statute began in May 2025 and thus expired in August 2025.
17 That is because the removal period “beg[an],” as relevant here, “[t]he date the
18 order of removal becomes administratively final,” 8 U.S.C. § 1231(a)(1)(B)(i), on
19 May 9, 2025. So the *Zadvydas* period as interpreted by the Ninth Circuit ended
20 three months after August 2025, in November 2025.

21 Most courts “broadly agree that the six-month period [under *Zadvydas*]
22 does not reset when the government detains an alien under 8 U.S.C. § 1231(a),
23 releases him from detention, and then re-detains him again.” *Solis Nolasco v.*
24 *Noem*, Civ. No. GLR-25-3847, 2025 WL 25002, *4 (D. Md. Jan. 5, 2026)
25 (collecting cases). That is because “the text of § 1231(a)(1)(B) does not mention
26 restarting the removal period,” and “[n]or does any interpretive regulation.” *Diaz-*
27 *Ortega v. Lund*, No. 1:19-CV-670-P, 2019 WL 6003485, *8 (W.D. La. Oct. 15,
28 2019). In fact, “a plain reading of the *existing* text disfavors the restarting

1 approach.” *Id.* The “stated *purpose*” of the text itself “is to create an obligatory
2 timeframe for removal, not a discretionary grace period for detention.” *Id.* at *9.
3 Finally, “[i]t also comports with the settled ‘in custody requirement,’” under
4 which “a petitioner need not be physically detained” so long as there are “other
5 restraints on . . . liberty . . . not shared by the public generally.” *Id.* “To afford ‘in
6 custody’ status for habeas purposes, but to deny similar status for removal period
7 purposes, would again be incongruent.” *Id.*

8 Second, Mr. Zermane has been subject to intermittent home confinement
9 and an ankle monitor ever since he was ordered removed, on May 8, 2025. ECF
10 No. 1, Exhibit A; Exhibit G. This has placed him subject to a meaningful
11 “restraint on . . . liberty . . . not shared by the public generally,” and, as explained
12 by the district court in *Diaz-Ortega*, thus weighs in favor of counting the
13 *Zadvydas* period from the date his removal order became final.” *Diaz-Oretga*,
14 2019 WL 6003485 at *9.

15 Third, even if this Court disagrees that the *Zadvydas* six months have
16 passed, that period at most establishes a “presumption” that is “rebuttable.”
17 *Ndandu*, 2026 WL 25848 at *3–*4 (collecting cases). The evidence Mr. Zermane
18 submitted to this Court has rebutted any presumption, as explained below.

19 **2. On the merits, there is not a significant likelihood of removal in the**
20 **reasonably foreseeable future.** “[M]ere generalizations, divorced from any
21 documentary support,” do not “suffice for *Zadvydas* purposes.” *Azzo v. Noem*, No.
22 25-cv-3122-RBM-BJW, 2025 WL 3535208, *4 n.3 (S.D. Cal. Dec. 10, 2025). In
23 response to Mr. Zermane’s specific arguments and evidence as to why he cannot
24 be removed in the reasonably foreseeable future, *see* ECF No. 1 at 4–7, 17–19, the
25 government has offered no more than generalizations in this case.

26 *Azzo* is instructive. There, the district court received a declaration for a
27 habeas petitioner who had received relief from removal to his country of
28 citizenship under the Convention Against Torture, asserting that although it had

1 not yet identified a third country for removal, ICE “believes there is a significant
2 likelihood of removal to a third country in the reasonably foreseeable future.” *Id.*
3 at *4. Upon surveying relevant case law, the court noted that the declaration
4 resulted in an “even weaker evidentiary showing” than in other cases that had still
5 granted *Zadvydas* petitions and ordered immediate relief. *Id.* *4 (discussing,
6 among other cases, *Kamyab v. Bondi*, No. C-25-389RSL, 2025 WL 2917522
7 (W.D. Wash. Oct. 14, 2025), and *Phan v. Warden of Otay Mesa Detention*
8 *Facility*, No. 25-cv-2369-AJB-BLM, 2025 WL 3141205 (S.D. Cal. Nov. 10,
9 2025)). There, as here, with ““little more than generalizations regarding the
10 likelihood that removal will occur,”” Respondents “have not met their burden to
11 ‘respond with evidence sufficient to rebut’ Petitioner’s showing.” *Id.*

12 **V. Claim 3: The government has no legal argument for how ICE’s third-**
13 **country removal process complies with existing Ninth Circuit law**
14 **regarding the process due to noncitizens in third-country removal**
15 **proceedings.**

16 This Court should also prohibit ICE from removing Mr. Zermane to a third
17 country without adequate notice and a meaningful opportunity to be heard
18 regarding his statutory and related rights to seek asylum, withholding of removal,
19 and Convention Against Torture relief as to that third country.

20 The government identifies certain components of the third-country removal
21 policy challenged in his habeas petition. Compare ECF No. 5 at 9 with ECF No. 1
22 at 7–8, 19–22, Exhibit F. But the government does not explain how this policy
23 complies with due process or Ninth Circuit law.

24 As Mr. Zermane explained in his habeas petition, “This policy contravenes
25 Ninth Circuit law.” *Nguyen v. Scott*, 796 F. Supp. 3d 703, 728 (W.D. Wash.
26 2025). “It would be impossible to comply both with Ninth Circuit precedent and
27 the policy.” *Id.* “Failing to notify individuals who are subject to deportation that
28 they have the right to apply . . . for withholding of deportation to the country to
which they will deported violates both INS regulations and the constitutional right

1 to due process.”” *Id.* at 727 (quoting *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th
2 Cir. 1999). Yet that is exactly what existing ICE policy allows for. *See* ECF No. 1
3 at –8, 19–22, Exhibit F. The government has no response on this point.

4 Nor does the government’s argument regarding the Supreme Court’s
5 unreasoned stay order in *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153
6 (2025), persuade. “The Supreme Court did not decide *D.V.D.* on the merits, nor
7 did it even necessarily rule on the class’s likelihood of success on its due process
8 and APA claims.” *Nguyen*, 796 F. Supp. 3d at 731. Because the Supreme Court
9 did not issue a decision explaining its stay, courts “cannot ascertain from the
10 Supreme Court’s emergency order whether it found the government likely to
11 succeed on its jurisdictional or substantive claims.” *Id.* at 732. This distinction
12 matters because “one of the government’s primary arguments—that the *D.V.D.*
13 court had no power to enter classwide injunctive relief—would have no bearing
14 on the merits of individual habeas petition.” *Id.* Further, “absent ‘clear guidance
15 from the Supreme Court’ that” existing law on third-country removals is “‘no
16 longer good law,’ this Court must follow ‘well-established precedent.’” *Id.*
17 (internal citations omitted); *accord, e.g., Louangmilith v. Noem*, No. 25-cv-2502-
18 JES, 2025 WL 2881578, *4 (S.D. Cal. Oct. 9, 2025).

19 **VI. Conclusion**

20 For all these reasons, this Court should grant the petition and (1) order
21 Mr. Zermene’s immediate release; (2) prohibit Respondents from re-detaining Mr.
22 Zermene unless and until Respondents obtain a travel document; (3) prohibit
23 Respondents from re-detaining Mr. Zermene without first following all regulatory
24 procedures; and (4) prohibit Respondents from removing Mr. Zermene to a third
25 country without following the process laid out in his prayer for relief.

26 Respectfully submitted,

27 Dated: February 10, 2026

s/ Jessie Agatstein
28 Jessie Agatstein

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