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

13 NATALIE CAMARGO ALEJO,

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 Respondents.

Civil Case No.: '26CV1511 JO SBC

Petition for Writ
of
Habeas Corpus

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

26
27
28 ¹ Federal Defenders of San Diego, Inc., is filing with provisional appointment
under Chief Judge Order No. 134.

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I. Introduction

Natalie Camargo Alejo was ordered removed to Mexico and granted withholding of removal from Mexico in 2015. She was released on an order of supervision. In 2018, she was again detained, ordered removed but granted relief from removal to Mexico, and released. On September 4, 2025, after completing a state sentence, Ms. Camargo was again transferred from state custody directly to ICE custody, where she has been ever since. She has never been informed of why she is in ICE custody or how long she will be there. She has never been given a chance to contest her re-detention, as required under ICE regulations. 8 C.F.R. §§ 241.13(i)(3), 241.4(l). She has now been held longer than the maximum six months allowed under ICE regulation for those who violate their conditions of release. 8 C.F.R. § 241.13(i)(1). And, under current policy, ICE apparently intends to deport her to a third country without her first having adequate time to investigate and, if needed, raise with a court, the possibility of persecution in that that third country.

Ms. Camargo Alejo's continued detention violates her statutory and regulatory rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. This habeas petition raises the following three claims:

(1) Regulatory and due process violations: Ms. Camargo Alejo must be released because ICE's failure to follow its own regulations—about notifying noncitizens of the reason for re-detention, about providing a meaningful opportunity to be heard following re-detention, and about the maximum duration of detention for a noncitizen's violation of a condition of release—has repeatedly violated the *Accardi* doctrine and due process. *See, e.g., Bui v. Warden*, No. 25-cv-2111-JES, ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Thai v. Noem*, No. 25-cv-2436-RBM, ECF No. 10, 12 (S.D. Cal. Oct. 17, 2025); *Constantinovici v. Bondi*, ___ F. Supp. 3d ___, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5

(S.D. Cal. Oct. 10, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025) (all either granting temporary restraining orders releasing noncitizens, or granting habeas petitions outright, due to ICE regulatory violations during re-detentions of released noncitizens previously ordered removed under 8 C.F.R. §§ 241.13(i), 241.4(l)).

(2) ***Zadvydas violations:*** Ms. Camargo Alejo must also be released under *Zadvydas* because—having proved unable to remove her for the last decade—the government cannot show that there is a “significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701. *See, e.g., Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas petitions releasing noncitizens due to *Zadvydas* violations).

(3) ***Third-country removal statutory and due process violations:*** Further, in the unlikely event ICE does identify a third country, its policy is to not provide Ms. Camargo Alejo with due process. ICE’s current third-country removal policy does not require ICE to notify immigrants of their right to seek protection under the Convention Against Torture or withholding of removal statutes. It allows for last-minute designation of a third country an immigration judge has never considered. *See* Exhibit C. It therefore “contravenes Ninth Circuit law.” *Nguyen v. Scott*, __ F. Supp. 3d __, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025). This Court should also enjoin the Respondents to adhere to basic requirements of notice and an opportunity to be heard before removing Ms. Camargo Alejo to a third country in which she could be persecuted or tortured—or, just as likely, deported from that country back to Mexico, where it is more likely than not that she will be persecuted or tortured.

1 **II. Statement of Facts**

2 **A. Ms. Camargo Alejo comes to the United States, is ordered**
 3 **removed in 2015 and granted withholding of removal, and is re-**
 4 **detained by ICE in September 4, 2025.**

5 Ms. Camargo Alejo was born in Mexico. Exhibit A, Declaration of Natalie
 6 Camargo Alejo, ¶ 1.² In April 2015, Ms. Camargo Alejo was ordered removed to
 7 Mexico and granted withholding of removal from Mexico because she is a
 8 transgender woman. *Id.* Because she could not be deported to Mexico, she was
 9 released on an order of supervision under 8 C.F.R. § 241.13. After sustaining
 10 another conviction, she was returned to ICE custody in late 2017, and her
 11 withholding of removal was re-affirmed in 2018. Exhibit A, ¶ 3. She was released
 12 that day. *Id.*

13 In 2024, she pleaded guilty to a new conviction in state court. Exhibit A
 14 ¶ 4. On September 4, 2025, she was released from state prison directly into ICE
 15 custody. She has been at the Otay Mesa Detention Center ever since. *Id.*

16 In the last six months, Ms. Camargo Alejo has never been informed why
 17 she is in ICE custody or how long she will be held. *Id.* She explains,

18 I don't think ICE ever gave me a notice of revocation of release. I
 19 met with ICE officers around the beginning of December 2025, for a
 20 custody review, and they told me that if DHS wants to release me,
 21 they can. I never heard back about what happened with the custody
 22 review.

23 I've never had a chance to meet with an ICE officer and explain why
 24 I should be released. I just got served the documents about the
 25 custody review and that's it.

26 No one from ICE has ever told me that they're going to try to deport
 27 me anywhere, including to a third country.

28 Exhibit A, ¶¶ 5–7.

² Ms. Camargo Alejo is a transgender woman. Her immigration documents refer to her by her birth name, *see* Exhibit B, but she goes by Natalie, Exhibit A.

B. 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.

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

There are more restrictions on asylum. *See* 8 U.S.C. § 1158(a)(2). There are fewer restrictions on eligibility for withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(B)(iii). However, an applicant for withholding of removal must show a higher likelihood of persecution than what an asylum applicant must demonstrate—specifically, that it is “more likely than not that he or she 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. § 1208.16(b)(2); *see INS v. Stevic*, 467 U.S. 407, 429–30 (1984).

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

When an immigration judge grants withholding relief, she issues a removal order and simultaneously issues an order withholding removal with respect to the country the person demonstrated a risk of persecution. *See Guzman-Chavez*, 594 U.S. at 535–38. While ICE is authorized to remove that person granted withholding to an alternative countries, the removal statute specifies restrictive

³ Available at https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf

⁴ Available at <https://www.congress.gov/crs-product/IN12501>.

1 criteria for identifying appropriate countries. *See* 8 U.S.C. § 1231(b); 8 C.F.R.
2 § 1208.16(f). Further, “foreign governments ‘routinely deny’ requests to receive
3 people who lack a connection to the would-be receiving country.” *Puertas-*
4 *Mendoza*, 2025 WL 3142089 at *3. “The reason so few people are deported to
5 third countries is because,” while “customary international law holds that a
6 country has a duty to accept the return of its nationals,” usually, “countries have
7 no incentive to accept non-citizens.” American Immigration Council & National
8 Immigrant Justice Center, *supra* n.2.

9 If ICE identifies an appropriate third country of removal, the noncitizen
10 must then have notice and an opportunity to seek relief from removal to that new
11 country. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) (“If [non-citizens] would
12 face persecution or other mistreatment in the country designated under
13 § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1);
14 withholding of removal, § 1231(b)(3)(A); [and] relief under an international
15 agreement prohibiting torture.”). “[L]ast minute” designation of alternative
16 country without meaningful opportunity to apply for protection “violate[s] a basic
17 tenet of constitutional due process.” *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th
18 Cir. 1999).

19 That said, this summer, ICE began removing more immigrants it could not
20 previously remove to third countries, which have often removed those people
21 back to their countries of origin. ICE implemented new policies to do so. On July
22 9, 2025, ICE rescinded previous guidance meant to give immigrants a
23 “‘meaningful opportunity’ to assert claims for protection under the Convention
24 Against Torture before initiating removal to a third country.” Exhibit C (July 9,
25 2025, ICE third-country removal guidance).

26 Now, ICE may remove an immigrant to a third country without any notice.
27 It may do so if, in the sole view of the State Department, the United States has
28 received “credible” “assurances” from that country that deportees will not be

1 persecuted or tortured. *Id.* at 1. ICE deported approximately twenty people to
2 Equatorial Guinea in January without notifying them that they were being
3 deported there under this provision. Third Country Deportation Watch, *Equatorial*
4 *Guinea*, Refugees International & Human Rights First (Jan. 21, 2026).⁵

5 If a country fails to credibly promise not to persecute or torture releasees,
6 ICE may remove immigrants with only 24 hours' notice. "In exigent
7 circumstances," a removal may take place in six hours, "as long as the alien is
8 provided reasonably means and opportunity to speak with an attorney prior to the
9 removal." *Id.*

10 Regardless of how much notice noncitizens receive of the third country ICE
11 intends to deport them to, ICE "will not affirmatively ask whether the alien is
12 afraid of being removed to the country of removal." *Id.* (emphasis original).

13 If the noncitizen "does not affirmatively state a fear of persecution or
14 torture if removed to the country of removal listed on the Notice of Removal
15 within 24 hours, [ICE] may proceed with removal to the country identified on the
16 notice." *Id.* at 2.

17 Under this policy, the United States has deported several dozen noncitizens
18 to prisons and military camps in Rwanda, Eswatini, South Sudan, Ghana, and
19 Equatorial Guinea. Those who have not been returned to their home countries are
20 still detained, in countries to which they have never been, without charge.

21 Nokukhanya Musi & Gerald Imray, *10 more deportees from the US arrive in the*
22 *African nation of Eswatini*, Associated Press (Oct. 6, 2025)⁶; *see also* Gerald
23 Imray, *A Cuban man deported by the US to Africa is on a hunger strike in prison,*
24 *his lawyer says*, Associated Press (Oct. 23, 2025)⁷; Frank Chothia, *Eswatini*

25
26 ⁵ Available at <https://www.thirdcountrydeportationwatch.org/equatorial-guinea>.

27 ⁶ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

28 ⁷ Available at <https://apnews.com/article/deported-immigration-migrants-trump->

1 confirms receiving \$5.1m from the US for accepting deportees, BBC (Nov. 18,
 2 2025)⁸; Nick Alexandra, *The Toll of Trump's African Deportation Agreements*,
 3 New Lines Magazine (Dec. 10, 2025)⁹. Others have been returned to their home
 4 countries, even though they had received orders protecting them against their
 5 return under the Convention Against Torture. *See* Third Country Deportation
 6 Watch, *Ghana*, Refugees International & Human Rights First (Dec. 5, 2025);¹⁰
 7 Sheriff Bojang Jr., *Equatorial Guinea sends eight of Trump's nine deportees*
 8 *home, braces for new arrivals*, The Africa Report (Jan. 16, 2026).¹¹

9 III. This Court has jurisdiction.

10 This Court has jurisdiction to consider Ms. Camargo Alejo's claims of
 11 unlawful detention and unlawful third-country removal under 28 U.S.C. § 2241.

12 The government's recent argument otherwise, that 8 U.S.C. § 1252(g) strips
 13 this Court of jurisdiction, lacks merit. Its argument "would eliminate judicial
 14 review of immigration [detainees'] claims of unlawful detention . . . inconsistent
 15 with *Jennings v. Rodriguez* and the history of judicial review of the detention of
 16 noncitizens under 28 U.S.C. § 2241." *Phan v. Noem*, No. 25-cv-2422-RBM, 2025
 17 WL 2898977, *3 (S.D. Cal. Oct. 10, 2025) (collecting cases agreeing on this
 18 jurisdictional point); *accord Sun v. Noem*, No. 25-cv-2433-CAB, 2025 WL
 19 2800037, *2 (S.D. Cal. Sept. 30, 2025).

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

23
 24 eswatini-8d8aad6dd01bf0e72de06480f3c70859.

25 ⁸ Available at <https://www.bbc.com/news/articles/cq50vjdx368o>.

26 ⁹ Available at <https://newlinesmag.com/reportage/the-toll-of-trumps-african-deportation-agreements/>.

27 ¹⁰ Available at <https://www.thirdcountrydeportationwatch.org/ghana>.

28 ¹¹ Available at <https://www.theafricareport.com/405291/equatorial-guinea-sends-eight-of-trumps-nine-deportees-home-braces-for-new-arrivals/>.

1 **IV. Legal Analysis.**

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

3 First, it should order Ms. Camargo Alejo's immediate release. ICE failed to
4 follow its own regulations requiring notification at re-detention, a chance to
5 promptly contest a re-detention decision, and mandating at most six months of
6 detention for a violation of supervision conditions. 8 C.F.R. §§ 241.13(i),
7 241.4(l). Further, *Zadvydas v. Davis* holds that immigration statutes do not
8 authorize the government to detain immigrants like Ms. Camargo Alejo, who has
9 been in custody for more than six months, and for whom there is "no significant
10 likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701
11 (2001).

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

18 **V. Claim 1: ICE failed to comply with its own regulations while re-**
19 **detaining Ms. Camargo Alejo, violating her rights under applicable**
20 **regulations and due process.**

21 Two regulations establish the process due to someone who is re-detained in
22 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
23 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping
24 framework to persons released upon good reason to believe that they will not be
25 removed in the reasonably foreseeable future, as Ms. Camargo Alejo was. *See*
26 *Phan v. Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3-*5 (S.D.
27 Cal. Oct. 10, 2025) (explaining this regulatory framework); *Rokhfirooz*, No. 25-
28 CV-2053-RSH-VET, 2025 WL 2646165 at *2 (same).

1 These regulations permit an official to “return [the person] to custody”
2 when the person “violate[d] any of the conditions of release,” 8 C.F.R.
3 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official
4 “determines that there is a significant likelihood that the alien may be removed in
5 the reasonably foreseeable future,” and makes that finding “on account of
6 changed circumstances,” § 241.13(i)(2).

7 No matter the reason for re-detention, the re-detained person is entitled to
8 certain procedural protections. For one, “[u]pon revocation,’ the noncitizen ‘will
9 be notified of the reasons for revocation of his or her release.’” *Phan*, 2025 WL
10 2898977 at *3, *4 (quoting §§ 241.4(l)(1), 241.13(i)(3)). Further, the person
11 “‘will be afforded an initial informal interview promptly after his or her return’ to
12 be given ‘an opportunity to respond to the reasons for revocation stated in the
13 notification.’” *Id.*

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

19 ICE is required to follow its own regulations. *United States ex rel. Accardi*
20 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
21 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
22 abide by certain internal policies is well-established.”). A court may review a re-
23 detention decision for compliance with the regulations, and “where ICE fails to
24 follow its own regulations in revoking release, the detention is unlawful and the
25 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at *4
26 (collecting cases); *accord Phan*, 2025 WL 2898977 at *5.

27 ICE followed none of its regulatory prerequisites to re-detention or
28 continued detention here.

1 First, ICE did not notify Ms. Camargo Alejo of the reasons for her re-
2 detention “upon revocation” of her release. *See* 8 C.F.R. §§ 241.4(l)(1),
3 241.13(i)(3). She was re-detained on September 4, 2025. Exhibit A ¶ 4. She had
4 pled guilty to a conviction in state custody and was transferred directly to ICE
5 custody afterward. *Id.* In the last six months and counting, she does not think ICE
6 has even given her a notice of revocation of release explaining why she is being
7 held or how long she is being held for. *Id.* ¶ 5.

8 Second, because Ms. Camargo Alejo has not been notified why she has
9 been re-detained, she is unable to know if ICE’s reason for re-detaining her were
10 proper. 8 C.F.R. §§ 241.13(i)(1), (2); 241.4(l)(1), (2).

11 Third, Ms. Camargo Alejo has never received the informal interview
12 required by regulation. §§ 241.13(i)(2); 241.4(l)(1). She has “never had a chance
13 to meet with an ICE officer and explain why [she] should be released.” *Id.* ¶ 6.

14 Fourth, Ms. Camargo Alejo has not been afforded a meaningful opportunity
15 to respond to the reasons for revocation or submit evidence rebutting her re-
16 detention. §§ 241.13(i)(2); 241.4(l)(1); *see* Exhibit A ¶ 6. No one from ICE has
17 ever invited her to contest her detention. *Id.*

18 Fifth, and finally, if Ms. Camargo Alejo was in fact detained for a violation
19 of her conditions of release, she has now been detained for longer than the
20 maximum “six months” authorized “to effect [her] removal, if possible, and to
21 effect the conditions under which [she] had been released.” 8 C.F.R.
22 § 241.13(i)(1).

23 Numerous courts have released re-detained immigrants after finding that
24 ICE failed to comply with some or all of the applicable regulations this summer
25 and fall. *See, e.g., Villanueva v. Tate*, __ F. Supp. 3d __, 2025 WL 2774610 (S.D.
26 Tex. Sept. 26, 2025); *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y.
27 2025); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9
28 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL

2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu v. Carter*, 2025 WL 1696526, *2 (D. Kan. June 17, 2025); *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025); *Bui v. Warden*, No. 25-cv-2111-JES, ECF No. 18 (S.D. Cal. Oct. 23, 2025); *Thai v. Noem*, No. 25-cv-2436-RBM, ECF No. 10, 12 (S.D. Cal. Oct. 17, 2025); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12, 17 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025).

“[B]ecause officials did not properly revoke petitioner’s release pursuant to the applicable regulations, that revocation has no effect, and [Ms. Camargo Alejo] is entitled to [her] release (subject to the same Order of Supervision that governed [her] most recent release).” *Liu*, 2025 WL 1696526, at *3.

VI. Claim 2: Ms. Camargo Alejo’s detention violates *Zadvydas* and 8 U.S.C. § 1231.

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

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Ms. Camargo Alejo: Federal law requires ICE to detain an immigrant during the “removal period,” which typically spans the first

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

17 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to
18 detain an immigrant for six months after his or her removal order becomes final.
19 After those six months have passed, the immigrant must be released unless his or
20 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six
21 months have passed, the petitioner must only make a prima facie case for relief—
22 there is “good reason to believe that there is no significant likelihood of removal
23 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the
24 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*¹²
25 Ms. Camargo Alejo can make all the threshold showings needed to shift the

26 _____
27 ¹² Further, even before the six months have passed, the immigrant must still be
28 released if she *rebutts* the presumption that her detention is reasonable. *See, e.g.,*
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).

1 burden to the government.

2 **B. Ms. Camargo has been detained for longer than six months,**
3 **regardless of how the *Zadvydas* presumption period is counted.**

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

11 Ms. Camargo Alejo’s order of removal (and order withholding removal)
12 was first entered in April 2015. Exhibit A ¶ 1; *see* Exhibit B. It was entered again
13 in September 18, 2018. *Id.*; *see* Exhibit B. Her *Zadvydas* grace period expired
14 three months after the removal period ended, in either 2015 or early 2019. *See*,
15 *e.g.*, *Tadros v. Noem*, 2025 WL 1678501, No. 25-cv-4108(EP), *2–*3.

16 Regardless, Ms. Camargo Alejo has most recently been detained for six
17 months and counting, since September 4 of last year. The *Zadvydas* grace period
18 has expired.

19 **C. Ms. Camargo Alejo’s experience provides good reason to believe**
20 **that he will not likely be removed in the reasonably foreseeable**
21 **future.**

22 This Court uses a burden-shifting framework to evaluate Ms. Camargo
23 Alejo’s *Zadvydas* claim. At the first stage of the framework, Ms. Camargo Alejo
24 must “provide[] good reason to believe that there is no significant likelihood of
25

26 ¹³ 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 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This
2 standard can be broken down into three parts.

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

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

20 In other words, even if “there remains *some* possibility of removal,” a
21 petitioner can still meet its burden if there is good reason to believe that
22 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
23 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

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

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

11 Ms. Camargo Alejo satisfies this standard: Her own experience bears this
12 out. ICE has now had a decade to deport her. It has also had the last six months of
13 her tenure in custody to focus its efforts to deport her. Exhibit A ¶¶ 1–7. Yet ICE
14 has proved unable to remove her. Particularly given that she has received
15 withholding of removal to her only country of citizenship, these circumstances are
16 not the makings of someone who has a significant likelihood of being removed in
17 the reasonably foreseeable future. *See, e.g., Zavvar v. Scott*, No. 25-2104-TDC,
18 2025 WL 2592543, *3–*8 (D. Md. Sept. 8, 2025) (granting habeas petition as to a
19 re-detained Iranian national in a similar position as Ms. Camargo Alejo under
20 *Zadvydas*).

21 Thus, Ms. Camargo Alejo has met her initial burden, and the burden shifts
22 to the government. Unless the government can prove a “significant likelihood of
23 removal in the reasonably foreseeable future,” Ms. Camargo Alejo must be
24 released. *Zadvydas*, 533 U.S. at 701.

D. *Zadvydas* unambiguously prohibits this Court from denying Ms. Camargo Alejo’s petition because of her criminal history.

Zadvydas squarely holds that danger or flight are not grounds for detaining an immigrant when there is no reasonable likelihood of removal in the reasonably foreseeable future. 533 U.S. at 684–91.

The two petitioners in *Zadvydas* both had significant criminal history. Mr. *Zadvydas* himself had “a long criminal record, involving drug crimes, attempted robbery, attempted burglary, and theft,” as well as “a history of flight, from both criminal and deportation proceedings.” *Id.* at 684. The other petitioner, Kim Ho Ma, was “involved in a gang-related shooting [and] convicted of manslaughter.” *Id.* at 685. The government argued that both men could be detained regardless of their likelihood of removal, because they posed too great a risk of danger or flight. *Id.* at 690–91.

The Supreme Court rejected that argument. The Court appreciated the seriousness of the government’s concerns. *Id.* at 691. But the Court found that the immigrant’s liberty interests were weightier. *Id.* The Court had never countenanced “potentially permanent” “civil confinement,” based only on the government’s belief that the person would misbehave in the future. *Id.*

The Court also noted that the government was free to use the many tools at its disposal to mitigate risk: “[O]f course, the alien’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions.” *Id.* at 700. The Ninth Circuit later elaborated, “All aliens ordered released must comply with the stringent supervision requirements set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration officer periodically, answer certain questions, submit to medical or psychiatric testing as necessary, and accept reasonable restrictions on [their] conduct and activities, including severe travel limitations. More important, if [they] engage[]

1 in any criminal activity during this time, including violation of [their] supervisory
2 release conditions, [they] can be detained and incarcerated as part of the normal
3 criminal process.” *Ma*, 257 F.3d at 1115.

4 Respondents must release Ms. Camargo Alejo, but of course they may do
5 so subject to her supervision conditions.

6 **E. The remedy for a *Zadvydas* violation is immediate release on**
7 **conditions set by ICE under § 1231(a)(3).**

8 As noted earlier, *Zadvydas* interpreted 8 U.S.C. § 1231(a)(6), which
9 permits ICE to detain immigrants past the removal period if certain conditions are
10 met. 533 U.S. at 698. Applying the constitutional avoidance canon, the Supreme
11 Court held that immigrants may no longer be held under 8 U.S.C. § 1231(a)(6),
12 but must be released, when removal proves unforeseeable. *Id.* at 700–01.

13 Section 1231(a)(6) dictates what happens next: “An alien ordered removed
14 . . . may be detained beyond the removal period and, if released, shall be subject
15 to the terms of supervision in paragraph (3).” Paragraph (3), in turn, states that
16 “[i]f the alien does not leave or is not removed within the removal period, the
17 alien, pending removal, shall be subject to supervision under regulations
18 prescribed by the Attorney General,” including several conditions that must be
19 imposed. 8 U.S.C. § 1231(a)(3). The Attorney General has, in turn, delegated
20 authority to set conditions of release under § 1231(a)(3) to officials within ICE.
21 *See* 8 C.F.R. § 241.5(a).

22 Thus, an immigrant released from detention under § 1231(a)(6) as
23 interpreted in *Zadvydas* is subject to conditions set by ICE under § 1231(a)(3).
24 The proper remedy for a grant of a *Zadvydas* petition is thus immediate release
25 subject to any conditions ICE determines appropriate under that statute.
26
27
28

VII. Claim 3: ICE may not remove Ms. Camargo Alejo to a third country without adequate notice and an opportunity to be heard.

Finally, in addition to unlawfully detaining her, ICE's policies threaten Ms. Camargo Alejo's unlikely, but potentially immediate, removal to an unidentified third country without adequate notice and an opportunity to be heard. These policies violate the Fifth Amendment, the Convention Against Torture, and implementing regulations.

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

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

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

1 without giving them a chance to look into country conditions, does not give them
2 a meaningful chance to determine whether and why they have a credible fear.

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

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

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

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

27 If given the opportunity to investigate conditions, immigrants would find
28 credible reasons to fear persecution or torture—like patterns of sending deportees
back to their home countries regardless of their risk of persecution or torture

1 there, patterns of keeping deportees indefinitely and without charge in solitary
2 confinement, or extreme instability raising a high likelihood of death—in many of
3 the third countries that have agreed to removal of thus far.

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

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

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

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

22 **IX. Prayer for relief**

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

- 24 1. Order and enjoin Respondents to immediately release Petitioner from
25 custody;
- 26 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
27 § 1231(a)(6) unless and until Respondents obtain a travel document
28 for her removal;

- 1 3. Enjoin Respondents from re-detaining Petitioner without first
- 2 following all procedures set forth in 8 C.F.R. §§ 241.4(I), 241.13(i),
- 3 and any other applicable statutory and regulatory procedures;
- 4 4. Enjoin Respondents from removing Petitioner unless they provide
- 5 the following process:
- 6 a. written notice to both Petitioner and Petitioner's counsel in a
- 7 language Petitioner can understand;
- 8 b. a meaningful opportunity, and a minimum of ten days, to raise
- 9 a fear-based claim for CAT protection prior to removal;
- 10 c. if Petitioner is found to have demonstrated "reasonable fear"
- 11 of removal to the country, Respondents must move to reopen
- 12 Petitioner's immigration proceedings;
- 13 d. if Petitioner is not found to have demonstrated a "reasonable
- 14 fear" of removal to the country, a meaningful opportunity, and
- 15 a minimum of fifteen days, for the Petitioner to seek reopening
- 16 of her immigration proceedings.
- 17 5. Order all other relief that the Court deems just and proper.

18
19 Respectfully submitted,

20
21 Dated: March 10, 2026

s/ Jessie Agatstein
Federal Defenders of San Diego, Inc.
Attorneys for Ms. Camargo Alejo
Email: jessie_agatstein@fd.org

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: March 10, 2026

s/ Jessie Agatstein
Jessie Agatstein

Exhibit A

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Attorneys for Ms. Camargo Alejo¹

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

NATALIE CAMARGO ALEJO,

Petitioner,

v.

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

Respondents.

Civil Case No.:

**Declaration of Natalie Camargo
Alejo in support of petition for writ
of habeas corpus**

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

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

I, Natalie Camargo Alejo, declare the following is true and correct under penalty of perjury:

1. I am from Mexico. My A-number is [REDACTED] In April 2015, I was granted withholding of removal from Mexico under CAT because I am transgender woman.
2. I was released the same day I got withholding of removal in 2015.
3. I got a new conviction, and I went into ICE custody in late 2017. An immigration judge re-affirmed my withholding of removal in 2018 and then I was released that day.
4. I got a conviction in 2024. I was released from state prison straight into ICE custody on September 4, 2025. I have been in the Otay Mesa Detention Center since.
5. I don't think ICE ever gave me a notice of revocation of release. I met with ICE officers around the beginning of December 2025, for a custody review, and they told me that if DHS wants to release me, they can. I never heard back about what happened with the custody review.
6. I've never had a chance to meet with an ICE officer and explain why I should be released. I just got served the documents about the custody review and that's it.
7. No one from ICE has ever told me that they're going to try to deport me anywhere, including to a third country.

I give my attorney authority to sign that the above is true and correct under penalty of perjury this day, February 10, 2026, from the Otay Mesa Detention Center to San Diego, CA, at 1PM PST,

/s/ Jessie Agatstein, on behalf of Natalie Camargo Alejo