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

12 **GEBREKIRSTOS GEBREYOHANS,**

13 **Petitioner,**

14 **v.**

15 **MARKWAYNE MULLIN, Secretary of**
16 **the Department of Homeland Security,**
17 **TODD BLANCHE, Acting Attorney**
18 **General, TODD M. LYONS, Acting**
19 **Director, Immigration and Customs**
20 **Enforcement, JESUS ROCHA, Acting**
21 **Field Office Director, San Diego Field**
22 **Office, CHRISTOPHER LAROSE,**
23 **Warden at Otay Mesa Detention Center,**

24 **Respondents.**

Case No.: **'26CV2385 RSH DEB**

Petition for Writ
of
Habeas Corpus

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

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

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I. Introduction

Mr. Gebreyohans is an Ethiopian citizen who arrived at the United States border on May 22, 2025, and was immediately detained and ordered removed via expedited removal. He requested a credible fear interview. In September, an asylum officer found discrepancies in the dates he was tortured and returned a negative result. His appeal was quickly denied. *See* Exhibits A, B.

Ever since, he has stayed detained at the Otay Mesa Detention Center. That is consistent with Ethiopia's pattern of being a challenging country to remove people to. As of 2024, there were over 1,700 Ethiopian citizens with final orders of removal living in the United States because Ethiopia would not accept them. Exhibit E.

This habeas petition raises the following two claims:

(1) *Zadvydas* violations: Mr. Gebreyohans must be released under *Zadvydas* because—having proven unable to remove him to either Ethiopia or a third country in the last eleven months since he was ordered removed, and in the last six months since an immigration judge denied his credible-fear appeal—the government cannot show that there is a “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *see, e.g., Ali v. Bondi*, No. C26-73-MLP, 2026 WL 657471 (W.D. Wash. Mar. 9, 2026) (releasing Ethiopian citizen under *Zadvydas*); *see also Joseph v. Casey*, No. 25-cv-3560-JES-KSC, 2025 WL 3751705, *4–*6 (S.D. Cal. Dec. 29, 2025); *Azzo v. Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 3535208 (S.D. Cal. Dec. 10, 2025); *Ho v. Noem*, No. 25-cv-2453-BAS, ECF No. 11 (S.D. Cal. Oct. 20, 2025); *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) (all releasing other noncitizens under *Zadvydas*).

(2) *Third-country removal statutory and due process violations:* In the event ICE does intend to remove him to another country instead of Ethiopia, it

will not provide Mr. Gebreyohans with due process. ICE's operative third-country removal policy "contravenes Ninth Circuit law." *Nguyen v. Scott*, 796 F. Supp. 3d 703, 728 (W.D. Wash. 2025). This Court should thus also enjoin the Respondents to adhere to basic requirements of notice and an opportunity to be heard before removing Mr. Gebreyohans to a third country in which he could be persecuted or tortured.

II. Statement of facts

A. Mr. Gebreyohans comes to the U.S. from Ethiopia, is ordered removed, loses his credible fear interview, and remains detained.

Mr. Gebreyohans is a Tigrinya-speaker from Ethiopia. Exhibit A, Declaration of Gebrekirstos Gebreyohans, ¶¶ 1, 7, 9. He came to the U.S. border seeking asylum on May 22, 2025, after being targeted and tortured based on his ethnicity. *Id.* ¶¶ 2–3. He was arrested and detained. *Id.* ¶ 2.

The next day, on May 23, 2025, Mr. Gebreyohans was ordered removed via an expedited removal order. Exhibit D; *see* 8 U.S.C. § 1225(b)(1) (establishing process for ordering a noncitizen removed via expedited removal by an immigration officer, and for then referring that noncitizen to an asylum officer for a credible fear interview if the noncitizen requests it).

He had a credible fear interview on September 22, 2025. *Id.* ¶ 4. In that interview, Mr. Gebreyohans had four different Tigrinya interpreters. *Id.*; *see* Exhibit C.

At the end of the interview, the asylum officer found he was not credible based on the following logic:

[W]hen asked the dates on which he was harmed, the applicant stated that it was on 11/30/21 and on 09/25/24. However, during the same interview, the applicant later testified that he was first harmed on 11/23/21 when he was arrested, transported to a prison facility, interrogated, and beaten and tortured. When asked about the discrepancy in his testimony, the applicant stated that he was arrested on 11/23/21 and beaten on 11/24/21, 11/25/21, 11/27/21, and lastly on 11/30/21, for a total of six times during his first detention. The applicant's explanation is unreasonable because it

1 does not address or resolve the inconsistency. It is reasonable for the
2 applicant to consistently and accurately recount the dates of harm.

3 He appealed to an immigration judge, who rejected his appeal on October
4 2, 2025. Exhibit B. During that appeal, the Tigrinya interpreter did not initially
5 convert dates from the Ethiopian calendar to the Gregorian calendar. The
6 immigration judge first denied the appeal, explaining that there was “no mention
7 of the [Ethiopian] year[s]” Mr. Gebreyohans discussed at the hearing in the
8 worksheet of his credible fear interview, so “that would not explain two
9 completely different years.” *Id.* at 7. Mr. Gebreyohans interjected, “Your honor,
10 your years are wrong too.” *Id.* The immigration judge responded, “There were
11 numerous times I asked him to resolve the inconsistencies and accurately recount
12 the dates of harm. I appreciate your arguments but this matter is adjourned.” *Id.* at
13 8. Mr. Gebreyohans’s counsel responded, “I’m sorry, that’s ridiculous.” *Id.*

14 Mr. Gebreyohans was not entitled to any further appeal and has not had any
15 hearings since. Exhibit A ¶ 5. He is currently detained at the Otay Mesa Detention
16 Center. *Id.* ¶ 2. He notes,

17 ICE officers came to take my picture about three or four months
18 ago. They asked me if I had a passport, and I explained that the
19 smugglers took it from me in Mexico. I have not heard from them
since about whether I am being sent back to Ethiopia.

20 *Id.* ¶ 7.

21 **B. Ethiopia is often noncooperative in accepting its citizens.**

22 ICE has often deemed Ethiopia “at risk of noncompliance” for refusing to
23 timely accept repatriation of its citizens. Exhibit F at 9–10, 29 (DHS OIG, *ICE*
24 *Faces Barriers in Timely Repatriation of Detained Aliens* (Mar. 11, 2019) (noting
25 that Ethiopia had rendered some of its citizens stateless, and that it was at risk of
26 noncompliance each year between 2017 and 2019)); *see also* Congressional
27 Research Service, “*Recalcitrant Countries and the Use of Visa Sanctions to*
28 *Encourage Cooperation with Alien Removals* (July 10, 2020),

1 <https://www.congress.gov/crs-product/IF11025> (deeming Ethiopia “at risk of non-
2 compliance” in 2020 as well). As a result, there were over 1,700 non-detained
3 Ethiopian citizens with final orders of removal in the United States in 2024.
4 Exhibit E at 2.

5 This is a noted international problem. In 2024, the European Union
6 restricted visa access for Ethiopian nationals due to it. Salma Ben Mariem, *EU*
7 *suspends visa provisions for Ethiopian nationals for insufficient cooperation by*
8 *Ethiopia in readmission process*, Jurist News (Apr. 30, 2024).² The EU explained,
9 “There is a lack of response from the Ethiopian authorities with regard to
10 readmission requests and difficulties persist with the issuance of emergency travel
11 documents and with the organisation of both voluntary and non-voluntary return
12 operations.” Council of EU, Press release: *Ethiopia: Council restricts Visa*
13 *Provision* (Apr. 29, 2024).³

14 **C. As of July 2025, third-country removals can happen with no or**
15 **little notice.**

16 When ICE is unable to deport someone to their home country and so
17 instead identifies an alternate third country of removal to, under controlling Ninth
18 Circuit precedent, the noncitizen must then have notice and be notified of their
19 opportunity to seek relief from removal to that new country. *See Jama v. ICE*, 543
20 U.S. 335, 348 (2005) (“If [non-citizens] would face persecution or other
21 mistreatment in the country designated under § 1231(b)(2), they have a number of
22 available remedies: asylum, § 1158(b)(1); withholding of removal,
23 § 1231(b)(3)(A); [and] relief under an international agreement prohibiting
24 torture.”); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (holding that

25 ² Available at [https://www.jurist.org/news/2024/04/eu-suspends-visa-provisions-
26 for-ethiopian-nationals-for-insufficient-cooperation-by-ethiopia-in-readmission-
27 process/#:~:text=The%20suspension%20is%20a%20response%20to%20the,all%
28 20the%20steps%20of%20the%20readmission%20process.](https://www.jurist.org/news/2024/04/eu-suspends-visa-provisions-for-ethiopian-nationals-for-insufficient-cooperation-by-ethiopia-in-readmission-process/#:~:text=The%20suspension%20is%20a%20response%20to%20the,all%20the%20steps%20of%20the%20readmission%20process.)

³ Available at [https://www.consilium.europa.eu/en/press/press-
releases/2024/04/29/ethiopia-council-restricts-visa-provision/.](https://www.consilium.europa.eu/en/press/press-releases/2024/04/29/ethiopia-council-restricts-visa-provision/)

1 “last minute” designation of alternative country without meaningful opportunity
2 to apply for protection “violate[s] a basic tenet of constitutional due process”).

3 However, this summer, ICE began removing more immigrants it could not
4 previously remove to third countries by circumventing these requirements. It
5 implemented new policies to do so. On July 9, 2025, ICE rescinded previous
6 guidance meant to give immigrants a “‘meaningful opportunity’ to assert claims
7 for protection under the Convention Against Torture before initiating removal to a
8 third country.” Exhibit G (July 9, 2025, ICE third-country removal guidance).

9 Now, ICE may remove any immigrant to a third country without any
10 notice. It may do so if, in the sole view of the State Department, the United States
11 has received “credible” “assurances” from that country that deportees will not be
12 persecuted or tortured. *Id.* at 1. ICE deported approximately twenty people to
13 Equatorial Guinea this week without notifying them that they were being deported
14 there under this provision. Third Country Deportation Watch, *Equatorial Guinea*,
15 Refugees International & Human Rights First (Mar. 11, 2026).⁴

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

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

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27
28 ⁴ Available at <https://www.thirdcountrydeportationwatch.org/equatorial-guinea>.

1 Under this policy, the United States has abruptly deported hundreds of
 2 noncitizens to prisons, military camps, and other forms of detention in Rwanda,
 3 Eswatini, South Sudan, Ghana, Uganda, and Equatorial Guinea. Nokukhanya
 4 Musi & Gerald Imray, *10 more deportees from the US arrive in the African nation*
 5 *of Eswatini*, Associated Press (Oct. 6, 2025)⁵; Frank Chothia, *Eswatini confirms*
 6 *receiving \$5.1m from the US for accepting deportees*, BBC (Nov. 18, 2025);⁶
 7 Elias Biryabarema *et al.*, *Twelve deportees from US arrive in Uganda*, *Law*
 8 *Society says*, Reuters (Apr. 2, 2026).⁷

9 Some are still detained to this day, in countries to which they have never
 10 been, without charge, and without access to lawyers. Gerald Imray, *Court rules in*
 11 *favor of 4 men deported by the US to Africa and denied lawyer meetings for 9*
 12 *months*, Associated Press (Apr. 10, 2026)⁸.

13 Others have been returned to their home countries, even though they had
 14 received orders protecting them against their return under the Convention Against
 15 Torture. See Third Country Deportation Watch, *Ghana*, Refugees International &
 16 Human Rights First (Mar. 11, 2026);⁹ Sheriff Bojang Jr., *Equatorial Guinea sends*
 17 *eight of Trump's nine deportees home, braces for new arrivals*, *The Africa Report*
 18 (Jan. 16, 2026).¹⁰

21
 22 ⁵ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

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

24 ⁷ Available at <https://www.reuters.com/world/africa/twelve-deportees-us-arrive-uganda-law-society-says-2026-04-02/>.

25 ⁸ Available at <https://apnews.com/article/deportees-us-trump-immigration-eswatini-africa-417e6d5c18c0687f6b0747289f4930ee>.

26 ⁹ Available at <https://www.thirdcountrydeportationwatch.org/ghana>.

27 ¹⁰ Available at <https://www.theafricareport.com/405291/equatorial-guinea-sends-eight-of-trumps-nine-deportees-home-braces-for-new-arrivals/>.

1 **III. This Court has jurisdiction.**

2 This Court has jurisdiction to consider Mr. Gebreyohans's claim of
3 unlawful detention and unlawful third-country removal under 28 U.S.C. § 2241
4 while he is in detention at the Otay Mesa Detention Center.

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

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

18 **IV. Claim 1: Mr. Gebreyohans's detention violates *Zadvydas* and 8 U.S.C.**
19 **§ 1231.**

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

24 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
25 a problem affecting people like Mr. Gebreyohans: Federal law requires ICE to
26 detain an immigrant during the "removal period," which typically spans the first
27 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After
28 that 90-day removal period expires, detention becomes discretionary—ICE may
detain the immigrant while continuing to try to remove them. *Id.* § 1231(a)(6).
Ordinarily, this scheme would not lead to excessive detention, as removal

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

13 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to
14 detain an immigrant for six months after his or his removal order becomes final.
15 After those six months have passed, the immigrant must be released unless his or
16 his removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six
17 months have passed, the petitioner must only make a prima facie case for relief—
18 there is “good reason to believe that there is no significant likelihood of removal
19 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the
20 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*¹¹

21 Mr. Gebreyohans can make all the threshold showings needed to shift the
22 burden to the government.

23 **B. Mr. Gebreyohans’s six-month grace period has expired.**

24 The six-month grace period has ended. The *Zadvydas* grace period is linked
25 to the date the final order of removal is issued. It lasts for “six months after a final
26

27 ¹¹ Further, even before the six months have passed, the immigrant must still be
28 released if he rebuts the presumption that his 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 order of removal—that is, three months after the statutory removal period has
2 ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Indeed,
3 the statute defining the beginning of the removal period is linked to the latest of
4 three dates, all of which relevant here are tied to when the removal order becomes
5 final. 8 U.S.C. § 1231(a)(1)(B).¹²

6 Mr. Gebreyohans’s order of removal was entered and became final on May
7 23, 2025. Exhibit D; *see also Riley v. Bondi*, 606 U.S. 259 (2025) (holding that a
8 removal order becomes final regardless of whether credible fear and withholding-
9 only proceedings remain ongoing).

10 Mr. Gebreyohans also went through credible-fear-only proceedings until
11 October 2, 2025, when an immigration judge affirmed the asylum officer’s
12 credible fear denial. Exhibit B.

13 Whether you count from May 23, 2025, or October 2, 2025, it has now
14 been more than six months since Mr. Gebreyohans’s removal order became final.
15 The *Zadvydas* period has thus expired.

16 **C. Mr. Gebreyohans’s experience and ICE’s historical experience**
17 **provide good reason to believe that he will not likely be removed**
18 **in the reasonably foreseeable future.**

19 This Court thus uses a burden-shifting framework to evaluate
20 Mr. Gebreyohans’s *Zadvydas* claim. At the first stage of the framework,
21 Mr. Gebreyohans must “provide[] good reason to believe that there is no
22 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
23 533 U.S. at 701. This standard can be broken down into three parts.

24 **“Good reason to believe.”** The “good reason to believe” standard is a
25 relatively forgiving one. “A petitioner need not establish that there exists no

26 ¹² 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.*

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

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

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

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

If the Court has “no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss.

1 Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y.
2 2019)). Thus, even if this Court concludes that Mr. Gebreyohans “would
3 eventually receive” a travel document, he can still meet his burden by giving good
4 reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL
5 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

6 Mr. Gebreyohans satisfies this standard for two reasons.

7 First, both the United States and the European Union have reported that it
8 is challenging to deport Ethiopians. *See supra* section II(B) at 3–4.

9 Second, ICE has not made progress in removing Mr. Gebreyohans to
10 Ethiopia since his removal order became final in May 2025. *See supra* section
11 I(B) at 2–3.

12 Given that removal to Ethiopia and to third countries is already very
13 challenging, a “lack of effort only reinforces the conclusion that the Petitioner’s
14 removal is not likely to occur in the reasonably foreseeable future.” *Kacanic v.*
15 *Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002);
16 *see also Conchas-Valdez v. Casey*, 25-cv-2469-DMS, Dkt. 9, at 6 (S.D. Cal. Oct.
17 6, 2025) (granting a petition in part because “the Government’s minimal work on
18 [the] case . . . [did] not instill confidence that it will be able to secure [CAT]
19 Petitioner’s removal in the reasonably foreseeable future”).

20 Mr. Gebreyohans has thus shown good reason to believe his removal is not
21 significantly likely in the reasonably foreseeable future. In light of this
22 information, the government cannot rebut this showing, and this Court should
23 grant the petition.

24 **D. The remedy for a *Zadvydas* violation is immediate release on**
25 **conditions set by ICE under § 1231(a)(3).**

26 As noted earlier, *Zadvydas* interpreted 8 U.S.C. § 1231(a)(6), which
27 permits ICE to detain immigrants past the removal period if certain conditions are
28 met. 533 U.S. at 698. Applying the constitutional avoidance canon, the Supreme

1 Court held that immigrants may no longer be held under 8 U.S.C. § 1231(a)(6),
2 but must be released, when removal proves unforeseeable. *Id.* at 700–01.

3 Section 1231(a)(6) dictates what happens next: “An alien ordered removed
4 . . . may be detained beyond the removal period and, if released, shall be subject
5 to the terms of supervision in paragraph (3).” Paragraph (3), in turn, states that
6 “[i]f the alien does not leave or is not removed within the removal period, the
7 alien, pending removal, shall be subject to supervision under regulations
8 prescribed by the Attorney General,” including several conditions that must be
9 imposed. 8 U.S.C. § 1231(a)(3). The Attorney General has, in turn, delegated
10 authority to officials within ICE. *See* 8 C.F.R. § 241.5(a) (delegating to “[t]he
11 Commissioner, Deputy Commissioner, Executive Associate Commissioner Field
12 Operations, regional director, district director, acting district director, deputy
13 district director, assistant district director for investigations, assistant district
14 director for detention and deportation, or officer-in-charge”).

15 Thus, an immigrant released from detention under § 1231(a)(6) as
16 interpreted in *Zadvydas* is subject to conditions set by those delegees within ICE
17 under § 1231(a)(3).

18 **V. Claim 2: ICE must provide adequate notice and an opportunity to be**
19 **heard before removing Mr. Gebreyohans to a third country.**

20 In addition to unlawfully detaining him to deport him to a country that
21 appears to be unwilling to accept him, ICE’s policies threaten Mr. Gebreyohans’s
22 unlikely, but potentially abrupt, removal to an unidentified third country without
23 adequate notice and an opportunity to be heard. These policies violate the Fifth
24 Amendment, the Convention Against Torture, and implementing regulations.

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

27 American law enshrines mandatory protections against dangerous and life-
28 threatening removal decisions through the withholding of removal statute and
implementations of the Convention Against Torture. *See* 8 U.S.C.

1 § 1231(b)(3)(A); 8 C.F.R. §§ 208.16, 1208.16 (withholding); FARRA 2681-822
2 (codified as 8 U.S.C. § 1231 note; 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18,
3 1208.16-1208.18 (CAT).

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

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

22 The government must also “ask the noncitizen whether he or he fears
23 persecution or harm upon removal to the designated country and memorialize in
24 writing the noncitizen’s response. This requirement ensures DHS will obtain the
25 necessary information from the noncitizen to comply with section 1231(b)(3) and
26 avoids [a dispute about what the officer and noncitizen said].” *Id.* “Failing to
27 notify individuals who are subject to deportation that they have the right to apply
28 for asylum in the United States and for withholding of deportation to the country

1 to which they will be deported violates both INS regulations and the constitutional
2 right to due process.” *Andriasian*, 180 F.3d at 1041.

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

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

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

21 The policies in the currently effective July 6, 2025, memo do not adhere to
22 these requirements. The operative memo “contravenes Ninth Circuit law.”
23 *Nguyen*, 796 F. Supp. 3d at 728 (explaining how the July 9, 2025 ICE memo
24 contravenes Ninth Circuit law on the process due to noncitizens in detail); *see*
25 *also Azzo v. Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 3535208, *6–*8 (S.D.
26 Cal. Dec. 10, 2025) (same).

27 Most critically, current policy does not require ICE to notify immigrants
28 that they have a right to apply for withholding of deportation from the new third
country to which they will be deported. *See* Exhibit G (ICE ““will not

1 affirmatively ask whether the alien is afraid of being removed to the country of
2 removal”).

3 This is in direct conflict with controlling Ninth Circuit law. “Failing to
4 notify individuals who are subject to deportation that they have the right to apply
5 . . . for withholding of deportation to the country to which they will be deported
6 violates both INS regulations and the constitutional right to due process,”
7 *Adriasian*, 180 F.3d at 1041.

8 Further, under the Convention Against Torture, Mr. Gebreyohans is entitled
9 to protection from deportation to a country that may subsequently deport him to
10 his home country, known as protection against “chain refoulement.” *See Inter-*
11 *American Commission on Human Rights, IACHR and United Nations Experts:*
12 *States Must Protect the Rights of Persons in Human Mobility* (Sept. 18, 2025);¹³
13 *see also* United Nations Committee Against Torture, *General comment No. 4 on*
14 *the implementation of article 3 of the Convention in the context of article 22*, at
15 section II (12) (Sept. 4, 2028) (“the person at risk [of torture] should never be
16 deported to another State from which the person may subsequently face
17 deportation to a third State in which there are substantial grounds for believing
18 that the person would be in danger of being subjected to torture”).¹⁴

19 Next, under the policy, ICE need not give immigrants *any* notice or *any*
20 opportunity to be heard before removing them to a country that—in the State
21 Department’s estimation—has provided “credible” “assurances” against
22 persecution and torture. Exhibit G. By depriving immigrants of any chance to
23 challenge the State Department’s view, this policy violates “[t]he essence of due
24 process,” “the requirement that a person in jeopardy of serious loss be given
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26
27 ¹³ Available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/190.asp&utm_term=class-dc

28 ¹⁴ Available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf.

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

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

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

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

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

process safeguards.

VI. This Court must hold an evidentiary hearing on any disputed facts.

Resolution of a prolonged-detention habeas petition may require an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).

Mr. Gebreyohans hereby requests such a hearing on any material, disputed facts.

VII. Prayer for relief

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

1. Order and enjoin Respondents to immediately release Petitioner from custody under conditions set by Respondents under 8 U.S.C. § 1231(a)(3);
2. Enjoin Respondents from re-detaining Petitioner without first following all applicable statutory and regulatory procedures;
3. Enjoin Respondents from removing Petitioner unless they provide the following process:
 - a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
 - b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
 - c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
 - d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.

1 4. Order all other relief that the Court deems just and proper.
2

3 Respectfully submitted,
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5 Dated: April 15, 2026

s/ Jessie Agatstein

Federal Defenders of San Diego, Inc.

Attorneys for Mr. Gebreyohans

Email: jessie_agatstein@fd.org
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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: April 15, 2026

s/ Jessie Agatstein
Jessie Agatstein