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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TOFAN AHMADZAI,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Acting Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, JEREMY CASEY, Warden at Imperial Regional Detention Center,

Respondents.

CIVIL CASE NO.: '26CV2641 JAO MSB

Petition for Writ of Habeas Corpus

[28 U.S.C. § 2241]

[1] Mr. Ahmadzai's financial eligibility for appointment of counsel is addressed in the attached declaration.

1 **INTRODUCTION**

2 On November 10, 2025, Tofan Ahmadzai was ordered removed to
3 Afghanistan. Yet almost six months from that order, ICE has proved unable to
4 remove him. That makes sense, because the Taliban-led government of
5 Afghanistan refuses to cooperate with the United States and is likely not "even
6 accepting the return of Afghan nationals from the United States." *Samir v. Wolf*,
7 No. 25-CV-01397, 2026 WL 817240, at *2 (W.D. La. Mar. 2, 2026). Thus,
8 because "there is no significant likelihood of removal in the reasonably
9 foreseeable future," Mr. Ahmadzai's detention is no longer statutorily
10 authorized, and this Court must order his immediate release. *Zadvydas v. Davis*,
11 533 U.S. 678 (2001).

12 Because "there is no significant likelihood of removal in the reasonably
13 foreseeable future," Mr. Ahmadzai must be released. *Zadvydas v. Davis*, 533 U.S.
14 678 (2001). That holds true even though Mr. Ahmadzai has been detained about a
15 two weeks shy of six months. **Many courts have held that *Zadvydas*'s six-**
16 **month presumptively reasonable removal period is "just that—a**
17 **presumption," which can be rebutted with sufficiently compelling evidence.**
18 *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018); *see also Cruz*
19 *Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *7 n.5 (D. Md.
20 Aug. 11, 2025); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D.N.J.
21 2025); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md.
22 Sept. 8, 2025); *Sweid v. Cantu*, No. CV-25-03590-PHX-DWL (CDB), 2025 WL
23 3033655, at *3 (D. Ariz. Oct. 30, 2025); *Puertas Mendoza v. Bondi*, No. SA-25-
24 CA-00890-XR, 2025 WL 3142089, at *2 (W.D. Tex. Oct. 22, 2025); *Jimenez v.*
25 *Cronen*, 317 F. Supp. 3d 626, 641 n.6 (D. Mass. 2018); *Ali v. Dep't of Homeland*
26 *Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020); *Villanueva v. Tate*, No. CV H-
27 25-3364, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025); *Douglas v. Baker*,
28 No. 25-CV-2243-ABA, 2025 WL 2687354, at *3 (D. Md. Sept. 19, 2025); *Jamal*

1 *v. Sessions*, No. 5:18-06015-CV-RK, 2018 WL 1440609, at *2 (W.D. Mo. Mar.
2 22, 2018); *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008). Because
3 Mr. Ahmadzai can prove that he will not be removed in the reasonably
4 foreseeable future, he must be released.

5 Should the Court find that Petitioner has not met the rebuttable
6 presumption, the Court should stay the matter until the six-month period expires,
7 May 10, 2026.[2] At that time, the Court can evaluate then whether the government
8 can meet its burden of establishing significant likelihood of removal in the
9 reasonably foreseeable future.

10 **STATEMENT OF FACTS**

11

12 **I. ICE has made no apparent progress in removing Mr. Ahmadzai to Afghanistan.**

13 Mr. Ahmadzai was born in Afghanistan in 1999. Exhibit A, Ahmadzai
14 Decl. at ¶ 1. Both of his parents were also born in Afghanistan. *Id.* He fled to the
15 United States, entering in June of 2025. *Id.* An immigration judge denied his
16 asylum claim on November 10, 2025. *Id.* at ¶ 3. He did not appeal and does not
17 believe that he reserved his right to do so. *Id.*

18 Since then, ICE has met with only once for about five minutes to discuss
19 his removal to Afghanistan. *Id.* at ¶ 4. Mr. Ahmadzai has seen no indication since
20 then that Afghanistan has accepted him for removal, and ICE has made no claim
21 to that effect. *Id.* at ¶ 4.

22 There is good reason to think that ICE will not be able to secure that
23 acceptance. The country is in turmoil under Taliban rule, which began after the
24 United States withdrawal of troops in 2021. Kim, *Trump administration ends*
25
26
27

28 [2] The Court can also set a status hearing at around the six-month date to see if the government has had success of obtaining travel documents.

1 *temporary protected status for thousands of Afghans*, NPR (Apr. 11, 2025).[3] And
2 the United States does not recognize the Taliban or any other entity as the
3 government of Afghanistan and "reports there are no U.S. or diplomatic or
4 military personnel in the country." *Afghanistan: Background and U.S. Policy in*
5 *Brief*, CONGRESS.GOV (Mar. 10, 2026).[4] The United States embassy in Kabul
6 suspended all operations in 2021 and the Afghan Embassy in Washington D.C.
7 and its consulates in New York and Los Angeles ceased operations in March
8 2022. *Afghanistan*, TRAVEL.STATE.GOV (Apr. 15, 2026)[5]; Lee, *U.S. takes control*
9 *of Afghan embassy, consulates in NY, CA*, ASSOCIATED PRESS (May 17, 2022).[6]
10 Thus, it is unlikely "that Afghanistan is even accepting the return of Afghan
11 nationals from the United States." *Samir*, 2026 WL 817240, at *2.
12
13 **II. The government is carrying out deportations to third countries without providing sufficient notice and opportunity to be heard.**
14 If ICE cannot successfully remove Mr. Ahmadzai to Afghanistan, ICE may
15 attempt to remove him to a third country. If so, he is in grave danger of removal
16 without due process.
17 The Trump administration reportedly has negotiated with at least 58
18 countries to accept deportees from other nations. Edward Wong et al, *Inside the*
19 *Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25,
20 2025. On June 25, 2025, the New York Times reported that seven countries—
21 Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—
22

23 [3] Available at https://www.npr.org/2025/04/11/g-s1-59939/trump-afghanistan-tps-
24 kristi-noem-dhs#:~:text=Trump%20freeze%20on%20resettlement%20funding,York%20Time
25 s%20reported%20on%20Friday.
26 [4] Available at https://www.congress.gov/crs-product/R45122.
27 [5] Available at https://travel.state.gov/en/international-travel/travel-advisories/afghanistan.html.
28 [6] Available at https://apnews.com/article/afghanistan-government-and-politics-united-states-taliban-d27a667b6b8c763eb33cb3a133f5ec45.

had agreed to accept deportees who are not their own citizens. *Id.* Since then, ICE has carried out highly publicized third country deportations to South Sudan and Eswatini.

The Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to South Sudan. *See* Wong, *supra.* On July 15, ICE deported five men to the tiny African nation of Eswatini, including one man from Vietnam, where they are reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human rights abuses or instability. For instance, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first. *See* Wong, *supra.*

On June 23 and July 3, 2025, the Supreme Court issued a stay of a national class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional requirements before removing an individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025

WL 1832186 (U.S. July 3, 2025).[7] On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a "'meaningful opportunity' to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country" like the ones just described. Exhibit B.

Under the new guidance, ICE may remove any immigrant to a third country "without the need for further procedures," as long as—in the view of the State Department—the United States has received "credible" "assurances" from that country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees, ICE may still remove immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours' notice. But "[i]n exigent circumstances," a removal may take place in as little as six hours, "as long as the alien is provided reasonably means and opportunity to speak with an attorney prior to the removal." *Id.*

Upon serving notice, ICE "will not affirmatively ask whether the alien is afraid of being removed to the country of removal." *Id.* (emphasis original). If the noncitizen "does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, [ICE] may proceed with removal to the country identified on the notice." *Id.* at 2. If the noncitizen "does affirmatively state a fear if removed to the country of removal" then ICE will refer the case to U.S. Citizenship and Immigration Services

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[7] Though the Supreme Court's order was unreasoned, the dissent noted that the government had sought a stay based on procedural arguments applicable only to class actions. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025) (Sotomayor, J., dissenting). Thus, "even if the Government [was] correct that classwide relief was impermissible" in *D.V.D.*, Respondents still "remain[] obligated to comply with orders enjoining [their] conduct with respect to individual plaintiffs" like Mr. Ahmadzai. *Id.* Thus, the Supreme Court's decision does not override courts' authority to grant individual injunctive relief. *See Nguyen v. Scott*, No. 25-CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

("USCIS") for a screening for eligibility for withholding of removal and protection under the Convention Against Torture ("CAT"). *Id.* at 2. "USCIS will generally screen within 24 hours." *Id.* If USCIS determines that the noncitizen does not meet the standard, the individual will be removed. *Id.* If USCIS determines that the noncitizen has met the standard, then the policy directs ICE to either move to reopen removal proceedings "for the sole purpose of determining eligibility for [withholding of removal protection] and CAT" or designate another country for removal. *Id.*

CLAIMS FOR RELIEF

This Court should grant this petition and order Mr. Ahmadzai's immediate release, because there is "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The Court should also enjoin his removal to a third country without due process.

I. Count 1: Mr. Ahmadzai's detention violates *Zadvydas* and 8 U.S.C. § 1231.

Mr. Ahmadzai's indefinite detention violates the statute authorizing detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Ahmadzai. Federal law requires ICE to detain an immigrant during the "removal period," which typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation agreement," or their countries "refuse to take

them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives.

If federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

As an initial matter, *Zadvydas* held that detention is "presumptively reasonable" for at least six months. *Id.* at 701. This acts as a kind of grace period for effectuating removals.

Following the six-month grace period, courts must use a burden-shifting framework to decide whether detention remains authorized. First, the petitioner must make a prima facie case for relief: He must prove that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

If he does so, the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.* Ultimately, then, the burden of proof rests with the government: The government must prove that there is a "significant likelihood of removal in the reasonably foreseeable future," or the immigrant must be released. *Id.*

II. Courts across the country agree that the six-month presumption is rebuttable.

Mr. Ahmadzai is only about 14 days shy of being detained for six months post final order of removal. But as *Zadvydas* makes clear, detention is only "*presumptively* reasonable" for six months. 533 U.S. at 701 (emphasis added). Numerous courts have concluded that the six-month presumption is "just that, a presumption, one that can be rebutted upon a showing that removal is *not*

reasonably foreseeable." *Cruz Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *7 n.5 (D. Md. Aug. 11, 2025); *accord Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D.N.J. 2025); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020); *Sweid v. Cantu*, No. CV-25-03590-PHX-DWL (CDB), 2025 WL 3033655, at *3 (D. Ariz. Oct. 30, 2025); *Puertas Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *2 (W.D. Tex. Oct. 22, 2025); *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 n.6 (D. Mass. 2018); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020); *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025); *Douglas v. Baker*, No. 25-CV-2243-ABA, 2025 WL 2687354, at *3 (D. Md. Sept. 19, 2025); *Jamal v. Sessions*, No. 5:18-06015-CV-RK, 2018 WL 1440609, at *2 (W.D. Mo. Mar. 22, 2018). "A close reading of *Zadvydas*" refutes any attempt to turn that presumption into a bright-line rule. *Cesar*, 542 F. Supp. 2d at 902.

Prohibiting all detention challenges before the six-month mark would go against *Zadvydas*'s most fundamental holding: that "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Zadvydas*, 533 U.S. at 699–700. "The fundamental principle in *Zadvydas* . . . is that where removal is not reasonably foreseeable, detention is unconstitutional." *Cesar*, 542 F. Supp. 2d at 902. "*Zadvydas* unequivocally held that 'once removal is no longer reasonably foreseeable, continued detention is no longer authorized.'" *Puerta Mendoza*, 2025 WL 3142089, at *2. It follows that "[i]f there comes a point during the six-month period at which it is 'no longer reasonably foreseeable' that a person will actually be removed, then detention 'is no longer authorized,'" and the petitioner must be released. *Cruz Medina*, 2025 WL 2306274, at *6 (quoting *Zadvydas*, 533 U.S. at 699–700). To hold otherwise would be to render *Zadvydas* "internally inconsistent." *Zavvar*, 2025 WL 2592543, at *5.

1 *Zadvydas* did not back away from that fundamental principle when
2 describing the six-month presumption. "At no point did the *Zadvydas* Court
3 preclude a noncitizen from challenging their detention before the end of the
4 presumptively reasonable six-month period." *Trinh*, 466 F. Supp. 3d at 1092. To
5 the contrary, the Court said that it was "adopting a *presumption* of reasonableness
6 before the six-month period expires. A presumption is just that: a default, a
7 starting point." *Cruz Medina*, 2025 WL 2306274, at *5. "The *Zadvydas* Court did
8 not say that the presumption is irrebuttable, and there is nothing inherent in the
9 operation of the presumption itself that requires it to be irrebuttable." *Cesar*, 542
10 F. Supp. 2d at 903; *accord Sweid*, 2025 WL 3033655, at *3 ("*Zadvydas* did not
11 hold that this presumption is conclusive in all cases and under all sets of facts.").
12 Furthermore, when introducing the six-month presumption, the Court
13 "noted that such presumptions are intended to 'guide lower court
14 determinations.'" *Zavvar*, 2025 WL 2592543, at *5. A "guide" is "not a
15 categorical prohibition on claims challenging detention less than six months."
16 *Trinh*, 466 F. Supp. 3d at 1093.
17 Finally, *Zadvydas* analogized to the "similar" rule in *County of Riverside v.*
18 *McLaughlin,* 500 U.S. 44, 56–58 (1991), in which the Court "adopt[ed] [a]
19 presumption, based on lower court estimate of time needed to process arrestee,
20 that 48–hour delay in probable-cause hearing after arrest is reasonable, hence
21 constitutionally permissible." *Zadvydas*, 533 U.S. at 701 (describing *Riverside*).
22 *Riverside*'s 48-hour rule "is a rebuttable presumption." *Cesar*, 542 F. Supp. 2d at
23 904. It stands to reason that "the *Zadvydas* presumption, like the *Riverside*
24 presumption, is rebuttable." *Munoz-Saucedo*, 789 F. Supp. 3d at 397.
25 In short, then, "[t]he presumption of reasonableness is the default, but if a
26 person 'can prove' that his removal is not reasonably foreseeable, then he can
27 overcome that presumption." *Munoz-Saucedo*, 789 F. Supp. 3d at 397 (quoting
28 *Riverside*, 500 U.S. at 56).

III. There is no significant likelihood of removal in the reasonably foreseeable future to Afghanistan.

Because Mr. Ahmadzai must rebut the six-month presumption, he bears the burden to show that "there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

First, removals to Afghanistan are difficult. Afghanistan refuses to cooperate with the United States and is likely not "even accepting the return of Afghan nationals from the United States." *Samir v. Wolf*, No. 25-CV-01397, 2026 WL 817240, at *2 (W.D. La. Mar. 2, 2026). Other courts have recognized the difficulty of removing people to Afghanistan. *Jalili v. Semaia*, No. 5:26-CV-01703-MBK, 2026 WL 1084739, at *3 (C.D. Cal. Apr. 16, 2026); *Rahimi v. Semaia*, No. ED CV 26-00116-DMG (RAO), 2026 WL 246066, at *3 (C.D. Cal. Jan. 27, 2026) (noting government concession that it did not have any opposition argument to Petitioner's claims of likelihood of removal to Afghanistan).

Second, in this case, ICE does not appear to have made any progress in removing Mr. Ahmadzai in almost six months since he was ordered removed. The governing statute provides that ICE "shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). Yet in the almost six months since he was ordered removed, it is unclear whether Afghanistan has even received a request for travel documents. Exh. A at ¶ 4. And at the time of the declaration, Mr. Ahmadzai did not know whether ICE had made any progress. *Id.* "[I]f [a] plaintiff c[an] show . . . that the government [is] not taking steps to effectuate his removal, then . . . removal likely would not be reasonably foreseeable, and detention would therefore be unconstitutional." *Cesar v. Achim*, 542 F. Supp. 2d 897, 905 (E.D. Wis. 2008). Even if ICE were making efforts behind the scenes, so far, it appears that none have borne fruit.

That matters, because even when Mr. Ahmadzai bears the burden, the *Zadvydas* standard remains the same: He must show that removal is not

significantly likely in the reasonably foreseeable future. See Cesar, 542 F. Supp. 2d at 903. And *Zadvydas* itself made clear that good faith efforts do not themselves show that removal is significantly likely. The petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." Id.

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Here, then, it is possible that ICE is making "travel document requests," *Gilali v. Warden of McHenry Cnty. Jail*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019)—though no evidence of that has filtered through to Mr. Ahmadzai. But mere efforts would be "insufficient" to defeat Mr. Ahmadzai's showing that removal is not likely. Id. That would be "merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Id.*; see also *Zavvar*, 2025 WL 2592543, at *7 (finding the presumption rebutted, despite outstanding third-country requests to Australia and Romania, because of "[t]he lack of any sign that Australia or Romania is actively considering accepting [the petitioner]").

1 Third, even if ICE could eventually remove Mr. Ahmadzai to Afghanistan,
2 there is no reason to think that that will happen in the reasonably foreseeable
3 future.
4 For all of these reasons, Mr. Afghanistan has rebutted the presumption, and
5 he must be released.

6 **IV. Count 2: ICE may not remove Mr. Ahmadzai to a third country without**
7 **adequate notice and an opportunity to be heard.**

8 If ICE does not succeed in removing Mr. Ahmadzai to Afghanistan, ICE may
9 attempt to remove him to a third country. It would do so under a policy that violates
10 the Fifth Amendment, the Convention Against Torture, and implementing
11 regulations.

12 **A. Legal background**

13 U.S. law enshrines protections against dangerous and life-threatening
14 removal decisions. By statute, the government is prohibited from removing an
15 immigrant to any third country where they may be persecuted or tortured, a form
16 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The
17 government "may not remove [a noncitizen] to a country if the Attorney General
18 decides that the [noncitizen's] life or freedom would be threatened in that country
19 because of the [noncitizen's] race, religion, nationality, membership in a particular
20 social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16.
21 Withholding of removal is a mandatory protection.
22 Similarly, Congress codified protections enshrined in the CAT prohibiting
23 the government from removing a person to a country where they would be tortured.
24 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of
25 the United States not to expel, extradite, or otherwise effect the involuntary return
26 of any person to a country in which there are substantial grounds for believing the
27 person would be in danger of being subjected to torture, regardless of whether the
28 person is physically present in the United States."); 28 C.F.R. § 200.1; *id.*

1 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

2 To comport with the requirements of due process, the government must
3 provide notice of the third country removal and an opportunity to respond. Due
4 process requires "written notice of the country being designated" and "the statutory
5 basis for the designation, i.e., the applicable subsection of § 1231(b)(2)." *Aden v.*
6 *Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S.*
7 *Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D.
8 Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

9 The government must also "ask the noncitizen whether he or she fears
10 persecution or harm upon removal to the designated country and memorialize in
11 writing the noncitizen's response. This requirement ensures DHS will obtain the
12 necessary information from the noncitizen to comply with section 1231(b)(3) and
13 avoids [a dispute about what was said]." *Aden*, 409 F. Supp. 3d at 1019. "Failing to
14 notify individuals who are subject to deportation that they have the right to apply
15 for asylum in the United States and for withholding of deportation to the country to
16 which they will be deported violates both INS regulations and the constitutional
17 right to due process." *Andriasian*, 180 F.3d at 1041.

18 If the noncitizen claims fear, measures must be taken to ensure that the
19 noncitizen can seek asylum, withholding, and relief under CAT before an
20 immigration judge in reopened removal proceedings. The amount and type of
21 notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and
22 circumstances, he would have a reasonable opportunity to raise and pursue his
23 claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009
24 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
25 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the
26 government to move to reopen the noncitizen's immigration proceedings if the
27 individual demonstrates "reasonable fear" and to provide "a meaningful
28 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening

of their immigration proceedings" if the noncitizen is found to not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

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

B. The June 6, 2025, memo's removal policies violate the Fifth Amendment, 8 U.S.C. § 1231, the Conviction Against Torture, and Implementing Regulations.

The policies in the June 6, 2025, memo do not adhere to these requirements. First, under the policy, ICE need not give immigrants *any* notice or hearing before removing them to a country that—in the State Department's estimation—has provided "credible" "assurances" against persecution and torture. Exhibit B. By depriving immigrants of any chance to challenge the State Department's view, this policy violates "[t]he essence of due process," "the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

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

scheduled for removal there. Yet if given the opportunity to investigate conditions, immigrants would find credible reasons to fear persecution or torture—like patterns of keeping deportees indefinitely and without charge in solitary confinement or extreme instability raising a high likelihood of death—in many of the third countries that have agreed to removal thus far. Due process requires an adequate chance to identify and raise these threats to health and life. This Court must prohibit the government from removing Mr. Ahmadzai without these due process safeguards.

V. 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. Ahmadzai hereby requests such a hearing on any material, disputed facts.

VI. Prayer for relief

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

1. Order Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from removing Petitioner to any country other than Afghanistan unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
    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;

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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.

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

Respectfully submitted,

Dated: April 26, 2026

s/ Zandra L. Lopez

Zandra L. Lopez
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Attorneys for Petitioner

Exhibit A

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Attorneys for Mr. Tofan Ahmadzai

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TOFAN AHMADZAI,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Acting Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, JEREMY CASEY, Warden at Imperial Regional Detention Center,

Respondents.

Civil Case No.:

Declaration of Tofan Ahmadzai

I, Tofan Ahmadzai, declare:

1. I was born in Afghanistan. My parents were also born in Afghanistan. My A# is

2. I came to the United States in June of 2025. I requested asylum and I have been detained at the Imperial Detention center ever since then.

3. On November 10, 2025, an immigration judge denied my asylum and ordered me removed. I do not believe that I reserved my right to appeal. I did not have an attorney representing me at the hearing.

4. An ICE agent spoke to me only once after the order of removal and it was about five minutes. ICE has not talked to me about travel documents to Afghanistan or any other country.

5. I am suffering from depression. I have shortness of breath. There is no one here to treat my dental issues. It is so hard for me because I have not had any contact with my family. I have not talked to my parents in so my parents. It is so overwhelming.

6. I do not have money to pay for an attorney. I have been detained for about nine months without any income. I do not even have one dollar. I could not even call out to get an attorney for the immigration case.

7. Each line of this declaration has been read to me by a Pashto interpreter. I understand and agree with the statements contained herein.

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I, Zandra Lopez, declare under penalty of perjury that I read every line of this declaration to TOFAN AHMADZAI, with the assistance of a Pashto interpreter, and he confirmed that it was true and correct.

Date: April 14, 2026 Signed: */s/ Zandra Lopez*

Exhibit B