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

ARASH EIDI,

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.

Case No.: 26-cv-2662-BTM-DDL

**Amended Petition for Writ
of Habeas Corpus**

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

¹ Mr. Eidi's financial eligibility for representation is included in a sworn statement attached to this petition.

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I. Introduction

Arash Eidi came to the United States border from Iran in January 2025. He has been detained since. He was ordered removed to Iran on November 13, 2025, but has not been removed. That the United States and Iran were unable to coordinate his removal for months in a time of peace does not bode well in the current moment, in which the two countries have more important diplomatic problems. *See* Benoit Faucon et al., *Iran, U.S. Working on Talks to End Fighting*, W.S.J. (May 6, 2026) (“Trump says Tehran agrees not to have nuclear weapon, but threatens new strike”).²

This amended habeas petition raises the following two claims:

(1) *Zadvydas* violations: Mr. Eidi must be released under *Zadvydas* because—having proved unable to remove him over the last six months, including over five months since his order became administratively final, and during the middle of a war—there is not a “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). *See, e.g., Bunnell v. Noem*, No. 25-cv-2259-GMN-EJY, 2025 WL 3707588 (D. Nev. Dec. 22, 2025); *Asfetani v. Current or Acting Field Office*, No. 25-cv-1562-SCR, 2025 WL 3677321 (E.D. Cal. Dec. 18, 2025); *Ghadesi v. Wamsley*, No. 25-cv-1984-RSM-BAT, 2025 WL 3699705 (W.D. Wash. Dec. 1, 2025), *report and recommendation adopted in Ghadesi v. Wamsley*, 2025 WL 3697208 (Dec. 19, 2025) (each granting habeas petitions or preliminary injunctions ordering release under *Zadvydas* as to detained noncitizens ordered removed to Iran, even before the war began and stopped all deportation flights). “[I]t is unlikely that anyone will be removed to a country deemed ‘uncooperative,’ with which the United States has no diplomatic relations and is currently at war.” *Minassi v. Noem*, No.

² Available at <https://apnews.com/live/iran-war-israel-trump-04-21-2026> (as updated as of 1:37 PM PDT on April 21, 2026).

26-cv-726-RGK-AYP, 2026 WL 923289, *5 (C.D. Cal. Apr. 1, 2026) (granting *Zadvydas* petition as to Iranian national).

(2) **Third-country removal due process violations.** Because it is unable to deport him to Iran, if ICE follows through with an officer's threat to deport Mr. Eidi "to a third country like a country in Africa," Exhibit A ¶ 6, ICE's nationwide policy is to not provide Mr. Eidi with due process. ICE's current third-country removal policy is to *not* inform immigrants of their right to seek protection under the Convention Against Torture or withholding of removal statutes. It instead allows for last-minute designation of a third country an immigration judge has never considered. *See* Exhibit E. It therefore "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. Eidi to a third country.

II. Statement of Facts

A. Mr. Eidi comes to the United States from Iran in January 2025, is ordered removed in November 2025, and remains detained.

Arash Eidi is from Iran. Exhibit A, Declaration of Arash Eidi, ¶ 4. He came to the border on January 2025 and has been detained since. *Id.* ¶ 2. On November 13, 2025, he was ordered removed to Iran. *Id.* ¶ 3. He did not appeal. Exhibit B. Mr. Eidi has remained detained at the Imperial Regional Detention Center. Exhibit A ¶ 3.

Mr. Eidi has been largely left in the dark about what is going on. He explains:

Since November, ICE officers have met with me several times. They take my photo and have me sign some forms.

In the middle or the end of this February, an ICE officer told me that they were not able to get my travel identification to Iran, so they would now try to deport me to a third country like a country in

1 Africa. At that time, the officer brought me a piece of paper asking
2 me to agree to be deported to a third country, as far as I understood.

3 Every month since, ICE has brought me a paper to sign and I sign it.
4 They do not give me any updates about when I will be deported or to
where.

5 Exhibit A ¶¶ 5–7.

6 **B. It is extremely challenging for the United States to deport people**
7 **to Iran even when it is not in the midst of a war.**

8 The United States has not had normalized relations with Iran since the
9 Islamic Revolution of 1979. *See generally* Council on Foreign Relations, *1953–*
10 *2025: U.S. Relations With Iran*.³

11 As President Trump found last year when banning the entry of Iranian
12 nationals into the United States, Iran “has historically failed to accept back its
13 removable nationals.” Presidential Proclamation, *Restricting the Entry of Foreign*
14 *Nationals to Protect the United States from Foreign Terrorists and Other*
15 *National Security and Public Safety Threats*, June 4, 2025⁴; accord Presidential
16 Proclamation, *Restricting and Limiting the Entry of Foreign Nationals to Protect*
17 *the Security of the United States*, Dec. 16, 2025.⁵

18 Iran has long been among the top fifteen most uncooperative countries the
19 United States faces when seeking to repatriate immigrants it has ordered deported,
20 alongside other countries like Cuba. *See* Exhibit C at 30 (Office of Inspector
21 General, Department of Homeland Security, *ICE Faces Barriers in Timely*
22 *Repatriation of Detained Aliens*, March 11, 2019); Exhibit D at 3, 7

23 _____
24 ³ Available at <https://www.cfr.org/timeline/us-relations-iran-1953-2025>.

25 ⁴ Available at [https://www.whitehouse.gov/presidential-](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)
26 [actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-](https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/)
states-from-foreign-terrorists-and-other-national-security-and-public-safety-
threats/.

27 ⁵ Available at [https://www.whitehouse.gov/presidential-](https://www.whitehouse.gov/presidential-actions/2025/12/restricting-and-limiting-the-entry-of-foreign-nationals-to-protect-the-security-of-the-united-states/)
28 [actions/2025/12/restricting-and-limiting-the-entry-of-foreign-nationals-to-protect-](https://www.whitehouse.gov/presidential-actions/2025/12/restricting-and-limiting-the-entry-of-foreign-nationals-to-protect-the-security-of-the-united-states/)
the-security-of-the-united-states/.

(Memorandum from ICE ERO, November 2024). In November 2024, there were over 2,600 Iranians with final orders of removal who could not be deported within the United States. Exhibit D at 3.

Iran is also currently in the midst of a war with the United States. The countries are in the middle of a ceasefire. *See Ben Finley et al., Trump administration sows confusion as it tries to reopen Strait of Hormuz*, Associated Press (May 6, 2026).⁶ “Whether the temporary ceasefire will lease to a lasting peace settlement remains to be seen.” Council on Foreign Relations, *The U.S. and Iran struck a Two-Week Truce. Now What?* (Apr. 8, 2026).⁷

C. Third-country removals for noncitizens granted withholding of removal are rare, but as of July 2025, third-country removals can happen with no or little notice and result in noncitizens’ return to their countries of origin.

While it is statutorily allowable to remove an individual to a country other than their home country—a “third country”—the removal statute specifies restrictive criteria for identifying appropriate countries. *See* 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f). Further, “foreign governments ‘routinely deny’ requests to receive people who lack a connection to the would-be receiving country.” *Puertas-Mendoza*, 2025 WL 3142089 at *3. “The reason so few people are deported to third countries is because,” while “customary international law holds that a country has a duty to accept the return of its nationals,” usually, “countries have no incentive to accept non-citizens.” American Immigration Council & National Immigrant Justice Center, *The Difference Between Asylum and Withholding of Removal* (Oct. 2020).⁸

⁶ Available at <https://apnews.com/article/trump-iran-war-confusion-messaging-contradiction-20471bb90ad7abd6381a761ffeb8e96>.

⁷ Available at <https://www.cfr.org/articles/the-u-s-and-iran-struck-a-two-week-truce-now-what>.

⁸ Available at https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf.

1 If ICE identifies an appropriate third country of removal, the noncitizen
2 must then have notice and an opportunity to seek relief from removal to that new
3 country. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) (“If [non-citizens] would
4 face persecution or other mistreatment in the country designated under
5 § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1);
6 withholding of removal, § 1231(b)(3)(A); [and] relief under an international
7 agreement prohibiting torture.”). Under existing Ninth Circuit law, “last minute”
8 designation of alternative country without meaningful opportunity to apply for
9 protection “violate[s] a basic tenet of constitutional due process.” *Andriasian v.*
10 *INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

11 That said, this summer, ICE began removing more immigrants it could not
12 previously remove to third countries, which have often removed those people
13 back to their countries of origin. ICE implemented new nationwide policies to do
14 so. On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a
15 “‘meaningful opportunity’ to assert claims for protection under the Convention
16 Against Torture before initiating removal to a third country.” Exhibit E (July 9,
17 2025, ICE third-country removal guidance).

18 Now, ICE may remove an immigrant to a third country without any notice.
19 It may do so if, in the sole view of the State Department, the United States has
20 received “credible” “assurances” from that country that deportees will not be
21 persecuted or tortured. *Id.* at 1. ICE deported approximately twenty people who
22 had been granted withholding of removal or CAT protection to Equatorial Guinea
23 in January without notifying them that they were being deported there under this
24 provision. Third Country Deportation Watch, *Equatorial Guinea*, Refugees
25 International & Human Rights First (Mar. 11, 2026).⁹

26
27
28 ⁹ Available at <https://www.thirdcountrydeportationwatch.org/equatorial-guinea>.

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

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

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

13 Under this policy, the United States has deported dozens of noncitizens to
14 prisons and military camps in Rwanda, Eswatini, South Sudan, Ghana, and
15 Equatorial Guinea. Those who have not been returned to their home countries are
16 still detained, in countries to which they have never been, without charge. *See*
17 Eduardo Cuevas & Jennifer Borresen, *How Trump's DHS deports people to*
18 *prisons in countries they don't know*, USA Today (Apr. 29, 2026)¹⁰; Nokukhanya
19 Musi & Gerald Imray, *10 more deportees from the US arrive in the African nation*
20 *of Eswatini*, Associated Press (Oct. 6, 2025)¹¹; Nick Alexandra, *The Toll of*
21 *Trump's African Deportation Agreements*, New Lines Magazine (Dec. 10,
22 2025).¹² Others have been returned to their home countries, even though they had
23 received orders protecting them against their return under the Convention Against
24

25 ¹⁰ Available at <https://www.usatoday.com/story/news/nation/2026/04/29/trump-third-country-removal-eswatini-dhs/89609025007/>.

26 ¹¹ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

27 ¹² Available at <https://newlinesmag.com/reportage/the-toll-of-trumps-african-deportation-agreements/>.

1 Torture. *See* Third Country Deportation Watch, *Ghana*, Refugees International &
2 Human Rights First (Mar. 2026);¹³ Sheriff Bojang Jr., *Equatorial Guinea sends*
3 *eight of Trump's nine deportees home, braces for new arrivals*, The Africa Report
4 (Jan. 16, 2026).¹⁴

5 **III. This Court has jurisdiction.**

6 This Court has jurisdiction to consider Mr. Eidi's claims of unlawful
7 detention under 28 U.S.C. § 2241.

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

16 This Court also has jurisdiction to consider the procedures to which
17 Mr. Eidi is entitled in removal proceedings. *See A.A.R.P. v. Trump*, 605 U.S. 91,
18 94–95 (2025) (confirming jurisdiction to consider due process claims in habeas
19 proceedings for noncitizens threatened with Alien Enemies Act deportations).

20 **IV. Claim 1: Mr. Eidi's detention violates *Zadvydas*.**

21 **A. The statute renders detention mandatory for 90 days after**
22 **removal and allowable after six months after removal only if**
23 **there is a significant 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. Eidi: Federal law requires ICE to detain an
26

27 ¹³ Available at <https://www.thirdcountrydeportationwatch.org/ghana>.

28 ¹⁴ Available at <https://www.theafricareport.com/405291/equatorial-guinea-sends-eight-of-trumps-nine-deportees-home-braces-for-new-arrivals/>.

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

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

26 Further, even before the six months have passed, the immigrant must still
27 be released if he rebuts the presumption that his detention is reasonable. “The six-
28 month benchmark is a ‘presumptively reasonable period of detention’ adopted

1 ‘for the sake of uniform administration,’ not a rigid prerequisite.” *Minassi*, 2026
2 WL 923289 at *3–*4 (C.D. Cal. Apr. 1, 2026) (granting *Zadvydas* petition as to
3 Iranian national detained for less than six months in light of the war). “[T]he six-
4 month period is a presumption that can be rebutted.” *Huan v. Noem*, No. 26-cv-
5 512-JLS, 2026 WL 412609, at *2 (S.D. Cal. Feb. 13, 2026) (granting *Zadvydas*
6 petition as to Chinese national detained for five months); *see also Trinh v.*
7 *Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases on
8 rebutting the *Zadvydas* presumption before six months).

9 Mr. Eidi can make all the threshold showings needed to shift the burden to
10 the government, or in the alternative, rebut the presumption and prove outright
11 that his removal is not significantly likely in the reasonably foreseeable future.

12 **B. Mr. Eidi has been detained for six months since his removal**
13 **order issued and for five months since it became final.**

14 The *Zadvydas* rebuttable-presumption period lasts for “six months after a
15 final order of removal—that is, three months after the statutory removal period
16 has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001).

17 Mr. Eidi’s removal order was issued on November 13, 2025. *See* Exhibit B.
18 He did not appeal, and assuming that he did not waive appeal at his initial
19 hearing, his order then became final 30 days later on December 13, 2025, starting
20 the clock on his removal period. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R.
21 § 1241.1(c). His *Zadvydas* six months thus end on June 13, 2026.

22 **C. Mr. Eidi is not likely be removed in the reasonably foreseeable**
23 **future.**

24 Regardless of whether this Court uses a burden-shifting framework to
25 evaluate Mr. Eidi’s *Zadvydas* claim, or whether the burden remains with Mr. Eidi,
26 this Court should grant this petition under the *Zadvydas* standard. This standard
27 can be broken down into two parts relevant here.

28 **“Significant likelihood of removal.”** This component focuses on whether
Mr. Eidi will likely be removed: Continued detention is permissible only if it is

1 “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533 U.S.
2 at 701. This inquiry targets “not only the *existence* of untapped possibilities, but
3 also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.
4 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,
5 even if “there remains *some* possibility of removal,” a petitioner can still meet its
6 burden if there is good reason to believe that successful removal is not
7 significantly likely. *Kacanik v. Elwood*, No. CIV.A. 02-8019, 2002 WL
8 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

9 **“In the reasonably foreseeable future.”** This component of the test
10 focuses on when Mr. Eidi will likely be removed: Continued detention is
11 permissible only if removal is likely to happen “in the reasonably foreseeable
12 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
13 removal efforts. If the Court has “no idea of when it might reasonably expect
14 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
15 is likely to occur—or even that it might occur—in the reasonably foreseeable
16 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
17 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
18 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
19 93, 102 (W.D.N.Y. 2019)).

20 Even if this Court concludes that Mr. Eidi “would *eventually* receive” a
21 travel document, he can still meet his burden by giving good reason to anticipate
22 sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D.
23 Mich. Nov. 14, 2016).

24 Mr. Eidi certainly satisfies this standard. “[I]t is unlikely that anyone will
25 be removed to a country deemed ‘uncooperative,’ with which the United States
26 has no diplomatic relations and is currently at war.” *Minassi*, 2026 WL 923289 at
27 *5 (granting *Zadvydas* petition as to Iranian national). President Trump concluded
28 last year that Iran “has historically failed to accept back its removable nationals.”

1 Presidential Proclamation, June 4, 2025, *supra* page 3 n.4. In late 2024, ICE
2 identified over 2,600 Iranian citizens with final orders of removal who it could not
3 remove to Iran. Exhibit D at 3. It explained that the reason so many are not
4 deportable is in part because Iran is one of fifteen countries ICE “considers . . . to
5 be uncooperative” with repatriation of its citizens. *Id.* at 7.

6 Mr. Eidi is thus similarly situated to the Iranian nationals ordered released
7 under *Zadvydas* in recent months. *See, e.g., Anjomshoa v. Oldham County Jail*,
8 No., 2026 WL 1034403, *3 (W.D. Ky. Apr. 16, 2026) (explaining that the Iranian
9 petitioner had “good reason to believe that there is no significant likelihood that
10 any detainee—let alone Petitioner specifically—will be removed to a country
11 deemed ‘uncooperative’ with which the United States has no diplomatic relations
12 and is currently engaged in a military conflict,” which was not rebutted by the fact
13 that Iran had accepted some deportees before the conflict); *Kazemzadeh v. United*
14 *States*, No. 25-cv-1941-JAD-NJK, 2026 WL 905755 (D. Nev. Apr. 1, 2026)
15 (granting habeas petition and explaining that “[t]he fact that Iran has accepted
16 some deportations does not show that it will continue to do so”).

17 Unless the government can prove a “significant likelihood of removal in the
18 reasonably foreseeable future,” Mr. Eidi must be released. *Zadvydas*, 533 U.S. at
19 701.

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

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

27 Section 1231(a)(6) dictates what happens next: “An alien ordered removed
28 . . . if released, shall be subject to the terms of supervision in paragraph (3).”

Paragraph (3) states that “[i]f the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General,” including several conditions that must be imposed. 8 U.S.C. § 1231(a)(3). The Attorney General has delegated authority to officials within ICE. *See* 8 C.F.R. § 241.5(a).

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

V. Claim 3: ICE must provide adequate notice and an opportunity to be heard before removing Mr. Eidi to a third country.

In addition to unlawfully detaining him, ICE’s nationwide policies threaten Mr. Eidi’s unlikely, but potentially abrupt, removal to an unidentified third country without adequate notice and an opportunity to be heard, should it decide to pivot from seeking his removal to Iran. These policies violate the Fifth Amendment, the Convention Against Torture, and implementing regulations. *See Azzo v. Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 3535208, *6–*8 (S.D. Cal. Dec. 10, 2025) (explaining why in detail as to a habeas petition).

A. 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.”

1 *Aden*, 409 F. Supp. 3d at 1006. If the noncitizen does not designate a country, or
2 that country does not accept them, then “the IJ may at step two designate a
3 country of which the noncitizen is a subject, national, or citizen.” *Id.* at 1007. If
4 “no country satisfies” that requirement, the step three allows designation and
5 removal to a number of other countries. 8 U.S.C. § 1231(b)(2)(E). The
6 government can proceed to the fourth stage—removal to “another country”—only
7 if it determines it is “impracticable, inadvisable, or impossible to remove the alien
8 to each country described” in the third stage. 8 U.S.C. § 1231(b)(2)(E)(vii).

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

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

23 If the noncitizen claims fear, measures must be taken to ensure that the
24 noncitizen can seek asylum, withholding, and relief under CAT before an
25 immigration judge in reopened removal proceedings. The amount and type of
26 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
27 circumstances, he would have a reasonable opportunity to raise and pursue his
28 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009

(citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)).

“[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). 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 to the relevant agencies: first, the asylum officer within USCIS, and, if that fails, the immigration judge. Telling a person where they may be sent, without giving them a chance to look into country conditions and the possibility they may be deported to yet another country, does not give them a meaningful chance to determine whether and why they have a credible fear.

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

The policies in the currently effective July 6, 2025, memo do not adhere to these requirements. The operative memo “contravenes Ninth Circuit law.” *Nguyen*, 796 F. Supp. 3d at 728 (explaining how the July 9, 2025 ICE memo contravenes Ninth Circuit law on the process due to noncitizens in detail); see also *Azzo v. Noem*, 2025 WL 3535208 at *6–*8 (same).

Most critically, current policy does not require ICE to notify immigrants that they have a right to apply for withholding of deportation from the new third country to which they will be deported. Exhibit E (ICE ““will not affirmatively ask whether the alien is afraid of being removed to the country of removal”).

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

1 Next, under the policy, ICE need not give immigrants *any* notice or *any*
2 opportunity to be heard before removing them to a country that—in the State
3 Department’s estimation—has provided “credible” “assurances” against
4 persecution and torture. Exhibit E. By depriving immigrants of any chance to
5 challenge the State Department’s view, this policy violates “[t]he essence of due
6 process,” “the requirement that a person in jeopardy of serious loss be given
7 notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*,
8 424 U.S. 319, 348 (1976) (cleaned up).

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

17 If given the opportunity to investigate conditions, immigrants may find
18 credible reasons to fear persecution or torture—like keeping deportees indefinitely
19 and without charge in solitary confinement, or extreme instability raising a high
20 likelihood of death—in many of the third countries that have agreed to removal of
21 thus far.

22 Immigrants may also have ample reason to challenge DHS’s determination
23 under § 1231(b)(2)(E)(vii) that each other country with which the immigrant has
24 connections is “impracticable, inadvisable, or impossible to remove the alien to.”
25 DHS must consider whether to remove him there before proceeding to the final
26 step of the third-country removal statute. *See Hadera*, 494 F.3d at 1156–59
27 (explaining this process).
28

Due process requires an adequate chance to identify and raise these threats to health and life. Because “[f]ailing to notify individuals who are subject to deportation that they have the right to apply . . . for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process,” *Adriasian*, 180 F.3d at 1041, this Court must prohibit the government from removing Mr. Eidi 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. Eidi 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;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless Respondents obtain a travel document for his removal or Petitioner violates a condition of release;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Enjoin Respondents from removing Petitioner to a country other than Iran 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;

- 1 c. if Petitioner is found to have demonstrated “reasonable fear”
2 of removal to the country, Respondents must move to reopen
3 Petitioner’s immigration proceedings; and
4 d. if Petitioner is not found to have demonstrated a “reasonable
5 fear” of removal to the country, a meaningful opportunity, and
6 a minimum of fifteen days, for the Petitioner to seek reopening
7 of his immigration proceedings; and

8 5. Order all other relief that the Court deems just and proper.
9

10 Respectfully submitted,
11

12 Dated: May 7, 2026

s/ Jessie Agatstein

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