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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YANDY ERNESTO MACHIN-ROSAL,

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, CHRISTOPHER LAROSE,
Warden at Otay Mesa Detention Center

Respondent.

CASE NO.: 26-cv-02796-RBM-AHG

**First Amended Petition for Writ
of
Habeas Corpus**

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

¹ Federal Defenders of San Diego, Inc., is filing the instant amended petition with provisional appointment under Chief Judge Order No. 134. The attached declaration addresses Petitioner's financial eligibility.

Introduction

Mr. Machin-Rosal is a national of Cuba who later became a lawful permanent resident of the United States. According to criminal charges brought by the government, Mr. Machin-Rosal was ordered removed to Cuba sometime in 2025. But because ICE could not physically remove him to that country, in November 2025, ICE removed him to Mexico against his will. In Mexico, he was kidnapped. He came back to the United States because he feared for his life.

In January 2026, the government charged Mr. Machin-Rosal with illegal reentry after an order of deportation. *United States v. Machin Rosal*, Case No. 6-cr-00412-RSH (S.D. Cal.). The government alleged that he was removed to Cuba through the Texas-Mexico border. *Id.* ECF No. 1. In April, the government moved to dismiss the indictment and Mr. Machin-Rosal was taken back into immigration custody. *Id.* ECF No. 21.

This civil immigration habeas petition seeks to prevent Mr. Machin's indefinite detention. It also seeks to prevent his deportation to a third country without his first receiving basic due process guarantees of notice and opportunity to be heard as to his statutory rights to seek withholding of removal and Convention Against Torture relief.

STATEMENT OF FACTS

I. Petitioner has an order of removal sometime before November 2025.

Petitioner was born in Cuba and came to the United States in 2009. *See* Exhibit A, Declaration of Yandy Ernesto Machin-Rosal, at ¶ 1.

In 2025, he was working at a car wash in Las Vegas, Nevada, when ICE agents came rushing into the business. *Id.* at ¶ 3. They arrested several people including Mr. Machin-Rosal. *Id.* They did not explain why he was being arrested. *Id.*

Mr. Machin-Rosal recalls then being sent to immigration detention centers in New Mexico and Texas. *Id.* at 4.

1 In November of 2025, he was sent to the border with Mexico and forced to
2 walk across the border. *Id.* at ¶ 5. In Mexico, he was kidnapped. *Id.* He came back
3 to the United States fearing for his life. *Id.* at ¶5-6.

4 According to a criminal complaint filed against Mr. Machin-Rosal in federal
5 court, he was arrested on January 16, 2026. *United States v. Machin Rosal*, Case
6 No. 6-cr-00412-RSH, ECF No. 1 (S.D. Cal.). On April 10, 2026, the government
7 moved to dismiss the case against Mr. Machin-Rosal stating that “[a]fter further
8 investigation, the United States believes that dismissal of the indictment is
9 warranted in the interests of justice.” *Id.* at ECF No. 20. District Judge Hui granted
10 the motion to dismiss on April 14. *Id.* at ECF No. 21.

11 After the dismissal, Mr. Machin-Rosal was brought back to immigration
12 detention in Otay Mesa. Exh. A at ¶ 7. ICE has not been able to remove him to
13 Cuba.

14 **A. The government is carrying out deportations to third countries**
15 **without providing sufficient notice and opportunity to be heard.**

16 When immigrants cannot be removed to their home country, ICE has begun
17 deporting those individuals to third countries without adequate notice or a
18 hearing. *See* Edward Wong et al., *Inside the Global Deal-Making Behind Trump’s*
19 *Mass Deportations*, N.Y. TIMES (June 25, 2025).² The Administration reportedly
20 has negotiated with at least 58 countries to accept deportees from other nations.
21 *Id.* On June 25, 2025, the New York Times reported that seven countries—Costa
22 Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had
23 agreed to accept deportees who are not their own citizens. *Id.*

24 This summer and fall, ICE has carried out highly publicized third country
25 deportations to prisons in South Sudan, Eswatini, Ghana, and Rwanda.
26 Nokukhanya Musi & Gerald Imray, *10 more deportees from the US arrive in the*

27
28 ² Available at <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html> (updated June 26, 2025).

1 *African nation of Eswatini*, Associated Press (Oct. 6, 2025).³ At least four men
2 deported to Eswatini have remained in a maximum-security prison there for
3 nearly three months without charge and without access to counsel; another six are
4 detained incommunicado in South Sudan, and another seven are being held in an
5 undisclosed facility in Rwanda. *Id.*

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

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24
25 ³ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

26
27 ⁴ Available at <https://www.bbc.com/news/articles/cwyrn42kp7no>.

28 ⁵ Available at <https://www.pbs.org/newshour/nation/3-deported-by-u-s-held-in-african-prison-despite-completing-sentences-lawyers-say>.

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).⁶ 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. Third Country Removal Policy, 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.*

⁶ 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 [his] conduct with respect to individual plaintiffs” like Petitioner. *Id.* In short, the Supreme Court’s decision does not override this Court’s authority to grant individual injunctive relief. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

I. Claim 1: Petitioner's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Analysis under *Zadvydas*.

Mr. Machin'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. Machin. 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

1 to believe that there is no significant likelihood of removal in the reasonably
2 foreseeable future.” *Id.*

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

8 **B. Courts across the country agree that the six-month presumption**
9 **is rebuttable.**

10 Here, it is unclear whether the six-month period has passed but even if it
11 has not passed, Mr. Machin can meet the burden of rebutting the presumption. As
12 *Zadvydas* makes clear, detention is only “*presumptively* reasonable” for six
13 months. 533 U.S. at 701 (emphasis added). Numerous courts have concluded that
14 the six-month presumption is “just that, a presumption, one that can be rebutted
15 upon a showing that removal is *not* reasonably foreseeable.” *Cruz Medina v.*
16 *Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *7 n.5 (D. Md. Aug. 11,
17 2025); *accord Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D.N.J.
18 2025); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md.
19 Sept. 8, 2025); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020);
20 *Sweid v. Cantu*, No. CV-25-03590-PHX-DWL (CDB), 2025 WL 3033655, at *3
21 (D. Ariz. Oct. 30, 2025); *Puertas Mendoza v. Bondi*, No. SA-25-CA-00890-XR,
22 2025 WL 3142089, at *2 (W.D. Tex. Oct. 22, 2025); *Jimenez v. Cronen*, 317 F.
23 Supp. 3d 626, 641 n.6 (D. Mass. 2018); *Ali v. Dep’t of Homeland Sec.*, 451 F.
24 Supp. 3d 703, 707 (S.D. Tex. 2020); *Villanueva v. Tate*, No. CV H-25-3364, 2025
25 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025); *Douglas v. Baker*, No. 25-CV-
26 2243-ABA, 2025 WL 2687354, at *3 (D. Md. Sept. 19, 2025); *Jamal v. Sessions*,
27 No. 5:18-06015-CV-RK, 2018 WL 1440609, at *2 (W.D. Mo. Mar. 22, 2018). “A
28 close reading of *Zadvydas*” refutes any attempt to turn that presumption into a

1 bright-line rule. *Cesar*, 542 F. Supp. 2d at 902.

2 Prohibiting all detention challenges before the six-month mark would go
3 against *Zadvydas*'s most fundamental holding: that "if removal is not reasonably
4 foreseeable, the court should hold continued detention unreasonable and no longer
5 authorized by statute." *Zadvydas*, 533 U.S. at 699–700. "The fundamental
6 principle in *Zadvydas* . . . is that where removal is not reasonably foreseeable,
7 detention is unconstitutional." *Cesar*, 542 F. Supp. 2d at 902. "*Zadvydas*
8 unequivocally held that 'once removal is no longer reasonably foreseeable,
9 continued detention is no longer authorized.'" *Puerta Mendoza*, 2025 WL
10 3142089, at *2. It follows that "[i]f there comes a point during the six-month
11 period at which it is 'no longer reasonably foreseeable' that a person will actually
12 be removed, then detention 'is no longer authorized,'" and the petitioner must be
13 released. *Cruz Medina*, 2025 WL 2306274, at *6 (quoting *Zadvydas*, 533 U.S. at
14 699–700). To hold otherwise would be to render *Zadvydas* "internally
15 inconsistent." *Zavvar*, 2025 WL 2592543, at *5.

16 *Zadvydas* did not back away from that fundamental principle when
17 describing the six-month presumption. "At no point did the *Zadvydas* Court
18 preclude a noncitizen from challenging their detention before the end of the
19 presumptively reasonable six-month period." *Trinh*, 466 F. Supp. 3d at 1092. To
20 the contrary, the Court said that it was "adopting a *presumption* of reasonableness
21 before the six-month period expires. A presumption is just that: a default, a
22 starting point." *Cruz Medina*, 2025 WL 2306274, at *5. "The *Zadvydas* Court did
23 not say that the presumption is irrebuttable, and there is nothing inherent in the
24 operation of the presumption itself that requires it to be irrebuttable." *Cesar*, 542
25 F. Supp. 2d at 903; accord *Sweid*, 2025 WL 3033655, at *3 ("*Zadvydas* did not
26 hold that this presumption is conclusive in all cases and under all sets of facts.").

27 Furthermore, when introducing the six-month presumption, the Court
28 "noted that such presumptions are intended to 'guide lower court

determinations.” *Zavvar*, 2025 WL 2592543, at *5. A “guide” is “not a categorical prohibition on claims challenging detention less than six months.” *Trinh*, 466 F. Supp. 3d at 1093.

Finally, *Zadvydas* analogized to the “similar” rule in *County of Riverside v. McLaughlin*, 500 U.S. 44, 56–58 (1991), in which the Court “adopt[ed] [a] presumption, based on lower court estimate of time needed to process arrestee, that 48-hour delay in probable-cause hearing after arrest is reasonable, hence constitutionally permissible.” *Zadvydas*, 533 U.S. at 701 (describing *Riverside*). *Riverside*’s 48-hour rule “is a rebuttable presumption.” *Cesar*, 542 F. Supp. 2d at 904. It stands to reason that “the *Zadvydas* presumption, like the *Riverside* presumption, is rebuttable.” *Munoz-Saucedo*, 789 F. Supp. 3d at 397.

In short, then, “[t]he presumption of reasonableness is the default, but if a person ‘can prove’ that his removal is not reasonably foreseeable, then he can overcome that presumption.” *Munoz-Saucedo*, 789 F. Supp. 3d at 397 (quoting *Riverside*, 500 U.S. at 56).

C. There is no significant likelihood of removal in the reasonably foreseeable future to Cuba.

If the six-month presumption period has not passed in this case, Mr. Machin 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, Cuba rarely accepts its citizens for repatriation. Prior to 2017, there was no repatriation agreement between the United States and Cuba. *Clark v. Martinez*, 543 U.S. 371, 386 (2005). On January 12, 2017, the United States and Cuba signed a joint statement (“2017 Joint Statement”) by which Cuba agreed to the repatriation of some Cuban nationals. *Cuba (17-112) – Joint Statement Concerning Normalization of Migration Procedures*, Jan. 12, 2017, available at <https://www.state.gov/17-112/>. Specifically, under the agreement Cuba “shall receive back all Cuban nationals who after the signing” of the 2017 Joint Statement

1 “found by the competent authorities of the United States to have tried to irregularly
2 enter or remain in that country in violation of United States law.” *Id.* at 2.

3 In practice, however, Cuba did not accept its nationals for removal. Despite
4 the 2017 Joint Statement, a 2019 report by the Office of Inspector General
5 classified Cuba as an “uncooperative country” in 2017, 2018, and 2019 based on
6 its failure to provide travel documents on a timely basis. Department of Homeland
7 Security, Office of Inspector General, Report No. OIG-19-28, *ICE Faces Barriers*
8 *in Timely Repatriation of Detained Aliens* (Mar. 11, 2019), available at
9 <https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf>
10 at pages 6-7, 10, 29. In May of 2018, Cuba was one of nine countries with the
11 uncooperative categorization. *Id.* at 10.

12 *Second*, it is evident that ICE cannot remove Mr. Machin to Cuba because
13 they forcibly removed him to Mexico in November of 2025.

14 *Third*, ICE has not identified a country that they intend to remove him to.
15 Moreover, there is doubt he can be removed to a third country. For one, Mexico’s
16 acceptance of Petitioner is contingent on the noncitizen’s consent. *See Rios v.*
17 *Noem et al.*, No. 3:25-cv-02866-JES-VET (S.D. Cal. 2025), Doc. 13-1 at ¶ 11
18 (“Mexican government was ready to accept Petitioner only if he would willingly
19 go to Mexico.”); *D.A.M v. Noem*, No. 25-cv-02657-JLS-VET (S.D. Cal. Jan 12,
20 2026), Doc. 26-1 at ¶ 7 (explaining that the “Mexican consulate informed ICE
21 ERO that Mexico would not accept Petitioner for removal against his will.”).
22 “This evidence of Mexico’s acceptance policy casts further doubt on the
23 Government’s ability to remove” petitioner to a third country. *Arenado-Borges v.*
24 *Bondi*, No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *4 (W.D. Wash. Dec. 19,
25 2025). Although ICE forcibly removed Mr. Machin to Mexico in November of
26 2025, it is now on notice that it cannot do that again.

27 *And even* if a third country is later identified, the government must first
28 provide Petitioner with notice and an opportunity to apply for protection as to *that*

country as well, if appropriate. 8 U.S.C. § 1231(b)(3). *See also Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf Protsenko v. U.S. Att’y Gen.*, 149 F. App’x 947, 953 (11th Cir. 2005 (per curiam) (permitting removal to third country only where individuals received “ample notice and an opportunity to be heard.”)

Finally, “under *Zadvydas*, the reasonableness of Mr. Machin’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. Machin. But mere efforts would be “insufficient” to defeat his 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]”).

For all of these reasons, Mr. Machin has rebutted the presumption, and he must be released.

II. Claim 2: ICE may not remove Petitioner to a third country without adequate notice and an opportunity to be heard.

In addition to unlawfully detaining him, ICE’s policies threaten his removal to a third country without adequate notice and an opportunity to be heard. These policies violate the Fifth Amendment, the Convention Against Torture, and

1 implementing regulations.

2 **A. Legal background: The Convention Against Torture, statutory**
3 **withholding of removal, and due process prohibit deportation to**
4 **third countries without meaningful notice and an opportunity to**
5 **be heard.**

6 U.S. law enshrines protections against dangerous and life-threatening
7 removal decisions. By statute, the government is prohibited from removing an
8 immigrant to any third country where they may be persecuted or tortured, a form
9 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The
10 government “may not remove [a noncitizen] to a country if the Attorney General
11 decides that the [noncitizen’s] life or freedom would be threatened in that country
12 because of the [noncitizen’s] race, religion, nationality, membership in a particular
13 social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16.
14 Withholding of removal is a mandatory protection.

15 Similarly, Congress codified protections enshrined in the CAT prohibiting
16 the government from removing a person to a country where they would be tortured.
17 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of
18 the United States not to expel, extradite, or otherwise effect the involuntary return
19 of any person to a country in which there are substantial grounds for believing the
20 person would be in danger of being subjected to torture, regardless of whether the
21 person is physically present in the United States.”); 28 C.F.R. § 200.1; *id.*
22 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

1 The government must also “ask the noncitizen whether he or she fears
2 persecution or harm upon removal to the designated country and memorialize in
3 writing the noncitizen’s response. This requirement ensures DHS will obtain the
4 necessary information from the noncitizen to comply with section 1231(b)(3) and
5 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.
6 3d at 1019. “Failing to notify individuals who are subject to deportation that they
7 have the right to apply for asylum in the United States and for withholding of
8 deportation to the country to which they will be deported violates both INS
9 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at
10 1041.

11 If the noncitizen claims fear, measures must be taken to ensure that the
12 noncitizen can seek asylum, withholding, and relief under CAT before an
13 immigration judge in reopened removal proceedings. The amount and type of
14 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
15 circumstances, he would have a reasonable opportunity to raise and pursue his
16 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
17 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
18 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at *1 (requiring the
19 government to move to reopen the noncitizen’s immigration proceedings if the
20 individual demonstrates “reasonable fear” and to provide “a meaningful
21 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening
22 of their immigration proceedings” if the noncitizen is found to not have
23 demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice
24 and time for a respondent to file a motion to reopen and seek relief).

25 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,
26 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App’x 724 (9th Cir. 2016), and
27 for good reason: To have a meaningful opportunity to apply for fear-based
28 protection from removal, immigrants must have time to prepare and present

1 relevant arguments and evidence. Merely telling a person where they may be sent,
2 without giving them a chance to look into country conditions, does not give them a
3 meaningful chance to determine whether and why they have a credible fear.

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

7 The policies in the June 6, 2025 memo do not adhere to these requirements.
8 The memo “contravenes Ninth Circuit law.” *Nguyen v. Scott*, No. 25-CV-1398,
9 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025) (explaining how the July 9,
10 2025 ICE memo contravenes Ninth Circuit law on the process due to noncitizens
11 in detail); *see also Van Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-
12 MSB (S.D. Cal. Sept. 29, 2025) (granting temporary restraining order preventing a
13 noncitizen’s deportation to a third country pending litigation in light of due process
14 problems); *Nguyen Tran*, No. 25-cv-2391-BTM-BLM, ECF No. 6 (S.D. Cal. Sept.
15 18, 2025) (same).

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

23 Second, even when the government has obtained no credible assurances
24 against persecution and torture, the government can still remove the person with
25 between six and 24 hours’ notice, depending on the circumstances. Exh. B.
26 Practically speaking, there is not nearly enough time for a detained person to assess
27 their risk in the third country and marshal evidence to support any credible fear—let
28 alone a chance to file a motion to reopen with an immigration judge. An immigrant

1 may know nothing about a third country, like Eswatini or South Sudan, when they
2 are scheduled for removal there.

3 Yet if given the opportunity to investigate conditions, immigrants would find
4 credible reasons to fear persecution or torture—like patterns of keeping deportees
5 indefinitely and without charge in solitary confinement or extreme instability
6 raising a high likelihood of death—in many of the third countries that have agreed
7 to removal thus far.

8 Due process requires an adequate chance to identify and raise these threats
9 to health and life. This Court must prohibit the government from removing
10 Petitioner without these due process safeguards.

11 **III. This Court must hold an evidentiary hearing on any disputed facts.**

12 Resolution of a prolonged-detention habeas petition may require an
13 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).
14 Petitioner hereby requests such a hearing on any material, disputed facts.

15 **IV. Prayer for relief**

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

- 17 1. Order and enjoin Respondents to immediately release Petitioner from
18 custody;
- 19 2. Enjoin Respondents from removing Petitioner to a third country,
20 unless they provide the following process, *see D.V.D. v. U.S. Dep't*
21 *of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1
22 (D. Mass. May 21, 2025):
 - 23 a) written notice to both Petitioner and Petitioner's counsel in a
24 language Petitioner can understand;
 - 25 b) a meaningful opportunity, and a minimum of ten days, to raise a
26 fear-based claim for CAT protection prior to removal;
 - 27
 - 28

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

8 3. Order all other relief that the Court deems just and proper.
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10
11

12 Respectfully submitted,

13 Dated: May 20, 2026

s/ Zandra L. Lopez

14 Zandra L. Lopez
15 Federal Defenders of San Diego, Inc.
16 Attorneys for Mr. Machin
17 Email: Zandra_Lopez @fd.org
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PROOF OF SERVICE

I, the undersigned, will cause the attached petition for a 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: May 20, 2026

s/ Zandra L. Lopez

Zandra L. Lopez

Federal Defenders of San Diego, Inc.

Email: Zandra_Lopez@fd.org