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7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 TEMIDAYO OLUWAMUYIWA
12 AROBOSEGBE,

13 Petitioner,

14 v.

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

21 Respondents.
22

Civil Case No.: 26CV3104 JAO JLB

**Petition for Writ
of
Habeas Corpus
[28 U.S.C. § 2241]**

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1 **I. Introduction**

2 On November 13, 2017, Petitioner Arowosegbe was granted
3 withholding of removal to Petitioner's native Nigeria because they are
4 transgender and queer. They would be persecuted if deported. Since
5 2017, Petitioner has been on an order of supervision and has complied
6 with all requirements.

7 On May 15, 2026, an ICE officer called Petitioner and told
8 Petitioner to come to ICE offices immediately. Petitioner clocked out of
9 work and took an Uber to the ICE offices. Petitioner was immediately
10 detained. ICE first provided Petitioner with a Notice of Revocation
11 stating that they were being detained because they had an aggravated
12 felony. When Petitioner said they did not have any felonies, ICE
13 printed another Notice of Revocation stating that there would be a
14 third country removal. There was no notice of where or when
15 Petitioner would be removed. Petitioner was not given an opportunity
16 to challenge their detention.

17 This civil immigration habeas petition seeks three grounds of
18 relief. First, it seeks to prevent Petitioner's indefinite detention
19 pending deportation to a third country absent the basic statutory and
20 due process guarantees outlined in *Zadvydas v. Davis*, 533 U.S. 678
21 (2001). Second, it seeks to prevent Petitioner's indefinite detention
22 pending deportation to a third country absent the basic regulatory and
23 due process guarantees of 8 C.F.R. §§ 241.4(l), 241.13(i), and *United*
24 *States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Third,
25 it seeks to prevent Petitioner's deportation to a third country without
26 Petitioner first receiving basic due process guarantees of notice and
27 opportunity to be heard as to Petitioner's statutory rights to seek
28 withholding of removal and Convention Against Torture relief.

1 **II. Statement of Facts**

2 **A. There is no evidence of any progress in removing**
3 **Petitioner to a third country and ICE failed to give**
4 **proper notice and opportunity prior to re-detaining**
5 **Petitioner.**

6 Petitioner was born in Nigeria and came to the United States in
7 2015 on a student visa. Exhibit A, Declaration of Arowosegbe, at ¶ 1–2.

8 In 2017, an immigration judge granted Petitioner withholding of
9 removal to Nigeria on account of Petitioner being transgender and
10 queer. *Id.* at ¶ 3. After the grant of withholding, Petitioner was
11 released into the country under an order of supervision. *Id.* at ¶ 4.
12 Petitioner complied with all requirements of supervision. *Id.*

13 In January of 2026, ICE placed a wrist monitor on Petitioner
14 through the Intensive Supervision Appearance Program (ISAP). *Id.* at
15 ¶ 5. Petitioner has been checking in twice a month and has also done
16 virtual check-ins. *Id.*

17 On May 15, Petitioner received a message from an ISAP officer
18 stating that Petitioner was required to immediately report to ICE
19 offices. *Id.* at ¶ 6. Petitioner clocked out of work and took an Uber to
20 ICE offices. *Id.* Petitioner waited for about an hour before called into
21 the office. *Id.* When Petitioner was called into an office, three to four
22 ICE officers were waiting for Petitioner. *Id.* ICE first provided
23 petitioner with a Notice of Revocation stating that they were being re-
24 detained because of a prior aggravated felony. *Id.* When Petitioner
25 informed the agents that they did not have any felonies, ICE printed
26 another Notice of Revocation stating that they would be removed to a
27 third country. ICE could not answer Petitioner’s question as to the
28 name of the third country. When Petitioner stated that they were
afraid of deportation because of their gender dysphoria, ICE simply

1 stated that they could speak to an officer at the detention center. *Id.*
2 An agent wrote down what Petitioner stated and simply responded “It
3 is what it is.” *Id.* There was no opportunity for Petitioner to explain
4 why they could not be detained. *Id.*

5 Since Petitioner has been detained, they have not been able to
6 speak to anyone from ICE. *Id.* at ¶ 8. Petitioner is detained at the Otay
7 Mesa Regional Detention Center. *Id.*

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

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

17 There are more restrictions on asylum. *See* 8 U.S.C. § 1158(a)(2);
18 *see also, e.g.*, US. Citizenship and Immigration Services, *Asylum, Court*
19 *Order on Circumvention of Lawful Pathways Final Rule* (updated Nov.
20 7, 2025) (noting limitations on asylum to those who entered outside a
21 port of entry between May 2023 and May 2025, among other
22 limitations).¹ There are fewer restrictions on eligibility for withholding
23 of removal. *See* 8 U.S.C. § 1231(b)(3)(B)(iii). However, an applicant for
24 withholding of removal must show a higher likelihood of persecution
25 than what an asylum applicant must demonstrate—specifically, that it
26 is “more likely than not that he or she would be persecuted on account
27 of race, religion, nationality, membership in a particular social group,

28 ¹ Available at <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum>.

1 or political opinion upon removal to that country.” 8 C.F.R.
2 § 1208.16(b)(2); *see INS v. Stevic*, 467 U.S. 407, 429–30 (1984).

3 About 1,000 people won withholding of removal each year
4 between 2010 and 2018. *See* Exhibit B at 6 (American Immigration
5 Council & National Immigrant Justice Center, *The Difference Between*
6 *Asylum and Withholding of Removal* (Oct. 2020)). In fiscal year 2024,
7 about 2,500 people won withholding or deferral of removal. *See* Exhibit
8 C at 2 (Congressional Research Service, *FY2024 Immigration Court*
9 *Data: Case Outcomes* (Feb. 3, 2025)).

10 When an immigration judge grants withholding relief, she issues
11 a removal order and simultaneously issues an order withholding
12 removal with respect to the country the person demonstrated a risk of
13 persecution. *See Guzman-Chavez*, 594 U.S. at 535–38. While ICE is
14 authorized to remove that person granted withholding to a alternative
15 countries, the removal statute specifies restrictive criteria for
16 identifying appropriate countries. *See* 8 U.S.C. § 1231(b); 8 C.F.R.
17 § 1208.16(f). Further, “foreign governments ‘routinely deny’ requests to
18 receive people who lack a connection to the would-be receiving
19 country.” *Puertas-Mendoza*, 2025 WL 3142089 at *3. “The reason so
20 few people are deported to third countries is because,” while
21 “customary international law holds that a country has a duty to accept
22 the return of its nationals,” usually, “countries have no incentive to
23 accept non-citizens.” Exhibit B at 7.

24 If ICE identifies an appropriate third country of removal, the
25 noncitizen must then have notice and an opportunity to seek relief
26 from removal to that new country. *See Jama v. ICE*, 543 U.S. 335, 348
27 (2005) (“If [non-citizens] would face persecution or other mistreatment
28 in the country designated under § 1231(b)(2), they have a number of

1 available remedies: asylum, § 1158(b)(1); withholding of removal,
2 § 1231(b)(3)(A); [and] relief under an international agreement
3 prohibiting torture.”); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
4 1999) (holding that “last minute” designation of alternative country
5 without meaningful opportunity to apply for protection “violate[s] a
6 basic tenet of constitutional due process”).

7 As a result of these restrictions and procedures, very few people
8 who receive withholding of removal are deported to a third country.
9 Between September 2023 and June 2025, ICE removed a total of eight
10 people granted withholding or other CAT relief to alternative
11 countries. Exhibit D (ICE removal data).² Between fiscal years 2020
12 and 2023, a total of five people granted withholding or other CAT relief
13 were removed to alternative countries. *Id.*

14 That said, in the summer of 2025, ICE began removing more
15 immigrants it could not previously remove to third countries, which
16 have often removed those people back to their countries of origin. ICE
17 implemented new policies to do so. On July 9, 2025, ICE rescinded
18 previous guidance meant to give immigrants a “meaningful
19

20 ² The data in Exhibit D are collected from the Deportation Data
21 Project, which “collects and posts public, anonymized U.S. government
22 immigration enforcement datasets,” “primarily [obtained] through
23 Freedom of Information Act requests.” For the complete raw data, one
24 can visit <https://deportationdata.org/data/ice>, select “Removals,” and
25 filter for each removal classified as “[5C] Relief Granted – Withholding
26 of Deportation / Removal” or “[5D] Final Order of Deportation /
27 Removal – Deferred Action Granted.” The chart attached as Exhibit D
28 highlights all such cases in which the noncitizen was removed to a
country other than their country of origin. The remaining
unhighlighted noncitizens either won withholding or CAT relief with
respect to a third country that was not their country of origin,
including dual citizens; had withholding or CAT relief terminated; or
agreed to return to their country of origin despite a grant of
withholding or CAT relief.

1 opportunity' to assert claims for protection under the Convention
2 Against Torture before initiating removal to a third country." Exhibit E
3 (July 9, 2025, ICE third-country removal guidance).

4 Now, ICE may remove an immigrant to a third country without
5 any notice. It may do so if, in the sole view of the State Department,
6 the United States has received "credible" "assurances" from that
7 country that deportees will not be persecuted or tortured. *Id.* at 1.

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

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

19 Under this policy, the United States has deported several dozen
20 noncitizens to prisons and military camps in Rwanda, Eswatini, South
21 Sudan, and Ghana. Those who have not been returned to their home
22 countries are still detained, in countries to which they have never
23 been, without charge. Nokukhanya Musi & Gerald Imray, *10 more*
24 *deportees from the US arrive in the African nation of Eswatini*,
25 Associated Press (Oct. 6, 2025)³; see also Gerald Imray, *A Cuban man*
26 *deported by the US to Africa is on a hunger strike in prison, his lawyer*

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

1 says, Associated Press (Oct. 23, 2025)⁴; Frank Chothia, *Eswatini*
2 *confirms receiving \$5.1m from the US for accepting deportees*, BBC
3 (Nov. 18, 2025)⁵; Nick Alexandra, *The Toll of Trump’s African*
4 *Deportation Agreements*, New Lines Magazine (Dec. 10, 2025)⁶.

5 **III. Claims for Relief**

6 This Court should grant this petition and order Petitioner’s
7 immediate release, because there is “no significant likelihood of
8 removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533
9 U.S. 678, 701 (2001). The Court should also enjoin their removal
10 without due process.

11 **A. Claim 1: Petitioner’s detention violates *Zadvydas* and** 12 **8 U.S.C. § 1231.**

13 **1. Legal background**

14 Petitioner’s indefinite detention violates the statute authorizing
15 detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678
16 (2001), the Supreme Court considered a problem affecting people like
17 Petitioner. Federal law requires ICE to detain an immigrant during
18 the “removal period,” which typically spans the first 90 days after the
19 immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-
20 day removal period expires, detention becomes discretionary—ICE
21 may detain the migrant while continuing to try to remove them. *Id.*
22 § 1231(a)(6). Ordinarily, this scheme would not lead to excessive
23 detention, as removal happens within days or weeks. But some
24 detainees cannot be removed quickly. Perhaps their removal “simply

25 _____
26 ⁴ Available at <https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859>.

27 ⁵ Available at <https://www.bbc.com/news/articles/cq50vjdx368o>.

28 ⁶ Available at <https://newlinesmag.com/reportage/the-toll-of-trumps-african-deportation-agreements/>.

1 require[s] more time for processing,” or they are “ordered removed to
2 countries with whom the United States does not have a repatriation
3 agreement,” or their countries “refuse to take them,” or they are
4 “effectively ‘stateless’ because of their race and/or place of birth.” *Kim*
5 *Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and
6 other circumstances, detained immigrants can find themselves trapped
7 in detention for months, years, decades, or even the rest of their lives.

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

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

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

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

26 **2. The six-month grace period has expired.**

27 As an initial matter, the six-month grace period has ended. The
28 *Zadvydas* grace period lasts for “*six months* after a final order of

1 removal—that is, *three months* after the statutory removal period has
2 ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir.
3 2001). Here, Petitioner was ordered removed in **November 2017 –**
4 **almost 9 years ago**. Exh. A at ¶ 2. Accordingly, Petitioner’s 90-day
5 removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas*
6 grace period thus expired six months after the removal period began,
7 in **May of 2018**.

8 **3. There is good reason to believe that there is no**
9 **significant likelihood of Petitioner’s removal in**
10 **the reasonably foreseeable future.**

11 Because the six-month grace period has expired, this Court must
12 evaluate Petitioner’s *Zadvydas* claim using the burden-shifting
13 framework. At the first stage of the framework, there must be “good
14 reason to believe that there is no significant likelihood of removal in
15 the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This
16 standard can be broken down into three parts.

17 “**Good reason to believe.**” The “good reason to believe”
18 standard is a relatively forgiving one. “A petitioner need not establish
19 that there exists no possibility of removal.” *Freeman v. Watkins*, No.
20 CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor
21 does “[g]ood reason to believe’ . . . place a burden upon the detainee to
22 demonstrate no reasonably foreseeable, significant likelihood of
23 removal or show that his detention is indefinite; it is something less
24 than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319,
25 at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d
26 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
27 Petitioners need only give a “good reason”—not prove anything to a
28 certainty.

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

13 **“In the reasonably foreseeable future.”** This component of
14 the test focuses on when Petitioner will likely be removed: Continued
15 detention is permissible only if removal is likely to happen “in the
16 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This
17 inquiry places a time limit on ICE’s removal efforts. If the Court has
18 “no idea of when it might reasonably expect [Petitioner] to be
19 repatriated, this Court certainly cannot conclude that his removal is
20 likely to occur—or even that it might occur—in the reasonably
21 foreseeable future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020
22 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and*
23 *recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020)
24 (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)).
25 Thus, even if this Court concludes that Petitioner “would *eventually*
26 receive” a travel document, Petitioner can still meet Petitioner’s
27 burden by giving good reason to anticipate sufficiently lengthy delays.
28 *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

1 Petitioner has very good reason to doubt Petitioner’s removal.
2 *First*, ICE has made no progress whatsoever in removing Petitioner,
3 despite having at almost nine years to do so. And there is an obvious
4 explanation for ICE’s inability to remove Petitioner: Petitioner has a
5 withholding of removal to Petitioner’s native country.

6 What’s more, removal to a third country is unlikely. That’s
7 because “alternative-country removal is rare.” *Johnson v. Guzman-*
8 *Chavez*, 594 U.S. 523, 537 (2021). Between 2020 and 2023, data
9 apparently show that “ICE removed . . . only *five* non-citizens granted
10 withholding or CAT relief to alternative countries.” *Munoz-Saucedo v.*
11 *Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025) (emphasis original). In
12 fiscal year 2017, there were at most 21 people of the thousands with
13 withholding of removal deported to *any* country; that number includes
14 dual citizens who only received withholding from one of their two other
15 countries of origin. See American Immigration Council & National
16 Immigrant Justice Center, *The Difference Between Asylum and*
17 *Withholding of Removal*, 7 (Oct. 2020)⁷ (cited in *Guzman-Chavez*, 594
18 U.S. at 537). That means that “less than two percent of those granted
19 withholding of removal were deported to a third country.” *Puertas-*
20 *Mendoza*, 2025 WL 3142089 at *3 (citing American Immigration
21 Council & National Immigrant Justice Center, *supra*).

22 “[T]hat is not simply a matter of United States policy—foreign
23 governments ‘routinely deny’ requests to receive people who lack a
24 connection to the would-be receiving country.” *Puertas-Mendoza*, 2025
25 WL 3142089 at *3. “The reason so few people are deported to third
26

27 _____
28 ⁷ Available at <https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the-difference-between-asylum-and-withholding-of-removal.pdf>.

1 countries is because,” while “customary international law holds that a
2 country has a duty to accept the return of its nationals,” usually,
3 “countries have no incentive to accept non-citizens.” American
4 Immigration Council & National Immigrant Justice Center, *supra*, at
5 7.

6 Petitioner’s individual circumstances strongly suggest that they
7 will not be among the handful of people granted withholding of
8 removal the U.S. removes to a third country. They have an order of
9 removal from nine years ago and ICE has yet to identify a third
10 country. Moreover, Petitioner does not have immigration status in any
11 other country.

12 *Second*, in light of Petitioner’s statutory and international right
13 to seek protection from persecution and chain refoulement, there is no
14 reason to think Petitioner’s removal could happen in the reasonably
15 foreseeable future. Even if ICE identified a third country, Petitioner
16 “would be entitled to seek fear-based relief from removal to that
17 country, which would require additional, lengthy proceedings.” *Munoz-*
18 *Saucedo*, 789 F. Supp. 3d at 399; *accord Villanueva*, 2025 WL 2774610,
19 at *10 (“[A]ny efforts to remove Villanueva to a third country would
20 likely be delayed by proceedings contesting his removal to the third
21 country finally identified.”).

22 Petitioner would be particularly entitled to seek protection from
23 removal because many noncitizens removed to third countries in the
24 past year have then been returned to their home countries. *See, e.g.,*
25 *Nick Alexandra, supra* at page 7 n.7. For Petitioner, a third-country
26 removal could very well result in “chain refoulement,” in which
27 Petitioner is deported to a third country that would proceed to deport
28 Petitioner to their home country of persecution. *See Inter-American*

1 Commission on Human Rights, *IACHR and United Nations Experts:*
2 *States Must Protect the Rights of Persons in Human Mobility* (Sept. 18,
3 2025);⁸ see also United Nations Committee Against Torture, *General*
4 *comment No. 4 on the implementation of article 3 of the Convention in*
5 *the context of article 22*, at section II (12) (Sept. 4, 2028) (“the person at
6 risk [of torture] should never be deported to another State from which
7 the person may subsequently face deportation to a third State in which
8 there are substantial grounds for believing that the person would be in
9 danger of being subjected to torture”).⁹

10 *Third*, ICE has not made any progress in removing Petitioner in
11 the last nine years.

12 Given that third country removal is already exceedingly unlikely,
13 a “lack of effort only reinforces the conclusion that the Petitioner’s
14 removal is not likely to occur in the reasonably foreseeable future.”
15 *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *5 (E.D.
16 Pa. Nov. 8, 2002); see also *Conchas-Valdez v. Casey*, 25-cv-2469-DMS,
17 Dkt. 9, at 6 (S.D. Cal. Oct. 6, 2025) (granting a petition in part because
18 “the Government’s minimal work on [the] case . . . [did] not instill
19 confidence that it will be able to secure [CAT] Petitioner’s removal in
20 the reasonably foreseeable future”); *Zavvar*, 2025 WL 2592543, at *7
21 (finding the presumption rebutted, despite outstanding third-country
22 requests to Australia and Romania, because of “[t]he lack of any sign
23 that Australia or Romania is actively considering accepting [the

25 ⁸ Available at
26 [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/190.asp&utm_term=class-dc)
27 [preleases/2025/190.asp&utm_term=class-dc](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/190.asp&utm_term=class-dc)

28 ⁹ Available at
[https://www.ohchr.org/sites/default/files/Documents/HRBodies/](https://www.ohchr.org/sites/default/files/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf)
[CAT/CAT-C-GC-4 EN.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf).

1 petitioner]”).

2 Even if ICE were making efforts behind the scenes, so far, none
3 have borne fruit. The third-country removal process has not progressed
4 even to the point that ICE has identified a country to which Petitioner
5 can apply or be removed to. Exhibit A ¶ 6. That matters, because
6 *Zadvydas* itself made clear that good faith efforts do not themselves
7 show that removal is significantly likely. The petitioner in *Zadvydas*
8 appealed a “Fifth Circuit h[olding] [that] [the petitioner’s] continued
9 detention [was] lawful as long as good faith efforts to effectuate
10 deportation continue and [the petitioner] failed to show that
11 deportation will prove impossible.” 533 U.S. at 702 (cleaned up). The
12 Supreme Court reversed, finding that the Fifth Circuit’s good-faith-
13 efforts standard “demand[ed] more than our reading of the statute can
14 bear.” *Id.* Thus, “under *Zadvydas*, the reasonableness of Petitioner’s
15 detention does not turn on the degree of the government’s good faith
16 efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard.
17 Rather, the reasonableness of Petitioner’s detention turns on whether
18 and to what extent the government’s efforts are likely to bear fruit.”
19 *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5
20 (W.D.N.Y. Jan. 2, 2019).

21 Because of all the above, Petitioner has met Petitioner’s initial
22 burden. Thus, unless the government can prove a “significant
23 likelihood of removal in the reasonably foreseeable future,” Petitioner
24 must be released. *Zadvydas*, 533 U.S. at 701.

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1 **B. Claim 2: ICE failed to comply with its own**
2 **regulations before re-detaining Petitioner, violating**
3 **Petitioner’ rights under applicable regulations and**
4 **the Fifth Amendment.**

5 Two regulations establish the process due to someone who is re-
6 detained in immigration custody following a period of release. 8 C.F.R.
7 § 241.4(l) applies to re-detention generally. 8 C.F.R. § 241.13(i) applies
8 to persons released after providing good reason to believe that they will
9 not be removed in the reasonably foreseeable future, as Petitioner
10 were. *See Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at
11 *2 (order from Judge Huie explaining this regulatory framework and
12 granting a habeas petition for ICE’s failure to follow these regulations).

13 These regulations permit an official to “return [the person] to
14 custody” because they “violate[d] any of the conditions of release.”
15 8 C.F.R. § 241.13(i)(1); *see also* § 241.4(l)(1).

16 Otherwise, they contain four major regulatory protections for
17 people like Petitioner, who did not violate any condition of release.
18 They permit revocation of release only if the appropriate official (1)
19 “determines that there is a significant likelihood that the alien may be
20 removed in the reasonably foreseeable future,” § 241.13(i)(2), and (2)
21 makes that finding “on account of changed circumstances.” *Id.* No
22 matter the reason for re-detention, (3) the re-detained person is
23 entitled to “an initial informal interview promptly,” during which they
24 “will be notified of the reasons for revocation.” §§ 241.4(l)(1);
25 241.13(i)(3). The interviewer must (4) “afford[] the [person] an
26 opportunity to respond to the reasons for revocation,” allowing them to
27 “submit any evidence or information” relevant to re-detention and
28 evaluating “any contested facts.” *Id.*

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

10 ICE followed none of its four regulatory prerequisites to re-
11 detention here.

12 First, Petitioner did not receive proper notice of the reasons for
13 re-detention upon revocation. Exh. A at ¶ 6. Second, although it
14 appears that may have been an interview, it does not appear to be one
15 where Petitioner could contest Petitioner’s detention. *Id.*

16 Third, based on information and belief, the government did not
17 provide notice of the changed circumstances. If the changed
18 circumstances was because of removal, that reason is insufficient. At
19 the time of arrest, and even today, ICE has not yet informed Petitioner
20 of where and when they intend to remove Petitioner and there does not
21 appear to be any changed circumstances that would indicate otherwise.

22 Absent any evidence for “why obtaining a travel document is
23 more likely this time around[,] Respondents’ intent to eventually
24 complete a travel document request for Petitioner does not constitute a
25 changed circumstance.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP,
26 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*,
27 No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)).
28 Furthermore, past experience teaches that ICE almost certainly made

1 no changed-circumstances determination before the arrest. *See*
2 *Rokhfirooz*, 2025 WL 2646165 at *3.

3 Numerous courts have released re-detained immigrants after
4 finding that ICE failed to comply with applicable regulations. *See, e.g.*,
5 *Rokhfirooz*, 2025 WL 2646165; *Grigorian*, 2025 WL 2604573; *Delkash*
6 *v. Noem*, 2025 WL 2683988; *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137,
7 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463
8 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass.
9 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at
10 *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-
11 AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v.*
12 *Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex.
13 July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL
14 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2;
15 *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar.
16 31, 2025).

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

22 **C. Claim 3: ICE may not remove Petitioner to a third**
23 **country without adequate notice and an opportunity**
24 **to be heard.**

25 If ICE did suddenly prove able to remove Petitioner to a third
26 country, it would do so under a policy that violates the Fifth
27 Amendment, the Convention Against Torture, and implementing
28 regulations.

1 **1. Legal background**

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

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

23 To comport with the requirements of due process, the government
24 must provide notice of the third country removal and an opportunity to
25 respond. Due process requires “written notice of the country being
26 designated” and “the statutory basis for the designation, i.e., the
27 applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d
28 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep’t of Homeland*

1 *Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21,
2 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

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

14 If the noncitizen claims fear, measures must be taken to ensure
15 that the noncitizen can seek asylum, withholding, and relief under
16 CAT before an immigration judge in reopened removal proceedings.
17 The amount and type of notice must be “sufficient” to ensure that
18 “given [a noncitizen’s] capacities and circumstances, he would have a
19 reasonable opportunity to raise and pursue his claim for withholding of
20 deportation.” *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v.*
21 *Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405,
22 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the
23 government to move to reopen the noncitizen’s immigration
24 proceedings if the individual demonstrates “reasonable fear” and to
25 provide “a meaningful opportunity, and a minimum of fifteen days, for
26 the non-citizen to seek reopening of their immigration proceedings” if
27 the noncitizen is found to not have demonstrated “reasonable fear”);
28

1 *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a
2 respondent to file a motion to reopen and seek relief).

3 “[L]ast minute” notice of the country of removal will not suffice,
4 *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x
5 724 (9th Cir. 2016), and for good reason: To have a meaningful
6 opportunity to apply for fear-based protection from removal,
7 immigrants must have time to prepare and present relevant
8 arguments and evidence. Merely telling a person where they may be
9 sent, without giving them a chance to look into country conditions,
10 does not give them a meaningful chance to determine whether and why
11 they have a credible fear.

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

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

25 Second, even when the government has obtained no credible
26 assurances against persecution and torture, the government can still
27 remove the person with between 6 and 24 hours’ notice, depending on
28 the circumstances. Exh. B. Practically speaking, there is not nearly

1 enough time for a detained person to assess their risk in the third
2 country and martial evidence to support any credible fear—let alone a
3 chance to file a motion to reopen with an IJ. An immigrant may know
4 nothing about a third country, like Eswatini or South Sudan, when
5 they are scheduled for removal there. Yet if given the opportunity to
6 investigate conditions, immigrants would find credible reasons to fear
7 persecution or torture—like patterns of keeping deportees indefinitely
8 and without charge in solitary confinement or extreme instability
9 raising a high likelihood of death—in many of the third countries that
10 have agreed to removal thus far. Due process requires an adequate
11 chance to identify and raise these threats to health and life. This Court
12 must prohibit the government from removing Petitioner without these
13 due process safeguards.

14 **IV. This Court must hold an evidentiary hearing on any**
15 **disputed facts.**

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

20 **V. Prayer for relief**

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

- 23 1. Order Respondents to immediately release Petitioner from
24 custody;
- 25 2. Enjoin Respondents from re-detaining Petitioner under
26 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a
27 travel document for Petitioner's removal;
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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 18, 2026

s/ Zandra L. Lopez
Zandra L. Lopez
Federal Defenders of San Diego, Inc.
Email: Zandra_Lopez@fd.org

Exhibit A

1 **ZANDRA L. LOPEZ**
California State Bar No. 216567
2 **FEDERAL DEFENDERS OF SAN DIEGO, INC.**
3 225 Broadway, Suite 900
San Diego, California 92101-5030
4 Telephone: (619) 234-8467
Facsimile: (619) 687-2666
5 Zandra_Lopez@fd.org

6 Attorneys for Petitioner Arowosegbe
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8
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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA


12 **TEMIDAYO OLUWAMUYIWA**
13 **AROWOSEGBE,**
14 **Petitioner,**
15 **v.**
16 **MARKWAYNE MULLIN, Secretary of**
17 **the Department of Homeland Security, et**
18 **al.,**
Respondents.

CASE NO.:

DECLARATION OF TEMIDAYO
OLUWAMUYIWA AROWOSEGBE

1 I declare the following is true and correct under penalty of perjury.

2 1. My name is Temidayo Oluwamuyiwa Arowosegbe. I am from Nigeria. My

3 A number is 

4 2. I came to the United States in 2015 on a student visa.

5 3. I am a member of the LGBTQ community. I received withholding in 2017
6 because I am transgender and queer. I would be persecuted if I was deported to
7 Nigeria. I would be persecuted if I was deported to many other African countries,
8 too.

9 4. Once I was released from ICE custody after I was granted withholding, I
10 went to yearly check-ins with ICE. I never missed one. During COVID they
11 suspended them for a bit, and once they were started up again, I went.

12 5. In January 2026, I went to my ICE check-in and they put me on a wrist
13 monitor on me through the ISAP program. I check in with them twice a month and
14 have done twice-daily virtual check-ins ever since.

15 6. On Friday, May 15, 2026, I got a message from my ISAP officer that they
16 wanted to see me right now. I clocked out of work, took an Uber, and went directly
17 to the office. I stayed there waiting for an hour or longer. I finally went in, and there
18 were three or four ICE officers waiting. One officer said they found a third country
19 for me and they were detaining me. I asked which country and they said they didn't
20 know and that I would find out in Otay Mesa. They gave me a piece of paper saying,
21 "Notice of Revocation of Release," and that said I had an aggravated felony. I
22 explained I don't have any felony, and so they reprinted it. Then it just said they
23 found a third country to deport me to but again didn't tell me which country. I told
24 them that I am afraid to be deported because I have gender dysphoria. They said I
25 would have to tell the officers at Otay Mesa.

26 7. The officers weren't willing to listen. They wrote down what I said, but just
27 said in response, "It is what it is." There was never any opportunity for me to
28 explain things so that I could be released.

1 8. I was brought to Otay Mesa. Since I've been here, I haven't been able to talk
2 to anyone from ICE. I am very scared.

3 9. I have about \$1,000 in savings. I do not own a home or a car. I have a race
4 bike that is worth about \$6,000. I am a personal trainer and I cannot work while I
5 am detained. I cannot afford a habeas attorney.

6
7 I declare that I received authority to sign that the above is true and correct under
8 penalty of perjury from Mr. Arowosegbe from Otay Mesa Detention Center to San
9 Diego on May 18, 2026, at 9:35 AM, /s/ *Jessie Agatstein*.

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