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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **SERGIO HILDEBRANDO**
11 **MARTINEZ,**

12 Petitioner,

13 v.

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

21 Respondents.

Case No.: '26CV3799 CAB JLB

Petition for Writ
of
Habeas Corpus

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

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

1 **I. Introduction**

2 On August 5, 2013, Petitioner Sergio Hilderbrando Martinez was
3 granted deferral of removal under the Convention Against Torture to
4 his native El Salvador. An immigration judge determined that it was
5 more likely than not that he would be tortured if returned to El
6 Salvador. Since then, Mr. Hilderbrando Martinez has been living in
7 the United States raising his young family.

8 On April 13, 2026, Mr. Hilderbrando Martinez reported to the
9 offices of USCIS was immediately detained. He was told that he was
10 reporting for purposes of taking his fingerprints and biometrics. ICE,
11 however, immediately arrested him without notice or an opportunity to
12 contest his detention. He does not remember receiving any paperwork
13 indicating the reasons for his detention.

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

1 **II. Statement of Facts**

2 **A. An IJ found under the Convention Against Torture**
3 **that it is more-likely-than-not that Petitioner would**
4 **face torture if returned to El Salvador.**

5 On August 5, 2013, an IJ granted Petitioner protection pursuant
6 to Article 3 under the United Nations Convention Against Torture
7 (CAT). Exhibit A Declaration of Sergio Hilderbrando Martinez, at ¶ 2.
8 The IJ's order became final on that date. 8 C.F.R. § 1241.1(c).

9 **B. There is no evidence of ICE making efforts to remove**
10 **Petitioner to a third country.**

11 After receiving CAT relief, Mr. Hilderbrando Martinez was
12 released into the country and given a work permit. Exh. A at ¶ 3. He
13 lives in New York working as a driver of a cement mixing truck. *Id.* He
14 supports his family that includes children ages 2, 9, 14, and 21. *Id.*

15 Earlier this year, he received a letter in the mail that he was to
16 report to the offices of USCIS. *Id.* at ¶ 4. When he arrived at the
17 offices, he was arrested by ICE agents. *Id.* at ¶ 5. The agents did not
18 tell him why he was being detained other than telling him he had a
19 prior order of removal. *Id.* Mr. Hilderbrando Martinez does not recall
20 receiving any paperwork that explained the reasons for detention. *Id.*
21 He was not given an opportunity to contest his detention. *Id.*

22 Since his detention, Mr. Hilderbrando Martinez has been moved
23 around a lot to different detention centers. *Id.* at ¶ 6. He has been in
24 detention centers in New York, Louisiana, Texas, Arizona, and now
25 California. *Id.*

26 While detained a different places, ICE agents have asked him if
27 he wants to be removed to Mexico. *Id.* at 7. This has happened about
28 five different times. *Id.* At times, he has been informed that if he does
not want to go to Mexico he does not have to go. *Id.* But on June 1,

2026, Mr. Hilderbrando Martinez was taken to the border in Nogales, Arizona. *Id.* at ¶ 8. The drive there took about four hours. He was not given food or water. *Id.* When they got to the border, the agents told him to get off the van but Mr. Hilderbrando Martinez refused. *Id.* At one point, he was left in the van with no air conditioning and the windows up. He had to drink his own urine out of desperation. *Id.* Mr. Hilderbrando Martinez was eventually taken back to the detention center. *Id.*

To date, ICE has not informed Mr. Hilderbrando Martinez of where or when he will be removed. *Id.* at 9.

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.

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

There are more restrictions on asylum. *See* 8 U.S.C. § 1158(a)(2); *see also, e.g.,* US. Citizenship and Immigration Services, *Asylum, Court Order on Circumvention of Lawful Pathways Final Rule* (updated Nov. 7, 2025) (noting limitations on asylum to those who entered outside a port of entry between May 2023 and May 2025, among other limitations).² There are fewer restrictions on eligibility for withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(B)(iii). However, an applicant for withholding of removal must show a higher likelihood of persecution than what an asylum applicant must demonstrate—specifically, that it

² Available at <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum>.

1 is “more likely than not that he or she would be persecuted on account
2 of race, religion, nationality, membership in a particular social group,
3 or political opinion upon removal to that country.” 8 C.F.R.

4 § 1208.16(b)(2); *see INS v. Stevic*, 467 U.S. 407, 429–30 (1984).

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

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

26 If ICE identifies an appropriate third country of removal, the
27 noncitizen must then have notice and an opportunity to seek relief
28 from removal to that new country. *See Jama v. ICE*, 543 U.S. 335, 348

(2005) (“If [non-citizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture.”); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (holding that “last minute” designation of alternative country without meaningful opportunity to apply for protection “violate[s] a basic tenet of constitutional due process”).

As a result of these restrictions and procedures, very few people who receive withholding of removal are deported to a third country. Between September 2023 and June 2025, ICE removed a total of eight people granted withholding or other CAT relief to alternative countries. Exhibit D (ICE removal data).³ Between fiscal years 2020 and 2023, a total of five people granted withholding or other CAT relief were removed to alternative countries. *Id.*

That said, in the summer of 2025, ICE began removing more immigrants it could not previously remove to third countries, which have often removed those people back to their countries of origin. ICE implemented new policies to do so. On July 9, 2025, ICE rescinded

³ The data in Exhibit D are collected from the Deportation Data Project, which “collects and posts public, anonymized U.S. government immigration enforcement datasets,” “primarily [obtained] through Freedom of Information Act requests.” For the complete raw data, one can visit <https://deportationdata.org/data/ice>, select “Removals,” and filter for each removal classified as “[5C] Relief Granted – Withholding of Deportation / Removal” or “[5D] Final Order of Deportation / Removal – Deferred Action Granted.” The chart attached as Exhibit D 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 previous guidance meant to give immigrants a “meaningful
2 opportunity’ to assert claims for protection under the Convention
3 Against Torture before initiating removal to a third country.” Exhibit E
4 (July 9, 2025, ICE third-country removal guidance).

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

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

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

20 Under this policy, the United States has deported several dozen
21 noncitizens to prisons and military camps in Rwanda, Eswatini, South
22 Sudan, and Ghana. Those who have not been returned to their home
23 countries are still detained, in countries to which they have never
24 been, without charge. Nokukhanya Musi & Gerald Imray, *10 more*
25 *deportees from the US arrive in the African nation of Eswatini*,
26 Associated Press (Oct. 6, 2025)⁴; see also Gerald Imray, *A Cuban man*

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⁴ Available at <https://apnews.com/article/eswatini-deportees-us-trump->

1 *deported by the US to Africa is on a hunger strike in prison, his lawyer*
 2 *says, Associated Press (Oct. 23, 2025)⁵; Frank Chothia, Eswatini*
 3 *confirms receiving \$5.1m from the US for accepting deportees, BBC*
 4 *(Nov. 18, 2025)⁶; Nick Alexandra, The Toll of Trump's African*
 5 *Deportation Agreements, New Lines Magazine (Dec. 10, 2025)⁷.*

6 CLAIMS FOR RELIEF

7 This Court should grant this petition and order two forms of
 8 relief.

9 First, it should order Petitioner's immediate release. ICE failed to
 10 follow its own regulations when continuing Petitioner's detention. And
 11 *Zadvydas v. Davis* holds that immigration statutes do not authorize
 12 the government to detain immigrants like Petitioner, for whom there is
 13 "no significant likelihood of removal in the reasonably foreseeable
 14 future." 533 U.S. 678, 701 (2001).

15 Second, it should enjoin the Respondents from removing
 16 Petitioner to a third country without first providing notice and a
 17 sufficient opportunity to be heard before an immigration judge.

18 I. Claim 1: Petitioner's detention violates *Zadvydas* and 19 8 U.S.C. § 1231.

20 A. Legal background

21 Mr. Hilderbrando Martinez's indefinite detention violates the
 22 statute authorizing detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v.*
 23 *Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem

24 immigration-74b2f942003a80a21b33084a4109a0d2.

25 ⁵ Available at [https://apnews.com/article/deported-immigration-migrants-trump-](https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859)
 26 [eswatini-8d8aad6dd01bf0e72de06480f3c70859.](https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859)

27 ⁶ Available at [https://www.bbc.com/news/articles/cq50vjdx368o.](https://www.bbc.com/news/articles/cq50vjdx368o)

28 ⁷ Available at [https://newlinesmag.com/reportage/the-toll-of-trumps-african-](https://newlinesmag.com/reportage/the-toll-of-trumps-african-deportation-agreements/)
[deportation-agreements/.](https://newlinesmag.com/reportage/the-toll-of-trumps-african-deportation-agreements/)

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

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

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

25 Following the six-month grace period, courts must use a burden-
26 shifting framework to decide whether detention remains authorized.
27 First, the petitioner must make a prima facie case for relief: They must
28

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

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

8 1. The six-month grace period has expired.

9 As an initial matter, the six-month grace period has ended. The
10 *Zadvydas* grace period lasts for “*six months* after a final order of
11 removal—that is, *three months* after the statutory removal period has
12 ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir.
13 2001). Here, Petitioner was ordered removed on **August 5, 2013 – 13**
14 **years ago**. Exh. A at ¶ 2.⁸ Accordingly, Petitioner’s 90-day removal
15 period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period
16 thus expired six months after the removal period began, in **February**
17 **2014**.

18 2. There is good reason to believe that there is no
19 significant likelihood of Petitioner’s removal in the
reasonably foreseeable future.

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

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28 ⁸ <https://acis.eoir.justice.gov/en/caseInformation>

1 **“Good reason to believe.”** The “good reason to believe”
2 standard is a relatively forgiving one. “A petitioner need not establish
3 that there exists no possibility of removal.” *Freeman v. Watkins*, No.
4 CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor
5 does “[g]ood reason to believe’ . . . place a burden upon the detainee to
6 demonstrate no reasonably foreseeable, significant likelihood of
7 removal or show that his detention is indefinite; it is something less
8 than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319,
9 at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d
10 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
11 Petitioners need only give a “good reason”—not prove anything to a
12 certainty.

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

25 **“In the reasonably foreseeable future.”** This component of
26 the test focuses on when Petitioner will likely be removed: Continued
27 detention is permissible only if removal is likely to happen “in the
28 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This

inquiry places a time limit on ICE's removal efforts. If the Court has "no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Petitioner "would eventually receive" a travel document, Petitioner can still meet Petitioner's burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

Petitioner satisfies this standard.

First, Petitioner cannot be removed to El Salvador. An immigration judge found that it is more-likely-than-not that they would risk being tortured if removed to that country.

Second, the government has already had 13 year to remove him to another country without success.

Third, there is "good reason to believe that there is no significant likelihood of his removal to a third country [] in the reasonably foreseeable future" when government has not yet provided "documentation regarding petitioner's deportation to a third country and were twice unsuccessful in deporting petitioner to Mexico." *Pena-Gil v. Lyons*, No. 25-CV-03268-PAB-NRN, 2025 WL 3268333, at *3 (D. Colo. Nov. 24, 2025) (noting ICE officers "attempted to persuade petitioner to voluntarily go to Mexico" and "transferred petitioner to several [detention] locations during its efforts to convince petitioner to voluntarily go to Mexico."). Here, ICE has attempted five different

1 times to remove him to Mexico.

2 *Fourth*, Mexico's acceptance may be contingent on the
3 noncitizen's consent. In *Rios v. Noem et al.*, No. 3:25-cv-02866-JES-
4 VET (S.D. Cal. 2025), an ICE Detention Officer stated that Mexico
5 refused to accept a Cuban national because he did not agree to be
6 removed to Mexico. He explained: "ICE drove Petitioner to the Mexican
7 border to effectuate his third country resettlement, but Petitioner
8 refused to willingly go to Mexico. Petitioner did not express a fear of
9 removal to Mexico. The Mexican government was ready to accept
10 Petitioner only if he would willingly go to Mexico." *Id.* ¶ 11. "This
11 evidence of Mexico's acceptance policy casts further doubt on the
12 Government's ability to remove" petitioner. *Arenado-Borges v. Bondi*,
13 No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *4 (W.D. Wash. Dec.
14 19, 2025).

15 *Sixth*, in light of Petitioner's statutory and international right to
16 seek protection from persecution and chain refoulement, there is no
17 reason to think Petitioner's removal could happen in the reasonably
18 foreseeable future. Even if a third country is later identified, the
19 government must first provide Petitioner with notice and an
20 opportunity to apply for protection as to *that* country as well, if
21 appropriate. 8 U.S.C. § 1231(b)(3). *See also Andriasian v. INS*, 180
22 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09
23 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004);
24 *cf Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005
25 (per curiam) (permitting removal to third country only where
26 individuals received "ample notice and an opportunity to be heard.")

27 Petitioner would be particularly entitled to seek protection from
28 removal because many noncitizens removed to third countries in the

1 past year have then been returned to their home countries. *See, e.g.*,
2 Nick Alexandra, *supra* at page 7 n.7. For Petitioner, a third-country
3 removal could very well result in “chain refoulement,” in which
4 Petitioner is deported to a third country that would proceed to deport
5 Petitioner to their home country of persecution. *See* Inter-American
6 Commission on Human Rights, *IACHR and United Nations Experts:*
7 *States Must Protect the Rights of Persons in Human Mobility* (Sept. 18,
8 2025);⁹ *see also* United Nations Committee Against Torture, *General*
9 *comment No. 4 on the implementation of article 3 of the Convention in*
10 *the context of article 22*, at section II (12) (Sept. 4, 2028) (“the person at
11 risk [of torture] should never be deported to another State from which
12 the person may subsequently face deportation to a third State in which
13 there are substantial grounds for believing that the person would be in
14 danger of being subjected to torture”).¹⁰

15 Thus, Petitioner has met their initial burden, and the burden
16 shifts to the government. Unless the government can prove a
17 “significant likelihood of removal in the reasonably foreseeable future,”
18 Petitioner must be released. *Zadvydas*, 533 U.S. at 701.

19 **B. Claim 2: ICE failed to comply with its own**
20 **regulations before re-detaining Petitioner, violating**
21 **Petitioner’s rights under applicable regulations and**
22 **the Fifth Amendment.**

23 Two regulations establish the process due to someone who is re-
24 detained in immigration custody following a period of release. 8 C.F.R.
25 § 241.4(l) applies to re-detention generally. 8 C.F.R. § 241.13(i) applies
26 to persons released after providing good reason to believe that they will

27 ⁹ Available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/190.asp&utm_term=class-dc

28 ¹⁰ Available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf.

1 not be removed in the reasonably foreseeable future, as Petitioner
2 were. *See Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at
3 *2 (order from Judge Huie explaining this regulatory framework and
4 granting a habeas petition for ICE's failure to follow these regulations).

5 These regulations permit an official to "return [the person] to
6 custody" because they "violate[d] any of the conditions of release."
7 8 C.F.R. § 241.13(i)(1); *see also* § 241.4(l)(1).

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

21 ICE is required to follow its own regulations. *United States ex rel.*
22 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*,
23 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that
24 agencies may be required to abide by certain internal policies is well-
25 established."). A court may review a re-detention decision for
26 compliance with the regulations, and "where ICE fails to follow its own
27 regulations in revoking release, the detention is unlawful and the
28

petitioner's release must be ordered." *Rokhfirooz*, 2025 WL 2646165 at *4 (collecting cases).

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

First, Petitioner did not receive proper notice of the reasons for re-detention upon revocation. Exh. A at ¶ 4-5. Second, it does not appear Petitioner received an interview where he could contest Petitioner's detention. *Id.*

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

Absent any evidence for "why obtaining a travel document is more likely this time around[,] Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Furthermore, past experience teaches that ICE almost certainly made no changed-circumstances determination before the arrest. *See Rokhfirooz*, 2025 WL 2646165 at *3.

Numerous courts have released re-detained immigrants after finding that ICE failed to comply with applicable regulations. *See, e.g., Rokhfirooz*, 2025 WL 2646165; *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463

(S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

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

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

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

1. Legal background

U.S. law enshrines protections against dangerous and life-threatening removal decisions. By statute, the government is prohibited from removing an immigrant to any third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government “may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen’s] life or freedom would be threatened in

1 that country because of the [noncitizen’s] race, religion, nationality,
2 membership in a particular social group, or political opinion.” *Id.*; see
3 also 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a
4 mandatory protection.

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

15 To comport with the requirements of due process, the government
16 must provide notice of the third country removal and an opportunity to
17 respond. Due process requires “written notice of the country being
18 designated” and “the statutory basis for the designation, i.e., the
19 applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d
20 998, 1019 (W.D. Wash. 2019); accord *D.V.D. v. U.S. Dep’t of Homeland*
21 *Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21,
22 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

23 The government must also “ask the noncitizen whether he or she
24 fears persecution or harm upon removal to the designated country and
25 memorialize in writing the noncitizen’s response. This requirement
26 ensures DHS will obtain the necessary information from the noncitizen
27 to comply with section 1231(b)(3) and avoids [a dispute about what was
28 said].” *Aden*, 409 F. Supp. 3d at 1019. “Failing to notify individuals

1 who are subject to deportation that they have the right to apply for
2 asylum in the United States and for withholding of deportation to the
3 country to which they will be deported violates both INS regulations
4 and the constitutional right to due process.” *Andriasian*, 180 F.3d at
5 1041.

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

22 “[L]ast minute” notice of the country of removal will not suffice,
23 *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x
24 724 (9th Cir. 2016), and for good reason: To have a meaningful
25 opportunity to apply for fear-based protection from removal,
26 immigrants must have time to prepare and present relevant
27 arguments and evidence. Merely telling a person where they may be
28 sent, without giving them a chance to look into country conditions,

1 does not give them a meaningful chance to determine whether and why
2 they have a credible fear.

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

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

15 Second, even when the government has obtained no credible
16 assurances against persecution and torture, the government can still
17 remove the person with between 6 and 24 hours' notice, depending on
18 the circumstances. Exh. B. Practically speaking, there is not nearly
19 enough time for a detained person to assess their risk in the third
20 country and marshal evidence to support any credible fear—let alone a
21 chance to file a motion to reopen with an IJ. An immigrant may know
22 nothing about a third country, like Eswatini or South Sudan, when
23 they are scheduled for removal there. Yet if given the opportunity to
24 investigate conditions, immigrants would find credible reasons to fear
25 persecution or torture—like patterns of keeping deportees indefinitely
26 and without charge in solitary confinement or extreme instability
27 raising a high likelihood of death—in many of the third countries that
28 have agreed to removal thus far. Due process requires an adequate

1 chance to identify and raise these threats to health and life. This Court
2 must prohibit the government from removing Petitioner without these
3 due process safeguards.

4 **II. This Court must hold an evidentiary hearing on any**
5 **disputed facts.**

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

10 **III. Prayer for relief**

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

- 13 1. Order Respondents to immediately release Petitioner from
14 custody;
- 15 2. Enjoin Respondents from re-detaining Petitioner under
16 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a
17 travel document for Petitioner's removal;
- 18 3. Enjoin Respondents from removing Petitioner unless they
19 provide the following process, *see D.V.D. v. U.S. Dep't of*
20 *Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640,
21 at *1 (D. Mass. May 21, 2025):
 - 22 a. written notice to both Petitioner and Petitioner's
23 counsel in a language Petitioner can understand;
 - 24 b. a meaningful opportunity, and a minimum of ten
25 days, to raise a fear-based claim for CAT protection
26 prior to removal;
 - 27 c. if Petitioner is found to have demonstrated
28 "reasonable fear" of removal to the country,

1 Respondents must move to reopen Petitioner's
2 immigration proceedings;

3 d. if Petitioner is not found to have demonstrated a
4 "reasonable fear" of removal to the country, a
5 meaningful opportunity, and a minimum of fifteen
6 days, for the Petitioner to seek reopening of
7 Petitioner's immigration proceedings.

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

Respectfully submitted,

Dated: June 29, 2026

s/ Zandra L. Lopez

ZANDRA L. LÓPEZ

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Attorneys for Petitioner

Exhibit A

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Attorneys for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SERGIO HILDEBRANDO
MARTINEZ,

Petitioner,

v.

MARKWAYNE MULLIN,
Secretary of the Department of
Homeland Security, et al.

Respondents.

**DECLARATION OF SERGIO
HILDEBRANDO MARTINEZ**

I, Sergio Hildebrando Martinez declare:

1. I was born in El Salvador in 1971.
2. In 2013, an immigration judge issued an order granting me relief under the Convention Against Torture.
3. Since then, I have been living in the New York and raising a family. I have five children. My youngest are 2, 9, 14 and 21. I was given a work permit and worked as a truck driver of a cement mixing truck.

1 4. Earlier this year, I received a letter in the mail telling me to report to
2 the offices of USCIS on April 14, 2026. I was told it was for the purpose of taking
3 my fingerprints and biometrics.

4 5. On April 14, I went to the USCIS offices. Without any notice, ICE
5 officers arrested me. They did not give me any reason for arresting me other than
6 the prior order of removal. I do not remember receiving any paper telling me why
7 I was being arrested. I was not given a chance to fight my arrest.

8 6. Since then I have been detained in multiple places. First, ICE took
9 me to New York where I was for 15 days. Then, they took me to Louisiana for
10 about a month. I have been taken back and forth to different places in Texas and
11 then Arizona and I am now in California.

12 7. ICE has asked me five different times if I want to be removed to
13 Mexico. Sometimes, ICE agents have told me that if I do not want to go to
14 Mexico, I will not be forced to go there. I do not want to go to Mexico. I have
15 never been told anything about what will happen to me when sent to Mexico. I
16 believe that Mexico will send me to El Salvador.

17 8. Despite previously stating I did not want to go to Mexico, on June 1,
18 2026, I was taken in a van to the border in Nogales, Arizona. We got to the border
19 in the afternoon when it was very hot. The drive there took about four hours. I
20 did not have any water or food. The Mexican man that was detained with me got
21 off the van and went to Mexico. The agents were telling me to get off the van but
22 I did not want to go. At one point, I was left inside the van with the windows up
23 and no air conditioning. I had to drink my own urine. I was eventually taken back
24 to a detention center.

25 9. To date, I have not received any information as to when or where I
26 will be removed.
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28

1 10. I cannot afford an attorney. I was earning around four thousand a
2 month. My wife does not work. I pay around \$1,800 in mortgage and all the bills
3 in the house. My children are still young.

4 11. This declaration was read to me in its entirety in the Spanish
5 language. I understand and agree with the statements contained herein.

6 I declare that I received authority to sign that the above is true and correct
7 under penalty of perjury from Mr. Sergio Hildebrando Martinez from Otay
8 Mesa Detention Center to San Diego on June 29, 2026, at 5:30 PM,

9 /s/ Zandra L. Lopez
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