

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 Mr. Fardijouybari

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

10 MEHRAD FARDIJOUYBARI,

11 Petitioner,

12 v.

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

18 Respondents.
19

CASE NO.: '26CV3840 BJC AHG

**Petition for Writ of
Habeas Corpus**

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

20

21

22

23

24

25

26

27

28

INTRODUCTION

Mr. Fardijouybari was born in Iran. He came to the United States on October 18, 2024, through the CPB-One app. On July 10, 2025, an immigration ordered him removed to Iran. He appealed, and his appeal was dismissed on February 26, 2026. More than four months later, there is no significant likelihood of removal in the reasonably foreseeable future and thus requests his release.

This civil immigration habeas petition seeks to prevent his indefinite detention pending deportation absent the basic statutory and due process guarantees outlined in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Because “there is no significant likelihood of removal in the reasonably foreseeable future,” Mr. Fardijouybari must be released. *Zadvydas v. Davis*, 533 U.S. 678 (2001). That holds true even though Mr. Fardijouybari has been detained for less than six months post final order of removal. **Many courts have held that *Zadvydas*’s six-month presumptively reasonable removal period is “just that—a presumption,” which can be rebutted with sufficiently compelling evidence.** *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018); *see also Cruz Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *7 n.5 (D. Md. Aug. 11, 2025); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D.N.J. 2025); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025); *Sweid v. Cantu*, No. CV-25-03590-PHX-DWL (CDB), 2025 WL 3033655, at *3 (D. Ariz. Oct. 30, 2025); *Puertas Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *2 (W.D. Tex. Oct. 22, 2025); *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 n.6 (D. Mass. 2018); *Ali v. Dep’t of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020); *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025); *Douglas v. Baker*, No. 25-CV-2243-ABA, 2025 WL 2687354, at *3 (D. Md. Sept. 19, 2025); *Jamal v. Sessions*, No. 5:18-06015-CV-RK, 2018 WL 1440609, at *2 (W.D. Mo. Mar. 22, 2018); *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis.

2008). Because Mr. Fardijouybari can prove that he will not be removed in the reasonably foreseeable future, he must be released.

Should the Court find that Petitioner has not met the rebuttable presumption, the Court should stay the matter until the six-month period expires, August 26, 2026.¹ At that time, the Court can evaluate then whether the government can meet its burden of establishing significant likelihood of removal in the reasonably foreseeable future.

STATEMENT OF FACTS

I. Mr. Fardijouybari has been detained by ICE for over four months after an IJ ordered him removed to Iran.

Mr. Fardijouybari was born in Iran in 1983. Exhibit A, Declaration of Mehrad Fardijouybari, at ¶ 1. He came to the United States on October 18, 2024, entering with the CBP-One application. *Id.* ¶ 2. An immigration judge denied asylum and ordered Mr. Fardijouybari removed on July 10, 2025. *Id.* ¶ 3.² He appealed. *Id.* On February 26, 2026, his appeal was dismissed. *Id.* Soon after, an ICE agent came to see Mr. Fardijouybari letting him know that the government wants to remove him to Iran. Exhibit A ¶ 4. Mr. Fardijouybari states, “Since February, no one from ICE has come to see me. I have not been told where or when I will be removed.” *Id.* ¶ 5.

It has now been over four months since his order of removal became final.

II. It is difficult to remove people such as Mr. Fardijouybari to Iran.

In late February, the United States launched strikes against Iran under Operation Epic Fury. *See* U.S. Department of War, *Operation Epic Fury*;³ *See also*, U.S. Department of War, *This Week in DOW: U.S. Delivers 'Devastating*

¹ The Court can also set a status hearing at around the six-month date to see if the government has had success of obtaining travel documents.

² *See* EOIR Automated Case Information, <https://acis.eoir.justice.gov/en/caseInformation>.

³ Available at <https://www.war.gov/Spotlights/Operation-Epic-Fury/>.

1 *Combat Power' to Iran*, March 20, 2026.⁴

2 Even before the war, the United States has not had normalized relations
3 with Iran since the Islamic Revolution of 1979. *See generally*, Council on Foreign
4 Relations, *1953–2025: U.S. Relations With Iran*.⁵ It currently lacks diplomatic
5 and consular relations. U.S. Department of State, Bureau of Consular Affairs, *Iran*
6 *Travel Advisory*, March 31, 2025.⁶

7 As President Trump found last year when banning the entry of Iranian
8 nationals into the United States, Iran “has historically failed to accept back its
9 removable nationals.” Presidential Proclamation, *Restricting the Entry of Foreign*
10 *Nationals to Protect the United States from Foreign Terrorists and Other*
11 *National Security and Public Safety Threats*, June 4, 2025⁷; accord Presidential
12 Proclamation, *Restricting and Limiting the Entry of Foreign Nationals to Protect*
13 *the Security of the United States*, Dec. 16, 2025.⁸ The Pentagon has not given a
14 “definitive time frame” for the end of the Iran war.⁹

15 Moreover, Iran has long been among the top fifteen most uncooperative
16 countries the United States faces when seeking to repatriate immigrants it has
17 ordered deported, alongside other countries like Cuba. *See* Office of Inspector
18

19
20 ⁴ Available at <https://www.war.gov/News/News-Stories/Article/Article/4440215/this-week-in-dow-us-delivers-devastating-combat-power-to-iran/>.

21 ⁵ Available at <https://www.cfr.org/timeline/us-relations-iran-1953-2025/>.

22 ⁶ Available at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/iran-travel-advisory.html>.

23 ⁷ Available at <https://www.whitehouse.gov/presidential-actions/2025/06/restricting-the-entry-of-foreign-nationals-to-protect-the-united-states-from-foreign-terrorists-and-other-national-security-and-public-safety-threats/>.

24
25 ⁸ Available at <https://www.whitehouse.gov/presidential-actions/2025/12/restricting-and-limiting-the-entry-of-foreign-nationals-to-protect-the-security-of-the-united-states/>.

26
27 ⁹ Rudi Maxwell et al., *Iran war updates: No ‘definitive time frame’ to end Iran*
28 *war, Pentagon to seek funds from Congress—as it happened*, ABC NEWS,
(March 24, 2026), <https://www.abc.net.au/news/2026-03-19/iran-israel-us-war-live-updates-march-19/106471026>.

1 General, Department of Homeland Security, *ICE Faces Barriers in Timely*
 2 *Repatriation of Detained Aliens*, (March 11, 2019).¹⁰

3 Even when Iranians were able to get documents, it has become nearly
 4 impossible to charter planes to go to Iran because of the war. *See* Kyle Cheney,
 5 Politico, ICE is trying to deport Iranians. The war is getting in the way, (March
 6 27, 2026)¹¹. Most of the airspace above Iran remains closed, and numerous flights
 7 have been canceled due to the war. *Id.*

8 **III. The government is carrying out deportations to third countries without**
 9 **providing sufficient notice and opportunity to be heard.**

10 Last summer, ICE began removing more immigrants it could not previously
 11 remove to third countries. ICE implemented new nationwide policies to do so. On
 12 July 9, 2025, ICE rescinded previous guidance meant to give immigrants a
 13 “‘meaningful opportunity’ to assert claims for protection under the Convention
 14 Against Torture before initiating removal to a third country.” Exhibit B (July 9,
 15 2025, ICE third-country removal guidance).

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

20 If a country fails to credibly promise not to persecute or torture releasees,
 21 ICE may remove immigrants with only 24 hours’ notice. “In exigent
 22 circumstances,” a removal may take place in six hours, “as long as the alien is
 23 provided reasonably means and opportunity to speak with an attorney prior to the
 24 removal.” Exhibit B.

25
 26
 27 ¹⁰ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf>.

28 ¹¹ Available at <https://www.politico.com/news/2026/03/27/iran-war-ice-deportations-00846640>.

1 Regardless of how much notice noncitizens receive of the third country ICE
 2 intends to deport them to, ICE “will not affirmatively ask whether the alien is
 3 afraid of being removed to the country of removal.” *Id.* (emphasis original). If the
 4 noncitizen “does not affirmatively state a fear of persecution or torture if removed
 5 to the country of removal listed on the Notice of Removal within 24 hours, [ICE]
 6 may proceed with removal to the country identified on the notice.” *Id.* at 2.

7 Under this policy, the United States has deported hundreds of noncitizens to
 8 prisons and military camps in Rwanda, Eswatini, South Sudan, Ghana, and
 9 Equatorial Guinea, among other countries. Those who have not been returned to
 10 their home countries are still detained, in countries to which they have never been,
 11 without charge. Eduardo Cuevas & Jennifer Borresen, *How Trump’s DHS deports*
 12 *people to prisons in countries they don’t know*, USA Today (May 4, 2026)¹²; see
 13 also Nokukhanya Musi & Gerald Imray, *10 more deportees from the US arrive in*
 14 *the African nation of Eswatini*, Associated Press (Oct. 6, 2025)¹³; Frank Chothia,
 15 *Eswatini confirms receiving \$5.1m from the US for accepting deportees*, BBC
 16 (Nov. 18, 2025)¹⁴; Nick Alexandra, *The Toll of Trump’s African Deportation*
 17 *Agreements*, *New Lines Magazine* (Dec. 10, 2025).¹⁵ Others have been returned
 18 to their home countries, even though they had received orders protecting them
 19 against their return under the Convention Against Torture. See Third Country
 20 Deportation Watch, *Ghana, Refugees International & Human Rights First* (Dec. 5,
 21 2025);¹⁶ Sheriff Bojang Jr., *Equatorial Guinea sends eight of Trump’s nine*
 22

23
 24 ¹² Available at <https://www.usatoday.com/story/news/nation/2026/04/29/trump-third-country-removal-eswatini-dhs/89609025007/>.

25 ¹³ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

26 ¹⁴ Available at <https://www.bbc.com/news/articles/cq50vjdx368o>.

27 ¹⁵ Available at <https://newlinesmag.com/reportage/the-toll-of-trumps-african-deportation-agreements/>.

28 ¹⁶ Available at <https://www.thirdcountrydeportationwatch.org/ghana>.

1 *deportees home, braces for new arrivals*, The Africa Report (Jan. 16, 2026).¹⁷

2 The United States has also deported noncitizens to war-torn countries
3 where they have no support or connection to, such as the Central African
4 Republic, where the United States itself has advised people to not travel there “for
5 any reason.” Camilo Montoya-Galvez, Annabelle Hanflig, CBS News, *U.S.*
6 *deports migrants from Afghanistan, Iran, other countries to violence-torn Central*
7 *African Republic*, (June 13, 2026)¹⁸.

8 CLAIM FOR RELIEF

9 *Zadvydas v. Davis* holds that immigration statutes do not authorize the
10 government to detain immigrants like Mr. Fardijouybari, for whom there is “no
11 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
12 678, 701 (2001). Though *Zadvydas* recognized that detention pending removal is
13 “presumptively reasonable” for six months after a removal order becomes final,
14 *id.*, many courts have concluded that that presumption is rebuttable.
15 Mr. Fardijouybari has rebutted the presumption here, proving that he will not be
16 removed in the reasonably foreseeable future.

17 I. Mr. Fardijouybari’s detention violates *Zadvydas* and 8 U.S.C. § 1231.

18 Mr. Fardijouybari’s indefinite detention violates the statute authorizing
19 detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the
20 Supreme Court considered a problem affecting people like Mr. Fardijouybari.
21 Federal law requires ICE to detain an immigrant during the “removal period,”
22 which typically spans the first 90 days after the immigrant is ordered removed.
23 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires, detention
24 becomes discretionary—ICE may detain the migrant while continuing to try to
25 remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to

26
27 ¹⁷ Available at <https://www.theafricareport.com/405291/equatorial-guinea-sends-eight-of-trumps-nine-deportees-home-braces-for-new-arrivals/>.

28 ¹⁸ Available at <https://www.cbsnews.com/news/us-deports-migrant-central-african-republic/>.

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

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

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

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

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

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

28 *Zadvydas* makes clear, detention is only “*presumptively* reasonable” for six
months. 533 U.S. at 701 (emphasis added). This presumption, however, can be

1 overcome; a detainee need not wait until her detention reaches constitutional
 2 limits in order to challenge it. *Clark v. Martinez*, 543 U.S. 371, 384 (2005)
 3 (“*Zadvydas* did not hold that the statute authorizes detention until it approaches
 4 constitutional limits; it held that, since interpreting the statute to authorize
 5 indefinite detention (one plausible reading) would approach constitutional limits,
 6 the statute should be read (in line with the other plausible reading) to authorize
 7 detention only for a period consistent with the purpose of effectuating removal.”).

8 Numerous courts have concluded that the six-month presumption is “just
 9 that, a presumption, one that can be rebutted upon a showing that removal is not
 10 reasonably foreseeable.” *Cruz Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL
 11 2306274, at *7 n.5 (D. Md. Aug. 11, 2025); *see also Duong v. Warden, California*
 12 *City Det. Facility*, No. 1:26-CV-02715 DC SCR, 2026 WL 1243444, at *3 (E.D.
 13 Cal. May 6, 2026); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D.N.J.
 14 2025); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md.
 15 Sept. 8, 2025); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020);
 16 *Sweid v. Cantu*, No. CV-25-03590-PHX-DWL (CDB), 2025 WL 3033655, at *3
 17 (D. Ariz. Oct. 30, 2025); *Puertas Mendoza v. Bondi*, No. SA-25-CA-00890-XR,
 18 2025 WL 3142089, at *2 (W.D. Tex. Oct. 22, 2025); *Jimenez v. Cronen*, 317 F.
 19 Supp. 3d 626, 641 n.6 (D. Mass. 2018); *Ali v. Dep’t of Homeland Sec.*, 451 F.
 20 Supp. 3d 703, 707 (S.D. Tex. 2020); *Villanueva v. Tate*, No. CV H-25-3364, 2025
 21 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025); *Douglas v. Baker*, No. 25-CV-
 22 2243-ABA, 2025 WL 2687354, at *3 (D. Md. Sept. 19, 2025); *Jamal v. Sessions*,
 23 No. 5:18-06015-CV-RK, 2018 WL 1440609, at *2 (W.D. Mo. Mar. 22, 2018). “A
 24 close reading of *Zadvydas*” refutes any attempt to turn that presumption into a
 25 bright-line rule. *Cesar*, 542 F. Supp. 2d at 902.

26 Prohibiting all detention challenges before the six-month mark would go
 27 against *Zadvydas*’s most fundamental holding: that “if removal is not reasonably
 28 foreseeable, the court should hold continued detention unreasonable and no longer

1 authorized by statute.” *Zadvydas*, 533 U.S. at 699–700. “The fundamental
2 principle in *Zadvydas* . . . is that where removal is not reasonably foreseeable,
3 detention is unconstitutional.” *Cesar*, 542 F. Supp. 2d at 902. “*Zadvydas*
4 unequivocally held that ‘once removal is no longer reasonably foreseeable,
5 continued detention is no longer authorized.’” *Puerta Mendoza*, 2025 WL
6 3142089, at *2. It follows that “[i]f there comes a point during the six-month
7 period at which it is ‘no longer reasonably foreseeable’ that a person will actually
8 be removed, then detention ‘is no longer authorized,’” and the petitioner must be
9 released. *Cruz Medina*, 2025 WL 2306274, at *6 (quoting *Zadvydas*, 533 U.S. at
10 699–700). To hold otherwise would be to render *Zadvydas* “internally
11 inconsistent.” *Zavvar*, 2025 WL 2592543, at *5.

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

23 Furthermore, when introducing the six-month presumption, the Court
24 “noted that such presumptions are intended to ‘guide lower court
25 determinations.’” *Zavvar*, 2025 WL 2592543, at *5. A “guide” is “not a
26 categorical prohibition on claims challenging detention less than six months.”
27 *Trinh*, 466 F. Supp. 3d at 1093.
28

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

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

13 **III. There is no need to wait for the presumptive six-month period because**
14 **there is no significant likelihood of removal in the reasonably**
foreseeable future to Iran.

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

18 First, removals to Iran are difficult. Mr. Fardijouybari is similarly situated
19 to the Iranian national ordered released recently in *Ghasedi v. Wamsley*, No. 2:25-
20 CV-01984-RSM-BAT, 2025 WL 3699705, at *3-5 (W.D. Wash. Dec. 1, 2025),
21 *report and recommendation adopted*, No. 2:25-CV-01984-RSM-BAT, 2025 WL
22 3697208 (W.D. Wash. Dec. 19, 2025) There, as here, “the government has failed
23 to remove him for” years, “states no timeframe for removal, and has not yet
24 obtained a travel document for him from Iran or another country.” *Id.* at *3. In
25 another recent case, *Yousefi v. Larose*, No. 3:26-cv-00272-RBM-VET, slip op. at
26 1 [Doc. #15] (S.D. Cal., Mar. 26, 2026), an Iranian national was immediately
27 released even though he had documents and a flight because the plane was
28 canceled and the government conceded that, “there is no significant likelihood of

1 removal in the reasonably foreseeable future’ and that the ‘proper remedy is
2 release of the Petitioner from custody under 8 U.S.C. § 1231(a)(6), subject to
3 conditions imposed by ICE under 8 U.S.C. § 1231(a)(3).’” *Id. See also Talebi v.*
4 *LaRose*, No. 26-cv-02642-BAS-JLB, slip op. at 2, Doc. 8 (granting after noting
5 Petitioner’s argument that the “relationship between the United States and Iran
6 has soured” and the government’s agreement that it is “unable to ascertain
7 sufficient facts at this time to establish that there is a significant likelihood of
8 removal in the reasonably foreseeable future” under *Zadvydas*.) If someone with
9 documents and a flight cannot be removed to Iran, then someone in
10 Mr. Fardijouybari’s position, where it is unclear whether documents have been
11 obtained at all, is even more unlikely to be removed to Iran.

12 In light of Iran’s status as “one of 15 ‘uncooperative’ countries that does
13 not facilitate deportations of its citizens,” the habeas petitioner had met his burden
14 under *Zadvydas*. *Id.* Thus, “it is unlikely that anyone will be removed to a country
15 deemed ‘uncooperative,’ with which the United States has no diplomatic relations
16 and is currently at war.” *Minassi v. Noem*, No. 5:26-CV-00723-RGK-AYP, 2026
17 WL 923289, at *5 (C.D. Cal. Apr. 1, 2026).

18 *Second*, in this case, ICE does not appear to have made any progress in
19 removing Mr. Fardijouybari in over four months since he was ordered removed.
20 The governing statute provides that ICE “shall remove the alien from the United
21 States within a period of 90 days.” 8 U.S.C. § 1231(a)(1)(A). Yet in the over four
22 months since he was ordered removed, it is unclear whether any steps have been
23 taken to facilitate Mr. Fardijouybari’s removal. Exh. A ¶ 5. And at the time of the
24 declaration, Mr. Fardijouybari did not know whether ICE had made any progress.
25 *Id.* “[I]f [a] plaintiff c[an] show . . . that the government [is] not taking steps to
26 effectuate his removal, then . . . removal likely would not be reasonably
27 foreseeable, and detention would therefore be unconstitutional.” *Cesar v. Achim*,
28 542 F. Supp. 2d 897, 905 (E.D. Wis. 2008). Even if ICE were making efforts

1 behind the scenes, so far, it appears that none have borne fruit.

2 That matters, because even when Mr. Fardijouybari bears the burden, the
3 *Zadvydas* standard remains the same: He must show that removal is not
4 significantly likely in the reasonably foreseeable future. *See Cesar*, 542 F. Supp.
5 2d at 903. And *Zadvydas* itself made clear that good faith efforts do not
6 themselves show that removal is significantly likely. The petitioner in *Zadvydas*
7 appealed a “Fifth Circuit h[olding] [that] [the petitioner’s] continued detention
8 [was] lawful as long as good faith efforts to effectuate deportation continue and
9 [the petitioner] failed to show that deportation will prove impossible.” 533 U.S. at
10 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit’s
11 good-faith-efforts standard “demand[ed] more than our reading of the statute can
12 bear.” *Id.*

13 Thus, “under *Zadvydas*, the reasonableness of Petitioner’s detention does
14 not turn on the degree of the government’s good faith efforts. Indeed, the
15 *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of
16 Petitioner’s detention turns on whether and to what extent the government’s efforts
17 are likely to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL
18 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Here, then, it is possible that ICE is
19 making “travel document requests,” *Gilali v. Warden of McHenry Cnty. Jail*, No.
20 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019)—though no
21 evidence of that has filtered through to Mr. Fardijouybari. But mere efforts would
22 be “insufficient” to defeat Mr. Fardijouybari’s showing that removal is not likely.
23 *Id.* That would be “merely an assertion of good-faith efforts to secure removal; it
24 does not make removal likely in the reasonably foreseeable future.” *Id.*; *see also*
25 *Zavvar*, 2025 WL 2592543, at *7 (finding the presumption rebutted, despite
26 outstanding third-country requests to Australia and Romania, because of “[t]he
27 lack of any sign that Australia or Romania is actively considering accepting [the
28 petitioner]”).

1 *Third*, even if ICE could eventually remove Mr. Fardijouybari to Iran, there
2 is no reason to think that will happen in the reasonably foreseeable future because
3 of recent conflicts the middle east that have yet to be resolved, and the history of
4 nondiplomatic relations between the United States and Iran.

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

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

10 The policies in the currently effective July 6, 2025, memo do not adhere to
11 these requirements. The operative memo “contravenes Ninth Circuit law.”
12 *Nguyen*, 796 F. Supp. 3d at 728 (explaining how the July 9, 2025 ICE memo
13 contravenes Ninth Circuit law on the process due to noncitizens in detail); *see*
14 *also Azzo v. Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 3535208, *6–*8 (S.D.
15 Cal. Dec. 10, 2025) (same).

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

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

25 Next, under the policy, ICE need not give immigrants *any* notice or *any*
26 opportunity to be heard before removing them to a country that—in the State
27 Department’s estimation—has provided “credible” “assurances” against
28 persecution and torture. Exhibit B. By depriving immigrants of any chance to
challenge the State Department’s view, this policy violates “[t]he essence of due

1 process,” “the requirement that a person in jeopardy of serious loss be given
2 notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*,
3 424 U.S. 319, 348 (1976) (cleaned up).

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

12 If given the opportunity to investigate conditions, immigrants may find
13 credible reasons to fear persecution or torture—like keeping deportees indefinitely
14 and without charge in solitary confinement, or extreme instability raising a high
15 likelihood of death—in many of the third countries that have agreed to removal of
16 thus far. In fact, the government has deported people to war-torn countries where
17 there is a significant likelihood of death and physical harm, which goes against
18 the principles established by the Convention Against Torture and asylum laws.

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

25 Due process requires an adequate chance to identify and raise these threats
26 to health and life. Because “[f]ailing to notify individuals who are subject to
27 deportation that they have the right to apply . . . for withholding of deportation to
28 the country to which they will be deported violates both INS regulations and the

1 constitutional right to due process,” *Adriasian*, 180 F.3d at 1041, this Court must
2 prohibit the government from removing Mr. Fardijouybari without these due
3 process safeguards.

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

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

8 **PRAYER FOR RELIEF**

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

- 10 1. Order Respondents to immediately release Petitioner;
11 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
12 § 1231(a)(6) unless and until Respondents obtain a travel document
13 for Petitioner’s removal;
14 3. Enjoin Respondents from re-detaining Petitioner without first
15 following all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i),
16 and any other applicable statutory and regulatory procedures;
17 4. Order all other relief that the Court deems just and proper.

18
19 Respectfully submitted,
20

21 Dated: July 1, 2026

s/ Zandra L. Lopez

ZANDRA L. LOPEZ

Federal Defenders of San Diego, Inc.

Attorneys for Mr. Fardijouybari

Email: Zandra_Lopez@fd.org

Exhibit A

Zandra Luz Lopez
California Bar No. 216567
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
Zandra_Lopez@fd.org

Attorneys for Mehrad Fardijouybari

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

MEHRAD FARDIJOUYBARI,

Petitioner,

v.

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

Respondents.

CASE NO.:

**Declaration of Mehrad
Fardijouybari**

1 I, Mehrad Fardijouybari, declare as follows:

2 1. I was born in Iran . My parents were also born in
3 Iran.

4 2. On October 18, 2024, I entered the United States with CBP-One
5 Application to request asylum.

6 3. An immigration judge ordered me removed on July 10, 2025. I
7 appealed. On February 26, 2026, my appeal was dismissed.

8 4. Soon after, an ICE agent came to see me letting me know that they
9 want to remove me to Iran. I was then moved from Arizona to California.

10 5. Since February, no one from ICE has come to see me. I have not
11 been told where or when I will be removed.

12 6. I have been detained for a very long time and I am under a lot of
13 stress.

14 7. Each of the lines have been read to me by a Farsi interpreter and I
15 believe them to be true and correct.

16
17 I, Zandra Lopez, declare under penalty of perjury that I read every line of this
18 declaration to Mehrad Fardijouybari and he confirmed that it was true and correct.

19
20 Date: June 15, 2026

Signed: /s/ Zandra Lopez

21
22
23
24
25
26
27
28