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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GHEZAE FISSIHA ARONE,
Petitioner,

v.

Warden, GOLDEN STATE ANNEX,
operated by THE GEO GROUP, INC., a
Florida profit corporation; ORESTES
CRUZ, Acting Director San Francisco
Field Office, Immigration and Customs
Enforcement; MARCOS CHARLES,
Executive Associate Director Of ICE
Enforcement And Removal Operations
(ERO); MARKWAYNE MULLIN,
Secretary, Department Of Homeland
Security; and TODD BLANCHE, Acting
Attorney General,

Respondents.

Case No. _____

**PETITION FOR WRIT OF HABEAS
CORPUS AND INJUNCTIVE RELIEF
UNDER 28 U.S.C § 2241**

INTRODUCTION

1. This case concerns the indefinite—and potentially permanent—civil detention of an asylum seeker, Ghezae Fissiha ARONE, who has been held since June 11, 2026 after being released under ICE supervision for the last ten years following DHS's failure to execute a final removal order to Eritrea *entered in 2016* by an Immigration Judge ("IJ") at the York Immigration Court in Pennsylvania.

2. For ten years, Petitioner reported regularly to DHS on an order of supervision but was taken into custody on June 11, 2026, and has been held since that time.

3. Petitioner was previously held for ninety days post-removal-order, which period expired on July 20, 2016. As expected, even after detaining him again ten years later, the government has been unable to remove Petitioner.

4. Petitioner's detention violates the Immigration and Nationality Act and Petitioner's right to Due Process.

5. Petitioner was detained at the border on November 12, 2015 and held in custody during the entirety of his 2015-2016 immigration proceedings. He was previously released from immigration custody in July 2016 after he was ordered removed to Eritrea in April 2016, since Eritrea does not cooperate with the United States for repatriation. He lived in the community for *ten years* pursuant to the Department of Homeland Security's authority for supervised release of stateless noncitizens under 8 USC 1231(a). Without prior notice, without a hearing, and without any neutral determination that re-detention was justified, the Department of Homeland Security abruptly re-arrested Petitioner and deprived him of his liberty. Such re-detention violates the Due Process Clause of the Fifth Amendment and exceeds DHS's statutory authority under 8 U.S.C. § 1231(a)(6), which permits detention after the post-final-order removal period has lapsed only for noncitizens who are (i) inadmissible; (ii) removable under certain provisions of § 1227(a); (iii) a risk to the community; or (iv) unlikely to comply with their removal order. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022) (quoting 8 U.S.C. § 1231(a)(6)). "Continued detention under this provision [triggers] the 'post-removal period.'" *Johnson v. Guzman Chavez*, 594 U.S. 523, 529, 541 (2021).

6. Petitioner's six-month removal period expired ten years ago on July 20, 2016. *Berhe v. Mattos*, No. 2:25-CV-01782-RFB-DJA, 2026 WL 222302, at *4 (D. Nev. Jan. 28, 2026) (holding that (1) Eritrean noncitizen was not subject to mandatory detention pending removal, after 90-day removal period within which Department of Homeland Security (DHS) was required to effect removal expired; (2) noncitizen's detention after removal period expired more than 23 years ago

1 was presumptively unreasonable; and (3) noncitizen's removal to Eritrea was not reasonably
2 foreseeable, thus requiring noncitizen's release from detention).

3 7. Petitioner has no criminal history and has complied with all conditions of supervision
4 imposed on him by the government, and he was detained at an ICE check-in where he was
5 demonstrating that compliance.

6 8. On information and belief, Respondents have not produced travel documents for
7 Petitioner or assurances from any country willing to accept him in the *ten years* since the IJ's
8 Order.

9 9. Respondents' failure to obtain Eritrean travel documents or identify a viable third
10 country for removal confirms that Petitioner's continued civil immigration detention no longer
11 serves any legitimate statutory purpose. The Supreme Court in *Zadvydas* made clear that due
12 process is violated where civil detention is no longer related to its purpose. *Zadvydas v. Davis*,
13 533 U.S. 678, 690 (2001). Far from authorizing indefinite detention, *Zadvydas* establishes a
14 presumption of release once removal is not reasonably foreseeable. Under this well-established
15 Supreme Court precedent, the government's authority to detain noncitizens is limited in the
16 absence of a significant likelihood of removal in the reasonably foreseeable future. *Id.* Because
17 that likelihood is nonexistent, Petitioner's continued detention is not only unauthorized, but
18 unconstitutional. This Court should grant habeas relief and order his immediate release.

19 10. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests an order to show cause
20 why he should remain in detention be issued within three days.

21 11. Furthermore, the ICE San Francisco Field Office's across-the-board detention of
22 Petitioner and similarly situated individuals for at least 90 days past their final removal orders
23 without prompt, individualized determinations of whether they should remain detained is
24 inconsistent with ICE's own long-standing policy, thereby violating the Administrative Procedure
25 Act (APA) and due process. *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

26 12. Accordingly, to vindicate Petitioner's statutory rights under 8 U.S.C. § 1226(a), the
27 terms of his release under the July 20, 2016 Order of Supervision, and his constitutional rights
28

1 under the Fifth Amendment to the United States Constitution, this Court should grant the instant
2 petition for a writ of habeas corpus.

3 JURISDICTION

4 13. This action arises under the Constitution of the United States and the Immigration
5 and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

6 14. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (the general grant of
7 habeas corpus authority to the district court), 28 U.S.C. § 1331 (federal question jurisdiction), and
8 Article I, § 9, cl. 2 of the United States Constitution (“Suspension Clause”).

9 15. Federal district courts have jurisdiction to hear habeas claims by non-citizens
10 challenging the lawfulness of their detention. *See, e.g., Zadvydas*, 533 U.S. at 687.

11 16. Federal courts also have federal question jurisdiction, through the APA, to “hold
12 unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or
13 otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable on
14 habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may
15 proceed by “any applicable form of legal action, including actions for declaratory judgments or
16 writs of prohibitory or mandatory injunction or habeas corpus”). The APA affords a right of
17 review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702.
18 Respondents’ continued detention of Petitioner after the 90-day removal period has adversely and
19 severely affected Petitioner’s liberty and freedom.

20 17. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et.*
21 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.
22 § 1651.

23 VENUE

24 18. Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. §
25 1391(b)(2) and (e)(1) because Petitioner is detained at the Petitioner is detained at the Golden
26 State Annex located in McFarland, California, which is within the jurisdiction of this District.

27 19. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
28 Respondents are employees, officers, and agencies of the United States, and because a substantial
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1 part of the events or omissions giving rise to the claims in this action occurred in the Eastern
2 District of California. These events or omissions also continue to occur at the San Francisco ICE
3 Field Office, which is the field office which detains noncitizens and detains them at several
4 detention centers in the Eastern District of California.

5 **REQUIREMENTS OF 28 U.S.C. § 2243**

6 20. The Court must grant the petition for writ of habeas corpus or issue an order to show
7 cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28
8 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a
9 return “within *three days* unless for good cause additional time, not exceeding twenty days, is
10 allowed.” *Id.* (emphasis added).

11 21. Courts have long recognized the significance of the habeas statute in protecting
12 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
13 important writ known to the constitutional law of England, affording as it does a *swift* and
14 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400
15 (1963) (emphasis added). If an order to show cause is issued, the Court must require respondents
16 to file a return “within three days unless for good cause additional time, not exceeding twenty
17 days, is allowed.” *Id.* (emphasis added).

18 **PARTIES**

19 22. Petitioner, Ghezac Fissiha ARONE, is a noncitizen who sought asylum and related
20 protections before a U.S. Immigration Court, which is controlled by the Executive Office of
21 Immigration Review (EOIR). Respondents seek to deport him to Eritrea. Petitioner is currently
22 detained at the Golden State Annex in McFarland, California.

23 23. Respondent WARDEN OF THE GOLDEN STATE ANNEX, whose name is not
24 publicly available, is sued in his official capacity as the Warden of the Golden State Annex,
25 which is operated by THE GEO GROUP, INC., a Florida corporation. THE GEO GROUP has
26 immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration
27 and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

24. Respondent Orestes CRUZ is sued in his official capacity as the Acting Field Office Director of the San Francisco Field Office of U.S. Immigration and Customs Enforcement. Respondent CRUZ is a legal custodian of Petitioner and has authority to release Petitioner.

25. Respondent Marcos CHARLES is sued in his official capacity as the Executive Associate Director of ICE Enforcement and Removal Operations (“ERO”) of U.S. Immigration and Customs Enforcement. Respondent CHARLES is a legal custodian of Petitioner and has authority to release Petitioner.

26. Respondent Markwayne MULLIN is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent MULLIN is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees all subordinate agencies within DHS, including U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner’s detention. Respondent MULLIN is a legal custodian of Petitioner.

27. Respondent Todd BLANCHE is sued in his official capacity as the Acting Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent BLANCHE is a legal custodian of Petitioner.

STATEMENT OF FACTS

1. On or about November 12, 2015, Petitioner applied for admission to the United States at the border near Hidalgo, Texas seeking asylum from his birth country of Eritrea (born to Ethiopian parents). **Exhibit A**, Notice to Appear (“NTA”) dated 12/18/2015. Petitioner fled the country without travel documents from Eritrea (he had only his Eritrean birth certificate because he was too young to apply for an exit visa in Eritrea when he fled). He was detained by U.S. immigration officials who started the expedited removal process. **Exhibit B**, I-860 Notice and Order of Expedited Removal (incomplete). However, he informed the officials of his fear of returning to Eritrea due to religious persecution (Petitioner is a Christian who was jailed by Eritrean officials for reading the Bible and being a conscientious objector). **Exhibit C**, I-867A

1 Record of Sworn Statement at credible fear interview. That same day, an officer interviewed
2 Petitioner and determined that he had a credible fear of persecution or torture, and he was placed
3 in removal proceedings. *Id.*; *see also* **Exhibit A**, NTA. Petitioner remained detained while he
4 awaited his individual hearing on April 21, 2016.

5 2. On April 21, 2016, the IJ entered a final order of removal against Petitioner which
6 denied his application for asylum, withholding of removal, or protection under the Convention
7 Against Torture. **Exhibit D**, IJ Order dated 4/21/2016. The Order designated Eritrea as the
8 country of removal. *Id.*

9 3. Petitioner remained in ICE detention after the removal order was entered. On July 20,
10 2016, he was released under an Order of Supervision because ICE “did not effect his removal
11 within the period prescribed by law.” **Exhibit E**, Order of Supervision dated 7/20/2016; *see also*
12 **Exhibit F**, Release Notification dated 7/12/20216. As one of the conditions of his release,
13 Petitioner was required to “continue to make efforts in working with the Embassy of Eritrea to
14 obtain a travel document” and to provide ICE with written copies of requests and replies from the
15 Embassy. *Id.*

16 4. Petitioner has complied with every condition of his ICE supervision. He has never
17 missed a check-in, showing up at least 19 times over the last ten years at ICE field offices in
18 Michigan, Texas, and California. **Exhibit E**, Order of Supervision, at 2-3; *see also* **Exhibit G**,
19 ICE Letter Confirming Compliance, dated 3/19/2019. Petitioner was visited at his home monthly
20 from 2016-2023, when he purchased his home and the home visits ceased. He called into ICE by
21 phone every two weeks. He even wore an ankle monitor for *four years* straight, from 2016-2020.

22 5. Petitioner has continuously tried to obtain a National ID and a travel document from
23 Eritrea since 2016, sending several emails for appointments in 2016-2018 (with no response) and
24 submitting passport applications in 2017, 2020, twice in 2023, 2025, and 2026. *See* **Exhibit H**,
25 Petitioner’s Attempts to Obtain Eritrean Travel Documents. He also hired counsel in New York
26 who contacted the Eritrean embassy on his behalf in 2025; that counsel also arranged for him to
27 apply through an “Eritrean community representative” in 2025, which did not pan out. *Id.*
28 Petitioner made countless phone calls to the Eritrean embassy, which does not answer its phones.

1 He tried once to visit the Eritrean Consulate in Oakland, California, but it had closed in 2007.
2 Petitioner also drove cross-country twice (once from Michigan and once from California) to show
3 up in-person at the Eritrean embassy in Washington, D.C., but they refused to see him.

4 6. In 2017, Petitioner married his wife Mulunesh Sisay Terefe ("Mulu"), a naturalized
5 U.S. citizen who was born in Ethiopia. **Exhibit I**, Marriage Certificate. They have two U.S.
6 Citizen children together, [REDACTED] and [REDACTED] and Petitioner is also stepdad to
7 Mulu's daughter, [REDACTED]

8 7. Mulu filed an I-130 Petition for his benefit on September 22, 2017, which was
9 approved on October 29, 2018. **Exhibit J**, I-130 Approval Notice. Petitioner applied for an
10 immigrant visa, which was approved by USCIS but which is currently pending until he can
11 appear at an immigrant visa interview in Nairobi, Kenya. **Exhibit K**, U.S. Department of State
12 Immigrant Visa Status. Since he had a prior removal order, Petitioner filed an I-212 Application
13 to Reapply for Admission after Deportation or Removal on May 15, 2019, which was approved
14 on April 7, 2020. **Exhibit L**, I-212 Approval Notice. Petitioner also applied for an I-601A
15 Provisional Unlawful Presence Waiver, which was granted on August 26, 2024. **Exhibit M**, I-
16 601A Approval Notice. **Petitioner would very much like to travel to Kenya for his immigrant**
17 **visa interview, but he has been unable to do so because he cannot get travel documents from**
18 **Eritrea.**

19 8. Mulu still has her Yellow Card from Ethiopia, but Petitioner cannot get Ethiopian
20 citizenship through Mulu (and therefore travel documents) because he has to reside in Ethiopia
21 for at least one year prior to applying for it. **Exhibit N**, Ethiopian Nationality Proclamation No.
22 378/2003, at 3.

23 9. Petitioner's NY Counsel has also applied for parole-in-place under INA 212(d)(5)(A)
24 for Petitioner in March 2026 and for advance parole and travel documents for him in May 2026.
25 **Exhibit O**, Parole-in-Place Application dated 3/9/2026; **Exhibit P**, I-131 Application USCIS
26 Case Status dated 5/20/2026.

27 10. At his most recent ICE check-in on June 11, 2026, in Sacramento, California,
28 Petitioner was unlawfully detained by ICE. Although Petitioner explained that he has
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1 continuously tried to get travel documents from Eritrea, four ICE officers arrested him, saying it
2 was “not enough” and that he must be detained because it had been “more than ten years” since
3 his removal order. The ICE officers did not have a warrant for Petitioner’s arrest. They did not
4 describe any travel documents they had obtained for him, or any travel plans they had arranged
5 for him; only the passage of time was given as a reason for his arrest.

6 11. Since then, Petitioner has remained in civil immigration detention, despite having
7 spent eight months in detention in 2015-2016, including the ninety days after the IJ’s final
8 removal order was originally entered.

9 12. Petitioner is currently detained at the Golden State Annex, operated by THE GEO
10 GROUP, Inc.

11 13. Petitioner is in prison-like conditions in the Golden State Annex, including forced
12 labor, freezing cold, dirty air and water, bugs and mice everywhere (with only a bottle marked
13 CLOROX to spray them with), dirty used clothing, lack of sufficient vegetarian food (one meal of
14 canned beans daily, plus one apple and one banana weekly), and inadequate medical care.
15 (**Exhibit Q**, Declaration of Petitioner’s Counsel). In addition to the abysmal conditions, Petitioner
16 was sick for two weeks with a condition that had similar symptoms to COVID-19, but he was not
17 tested for COVID-19 and told he had a “flu.” He is also being subjected to discriminatory
18 treatment by a guard at Golden State Annex based on his race and nationality, including being
19 told he could not enter the dining hall to eat because he was black; being denied utensils because
20 in his home country, they eat with their hands; and being told not to touch a chair in a waiting
21 room even though white detainees were being allowed to touch the chairs.

22 LEGAL FRAMEWORK

23 14. “Freedom from imprisonment—from government custody, detention, or other forms
24 of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth
25 Amendment] protects.” *Zadvydas*, 533 U.S. at 690. Indefinite detention raises a particularly
26 “serious constitutional problem” and directly violates the Due Process Clause. *Id.* at 689-90.

27 15. Any deprivation of the liberty interests protected by the Due Process Clause must be
28 closely related to a compelling government interest. See *Reno v. Flores*, 507 U.S. 292, 301-02

1 (1993) (holding that due process “forbids the government to infringe certain ‘fundamental’ liberty
2 interests at all, no matter what process is provided, unless the infringement is narrowly tailored to
3 serve a compelling state interest”). Accordingly, any period of post-final-order detention must be
4 strictly limited to what is necessary to achieve the goal of removal. Otherwise, if federal law were
5 understood to allow for “indefinite, perhaps permanent, detention,” it would pose “a serious
6 constitutional threat.” *Zadvydas*, 533 U.S. at 699.

7 16. Furthermore, the Due Process Clause prohibits the government from revoking an
8 existing grant of liberty without first providing notice and a meaningful opportunity to be heard,
9 and that principle applies with full force where DHS seeks to re-detain a noncitizen previously
10 released from their custody. Once DHS has exercised its discretion to release a noncitizen into the
11 community, a substantial liberty interest accrues, and detention becomes the exception rather than
12 the rule. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Hernandez v. Sessions*, 872 F.3d 976,
13 981 (9th Cir. 2017). Courts in the Northern District have repeatedly held that DHS may not
14 summarily revoke that liberty interest through re-arrest without first affording pre-deprivation
15 process, including notice of the alleged violations or changed circumstances, a hearing before a
16 neutral decision-maker, and a determination that a material change in circumstances justifies re-
17 detention. *See Rodriguez Diaz v. Kaiser*, 2025 WL 3011852, at *6–8 (N.D. Cal. Sept. 16, 2025);
18 *Guillermo M.R. v. Kaiser*, 2025 WL 1983677, at *8 (N.D. Cal. July 17, 2025); *Pinchi v. Noem*,
19 2025 WL 2084921, at *3–5 (N.D. Cal. July 25, 2025).

20 17. A post-arrest hearing does not cure the constitutional defect because it presumes
21 detention and improperly places the burden on the noncitizen to prove a negative—namely, that
22 he is not a danger to the community or a flight risk—rather than requiring the government to
23 justify the deprivation of liberty in the first instance. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40
24 (BIA 2006); *Guillermo M.R.*, 2025 WL 1983677, at *8. As the Supreme Court has long
25 recognized in the parole-revocation context, due process requires that reincarceration be preceded
26 by a hearing at which the government bears the burden of establishing that continued liberty is no
27 longer warranted. *See Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (disapproving of
28

1 reincarceration pursuant to a parole revocation where there was no continuing interest in
2 detaining a criminal parolee erroneously released).

3 18. This timing defect is constitutionally significant. As courts have explained, post-hoc
4 procedures do not mitigate the risk of erroneous deprivation where the government had ample
5 opportunity to provide notice and process in advance and where the loss of liberty was neither
6 sudden nor unforeseeable. *Rodriguez Diaz*, 2025 WL 3011852, at *7–8; *Pinchi*, 2025 WL
7 2084921, at *5; *Vargas v. Jennings*, No. 20-CV-05785, 2020 WL 5043124, at *3–4 (N.D. Cal.
8 Aug. 23, 2020). Allowing DHS to incarcerate first and litigate justification later inverts the
9 constitutional order and creates an unacceptably high risk of error, particularly where, as here,
10 DHS has never identified any facts demonstrating a change in Petitioner’s circumstances since his
11 prior release.

12 19. Because DHS failed to carry its burden to justify re-detention at the moment liberty
13 was withdrawn, Petitioner’s confinement no longer bears a reasonable relation to any legitimate
14 civil purpose and violates due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Hernandez*
15 *v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). The appropriate remedy for this structural
16 constitutional violation is not a belated hearing under a detention-presumptive framework, but
17 immediate release.

18 20. Furthermore, with regard to Petitioner’s final removal order, 8 U.S.C. § 1231(a)
19 governs the detention of noncitizens who have been ordered removed from the United States. 8
20 U.S.C. § 1231(a)(1)(A) provides for a removal period of 90 days. In *Zadvydas*, the Supreme
21 Court interpreted § 1231(a)(6) to incorporate implicit limits. *Id.* at 689. Specifically, the Supreme
22 Court held that under 8 U.S.C. § 1231(a)(6), post-final-order detention is presumptively
23 reasonable for a period of six months. 533 U.S. at 678. After the expiration of six months, if
24 removal is not reasonably foreseeable, continued detention is no longer authorized. *Id.* at 699–
25 700. At this stage, the burden shifts to the government to show that there is a significant
26 likelihood of removal in the reasonably foreseeable future. *Id.* at 701.

27 21. If the government cannot present documented confirmation that removal is likely to
28 occur in the reasonably foreseeable future, the noncitizen must be released. *See Zadvydas*, 533
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1 U.S. at 701; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005). Continued detention would
2 violate both §1231(a)(6) and the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533
3 U.S. at 701; *Morales-Fernandez v. INS*, 418 F.3d 1118 (10th Cir. 2005).

4 22. The regulations at 8 C.F.R. § 241.4 provide for reviews of a noncitizen's continuing
5 detention after 90 days and again after 180 days.

6 23. For noncitizens with a final removal order, the removal period begins running on the
7 date that the removal order became administratively final, and lapses 90 days later. *Berhe*, 2026
8 WL 222302, at *4 (citing 8 U.S.C. § 1231(a)(1)(A)); *see also Zerabruk v. ICE Field Office*
9 *Director*, 2011 WL 718828 (W.D. Wash. 2011)(granting Eritrean's petition for writ of habeas
10 corpus because there was no significant likelihood of removal in the reasonable foreseeable future
11 and holding that the 90-day removal period ends 90 days after the order becomes final, in
12 accordance with the clear and unambiguous language of the statute). As soon as the removal
13 period lapses, the noncitizen enters the post-removal period and is no longer subject to §
14 1231(a)(2)(A)'s mandatory detention requirement. *Id.* (citing *Arteaga-Martinez*, 596 U.S. at 578–
15 79). If ICE is unable to effectuate the noncitizen's removal from the United States even after an
16 “abundance of time,” and they have not presented a “plan to identify any viable alternatives,” the
17 Court has “good reason to believe that there is no significant likelihood of Petitioner's removal in
18 the reasonably foreseeable future.” *Berhe*, 2026 WL 222302, at *5 (quoting *Guzman Chavez*, 549
19 U.S. at 529 (quoting *Zadvydas*, 533 U.S. at 701)).

20 24. Using this framework, Petitioner can make all the threshold showings needed to shift
21 the burden to the government to show that there is a significant likelihood of removal in the
22 reasonably foreseeable future.

23 **A. The six-month grace period has expired.**

24 25. As an initial matter, the six-month grace period has long since ended. The *Zadvydas*
25 grace period lasts for “six months after a final order of removal—that is, three months after the
26 statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir.
27 2001). Here, Petitioner's order of removal was entered on April 21, 2026. **Exhibit D**, IJ Order
28 dated 4/21/2026. Accordingly, his 90-day removal period began on that date. 8 U.S.C. §
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1 1231(a)(1)(B). The *Zadvydas* grace period thus expired six months after the order of removal was
2 entered on April 21, 2016, which is to say, October 21, 2016. Thus, this threshold requirement is
3 met.

4 26. Furthermore, DHS acknowledged Petitioner's indefinite limbo when it released him
5 from detention on July 20, 2016, after the IJ entered his removal order on April 21, 2016. By
6 releasing him, DHS conceded that he could no longer be detained to effect removal because travel
7 documents could not be obtained for him and they could not accomplish removal within the
8 allotted statutory period.

9 **B. The irregular diplomatic relationship between the United States and Eritrea**
10 **provides very good reason to believe that Petitioner will not likely be removed**
11 **in the reasonably foreseeable future.**

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

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

26 29. "Significant likelihood of removal." This component focuses on whether Petitioner
27 will likely be removed: Continued detention is permissible only if it is "significant[ly] like[ly]"
28 that ICE will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only
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1 the *existence* of untapped possibilities, but also [the] probability of *success* in such possibilities.”
2 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other
3 words, even if “there remains *some* possibility of removal,” a petitioner can still meet its burden if
4 there is good reason to believe that successful removal is not significantly likely. *Kacanic v.*
5 *Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis
6 added). That is to say that some possibility of an eventual removal is not the same as a significant
7 likelihood that removal will occur in the reasonably foreseeable future. *See Iakubov v. Figueroa*,
8 No. CV-25-03187-PHX-KML (JZB), 2025 WL 2731355, at *1 (D. Ariz. Sept. 25, 2025)
9 (granting noncitizen’s habeas where the government could not demonstrate a significant
10 likelihood of imminent removal); *Escalante v. Noem*, 2025 WL 2206113 at 4. (E.D. Tex. Aug. 2,
11 2025).

12 30. **“In the reasonably foreseeable future.”** This component of the test focuses on when
13 Petitioner will likely be removed: Continued detention is permissible only if removal is likely to
14 happen “in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a
15 time limit on ICE’s removal efforts. If the Court has “no idea of when it might reasonably expect
16 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to
17 occur—or even that it might occur—in the reasonably foreseeable future.” *Palma v. Gillis*, No.
18 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and*
19 *recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v.*
20 *Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that
21 Petitioner “would *eventually* receive” a travel document, he can still meet his burden by giving
22 good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2
23 (E.D. Mich. Nov. 14, 2016). Indeed, merely starting the process of requesting travel documents
24 does not suffice to establish that removal is significantly likely to occur. *Nguyen v. Archambeault*,
25 No. CV-25-04107-PHX-SHD (ASB), 2025 WL 3250922, at *2 (D. Ariz. Nov. 21, 2025)
26 (granting noncitizen’s habeas release where merely submitting travel document requests failed to
27 establish that removal was significantly likely to occur).

1 **31. Petitioner readily satisfies this standard.** In order to remove a noncitizen to a
2 foreign nation, the government relies on foreign-government consent and travel documents for the
3 removals. In fact, DHS’s own rule treats travel-document availability as a key determinant in
4 continued detention, as explained in 8 CFR § 241.4.

5 32. Here, Petitioner was already held for three months post-removal order from April to
6 July 2016. The order has been final for more than ten years. Despite that ample amount of time,
7 on information and belief, DHS has not provided any evidence that removal to Eritrea is
8 imminent—such as an issued travel document, confirmed acceptance by Eritrean authorities, or a
9 scheduled removal itinerary.

10 **33. U.S.-Eritrean Relations.** Obtaining these documents is especially complex and
11 unreliable because the U.S. has an atypical diplomatic posture toward Eritrea specifically,
12 including labeling Eritrea as a recalcitrant country unwilling to issue travel documents for its
13 nationals, subjecting Eritrea to visa sanctions, targeting specific Eritrean groups and individuals
14 for sanctions due to their “destabilizing presence in Ethiopia” in 2021, imposing economic
15 sanctions, designating Eritrea annually since 2004 as a Country of Particular Concern for
16 particularly severe violations of religious freedom, and reporting annually that the government
17 abused a wide range of human rights and the investment climate is not conducive to U.S.
18 investment. *See Exhibit R*, “U.S. Relations with Eritrea,” U.S. Department of State (November 7,
19 2022). The U.S. currently recommends that U.S. citizens traveling in Eritrea exercise increased
20 caution due to travel restrictions, limited consular assistance, landmines, and wrongful detentions.

21 34. Eritrea was on the first list of four “recalcitrant” countries issued under Trump’s first
22 administration in 2017 and subjected to INA § 243(d) visa sanctions for their “lack of cooperation
23 in accepting their nationals ordered removed from the United States,” stating that the four
24 countries “have not established reliable processes for issuing travel documents to their nationals.”
25 **Exhibit S**, “DHS Announces Implementation of Visa Sanctions on Four Countries,” DHS
26 (September 13, 2017), at 1. Eritrea has remained on the list of recalcitrant countries since 2017.
27 **Exhibit T**, “Recalcitrant Countries: Diplomatic Obstacles to Deportation,” FAIR Fact Sheet (July
28 2025), at 2. Eritrea’s recalcitrance has been so odious that from 2017 until at least 2019, it was the

1 only country for which the U.S. ceased issuing B visas **entirely** to all residents of the country (as
 2 opposed to only limiting them for certain government officials). **Exhibit U**, “Immigration:
 3 Recalcitrant Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien
 4 Removals,” Congressional Research Service (May 14, 2019).

5 **35. Eritrean Governance.** Eritrea is “one of the most repressive political systems in the
 6 world,” and an international human rights investigation concluded in 2015 that “it is not law that
 7 rules Eritreans, but fear.” **Exhibit V**, “Expert Report: Access to Official Documents by Eritrean
 8 Refugees,” Daniel Mekonnen & Sara Palacios Arapiles (April 2021), at 7. “Eritrea is the only
 9 country in the world without a working constitution (written or unwritten) and a functioning
 10 parliament.” *Id.* at 10. There are reasonable grounds to assert that systemic “crimes against
 11 humanity been committed in Eritrea since 1991 in the form of the following core violations:
 12 enslavement, imprisonment, enforced disappearance, torture, other inhumane acts, persecution,
 13 rape and murder.” *Id.* at 10. In addition to widespread human rights violations, Eritrea’s forced
 14 conscription program is a major reason why Eritreans flee the country, particularly because
 15 “Eritrean law does not allow for conscientious objection nor alternative service. Moreover,
 16 deserting or evading the NMSP, and exiting the country, have been rendered criminal offences.”
 17 *Id.* at 8.

18 **36.** “Eritrea’s socio-economic deprivation is a direct consequence of the government’s
 19 deliberate policy of keeping the entire Eritrean society under a perpetual yoke of economic
 20 hardship, so that society remains preoccupied with visceral survival issues, thus having no
 21 stamina to pay attention to major issues of accountability for gross human rights violations.” *Id.* at
 22 13. The military program “keeps all able-bodied members of the society under a prolonged
 23 scheme of unpaid military and non-military service, is the most effective enabler of the
 24 government’s deliberate policy of economic deprivation. It is supplemented by the practice of
 25 food rationing (artificial restriction of demand), as implemented by the ration coupon.” *Id.* “The
 26 country is run like a giant prison system,” “so much so that at times it is even difficult to
 27 distinguish the difference between the state of being free and not free in an Eritrean context.” *Id.*

1 **37. Obtaining Vital Documents in Eritrea.** Although there are plenty of laws
2 promulgated to address vital documents in Eritrea, “[i]n fact, registration of vital events is not a
3 very common practice in Eritrea.” *Id.* at 22. Vital documents are not standardized and frequently
4 feature significant errors. *Id.* at 24. In Eritrea, “there are almost no particular instances in which
5 individuals would be required by public or private entities to present a birth, marriage or divorce
6 certificate,” except for primary school registration (which accepts birth certificates, baptism
7 records, and even vaccination cards as form of identification). *Id.* at 23. “From all types of
8 records of vital events, a death certificate is the least known official document in Eritrea.” *Id.* at
9 25.

10 **38.** Eritrean National ID cards were introduced in 1992, shortly after Eritrea became
11 independent, but in practice, their issuance “is subject to varying levels of inconsistency. For
12 many years, it was considered as the most important document for the purposes of identification
13 of individuals,” but its relevance has “considerably diminished.” *Id.* at 26.

14 **39.** The Eritrean passport is the most difficult Eritrean document to obtain, because it is
15 only used for international travel, which implicates the official Eritrean policy on exit visas.
16 “[T]ogether with North Korea, Eritrea is one of the only two countries in the world that require
17 their citizens to obtain an exit visa before they travel abroad [demonstrating] the Eritrean
18 Government’s perennial preoccupation with controlling the movement of important segments of
19 the population.” *Id.* at 29. Eritrean access to passports is highly regulated, and “citizens within the
20 so-called age limit of the military program are not allowed to leave the country legally (or to
21 travel at all).” *Id.* There is a short list of nine groups who are eligible for the “privilege of lawful
22 exit” from Eritrea, including men aged over 54; women aged over 47; children aged under five;
23 medically exempt individuals or people travelling abroad for medical treatment, education, or
24 business; athletes; former freedom fighters; and government officials. *Id.* Petitioner did not fit
25 into any of these categories when he fled (and he still does not).

26 **40.** According to the website of the Eritrean Embassy in Washington, D.C., Eritreans must
27 apply for the National ID online and have their fingerprints taken by appointment with the
28 Embassy of Eritrea or “a local community representative.” **Exhibit W**, “National ID – Eritrean

Embassy,” at 1. They “must have” the following: birth certificate, “Parent’s Eritrean National ID (copies),” four passport photos, passport (copy of profile page), LPR card or I-94, “Copies of both parents Eritrean National ID (if parents’ Eritrean National ID information is not available, client must complete witness form),” and several nonrefundable fees to be paid online. *Id.* at 1-2. Note that the website itself says “parent’s Eritrean National ID (copies)” (singular) and then also says “copies of both parents Eritrean National ID” (plural), adding a witness requirement if (plural) parents’ national ID information is unavailable.

41. Denying the diaspora tax is compulsory, as described by the Expert Report, the website also states that the “Recovery and Rehabilitation Tax” (aka the 2% diaspora tax) cannot be paid unless you have an Eritrean National ID, and that “[p]aying the Recovery and Rehabilitation Tax is not a requirement to obtain or apply for Eritrean National ID.” As anticipated, the “regret form” is not mentioned at all. However, Petitioner was told by the community representative that he needed to sign the “regret form” and pay the tax in order to get his documents.

42. Risks of Obtaining Eritrean Documents Outside Eritrea. Issuing a passport is one of the most arbitrary practices in Eritrea; outside the country, the embassies themselves cannot even issue vital documents or ID cards and passports, but only serve as facilitators, since all passport applications worldwide must be sent to the Head Office in Asmara. *Id.* at 29, 31. Over the years, Eritrean embassies have disseminated wildly varying information about what is required to apply for an Eritrean passport, much of which has no basis in fact or law. For example, although Eritrean Proclamation No. 21/1992, Article 2(1) states that a person has to be born to an Eritrean mother or father in order to obtain Eritrean nationality, and thus to obtain the Eritrean national ID card, the Eritrean Embassy in Germany requires a national ID and passport applicant to prove that “four generations of his ancestors are Eritreans.” *Id.* at 27. In this case, Petitioner was repeatedly told he needed both of his parents’ birth certificates and death certificates to apply for an Eritrean national ID. *See Exhibit H.*

43. Furthermore, Eritrea is one of a few countries in the world that imposes a “diaspora income tax” on their citizens living abroad, which, combined with the so-called “regret form,” has

1 become “a potent tool of controlling Eritrean diaspora communities.” **Exhibit W** at 33-34. The
2 UN Security Council found that “the tax collection system involves practices that are inherently
3 illegal, such as threats of violence, fraud and other illicit means.” *Id.* at 34. The Eritrean
4 embassies are actively involved in collecting the tax, and Eritrean law clearly defines punitive
5 measures against Eritreans who refuse to pay any tax. *Id.* at 34-35. Although there is no such law,
6 Eritrean embassies routinely refuse to provide consular services if the tax has not been paid. *Id.* at
7 35.

8 44. Eritreans living abroad are also required to sign a “regret form” when seeking consular
9 services, particularly those who fled after the 1998-2000 border conflict with Ethiopia, including
10 individuals who fled the country before they reached the age of conscription or who fled without
11 serving in the military. *Id.* at 36; *see also* **Exhibit X**, “Obtaining Documents from Eritrea,”
12 America Team for Displaced Eritreans, at 2-3 (actual “regret form” in original language and
13 English). The “regret form” is not promulgated in any Eritrean law. **Exhibit W** at 37. However,
14 since the Eritrean government considers these individuals to be “absconders” and “traitors,”
15 embassies (unofficially) force Eritreans abroad to formally admit their guilt before they can
16 receive consular services. *Id.* These self-incriminating statements can be used against them in
17 future criminal proceedings in Eritrea, which makes these forms particularly dangerous for
18 individuals with removal orders to Eritrea, since they will be returned to Eritrea shortly after
19 signing to face charges and punishment. *Id.* As one human rights official put it, “it is like if a
20 woman runs away from her abuser and thereafter the abuser asks her to sign a letter regretting
21 having left him.” *Id.* at 36 n. 173.

22 45. If an individual is regarded as a political opponent to the Eritrean Government, they
23 are reportedly denied consular services, including the issuance of official documents, even if they
24 are willing to sign the regret form and to pay the diaspora tax. *Id.* at 43. Refugees and asylum
25 seekers are included as “opponents.” *Id.* Furthermore, family members “are immediately
26 cancelled from the family register once it is known that they are no longer in the country, or they
27 have left the country illegally.” *Id.* at 61. Thus, Eritrean refugees “should not be expected to
28 approach embassies, as these are the diplomatic missions of the government from which they

1 have fled and therefore form part of the persecutory regime.” *Id.* In addition to imposing the 2%
2 diaspora income tax and forcing Eritreans to sign the regret form, “Eritrean embassies (and those
3 affiliated with them) have also implemented other far-reaching activities of surveillance. They
4 rely on a broad network of spies embedded throughout the world in various Eritrean diaspora
5 communities – oftentimes disguised as neutral or apolitical community organizers.” *Id.*

6 **46. Petitioner’s Efforts to Obtain Eritrean Documents.** Petitioner has continuously
7 tried to obtain identity and travel documents from Eritrea for ten years without success. As
8 explained above, Petitioner sent several emails for appointments in 2016-2018 (with no response)
9 and submitted passport applications in 2017, 2020, twice in 2023, 2025, and 2026 (in addition to
10 the applications he signed for ICE). *See Exhibit H*, Petitioner’s Attempts to Obtain Eritrean
11 Travel Documents. He also hired counsel in New York who contacted the Eritrean embassy on
12 his behalf in 2025, without success.

13 **47.** Petitioner’s NY counsel also arranged for him to apply for a National ID through an
14 “Eritrean community representative” in 2025, which did not pan out. *Id.* Despite having
15 fingerprints taken by the designated representative and three Eritrean witnesses (with Eritrean
16 National ID and 40 years old or older) in lieu of his parents’ National IDs (as the included form
17 stated at the time), the 2025 application was “returned” by the embassy because his application
18 must include “a birth certificate, Eritrean ID from both parents, and the place of origin, which
19 must be filled out.” *Id.* Once the application was returned, the “community representative”
20 stopped responding to Petitioner’s calls, text, messages, and emails, and Petitioner has lost all
21 contact with him.

22 **48.** Petitioner also made countless phone calls to the Eritrean embassy, which does not
23 answer its phones. He tried once to visit the Eritrean Consulate in Oakland, California, but it had
24 closed in 2007. Petitioner also drove cross-country twice (once from Michigan and once from
25 California) to show up in-person at the Eritrean embassy in Washington, D.C., but they refused to
26 see him without an appointment and would not allow him to make an appointment.

27 **49.** Petitioner is unwilling to sign the “regret form” because of the real danger he would
28 face upon his return to Eritrea, which would be imminent once he actually obtained a passport via
Petition for Writ of Habeas Corpus

1 the “regret form.” Other than that form, Petitioner has taken every action imaginable to obtain his
2 Eritrean travel documents.

3 50. Courts in this Circuit have repeatedly held that removal to Eritrea is unlikely in the
4 foreseeable future. In January 2026, the Nevada District Court held in *Berhe* that after an
5 abundance of time (23 years in *Berhe*) in which ICE has been unable to effectuate a noncitizen’s
6 removal, where ICE previously released the noncitizen because they could not get travel
7 documents for him, and where documents have been requested from Eritrea by government
8 Respondents but no actual updates have been received, the noncitizen is “clearly in a ‘removable-
9 but-unremovable limbo,’ whereby he is legally—but not practically—removable from the United
10 States[, and a]ccordingly, his ongoing detention is statutorily and constitutionally unlawful, and
11 he must ‘be released into American society.’” 2026 WL 222302 at *7-8 (quoting *Prieto-Romero*
12 *v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) and *Jama v. Immigr. & Customs Enft*, 543 U.S.
13 335, 347–48 (2005)). In 2011, an ICE deportation officer declared to the District Court for the
14 Western District of Washington in *Zerabruk* that despite the noncitizen’s cooperation, travel
15 documents to Eritrea “are extremely difficult to procure [and] it is extremely difficult to identify
16 and engage with the appropriate Eritrean authorities in order to produce the requisite travel
17 documents,” and that “ICE cannot state with certainty that Mr. Zerabruk will be issued travel
18 documents by his government within the next 12 months.” 2011 WL 718828 at *1. These facts
19 led the magistrate judge in *Zerabruk* to recommend that the Court grant the petition for a writ of
20 habeas corpus. *Id.*

21 51. Given these constraints, Petitioner has provided “good reason” to believe removal is
22 not significantly likely in the reasonably foreseeable future. Under *Zadvydas*, the Government
23 must therefore rebut Petitioner’s showing with specific, case-particularized evidence—not
24 general statements that removals to Eritrea can occur in some cases. Unless the government can
25 prove a “significant likelihood of removal in the reasonably foreseeable future,” Petitioner must
26 be released. *Zadvydas*, 533 U.S. at 701.

27 **C. ICE may not remove Petitioner to a third country without adequate notice**
28 **and an opportunity to be heard.**

1 52. In addition to unlawfully detaining him, ICE's policies threaten Petitioner's removal
2 to a third country without adequate notice and an opportunity to be heard. These policies violate
3 the Fifth Amendment, the Convention Against Torture ("CAT"), and implementing regulations.

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

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

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

25 56. The government must also "ask the noncitizen whether he or she fears persecution or
26 harm upon removal to the designated country and memorialize in writing the noncitizen's
27 response. This requirement ensures DHS will obtain the necessary information from the
28 noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what the officer and

1 noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019. “Failing to notify individuals who are subject to
 2 deportation that they have the right to apply for asylum in the United States and for withholding
 3 of deportation to the country to which they will be deported violates both INS regulations and the
 4 constitutional right to due process.” *Andriasian*, 180 F.3d at 1041.

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

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

23 **D. The June 9, 2025, ICE memo’s removal policies violate the Fifth Amendment,**
 24 **8 U.S.C. § 1231, the Convention Against Torture, and Implementing**
 25 **Regulations.**

26 59. The policies in the June 9, 2025, memo do not adhere to these requirements.

27 60. First, under the policy, ICE need not give immigrants *any* notice or *any* opportunity to
 28 be heard before removing them to a third country. By depriving immigrants of any chance to

1 challenge the State Department's view, this policy violates "[t]he essence of due process," "the
2 requirement that a person in jeopardy of serious loss be given notice of the case against him and
3 opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

4 61. Second, even when the government has obtained no credible assurances against
5 persecution and torture, the government can still remove the person with between 6 and 24 hours'
6 notice, depending on the circumstances. Practically speaking, there is not nearly enough time for
7 a detained person to assess their risk in the third country and gather evidence to support any
8 credible fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may know
9 nothing about a third country, like Eswatini or South Sudan, when they are scheduled for removal
10 there. Yet if given the opportunity to investigate conditions, immigrants would find credible
11 reasons to fear persecution or torture—like patterns of keeping deportees indefinitely and without
12 charge in solitary confinement or extreme instability raising a high likelihood of death—in many
13 of the third countries that have agreed to removal thus far. Due process requires an adequate
14 chance to identify and raise these threats to health and life. This Court must prohibit the
15 government from removing Petitioner without these due process safeguards, including safeguards
16 against the risk of violating the principle of *non-refoulement*.

17 62. This Court must hold an evidentiary hearing on any disputed facts. Resolution of a
18 habeas petition dealing with post-removal-order detention may require an evidentiary hearing.
19 *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Petitioner hereby requests such a
20 hearing on any material, disputed facts.

21 **E. Petitioner's Detention Without a Hearing Demonstrating a Change in**
22 **Circumstances to Warranting a Fear of Flight or Danger to the Community**
23 **was Unconstitutional and Must Result in His Immediate Release.**

24 63. DHS's decision to detain Petitioner without first demonstrating that he presently poses
25 a danger or risk of flight violates the core due-process principle that the government must justify
26 a deprivation of liberty at the time it occurs. Where DHS has already exercised its discretion to
27 release a noncitizen, courts have held that the government bears the burden of establishing—
28 **before** re-detention—that a material change in circumstances warrants renewed confinement.

1 *Rodriguez Diaz v. Kaiser*, 2025 WL 3011852, at *6–8 (N.D. Cal.); *Guillermo M.R. v. Kaiser*,
2 2025 WL 1983677, at *8 (N.D. Cal. July 17, 2025); *Pinchi v. Noem*, 2025 WL 2084921, at *3–5
3 (N.D. Cal. July 25, 2025).

4 **CLAIMS FOR RELIEF**

5 **COUNT ONE**

6 **Unlawful Post-Final Order Detention In Violation of 8 U.S.C. § 1231(a)(6) and *Zadvydas***

7 64. Petitioner realleges and incorporates by reference the paragraphs above.

8 65. The government detains Petitioner pursuant to 8 U.S.C. § 1231(a)(6), which governs
9 the detention of noncitizens who have administratively final orders of removal.

10 66. In *Zadvydas*, the Supreme Court interpreted section 1231(a)(6) to contain an implicit
11 timeframe, authorizing detention only for “a period reasonably necessary to bring about the
12 [noncitizen’s] removal from the United States. 533 U.S. at 589. The Court established a six-
13 month period of post-final-order detention, after which the government must provide evidence
14 that removal is likely in the reasonably foreseeable future. *See id.* at 701.

15 67. In the more than ten years since Petitioner’s removal order became administratively
16 final, the government has failed to identify a single country for removal that has agreed to accept
17 Petitioner.

18 68. Before initiating removal to any third country, the government must first afford
19 Petitioner notice and the opportunity to raise a fear-based protection claim seeking relief from
20 removal to that country. If Petitioner successfully demonstrates reasonable fear, the government
21 must allow him an opportunity to reopen his proceedings. Petitioner was born a citizen of Eritrea,
22 a recalcitrant country that refuses to issues travel documents or cooperate with the United States
23 to receives its own nationals, and a country with which the United States has irregular diplomatic
24 relations, making it highly improbable that DHS would succeed in removing him there.

25 69. Because Petitioner cannot be removed from the U.S. in the “reasonably foreseeable
26 future,” his continued detention violates 8 U.S.C. § 1231(1). *See Zadvydas*, 533 U.S. at 701.

27 70. Accordingly, Petitioner respectfully requests that this Court order Respondents to
28 immediately release him from detention.

SECOND CAUSE OF ACTION

Violation of the Procedural Due Process Clause of the Fifth Amendment of the U.S. Constitution

71. Petitioner realleges and incorporates by reference the paragraphs above.

72. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. To comply with the Due Process Clause, civil detention must “bear[] a reasonable relation to the purpose for which the individual was committed,” which (for immigration detention pursuant to § 1231) is removal from the U.S. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).

73. The government’s alleged justification for detaining Petitioner absent any indication it has even begun the preliminary research that third country removal requires in the more than ten years since the final decision in his case, violates his procedural due process rights and renders his detention indefinite. Moreover, without notice of the government’s intent to deport him to a single country, Petitioner cannot have a meaningful opportunity to challenge the viability of his removal, further depriving him of the due process rights to which he is entitled under the U.S. Constitution.

74. Lastly, on information and belief, Respondents have failed to conduct any of the mandatory custody reviews required by 8 C.F.R. § 241.4 during this post-removal-order period of detention, further violating his right to due process.

THIRD CAUSE OF ACTION

Violation of the Substantive Due Process Clause of the Fifth Amendment of the U.S. Constitution

75. Petitioner realleges and incorporates by reference the paragraphs above.

76. The Fifth Amendment provides that “No person shall . . . be deprived of life, liberty, or property[] without due process of law.” U.S. Const. amend. V. Moreover, “The Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

1 77. Moreover, the Supreme Court has established that noncitizens in post-final-order
2 detention for more than six months must be released from custody if there is no likelihood that
3 they will be removed in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 699-700.

4 78. More than ten years have lapsed since the IJ's order of removal, yet Petitioner has
5 been confined, in Respondents' legal and physical custody, without any further court proceedings,
6 appellate process, or indication of any plan for removal. Under these circumstances, Petitioner's
7 continued detention is completely untethered to any legal basis and no longer bears any
8 reasonable relation to a legitimate government purpose. *Id.* at 690 ("where detention's goal is no
9 longer practically attainable, detention no longer bears reasonable relation to the purpose for
10 which the individual was committed."). At this stage, DHS's refusal to release Petitioner is "the
11 exercise of power without any reasonable justification" and a violation of due process principles.
12 *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998).

13 79. The indefinite nature of Petitioner's detention under section 1231 violates his
14 substantive due process rights under the Fifth Amendment by depriving him of his "strong liberty
15 interest." *United States v. Salerno*, 481 U.S. 739, 750 (1987).

16 80. Beyond the permitted six months post-final-order and with numerous "good reason[s]
17 to believe that there is no significant likelihood of removal in the reasonably foreseeable future,"
18 the government must now carry the burden of justifying Petitioner's continued imprisonment.
19 *Zadvydas*, 533 U.S. at 701.

20 81. Moreover, the government's interest in "preventing flight [] is weak or nonexistent
21 where removal seems a remote possibility at best." *Id.* at 690.

22 82. Accordingly, Petitioner respectfully requests this Court order Respondents to
23 immediately release him.

24 **FOURTH CAUSE OF ACTION**

25 **Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (D)**

26 83. Petitioner realleges and incorporates by reference the paragraphs above.

27 84. A "reviewing court shall (1) compel agency action unlawfully withheld or
28 unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and

1 conclusions found to be — (A) arbitrary, capricious, an abuse of discretion, or otherwise not in
2 accordance with law; [or] (D) without observance of procedure required by law.” 5 U.S.C. § 706.

3 85. ICE’s actions and omissions, including its failure to timely provide an adequate
4 custody review and failure to follow the custody review process required under 8 C.F.R. § 241.4
5 for post-removal-order detention, constitute unlawful agency action.

6 **FIFTH CAUSE OF ACTION**

7 **Unconstitutionally Inadequate Procedures Regarding Third-Country Removal - Procedural**
8 **Due Process Under the Fifth Amendment of the U.S. Constitution**

8 86. Petitioner realleges and incorporates by reference the paragraphs above.

9 87. The Due Process Clause of the Fifth Amendment requires sufficient notice and an
10 opportunity to be heard prior to the deprivation of any protected rights. U.S. Const. amend. V.

11 88. Petitioner has a protected interest in his life. Thus, prior to any third-country removal,
12 Petitioner must be provided with constitutionally compliant notice and an opportunity to respond
13 and contest that removal if he has a fear of persecution or torture in that country.

14 89. For these reasons, Petitioner’s removal to any third country without adequate notice
15 and an opportunity to apply for relief under the Convention Against Torture would violate his due
16 process rights. The only remedy of this violation is for this Court to order that he not be
17 summarily removed to any third country unless and until he is provided constitutionally adequate
18 procedures.

19 **PRAYER FOR RELIEF**

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

21 90. Assume jurisdiction over this matter;

22 91. Issue a Temporary Restraining Order prohibiting Respondents from transferring
23 Petitioner outside of the jurisdiction of the Eastern District of California pending resolution of
24 this case;

25 92. Issue a Temporary Restraining Order releasing Petitioner from Respondents’ custody;

26 93. Issue an Order to Show Cause or Order to Answer pursuant to 28 U.S.C. § 2243,
27 ordering Respondents to show cause within three days of why the writ should not be granted;

1 94. Grant a writ of habeas corpus and order Respondents to immediately release Petitioner
2 from detention;

3 95. Declare that Petitioner's continued detention violates 8 U.S.C. § 1231, as interpreted
4 by the Supreme Court in *Zadvydas*;

5 96. Declare that Petitioner's indefinite detention violates his rights under the Due Process
6 Clause of the Fifth Amendment;

7 97. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless
8 and until Respondents obtain a travel document for his removal and providing at least 14 days'
9 notice;

10 98. Enjoin Respondents from re-detaining Petitioner without first following all procedures
11 set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other applicable statutory and regulatory
12 procedures;

13 99. Enjoin Respondents from removing Petitioner to any country other than Eritrea, unless
14 they provide constitutionally compliant notice and opportunity to respond and contest that
15 removal if he has a fear of persecution or torture in that country, *see D.V.D. v. U.S. Dep't of*
16 *Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025),
17 including:

- 18 a. written notice to both Petitioner and Petitioner's counsel in a language
19 Petitioner can understand;
- 20 b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based
21 claim for CAT protection prior to removal;
- 22 c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the
23 third country, Respondents must move to reopen Petitioner's immigration
24 proceedings;
- 25 d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal
26 to the country, a meaningful opportunity, and a minimum of fifteen days, for
27 the Petitioner to seek reopening of his immigration proceedings;
- 28

1 100. Award Petitioner costs and reasonable attorneys' fees in this action under the
2 Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other
3 basis justified under law; and

4 101. Grant any further relief as this Court deems just and proper.
5

6 Respectfully submitted,

7 /s/ Chien-Yu Michael Wang

Dated: July 9, 2026

8 Chien-Yu Michael Wang

9 WILNER & O'REILLY, APLC

Attorney for Petitioner, Ghezze Fissiha ARONE
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Ghezae Fissiha Arone, and submit this verification on Petitioner's behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Respectfully submitted,

/s/ Chien-Yu Michael Wang

Dated: July 9, 2026

Chien-Yu Michael Wang

WILNER & O'REILLY, APLC

Attorney for Petitioner, Ghezae Fissiha Arone