

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 DESMOND ACHALEFAC ACHA


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

DESMOND ACHALEFAC ACHA,

Petitioner,

v.

KRISTI NOEM, Secretary of the
Department of Homeland Security,
PAMELA JO BONDI, Attorney General,
TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement,
JESUS ROCHA, Acting Field Office
Director, San Diego Field Office,
Warden at IMPERIAL REGIONAL
ADULT DET FAC

Respondents.

CIVIL CASE NO.: '26CV1289 JO MSB

**Petition
for a
Writ of Habeas Corpus**

¹ Federal Defenders of San Diego, Inc., is filing the instant petition with provisional appointment under Chief Judge Order No. 134.

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1 **I. Introduction**

2 Desmond Achalefac Acha came to the United States seeking asylum from
3 Cameroon. He has been in immigration detention for 14 months. On **September**
4 **10, 2025**, he received a grant of **withholding of removal** to Cameroon.

5 Mr. Acha remains in detention despite there being no indication that he can
6 be removed to any country in the reasonable foreseeable future.

7 This civil immigration habeas petition seeks two grounds of relief. First, it
8 seeks to prevent his indefinite detention pending deportation absent the basic
9 statutory and due process guarantees outlined in *Zadvydas v. Davis*, 533 U.S. 678
10 (2001). Third, it seeks to prevent his deportation to a third country without him
11 first receiving basic due process guarantees of notice and opportunity to be heard
12 as to Petitioner's statutory rights to seek withholding of removal and Convention
13 Against Torture relief.

14 **II. STATEMENT OF FACTS**

15 **A. Mr. Acha has been detained by ICE for six months after an IJ**
16 **granted him relief from removal to Cameroon.**

17 Mr. Acha came to the United States from Cameroon on January 5, 2025. He
18 requested asylum and was detained at the Imperial Regional Adult Detention
19 Center, where he remains today. *See* Exhibit A, Declaration of Desmond
20 Achalefac Acha, at ¶ 1, 2.

21 After fighting his case for about nine months, on September 10, 2025, an
22 immigration judge granted him relief and gave him withholding of removal to
23 Cameroon.² *Id.* at ¶ 3.

24 Other than asking Mr. Acha to sign papers stating that he will cooperate
25 with ICE, no one from ICE has spoken to Mr. Acha about efforts to remove him
26
27

28 ² <https://acis.eoir.justice.gov/en/caseInformation>

1 to a third country. *Id.* at ¶¶ 4-5. ICE has not identified a third country for removal.
 2 *Id.*

3 The stress from what he endured in his home country and being detained
 4 for so long has been very difficult for Mr. Acha. *Id.* at ¶ 6.

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

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

12 There are more restrictions on asylum. *See* 8 U.S.C. § 1158(a)(2); *see also*,
 13 *e.g.*, US. Citizenship and Immigration Services, *Asylum, Court Order on*
 14 *Circumvention of Lawful Pathways Final Rule* (updated Nov. 7, 2025) (noting
 15 limitations on asylum to those who entered outside a port of entry between May
 16 2023 and May 2025, among other limitations).³ There are fewer restrictions on
 17 eligibility for withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(B)(iii).
 18 However, an applicant for withholding of removal must show a higher likelihood
 19 of persecution than what an asylum applicant must demonstrate—specifically,
 20 that it is “more likely than not that he or she would be persecuted on account of
 21 race, religion, nationality, membership in a particular social group, or political
 22 opinion upon removal to that country.” 8 C.F.R. § 1208.16(b)(2); *see INS v.*
 23 *Stevic*, 467 U.S. 407, 429–30 (1984).

24 About 1,000 people won withholding of removal each year between 2010
 25 and 2018. *See* Exhibit B at 6 (American Immigration Council & National
 26 Immigrant Justice Center, *The Difference Between Asylum and Withholding of*
 27 *Removal* (Oct. 2020)). In fiscal year 2024, about 2,500 people won withholding or
 28 deferral of removal. *See* Exhibit C at 2 (Congressional Research Service, *FY2024*

³ Available at <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum>.

1 *Immigration Court Data: Case Outcomes* (Feb. 3, 2025)).

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

14 If ICE identifies an appropriate third country of removal, the noncitizen
15 must then have notice and an opportunity to seek relief from removal to that new
16 country. *See Jama v. ICE*, 543 U.S. 335, 348 (2005) (“If [non-citizens] would
17 face persecution or other mistreatment in the country designated under
18 § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1);
19 withholding of removal, § 1231(b)(3)(A); [and] relief under an international
20 agreement prohibiting torture.”); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
21 1999) (holding that “last minute” designation of alternative country without
22 meaningful opportunity to apply for protection “violate[s] a basic tenet of
23 constitutional due process”).

24 As a result of these restrictions and procedures, very few people who
25 receive withholding of removal are deported to a third country. Between
26 September 2023 and June 2025, ICE removed a total of eight people granted
27 withholding or other CAT relief to alternative countries. Exhibit D (ICE removal
28

1 data).⁴ Between fiscal years 2020 and 2023, a total of five people granted
2 withholding or other CAT relief were removed to alternative countries. *Id.*

3 That said, this summer, ICE began removing more immigrants it could not
4 previously remove to third countries, which have often removed those people
5 back to their countries of origin. ICE implemented new policies to do so. On July
6 9, 2025, ICE rescinded previous guidance meant to give immigrants a
7 “‘meaningful opportunity’ to assert claims for protection under the Convention
8 Against Torture before initiating removal to a third country.” Exhibit E (July 9,
9 2025, ICE third-country removal guidance).

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

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

19
20
21 ⁴ The data in Exhibit D are collected from the Deportation Data Project, which
22 “collects and posts public, anonymized U.S. government immigration
23 enforcement datasets,” “primarily [obtained] through Freedom of Information Act
24 requests.” For the complete raw data, one can visit
25 <https://deportationdata.org/data/ice>, select “Removals,” and filter for each
26 removal classified as “[5C] Relief Granted – Withholding of Deportation /
27 Removal” or “[5D] Final Order of Deportation / Removal – Deferred Action
28 Granted.” The chart attached as Exhibit D highlights all such cases in which the
noncitizen was removed to a country other than their country of origin. The
remaining unhighlighted noncitizens either won withholding or CAT relief with
respect to a third country that was not their country of origin, including dual
citizens; had withholding or CAT relief terminated; or agreed to return to their
country of origin despite a grant of withholding or CAT relief.

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

Under this policy, the United States has deported several dozen noncitizens to prisons and military camps in Rwanda, Eswatini, South Sudan, and Ghana. Those who have not been returned to their home countries are still detained, in countries to which they have never been, without charge. Nokukhanya Musi & Gerald Imray, *10 more deportees from the US arrive in the African nation of Eswatini*, Associated Press (Oct. 6, 2025)⁵; see also Gerald Imray, *A Cuban man deported by the US to Africa is on a hunger strike in prison, his lawyer says*, Associated Press (Oct. 23, 2025)⁶; Frank Chothia, *Eswatini confirms receiving \$5.1m from the US for accepting deportees*, BBC (Nov. 18, 2025)⁷; Nick Alexandra, *The Toll of Trump’s African Deportation Agreements*, New Lines Magazine (Dec. 10, 2025)⁸.

III. Claims for Relief

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

First, it should order Mr. Acha’s immediate release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Petitioner, for whom there is “no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001).

⁵ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

⁶ Available at <https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859>.

⁷ Available at <https://www.bbc.com/news/articles/cq50vjdx368o>.

⁸ Available at <https://newlinesmag.com/reportage/the-toll-of-trumps-african-deportation-agreements/>.

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

4 **A. Count 1: Petitioner's detention violates *Zadvydas* and 8 U.S.C.**
5 **§ 1231.**

6 1. Legal background

7 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
8 a problem affecting people like Petitioner: Federal law requires ICE to detain an
9 immigrant during the “removal period,” which typically spans the first 90 days
10 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-
11 day removal period expires, detention becomes discretionary—ICE may detain
12 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
13 this scheme would not lead to excessive detention, as removal happens within
14 days or weeks. But some detainees cannot be removed quickly. Perhaps their
15 removal “simply require[s] more time for processing,” or they are “ordered
16 removed to countries with whom the United States does not have a repatriation
17 agreement,” or their countries “refuse to take them,” or they are “effectively
18 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,
19 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained
20 immigrants can find themselves trapped in detention for months, years, decades,
21 or even the rest of their lives.

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

26 As an initial matter, *Zadvydas* held that detention is “presumptively
27 reasonable” for at least six months. *Id.* at 701. This presumption is, in some
28 circumstances even before the running of six months, “rebuttable.” *See Zavvar*,

1 2025 WL 2592543 at *5–*6 (explaining this point when granting *Zadvydas*
2 habeas relief).

3 Courts must use a burden-shifting framework to decide whether detention
4 remains authorized. First, the petitioner must make a prima facie case for relief:
5 Petitioner must prove that there is “good reason to believe that there is no
6 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
7 533 U.S. at 689.

8 If Petitioner does so, the burden shifts to “the Government [to] respond
9 with evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of
10 proof rests with the government: The government must prove that there is a
11 “significant likelihood of removal in the reasonably foreseeable future,” or the
12 immigrant must be released. *Id.*

13 To underline the government’s burden, good faith is beside the point.
14 “[U]nder *Zadvydas*, the reasonableness of Petitioner’s detention does not turn on
15 the degree of the government’s good faith efforts. Indeed, the *Zadvydas* court
16 explicitly rejected such a standard. Rather, the reasonableness of Petitioner’s
17 detention turns on whether and to what extent the government’s efforts are likely
18 to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5
19 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is required to
20 demonstrate the likelihood of not only the *existence* of untapped possibilities, but
21 also of a probability of success in such possibilities.” *Elashi v. Sabol*, 714 F.
22 Supp. 2d 502, 506 (M.D. Pa. 2010).

23 Using this framework, Mr. Acha can make all the threshold showings
24 needed to shift the burden to the government.
25
26
27
28

2. The six-month grace period expired.

As an initial matter, the six-month grace period has ended. The *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Mr. Acha has been detained for six months. Thus, this threshold requirement is met.

3. There is good reason to believe that there is no significant likelihood of Mr. Acha’s removal in the reasonably foreseeable future.

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

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

“No significant likelihood of removal.” This component focuses on whether Petitioner will likely be removed: Continued detention is permissible only if it is “significant[ly] like[ly]” that ICE will be able to remove Petitioner. *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of untapped possibilities, but also [the] probability of *success* in such possibilities.”

1 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis
2 added). In other words, even if “there remains *some* possibility of removal,” a
3 petitioner can still meet its burden if there is good reason to believe that
4 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
5 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

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

20 *First*, the IJ’s withholding of removal order prohibits Mr. Acha’s removal
21 to his home country.

22 The withholding of removal “substantially increases the difficulty of
23 removing him.” *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J.
24 2025). Historical data back this difficulty up. In the four and a half years between
25 2020 and mid-2025, ICE was able to successfully remove 13 people who had
26 been granted withholding to a third country. Given that about 2,500 people
27 received a grant of withholding of removal in fiscal year 2024 *alone*, that
28 indicates ICE has a very small percentage chance of success removing people

1 granted withholding of removal overall. Exhibit C.

2 Mr. Acha's individual circumstances strongly suggest that he will not be
3 among the handful of people granted withholding of removal the U.S. removes to
4 a third country. He is a Cameroonian citizen, who was born in Cameroon. His
5 parents were also born in Cameroon. Exhibit A at ¶ 1. He does not have
6 immigration status in any other country.

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

16 Mr. Acha would be particularly entitled to seek protection from removal
17 because many noncitizens removed to third countries in the past year have then
18 been returned to their home countries. *See, e.g., Nick Alexandra, supra* at page 7
19 n.7. For Mr. Acha, a third-country removal could very well result in "chain
20 refoulement," in which he is deported to a third country that would proceed to
21 deport him to his home country of persecution. *See Inter-American Commission*
22 *on Human Rights, IACHR and United Nations Experts: States Must Protect the*
23 *Rights of Persons in Human Mobility* (Sept. 18, 2025);⁹ *see also United Nations*
24 *Committee Against Torture, General comment No. 4 on the implementation of*
25 *article 3 of the Convention in the context of article 22*, at section II (12) (Sept. 4,
26 2028) ("the person at risk [of torture] should never be deported to another State

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

1 from which the person may subsequently face deportation to a third State in
2 which there are substantial grounds for believing that the person would be in
3 danger of being subjected to torture”).¹⁰

4 *Third*, ICE has not made any progress in removing Mr. Acha in the last six
5 months. During this time, ICE has not discussed removal to any other country.
6 Exhibit A ¶ 4.

7 Given that third country removal is already exceedingly unlikely, a “lack of
8 effort only reinforces the conclusion that the Petitioner’s removal is not likely to
9 occur in the reasonably foreseeable future.” *Kacanic v. Elwood*, No. CIV.A. 02-
10 8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002); *see also Conchas-*
11 *Valdez v. Casey*, 25-cv-2469-DMS, Dkt. 9, at 6 (S.D. Cal. Oct. 6, 2025) (granting
12 a petition in part because “the Government’s minimal work on [the] case . . . [did]
13 not instill confidence that it will be able to secure [CAT] Petitioner’s removal in
14 the reasonably foreseeable future”); *Zavvar*, 2025 WL 2592543, at *7 (finding the
15 presumption rebutted, despite outstanding third-country requests to Australia and
16 Romania, because of “[t]he lack of any sign that Australia or Romania is actively
17 considering accepting [the petitioner]”).

18 Even if ICE were making efforts behind the scenes, so far, none have borne
19 fruit. The third-country removal process has not progressed even to the point that
20 ICE has identified a country to which Mr. Acha can apply or be removed to. That
21 matters, because *Zadvydas* itself made clear that good faith efforts do not
22 themselves show that removal is significantly likely. The petitioner in *Zadvydas*
23 appealed a “Fifth Circuit h[olding] [that] [the petitioner’s] continued detention
24 [was] lawful as long as good faith efforts to effectuate deportation continue and
25 [the petitioner] failed to show that deportation will prove impossible.” 533 U.S. at
26 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit’s

27
28 ¹⁰ Available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf.

1 good-faith-efforts standard “demand[ed] more than our reading of the statute can
2 bear.” *Id.* Thus, “under *Zadvydas*, the reasonableness of Petitioner’s detention
3 does not turn on the degree of the government’s good faith efforts. Indeed, the
4 *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of
5 Petitioner’s detention turns on whether and to what extent the government’s efforts
6 are likely to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL
7 78984, at *5 (W.D.N.Y. Jan. 2, 2019).

8 For all of these reasons, Mr. Acha has shown good reason to believe—and,
9 in the alternative, proven outright—that his removal is not significantly likely in
10 the reasonably foreseeable future. This Court should grant the petition.

11 **B. Count 2: ICE may not remove Mr. Acha to a third country**
12 **without adequate notice and an opportunity to be heard.**

13 In addition to unlawfully detaining Mr. Acha, ICE’s policies threaten him
14 removal to a third country without adequate notice and an opportunity to be heard.
15 These policies violate the Fifth Amendment, the Convention Against Torture, and
16 implementing regulations. Though the government will not be able to prove that
17 there is a significant prospect of removal in the reasonably foreseeable future, an
18 unanticipated change of circumstances could open up a heretofore unavailable
19 avenue to third-country removal. If that happens, ICE could remove Petitioner
20 with as little as 24 hours’ notice or no notice at all. This Court should enter an
21 order prohibiting such surprise removals, as they violate the Due Process Clause.

22 1. Legal background

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

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

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

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

21 The government must also “ask the noncitizen whether he or she fears
22 persecution or harm upon removal to the designated country and memorialize in
23 writing the noncitizen’s response. This requirement ensures DHS will obtain the
24 necessary information from the noncitizen to comply with section 1231(b)(3) and
25 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.
26 3d at 1019. “Failing to notify individuals who are subject to deportation that they
27 have the right to apply for asylum in the United States and for withholding of
28 deportation to the country to which they will be deported violates both INS

1 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at
2 1041.

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

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

25
26 2. The June 6, 2025 memo’s removal policies violate the Fifth
27 Amendment, 8 U.S.C. § 1231, the Conviction Against Torture,
28 and Implementing Regulations.

The policies in the June 6, 2025 memo do not adhere to these requirements.

1 First, under the policy, ICE need not give immigrants *any* notice or *any*
2 opportunity to be heard before removing them to a country that—in the State
3 Department’s estimation—has provided “credible” “assurances” against
4 persecution and torture. Exh. C. By depriving immigrants of any chance to
5 challenge the State Department’s view, this policy violates “[t]he essence of due
6 process,” “the requirement that a person in jeopardy of serious loss be given
7 notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*,
8 424 U.S. 319, 348 (1976) (cleaned up).

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

24 **C. This Court must hold an evidentiary hearing on any disputed**
25 **facts.**

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

IV. Prayer for relief

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

1. Order Respondents to immediately release Petitioner;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for Petitioner's removal;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Enjoin Respondents from removing Petitioner to any country, unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
 - a) written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
 - b) a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
 - c) if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;

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d) if Petitioner is not found to have demonstrated a “reasonable fear” of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of Petitioner’s immigration proceedings.

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

Respectfully submitted,

Dated: March 1, 2026

s/ Zandra L. Lopez

Zandra L. Lopez
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Acha
Email: Zandra_Lopez @fd.org

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PROOF OF SERVICE

I, the undersigned, will cause the attached petition for a writ of habeas corpus to be emailed to the U.S. Attorney’s Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Dated: March 1, 2026	<u>s/ Zandra L. Lopez</u>
	Zandra L. Lopez
	Federal Defenders of San Diego, Inc.
	Email: <u>Zandra_Lopez@fd.org</u>

Exhibit A

1 Zandra Luz Lopez
2 CA Bar No. 216567
3 Federal Defenders of San Diego, Inc.
4 225 Broadway, Suite 900
5 San Diego, California 92101-5030
6 Telephone: (619) 234-8467
7 Facsimile: (619) 687-2666
8 Zandra_Lopez@fd.org

9 Attorneys for Petitioner

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

12 **DESMOND ACHALEFAC ACHA,**
13 **Petitioner,**

14 **v.**

15 **KRISTI NOEM, Secretary of the**
16 **Department of Homeland Security,**
17 **PAMELA JO BONDI, Attorney General,**
18 **TODD M. LYONS, Acting Director,**
19 **Immigration and Customs Enforcement,**
20 **JESUS ROCHA, Acting Field Office**
Director, San Diego Field Office,
Warden at IMPERIAL REGIONAL
ADULT DET FAC,

21 **Respondents.**

CIVIL CASE NO.:

DECLARATION OF DESMOND
ACHALEFAC ACHA

1 I, DESMOND ACHALEFAC ACHA, declare:

- 2 1. I was born  in Cameroon. My parents were born in
3 Cameroon.
- 4 2. I came to the United States on January 5, 2025. I requested asylum and was
5 detained and taken to Imperial Detention Center where I remain today.
- 6 3. On September 10, 2025, an immigration judge granted me relief from removal
7 to Cameroon and gave him withholding of removal.
- 8 4. No one from ICE has spoken to me about what they want to do with me. They
9 have not told me what, if any, third country they intend to remove me.
- 10 5. A deportation officer comes to see me and asks me to sign a paper that I will
11 cooperate with my removal. I sign the paper.
- 12 6. Because of what I have endured in my home country and the fact that I have
13 been detained for so long, it has been extremely stressful. I cannot sleep at
14 night. I have been getting skin rashes from stress.
- 15 7. I do not have any savings. While detained, I make \$5 a week by working at the
16 detention center. I have not had any other income since I have been detained.

17
18 I declare that DESMOND ACHALEFAC ACHA gave me authority to sign
19 on his behalf via telephone conference that the foregoing is true and
20 correct under penalty of perjury, on February 25, 2026, in San Diego,
21 California,

22
23 /S/ Zandra L. Lopez

24 Zandra L. Lopez
25
26
27
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Exhibit B