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

12
13 **MADIT MAICHAL DENG,**

14 **Petitioner,**

15 **v.**

16 **MARKWAYNE MULLIN, Secretary of**
17 **the Department of Homeland Security,**
18 **TODD BLANCE, Acting Attorney**
19 **General, TODD M. LYONS, Acting**
20 **Director, Immigration and Customs**
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, JEREMY CASEY, Warden at
Imperial Regional Detention Center,

21 **Respondents.**

CIVIL CASE NO.: **'26CV2801 LEK MSB**

Petition for Writ
of
Habeas Corpus

[28 U.S.C. § 2241]

INTRODUCTION

Madit Deng was ordered removed to his native country of Sudan in February 2011. ICE then held him in immigration detention for 19 months. ICE could not remove him to Sudan, so ICE had to release him. ICE redetained him over six months ago on November 21, 2025, without giving him a chance to contest his re-detention and without identify any changed circumstances that might make his removal more likely. In February, his deportation officer confirmed that ICE cannot remove him to Sudan or any other country. The officer even recommended that he seek habeas relief.

Because ICE violated its own regulations, and Mr. Deng cannot be removed in the reasonably foreseeable future, this Court must order his immediate release.

STATEMENT OF FACTS

I. ICE proved unable to remove Mr. Deng for over 20 years.

Mr. Deng fled Sudan and entered the United States as a refugee in November 2002. Exh. A at ¶ 1. Following convictions, he was ordered removed on February 16, 2011. *Id.* He spent 19 months in immigration detention, but ICE could not remove him, so they released him. *Id.*

After his release, he checked in as scheduled unless he was in custody. *Id.* at ¶ 3. (Mr. Deng has no violent convictions, only alcohol-related ones. *Id.*) He last checked in with ICE in October 2025, and he was permitted to stay on release. *Id.*

ICE redetained Mr. Deng in late November 2025. *Id.* at ¶ 4. As far as he understood, he was not given a chance to explain why he should not be redetained. *Id.* at ¶ 5. No one told him what had changed to make his removal more likely this time around. *Id.*

1 Initially, in December 2025, ICE told Mr. Deng that ICE was trying to
2 remove him to a third country. *Id.* at ¶ 6. But in February 2026, Mr. Deng's
3 deportation officer said that efforts to remove him to Sudan or a third country
4 were unsuccessful; ICE could not remove him anywhere. *Id.* The deportation
5 officer said that if it were up to him, he would release Mr. Deng, but his bosses
6 would not let him. *Id.* He therefore recommended that Mr. Deng call a lawyer and
7 file a habeas petition. *Id.*¹

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

10 When immigrants cannot be removed to their home country, ICE has begun
11 deporting those individuals to third countries without adequate notice or a
12 hearing. The Trump administration reportedly has negotiated with at least 58
13 countries to accept deportees from other nations. Edward Wong et al, *Inside the*
14 *Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25,
15 2025. On June 25, 2025, the New York Times reported that seven countries—
16 Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—
17 had agreed to accept deportees who are not their own citizens. *Id.* Since then, ICE
18 has carried out highly publicized third country deportations to South Sudan and
19 Eswatini.

20 The Administration has reportedly negotiated with countries to have many
21 of these deportees imprisoned in prisons, camps, or other facilities. The
22 government paid El Salvador about \$5 million to imprison more than 200
23 deported Venezuelans in a maximum-security prison notorious for gross human
24 rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica
25 took in hundreds of deportees from countries in Africa and Central Asia and
26 imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa
27

28 ¹ Mr. Deng qualifies financially for Federal Defenders' services. Exh. A at ¶ 8.

1 Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*,
 2 BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men, including one
 3 pre-1995 Vietnamese refugee, to South Sudan. *See Wong, supra*. On July 15, ICE
 4 deported five men to the tiny African nation of Eswatini, including one man from
 5 Vietnam, where they are reportedly being held in solitary confinement. Gerald
 6 Imray, *3 Deported by US held in African Prison Despite Completing Sentences*,
 7 *Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human
 8 rights abuses or instability. For instance, conditions in South Sudan are so
 9 extreme that the U.S. State Department website warns Americans not to travel
 10 there, and if they do, to prepare their will, make funeral arrangements, and appoint
 11 a hostage-taker negotiator first. *See Wong, supra*.

12 On June 23 and July 3, 2025, the Supreme Court issued a stay of a national
 13 class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of*
 14 *Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D.
 15 Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional
 16 requirements before removing an individual to a third country. *U.S. Dep't of*
 17 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025
 18 WL 1832186 (U.S. July 3, 2025).² On July 9, 2025, ICE rescinded previous
 19 guidance meant to give immigrants a “‘meaningful opportunity’ to assert claims
 20 for protection under the Convention Against Torture (CAT) before initiating
 21 removal to a third country” like the ones just described. Exh. B.

24 ² Though the Supreme Court’s order was unreasoned, the dissent noted that the
 25 government had sought a stay based on procedural arguments applicable only to
 26 class actions. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025)
 27 (Sotomayor, J., dissenting). Thus, “even if the Government [was] correct that
 28 classwide relief was impermissible” in *D.V.D.*, Respondents still “remain[]
 obligated to comply with orders enjoining [their] conduct with respect to individual
 plaintiffs” like Mr. Deng. *Id.* Thus, the Supreme Court’s decision does not override
 courts’ authority to grant individual injunctive relief. *See Nguyen v. Scott*, No. 2:25-
 CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

Under the new guidance, ICE may remove any immigrant to a third country “without the need for further procedures,” as long as—in the view of the State Department—the United States has received “credible” “assurances” from that country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees, ICE may still remove immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’ notice. But “[i]n exigent circumstances,” a removal may take place in as little as six hours, “as long as the alien is provided reasonably means and opportunity to speak with an attorney prior to the removal.” *Id.*

Upon serving notice, 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. If the noncitizen “does affirmatively state a fear if removed to the country of removal” then ICE will refer the case to U.S. Citizenship and Immigration Services (“USCIS”) for a screening for eligibility for withholding of removal and protection under the Convention Against Torture (“CAT”). *Id.* at 2. “USCIS will generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen does not meet the standard, the individual will be removed. *Id.* If USCIS determines that the noncitizen has met the standard, then the policy directs ICE to either move to reopen removal proceedings “for the sole purpose of determining eligibility for [withholding of removal protection] and CAT” or designate another country for removal. *Id.*

CLAIMS FOR RELIEF

This Court should grant this petition and order Mr. Deng’s immediate release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the

1 government to detain immigrants like Mr. Deng, for whom there is “no significant
2 likelihood of removal in the reasonably foreseeable future.” 533 U.S. 678, 701
3 (2001). ICE’s own regulations require changed circumstances before re-detention,
4 as well as a chance to contest a re-detention decision. And due process requires
5 ICE to provide notice and an opportunity to be heard before any removal to a third
6 country.

7
8 **I. Count 1: ICE failed to comply with its own regulations before re-**
9 **detaining Mr. Deng, violating his rights under the Fifth Amendment and**
10 **the Administrative Procedures Act.**

11 The Department of Homeland Security has enacted a series of regulations to
12 protect the due process rights of someone who, like Mr. Deng, is re-detained
13 following a period of release. Title 8 C.F.R. § 241.4(l) applies to re-detention
14 generally, while 8 C.F.R. § 241.13(i) applies to persons released after providing
15 good reason to believe that they will not be removed in the reasonably foreseeable
16 future, *see Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165,
at *2 (S.D. Cal. Sept. 15, 2025), as Mr. Deng was.

17 ICE is required to follow its own regulations. *United States ex rel. Accardi*
18 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162
19 (9th Cir. 2004) (“The legal proposition that agencies may be required to abide by
20 certain internal policies is well-established.”). A court may review a re-detention
21 decision for compliance with the regulations. *See Phan v. Beccerra*, No. 2:25-CV-
22 01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No.
23 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong*
24 *v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)). Many judges in this district
25 have granted habeas petitions or temporary restraining orders when ICE failed to
26 follow 8 C.F.R. §§ 241.4(l), 241.13(i). *See, e.g., Constantinovici v. Bondi*, 2025
27 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v.*
28 *Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan*

1 *v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct.
 2 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept.
 3 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D.
 4 Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D.
 5 Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF
 6 No. 12 (S.D. Cal. Oct. 9, 2025).³

7 Here, ICE violated § 241.13 in several respects.⁴

8 First, ICE did not comply with § 241.13(i)’s informal interview requirement.
 9 No matter the reason for re-detention, the re-detained person is entitled to “an initial
 10 informal interview promptly,” during which they “will be notified of the reasons
 11 for revocation.” *Id.* §§ 241.4(l)(1), 241.13(i)(3). The interviewer must “afford[] the
 12 [person] an opportunity to respond to the reasons for revocation,” allowing them to
 13 “submit any evidence or information” relevant to re-detention and evaluating “any
 14 contested facts.” *Id.* But Mr. Deng has been detained for six months without ever
 15 receiving an interview. Exh. A at ¶ 5. Any interview conducted now would not be
 16 prompt. *See, e.g., M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL
 17 2430267, at *11 (D. Or. Aug. 21, 2025) (27-day delay not prompt); *Yang v. Kaiser*,
 18 No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20,
 19

20
 21 ³ Courts in other districts have done the same. *Ceesay v. Kurzdorfer*, 781 F. Supp.
 22 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y.
 23 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*,
 24 No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025);
 25 *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or.
 26 Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782,
 27 at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP,
 28 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2;
M.Q. v. United States, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

⁴ Some of these violations also constitute § 241.4(l) violations, but because § 241.13(i) is more comprehensive, Mr. Deng focuses his arguments on that regulation.

1 2025) (two-month delay not prompt); *Soryadvongsa v. Noem*, 24-cv-2663-AGS-
2 DDL, 2025 WL 3126821, at *1 (S.D. Cal. Nov. 8, 2025) (29-day delay not prompt).
3 That alone is enough to grant the petition.

4 Second, on information and behalf, ICE did not comply with § 241.13(i)'s
5 requirement that, "upon revocation," the re-detained person be "notified of the
6 reasons for revocation." As Judge Moskowitz recently explained, the regulation's
7 text and due process require that the notice be written. *Tran v. Noem*, 25-cv-2391-
8 BTM, Dkt. 16, at 5–6 (S.D. Cal. Oct. 27, 2025). Though ICE recently began issuing
9 revocation notices to re-detained individuals, these notices are often so vague that
10 they do not satisfy due process.

11 Third, there is no indication that the appropriate officials made the proper
12 determinations prior to Mr. Deng's revocation. Regulations permit ICE to "return
13 [a releasee] to custody" because they "violate[d] any of the conditions of release."
14 8 C.F.R. § 241.13(i)(1). Otherwise, § 241.13(i) permits revocation of release only
15 if the appropriate official (1) "determines that there is a significant likelihood that
16 the alien may be removed in the reasonably foreseeable future," and (2) makes that
17 finding "on account of changed circumstances." *Id.* Here, if the government is
18 unable to produce "any documented determination, made prior to Petitioner's
19 arrest," that any of the prerequisites to re-detention were met, then Mr. Deng must
20 be released on those grounds, too. *Rokhfirooz v. Larose*, 2025 WL 2646165, at *3
21 (S.D. Cal. Sept. 15, 2025).

22 Finally, if Mr. Deng was in fact detained for a violation of his release
23 conditions, his detention past six months would still violate ICE regulations. Under
24 § 241.13(i)(1), "if a noncitizen 'violates any of the conditions of release,' then the
25 noncitizen 'may be continued in detention for an additional six months in order to
26 effect the alien's removal, if possible, and to effect the conditions under which the
27 alien had been released.'" *Vu v. Noem*, No. 1:25-CV-01366-KES-SKO (HC), 2025
28 WL 3114341, at *7 n.8 (E.D. Cal. Nov. 6, 2025). Because it has been almost six

1 months since Mr. Deng's redetention, and this petition will likely resolve after six
 2 months have elapsed, any conditions violation would not be able to justify
 3 Mr. Deng's detention.

4 "[B]ecause officials did not properly revoke petitioner's release pursuant to
 5 the applicable regulations, that revocation has no effect, and [Mr. Deng] is entitled
 6 to his release (subject to the same Order of Supervision that governed his most
 7 recent release)." *Liu*, 2025 WL 1696526, at *3.

8 **II. Count 2: Mr. Deng's detention violates *Zadvydas* and 8 U.S.C. § 1231.**

9 **A. Legal background**

10 Beyond these regulatory violations, Mr. Deng's detention violates the
 11 statute authorizing detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533
 12 U.S. 678 (2001), the Supreme Court considered a problem affecting people like
 13 Mr. Deng: Federal law requires ICE to detain an immigrant during the "removal
 14 period," which typically spans the first 90 days after the immigrant is ordered
 15 removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires,
 16 detention becomes discretionary—ICE may detain the migrant while continuing
 17 to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to
 18 excessive detention, as removal happens within days or weeks. But some
 19 detainees cannot be removed quickly. Perhaps their removal "simply require[s]
 20 more time for processing," or they are "ordered removed to countries with whom
 21 the United States does not have a repatriation agreement," or their countries
 22 "refuse to take them," or they are "effectively 'stateless' because of their race
 23 and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir.
 24 2001). In these and other circumstances, detained immigrants can find themselves
 25 trapped in detention for months, years, decades, or even the rest of their lives.

26 If federal law were understood to allow for "indefinite, perhaps permanent,
 27 detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at
 28 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by

1 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

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

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

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

15 Using this framework, Mr. Deng can make all the threshold showings
16 needed to shift the burden to the government.

17 **B. The six-month grace period expired long ago, and he has been**
18 **detained for about two years in total.**

19 As an initial matter, the six-month grace period has long since ended. The
20 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,
21 *three months* after the statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*,
22 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Deng’s order of removal was
23 entered in February 2011. Exh. A at ¶ 2. Accordingly, his 90-day removal period
24 began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six
25 months after he was ordered removed and three months after the removal period
26 expired, both of which occurred in August 2011. Not only that, but Mr. Deng was
27 detained for 19 months in 2011 and for over five months in 2025 and 2026. Exh. A
28

1 at ¶¶ 2, 4. ICE has therefore had four *Zadvydas* grace periods to remove him but
2 has proved unable to do so. Thus, this threshold requirement is indisputably met.

3
4 **C. Mr. Deng will not likely be removed reasonably soon.**

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

10 "Good reason to believe." The "good reason to believe" standard is a
11 relatively forgiving one. "A petitioner need not establish that there exists no
12 possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
13 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "[g]ood reason to
14 believe' . . . place a burden upon the detainee to demonstrate no reasonably
15 foreseeable, significant likelihood of removal or show that his detention is
16 indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW,
17 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
18 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
19 Petitioners need only give a "good reason"—not prove anything to a certainty.

20 "Significant likelihood of removal." This component focuses on whether
21 Mr. Deng will likely be removed: Continued detention is permissible only if it is
22 "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533 U.S.
23 at 701. This inquiry targets "not only the *existence* of untapped possibilities, but
24 also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F.
25 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words,
26 even if "there remains *some* possibility of removal," a petitioner can still meet its
27 burden if there is good reason to believe that successful removal is not
28

1 significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL
2 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

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

17 Mr. Deng readily satisfies this standard for two reasons.

18 *First*, ICE has detained Mr. Deng for four total *Zadvydas* grace periods: 19
19 months in 2011 and 5 months in 2025 and 2026. Exh. A at ¶¶ 2, 4. Yet ICE has
20 made no progress removing him to Sudan or any other country. *Id.* at ¶ 6. There is
21 no apparent reason why ICE would succeed now when it has so consistently
22 failed.

23 *Second*, ICE has told Mr. Deng directly that he cannot be removed. His
24 deportation officer said that Sudan won’t accept him, and neither will a third
25 country. *Id.* The deportation officer then suggested that he file a habeas, as ICE
26 leadership refuses to voluntarily release people who cannot be removed. *Id.*

27 Thus, Mr. Deng has met his initial burden, and the burden shifts to the
28 government. Unless the government can prove a “significant likelihood of

1 removal in the reasonably foreseeable future,” Mr. Deng must be released.
2 *Zadvydas*, 533 U.S. at 701.

3 **III. Count 3: ICE may not remove Mr. Deng to a third country without**
4 **adequate notice and an opportunity to be heard.**

5 Thus, based on the evidence currently available, Mr. Deng will not likely be
6 removed to a third country any time soon. Yet in this unpredictable diplomatic
7 landscape, something could unexpectedly change to make third-country removal
8 feasible. If so, ICE’s policies threaten his removal to a third country without
9 adequate notice and an opportunity to be heard. These policies violate the Fifth
10 Amendment, the Convention Against Torture, and implementing regulations.

11 **A. Legal background**

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

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

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

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

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

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

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

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

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

21 Second, even when the government has obtained no credible assurances
22 against persecution and torture, the government can still remove the person with
23 between 6 and 24 hours’ notice, depending on the circumstances. Exh. B.
24 Practically speaking, there is not nearly enough time for a detained person to assess
25 their risk in the third country and marshal evidence to support any credible fear—let
26 alone a chance to file a motion to reopen with an IJ. An immigrant may know
27 nothing about a third country, like Eswatini or South Sudan, when they are
28 scheduled for removal there. Yet if given the opportunity to investigate conditions,

1 immigrants would find credible reasons to fear persecution or torture—like patterns
2 of keeping deportees indefinitely and without charge in solitary confinement or
3 extreme instability raising a high likelihood of death—in many of the third
4 countries that have agreed to removal thus far. Due process requires an adequate
5 chance to identify and raise these threats to health and life. This Court must prohibit
6 the government from removing Mr. Deng without these due process safeguards.

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

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

11 **V. Prayer for relief**

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

- 13 1. Order Respondents to immediately release Petitioner from custody;
- 14 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
15 § 1231(a)(6) unless and until Respondents obtain a travel document for
16 his removal;
- 17 3. Enjoin Respondents from re-detaining Petitioner without first following
18 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other
19 applicable statutory and regulatory procedures;
- 20 4. Enjoin Respondents from removing Petitioner to any country other than
21 Sudan, unless they provide the following process, *see D.V.D. v. U.S. Dep't*
22 *of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D.
23 Mass. May 21, 2025):
 - 24 a. written notice to both Petitioner and Petitioner's counsel in a
25 language Petitioner can understand;
 - 26 b. a meaningful opportunity, and a minimum of ten days, to raise a
27 fear-based claim for CAT protection prior to removal;
 - 28

1 c. if Petitioner is found to have demonstrated “reasonable fear” of
2 removal to the country, Respondents must move to reopen
3 Petitioner’s immigration proceedings;

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

8 5. Order all other relief that the Court deems just and proper.
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12 Respectfully submitted,

13 Dated: May 2, 2026

s/ Katie Hurrelbrink

KATIE HURRELBRINK

Federal Defenders of San Diego, Inc.

Email: Katie_Hurrelbrink@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.

Date: April 28, 2026

/s/ Katie Hurrelbrink
Katie Hurrelbrink