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8 

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

11 NAHOM HAFTOM BERHE,
12
13 Petitioner,

14 v.

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

24 Respondents.
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CIVIL CASE NO.: '26CV2828 JES VET

**Petition for Writ
of
Habeas Corpus**
[28 U.S.C. § 2241]

INTRODUCTION

On December 19, 2026, Nahom Haftom Berhe, received withholding of removal to his native country of Ethiopia. ICE continued to detain him for the next approximate four and a half months, purportedly to remove him to a third country. But ICE has made no progress in doing so. It does not appear that ICE has even asked a third country to take him. Because “there is no significant likelihood of removal in the reasonably foreseeable future,” Mr. Berhe’s detention is no longer statutorily authorized, and this Court must order his immediate release. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

STATEMENT OF FACTS

I. Mr. Berhe received withholding of removal, and there is no evidence of any progress in sending him to a third country.

Mr. Berhe was born in Ethiopia on  Dec. at ¶ 1. Mr. Berhe entered the United States with a valid visa in April of 2016. *Id.* He applied for asylum withing six months of arriving based on a fear of persecution for his homosexual actions and behavior (Mr. Berhe is bisexual). *Id.* Homosexuality is illegal in Ethiopia.

He resided in the United States for almost ten years before receiving a hearing the merits of his asylum claim. *Id.* at ¶ 3.

On May 31, 2025, he was arrested on suspicion of driving under the influence. *Id.* at ¶ 2. Another car ran a red light and hit his car. *Id.* Mr. Berhe called 911 to report the accident and was questioned by law enforcement when they arrived at the scene. *Id.* Mr. Berhe was questioned about his immigration status, and he admitted to drinking a beer prior to driving. *Id.* Mr.

1 Berhe was in Texas state custody until on or about June 4, 2025, when ICE
2 took him into immigration custody. *Id.*

3 While in immigration custody he received notice of a hearing on the
4 merits for his asylum claim. *Id.* at ¶ 2 An immigration judge awarded him
5 withholding of removal on December 19, 2025. *Id.* at ¶ 2.

6 Since then, ICE has met with him only to sign internal ICE paperwork
7 every month. *Id.* at ¶ 4. No third country has been identified or mentioned as
8 a third-country removal candidate. *Id.*

9 On April 17, 2026, when an ICE agent visited Mr. Berhe, he was told
10 that the agent had never seen a case of an Ethiopian removed to a third
11 country. *Id.* Now, about 136 days have passed since Mr. Berhe was granted
12 withholding of removal, and about 334 days have passed since Mr. Berhe was
13 first placed into ICE detention.

14 At none of these meetings has ICE ever identified a third country that
15 might take Mr. Berhe. *Id.* at ¶ 6. No one has asked him to fill out any
16 paperwork for third-country removal or to talk to the consulate of any third
17 country. *Id.* Nor can Mr. Berhe think of any reason why a third country would
18 take him. He is not a citizen of any country other than Ethiopia. *Id.* at ¶ 1. He
19 does not have legal status in any other country. *Id.* Both of his parents legally
20 reside in the United States. *Id.* at ¶ 7. His United States citizen wife resides in
21 the United States. *Id.* There is therefore no apparent prospect of his removal
22 from the United States.

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

3 Though it is highly unlikely that ICE can remove Mr. Berhe to a third
4 country in the reasonably foreseeable future, something could unexpectedly
5 change to make third-country removal plausible. If so, Mr. Berhe would be in
6 grave danger of removal without due process.

7 The Trump administration reportedly has negotiated with at least 58
8 countries to accept deportees from other nations. Edward Wong et al, *Inside the*
9 *Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25,
10 2025. On June 25, 2025, the New York Times reported that seven countries—
11 Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—
12 had agreed to accept deportees who are not their own citizens. *Id.* Since then, ICE
13 has carried out highly publicized third country deportations to South Sudan and
14 Eswatini.

15 The Administration has reportedly negotiated with countries to have
16 many of these deportees imprisoned in prisons, camps, or other facilities. The
17 government paid El Salvador about \$5 million to imprison more than 200
18 deported Venezuelans in a maximum-security prison notorious for gross
19 human rights abuses, known as CECOT. *See id.* In February, Panama and
20 Costa Rica took in hundreds of deportees from countries in Africa and Central
21 Asia and imprisoned them in hotels, a jungle camp, and a detention center. *Id.*;
22 Vanessa Buschschluter, *Costa Rican court orders release of migrants deported*
23 *from U.S.*, BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men,
24 including one pre-1995 Vietnamese refugee, to South Sudan. *See Wong, supra.*
25 On July 15, ICE deported five men to the tiny African nation of Eswatini,
26 including one man from Vietnam, where they are reportedly being held in
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1 solitary confinement. Gerald Imray, *3 Deported by US held in African Prison*
 2 *Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). Many of
 3 these countries are known for human rights abuses or instability. For instance,
 4 conditions in South Sudan are so extreme that the U.S. State Department
 5 website warns Americans not to travel there, and if they do, to prepare their
 6 will, make funeral arrangements, and appoint a hostage-taker negotiator first.
 7 *See Wong, supra.*

9 On June 23 and July 3, 2025, the Supreme Court issued a stay of a
 10 national class-wide preliminary injunction issued in *D.V.D. v. U.S.*
 11 *Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968,
 12 at *1, 3 (D. Mass. Apr. 18, 2025), which required ICE to follow statutory and
 13 constitutional requirements before removing an individual to a third country.
 14 *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No.
 15 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).¹ On July 9, 2025, ICE
 16 rescinded previous guidance meant to give immigrants a “meaningful
 17 opportunity’ to assert claims for protection under the Convention Against
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23 ¹ Though the Supreme Court’s order was unreasoned, the dissent noted that the
 24 government had sought a stay based on procedural arguments applicable only to
 25 class actions. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025)
 26 (Sotomayor, J., dissenting). Thus, “even if the Government [was] correct that class
 27 wide relief was impermissible” in *D.V.D.*, Respondents still “remain[] obligated to
 28 comply with orders enjoining [their] conduct with respect to individual plaintiffs”
 like Mr. Berhe. *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).

1 Torture (CAT) before initiating removal to a third country” like the ones just
2 described. Exh. B.

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

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14 Upon serving notice, ICE “will not affirmatively ask whether the alien is
15 afraid of being removed to the country of removal.” *Id.* (emphasis original). If
16 the noncitizen “does not affirmatively state a fear of persecution or torture if
17 removed to the country of removal listed on the Notice of Removal within 24
18 hours, [ICE] may proceed with removal to the country identified on the
19 notice.” *Id.* at 2. If the noncitizen “does affirmatively state a fear if removed to
20 the country of removal” then ICE will refer the case to U.S. Citizenship and
21 Immigration Services (“USCIS”) for a screening for eligibility for withholding
22 of removal and protection under the Convention Against Torture (“CAT”). *Id.*
23 at 2. “USCIS will generally screen within 24 hours.” *Id.* If USCIS determines
24 that the noncitizen does not meet the standard, the individual will be
25 removed. *Id.* If USCIS determines that the noncitizen has met the standard,
26 then the policy directs ICE to either move to reopen removal proceedings “for
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1 the sole purpose of determining eligibility for [withholding of removal
 2 protection] and CAT” or designate another country for removal. *Id.*

3 4 CLAIMS FOR RELIEF

5 This Court should grant this petition and order Mr. Berhe’s immediate
 6 release, because there is “no significant likelihood of removal in the reasonably
 7 foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The Court
 8 should also enjoin his removal without due process.

9 10 I. Count 1: Mr. Berhe’s detention violates *Zadvydas* and 8 U.S.C. § 1231.

11 A. Legal background

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

28 If federal law were understood to allow for “indefinite, perhaps permanent,

1 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at
2 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by
3 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

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

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

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

17 **B. The six-month grace period will expire on June 19, 2026**

18 As an initial matter, the six-month grace period is very close to ending. It
19 expires on June 19, 2026. The *Zadvydas* grace period lasts for “*six months* after a
20 final order of removal—that is, *three months* after the statutory removal period
21 has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001).
22 Here, Mr. Berhe was granted withholding of removal on December 19, 2025. Dec
23 at ¶ 3. Accordingly, his 90-day removal period began then. 8 U.S.C.
24 § 1231(a)(1)(B). The *Zadvydas* grace period will thus expire six months after the
25 removal period began, on June 19, 2026.

26 It is possible the threshold requirement will therefore be met when this
27 Court decides the case. If not, the Court can stay the petition until the six month
28 period has passed or request a status update at the six-month mark. If Mr. Berhe

1 remains in custody with no significant likelihood of removal, the burden shifts to
2 the government to demonstrate there is a significant likelihood of removal in the
3 reasonably foreseeable future.

4 C. There is good reason to believe that there is no significant likelihood
5 of Mr. Berhe removal in the reasonably foreseeable future.

6 As the 90-day removal period has ended and the six-month grace period is
7 fast approaching and there has been no indication that Mr. Berhe will be removed
8 to a third country, the Court will have to evaluate Mr. Berhe's *Zadvydas* claim
9 using the burden-shifting framework. At the first stage of the framework, there
10 must be "good reason to believe that there is no significant likelihood of removal
11 in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard
12 can be broken down into three parts.

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

23 **"No significant likelihood of removal."** This component focuses on
24 whether Mr. Berhe will likely be removed: Continued detention is permissible
25 only if it is "significant[ly] like[ly]" that ICE will be able to remove him.
26 *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the *existence* of
27 untapped possibilities, but also [the] probability of *success* in such possibilities."
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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 Mr. Berhe 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 Mr. Berhe
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 Mr. Berhe has very good reason to doubt his removal. ICE has made no
21 progress whatsoever in removing him, despite having four and a half months to do
22 so. And there is an obvious explanation for ICE’s inability to remove him: The IJ’s
23 order prohibits Mr. Berhe’s removal to his home country of Ethiopia, “which is the
24 only country to which he has a claim to citizenship or legal immigration status.”
25 *Villanueva*, 2025 WL 2774610, at *10. “This substantially increases the difficulty
26 of removing him.” *Munoz-Saucedo*, 789 F. Supp. 3d at 398.

27 That’s because “alternative-country removal is rare.” *Johnson v. Guzman-*
28 *Chavez*, 594 U.S. 523, 537 (2021). Between 2020 and 2023, data apparently show

1 that “ICE removed . . . only *five* non-citizens granted withholding or CAT relief to
2 alternative countries.” *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J.
3 2025) (emphasis original). In fiscal year 2017, there were at most 21 people of the
4 thousands with withholding of removal deported to *any* country; that number
5 includes dual citizens who only received withholding from one of their two other
6 countries of origin. *See* American Immigration Council & National Immigrant
7 Justice Center, *The Difference Between Asylum and Withholding of Removal*, 7
8 (Oct. 2020)² (cited in *Guzman-Chavez*, 594 U.S. at 537). That means that “less than
9 two percent of those granted withholding of removal were deported to a third
10 country.” *Puertas-Mendoza*, 2025 WL 3142089 at *3 (citing American
11 Immigration Council & National Immigrant Justice Center, *supra*).

12 “[T]hat is not simply a matter of United States policy—foreign governments
13 ‘routinely deny’ requests to receive people who lack a connection to the would-be
14 receiving country.” *Puertas-Mendoza*, 2025 WL 3142089 at *3. “The reason so few
15 people are deported to third countries is because,” while “customary international
16 law holds that a country has a duty to accept the return of its nationals,” usually,
17 “countries have no incentive to accept non-citizens.” American Immigration
18 Council & National Immigrant Justice Center, *supra*, at 7.

19 Because third country removal is exceedingly rare, and ICE has made no
20 progress in removing Mr. Berhe to one over the last four and a half months, Mr.
21 Berhe is on the verge of meeting his initial burden. Thus, unless the government
22 can prove a “significant likelihood of removal in the reasonably foreseeable future,”
23 Mr. Berhe must be released. *Zadvydas*, 533 U.S. at 701.

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27 ²Available at [https://www.americanimmigrationcouncil.org/wp-](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf)
28 [content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf)

1 **II. Count 2: ICE may not remove Mr. Berhe to a third country without**
2 **adequate notice and an opportunity to be heard.**

3 There is therefore no current likelihood that Mr. Berhe will be removed to a
4 third country. But ICE is trying to do just that, and in this rapidly evolving removal
5 landscape, something unforeseen could suddenly change to make that feasible.
6 ICE's "credible threat of enforcement" of this third-country removal plan is
7 sufficient to make this claim justiciable, even ICE does not have any current
8 feasible plan to remove Mr. Berhe to a third country. *See Susan B. Anthony List v.*
9 *Driehaus*, 573 U.S. 149, 156–57, 161 (2014) (finding standing, even though the
10 politician seeking enforcement of an unconstitutional law was no longer running
11 for office). And if ICE did suddenly prove able to remove Mr. Berhe to a third
12 country, it would do so under a policy that violates the Fifth Amendment, the
13 Convention Against Torture, and implementing regulations.

14 **A. Legal background**

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

24 Similarly, Congress codified protections enshrined in the CAT prohibiting
25 the government from removing a person to a country where they would be tortured.
26 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of
27 the United States not to expel, extradite, or otherwise effect the involuntary return
28

1 of any person to a country in which there are substantial grounds for believing the
2 person would be in danger of being subjected to torture, regardless of whether the
3 person is physically present in the United States.”); 28 C.F.R. § 200.1; *id.*
4 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

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

21 If the noncitizen claims fear, measures must be taken to ensure that the
22 noncitizen can seek asylum, withholding, and relief under CAT before an
23 immigration judge in reopened removal proceedings. The amount and type of
24 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
25 circumstances, he would have a reasonable opportunity to raise and pursue his
26 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
27 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
28 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the

1 government to move to reopen the noncitizen's immigration proceedings if the
2 individual demonstrates "reasonable fear" and to provide "a meaningful
3 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening
4 of their immigration proceedings" if the noncitizen is found to not have
5 demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice
6 and time for a respondent to file a motion to reopen and seek relief).

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

14 **B. The July 9, 2025 memo's removal policies violate the Fifth**
15 **Amendment, 8 U.S.C. § 1231, the Conviction Against Torture, and**
16 **Implementing Regulations.**

17 The policies in the July 9, 2025, memo do not adhere to these requirements.
18 First, under the policy, ICE need not give immigrants *any* notice or hearing before
19 removing them to a country that—in the State Department's estimation—has
20 provided "credible" "assurances" against persecution and torture. Exh. A. By
21 depriving immigrants of any chance to challenge the State Department's view, this
22 policy violates "[t]he essence of due process," "the requirement that a person in
23 jeopardy of serious loss be given notice of the case against him and opportunity to
24 meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

25 Second, even when the government has obtained no credible assurances
26 against persecution and torture, the government can still remove the person with
27 between 6 and 24 hours' notice, depending on the circumstances. Exh. A.
28 Practically speaking, there is not nearly enough time for a detained person to assess

1 their risk in the third country and martial evidence to support any credible fear—let
2 alone a chance to file a motion to reopen with an IJ. An immigrant may know
3 nothing about a third country, like Eswatini or South Sudan, when they are
4 scheduled for removal there. Yet if given the opportunity to investigate conditions,
5 immigrants would find credible reasons to fear persecution or torture—like patterns
6 of keeping deportees indefinitely and without charge in solitary confinement or
7 extreme instability raising a high likelihood of death—in many of the third
8 countries that have agreed to removal thus far. Due process requires an adequate
9 chance to identify and raise these threats to health and life. This Court must prohibit
10 the government from removing Mr. Berhe without these due process safeguards.

11 **III. This Court must hold an evidentiary hearing on any disputed facts.**

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

15 **IV. Prayer for relief**

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

- 17 1. Order Respondents to immediately release Petitioner from custody;
- 18 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
19 § 1231(a)(6) unless and until Respondents obtain a travel document for
20 his removal;
- 21 3. Enjoin Respondents from removing Petitioner unless they provide the
22 following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV
23 25-10676-BEM, 2025 WL 1453640, at *1 (D. 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 4. Order all other relief that the Court deems just and proper.
9

10 Respectfully submitted,

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12 Dated: May 4, 2026

s/ Danielle R. Peay

Danielle R. Peay

Attorney for Mr. Berhe

Email: daniellerpeay@gmail.com
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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: May 4, 2026

/s/ Danielle R. Peay
Danielle R. Peay