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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, et
17 al.

18 Respondents.
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CASE NO.: 26-cv-2828-JES-VET

**Traverse in Support of Petition for
Writ of
Habeas Corpus**

[28 U.S.C. § 2241]

INTRODUCTION

On December 19, 2025, Nahom Haftom Berhe, received withholding of removal to his native country of Ethiopia. On the same date an immigration judge denied his asylum claim. He did not appeal. He subsequently filed a habeas petition arguing that he should be released under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

In their return, Respondents argue that Mr. Berhe's is detention is "presumptively reasonable" because Mr. Berhe cannot rebut the presumption that his removal is significantly likely in the reasonably foreseeable future. Dkt. 4 at 3. This argument is not persuasive.

I. Mr. Berhe can rebut the presumption that his detention is reasonable.

Respondents do not dispute that once the 90-day period passes, Mr. Berhe's detention is only "presumptively reasonable", and this may be rebutted. Mr. Berhe can rebut this presumption.

Respondents have stated that since Mr. Berhe's removal order became final "ICE is working diligently to identify a third country for removal." Dkt. 4 at 5. Despite this diligent work, Respondents have submitted zero specifics or details on potential third countries that would accept Mr. Berhe. Respondents have also failed to provide any examples of Ethiopian nationals that have been successfully removed to a third country.¹

Respondent's diligent work should produce a modicum of documentation and/or details; however, Respondents have only provided generalized vagaries. There has been no assurance, no timeline, nor any prospective third country proffered. Therefore, there is no significant likelihood Mr. Berhe will be removed

¹ In Mr. Berhe's First Declaration he stated, under penalty of perjury, that in January of 2026 an ICE agent informed him that he had never seen a case of an Ethiopian removed to a third country. Dkt. 1-2 at 2.

1 in the foreseeable future.

2 Because Respondents have failed to provide any specific details about
3 removal to a third country and have not addressed or rebutted Mr. Berhe's
4 declaration that an ICE agent told him Ethiopians are never removed to a third
5 country, Mr. Berhe has rebutted the presumption that his detention is reasonable.

6 **CONCLUSION**

7 Mr. Berhe is outside of the 90-day statutory detention period and has
8 rebutted the presumption that his detention is reasonable. This Court should grant
9 the habeas petition and order him immediately released.

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11 Respectfully submitted,

12 Dated: May 13, 2026

s/ Danielle R. Peay

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