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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES MUSA GAMA,

Petitioner,

v.

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

Respondents.

Civil Case No.: '26CV2868 BJC SBC

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

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I. Introduction

On November 15, 2026, Mr. Gama was detained by ICE. For years before that re-detention, ICE was not been able to remove Mr. Gama to Sudan. Thus, Mr. Gama was on an order of supervision. Now he has been re-detained for 6 months and there is no likelihood of removal to Sudan. It does not appear that ICE has even asked a third country to take him.

This civil immigration habeas petition seeks three grounds of relief. First, it seeks to prevent his indefinite detention pending deportation to Sudan absent the basic statutory and due process guarantees outlined in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Second, it seeks to prevent Petitioner's indefinite detention pending deportation to Sudan absent the basic regulatory and due process guarantees of 8 C.F.R. §§ 241.4(l), 241.13(i), and *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Third, it seeks to prevent their deportation to a third country without them first receiving basic due process guarantees of notice and opportunity to be heard as to Petitioner's statutory rights to seek withholding of removal and Convention Against Torture relief.

II. Statement of Facts

A. There is no evidence of any progress in removing Mr. Gama.

Mr. Gama was born in Sudan and later lived in a refugee camp in Ethiopia. Exhibit A, Declaration of James Musa Gama, at ¶ 1. He came to the United States in 2005 as a refugee. *Id.*

In 2023, Mr. Gama was given voluntary departure to Sudan but he could not go to Sudan because of the civil war. *Id.* at ¶ 2. ICE was not able to obtain travel documents. *Id.* Thus, ICE released Mr. Gama under an order of supervision. *Id.* at ¶ 3.

1 On November 15, 2025, Mr. Gama was home when he was
2 arrested by ICE. *Id.* at ¶ 4. He did not receive proper notice or an
3 opportunity to contest his detention. *Id.*

4 Mr. Gama has now been detained at Imperial Detention Center a
5 week shy of six months. *Id.* While detained, in January of 2026, he
6 learned that Sudan continues to state that it will not issue travel
7 documents. *Id.* at ¶ 5. ICE has not told Mr. Gama if they intend to
8 remove him to a third country. *Id.* at ¶ 6.

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

12 Though it is highly unlikely that ICE can remove Mr. Gama to a
13 third country in the reasonably foreseeable future, something could
14 unexpectedly change to make third-country removal plausible. If so,
15 Mr. Gama would be in grave danger of removal without due process.

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

25 The Administration has reportedly negotiated with countries to
26 have many of these deportees imprisoned in prisons, camps, or other
27 facilities. The government paid El Salvador about \$5 million to
28 imprison more than 200 deported Venezuelans in a maximum-security
prison notorious for gross human rights abuses, known as CECOT. *See*

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

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

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

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

III. Claims for Relief

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

A. Claim 1: Mr. Gama's detention violates *Zadvydas* and 8 U.S.C. § 1231.

1. Legal background

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

If federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat."

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

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

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

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

17 2. The six-month grace period has expired.

18 As an initial matter, the six-month grace period has ended. The
 19 *Zadvydas* grace period lasts for “*six months* after a final order of
 20 removal—that is, *three months* after the statutory removal period has
 21 ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir.
 22 2001). Here, Mr. Gama was ordered removed via voluntary departure
 23 in **January 2023**. Exh. A at ¶ 2. Accordingly, his 90-day removal
 24 period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period
 25 thus expired six months after the removal period began, in **June 2023**.

26 In addition to the six-month period following removal already
 27 expiring, Mr. Gama has now been **re-detained for an additional six**
 28

1 **months.** The threshold requirement will therefore be met when this
 2 Court decides the case.

3 **3. There is good reason to believe that there is no**
 4 **significant likelihood of Mr. Gama's removal in**
 5 **the reasonably foreseeable future.**

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

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

24 **"No significant likelihood of removal."** This component
 25 focuses on whether Mr. Feh will likely be removed: Continued
 26 detention is permissible only if it is "significant[ly] like[ly]" that ICE
 27 will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry
 28 targets "not only the *existence* of untapped possibilities, but also [the]
 probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F.

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

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

23 Mr. Gama has very good reason to doubt his removal. ICE has
24 made no progress whatsoever in removing him, despite having at least
25 three years to do so. And there is an obvious explanation for ICE’s
26 inability to remove him: Mr. Gama entered as a refugee and Sudan has
27 never issued travel documents for Mr. Gama. Sudan did not issue
28 travel documents back in 2023 and again six months after his re-

1 detention continues to deny travel documents.

2 What's more, removal to a third country is unlikely. That's
3 because "alternative-country removal is rare." *Johnson v. Guzman-*
4 *Chavez*, 594 U.S. 523, 537 (2021). Between 2020 and 2023, data
5 apparently show that "ICE removed . . . only *five* non-citizens granted
6 withholding or CAT relief to alternative countries." *Munoz-Saucedo v.*
7 *Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025) (emphasis original). In
8 fiscal year 2017, there were at most 21 people of the thousands with
9 withholding of removal deported to *any* country; that number includes
10 dual citizens who only received withholding from one of their two other
11 countries of origin. See American Immigration Council & National
12 Immigrant Justice Center, *The Difference Between Asylum and*
13 *Withholding of Removal*, 7 (Oct. 2020)¹ (cited in *Guzman-Chavez*, 594
14 U.S. at 537). That means that "less than two percent of those granted
15 withholding of removal were deported to a third country." *Puertas-*
16 *Mendoza*, 2025 WL 3142089 at *3 (citing American Immigration
17 Council & National Immigrant Justice Center, *supra*).

18 "[T]hat is not simply a matter of United States policy—foreign
19 governments 'routinely deny' requests to receive people who lack a
20 connection to the would-be receiving country." *Puertas-Mendoza*, 2025
21 WL 3142089 at *3. "The reason so few people are deported to third
22 countries is because," while "customary international law holds that a
23 country has a duty to accept the return of its nationals," usually,
24 "countries have no incentive to accept non-citizens." American
25 Immigration Council & National Immigrant Justice Center, *supra*, at
26

27
28 ¹ Available at <https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the-difference-between-asylum-and-withholding-of-removal.pdf>.

7.

Because third country removal is exceedingly rare, and ICE has made no progress in removing Mr. Gama to one over the last three years or the last six months since his re-detention, Mr. Gama has met his initial burden. Thus, unless the government can prove a “significant likelihood of removal in the reasonably foreseeable future,” Mr. Gama must be released. *Zadvydas*, 533 U.S. at 701.

B. Claim 2: ICE failed to comply with its own regulations before re-detaining Petitioner, violating Petitioner’s rights under applicable regulations and the Fifth Amendment.

Two regulations establish the process due to someone who is re-detained in immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to re-detention generally. 8 C.F.R. § 241.13(i) applies to persons released after providing good reason to believe that they will not be removed in the reasonably foreseeable future, as Petitioner were. *See Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (order from Judge Huie explaining this regulatory framework and granting a habeas petition for ICE’s failure to follow these regulations).

These regulations permit an official to “return [the person] to custody” because they “violate[d] any of the conditions of release.” 8 C.F.R. § 241.13(i)(1); *see also* § 241.4(l)(1).

Otherwise, they contain four major regulatory protections for people like Petitioner, who did not violate any condition of release. They permit revocation of release only if the appropriate official (1) “determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future,” § 241.13(i)(2), and (2) makes that finding “on account of changed circumstances.” *Id.* No matter the reason for re-detention, (3) the re-detained person is

1 entitled to “an initial informal interview promptly,” during which they
2 “will be notified of the reasons for revocation.” §§ 241.4(l)(1);
3 241.13(i)(3). The interviewer must (4) “afford[] the [person] an
4 opportunity to respond to the reasons for revocation,” allowing them to
5 “submit any evidence or information” relevant to re-detention and
6 evaluating “any contested facts.” *Id.*

7 ICE is required to follow its own regulations. *United States ex rel.*
8 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*,
9 384 F.3d 1150, 1162 (9th Cir. 2004) (“The legal proposition that
10 agencies may be required to abide by certain internal policies is well-
11 established.”). A court may review a re-detention decision for
12 compliance with the regulations, and “where ICE fails to follow its own
13 regulations in revoking release, the detention is unlawful and the
14 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at
15 *4 (collecting cases).

16 ICE followed none of its four regulatory prerequisites to re-
17 detention here.

18 First, Petitioner did not receive proper notice of the reasons for
19 re-detention upon revocation. Exh. A at ¶ 4. Second, he did not get an
20 interview where he could contest his detention. *Id.*

21 Third, based on information and belief, the government did not
22 provide notice of the changed circumstances. If the changed
23 circumstances was because of removal, that reason is insufficient. At
24 the time of arrest, and even today, ICE has not been able to remove
25 him to Sudan and there does not appear to be any changed
26 circumstances that would indicate otherwise.

27 Absent any evidence for “why obtaining a travel document is
28 more likely this time around[,] Respondents’ intent to eventually

1 complete a travel document request for Petitioner does not constitute a
2 changed circumstance.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP,
3 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*,
4 No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)).
5 Furthermore, past experience teaches that ICE almost certainly made
6 no changed-circumstances determination before the arrest. *See*
7 *Rokhfirooz*, 2025 WL 2646165 at *3.

8 Numerous courts have released re-detained immigrants after
9 finding that ICE failed to comply with applicable regulations. *See, e.g.*,
10 *Rokhfirooz*, 2025 WL 2646165; *Grigorian*, 2025 WL 2604573; *Delkash*
11 *v. Noem*, 2025 WL 2683988; *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137,
12 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463
13 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass.
14 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at
15 *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-
16 AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v.*
17 *Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex.
18 July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL
19 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2;
20 *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar.
21 31, 2025).

22 “[B]ecause officials did not properly revoke petitioner’s release
23 pursuant to the applicable regulations, that revocation has no effect,
24 and [Petitioner] is entitled to [their] release (subject to the same Order
25 of Supervision that governed [their] most recent release).” *Liu*, 2025
26 WL 1696526, at *3.

1 **C. Claim 3: ICE may not remove Mr. Gama to a third**
2 **country without adequate notice and an opportunity**
3 **to be heard.**

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

16 **1. Legal background**

17 U.S. law enshrines protections against dangerous and life-
18 threatening removal decisions. By statute, the government is
19 prohibited from removing an immigrant to any third country where
20 they may be persecuted or tortured, a form of protection known as
21 withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government
22 "may not remove [a noncitizen] to a country if the Attorney General
23 decides that the [noncitizen's] life or freedom would be threatened in
24 that country because of the [noncitizen's] race, religion, nationality,
25 membership in a particular social group, or political opinion." *Id.*; *see*
26 *also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a
27 mandatory protection.
28

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

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

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

1 1041.

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

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

27

28

1 **2. The June 6, 2025 memo’s removal policies**
2 **violate the Fifth Amendment, 8 U.S.C. § 1231, the**
3 **Conviction Against Torture, and Implementing**
4 **Regulations.**

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

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

1 must prohibit the government from removing Mr. Gama without these
2 due process safeguards.

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

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

9 **V. Prayer for relief**

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

- 12 1. Order Respondents to immediately release Petitioner from
13 custody;
- 14 2. Enjoin Respondents from re-detaining Petitioner under
15 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a
16 travel document for his removal;
- 17 3. Enjoin Respondents from removing Petitioner unless they
18 provide the following process, *see D.V.D. v. U.S. Dep't of*
19 *Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640,
20 at *1 (D. Mass. May 21, 2025):
 - 21 a. written notice to both Petitioner and Petitioner's
22 counsel in a language Petitioner can understand;
 - 23 b. a meaningful opportunity, and a minimum of ten
24 days, to raise a fear-based claim for CAT protection
25 prior to removal;
 - 26 c. if Petitioner is found to have demonstrated
27 "reasonable fear" of removal to the country,
28

Respondents must move to reopen Petitioner's immigration proceedings;

- 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 his immigration proceedings.

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

Respectfully submitted,

Dated: May 6, 2026

s/ Zandra L. Lopez

Zandra L. Lopez

Federal Defenders of San Diego, Inc.

Email: Zandra_Lopez@fd.org

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: May 6, 2026

s/ Zandra L. Lopez

Zandra L. Lopez

Federal Defenders of San Diego, Inc.

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