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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALAM KHURSHAD,

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.:

'26CV3133 LL MSB

**Petition for Writ
of
Habeas Corpus**

[28 U.S.C. § 2241]

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I. Introduction

On December 18, 2025, Petitioner Alam Khurshad was granted withholding of removal to Bangladesh. He has now been detained for over five months with no information as to when or where he will be removed.

This civil immigration habeas petition seeks two grounds of relief. First, it seeks to prevent Petitioner's indefinite detention pending deportation to a third country 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 deportation to a third country without Petitioner 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 Petitioner to a third country.

Mr. Khurshad was born in Bangladesh. Exhibit A, Declaration of Alam Khurshad, at ¶ 1. His parents were also born there. *Id.*

Over a year ago, on January 26, 2025, he came to the United States seeking asylum. *Id.* at ¶ 2. He has been detained ever since at the Imperial Regional Detention Center. *Id.*

On December 18, 2025, an immigration judge granted Mr. Khurshad withholding of removal after making a finding that it would be "more likely than not that [he] would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country." 8 C.F.R. § 1208.16(b)(2); Exh. A at ¶ 3.

Five months after the immigration order, Mr. Khurshad remains detained by immigration. No one from ICE has given him information

1 as to where they are trying to remove him or when they expect to
 2 remove him. *Id.* at ¶ 4.

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

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

12 There are more restrictions on asylum. *See* 8 U.S.C. § 1158(a)(2);
 13 *see also, e.g.*, US. Citizenship and Immigration Services, *Asylum, Court*
 14 *Order on Circumvention of Lawful Pathways Final Rule* (updated Nov.
 15 7, 2025) (noting limitations on asylum to those who entered outside a
 16 port of entry between May 2023 and May 2025, among other
 17 limitations).¹ There are fewer restrictions on eligibility for withholding
 18 of removal. *See* 8 U.S.C. § 1231(b)(3)(B)(iii). However, an applicant for
 19 withholding of removal must show a higher likelihood of persecution
 20 than what an asylum applicant must demonstrate—specifically, that it
 21 is “more likely than not that he or she would be persecuted on account
 22 of race, religion, nationality, membership in a particular social group,
 23 or political opinion upon removal to that country.” 8 C.F.R.
 24 § 1208.16(b)(2); *see INS v. Stevic*, 467 U.S. 407, 429–30 (1984).

25 About 1,000 people won withholding of removal each year
 26 between 2010 and 2018. *See* Exhibit B at 6 (American Immigration
 27 Council & National Immigrant Justice Center, *The Difference Between*

28 ¹ Available at <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum>.

1 *Asylum and Withholding of Removal* (Oct. 2020)). In fiscal year 2024,
2 about 2,500 people won withholding or deferral of removal. *See* Exhibit
3 C at 2 (Congressional Research Service, *FY2024 Immigration Court*
4 *Data: Case Outcomes* (Feb. 3, 2025)).

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

19 If ICE identifies an appropriate third country of removal, the
20 noncitizen must then have notice and an opportunity to seek relief
21 from removal to that new country. *See Jama v. ICE*, 543 U.S. 335, 348
22 (2005) (“If [non-citizens] would face persecution or other mistreatment
23 in the country designated under § 1231(b)(2), they have a number of
24 available remedies: asylum, § 1158(b)(1); withholding of removal,
25 § 1231(b)(3)(A); [and] relief under an international agreement
26 prohibiting torture.”); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
27 1999) (holding that “last minute” designation of alternative country
28 without meaningful opportunity to apply for protection “violate[s] a

1 basic tenet of constitutional due process”).

2 As a result of these restrictions and procedures, very few people
3 who receive withholding of removal are deported to a third country.
4 Between September 2023 and June 2025, ICE removed a total of eight
5 people granted withholding or other CAT relief to alternative
6 countries. Exhibit D (ICE removal data).² Between fiscal years 2020
7 and 2023, a total of five people granted withholding or other CAT relief
8 were removed to alternative countries. *Id.*

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

17 Now, ICE may remove an immigrant to a third country without
18 any notice. It may do so if, in the sole view of the State Department,
19

20 ² The data in Exhibit D are collected from the Deportation Data
21 Project, which “collects and posts public, anonymized U.S. government
22 immigration enforcement datasets,” “primarily [obtained] through
23 Freedom of Information Act requests.” For the complete raw data, one
24 can visit <https://deportationdata.org/data/ice>, select “Removals,” and
25 filter for each removal classified as “[5C] Relief Granted – Withholding
26 of Deportation / Removal” or “[5D] Final Order of Deportation /
27 Removal – Deferred Action Granted.” The chart attached as Exhibit D
28 highlights all such cases in which the noncitizen was removed to a
country other than their country of origin. The remaining
unhighlighted noncitizens either won withholding or CAT relief with
respect to a third country that was not their country of origin,
including dual citizens; had withholding or CAT relief terminated; or
agreed to return to their country of origin despite a grant of
withholding or CAT relief.

1 the United States has received “credible” “assurances” from that
2 country that deportees will not be persecuted or tortured. *Id.* at 1.

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

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

14 Under this policy, the United States has deported several dozen
15 noncitizens to prisons and military camps in Rwanda, Eswatini, South
16 Sudan, and Ghana. Those who have not been returned to their home
17 countries are still detained, in countries to which they have never
18 been, without charge. Nokukhanya Musi & Gerald Imray, 10 more
19 deportees from the US arrive in the African nation of Eswatini,
20 Associated Press (Oct. 6, 2025)³; see also Gerald Imray, A Cuban man
21 deported by the US to Africa is on a hunger strike in prison, his lawyer
22 says, Associated Press (Oct. 23, 2025)⁴; Frank Chothia, Eswatini
23 confirms receiving \$5.1m from the US for accepting deportees, BBC

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27 ³ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

28 ⁴ Available at <https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859>.

(Nov. 18, 2025)5; Nick Alexandra, The Toll of Trump’s African Deportation Agreements, *New Lines Magazine* (Dec. 10, 2025).

III. Claims for Relief

Zadvydas v. Davis holds that immigration statutes do not authorize the government to detain immigrants like Mr. Khurshad, for whom there is “no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001). Though *Zadvydas* recognized that detention pending removal is “presumptively reasonable” for six months after a removal order becomes final, *id.*, many courts have concluded that that presumption is rebuttable. Mr. Khurshad has rebutted the presumption here, proving that he will not be removed in the reasonably foreseeable future.

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

Mr. Khurshad’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. Khurshad. 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

⁵ Available at <https://www.bbc.com/news/articles/cq50vjdx368o>.

1 repatriation agreement,” or their countries “refuse to take them,” or
2 they are “effectively ‘stateless’ because of their race and/or place of
3 birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In
4 these and other circumstances, detained immigrants can find
5 themselves trapped in detention for months, years, decades, or even
6 the rest of their lives.

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

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

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

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

25 **1. Courts across the country agree that the six-**
26 **month presumption is rebuttable.**

27 By the time this Court decides this petition, Mr. Khurshad will
28 be close to or past the six-month detention mark. Regardless, as

1 *Zadvydas* makes clear, detention is only “*presumptively* reasonable” for
2 six months. 533 U.S. at 701 (emphasis added). Numerous courts have
3 concluded that the six-month presumption is “just that, a presumption,
4 one that can be rebutted upon a showing that removal is *not*
5 reasonably foreseeable.” *Cruz Medina v. Noem*, No. 25-CV-1768-ABA,
6 2025 WL 2306274, at *7 n.5 (D. Md. Aug. 11, 2025); *accord Munoz-*
7 *Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D.N.J. 2025); *Zavvar v.*
8 *Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8,
9 2025); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020);
10 *Sweid v. Cantu*, No. CV-25-03590-PHX-DWL (CDB), 2025 WL
11 3033655, at *3 (D. Ariz. Oct. 30, 2025); *Puertas Mendoza v. Bondi*, No.
12 SA-25-CA-00890-XR, 2025 WL 3142089, at *2 (W.D. Tex. Oct. 22,
13 2025); *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 n.6 (D. Mass.
14 2018); *Ali v. Dep’t of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D.
15 Tex. 2020); *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610,
16 at *9 (S.D. Tex. Sept. 26, 2025); *Douglas v. Baker*, No. 25-CV-2243-
17 ABA, 2025 WL 2687354, at *3 (D. Md. Sept. 19, 2025); *Jamal v.*
18 *Sessions*, No. 5:18-06015-CV-RK, 2018 WL 1440609, at *2 (W.D. Mo.
19 Mar. 22, 2018). “A close reading of *Zadvydas*” refutes any attempt to
20 turn that presumption into a bright-line rule. *Cesar*, 542 F. Supp. 2d at
21 902.

22 Prohibiting all detention challenges before the six-month mark
23 would go against *Zadvydas*’s most fundamental holding: that “if
24 removal is not reasonably foreseeable, the court should hold continued
25 detention unreasonable and no longer authorized by statute.”
26 *Zadvydas*, 533 U.S. at 699–700. “The fundamental principle in
27 *Zadvydas* . . . is that where removal is not reasonably foreseeable,
28 detention is unconstitutional.” *Cesar*, 542 F. Supp. 2d at 902.

1 “*Zadvydas* unequivocally held that ‘once removal is no longer
2 reasonably foreseeable, continued detention is no longer authorized.’”
3 *Puerta Mendoza*, 2025 WL 3142089, at *2. It follows that “[i]f there
4 comes a point during the six-month period at which it is ‘no longer
5 reasonably foreseeable’ that a person will actually be removed, then
6 detention ‘is no longer authorized,’” and the petitioner must be
7 released. *Cruz Medina*, 2025 WL 2306274, at *6 (quoting *Zadvydas*,
8 533 U.S. at 699–700). To hold otherwise would be to render *Zadvydas*
9 “internally inconsistent.” *Zavvar*, 2025 WL 2592543, at *5.

10 *Zadvydas* did not back away from that fundamental principle
11 when describing the six-month presumption. “At no point did the
12 *Zadvydas* Court preclude a noncitizen from challenging their detention
13 before the end of the presumptively reasonable six-month period.”
14 *Trinh*, 466 F. Supp. 3d at 1092. To the contrary, the Court said that it
15 was “adopting a *presumption* of reasonableness before the six-month
16 period expires. A presumption is just that: a default, a starting point.”
17 *Cruz Medina*, 2025 WL 2306274, at *5. “The *Zadvydas* Court did not
18 say that the presumption is irrebuttable, and there is nothing inherent
19 in the operation of the presumption itself that requires it to be
20 irrebuttable.” *Cesar*, 542 F. Supp. 2d at 903; *accord Sweid*, 2025 WL
21 3033655, at *3 (“*Zadvydas* did not hold that this presumption is
22 conclusive in all cases and under all sets of facts.”).

23 Furthermore, when introducing the six-month presumption, the
24 Court “noted that such presumptions are intended to ‘guide lower court
25 determinations.’” *Zavvar*, 2025 WL 2592543, at *5. A “guide” is “not a
26 categorical prohibition on claims challenging detention less than six
27 months.” *Trinh*, 466 F. Supp. 3d at 1093.

1 Finally, *Zadvydas* analogized to the “similar” rule in *County of*
2 *Riverside v. McLaughlin*, 500 U.S. 44, 56–58 (1991), in which the Court
3 “adopt[ed] [a] presumption, based on lower court estimate of time
4 needed to process arrestee, that 48–hour delay in probable-cause
5 hearing after arrest is reasonable, hence constitutionally permissible.”
6 *Zadvydas*, 533 U.S. at 701 (describing *Riverside*). *Riverside*’s 48-hour
7 rule “is a rebuttable presumption.” *Cesar*, 542 F. Supp. 2d at 904. It
8 stands to reason that “the *Zadvydas* presumption, like the *Riverside*
9 presumption, is rebuttable.” *Munoz-Saucedo*, 789 F. Supp. 3d at 397.

10 In short, then, “[t]he presumption of reasonableness is the
11 default, but if a person ‘can prove’ that his removal is not reasonably
12 foreseeable, then he can overcome that presumption.” *Munoz-Saucedo*,
13 789 F. Supp. 3d at 397 (quoting *Riverside*, 500 U.S. at 56).

14 **2. There is no significant likelihood of removal in**
15 **the reasonably foreseeable future to a third**
16 **country.**

17 Even if Mr. Khurshad must rebut the six-month presumption, he
18 can show that “there is no significant likelihood of removal in the
19 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701.

20 *First*, ICE has made no progress whatsoever in removing
21 Petitioner, despite having more than five months to do so. And there is
22 an obvious explanation for ICE’s inability to remove Mr. Khurshad: He
23 has a withholding of removal to his native country and he has no
24 nationality in any other country.

25 What’s more, removal to a third country is unlikely. That’s
26 because “alternative-country removal is rare.” *Johnson v. Guzman-*
27 *Chavez*, 594 U.S. 523, 537 (2021). Between 2020 and 2023, data
28 apparently show that “ICE removed . . . only *five* non-citizens granted
withholding or CAT relief to alternative countries.” *Munoz-Saucedo v.*

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

12 “[T]hat is not simply a matter of United States policy—foreign
13 governments ‘routinely deny’ requests to receive people who lack a
14 connection to the would-be receiving country.” *Puertas-Mendoza*, 2025
15 WL 3142089 at *3. “The reason so few people are deported to third
16 countries is because,” while “customary international law holds that a
17 country has a duty to accept the return of its nationals,” usually,
18 “countries have no incentive to accept non-citizens.” American
19 Immigration Council & National Immigrant Justice Center, *supra*, at
20 7.

21 Mr. Khurshad’s individual circumstances strongly suggest that
22 he will not be among the handful of people granted withholding of
23 removal the U.S. removes to a third country. He have an order of
24 removal for over five months and ICE has yet to identify a third
25 country. Moreover, he does not have immigration status in any other
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27 ⁶ Available 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 country. Exh. A at ¶ 1.

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

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

27 _____
28 ⁷ Available at
[https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/
preleases/2025/190.asp&utm_term=class-dc](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/190.asp&utm_term=class-dc).

1 there are substantial grounds for believing that the person would be in
2 danger of being subjected to torture”).⁸

3 *Third*, ICE has not made any progress in removing
4 Mr. Khurshad. At five months, that have yet to identify any third
5 country or the likelihood of removal to any third country.

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

19 Even if ICE were making efforts behind the scenes, so far, none
20 have borne fruit. The third-country removal process has not progressed
21 even to the point that ICE has identified a country to which
22 Mr. Khurshad can apply or be removed to. Exh. A ¶ 4. That matters,
23 because *Zadvydas* itself made clear that good faith efforts do not
24 themselves show that removal is significantly likely. The petitioner in
25 *Zadvydas* appealed a “Fifth Circuit h[olding] [that] [the petitioner’s]

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28 ⁸ Available at
[https://www.ohchr.org/sites/default/files/Documents/HRBodies/
CAT/CAT-C-GC-4_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf).

1 continued detention [was] lawful as long as good faith efforts to
2 effectuate deportation continue and [the petitioner] failed to show that
3 deportation will prove impossible.” 533 U.S. at 702 (cleaned up). The
4 Supreme Court reversed, finding that the Fifth Circuit’s good-faith-
5 efforts standard “demand[ed] more than our reading of the statute can
6 bear.” *Id.* Thus, “under *Zadvydas*, the reasonableness of Petitioner’s
7 detention does not turn on the degree of the government’s good faith
8 efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard.
9 Rather, the reasonableness of his detention turns on whether and to
10 what extent the government’s efforts are likely to bear fruit.” *Hassoun*
11 *v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan.
12 2, 2019).

13 Because of all the above, Mr. Khurshad has met his initial
14 burden. Thus, unless the government can prove a “significant
15 likelihood of removal in the reasonably foreseeable future,”
16 Mr. Khurshad must be released. *Zadvydas*, 533 U.S. at 701.

17 **B. Claim 2: ICE may not remove Petitioner to a third**
18 **country without adequate notice and an opportunity**
19 **to be heard.**

20 If ICE did suddenly prove able to remove Mr. Khurshad to a third
21 country, it would do so under a policy that violates the Fifth
22 Amendment, the Convention Against Torture, and implementing
23 regulations.

24 **1. Legal background**

25 U.S. law enshrines protections against dangerous and life-
26 threatening removal decisions. By statute, the government is
27 prohibited from removing an immigrant to any third country where
28 they may be persecuted or tortured, a form of protection known as
withholding of removal. See 8 U.S.C. § 1231(b)(3)(A). The government

1 “may not remove [a noncitizen] to a country if the Attorney General
2 decides that the [noncitizen’s] life or freedom would be threatened in
3 that country because of the [noncitizen’s] race, religion, nationality,
4 membership in a particular social group, or political opinion.” *Id.*; see
5 also 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a
6 mandatory protection.

7 Similarly, Congress codified protections enshrined in the CAT
8 prohibiting the government from removing a person to a country where
9 they would be tortured. See FARRA 2681-822 (codified as 8 U.S.C.
10 § 1231 note) (“It shall be the policy of the United States not to expel,
11 extradite, or otherwise effect the involuntary return of any person to a
12 country in which there are substantial grounds for believing the person
13 would be in danger of being subjected to torture, regardless of whether
14 the person is physically present in the United States.”); 28 C.F.R.
15 § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
16 mandatory.

17 To comport with the requirements of due process, the government
18 must provide notice of the third country removal and an opportunity to
19 respond. Due process requires “written notice of the country being
20 designated” and “the statutory basis for the designation, i.e., the
21 applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d
22 998, 1019 (W.D. Wash. 2019); accord *D.V.D. v. U.S. Dep’t of Homeland*
23 *Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21,
24 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

25 The government must also “ask the noncitizen whether he or she
26 fears persecution or harm upon removal to the designated country and
27 memorialize in writing the noncitizen’s response. This requirement
28 ensures DHS will obtain the necessary information from the noncitizen

1 to comply with section 1231(b)(3) and avoids [a dispute about what was
2 said].” *Aden*, 409 F. Supp. 3d at 1019. “Failing to notify individuals
3 who are subject to deportation that they have the right to apply for
4 asylum in the United States and for withholding of deportation to the
5 country to which they will be deported violates both INS regulations
6 and the constitutional right to due process.” *Andriasian*, 180 F.3d at
7 1041.

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

24 “[L]ast minute” notice of the country of removal will not suffice,
25 *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x
26 724 (9th Cir. 2016), and for good reason: To have a meaningful
27 opportunity to apply for fear-based protection from removal,
28 immigrants must have time to prepare and present relevant

1 arguments and evidence. Merely telling a person where they may be
2 sent, without giving them a chance to look into country conditions,
3 does not give them a meaningful chance to determine whether and why
4 they have a credible fear.

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

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

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

1 and without charge in solitary confinement or extreme instability
2 raising a high likelihood of death—in many of the third countries that
3 have agreed to removal thus far. Due process requires an adequate
4 chance to identify and raise these threats to health and life. This Court
5 must prohibit the government from removing Petitioner without these
6 due process safeguards.

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

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

13 **V. Prayer for relief**

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

- 16 1. Order Respondents to immediately release Petitioner from
17 custody;
 - 18 2. Enjoin Respondents from re-detaining Petitioner under
19 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a
20 travel document for Petitioner's removal;
 - 21 3. Enjoin Respondents from removing Petitioner unless they
22 provide the following process, *see D.V.D. v. U.S. Dep't of*
23 *Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640,
24 at *1 (D. Mass. May 21, 2025):
 - 25 a. written notice to both Petitioner and Petitioner's
26 counsel in a language Petitioner can understand;
- 27
28

- 1 b. a meaningful opportunity, and a minimum of ten
2 days, to raise a fear-based claim for CAT protection
3 prior to removal;
4 c. if Petitioner is found to have demonstrated
5 “reasonable fear” of removal to the country,
6 Respondents must move to reopen Petitioner’s
7 immigration proceedings;
8 d. if Petitioner is not found to have demonstrated a
9 “reasonable fear” of removal to the country, a
10 meaningful opportunity, and a minimum of fifteen
11 days, for the Petitioner to seek reopening of
12 Petitioner’s immigration proceedings.
13 4. Order all other relief that the Court deems just and proper.

14
15 Respectfully submitted,

16 Dated: May 19, 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 19, 2026

s/ Zandra L. Lopez

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

Exhibit A

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Attorneys for Mr. Alam Khurshad

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALAM KHURSHAD,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary
of the Department of Homeland
Security,

Respondents.

CASE NO.:

**DECLARATION OF
ALAM KHURSHAD**

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I, Alam Khurshad, declare:

1. I was born in Bangladesh. I was born in 2003. My parents were born in Bangladesh. My A# XXXXXXXXXX.

2. I came to the United States in January 26, 2025. I have been detained since then. I am detained at the Imperial Detention Center.

3. On December 18, 2025, I was ordered removed to Bangladesh and granted withholding of removal.

4. ICE has not told me when or where they intend to remove me to. I have not been told about what other country they want to remove me to.

5. I have been detained for over a year and do not have income. I cannot afford an attorney.

I, Zandra Lopez, declare under penalty of perjury that I read every line of this declaration to Alam Khurshad, and she confirmed that it was true and correct.

Date: May 6, 2026

Signed: /s/ *Zandra Lopez*