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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NAIM IBRAHIM SAMAD,

Petitioner,

v.

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

Respondents.

CIVIL CASE NO.:

'26CV4626 DMS JLB

Petition for Writ of Habeas Corpus

[28 U.S.C. § 2241]

INTRODUCTION

Naim Ibrahim Samad is Palestinian and has lived in the U.S. Virgin Islands for nearly 30 years. He has no citizenship in any other country. Since February 28, 2026, Mr. Samad has been in immigration custody. On April 1, 2026, an immigration judge granted him voluntary departure to Jordan. More than four months later, ICE still has not been able to remove him.

Mr. Samad must be released. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001). The six-month period identified in *Zadvydas* is a rebuttable presumption, not a categorical waiting period. *Fardijouybari v. Mullin*, 26-cv-3840-BJC-AHG, 2026 WL 2227363, at *2 (S.D. Cal. Aug. 3, 2026); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092–93 (C.D. Cal. 2020). Because ICE has no present document, acceptance, executable route, or timetable, Mr. Samad's detention no longer serves the purpose that authorizes it. And if ICE seeks to remove him to Israel or another country, it must first give him meaningful notice and a opportunity to present a country-specific fear claim. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Fardijouybari*, 2026 WL 2227363, at *2.

Thus, because "there is no significant likelihood of removal in the reasonably foreseeable future," Mr. Samad'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. Samad, a stateless Palestinian, has lived in the United States for nearly three decades and has cooperated fully with ICE.

Mr. Samad was born in Palestine on [redacted]. Declaration of Naim Ibrahim Samad, Exhibit A at ¶ 1. He came to the United States on July 21, 1997, after experiencing extreme violence in his home country. *Id.* Before coming here, [redacted] *Id.* ¶¶ 1, 7.

Mr. Samad has lived only in the U.S. Virgin Islands since entering the United States. *Id.* ¶ 2. His brother is a United States citizen who has a home and businesses there. *Id.* Mr. Samad worked for his brother's business. *Id.*

On February 28, 2026, ICE arrested Mr. Samad at work. *Id.* ¶ 3. The arresting officer had a warrant. *Id.* Mr. Samad fully cooperated with officers when he was detained, and, as soon as he could, he requested voluntary departure to Jordan. *Id.* ¶ 4. An immigration judge granted that request on April 1, 2026. *Id.*

ICE first told Mr. Samad that it had travel documents for Jordan. *Id.* ¶ 6. In June, ICE reversed course and told him that he would need to apply for a new passport. *Id.* Mr. Samad's prior Jordanian passport was temporary and arose from a brief period when he lived in Jordan with his father. *Id.* ¶ 6. One ICE officer acknowledged that removing people of Palestinian origin to Jordan is very difficult. *Id.* ¶ 8. ICE has also mentioned Israel as a possible destination. *Id.* ¶ 7.

Mr. Samad signed all documents ICE presented and has cooperated fully throughout the process. *Id.* Since then, there have been no updates. ICE has not confirmed whether it received a new Jordanian passport, travel documents, or removal date. *Id.* ¶¶ 6, 8.

ICE has transferred Mr. Samad repeatedly during this detention. He has been held at the South Florida Detention Center, Krome Detention Center, a detention facility in Texas, and Otay Mesa Detention Center. *Id.* ¶ 5. His documents and belongings were lost during those transfers. *Id.* He arrived at Otay Mesa on July 15, 2026. *Id.* ¶ 8.

II. The political climate in the Middle East makes removal to Jordan for a non-Jordanian citizen very difficult.

Currently, Israel's occupation of the West Bank has threatened to displace huge groups of Palestinians to Jordan: As recently as yesterday, Jordanian politicians have been outspoken about this, stating Jordan "rejects any proposed

settlement of the Palestinian issue that would come at the expense of its national principles and higher interests." *Senate Committee, US Congress Advisers Discuss Ties, Region*, JORDAN NEWS AGENCY (Aug. 12, 2026), https://petra.gov.jo/en/news/senate-committee-us-congress-advisers-discuss-ties-region. Though Jordan has historically been a safe haven for refugees across the Middle East, Jordan has more recently been outspoken about not accepting masses of Palestinian refugees. *Id.*; *see* Jack Jeffery & Samy Magdy, *Why Egypt and other Arab countries are unwilling to take in Palestinian refugees from Gaza*, ASSOCIATED PRESS (Oct. 18, 2023), https://apnews.com/article/palestinian-jordan-egypt-israel-refugee-502c06d004767d4b64848d878b66bd3d (tracing the history of Palestinian displacement and discussing Jordan's stance on Palestinian resettlement after the October 7, 2023 Hamas attack).

In fact, there is a history of Jordan refusing to accept Palestinians who the United States is trying to remove. Ali Abunimah, *Jordan stops cooperation with US deportations of Palestinians*, THE ELECTRONIC INTIFADA (June 13, 2019), https://electronicintifada.net/blogs/ali-abunimah/jordan-stops-cooperation-us-deportations-palestinians. And there is evidence that the few removals of Palestinian nationals that have occurred to Jordan in recent years are, in reality, being used to move Palestinians back into Israeli-occupied West Bank. Ghousoon Bisharat & Ben Reiff, *U.S. secretly deporting Palestinians to the West Bank in coordination with Israel*, +972 MAGAZINE (Feb. 5, 2026), https://www.972mag.com/us-secretly-deporting-palestinians-ice-dezer/. Although Jordan has historically had a strong working relationship with the United States, the U.S.-Iran war is opening Jordan up to violence because of this relationship. Nabih Bulos, *Jordan faces a dilemma in its growing role in the U.S.-Iran war*, LOS ANGELES TIMES (July 28, 2026), https://www.latimes.com/world-nation/story/2026-07-28/jordan-faces-dilemma-in-its-growing-role-in-u-s-iran-war.

III. The government is carrying out deportations to third countries without providing sufficient notice and opportunity to be heard.

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

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

The Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to South Sudan. *See* Wong, *supra*. On July 15, ICE deported five men to the tiny African nation of Eswatini, including one man from Vietnam, where they are reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human

rights abuses or instability. For instance, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first. *See* Wong, *supra*.

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

Under the new guidance, ICE may remove any immigrant to a third country "without the need for further procedures," as long as—in the view of the State Department—the United States has received "credible" "assurances" from that country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees, ICE may still remove immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours'

[1] Though the Supreme Court's order was unreasoned, the dissent noted that the government had sought a stay based on procedural arguments applicable only to class actions. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025) (Sotomayor, J., dissenting). Thus, "even if the Government [was] correct that classwide relief was impermissible" in *D.V.D.*, Respondents still "remain[] obligated to comply with orders enjoining [their] conduct with respect to individual plaintiffs" like Mr. Samad. *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).

notice. But "[i]n exigent circumstances," a removal may take place in as little as six hours, "as long as the alien is provided reasonably means and opportunity to speak with an attorney prior to the removal." *Id.*

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

CLAIMS FOR RELIEF

This Court should grant the petition on two grounds. First, *Zadvydas* does not authorize detention once removal is no longer significantly likely in the reasonably foreseeable future. 533 U.S. at 699–701. Second, if ICE seeks removal to Israel or another country not adjudicated in his proceedings, due process requires meaningful notice and a meaningful opportunity to raise a country-specific fear claim. *Andriasian*, 180 F.3d at 1041. Each ground independently warrants relief.

I. Mr. Samad's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background

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

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

Following the six-month grace period, courts must use a burden-shifting framework to decide whether detention remains authorized. First, the petitioner must make a prima facie case for relief: He must prove that there is "good reason

to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

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

B. Courts across the country agree that the six-month presumption is rebuttable, and Mr. Samad is able to do so.

Mr. Samad has been in ICE custody for more than five months, and more than four months have passed since the immigration judge granted voluntary departure to Jordan. Exh. A ¶¶ 3–4. On information and belief, Mr. Samad's order of voluntary departure converted to a final order of removal on May 1, 2026, meaning he has been detained more than the 90-day mandatory detention period. At this point, the question then becomes whether the six-month presumption bars this petition. It does not.

Even when the six-month presumption has not yet expired, relief is not categorically barred. As *Zadvydas* makes clear, detention is only "*presumptively* reasonable" for six months. 533 U.S. at 701 (emphasis added). Numerous courts have concluded that the six-month presumption is "just that, a presumption, one that can be rebutted upon a showing that removal is *not* reasonably foreseeable." *Fardijouybari*, 2026 WL 2227363, at *2; *Cruz Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *7 n.5 (D. Md. Aug. 11, 2025); *accord Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D.N.J. 2025); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020); *Sweid v. Cantu*, No. CV-25-03590-PHX-DWL (CDB), 2025 WL 3033655, at *3 (D. Ariz. Oct. 30, 2025); *Puertas Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *2

(W.D. Tex. Oct. 22, 2025); *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 n.6 (D. Mass. 2018); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020); *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025); *Douglas v. Baker*, No. 25-CV-2243-ABA, 2025 WL 2687354, at *3 (D. Md. Sept. 19, 2025); *Jamal v. Sessions*, No. 5:18-06015-CV-RK, 2018 WL 1440609, at *2 (W.D. Mo. Mar. 22, 2018). "A close reading of *Zadvydas*" refutes any attempt to turn that presumption into a bright-line rule. *Cesar*, 542 F. Supp. 2d at 902.

Prohibiting all detention challenges before the six-month mark would go against *Zadvydas*'s most fundamental holding: that "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Zadvydas*, 533 U.S. at 699–700. "The fundamental principle in *Zadvydas* . . . is that where removal is not reasonably foreseeable, detention is unconstitutional." *Cesar*, 542 F. Supp. 2d at 902. "*Zadvydas* unequivocally held that 'once removal is no longer reasonably foreseeable, continued detention is no longer authorized.'" *Puerta Mendoza*, 2025 WL 3142089, at *2. It follows that "[i]f there comes a point during the six-month period at which it is 'no longer reasonably foreseeable' that a person will actually be removed, then detention 'is no longer authorized,'" and the petitioner must be released. *Cruz Medina*, 2025 WL 2306274, at *6 (quoting *Zadvydas*, 533 U.S. at 699–700). To hold otherwise would be to render *Zadvydas* "internally inconsistent." *Zavvar*, 2025 WL 2592543, at *5.

Zadvydas did not back away from that fundamental principle when describing the six-month presumption. "At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period." *Trinh*, 466 F. Supp. 3d at 1092. To the contrary, the Court said that it was "adopting a *presumption* of reasonableness before the six-month period expires. A presumption is just that: a default, a starting point." *Cruz Medina*, 2025 WL 2306274, at *5. "The *Zadvydas* Court did not say

that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable." *Cesar*, 542 F. Supp. 2d at 903; *accord Sweid*, 2025 WL 3033655, at *3 ("*Zadvydas* did not hold that this presumption is conclusive in all cases and under all sets of facts.").

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

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

The six-month presumption from *Zadvydas* sets a default rule. *Munoz-Saucedo*, 789 F. Supp. 3d at 397 (quoting *Riverside*, 500 U.S. at 56). It does not erase the Court's more basic instruction that continued detention ceases to be authorized once removal is no longer reasonably foreseeable. *Zadvydas*, 533 U.S. at 699–700.

C. Mr. Samad has good reason to believe that his removal is not significantly likely in the reasonably foreseeable future.

Mr. Samad need not prove that removal is impossible. But, because Mr. Samad must rebut the six-month presumption, he bears the burden to show that "there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts.

"Good reason to believe." The "good reason to believe" standard is a

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

"Significant likelihood of removal." This component focuses on whether Mr. Samad will likely be removed: Continued detention is permissible only if it is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities, but also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added).

In other words, even if "there remains *some* possibility of removal," a petitioner can still meet its burden if there is good reason to believe that successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

"In the reasonably foreseeable future." This component of the test focuses on when Mr. Samad will likely be removed: Continued detention is permissible only if removal is likely to happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's removal efforts.

If the Court has "no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Palma v. Gillis*, 19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug.

19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Samad "would *eventually* receive" a travel document, he can still meet his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

Mr. Samad satisfies this standard, therefore rebutting the presumption, for two reasons.

First, removal to Jordan will be extremely difficult given the political climate surrounding the region and the country itself. *See supra* section II at 2–3. It is highly unlikely that Jordan, who is pushing back on resettlement of Palestinians into Jordan, would then accept a Palestinian with no Jordanian citizenship or status simply because the United States has decided this is where he should be sent.

Second, ICE seems to have not made any progress in removing Mr. Samad to Jordan or a third in the last three months since his removal order became final.

Given that removal to Jordan and to third countries is already very challenging, a "lack of effort only reinforces the conclusion that the Petitioner's removal is not likely to occur in the reasonably foreseeable future." *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002); *see also Conchas-Valdez v. Casey*, 25-cv-2469-DMS, Dkt. 9, at 6 (S.D. Cal. Oct. 6, 2025) (granting a petition in part because "the Government's minimal work on [the] case . . . [did] not instill confidence that it will be able to secure [CAT] Petitioner's removal in the reasonably foreseeable future").

Mr. Samad's present circumstances show no concrete route to Jordan. Even an ICE agent told Mr. Samad removal to Jordan will be very difficult. Exh. A at ¶ 8. His prior Jordanian passport was temporary, and he signed the documents ICE presented to renew it. *Id.* Since then, though, ICE has identified no new passport, travel document, acceptance, interview, request for supplemental material, or expected completion date. *Id.* ¶¶ 6, 8.

Khaliq v. Noem shows why those facts matter. 828 F. Supp. 3d 1260 (W.D. Okla. 2026). The petitioner there was of Palestinian descent and had previously held a temporary Jordanian passport. *Id.* at 1263–64. Jordan eventually told ICE that it could not issue an emergency travel document based on that temporary passport and required a new passport application. *Id.* at 1265. The court found removal was too uncertain because the passport process had effectively started over without a completion date. *Id.* at 1269–71. And DHS's backup plan to seek permission for removal to Israel did not cure the problem because ICE had not begun that process. *Id.* at 1270.

Other recent cases involving Palestinian petitioners demonstrate the same issue. In *Thabata v. Blanche*, the government's assertion that it was actively pursuing Israeli transit and a Palestinian passport did not establish foreseeable removal where the necessary approvals had not materialized. CIV-26-531-J, 2026 WL 1397059, at *5 (W.D. Okla. May 19, 2026), *report and recommendation adopted*, 2026 WL 1495209, at *2–3 (W.D. Okla. May 28, 2026). In *Abushanab v. Frink*, completed travel-document paperwork and asserted third-country efforts were not enough without evidence that removal to some country was significantly likely. No. 4:25-cv-05340, ECF No. 21 at 6–7 (S.D. Tex. Apr. 13, 2026). And *Al Ellary v. Bondi* ordered release where ICE lacked a country, plan, or timeline that made removal reasonably foreseeable. 2026 WL 787663, at *1–2 (M.D. Fla. Mar. 20, 2026).

This petition does not ask the Court to decide that Jordan will never issue a passport. It asks the narrower question *Zadvydas* requires: whether removal is significantly likely within a reasonably foreseeable period. Mr. Samad has rebutted the presumption of reasonableness and provided good reason to believe that his removal is not significantly likely in the reasonably foreseeable future. His continued detention is no longer authorized by § 1231(a)(6), and this Court should order his release.

II. ICE may not remove Mr. Samad to Israel or another third country without meaningful notice and an opportunity to be heard.

A. Legal background

U.S. law enshrines protections against dangerous and life-threatening removal decisions. By statute, the government is prohibited from removing an immigrant to any third country where 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 "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." Id.; see also 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

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

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

The government must also "ask the noncitizen whether he or she fears

persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what was said]." Aden, 409 F. Supp. 3d at 1019. "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." Andriasian, 180 F.3d at 1041.

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

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

meaningful chance to determine whether and why they have a credible fear.

A recent decision from this District applies those principles to ICE's current third-country removal guidance. *Fardijouybari*, 2026 WL 2227363, at *2. The court enjoined third-country removal unless ICE provided written notice, at least ten days to raise a fear-based CAT claim, reopening upon a reasonable-fear showing, and a meaningful opportunity to seek reopening if the screening did not find reasonable fear. *Id.* at 5–6.

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

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

Second, even when the government has obtained no credible assurances against persecution and torture, the government can still remove the person with between 6 and 24 hours' notice, depending on the circumstances. Exhibit B. Practically speaking, there is not nearly enough time for a detained person to assess their risk in the third country and martial evidence to support any credible fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may know nothing about a third country, like Eswatini or South Sudan, when they are scheduled for removal there. Yet if given the opportunity to investigate conditions, immigrants would find credible reasons to fear persecution or torture—like patterns of keeping deportees indefinitely and without charge in solitary confinement or extreme instability raising a high likelihood of death—in many of the third

countries that have agreed to removal thus far. Due process requires an adequate chance to identify and raise these threats to health and life. This Court must prohibit the government from removing Mr. Samad without these due process safeguards.

C. Mr. Samad has a concrete need for due process before any removal to Israel.

This claim is not abstract. ICE officers have already mentioned Israel to Mr. Samad as a possible destination. Exh. A ¶ 7. Israel was not the country for which he requested voluntary departure; Jordan was. *Id.* ¶ 4. ICE has not told him that Israel has agreed to accept him or identified a date for such a removal. *Id.* ¶¶ 6–8.

Mr. Samad also has an individualized fear of removal to Israel. The Israeli government detained him for more than nine months before he came to the United States. *Id.* ¶ 1. He now fears for his life if forced to return there. *Id.* ¶ 7. Those facts make meaningful advance notice indispensable. Without sufficient notice to consult counsel, develop country-specific evidence, and invoke the available protective procedures, a last-minute removal would deprive him of the opportunity that *Andriasian* requires. 180 F.3d at 1041.

The requested injunction does not prevent ICE from executing a lawful removal. It requires only the process necessary to determine whether removal to a newly selected country would violate the law. *Fardijouybari*, 2026 WL 2227363, at *2. If ICE identifies Israel or another unadjudicated country, it should provide written notice to Mr. Samad and counsel, give him a meaningful period to present a fear claim, and preserve an opportunity for adjudication before removal occurs.

III. This Court should hold an evidentiary hearing on any material disputed facts.

A habeas court may hold an evidentiary hearing when material facts concerning the lawfulness of immigration detention are disputed. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr. Samad requests such a hearing on any material, disputed facts.

PRAYER FOR RELIEF

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

1. Order Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from removing Petitioner to Israel or any other country not previously adjudicated as a country of removal unless Respondents first provide the following process, consistent with *Fardijouybari v. Mullin*, No. 26-cv-3840-BJC-AHG, 2026 WL 2227363, at *2 (S.D. Cal. Aug. 3, 2026):
    a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
    b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
    c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, 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.
5. If the Court declines to grant this petition before the end of the six-month *Zadvydas* grace period, Petitioner asks this Court to hold the case in abeyance until November 1, 2026.

Respectfully submitted,

Dated: August 13, 2026

s/ Hannah Pineiro Basalone

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Email: hannah_basalone@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.

Date: 8/13/2026

/s/ Hannah Pineiro Basalone
Hannah Pineiro Basalone