ORIGINAL

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Pro Se[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOANI RODRIGUEZ-GUTIERREZ,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, 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.: '25CV2726 BAS SBC

Petition for Writ of Habeas Corpus

[28 U.S.C. § 2241]

[1] Mr. Rodriguez-Gutierrez is filing this petition for a writ of habeas corpus with the assistance of the Federal Defenders of San Diego, Inc., who drafted the instant petition. That same counsel also assisted the petitioner in preparing and submitting his request for the appointment of counsel, which has been filed concurrently with this petition, and all other documents supporting the petition. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of Zandra Lopez in Support of Appointment Motion attaches case examples.

INTRODUCTION

Mr. Rodriguez-Gutierrez is from Cuba. He came to the United States in 1994. In 1996, he sustained a controlled substance offense conviction. On February 9, 1996, he received a final order of removal. But when it came to his removal, there was a problem: Cuba has a longstanding policy of not accepting immigrants for deportation. Nevertheless, the former Immigration and Naturalization Service ("INS") detained Mr. Rodriguez-Gutierrez and eventually released him after 8 months in custody.

Since 2000, 25 years, Mr. Rodriguez-Gutierrez has been on supervision and reporting to immigration officials without any violations. He is a devoted his time as a husband and father and a father of two, the youngest is an 18-year-old with autism.

Nevertheless, ICE re-detained him on May 29, 2025 during Mr. Rodriguez-Gutierrez's annual check-in. Contrary to regulation, ICE did not identify any changed circumstances that made his removal more likely or give Mr. Rodriguez-Gutierrez an opportunity to contest re-detention. He was placed in the Krome Detention Center in Florida, where he slept on the floor of a reception area and wore the same clothes he was arrested in for six days. He was then taken to Texas, Arizona, and finally, to the Otay Detention Center here in San Diego.

He has now been detained for almost 5 months, with no travel document in sight. Worse yet, on July 9, 2025, ICE adopted a new policy permitting removals to third countries with no notice, six hours' notice, or 24 hours' notice depending on the circumstances, providing no meaningful opportunity to make a fear-based claim against removal.

Mr. Rodriguez-Gutierrez's detention violates *Zadvydas v. Davis*, 533 U.S. 678 (2001), Mr. Rodriguez-Gutierrez's statutory and regulatory rights, and the Fifth Amendment. Mr. Rodriguez-Gutierrez must be released under *Zadvydas* because—having proved unable to remove him for almost 30 years—the

government cannot show that there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. ICE's failure to follow its own regulations provides a second, independent ground for release. Finally, ICE may not remove Mr. Rodriguez-Gutierrez to a third country without providing an opportunity to assert fear of persecution or torture before an immigration judge. This Court should grant this habeas petition on all three grounds.

STATEMENT OF FACTS

I. While being on supervision, Mr. Rodriguez-Gutierrez lived peacefully in the community and cared for his children and wife—including a son with autism—for more than two decades.

In 1994, Rodriguez-Gutierrez fled Cuba on his own as a 20 year old. Exh. A at ¶ 1. In 1996, he was arrested for a controlled substance offense. *Id.* at ¶ 2. The conviction led to a February 9, 1996 order of removal. *Id.*[2] ICE detained Mr. Rodriguez-Gutierrez for over 8 months after that. *Id.* at ¶ 2. He was told that Cuba was not accepting him. *Id.*

Since 2000, Mr. Rodriguez-Gutierrez has been under an order of supervision. Exh. A at ¶¶ 3, 4. At the beginning, he was required to report every three months and then once a year. *Id.* He has consistently checked in with ICE. *Id.* During that time, Mr. Rodriguez-Gutierrez lived a law-abiding life working in construction and dedicated to his family. Mr. Rodriguez-Gutierrez has two adult children. He continues to financially support his 18-year-old son who has autism and cannot live independently. Exhibit A (Declaration of Petitioner) at ¶ 12.

On May 29, 2025, Mr. Rodriguez-Gutierrez appeared at one of these check-ins as scheduled in Florida. *Id.* at ¶ 4. When he asked why he was being arrested, he was told that it was Trump's orders. *Id.* No one told him that there were travel documents for his removal. *Id.* Mr. Rodriguez-Gutierrez's wife was waiting for

[2] EOIR, *Automated Case Information*, https://acis.eoir.justice.gov/en/.

him in the parking lot. He did not even have an opportunity to say goodbye to her. *Id.* Other than hearing it was Trump's orders, Mr. Rodriguez-Gutierrez was not given a reason for being re-detained and had no opportunity to contest his re-detention. *Id.* at ¶ 4, 11.

After he was arrested, Mr. Rodriguez-Gutierrez was sent to the Krome Service Processing Center in Miami, Florida. *Id.* at ¶ 5. For six days, he slept on the floor of a reception area. *Id.* For those six days, he stayed in the same clothes he was arrested in, he was not allowed to shower or brush his teeth. *Id.* While there, no immigration official met with Mr. Rodriguez-Gutierrez to talk about his case. *Id.*

Mr. Rodriguez-Gutierrez was then taken to Texas where he stayed for about a week. No one talked to me about travel documents. Mr. Rodriguez-Gutierrez kept asking when someone would come to see him, when someone would come to talk to him to let him know what was going on, but nothing happened. *Id.*

Mr. Rodriguez-Gutierrez was then sent to Arizona. *Id.* ¶ 7. In Arizona, was the first time an immigration officer spoke to him. The immigration officer asked him if he would sign a paper agreeing to be removed to Mexico. *Id.* He did not agree to sign the papers. *Id.* The officer did not discuss travel documents to Cuba. *Id.*

On July 1, 2025, Mr. Rodriguez-Gutierrez was brought to San Diego's Otay Detention Center. *Id.* ¶ 8. While here, no one has talked about his removal to Cuba. One day, he was taken to the San Ysidro Port of Entry and asked if he would go to Mexico. *Id.* ¶ 8. He was unsure if he was required to say yes to the question posed so he asked if he had to agree to being removed to Mexico. When he was told, he did not have to say yes, Mr. Rodriguez-Gutierrez responded that he did not want to go to Mexico. *Id.* On October 6, 2025, an immigration officer spoke to Mr. Rodriguez-Gutierrez and asked him to sign a document indicating that he agreed to be removed to Mexico. Id. ¶ 9. When Mr. Rodriguez-Gutierrez

said that he did not want to sign, the officer told him that he would have to tell headquarters that he would not sign. *Id.*

ICE has not given Mr. Rodriguez-Gutierrez any formal paperwork explaining why he was re-detained or identifying changed circumstances that make his removal more likely. *Id.* at ¶ 11. He has never gotten an opportunity to tell ICE why he should not be re-detained. *Id.*

II. The repatriation agreement with Cuba allows it to use its discretion in accepting Cuban nationals on a case-by-case basis.

For 20 years following Mr. Rodriguez-Gutierrez's deportation, there was no repatriation agreement between the United States and Cuba. *Clark v. Martinez*, 543 U.S. 371, 386 (2005). Although a repatriation agreement was entered in 2017, the agreement allows Cuba to limit the acceptance of individuals like Mr. Rodriguez-Gutierrez, who entered the United States prior to the passage of the agreement.

On January 12, 2017, the United States and Cuba signed a joint statement by which Cuba agreed to the repatriation of some Cuban nationals. *Cuba (17-112) – Joint Statement Concerning Normalization of Migration Procedures*, Jan. 12, 2017, available at https://www.state.gov/17-112/. Specifically, under the agreement Cuba "shall receive back all Cuban nationals who after the signing" of the Joint Statement are found to be removable by the United States. *Id.* at 2. The agreement also stated that Cuba "shall accept individuals included in the list of 2,746 to be returned in accordance with the Joint Communiqué of December 14, 1984," who came to the United States in 1980 via the Port of Mariel. *Id.* Cuba could exercise its discretion to accept the third group of Cuban nationals that entered the United States prior to the passage of the 2017 Joint Statement and were not part of the 1984 list. The agreement states that Cuba agrees to "consider and decide on a case-by-case basis the return of other Cuban nationals presently in

the United States of America who before the signing of this Joint Statement" are found to be deportable from the United States. *Id.*

Despite the Joint Statement, a 2019 report by the Office of Inspector General classified Cuba as an "uncooperative country" in 2017, 2018, and 2019 based on the inability of ICE to obtain travel documents on a timely basis. Department of Homeland Security, Office of Inspector General, Report No. OIG-19-28, *ICE Faces Barriers in Timely Repatriation of Detained Aliens* (Mar. 11, 2019), available at https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf at pages 6-7, 10, 29. In May of 2018, it was one of nine countries with the uncooperative categorization. *Id.* at 10.

As of the filing of this petition, Petitioner cannot find available numbers of pre-2017 Cuban nationals who have been repatriated to Cuba.

Mr. Rodriguez-Gutierrez has not been advised of any communications between ICE and Cuba to remove him to Cuba. Mr. Rodriguez-Gutierrez has now been detained for almost five months and there is no indication that ICE anticipates receiving travel documents to his designated country any time in the reasonably foreseeable future.

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

When immigrants cannot be removed to their home country—including Cuban immigrants—ICE has begun deporting those individuals to third countries without adequate notice or a hearing. 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 to South Sudan. *See* Wong, *supra*. On July 15, ICE deported five men to the tiny African nation of Eswatini 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).[3] On July 9, 2025, ICE rescinded previous

[3] Though the Supreme Court's order was unreasoned, the dissent noted that the

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 ("Third Country Removal Policy").

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' 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

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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. Rodriguez-Gutierrez. *Id.* In short, the Supreme Court's decision does not override this Court's 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).

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 this petition and order Mr. Rodriguez-Gutierrez's immediate release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Mr. Rodriguez-Gutierrez, for whom there is "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001). ICE's own regulations require changed circumstances before re-detention, as well as a chance to contest a re-detention decision. And due process requires ICE to provide notice and an opportunity to be heard before any removal to a third country.

I. Count 1: Mr. Rodriguez-Gutierrez's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Rodriguez-Gutierrez: 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.*

Using this framework, Mr. Rodriguez-Gutierrez can make all the threshold showings needed to shift the burden to the government.

B. The six-month grace period has expired.

As an initial matter, the six-month grace period has long since ended. The *Zadvydas* grace period lasts for "*six months* after a final order of removal—that is,

three months after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Rodriguez-Gutierrez's order of removal was entered on February 9, 1996. Exh. A at ¶ 2.[4] Because Mr. Rodriguez-Gutierrez did not appeal, the order became final on that day. Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired six months after the appeal finished and three months after the removal period ended, both of which occurred in May 1996. Furthermore, Mr. Rodriguez-Gutierrez was detained for 8 months in 1996, and he has been detained for about four months in 2025. Exh. A at ¶¶ 2, 4. Thus, this threshold requirement is met.

The government has sometimes proposed calculating the *Zadvydas* grace period differently where, as here, an immigrant is released and then rearrested. But these proposed alternative calculations contradict the statute and *Zadvydas*.

First, the government has sometimes argued that release and rearrest resets the six-month grace period completely, taking the clock back to zero. "Courts . . . broadly agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases). This proposal would create an obvious end run around *Zadvydas*, because ICE could detain an immigrant indefinitely by releasing and quickly rearresting them every six months.

Second, the government has sometimes claimed that rearrest at least resets the 90-day removal period under 8 U.S.C. § 1231(a)(1). *See, e.g.*, *Farah v. INS*, No. Civ. 02-4725(DSD/RLE), 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (adopting this view). But as a court explained in *Bailey v. Lynch*, that view cannot

[4] EOIR, *Automated Case Information*, https://acis.eoir.justice.gov/en/.

be squared with the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). "Pursuant to the statute, the removal period, and in turn the [six-month] presumptively reasonable period, begins from the latest of 'the date the order of removal becomes administratively final,' the date of a reviewing court's final order where the removal order is judicially removed and that court orders a stay of removal, or the alien's release from detention or confinement where he was detained for reasons other than immigration purposes at the time of his final order of removal." *Id.* None of these statutory starting points have anything to do with whether or when an immigrant is detained. *See id.* Because the statutorily-defined removal period has nothing to do with release and rearrest, releasing and rearresting the immigrant cannot reset the removal period.

For all these reasons, the six-month grace period poses no barrier to granting this *Zadvydas* petition.

C. **The length of Mr. Rodriguez-Gutierrez's current detention and the history of Cuba being uncooperative with repatriation provides very good reason to believe that Mr. Rodriguez-Gutierrez will not likely be removed in the reasonably foreseeable future.**

Because the six-month grace period has passed, this Court must evaluate Mr. Rodriguez-Gutierrez's *Zadvydas* claim using the burden-shifting framework. At the first stage of the framework, Mr. Rodriguez-Gutierrez must "provide[] good reason to believe 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 <u>whether</u> Mr. Rodriguez-Gutierrez 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 <u>when</u> Mr. Rodriguez-Gutierrez 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*, No. 5:19-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. Rodriguez-Gutierrez "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. Rodriguez-Gutierrez readily satisfies this standard for two reasons.

First, as explained above, the Joint Statement between the United States and Cuba gives Cuba the discretion to accept individuals on a case-by-case basis. Even following the 2017 Joint Statement, the United States has categorized Cuba as uncooperative in providing travel documents in a timely manner.

Second, Mr. Rodriguez-Gutierrez's own experience bears this out. ICE has now had almost 30 years to deport him, including 9 years under the 2017 Joint Statement. He has fully cooperated with ICE's removal efforts throughout that time, including at yearly check-ins. Exh. A ¶¶ 3, 4. Yet ICE has not informed Mr. Rodriguez-Gutierrez of any communication with Cuba or the likelihood of obtaining travel documents from Cuba.

Thus, Mr. Rodriguez-Gutierrez has met his initial burden, and the burden shifts to the government. Unless the government can prove a "significant likelihood of removal in the reasonably foreseeable future," Mr. Rodriguez-Gutierrez must be released. *Zadvydas*, 533 U.S. at 701.

D. *Zadvydas* unambiguously prohibits this Court from denying Mr. Rodriguez-Gutierrez's petition because of his criminal history.

If released on supervision, Mr. Rodriguez-Gutierrez poses no risk of danger or flight. He has been on supervision for about 25 years. Exh. A at ¶ 3. During that time, he has committed himself to being a hard worker, dedicated husband, and father. Exh. A at ¶ 12. He helps support his wife and provides continued financial and emotional support to his 18-year-old son with autism. *Id.* Since at least 2000, he has not sustained any convictions. *Id.* at ¶ 3. And he has checked in regularly with ICE for about 25 years. *Id.* at ¶ 3.

Even if the government did try to argue that Mr. Rodriguez-Gutierrez posed a danger or flight risk, however, *Zadvydas* squarely holds that those are not grounds for detaining an immigrant when there is no reasonable likelihood of removal in the reasonably foreseeable future. 533 U.S. at 684–91.

The two petitioners in *Zadvydas* both had significant criminal history. Mr. Zadvydas himself had "a long criminal record, involving drug crimes, attempted robbery, attempted burglary, and theft," as well as "a history of flight, from both criminal and deportation proceedings." *Id.* at 684. The other petitioner, Kim Ho Ma, was "involved in a gang-related shooting [and] convicted of manslaughter." *Id.* at 685. The government argued that both men could be detained regardless of their likelihood of removal, because they posed too great a risk of danger or flight. *Id.* at 690–91.

The Supreme Court rejected that argument. The Court appreciated the seriousness of the government's concerns. *Id.* at 691. But the Court found that the immigrant's liberty interests were weightier. *Id.* The Court had never countenanced "potentially permanent" "civil confinement," based only on the government's belief that the person would misbehave in the future. *Id.*

The Court also noted that the government was free to use the many tools at its disposal to mitigate risk: "[O]f course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions." *Id.* at 700. The Ninth Circuit later elaborated, "All aliens ordered released must comply with the stringent supervision requirements set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration officer periodically, answer certain questions, submit to medical or psychiatric testing as necessary, and accept reasonable restrictions on [their] conduct and activities, including severe travel limitations. More important, if [they] engage[ ] in any criminal activity during this time, including violation of [their] supervisory

release conditions, [they] can be detained and incarcerated as part of the normal criminal process." *Ma*, 257 F.3d at 1115.

These conditions have proved sufficient to protect the public over 25 years. They will continue to do so while ICE keeps trying to deport Mr. Rodriguez-Gutierrez.

II. Count 2: ICE failed to comply with its own regulations before re-detaining Mr. Rodriguez-Gutierrez, violating his rights under the Fifth Amendment and the Administrative Procedures Act.

In addition to *Zadvydas*'s protections, a series of regulations provide extra process for someone who, like Mr. Rodriguez-Gutierrez, is re-detained following a period of release. Title 8 C.F.R. § 241.4(*l*) applies to re-detention generally, while 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, *see Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025), as Mr. Rodriguez-Gutierrez plainly was.

These regulations permit an official to "return[s] [the person] to custody" because they "violate[d] any of the conditions of release." 8 C.F.R. § 241.13(i)(1); *see also id.* § 241.4(*l*)(1). Otherwise, 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," *id.* § 241.13(i)(2), and (2) makes that finding "on account of changed circumstances." *Id.*

No matter the reason for re-detention, the re-detained person is entitled to "an initial informal interview promptly," during which they "will be notified of the reasons for revocation." *Id.* §§ 241.4(*l*)(1), 241.13(i)(3). The interviewer must "afford[] the [person] an opportunity to respond to the reasons for revocation," allowing them to "submit any evidence or information" relevant to re-detention and evaluating "any contested facts." *Id.*

ICE is required to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established."). A court may review a re-detention decision for compliance with the regulations. *See Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

None of the prerequisites to detention apply here. Mr. Rodriguez-Gutierrez was not returned to custody because of a conditions violation. And there are no changed circumstances that justify re-detaining him. There is no indication that Cuba has used its discretion in issuing travel documents for Mr. Rodriguez-Gutierrez. ICE may be planning to try again to remove Mr. Rodriguez-Gutierrez. But absent any evidence for "why obtaining a travel document is more likely this time around[,] Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Nor has Mr. Rodriguez-Gutierrez received the interview required by regulation. Exh. A at ¶ 9. No one from ICE has ever invited him to contest his detention. *Id.*

Numerous courts have released re-detained immigrants after finding that ICE failed to comply with applicable regulations. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782,

at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025). That includes Judge Huie earlier this month. *Rokhfirooz*, 2025 WL 2646165.

"[B]ecause officials did not properly revoke petitioner's release pursuant to the applicable regulations, that revocation has no effect, and [Mr. Rodriguez-Gutierrez] is entitled to his release (subject to the same Order of Supervision that governed his most recent release)." *Liu*, 2025 WL 1696526, at *3.

III. Count 3: ICE may not remove Mr. Rodriguez-Gutierrez to a Third country without following the mandatory consecutive procedures of 8 U.S.C. § 1231(b)(2).

The government may not legally pursue its plan to remove Mr. Rodriguez-Gutierrez to Cuba, because 8 U.S.C. § 1231(b)(2) requires that ICE first seek removal to the Cuba.

"Th[at] statute . . . provides four consecutive removal commands." *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005). First, "the Attorney General shall remove the alien to the country the alien so designates." 8 U.S.C. § 1231(b)(2)(A)(ii). Here, the designated country is Cuba.

The Attorney General may "disregard [that] designation if" one of four criteria are met, but none are here. Mr. Rodriguez-Gutierrez did not "fail[] to designate a country promptly." 8 U.S.C. § 1231(b)(2)(C)(i). ICE also has not presented any evidence that Cuba has failed to respond to a request to remove Mr. Rodriguez-Gutierrez to that country. § 1231(b)(2)(C)(ii)-(iv).

This Court should therefore order that Mr. Rodriguez-Gutierrez cannot be removed to a third country prior to the government making efforts for his removal to Cuba. *See Farah v. I.N.S.*, No. CIV. 02-4725DSDRLE, 2002 WL 31866481, at *4 (D. Minn. Dec. 20, 2002) (granting a habeas petition and prohibiting removal in violation of § 1231(b)(2)); *see also Jama*, 543 U.S. at

338 (reviewing a § 1231(b)(2) argument set forth in a habeas petition).

IV. Count 4: ICE may not remove Mr. Rodriguez-Gutierrez to a third country without adequate notice and an opportunity to be heard.

In addition to unlawfully detaining him and the failure to comply with regulations and statute, ICE's policies threaten his removal to a third country without adequate notice and an opportunity to be heard. These policies violate the Fifth Amendment, the Convention Against Torture, and implementing regulations.

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 the officer and noncitizen 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.

B. The June 6, 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 6, 2025 memo do not adhere to these requirements. First, under the policy, ICE need not give immigrants *any* notice or *any* opportunity to be heard before removing them to a country that—in the State Department's estimation—has provided "credible" "assurances" against persecution and torture. Exh. 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. Exh. 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. Rodriguez-Gutierrez without these due process safeguards.

V. This Court must hold an evidentiary hearing on any disputed facts.

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

VI. 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 re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(*l*), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Enjoin Respondents from removing Petitioner to any country other than Cuba, without first following the consecutive procedures of 8 U.S.C. § 1231(b)(2).

5. Enjoin Respondents from removing Petitioner to any country other than Cuba, unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
   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.

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

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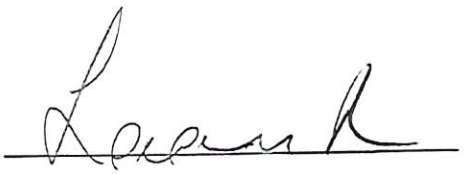
Conclusion

For those reasons, Mr. Rodriguez-Gutierrrez requests that this Court order the respondents to prove that there is a "significant likelihood of removal in the reasonably foreseeable future" and, if they do not, order his release. *Zadvydas*, 533 U.S. at 701. In the alternative, he requests that this Court order a bond hearing.

DATED: 10-24-2025 Respectfully submitted,



LOANI RODRIGUEZ-GUTIERREZ

Petitioner

Exhibit A

Loani Rodriguez-Gutierrez
A# [redacted]
Otay Mesa Detention Center
P.O. Box 439049
San Diego, CA 92143-9049

Pro Se[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LOANI RODRIGUEZ-GUTIERREZ, Petitioner, v. KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, 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.: **First Declaration of Loani Rodriguez-Gutierrez**

[1] Mr. Rodriguez-Gutierrez is filing this petition for a writ of habeas corpus and all associated documents with the assistance of the Federal Defenders of San Diego, Inc. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases. The Declaration of _____ in Support of Appointment Motion attaches case examples.

I, Loani Rodriguez-Gutierrez, declare:

1. In 1994, I came to the United States from Cuba as a refugee. I was 20 years old and came alone.
2. A year later, I was convicted of a controlled substance offense and was ordered deported in 1996 to Cuba. I remained in immigration custody for about eight months before being released. I was told that Cuba was not accepting us.
3. Since 2000, I have been reporting to ICE. At first, I was required to report every three months and then it became once a year. I have consistently checked in with ICE. I have not had any convictions for at least 25 years.
4. On May 29, 2025, I went to my yearly ICE check-in in Florida. There, I was told I was being detained. When I asked why they were arresting me, I was told that this was Trump's order. They did not tell me that they had travel documents to remove me. They did not tell me why I was being re-detained. No one told me anything. My wife was waiting for me in the parking lot. I did not even have a chance to say goodbye.
5. I was then sent to the Krome Detention Center in Florida. For six days, I slept on the floor of a reception area of the detention center. I was also not allowed to shower, brush my teeth, nor was I given a change of clothes. No one talked to me about my case.

6. I was then sent to Texas for a week. I kept asking, when are they going to see us, when are they going to talk to us, but we got nothing.

7. I was then sent to Arizona. In Arizona was the first time that I spoke to an immigration officer. The only thing he asked me is if I would sign a document agreeing to be removed to Mexico. But I did not understand since I am not Mexican. He did not discuss travel documents to Cuba.

8. On July 1, 2025, I was moved to the Otay Detention Center. Here, I have not spoken to anyone about my removal to Cuba. One day, I was taken to the San Ysidro Port of Entry and asked if I would go to Mexico. I asked if I had to say yes, and they responded that I did not have to say yes. I said I did not want to go to Mexico.

9. On October 6, 2025, an immigration officer came to see me and asked if I would sign a document to have me removed to Mexico. When I said no, they told me that they would send my response to headquarters.

10. ICE does not beat you physically, but they hurt you psychologically. I do not understand what is happening and why they detained me.

11. ICE has never given me any formal paperwork explaining why I was re-detained or identifying changed circumstances that would make my removal easier. I have never gotten a chance to tell ICE why I should not be re-detained.

12. Prior to my detention I worked in construction. I live with my wife. I have

an adult daughter and an 18-year-old son with autism. My son cannot live independently, and I continue to financially and emotionally support him. After I was detained, my wife had to move out of the house that we were renting and move into a small studio.

13. I do not have money to pay for an attorney. I do not have any savings or property. It is extremely difficult for the family to get by without me because I was the one that earned money in construction.

14. I do not speak English, and I am of hard of hearing. I have no legal training. I do not know anything about immigration law. I do not have unrestricted access to the internet at my detention facility, so I cannot use the internet to research ICE's and Cuba's latest polices for people like me. I cannot do a habeas petition on my own.

15. This declaration was read to me in its entirety in the Spanish language. I understand and agree with the statements contained herein.

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I declare under penalty of perjury that the foregoing is true and correct, executed on _____, in San Diego, California.

LOANI RODRIGUEZ-GUTIERREZ
Declarant

Exhibit B

To All ICE Employees
July 9, 2025

Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the district court's nationwide preliminary injunction in *D.V.D. v. Department of Homeland Security*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required certain procedures related to providing a "meaningful opportunity" to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country. Accordingly, all previous guidance implementing the district court's preliminary injunction related the third country removals issued in *D.V.D.* is hereby rescinded. Absent additional action by the Supreme Court, the stay will remain in place until any writ of certiorari is denied or a judgment following any decision issues.

Effective immediately, when seeking to remove an alien with a final order of removal—other than an expedited removal order under section 235(b) of the Immigration and Nationality Act (INA)—to an alternative country as identified in section 241(b)(1)(C) of the INA, ICE must adhere to Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, *Guidance Regarding Third Country Removals*, as detailed below. A "third country" or "alternative country" refers to a country other than that specifically referenced in the order of removal.

If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures. ICE will seek written confirmation from the Department of State that such diplomatic assurances were received and determined to be credible. HSI and ERO will be made aware of any such assurances. In all other cases, ICE must comply with the following procedures:

- An ERO officer will serve on the alien the attached Notice of Removal. The notice includes the intended country of removal and will be read to the alien in a language he or she understands.
- ERO will not affirmatively ask whether the alien is afraid of being removed to the country of removal.
- ERO will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal.
    - Any determination to execute a removal order under exigent circumstances less than 24 hours following service of the Notice of Removal must be approved by the DHS General Counsel, or the Principal Legal Advisor where the DHS General Counsel is not available.

- If the alien 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, ERO may proceed with removal to the country identified on the notice. ERO should check all systems for motions as close in time as possible to removal.
- If the alien does affirmatively state a fear if removed to the country of removal listed on the Notice of Removal, ERO will refer the case to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under section 241(b)(3) of the INA and the Convention Against Torture (CAT). USCIS will generally screen the alien within 24 hours of referral.
    - USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.
    - If USCIS determines that the alien has not met this standard, the alien will be removed.
    - If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the immigration court, USCIS will refer the matter to the immigration court for further proceedings. In cases where the alien was previously in proceedings before the immigration court, USCIS will notify the referring immigration officer of its finding, and the immigration officer will inform ICE. In such cases, ERO will alert their local Office of the Principal Legal Advisor (OPLA) Field Location to file a motion to reopen with the immigration court or the Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under section 241(b)(3) of the INA and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.

Notably, the Supreme Court's stay of removal does not alter any decisions issued by any other courts as to individual aliens regarding the process that must be provided before removing that alien to a third country.

Please direct any questions about this guidance to your OPLA field location.

Thank you for all you continue to do for the agency.

Todd M. Lyons
Acting Director
U.S. Immigration and Customs Enforcement

Attachments:

- U.S. Supreme Court Order
- Secretary Noem's Memorandum
- Notice of Removal