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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MIGUEL CABRERA-TRILLO,

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.:
25-cv-02865-CAB-MSB

Traverse

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Introduction

Miguel Cabrera-Trillo has been under an order of supervision without incident for over 20 years. When he went in for his regular immigration check-in on August 29, he was taken into custody. ICE did not tell him why he was being detained, nor did they give him a prompt interview to challenge the detention. More than two months later, the reasons for the re-detention are unknown. ICE has failed to give Mr. Cabrera-Trillo any reason why it believes that there is a significant likelihood of removal in the reasonably foreseeable future. In fact, ICE doubted so much that Mr. Cabrera-Trillo would be removed to his designated country of Cuba, that they first attempted to remove him to Mexico before even contacting Cuba. It was only after he filed a petition with this Court that ICE made its first attempt for removal to Cuba and Cuba said no. Now, ICE is claiming that it is "work[ing] to locate" another country and "should" they find a third country, and "if" Mr. Cabrera-Trillo does not succeed in seeking asylum from that third country, he will then be removed. Doc. 9 at 2. Simply put, there is no significant likelihood of removal in the reasonably foreseeable future. He remains at Otay Detention Center as a 69-year-old man with serious medical issues, not knowing how much longer he will remain detained.

Now having received the government's Return and supporting evidence, this Court should grant Mr. Cabrera-Trillo's petition on all his claims. To do so, the Court need only follow recent decisions in this district and around the country.

First, this Court should grant the petition on Claim One because the government provides no independent evidence to satisfy the success element ("a significant likelihood of removal") or timing element ("in the reasonably foreseeable future") of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Respondents say nothing regarding likelihood of removal or the expected timing of removal. Deportation Officer ("DO") Lara Ramirez only asserts that Mr. Cabrera-Trillo cannot be removed to Cuba and ICE is now in the process of locating third

country. No country has been identified, the repatriation agreement with that country has not been disclosed, the process of removal is unknown, and no indication as to when that will happen. DO Lara Ramirez's claim also does nothing to address the due process procedures that would be given to Mr. Cabrera-Trillo once a third country is chosen. Other judges of this district have held that ICE's ongoing efforts to removal petitioner—with no evidence of likely success or timing—does not satisfy the government's burden. *See, e.g., Conchas-Valdez v. Casey*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025); *Alic v. Dep't of Homeland Sec./Immigr. Customs Enf't*, No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept. 30, 2025).

Second, this Court must grant the petition on Claim Two because the government does not claim to have complied with 8 C.F.R. §§ 241.4, 241.13. For persons like Mr. Cabrera-Trillo, those regulations permit re-detention only if ICE: (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2); (2) makes that finding "on account of changed circumstances," *id.*; (3) provides "an initial informal interview promptly," *id.* §§ 241.4(*l*)(1), 241.13(i)(3); and (4) "affords the [person] an opportunity to respond to the reasons for revocation," *id.* Respondents only claim that a vague statement of "changed circumstances" was sufficient notice to revoke supervision. But "[s]imply to say that circumstances had changed or there was a significant likelihood of removal in the foreseeable future is not enough." *Rasakhamdee v. Noem*, 25-CV-02816-RBM-DEB (S.D. Cal. Nov. 6, 2025) (citing *Sarail A. v. Bondi*, No. --- F. Supp. 3d ---, 2025 WL 2533673, at *10 (D. Minn. Sept. 3, 2025)). Moreover, in the last several weeks, multiple judges from this district have ordered release for failure to follow these regulations on records meaningfully indistinguishable from this one. *See Tran v. Noem*, 25-cv-02391-BTM-BLM (S.D. Cal. Oct. 27, 2025); *McSweeney v. Warden*, 25-cv-02488-

RBM-DEB (S.D. Cal. Oct. 24, 2025); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025).

Third, this Court must grant the petition on Claim Three. Respondents failed to comply with 8 U.S.C. § 1231(b)(2), which requires that ICE first seek removal to the designated country. As the Supreme Court has made clear, § 1231(b)(2) "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). The designated country is Cuba. The Attorney General may "disregard [that] designation" only if certain criteria are met. 8 U.S.C. § 1231(b)(2)(C)(i). Here, ICE did not follow the consecutive commands of § 1231(b)(2) by seeking to removal Mr. Cabrera-Trillo to a third country prior the designated country of 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)). The government does not provide a response to this claim.

Fourth, the government does not dispute that ICE's third-country removal policy violates the due process. And the Ninth Circuit has squarely rejected the government's jurisdictional argument, holding that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed," or any other claim asserting a "violation of [ICE's] mandatory duties." *Ibarra-Perez v. United States*,

__ F.4th __, 2025 WL 2461663, at *7, *9 (9th Cir. Aug. 27, 2025). The contrary position would leave immigrants without protection from ICE's policy, which allows for a change of plans with minimal or no notice. Multiple judges in this district have granted relief on this ground. *See, e.g.*, *Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025). This Court should therefore grant the petition—or at least a temporary restraining order ("TRO")—on all grounds.

Argument

I. Mr. Cabrera Trillo's claims succeed on the merits.

This Court need not speculate about whether Mr. Cabrera Trillo may succeed on the merits. Because the government's evidence is insufficient to justify his re-detention, his petition should be granted outright, or the Court should at least release him on a TRO pending further briefing.

A. Claim One: The government has not proved that there is a significant likelihood of removal in the reasonably foreseeable future.

First, the government provides no evidence that Mr. Cabrera-Trillo will likely be removed to Cuba or another country, let alone in the reasonably foreseeable future.

1. The government cites no authority for the proposition that Mr. Cabrera Trillo has not satisfied the six-month *Zadvydas* grace period.

Mr. Cabrera-Trillo has been previously detained by immigration officials for a total of at least 7 months after the 1997 final order of removal. Cabrera-Trillo Dec., Doc. No. 1 at 28, ¶¶ 2-3 (noting 3-month detention in 1997 and approximate 5-month detention in 2003); Lara Ramirez Dec., Doc. 9-1 at ¶¶ 4-7 (noting a detention in 1997 and a 4-month detention in 2003). He has now been detained for

an additional two months.

As an initial matter, the government appears to contend that the six-month grace period starts over every time ICE re-detains someone. Doc. 9 at 3-4. "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); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025); S.*F. v. Bostock*, No. 3:25-CV-01084-MTK, 2025 WL 2841022, at *4 (D. Or. Oct. 7, 2025) ("[Federal courts have refrained from applying the presumption of reasonableness under *Zadvydas* in re-detention cases" even where the second detention is less than six months.); *Phong Thanh Nguyen v. Scott*, No. 25-cv-01389, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025) ("[T]he six-month period does not reset when the government detains a[ ] [noncitizen] ..., releases him from detention, and then re-detains him again.") (citation omitted). The government cites no case law to the contrary.

The six-month grace period has therefore ended, and so—contrary to the government's claims—Mr. Cabrera-Trillo need not rebut the presumptively reasonable period of detention.

2. The government provides no evidence to support a "significant likelihood of removal" to Cuba.

Because the six-month grace period has passed, this court moves on to the burden-shifting framework. The government does not deny that Mr. Cabrera Trillo has provided "good reason" to doubt his reasonably foreseeable removal, thereby forfeiting the issue. *See Moallin v. Cangemi*, 427 F. Supp. 2d 908, 928 (D. Minn. 2006). Moreover, a petitioner sufficiently raises "good reason" to doubt reasonable foreseeable removal where, like here, Petitioner has not been "told which countries have been contacted for [his] potential removal, whether any

country has agreed to accept [him], or when a third country removal might occur." *Gharakhan v. Noem*, 25-cv-02879-DMS-AHG, Doc. 11 at 6 (S.D. Cal. Nov. 5, 2025). Here, the "Government does not have any third country locations underway and does not have an answer as to when Petitioner will be removed." *Id.*

The burden therefore shifts to the government to prove that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. That standard has a success element ("significant likelihood of removal") and a timing element ("in the reasonably foreseeable future"). The government meets neither.

As an initial matter, the government has not shown that Mr. Cabrera-Trillo's removal to Cuba, or any other country, is "significant[ly] like[ly]." *Zadvydas*, 533 U.S. at 701. The evidence presented by the government is that Mr. Cabrera Trillo cannot be removed to Cuba. The government is just starting efforts to remove him to a third country. Yet, they have not identified a country or how long it will take to remove him. Courts have "demanded an individualized analysis" of why *this* person—Mr. Cabrera Trillo —will likely be removed. *Nguyen*, 2025 WL 2419288, at *17 (citing *Nguyen*, 2025 WL 1725791, at *4). Because "[t]he government has not provided any evidence of [a third country's] eligibility criteria or why it believes *Petitioner* now meets it," the government's evidence is insufficient. *Id.* at *18 (emphasis added).

Moreover, even if ICE had submitted a request for travel documents for a third country—and, to date, it has not —good faith efforts to secure a travel document do not themselves satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's

good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, "the Government is required to demonstrate the likelihood of not only the *existence* of untapped possibilities, but also of a probability of success in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010).

Here, then, a mere "assertion of good-faith efforts to secure removal [] does not make removal likely in the reasonably foreseeable future." *Gilali v. Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019). Many courts have agreed that requesting travel documents does not itself make removal reasonably likely. *See, e.g.*, *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's case was "still under review and pending a decision" did not meet respondents' burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where "[t]he government offers nothing to suggest when an answer might be forthcoming or why there is reason to believe that he will not be denied travel documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document

request). That includes Judge Robinson's recent ruling. *See supra*, Introduction (explaining the *Rebenok* ruling).

3. The government provides no evidence to support that any such removal will occur "in the reasonably foreseeable future."

Additionally, even if ICE will eventually remove Mr. Cabrera Trillo, the government provides zero evidence that removal will happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. DO Lara Ramirez provides no timetable for how long travel document requests like his typically take—no statistics, no estimations, no anecdotes, no nothing.

That is fatal. "[D]etention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future." *Hassoun*, 2019 WL 78984, at *6. "The government's active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). "[I]f DHS has no idea of when it might reasonably expect [Mr. Cabrera Trillo] 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." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

Courts have routinely granted habeas petitions where, as here, the government does not establish *Zadvydas*'s timing element. *See, e.g.*, *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020), *report and recommendation adopted,* No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La. Oct. 14, 2020) ("[A] theoretical possibility of eventually being

removed does not satisfy the government's burden[.]"); *Eugene v. Holder*, No. 408CV346-RH WCS, 2009 WL 931155, at *4 (N.D. Fla. Apr. 2, 2009) ("While Respondents contend Petitioner *could* be removed to Haiti, it has not been shown that it is significantly likely that Petitioner *will* be removed in the *reasonably foreseeable* future."); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 426 (M.D. Pa. 2004) (granting petition because even if "Petitioner's removal will ultimately be effected . . . the Government has not rebutted the presumption that removal is not likely to occur in the reasonably foreseeable future"); *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C. 2002) (granting petition where the government had not provided any "evidence . . . that travel documents will be issued in a matter of days or weeks or even months").

In sum, then, there could be "some possibility that [some unknown country] will accept Petitioner at some point. But that is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future." *Nguyen*, 2025 WL 2419288, at *16. Mr. Cabrera trillo therefore succeeds under *Zadvydas*, too.

B. Claim Two: As other judges have recently found when granting similar habeas petitions, ICE did not adhere to the regulations governing re-detention.

The government provides no evidence that ICE complied with 8 C.F.R. §§ 241.4, 241.13. The government does not deny that these regulations apply to Mr. Cabrera Trillo or that he may challenge them in this habeas case. *See* Doc. 9 at 5-6. In fact, the Notice of Revocation given to Mr. Cabrera Trillo states that his release was revoked under 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13. Doc. 9-2 at 14. The regulations have two parts: the reasons for the revocation removal and the procedures for revocation. The government implies that ICE complied with these regulations. *Id.* ICE did not.

First, ICE did not comply with the ***reasons for the revocation***. Beginning

with 8 C.F.R. § 241.13(i)(2). That section provides that ICE may "revoke an alien's release under this section and return the alien to custody if, on *account of changed circumstances*, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2) (emphasis added). That "regulation require[s] (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023).

In *Rokhfirooz*, Judge Huie determined the fourth requirement was not met on a record materially indistinguishable from this one. 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025). There, the government failed to produce "any documented determination, made prior to Petitioner's arrest, that his release should be revoked." *Id.* at *3. The only documentation was "an arrest warrant, issued on DHS Form I-200, merely recit[ing] that there is probable cause to believe that Petitioner is 'removable from the United States,' that is, subject to removal, which would be accurate whether or not Petitioner's release was revoked." *Id.*

Here, similarly, the government provides no documented, pre-arrest determination that release should be revoked; it only references an arrest warrant stating that Mr. Cabrera Trillo is removable. Doc. 9-2 at 10-12. The I-213 confirms that his arrest was premised entirely on his status as a person who had a final order of removal—not a determination that release should be revoked due to changed circumstances making removal significantly likely. Doc. 9-2 at 2-5.

Judge Huie also remarked in *Rokhfirooz* that the government had produced "no record constitut[ing] a determination even after Petitioner's arrest that there is a significant likelihood that Petitioner can be removed in the reasonably foreseeable future." 2025 WL 2646165, at *3. "In connection with defending [that] lawsuit, Respondents prepared and filed a declaration from a Supervisory Detention and Deportation Officer assigned to the detention center where Petitioner is housed,"

which stated that "[ICE Enforcement and Removal Operations] determined that there is a significant likelihood of removal and resettlement in a third country in the reasonably foreseeable future and re-detained Petitioner to execute his warrant of removal." *Id.* Judge Huie deemed that post-hoc determination insufficient, because the declarant did not produce underlying documentation showing that any such determination had actually been made—let alone that it had been made pre-arrest. *Id.* The Court therefore "decline[d] to rely on" those statements. *Id.*

Here, the evidence is even weaker. DO Lara Ramirez's declaration reinforces the fact that at the time Mr. Cabrera Trillo was re-detained, despite any information on the significant likelihood that he may be removed in the reasonably foreseeable future. DO Lara Ramirez cites efforts to remove Mr. Cabrera Trillo only after he was re-detained. Doc. 9-1 at ¶ 10-12. Moreover, he does not dispute the fact that before ICE even tried to contact Cuba, ICE tried to get Mr. Cabrera Trillo to deport to Mexico by paying him a thousand dollars. Doc. 1 at 28, ¶ 7. Lara Ramirez now states that ICE is exploring other unidentified third countries. Doc. 9-1 at ¶ 12. But no evidence was presented that any efforts were made prior to the re-detention. There is simply no explanation or any evidence showing why there is a significant likelihood that Mr. Cabrera Trillo can be removed in the reasonably foreseeable future. There is therefore "no evidence that DHS has made such a determination as to the revocation of Petitioner's release even after the fact of arrest, up to the present day." *Rokhfirooz*, 2025 WL 2646165, at *4.

Additionally, even if ICE *had* revoked release because of a significant likelihood of removal, that is not enough. The regulation requires that the likelihood of removal arise out of "changed circumstances." 8 C.F.R. § 241.13(i)(2). Here, nothing had changed, Cuba continues to deny repatriation of Mr. Cabrera Trillo. DO Lara Ramirez identifies no changed circumstances, nor does he assert that ICE premised re-detention on any such changes. And "Respondents have not provided any details about why a travel document could not be obtained in the past, nor have

they attempted to show why obtaining a travel document is more likely this time around." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025). Respondents have announced only their "intent to eventually complete a travel document request for Petitioner," which "does not constitute a changed circumstance." *Id.*

Second, ICE did not comply with the ***revocation procedures***. Subsection 241.13(i)(3) requires that the alien "will be ***notified of the reasons for revocation of his or her release.***" (Emphasis added). ICE did not provide Mr. Cabrera Trillo notice under 8 C.F.R. § 241.13 of the reasons for the revocation of his release. The Notice of Revocation of Release produced by the government in its Return simply states that this revocation was "based on a review of your official alien file and a determination that there are changed circumstances in your case." Doc. 9-2 at 14. But "[s]imply to say that circumstances had changed or there was a significant likelihood of removal in the foreseeable future is not enough." *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025). Rather, "Petitioner must be told *what* circumstances had changed or *why* there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3)." *Id.* By "identif[ying] the category—'changed circumstances'—but fail[ing] to notify [Petitioner] of the reason—the circumstances that changed and created a significant likelihood of removal in the reasonably foreseeable future—[ICE] failed to follow the relevant regulation." *Id.*; *See Rasakhamdee v. Noem*, 25-CV-02816-RBM-DEB (S.D. Cal. Nov. 6, 2025) (granting habeas finding notice of "changed circumstances" without more is not notice under the regulations).

Sections 241.4(l) and 241.13(i)(3) also mandate additional procedures: "[B]oth require ICE to provide '***an initial informal interview promptly ... to afford the alien an opportunity to respond to the reasons for revocation***.'" *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (quoting 8 C.F.R. §§ 241.4(*l*)(2),

241.13(i)(3)) (emphasis added). Mr. Cabrera Trillo was not provided with a prompt interview, *see* Doc. 1 at 28, ¶¶ 5-8. DO Lara Ramirez does not claim to have given such an interview to Mr. Cabrera Trillo. Moreover, without knowing the reasons for the revocation of his release, it would be been impossible for Mr. Cabrera Trillo to be able to "respond to the reasons for revocation." 8 C.F.R. §§ 241.4(*l*)(2).

ICE failed to comply with all aspects of the regulations.

The government's two remaining arguments on Mr. Cabrera-Trillo's regulatory claims—that Mr. Cabrera-Trillo must show prejudice, and that the regulations do not implement due process and protected liberty interests—also fail.

First, Mr. Cabrera-Trillo need not show prejudice from these regulatory claims. But, of course, he can. "There are two types of regulations: (1) those that protect fundamental due process rights, and (2) and those that do not." *Martinez v. Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). "A violation of the first type of regulation . . . implicates due process concerns even without a prejudice inquiry." *Id.* (cleaned up). Here, "[t]here can be little argument that ICE's requirement that noncitizens be afforded an informal interview—arguably the most bare-bones form of an opportunity to be heard—derives from the fundamental constitutional guarantee of due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. May 2, 2025). No showing of prejudice is required.

Regardless, a violation of a regulation is prejudicial where, as here, "the merits" of an immigrant's case for relief "were never considered by the agency at all." *Arizmendi-Medina v. Garland*, 69 F.4th 1043, 1052 (9th Cir. 2023). Faced with that total deprivation, a petitioner need not point to the specific "evidence he would have presented to support his assertions" or make "any allegations as to what the petitioner or his witnesses might have said." *Id.* (cleaned up).

And Mr. Cabrera Trillo could "present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007)

(cleaned up). He would have had a very strong argument against re-detention had ICE given him notice and an opportunity to respond.[1] Importantly, ICE was fully capable of trying to get a travel document while Mr. Cabrera Trillo remained at liberty.[2]

Second, of course § 241.13(i) and § 241.4(*l*)(1) implement the basic due process protections of notice and an opportunity to be heard before being detained indefinitely. Their violation is an enforceable violation of a protected interest in being free from indefinite detention. "When someone's most basic right of freedom is taken away, that person is entitled to at least some minimal process; otherwise, we all are at risk to be detained—and perhaps deported—because someone in the government thinks we are not supposed to be here." *Ceesay*, 781 F. Supp. 3d at 165.

In arguing otherwise, the government "confuses [Mr. Cabrera Trillo's] right to an order of supervision, which ICE indeed has discretion to grant or deny, with [his] right not to be detained without adequate—in fact, without *any*—process. The right to be free from detention can never be dismissed as discretionary." *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)).

"When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained

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[1] Moreover, the two cases cited by Respondents are factually distinguishable from the present case. Doc. 9 at 7-8. In both of those cases, the individuals were detained because ICE had travel documents in hand, or the designated country had accepted repatriation and the efforts to effectual imminent removal had already begun. *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540 (W.D. Wash. Dec. 4, 2018), report and recommendation adopted, No. C18-287-JLR, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019); *Doe v. Smith*, No. CV 18-11363-FDS, 2018 WL 4696748 (D. Mass. Oct. 1, 2018). Thus, there were in fact changed circumstances.

[2] In fact, when an individual is placed on an order of supervision, he is informed that "ICE [would] continue to make efforts to obtain a travel document that [would] allow the United States ... to carry out [his] removal." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166–67 (W.D.N.Y. 2025). And "[o]nce a travel document [is] obtained, [he would] be required to surrender to ICE for removal" but that he would "at that time, be given an opportunity to prepare for an orderly departure." *Id.*

Traverse

against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(*l*) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*). "The procedures in § 241.4" and § 241.13 therefore "are not meant merely to facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees." *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R. §§ 241.4, 241.13 are "intended to provide due process to individuals in [Mr. Cabrera Trillo's] position," *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable.

Because the government utterly failed to comply with each requirement of § 241.4 and § 241.13 when revoking Mr. Cabrera Trillo's release, it should, "[l]ike many other district courts within this circuit," "find[] that these failures constitute a violation of Petitioner's due process rights and justif[y] [her] release." *Bui v. Noem*, No. 25-cv-2111, 2025 WL 2988356, *5 (S.D. Cal. Oct. 23, 2025).

C. Claim Three: ICE may not remove Mr. Cabrera Trillo to a Third country without following the mandatory consecutive procedures of 8 U.S.C. § 1231(b)(2).

Based on DO Lara Ramirez's declaration, it appears that ICE has now made efforts for removal to Cuba, despite first attempting Mr. Cabrera Trillo's removal to Mexico.

D. Claim Four: The government does not deny that ICE's third-country removal policy violates due process, and this claim is justiciable.

The government does not address Mr. Cabrera Trillo's argument that ICE's existing third-country removal policy—to provide between zero- and 24-hours' notice before removing a noncitizen—violates due process.

Traverse

Instead, it briefly argues that an injunction ordering the government to provide notice and an opportunity to be heard before removal to a third country would be reversed under the Supreme Court's stay in *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025).

However, "[t]he Supreme Court did not decide *D.V.D.* on the merits, nor did it even necessarily rule on the class's likelihood of success on its due process and APA claims." *Nguyen*, 2025 WL 2419288 at *22. Because the Supreme Court did not issue a decision explaining its stay, courts "cannot ascertain from the Supreme Court's emergency order whether it found the government likely to succeed on its jurisdictional or substantive claims." *Id.* at *23. This distinction matters because "one of the government's primary arguments—that the *D.V.D.* court had no power to enter *classwide* injunctive relief—would have no bearing on the merits of individual habeas petition." *Id.* Further, "absent 'clear guidance from the Supreme Court' that" existing law on third-country removals is "'no longer good law,' this Court must follow 'well-established precedent.'" *Id.* (internal citations omitted); *accord, e.g.*, *Louangmilith v. Noem*, No. 25-cv-2502-JES, 2025 WL 2881578, *4 (S.D. Cal. Oct. 9, 2025).

In fact, "[t]o dismiss Petitioner's claims for preliminary injunctive relief at this time would effectively preclude [her] from the relief [s]he seeks entirely and potentially foreclose any relief that [s]he could be entitled to as part of the *D.V.D.* class if [s]he is removed before the class-wide claims are resolved." *Sagastizado v. Noem*, __ F. Supp. 3d __, 2025 WL 2957002, *8 (S.D. Tex. Oct. 2, 2025).

The government has no other argument on the merits against this Court's issuance of a temporary restraining order and injunctive relief against third-country removal without adequate notice and an opportunity to be heard. For the reasons identified in Mr. Cabrera Trillo's petition and motion for temporary relief, this Court should enjoin Respondents from removing him to a third country, absent the process identified in his prayer for relief.

II. The remaining preliminary injunction factors decidedly favor Mr. Cabrera Trillo.

This Court need not evaluate the other TRO factors—the Court may simply grant the petition outright. But if the Court does decide to evaluate irreparable harm and balance of harms/public interest, Mr. Cabrera Trillo should prevail.

On the irreparable harm prong, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government's arguments,[3] the Ninth Circuit has specifically recognized the "irreparable harms imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Fifth Amendment protects. *Zadvydas*, 533 U.S. at 690. Furthermore, "[i]t is beyond dispute that Petitioner would face irreparable harm from removal to a third country." *Nguyen*, 2025 WL 2419288, at *26.

On the balance-of-equities/public-interest prong, the government is correct that there is a "public interest in prompt execution of removal orders." *Nken v. Holder*, 556 U.S. 418, 436 (2009). But that interest is diminished here because the government likely cannot remove Mr. Cabrera Trillo in the reasonably foreseeable future. Even if it could, it is equally "well-established that 'our system does not permit agencies to act unlawfully even in pursuit of desirable ends.'" *Nguyen*, 2025 WL 2419288, at *28 (quoting *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 766 (2021)). It also "would not be equitable or in the public's interest to allow the [government] to violate the requirements of federal

[3] The government cites to case law to support the position that illegal immigration detention is not irreparable harm. Doc. 9 at 9. The immigrant there was actively appealing to the BIA, but wanted a federal court to intervene before the appeal was done. *Reyes v. Wolf*, No. C20-0377JLR, 2021 WL 662659, at *1 (W.D. Wash. Feb. 19, 2021). The court there indicated only that post-bond-hearing detention pending an ordinary BIA appeal was not irreparable harm. *Reyes*, 2021 WL 662659, at *3.

law" with respect to detention and re-detention, *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (cleaned up), or to imperil the "public interest in preventing aliens from being wrongfully removed," *Nken*, 556 U.S. 418, 436. *See, e.g.*, *Sun*, 2025 WL 2800037 at *4 (explaining this and holding that the "third and fourth *Winter* factors support injunctive relief" enjoining the petitioner's improper revocation of immigration supervision); *Delkash*, 2025 WL 2683988 at *6 (enjoining the government from re-detaining or removing an Iranian national to a third country without notice and an opportunity to be heard).

Conclusion

For all these reasons, this Court should grant the petition or at least enter a temporary restraining order and injunction. In either case, the Court should (1) order Mr. Cabrera-Trillo's immediate release, and (2) prohibit the government from removing Mr. Cabrera-Trillo to a third country without following the process laid out in *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).

Respectfully submitted,

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