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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CARLOS RIOS,

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-02866-JES

Traverse

INTRODUCTION

Having received the government's Return and supporting evidence, this Court should grant Mr. Rios'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 must grant the petition on Claim One because the government did not comply with 8 C.F.R. §§ 241.4, 241.13. For persons like Mr. Rios, 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.* Yet ICE did not comply with any of these requirements. While it appears that Mr. Rios was given a Notice of Revocation, that Notice – along with incorrectly stating Mr. Rios had received withholding of removal – vaguely claimed that there were "changed circumstances," it never explained what those changed circumstances were. Doc. 10-4 at 2. Nor *have* there been any changed circumstances, since the government admits that it did not have travel documents to remove him to Cuba and learned post-re-detention that Cuba would not accept him. What's more, there is no evidence that a mandatory interview was every given or that it was provided "promptly," as the regulations require. In the last several weeks, multiple judges from this district have ordered release on similar records. *See 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).

Second, this Court should grant the petition on Claim Two 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). Deportation Officer ("DO") Parsons asserts that Cuba did not accept Mr. Rios for repatriation. Doc. 10-7 at ¶9. It now claims, without any evidence, "a high likelihood of Petitioner's removal to a third country in the near future." *Id.* at ¶ 15. DO Parsons does not say where the government is considering moving Mr. Rios to, he does not say anything about the process of removal to a third country, and he provides no time frame for this process. *Id.* at ¶ 15. DO Parsons's claim also does nothing to address the due process procedures that would be given to Mr. Rios 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,* 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).

Third, the government does not dispute the merits of ICE's third-country removal policy violates due process. It simply incorrectly claims that an no injunction can be applied here.

This Court should therefore grant the petition—or at least a temporary restraining order ("TRO")—on all grounds.

ARGUMENT

I. This Court has jurisdiction to consider Mr. Rios's claims.

To begin, this Court has jurisdiction to consider all of Mr. Rios's claims. Contrary to the government's arguments, § 1252(g) does not bar review of "all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts "have jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, __ F.4th __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up).

In *Ibarra-Perez*, the Ninth Circuit squarely held 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," *id.* at *7[1]—the same claim that Mr. Rios raises here with respect to third-country removals. The Court reasoned that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* Instead, § 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

[1] Mr. Ibarra-Perez raised this claim in a post-removal Federal Tort Claims Act ("FTCA") case, *id.* at *2, while this is a pre-removal habeas petition. But the analysis under § 1252(g) remains the same, because both Mr. Ibarra-Perez and Mr. Rios are challenging the same kind of agency action. *See Kong*, 62 F.4th at 616–17 (explaining that a decision about § 1252(g) in an FTCA case would also affect habeas jurisdiction).

The same logic applies to all of Mr. Rios's claims, because he challenges only violations of ICE's mandatory duties under statutes, regulations, and the Constitution. Accordingly, "[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Mr. Rios's] continued detention and the process required in relation to third country removal." *Y.T.D.*, 2025 WL 2675760, at *5.

Other courts agree. *See, e.g.*, *Kong*, 62 F.4th at 617 ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention," including ICE's "fail[ure] to abide by its own regulations"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim concern[ing] detention"); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was "failing to carry out non-discretionary statutory duties and provide due process"); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (§ 1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard prior to removal of an alien to a third country").

In short, Mr. Rios does not challenge whether the government may "execute" his removal under 8 U.S.C § 1252(g)—only whether it may detain him up to the date it does so or remove him to a third country without notice and an opportunity to be heard. This Court thus has jurisdiction.

II. Mr. Rios's claims succeed on the merits.

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

A. Claim One: 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. Rios or that Mr. Rios may challenge them in this habeas case. *See* Doc. 10 at 5-9. In fact, the Notice of Revocation given to Mr. Rios states that his release was revoked under 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13. Doc. 10-4 at 2. 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. Rios is removable. Doc. 10 at 5-6. 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. 10-1.

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 Parson's declaration reinforces the fact that at the time Mr. Rios was re-detained, despite any information on the significant likelihood that he may be removed in the reasonably foreseeable future. DO Parson's states that efforts to remove Mr. Rios following his re-detention. Doc.

10-7 at ¶ 8. After the re-detention, ICE contacted Cuba. Id. at ¶¶8-10. ICE then learned that Cuba did not accept Mr. Rios's repatriation. *Id.* Following Cuba's rejection, ICE is now trying to figure out what it will do with Mr. Rios. It then tried Mexico and is now exploring other unidentified third countries. *Id.* at ¶¶8-10. But no evidence was presented that any efforts were made prior to Mr. Rios's detention. There is simply no explanation or any evidence showing why a significant likelihood that Mr. Rios can be removed in the reasonably foreseeable future. *See* Doc. 10-7. 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. Rios. DO Parson's 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. Rios 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." Dkt. 10-4. 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.*

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)). Mr. Rios was not provided with a prompt interview, *see* Doc. 1 at 27, ¶¶ 6-7. DO Parsons does not claim to have given Mr. Rios any interview. Doc. 10-7.

ICE failed to comply with all aspects of the regulations.

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

First, Mr. Rios 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. Rios 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. Importantly, ICE was fully capable of trying to get a travel document while Mr. Rios remained at liberty.

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 [Ms. Martinez's] right to an order of supervision, which ICE indeed has discretion to grant or deny, with [her] 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 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 [Ms. Martinez'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. Rios'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).

B. Claim Two: 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. Rios 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. Rios has not satisfied the six-month *Zadvydas* grace period.

As an initial matter, the government appears to contend that the six-month grace period starts over every time ICE re-detains someone. Dkt. 10 at 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). 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. Rios 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 first claims that Mr. Rios "refused to cooperate" because he stated that he did not want to be removed to Mexico. The government's Return implies that the government may continue to detain when the petitioner fails to refuses to cooperate. *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008). But, "[Section] 1231(a)(1)(C) pertains only to intentionally obstructionist, bad faith tactics that are designed to frustrate the government's attempts to effectuate a removal order . . . ." *Id.* at 1232 (emphasis added); *accord Prieto-Romero v. Clark*, 534 F.3d 1053, 1061 (9th Cir. 2008) ("We have previously held that an alien engages in [noncompliant] behavior when he willfully refuses to cooperate with the government in processing his deportation papers."). In other words, the obstruction must be (1) in bad faith, and (2) designed to obstruct the present removal.

Here, there is no evidence whatsoever that Mr. Rios was acting in bad faith and has obstructed his removal. In fact, Mr. Rios states in his declaration that he

was not given a warning. He was told in the early morning of October 1 that he was being discharged. He believed that he was being released into the community. Instead, he was placed in a van and taken to the border and told to depart to Mexico, a third country. Doc. 1 at 30, ¶ 8. It is not that he failed to cooperate. It is that he simply told the truth that he did not want to go to a third country. "[P]etitioner's simple and honest explanation that he did not want to return to a country to which he had no ties, without any accompanying affirmative lack of cooperation, is not a refusal to cooperate that supports an extension of detention." *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 53 (D.D.C. 2002). "Respondents cite no case law to support their view that petitioner's truthful (and somewhat self-evident) statement constitutes a lack of cooperation or failure to assist in his removal under 8 U.S.C. § 1231(a)(1)(C)." Id. at 51.

The burden then 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. Rios's removal is "significant[ly] like[ly]." *Zadvydas*, 533 U.S. at 701. The evidence presented by the government is that Mr. Rios cannot be removed to Cuba. The government is making 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. Rios—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 document 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. Rios, the government provides zero evidence that removal will happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. DO Parsons 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. Rios] 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 [a 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. Rios therefore succeeds under *Zadvydas*, too.

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

The government claims in DO Parsons's declaration that ICE followed the mandates of 8 U.S.C. § 1231(b)(2) by first seeking travel documents from Cuba. Doc. 10-7 at ¶ 9. It is unclear what procedures ICE followed to obtain travel documents from Cuba. It does not appear that Mr. Rios was asked to sign any

travel document requests for removal to Cuba.

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. Rios'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.

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. Rios's petition and motion for temporary relief, this Court should enjoin Respondents from removing Mr. Rios to a third country absent the process identified in his prayer for relief.

III. The remaining preliminary injunction factors decidedly favor Mr. Rios.

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. Rios 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,[2] 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.*

[2] The government cites to case law to support the position that illegal immigration detention is not irreparable harm. Doc. 10 at 10. 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.

Holder, 556 U.S. 418, 436 (2009). But that interest is diminished here because the government likely cannot remove Mr. Rios 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 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. Rios's immediate release, and (2) prohibit the government from removing Mr. Rios 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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s/ Zandra L. Lopez

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