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 9 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
 10

11 **CARLOS ALBERTO IZQUIERDO-**
 12 **MATOS,**

CASE NO.: 25-cv-2979-BJC-BLM

13 **Petitioner,**

Traverse

14 **v.**

15 **KRISTI NOEM, Secretary of the**
 Department of Homeland Security,
 16 **PAMELA JO BONDI, Attorney General,**
TODD M. LYONS, Acting Director,
 17 **Immigration and Customs Enforcement,**
JESUS ROCHA, Acting Field Office
 18 **Director, San Diego Field Office,**
CHRISTOPHER LAROSE, Warden at
 19 **Otay Mesa Detention Center,**

20 **Respondents.**

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1 INTRODUCTION

2 Having received the government’s Return and supporting evidence, this
3 Court should grant Mr. Izquierdo Matos’s petition on all his claims. To do so, the
4 Court need only follow recent decisions in this district and around the country.

5 First, this Court should grant the petition on Claim One because the
6 government provides no independent evidence to satisfy the success element (“a
7 significant likelihood of removal”) or timing element (“in the reasonably
8 foreseeable future”) of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Deportation
9 Officer (“DO”) Vera asserts that Cuba did not accept Mr. Izquierdo-Matos for
10 repatriation. Doc. 9-1 at ¶¶ 9–10. It now claims, without any evidence, “a high
11 likelihood of Petitioner’s removal to a third country in the near future.” *Id.* at ¶ 16.
12 DO Vera does not say where the government is considering moving Mr. Izquierdo
13 Matos to, he does not say anything about the process of removal to a third
14 country, and he provides no time frame for this process. *Id.* at ¶ 16. DO Vera’s
15 claim also does nothing to address the due process procedures that would be given
16 to Mr. Izquierdo Matos once a third country is chosen. Other judges of this district
17 have held that ICE’s ongoing efforts to removal petitioner—with no evidence of
18 likely success or timing—does not satisfy the government’s burden. *See, e.g.*,
19 *Martinez v. Noem*, 25-cv-02740-BJC-BJW Doc. 10 at 13 (S.D. Cal. Nov. 13,
20 2025); *Rodriguez-Gutierrez v. Noem*, 25-cv-02726-BAS-SBC Doc. 14 (S.D. Cal.
21 Nov. 7, 2025); *Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D.
22 Cal. Oct. 6, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, Doc. 13 (S.D. Cal.
23 Sept. 25, 2025); *Alic v. Dep’t of Homeland Sec./Immigr. Customs Enft.*, No. 25-
24 CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept. 30, 2025).

25 Second, this Court must grant the petition on Claim Two because the
26 government did not comply with 8 C.F.R. §§ 241.4, 241.13. For persons like
27 Mr. Izquierdo Matos, those regulations permit re-detention only if ICE: (1)
28 “determines that there is a significant likelihood that the alien may be removed in

1 the reasonably foreseeable future,” *id.* § 241.13(i)(2); (2) makes that finding “on
2 account of changed circumstances,” *id.*; (3) provides “an initial informal interview
3 promptly,” *id.* §§ 241.4(l)(1), 241.13(i)(3); and (4) “affords the [person] an
4 opportunity to respond to the reasons for revocation,” *id.* Yet ICE did not comply
5 with any of these requirements. Mr. Izquierdo Matos was re-detained on July 11.
6 No evidence has been presented that, during the first 122 days of Mr. Izquierdo-
7 Matos’s detention, ICE gave notice of reasons for revocation or that ICE provided
8 Mr. Izquierdo-Matos with an interview to contest his detention. On the 123rd day,
9 ICE handed Mr. Izquierdo-Matos a Notice of Revocation and attempted an
10 interview. Doc. 9-2 at 15–18. The notice vaguely states that there were “changed
11 circumstances” but there is no explanation whatsoever as to what those changed
12 circumstances are. Doc. 9-2 at 15. And the interview, four months after detention,
13 is simply not prompt. In the last several weeks, multiple judges from this district
14 have ordered release on similar records. *See Constantinovici v. Bondi*, __ F. Supp.
15 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025);
16 *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept.
17 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5
18 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB
19 (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-
20 2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES,
21 ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-
22 02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025).

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

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

28

1
2 **ARGUMENT**

3 **I. This Court has jurisdiction to consider Mr. Izquierdo-Matos’s claims.**

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

10 In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not
11 prohibit immigrants from asserting a “right to meaningful notice and an
12 opportunity to present a fear-based claim before [they] [are] removed,” *id.* at
13 *7¹—the same claim that Mr. Izquierdo-Matos raises here with respect to third-
14 country removals. The Court reasoned that “§ 1252(g) does not prohibit
15 challenges to unlawful practices merely because they are in some fashion
16 connected to removal orders.” *Id.* Instead, § 1252(g) is “limited . . . to actions
17 challenging the Attorney General’s discretionary decisions to initiate proceedings,
18 adjudicate cases, and execute removal orders.” *Arce v. United States*, 899 F.3d
19 796, 800 (9th Cir. 2018). It does not apply to arguments that the government
20 “entirely lacked the authority, and therefore the discretion,” to carry out a
21 particular action. *Id.* at 800. Thus, § 1252(g) applies to “discretionary decisions
22 that [the Secretary] actually has the power to make, as compared to the violation
23 of his mandatory duties.” *Ibarra-Perez*, 2025 WL 2461663, at *9.

24
25
26 ¹ Mr. Ibarra-Perez raised this claim in a post-removal Federal Tort Claims Act
27 (“FTCA”) case, *id.* at *2, while this is a pre-removal habeas petition. But the
28 analysis under § 1252(g) remains the same, because both Mr. Ibarra-Perez and
Mr. Izquierdo Matos 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).

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

9 Other courts agree. *See, e.g., Kong*, 62 F.4th at 617 (“§ 1252(g) does not
10 bar judicial review of Kong’s challenge to the lawfulness of his detention,”
11 including ICE’s “fail[ure] to abide by its own regulations”); *Cardoso v. Reno*, 216
12 F.3d 512, 516 (5th Cir. 2000) (“[S]ection 1252(g) does not bar courts from
13 reviewing an alien detention order[.]”); *Parra v. Perryman*, 172 F.3d 954, 957
14 (7th Cir. 1999) (1252(g) did not apply to a “claim concern[ing] detention”); *J.R. v.*
15 *Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June
16 30, 2025) (1252(g) did not apply to claims that ICE was “failing to carry out non-
17 discretionary statutory duties and provide due process”); *D.V.D. v. U.S. Dep’t of*
18 *Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (§ 1252(g) did not
19 bar review of “the purely legal question of whether the Constitution and relevant
20 statutes require notice and an opportunity to be heard prior to removal of an alien
21 to a third country”).

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

26 **II. Mr. Izquierdo Matos’s claims succeed on the merits.**

27 This Court need not speculate about whether Mr. Izquierdo Matos may
28 succeed on the merits. Because the government’s evidence is insufficient to

1 justify Mr. Izquierdo Matos’s detention, his petition should be granted outright, or
2 the Court should at least release him on a preliminary injunction pending further
3 briefing.

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

7 First, the government provides no evidence that Mr. Izquierdo Matos will
8 likely be removed to Cuba or another country, let alone in the reasonably
9 foreseeable future.

10 **1. The government cites no authority for the proposition that**
11 **Mr. Izquierdo Matos has not satisfied the six-month**
12 ***Zadvydas* grace period.**

13 The six-month grace period ended six months after Mr. Izquierdo Matos’s
14 2008 order of removal. *See* Habeas Petition, Doc. 1 at 9-10. But the government
15 appears to contend that the six-month grace period starts over every time ICE
16 decides to re-detain someone. Dkt. 9 at 7.² “Courts . . . broadly agree” that this is
17 not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15,
18 2019), *report and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov.
19 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at
20 *6 (N.D. Cal. Apr. 19, 2018) (collecting cases); *Nguyen v. Scott*, No. 2:25-CV-
21 01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025). In fact, District
22 Judge Battaglia noted that in federal courts across the country, who have found
23 that there is no restarting of the clock, are “motivated, in part, by a concern that
24 the federal government could otherwise detain noncitizens indefinitely by
25 continuously releasing and re-detaining them.” *Phan v. Warden of Otay Mesa*
26 *Det. Facility*, No. 25-CV-02369-AJB-BLM, 2025 WL 3141205, at *3 (S.D. Cal.
27 Nov. 10, 2025). The government cites no case law to the contrary.

28 ² ICE detained Mr. Izquierdo-Mato for over three months after his order of
removal. Doc. 9-1 at 2, ¶¶ 4–5. He has now been in immigration custody for over
four additional months. *Id.* at ¶ 8.

1 The six-month grace period has therefore ended, and so—contrary to the
2 government’s claims—Mr. Izquierdo Matos need not rebut the presumptively
3 reasonable period of detention.

4 **2. The government provides no evidence to support a**
5 **“significant likelihood of removal” to Cuba.**

6 Because the six-month grace period has passed, this court moves on to the
7 burden-shifting framework.

8 The burden then shifts to the government to prove that there is a
9 “significant likelihood of removal in the reasonably foreseeable future.”
10 *Zadvydas*, 533 U.S. at 701. That standard has a success element (“significant
11 likelihood of removal”) and a timing element (“in the reasonably foreseeable
12 future”). The government meets neither.

13 As an initial matter, the government has not shown that Mr. Izquierdo
14 Matos’s removal is “significant[ly] like[ly].” *Zadvydas*, 533 U.S. at 701. The
15 evidence presented by the government is that Mr. Izquierdo Matos cannot be
16 removed to Cuba. The government is making efforts to remove him to a third
17 country. Yet, they have not identified a country or how long it will take to remove
18 him. Courts have “demanded an individualized analysis” of why *this* person—
19 Mr. Izquierdo Matos —will likely be removed. *Nguyen*, 2025 WL 2419288, at
20 *17 (citing *Nguyen*, 2025 WL 1725791, at *4). Because “[t]he government has
21 not provided any evidence of [a third country’s] eligibility criteria or why it
22 believes *Petitioner* now meets it,” the government’s evidence is insufficient. *Id.* at
23 *18 (emphasis added).

24 Moreover, even if ICE had submitted a request for travel document for a
25 third country—and, to date, it has not —good faith efforts to secure a travel
26 document do not themselves satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas*
27 appealed a “Fifth Circuit h[olding] [that] [the petitioner’s] continued detention
28 [was] lawful as long as good faith efforts to effectuate deportation continue and

1 [the petitioner] failed to show that deportation will prove impossible.” 533 U.S. at
2 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit’s
3 good-faith-efforts standard “demand[ed] more than our reading of the statute can
4 bear.” *Id.*

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

14 Here, then, a mere “assertion of good-faith efforts to secure removal [] does
15 not make removal likely in the reasonably foreseeable future.” *Gilali v. Warden of*
16 *McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15,
17 2019). Many courts have agreed that requesting travel documents does not itself
18 make removal reasonably likely. *See, e.g., Andreatyan v. Gonzales*, 446 F. Supp.
19 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner’s case
20 was “still under review and pending a decision” did not meet respondents’
21 burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D.
22 Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205
23 (D. Ariz. Sept. 20, 2011) (“Repeated statements from the Bangladesh Consulate
24 that the travel document request is pending does not provide any insight as to
25 when, or if, that request will be fulfilled.”); *Khader v. Holder*, 843 F. Supp. 2d
26 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document
27 request, where “[t]he government offers nothing to suggest when an answer might
28 be forthcoming or why there is reason to believe that he will not be denied travel

1 documents”); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1
2 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document
3 request). That includes Judge Robinson’s recent ruling. *See supra*, Introduction
4 (explaining the *Rebenok* ruling).

5 Finally, the government appears to argue that Mr. Izquierdo Matos’s
6 continued detention is appropriate because he “refused to cooperate” by not
7 agreeing to be removed to a third country, Mexico. Doc. 9 at 8. The government’s
8 Return suggests that the government may continue to detain when the petitioner
9 fails to refuses to cooperate. *Id.* (citing *Diouf v. Mukasey*, 542 F.3d 1222, 1233
10 (9th Cir. 2008)). But, continued detention under § 1231(a)(1)(C) “pertains only to
11 intentionally obstructionist, bad faith tactics that are designed to frustrate the
12 government’s attempts to effectuate a removal order” *Diouf*, 542 F.3d at
13 1232 (emphasis added); *accord Prieto-Romero v. Clark*, 534 F.3d 1053, 1061 (9th
14 Cir. 2008) (“We have previously held that an alien engages in [noncompliant]
15 behavior when he willfully refuses to cooperate with the government in
16 processing his deportation papers.”). In other words, the obstruction must be (1)
17 in bad faith, and (2) designed to obstruct the present removal.

18 Here, there is no evidence whatsoever that Mr. Izquierdo Matos was acting
19 in bad faith and has obstructed his removal. In fact, Mexico will accept third-
20 country deportees “only if [they] would willingly go to Mexico.” *See* Exhibit C
21 (Declaration of Officer Martin Parsons, in *Rios v. Noem*, No. 25-CV-2866-JES
22 (S.D. Cal.)) ¶ 11. Mr. Izquierdo Mato simply stated that he did not want to go.
23 “[P]etitioner’s simple and honest explanation that he did not want to return to a
24 country to which he had no ties, without any accompanying affirmative lack of
25 cooperation, is not a refusal to cooperate that supports an extension of detention.”
26 *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 53 (D.D.C. 2002).³ “Respondents

27 _____
28 ³ Furthermore, from the record, it is unclear what notice, if any, Mr. Izquierdo-
Matos received about ICE’s attempt to remove him to Mexico.

1 cite no case law to support their view that petitioner’s truthful (and somewhat
2 self-evident) statement constitutes a lack of cooperation or failure to assist in his
3 removal under 8 U.S.C. § 1231(a)(1)(C).” *Id.* at 51.

4 **3. The government provides no evidence to support that any**
5 **such removal will occur “in the reasonably foreseeable**
6 **future.”**

7 Additionally, even if ICE will eventually remove Mr. Izquierdo Matos, the
8 government provides zero evidence that removal will happen “in the reasonably
9 foreseeable future.” *Zadvydas*, 533 U.S. at 701. DO Vera provides no timetable
10 for how long travel document requests like his typically take—no statistics, no
11 estimations, no anecdotes, no nothing.

12 That is fatal. “[D]etention may not be justified on the basis that removal to
13 a particular country is likely *at some point* in the future; *Zadvydas* permits
14 continued detention only insofar as removal is likely in the *reasonably*
15 *foreseeable* future.” *Hassoun*, 2019 WL 78984, at *6. “The government’s active
16 efforts to obtain travel documents from the Embassy are not enough to
17 demonstrate a likelihood of removal in the reasonably foreseeable future where
18 the record before the Court contains no information to suggest a timeline on
19 which such documents will actually be issued.” *Rual v. Barr*, No. 6:20-CV-06215
20 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). “[I]f DHS has no idea
21 of when it might reasonably expect [Mr. Izquierdo Matos] to be repatriated, this
22 Court certainly cannot conclude that his removal is likely to occur—or even that it
23 *might* occur—in the reasonably foreseeable future.” *Singh v. Whitaker*, 362 F.
24 Supp. 3d 93, 102 (W.D.N.Y. 2019).

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

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

12 In sum, then, there could be “some possibility that [a country] will accept
13 Petitioner at some point. But that is not the same as a significant likelihood that he
14 will be accepted in the reasonably foreseeable future.” *Nguyen*, 2025 WL
15 2419288, at *16. Mr. Izquierdo Matos therefore succeeds under *Zadvydas*, too.

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

19 The government provides no evidence that ICE complied with 8 C.F.R.
20 §§ 241.4, 241.13. The government does not deny that these regulations apply to
21 Mr. Izquierdo Matos or that Mr. Izquierdo Matos may challenge them in this
22 habeas case. *See* Doc. 10 at 5-9. In fact, the Notice of Revocation given to
23 Mr. Izquierdo Matos states that his release was revoked under 8 C.F.R. § 241.4
24 and 8 C.F.R. § 241.13. Doc. 9-2 at 15-18. The regulations have two parts: the
25 reasons for the revocation removal and the procedures for revocation. The
26 government implies that ICE complied with these regulations. *Id.* ICE did not.

27 **1. ICE did not have a reason for revocation.**

28 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

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

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

17 Here, similarly, the government provides no documented, pre-arrest
18 determination that release should be revoked; it only references an arrest warrant
19 stating that Mr. Izquierdo Matos is removable. Doc. 9-2 at 3–10. The I-213
20 confirms that his arrest was premised entirely on his status as a person who had a
21 final order of removal—not a determination that release should be revoked due to
22 changed circumstances making removal significantly likely. Doc. 9-2 at 3–10.

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

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

9 Here, the evidence is even weaker. DO Vera’s declaration reinforces the
10 fact that at the time Mr. Izquierdo Matos was re-detained, despite any information
11 on the significant likelihood that he may be removed in the reasonably foreseeable
12 future. After the re-detention, ICE confirmed that Cuba continued to not accept
13 Mr. Izquierdo Matos. Doc. 9-1 at 10. Following Cuba’s rejection, ICE is now
14 trying to figure out what it will do with Mr. Izquierdo Matos. It tried Mexico and
15 is now exploring other unidentified third countries. *Id.* at ¶¶ 10–15. But no
16 evidence was presented that any efforts were made prior to Mr. Izquierdo Matos’s
17 detention. There is simply no explanation or any evidence showing why a
18 significant likelihood that Mr. Izquierdo Matos can be removed in the reasonably
19 foreseeable future. *See* Doc. 9-1. There is therefore “no evidence that DHS has
20 made such a determination as to the revocation of Petitioner’s release even after
21 the fact of arrest, up to the present day.” *Rokhfirooz*, 2025 WL 2646165, at *4.

22 Additionally, even if ICE *had* revoked release because of a significant
23 likelihood of removal, that is not enough. The regulation requires that the
24 likelihood of removal arise out of “changed circumstances.” 8 C.F.R.
25 § 241.13(i)(2). Here, nothing had changed, Cuba continues to deny repatriation of
26 Mr. Izquierdo Matos. DO Vera identifies no changed circumstances, nor does he
27 assert that ICE premised re-detention on any such changes. And “Respondents
28 have not provided any details about why a travel document could not be obtained

1 in the past, nor have they attempted to show why obtaining a travel document is
2 more likely this time around.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP,
3 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025). Respondents have announced
4 only their “intent to eventually complete a travel document request for Petitioner,”
5 which “does not constitute a changed circumstance.” *Id.*

6 **2. ICE did not follow revocation procedures.**

7 Second, ICE did not comply with the *revocation procedures*. Subsection
8 241.13(i)(3) requires that the alien “will be *notified of the reasons for revocation*
9 of his or her release.” (emphasis added). ICE did not provide Mr. Izquierdo-Matos
10 notice under 8 C.F.R. § 241.13 of the reasons for the revocation of his release.
11 The Notice of Revocation of Release produced by the government in its Return
12 simply states that this revocation was “based on a review of your official alien file
13 and a determination that there are changed circumstances in your case.” Dkt. 9-2
14 at 15 But “[s]imply to say that circumstances had changed or there was a
15 significant likelihood of removal in the foreseeable future is not enough.” *Sarail*
16 *A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025).
17 Rather, “Petitioner must be told *what* circumstances had changed or *why* there
18 was now a significant likelihood of removal in order to meaningfully respond to
19 the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3).”
20 *Id.* By “identif[y]ing the category—‘changed circumstances’—but fail[ing] to
21 notify [Petitioner] of the reason—the circumstances that changed and created a
22 significant likelihood of removal in the reasonably foreseeable future—[ICE]
23 failed to follow the relevant regulation.” *Id.*

24 Sections 241.4(l) and 241.13(i)(3) also mandate additional procedures:
25 “[B]oth require ICE to provide ‘an initial informal interview promptly ... to afford
26 the alien an opportunity to respond to the reasons for revocation.’” *Rombot v.*
27 *Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (quoting 8 C.F.R.
28 §§ 241.4(l)(2), 241.13(i)(3)). Mr. Izquierdo Matos was not provided with a

1 prompt interview. He was offered an interview four months after he was re-
2 detained. Doc. 9-2 at 18. That is not prompt. *See M.S.L. v. Bostock*, Civ. No.
3 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025) (finding an
4 informal interview given 27 days after petitioner was taken into ICE custody
5 “cannot reasonably be construed as . . . prompt” and granting petition); *Yang v.*
6 *Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal.
7 Aug. 20, 2025) (finding “the failure to provide an informal interview during that
8 lengthy [two-month] period of time renders petitioner’s re-detention unlawful”);
9 *Sayvongsa v. Noem*, Case No.: 3:25-cv-02867-AGS-DEB (S.D. Cal. Oct. 31,
10 2025), ECF No. 10 (granting petition where petitioner ICE failed to comply with
11 all aspects of the regulations did not receive informal interview for three weeks
12 after being re-detained).

13 The government’s two remaining arguments on Mr. Izquierdo Matos’s
14 regulatory claims—that Mr. Izquierdo Matos must show prejudice, and that the
15 regulations do not implement due process and protected liberty interests—also
16 fail.

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

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

7 And Mr. Izquierdo Matos could “present plausible scenarios in which the
8 outcome of the proceedings would have been different if a more elaborate process
9 were provided.” *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir.
10 2007) (cleaned up). He would have had a very strong argument against re-
11 detention had ICE given him notice and an opportunity to respond. Importantly,
12 ICE was fully capable of trying to get a travel document while Mr. Izquierdo
13 Matos remained at liberty.

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

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

27 “When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it
28 explained that the regulation was intended to provide aliens procedural due

1 process, stating that § 241.4 ‘has the procedural mechanisms that . . . courts have
2 sustained against due process challenges.’” *Jimenez v. Cronen*, 317 F. Supp. 3d
3 626, 641 (D. Mass. 2018) (quoting *Detention of Aliens Ordered Removed*, 65 FR
4 80281-01). And “[s]ection 241.13(i) includes provisions modeled on § 241.4(1) to
5 govern determinations to take an alien back into custody,” *Continued Detention of*
6 *Aliens Subject to Final Orders of Removal*, 66 FR 56967-01, meaning that it
7 addresses the same due process concerns as 241.4(I). “The procedures in § 241.4”
8 and § 241.13 therefore “are not meant merely to facilitate internal agency
9 housekeeping, but rather afford important and imperative procedural safeguards to
10 detainees.” *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R.
11 §§ 241.4, 241.13 are “intended to provide due process to individuals in
12 [Ms. Martinez’s] position,” *Santamaria Orellana v. Baker*, No. CV 25-1788-
13 TDC, 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable.

14 Because the government utterly failed to comply with each requirement of
15 § 241.4 and § 241.13 when revoking Mr. Izquierdo Matos’s release, it should,
16 “[l]ike many other district courts within this circuit,” “find[] that these failures
17 constitute a violation of Petitioner’s due process rights and justif[y] his release.”
18 *Bui v. Noem*, No. 25-cv-2111, 2025 WL 2988356, *5 (S.D. Cal. Oct. 23, 2025).⁴

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22 ⁴ It also appears that ICE may have violated its practice of providing notice of
23 removal to a third country. Mr. Izquierdo Matos states that he was taken to the
24 US/Mexico border without knowing that he was being removed to Mexico. Doc. 1
25 at 27, ¶ 8. DO Vera declaration states that Mr. Izquierdo Matos received notice.
26 Doc. 9-1 at 2, ¶ 13. DO Vera does not state who gave that notice, when it was
27 given, or how it was given. Doc. 9-1 at 2, ¶ 13. No documentary evidence has
28 been provided regarding the notice. In a recent case with similar facts, a
deportation officer stated that it is ICE practice to provide notice of third party
removal but such a notice could not be found in the petitioner’s file. *Rios v. Noem*,
25-cv-02866-JES-VET, Doc. 15 at 3 (Nov. 11, 2025). District Judge Simmons
determined that “Respondents acted arbitrarily and capriciously in attempting to
remove Respondent to a third country without notice” in violation of the
Administrative Procedure Act. *Id.* at 7–8.

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

4 DO Vera’s states that ICE followed the mandates of 8 U.S.C. § 1231(b)(2)
5 by first seeking travel documents from Cuba. Doc. 9-1 at ¶ 2.

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

9 The government does not address Mr. Izquierdo Matos’s argument that
10 ICE’s existing third-country removal policy—to provide between zero and 24
11 hours’ notice before removing a noncitizen—violates due process.

12 Instead, it briefly argues that an injunction ordering the government to
13 provide notice and an opportunity to be heard before removal to a third country
14 would be reversed under the Supreme Court’s stay in *Dep’t of Homeland Sec. v.*
15 *D.V.D.*, 145 S. Ct. 2153 (2025). Doc. 8 at 8.

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

1 potentially foreclose any relief that [s]he could be entitled to as part of the *D.V.D.*
2 class if he is removed before the class-wide claims are resolved.” *Sagastizado v.*
3 *Noem*, __ F. Supp. 3d __, 2025 WL 2957002, *8 (S.D. Tex. Oct. 2, 2025).

4 The government has no other argument on the merits against this Court’s
5 issuance of a temporary restraining order and injunctive relief against third-
6 country removal without adequate notice and an opportunity to be heard. In a very
7 similar case, District Judge Bashant recently enjoined Respondents from
8 removing the petition “to any country other than Cuba without providing
9 Petitioner with notice and an opportunity to be heard.” *Rodriguez-Gutierrez v.*
10 *Noem*, 25-cv-02726-BAS-SBC, Doc. 14, (S.D. Cal. Nov. 7, 2025). For the
11 reasons identified in Mr. Izquierdo Matos’s petition and motion for temporary
12 relief, this Court should enjoin Respondents from removing Mr. Izquierdo Matos
13 to a third country absent the process identified in his prayer for relief.

14 **III. The remaining preliminary injunction factors decidedly favor**
15 **Mr. Izquierdo Matos.**

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

19 On the irreparable harm prong, “[i]t is well established that the deprivation
20 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres*
21 *v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government’s
22 arguments,⁵ the Ninth Circuit has specifically recognized the “irreparable harms
23 imposed on anyone subject to immigration detention.” *Hernandez v. Sessions*, 872

24 _____
25 ⁵ The government cites to case law to support the position that illegal immigration
26 detention is not irreparable harm. Doc. 10 at 10. The immigrant there was actively
27 appealing to the BIA, but wanted a federal court to intervene before the appeal
28 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.

1 F.3d 976, 995 (9th Cir. 2017). “Freedom from imprisonment—from government
2 custody, detention, or other forms of physical restraint—lies at the heart of the
3 liberty” that the Fifth Amendment protects. *Zadvydas*, 533 U.S. at 690.

4 Furthermore, “[i]t is beyond dispute that Petitioner would face irreparable harm
5 from removal to a third country.” *Nguyen*, 2025 WL 2419288, at *26.

6 On the balance-of-equities/public-interest prong, the government is correct
7 that there is a “public interest in prompt execution of removal orders.” *Nken v.*
8 *Holder*, 556 U.S. 418, 436 (2009). But that interest is diminished here because the
9 government likely cannot remove Mr. Izquierdo Matos in the reasonably
10 foreseeable future. Even if it could, it is equally “well-established that ‘our system
11 does not permit agencies to act unlawfully even in pursuit of desirable ends.’”
12 *Nguyen*, 2025 WL 2419288, at *28 (quoting *Ala. Ass’n of Realtors v. Dep’t of*
13 *Health & Hum. Servs.*, 594 U.S. 758, 766 (2021)). It also “would not be equitable
14 or in the public’s interest to allow the [government] to violate the requirements of
15 federal law” with respect to detention and re-detention, *Arizona Dream Act Coal.*
16 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (cleaned up), or to imperil the
17 “public interest in preventing aliens from being wrongfully removed,” *Nken*, 556
18 U.S. 418, 436. *See, e.g., Sun*, 2025 WL 2800037 at *4 (explaining this and
19 holding that the “third and fourth *Winter* factors support injunctive relief”
20 enjoining the petitioner’s improper revocation of immigration supervision);
21 *Delkash*, 2025 WL 2683988 at *6 (enjoining the government from re-detaining or
22 removing an Iranian national to a third country without notice and an opportunity
23 to be heard).

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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. Izquierdo Matos immediate release, and (2) prohibit the government from removing Mr. Izquierdo Matos 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,

Dated: November 14, 2025

s/ Zandra L. Lopez

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