ZANDRA L. LOPEZ
California State Bar No. 216567
FEDERAL DEFENDERS OF SAN DIEGO, INC.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
Zandra_Lopez@fd.org

Attorneys for Mr. Arostegui-Campo

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FIDEL EDUARDO AROSTEGUI-CAMPO,

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.

CASE NO.: 25-cv-3064-JLS

Traverse

TABLE OF CONTENTS

FEAR OF BEING REMOVED TO MEXICO

Mr. Arostegui-Campo asserts he fears being removed to Mexico.

INTRODUCTION

The government's return and opposition includes the following evidence:

- A declaration referencing previous immigration detention periods that totaled 4.5 years. Doc. 9-7, Declaration of Daniel Negrin, ¶¶ 5-8.
- A declaration stating that on February 6, 2004 after being "unable to repatriate" Mr. Arostegui-Campo to Cuba, ICE placed him on an order of supervision; Doc. 9-7, ¶ 8.
- A February 6, 2004 decision to release Mr. Arostegui-Campo informing him that if ICE were to be "successful in obtaining [travel] documents, [he would] be required to surrender to BICE for removal" and Mr. Arostegui-Campo would "be given an opportunity for an orderly departure." Doc. 9-6;
- A declaration stating that on October 21, 2025, when ICE re-detained Mr. Arostegui-Campo, an officer provided Mr. Arostegui-Campo a copy of the notice of revocation and "interviewed Petitioner about his legal status to remain in the United States. During that interview, [the officer] informed Petitioner that his Order of Supervision was being revoked and he was being detained to execute his final order of removal." Doc. 9-8, Declaration of Michael Richardson, ¶¶ 3-4.
- An October 21, 2025 notice of revocation of release alleging that the sole changed circumstance warranting revocation of his supervision was "a review of your official alien file," Doc. 9-4;
- A declaration stating that on October 31, Cuba did not accept Mr. Arostegui-Campo for repatriation; Doc. 9-7, ¶10.
- A declaration stating that on November 14, while ICE was seeking the government of Mexico's approval to accept Mr. Arostegui-Campo for third country resettlement, ICE paused its efforts after learning of this Court's order

that Mr. Arostegui-Campo shall not be removed from the United States. Doc. 9-7, ¶ 13.

- A November 18, 2025 notice of removal to Mexico provided to Mr. Arostegui-Campo. Doc. 9-5;[1]
- A declaration stating the Mexican government notifies ICE of acceptance within a day and removal to Mexico happens imminently. Doc. 9-7, ¶¶ 14, 17.

This evidence submitted by government does not rebut Mr. Arostegui-Campo's first claim that he was re-detained in violation of his regulatory and due process rights to be notified of "the reasons for revocation." § 241.13(i)(2)(iii), 241.13(*l*)(1). "[A] reason is what makes an action intelligible, accounted for, or explained"—"the specific facts supporting ICE's decision." *Sarail A. v. Bondi*, __ F. Supp. __, 2025 WL 2533673, *5–*6 (D. Minn. 2025). Nor do they rebut Mr. Arostegui-Campo's claim that ICE never made a determination before his re-detention that "there is a significant likelihood that [he] may be removed in the reasonably foreseeable future," § 241.13(i)(2), or his claim that he was not "afford[ed] . . . an opportunity to respond to the reasons for revocation," *id.* §§ 241.4(*l*)(1), 241.13(i)(3).

Nor does the government rebut Mr. Arostegui-Campo's claim that there is not an individualized, significant likelihood of his removal in the foreseeable future. ICE tried and failed to obtain a travel document for Mr. Arostegui-Campo during the last 38 years. The only evidence the government presents now is that it the United States has an agreement with Mexico to accept people from Cuba for removal. Doc. 9-7, ¶ 12. ICE states it will seek approval from Mexico to remove

[1] Hours before the notice of intent to remove to Mexico, on November 17, 2025, ICE gave Mr. Arostegui-Campo the same notice but that it intended to remove him to Cuba. *See* Exhibit C, Notice of Removal.

Mr. Arostegui-Campo to Mexico. *Id.* However, under the agreement between the two countries, Mexico will only agree to accept non-Mexicans if they "willingly" agree to be removed to Mexico. *See* Exhibit D (Declaration of Officer Martin Parsons, in *Rios v. Noem*, No. 25-CV-2866-JES (S.D. Cal.)) ¶ 11. Mr. Arostegui-Campo fears being removed to Mexico. ICE also does nothing to address the fact that, should deportation to Mexico be obligatory, Mr. Arostegui-Campo would still be entitled to due process procedures prior to removal to assert his fear claims.

Third, the government does not dispute the merits of ICE's third-country removal policy violates due process. It only claims that after the petition and motion was filed, ICE gave notice to Mr. Arostegui-Campo that it intended to remove him to Mexico and Mr. Arostegui-Campo did not spontaneously claim fear. The government does not address the fact that only hours prior, ICE told Mr. Arostegui-Campo they intended to remove him to Cuba. Regardless, Mr. Arostegui-Campo informs ICE now that he does have a fear of being removed to Mexico. ICE's efforts to remove him consistent with its current third country removal policy violates due process requiring this Court to enjoin Respondents.

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

ARGUMENT[2]

I. Mr. Arostegui-Campo's claims succeed on the merits.

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

[2] The government does not contest that this Court has jurisdiction to hear Mr. Arostegui-Campo's claims.

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

1. Mr. Arostegui-Campo did not receive notice of the reasons for his revocation or have an opportunity to contest those reasons.

The government did not comply with 8 C.F.R. §§ 241.4 and 241.13. For Mr. Arostegui-Campo, those regulations permit his re-detention only if ICE: (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," § 241.13(i)(2); (2) makes that finding "on account of changed circumstances," *id.*; (3) "upon revocation," "notifie[s]" the noncitizen "of the reasons for revocation of his or her release," § 241.13(i)(2)(iii), 241.4(*l*)(1); and (4) "affords the [person] an opportunity to respond to the reasons for revocation," *id.*

As Mr. Arostegui-Campo explained in his petition and motion, ICE did not comply with these requirements.

First, the evidence before this Court indicates ICE did not determine that there were "changed circumstances" such that, unlike in 2004 (date of order of supervision), there is now "a significant likelihood that [Mr. Arostegui-Campo] may be removed in the reasonably foreseeable future." § 241.13(i)(2). ICE's internal record for Mr. Arostegui-Campo, its I-213, indicates it revoked his detention solely because "[d]atabase searches, and statements made by Arostegui during his interview, it was determined that AROSTEGUI has a final order of removal . . . on January 29, 1987." Doc. 9-2. Indeed, there is no evidence that ICE began the process of requesting travel documents from Cuba for Arostegui-Campo until after he was re-detained. And only a few days ago, ICE provided Mr. Arostegui-Campo notice that they were still intending to remove him to Cuba. Exhibit C.

Next, upon Mr. Arostegui-Campo's revocation, ICE did not notify him of "the reasons for revocation of his . . . release." § 241.13(i)(2)(iii); § 241.4(*l*)(1).

As he explained in his declaration, the only explanation provided for his re-detention was that it was "due to the administration." Doc. 1 at 26, ¶ 7. His declaration is consistent with the written notification he received that day. It informed him only that "your order of supervision has been revoked . . . based on a review of your official alien file and a determination that there are changed circumstances in your case." Doc. 9-4.

As Judge Montenegro recently explained as to an identically worded written revocation notification, "ICE's conclusory explanations for revoking Petitioner's release 'did not offer him adequate notice of the basis for the revocation decision such that he could meaningfully respond at the post-detention informal interview.'" *Raskhamdee v. Noem*, No.25-cv-2816-RBM-DEB, 2025 WL 3102037, *4 (S.D. Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No. 25-cv-1079-JLT-EPG, 2025 WL 2581575, *8 (E.D. Cal. Sept. 5, 2025)); *accord Quoc Anh Nguyen v. Noem*, No. 25-cv-2792-LL-VET, 2025 WL 3101979, *2 (S.D. Cal. Nov. 6, 2025) (holding that a similarly "bare-bones explanation does not contain reasons for the revocation of Petitioner's release" as to a pre-1995 Vietnamese immigrant). "Simply to say that circumstances had changed . . . is not enough. 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)." *Sarail A.*, __ F. Supp. 3d __, 2025 WL 2533673 at *10 (emphasis in original).

Finally, ICE did not "afford[] [Mr. Arostegui-Campo] an opportunity to respond to the reasons for revocation." 8 C.F.R. §§ 241.13(i)(3); 241.4(*l*)(1). "[W]hile an informal interview apparently occurred, Petitioner could not have responded to the reasons for revocation, because they were not given." *Sarail A.*, __ F. Supp. 3d __, 2025 WL 2533673 at *10. Instead, Mr. Arostegui-Campo's informal interview apparently revolved around the unchanged circumstances that he had been ordered removed to Cuba almost 40 years ago, Doc 9-2 (I-213), 9-8

(Richardson Dec.); without reasons for why ICE thought his removal was now likely in the foreseeable future, the only fact discussed was the order of removal. In fact, it appears that, even if ICE had afforded Mr. Arostegui-Campo an opportunity to respond, it would not have "evaluat[ed] . . . any contested facts relevant to the revocation" regarding the likelihood he may be removed and "determine[ed] whether the facts as determined warrant revocation and further denial of release." 8 C.F.R. § 241.13(i)(3). Doc. 9-8, ¶ 4. Whether Mr. Arostegui-Campo had been able to rebut the reasons ICE may or may not have had for deciding he was significantly likely to be removed in the reasonably foreseeable future, ICE apparently would have detained him regardless, "as he has a final order." Doc. 9-2 (I-213).

In the last two months, multiple judges from this district have ordered release for failure to follow these regulations for similar reasons. *See, e.g.*, *Soryadvongsa*, 2025 WL 3125821; *Ghafouri v. Noem*, No. 25-cv-2675-RBM, ECF No. 11 (S.D. Cal. Nov. 4, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 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); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 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). This Court should do the same.

2. Mr. Arostegui-Campo need not show prejudice, although he can, because the regulations implement the core due process guarantees of notice and an opportunity to be heard while being detained.

The government's two remaining arguments on Mr. Arostegui-Campo's regulatory claims—that Mr. Arostegui-Campo must show prejudice, and that the

regulations do not implement due process and protected liberty interests—also fail.

First, Mr. Arostegui-Campo need not show prejudice from these regulatory claims. "[T]he 'norm' when ICE fails to conduct an 'informal interview promptly' is that 'courts across the country have ordered the release of individuals stemming from ICE's illegal detention." *Soryadvongsa*, 2025 WL 3125821 at *3 (quoting *KEO v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, *6–*7 (W.D. Ky. Sept. 4, 2025)). As Judge Schopler recently reasoned, "Especially in the context of civil detentions—when constitutional safeguards are at their zenith—this Court is unwilling to import such a prejudice analysis into regulations or binding caselaw that don't mention it." *Id.*

To flesh this point out, "[t]here 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. Arostegui-Campo 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, in February 2004, ICE told Mr. Arostegui-Campo that ICE "will continue to make efforts to obtain your travel documents" while he remained in liberty. Doc. 9-6. ICE promised that if they were to be "successful in obtaining [travel] documents, [he would] be required to surrender to BICE for removal" and Mr. Arostegui-Campo would "be given an opportunity for an orderly departure." *Id.* Re-detaining him is therefore unnecessary. Mr. Arostegui-Campo deserved a chance to make that case upon his re-detention. Because ICE did not make any of the proper findings, let alone give Mr. Arostegui-Campo timely notice and a chance to contest them, he must be released.

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. Arostegui-Campo'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 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(1) 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. Arostegui-Campo'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 failed to comply with core requirements of § 241.4 and § 241.13 when revoking Mr. Arostegui-Campo'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] his release." *Bui v. Warden of Otay Mesa Detention Facility*, No. 25-cv-2111-JES, 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. Arostegui-Campo 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. Arostegui-Campo has not satisfied the six-month *Zadvydas* grace period.

The six-month grace period ended six months after Mr. Arostegui-Campo's 1987 order of removal. *See* Doc. 1 at 9-10. What's more, prior to 2004, Mr.

Arostegui-Campo spent an aggregate of approximately 4.5 years in immigration detention.[3] Four of those years were in the 1990's where he was sent to a Nevada state prison and a Louisiana county jail. Doc. 1 at 26, ¶ 3. It appears, however, that the government mistakenly assumes that because DHS/ICE was transferring Mr. Arostegui-Campo to different state prisons and county jails during that time, he must have been imprisoned for "various [criminal] offenses he committed." Doc. 9 at 4. In fact, prior to *Zadvydas*, it was not uncommon for immigration indefinite detainees to be held in state and county jails nationwide. Lourdes M. Guiribitey, *Criminal Aliens Facing Indefinite Detention Under Ins: An Analysis of the Review Process*, 55 U. Miami L. Rev. 275, 295 (2001); Alexandra E. Chopin, *Disappearing Due Process: The Case for Indefinitely Detained Permanent Residents' Retention of Their Constitutional Entitlement Following A Deportation Order*, 49 Emory L.J. 1261, 1262 (2000). Here, that makes sense since Mr. Arostegui-Campo has no criminal convictions in either Nevada and Louisiana where he was detained for an extended amount of time. Doc. 9-3.

The government's argument that the six-month grace period starts over every time ICE decides to re-detain someone is without merit. Dkt. 9 at 7. "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). In fact, District Judge Battaglia noted that in federal courts across the country, who have found that there is no restarting of the clock, are "motivated, in part, by a concern that the federal government could

[3] According to the deportation officer's declaration, Mr. Arostegui-Campo was detained for (1) three months between October 27, 1993 to January 26, 1994; (2) 46 months from November 30, 1994 to September 10, 1998; and (3) five months from September 11, 2003 to February 6, 2004). Doc. 9-7 ¶ 6-8.

otherwise detain noncitizens indefinitely by continuously releasing and re-detaining them." *Phan v. Warden of Otay Mesa Det. Facility*, No. 25-CV-02369-AJB-BLM, 2025 WL 3141205, at *3 (S.D. Cal. Nov. 10, 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. Arostegui-Campo need not rebut the presumptively reasonable period of detention.

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

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

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. Arostegui-Campo's removal is "significant[ly] like[ly]." *Zadvydas*, 533 U.S. at 701. The evidence presented by the government is that Mr. Arostegui-Campo cannot be removed to Cuba. Doc. 9-7, ¶ 11. The government is making efforts to remove him to Mexico. At this time, it is unknown whether Mexico will in fact accept Mr. Arostegui-Campo for removal. *Id.* at ¶¶16-17.

Moreover, Mexico will accept third-country deportees "only if [they] would willingly go to Mexico." *See* Exhibit D (Declaration of Officer Martin Parsons, in Rios v. Noem, No. 25-CV-2866-JES (S.D. Cal.)) ¶ 11. Based on the July 9, 2025 Guidance Regarding Third Country Removals, ICE officers "will not affirmatively ask whether the alien is afraid of being removed to the country of removal." Doc. 1 at 30, Ex. B (emphasis in original). It is likely that ICE officers

are also instructed not to advise detainees that removal to Mexico is conditioned on detainees "willingly" agreeing to be removed. Thus, Mr. Arostegui-Campo asserts that he fears removal to Mexico.

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. Arostegui-Campo, the government provides zero evidence that removal will happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Mexico has not accepted Mr. Arostegui-Campo. And DO Negrin's declaration does not account for Mr. Arostegui-Campo not being "willing" to go to Mexico and asserting a fear claim. The government does not provide the timing for a back up plan.

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. Arostegui-Campo] 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. Arostegui-Campo therefore succeeds under *Zadvydas*, too.

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

DO Negrin states that ICE is seeking removal to Mexico after Cuba denied

acceptance. Doc. 9-7 at ¶ 11, 12. As of a few days ago, ICE, however, informed Mr. Arostegui-Campo that they are seeking to remove to both Cuba and Mexico. Doc. 9-5; Exhibit C.

Thus, it is unclear whether the mandates of 8 U.S.C. § 1231(b)(2) have been followed.

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. Arostegui-Campo'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. It simply claims that ICE notified Mr. Arostegui-Campo of its intent to remove him to Mexico on November 18. Doc. 9 at 5-6. That notice is insufficient because it was contrary to the notice given only hours prior that ICE intended to remove him to Cuba. Exhibit C.

Moreover, ICE's current actions consistent with the July 9 Memo where notice is provided without asking the immigrant if he has fear of removal and seeking to remove in a matter of a few days, is inconsistent with Ninth Circuit due process precedent. *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *18–19 (W.D. Wash. Aug. 21, 2025). Due process requires the government to give a noncitizen "sufficient notice of a country of deportation that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Id.* (quoting *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019)). This requirement flows directly from Ninth Circuit precedent holding that failure "to notify individuals who are subject to deportation that they have the right to apply … for withholding of deportation to the country to which they will be deported violates … the constitutional right to due process." *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (citing *Kossov v. I.N.S.*, 132 F.3d 405, 408–09 (7th Cir. 1998)). In

other words, "last minute orders of removal to a country may violate due process if an immigrant was not provided an opportunity to address his fear of persecution in that country." *Nguyen*, 2025 WL 2419288, at *18. (quoting *Najjar v. Lynch*, 630 Fed. App'x 724 (9th Cir. 2016)).

Here, not only was Mr. Arostegui-Campo never asked if he was afraid of being removed to Mexico or notified of his right to apply for fear-based protections, the policy provides that ICE could give him as little as a day or two to prepare for his interview with USCIS even after he affirmatively expressed a fear. "Applying for protection in withholding-only proceedings before an IJ would typically involve preparing witness testimony, documentation of country conditions, and expert reports supporting the claim to protection." *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *5 (W.D. Wash. Nov. 17, 2025). Giving "notice roughly 24 hours before removal"—as the policy allows—"devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." *Id.* (quoting *A.A.R.P. v. Trump*, 605 U.S. 91, 95 (2025)).

For the reasons identified in Mr. Arostegui-Campo's petition and motion for temporary relief, this Court should follow what other district courts have done and ENJOIN Respondents from removing Mr. Arostegui-Campo to a third country absent the process identified in his prayer for relief. *Rodriguez-Gutierrez v. Noem*, 25-cv-02726-BAS-SBC, Doc. 14, (S.D. Cal. Nov. 7, 2025) (enjoining Respondents from removing petitioner "to any country other than Cuba without providing Petitioner with notice and an opportunity to be heard."); *Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *13 (E.D. Cal. Sep. 18, 2025) (enjoining removal without giving petitioner "a minimum of ten days" to raise fear-based claims and "a minimum of fifteen days" after an adverse "reasonable fear" determination to move to reopen); *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *9 (C.D. Cal. June 25, 2025)

(same); *M.T.M. v. Andrews*, No. 2:25-CV-08208-SRM-PD, 2025 WL 2995053, at *2 (C.D. Cal. Sept. 24, 2025) (same).; *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *5 (same).

II. The remaining preliminary injunction factors decidedly favor Mr. Arostegui-Campo.

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. Arostegui-Campo 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,[4] 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. Arostegui-Campo in the reasonably foreseeable future. Even if it could, it is equally "well-established that 'our system

[4] 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.

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. Arostegui-Campo immediate release, and (2) prohibit the government from removing Mr. Arostegui-Campo 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 21, 2025

s/ Zandra L. Lopez

Zandra L. Lopez
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Arostegui-Campo
Email: zandra_lopez@fd.org