ORIGINAL

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[redacted]
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Pro Se[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MANUEL AVILA-HEBRA,

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.: '25CV3140 AGS BJW

Petition for Writ of Habeas Corpus

[28 U.S.C. § 2241]

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

INTRODUCTION

Manuel Avila-Hebra, who fled Cuba in 1995, was ordered removed from the United States in 1998. But he could not be physically removed to Cuba. Although there was a 2017 repatriation agreement with Cuba, the United States continued to categorize Cuba as uncooperative following that agreement. Mr. Avila-Hebra was released from immigration custody and placed on an order of supervision.

Since 1998, Mr. Avila-Hebra remained on supervision. He checked in with ICE every year without any arrests or missed check-ins. His next check-in would have been on January 6, 2026. But on September 28, 2025, while fishing, he was detained and handed over to ICE and placed in a detention center in Florida.

Mr. Avila-Hebra has had no information about whether ICE has sought a travel document or even begun the process of seeking his deportation to Cuba. On July 9, 2025, ICE adopted a new policy permitting removals to third countries with no notice, six hours' notice, or 24 hours' notice depending on the circumstances, providing no meaningful opportunity to make a fear-based claim against removal. Most pressingly, while ICE has a third-country deportation agreement with Mexico that the country will accept Cubans only if they "willingly" go, in practice, Mr. Avila-Hebra has not been given a choice. An officer told him he *had not choice* but to sign to be deported to Mexico, and he was never asked if he had a fear of being removed there. Mr. Avila-Hebra explained he was afraid, but because he was told he had no choice but to sign, he signed the paperwork. He did not do so voluntarily.

Mr. Avila-Hebra's detention violates his statutory and regulatory rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. His detention violates his statutory and regulatory rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. Courts in this district have agreed in similar circumstances as to each of his claims. Specifically:

(1) Regulatory and due process violations: Petitioner must be released because ICE's failure to follow its own regulations about notice and an opportunity to be heard violate the APA, its own regulations, and due process. *See, e.g.*, *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); *Ho v. Noem*, 25-cv-02453-BAS-BLM, ECF 11 (Oct. 10, 2025) (all either granting temporary restraining orders releasing noncitizens, or granting habeas petitions outright, due to ICE regulatory violations during recent re-detentions of released noncitizens previously ordered removed).

(2) Zadvydas violations: Petitioner must also be released under *Zadvydas* because—having proved unable to remove him in the past—the government cannot show that there is a "significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. *See, e.g.*, *Conchas-Valdez*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 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); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas petitions releasing noncitizens due to *Zadvydas* violations).

(3) Third-country removal statutory and due process violations: This Court should enjoin ICE from removing Petitioner to a third country without providing an opportunity to assert fear of persecution or torture before an immigration judge. *See, e.g.*, *Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van*

Tran v. Noem, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025); *Ho v. Noem*, 25-cv-02453-BAS-BLM, ECF 11 (Oct. 10, 2025) (all either granting temporary restraining orders or habeas petitions ordering the government to not remove petitioners to third countries pending litigation or reopening of their immigration cases).

This Court should grant this habeas petition and issue appropriate injunctive relief on all four grounds addressed below.

STATEMENT OF FACTS

I. Mr. Avila-Hebra is ordered removed, and is released on supervision for two decades until he walks into ICE for his annual check-in.

Mr. Avila-Hebra was born in Cuba in 1969 and entered the United States in 1995. Exh. A at ¶ 1. In 1998, an immigration judge ordered him removed to Cuba after he completed sentence relating to a marijuana offense. *Id.* at ¶ 2.[2] He was then placed on an order of supervision. *Id.* ¶ 3.

During the decades that Mr. Avila-Hebra has been on supervision, he did not have any new arrests or violations of his supervision. Exh. A at ¶ 3. He did not miss any of his appointments. *Id.* His next check-in was January 6, 2025. *Id.* at ¶ 4.

On September 28, 2025, he was detained by an agency called Wildlife while he was fishing on a canal in Florida. *Id.* at ¶ 5. Mr. Avila-Hebra had all his documents up-to-date and in order but he was detained anyway and handed over to ICE. *Id.* ICE placed him in a detention center called Alcatraz. *Id.* The was

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

detained there for 17 days. *Id.* He was taken to another detention center in another Florida for 21 days. *Id.*

There he was re-detained and eventually sent to the Otay Detention Center. *Id.* He has never given any formal paperwork explaining the reasons for his re-detention and he has not been given the chance to contest his re-detention with ICE. *Id.* at ¶¶ 5-7.

Early in October, an officer called Mr. Avila-Hebra out of his cell. *Id.* at ¶ 7. The officer did not explain to Mr. Avila-Hebra that, if he did not want to go to Mexico, he did not have to. *Id.* The officer did not ask if he feared going to Mexico. *Id.* He signed paperwork because he was told he did not have any other option. *Id.*

Mr. Avila-Hebra fears that he will be taken to the border and unwillingly deported to Mexico at any day. *Id.*

II. The repatriation agreement with Cuba allows it to use its discretion in accepting Cuban nationals that entered the United States prior to 2017 on a case-by-case basis.

Prior to 2017, there was no repatriation agreement between the United States and Cuba. *Clark v. Martinez*, 543 U.S. 371, 386 (2005). On January 12, 2017, the United States and Cuba signed a joint statement ("2017 Joint Statement") by which Cuba agreed to the repatriation of some Cuban nationals. *Cuba (17-112) – Joint Statement Concerning Normalization of Migration Procedures*, Jan. 12, 2017, available at https://www.state.gov/17-112/. The 2017 Joint Statement required Cuba to accept some Cuban nationals but allowed it to use its discretion to accept others on a case-by-case basis.

Specifically, under the agreement Cuba "shall receive back all Cuban nationals who after the signing" of the 2017 Joint Statement "found by the competent authorities of the United States to have tried to irregularly enter or remain in that country in violation of United States law." *Id.* at 2. The agreement

also stated that Cuba "shall accept individuals included in the list of 2,746 to be returned in accordance with the Joint Communiqué of December 14, 1984," who came to the United States in 1980 via the Port of Mariel. *Id.* Cuba is not required to accept a third group of Cuban Nationals. Under the 2017 Joint Statement, Cuba agrees to "consider and decide on a case-by-case basis the return of other Cuban nationals presently in the United States of America who before the signing of this Joint Statement had been found by the competent authorities of the United States to have tried to irregularly enter or remain in that country in violation of United States law." *Id.* Mr. Avila-Hebra falls into this last group of Cuban Nationals since he was found to "have tried to irregularly enter or remain in that country" prior to the 2017 Joint Statement.

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

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

Based on the facts of Mr. Avila-Hebra's individual case, it is evident that ICE has not obtained travel documents from Cuba. This is evident because ICE has had two and a half decades to obtain travel documents and has not done so. What's more, Mr. Avila-Hebra has now been in ICE custody for over a month and

there is no indication that ICE anticipates receiving travel documents from Cuba any time in the reasonably foreseeable future.

III. The government intends to deport Mr. Avila-Hebra to Mexico quickly, as it has many other Cuban nationals in the last month.

Mexico recently agreed with the United States to accept individuals from Cuba, Haiti, Nicaragua, Venezuela, Guatemala, Honduras, and El Salvador for third-country removal. *See* Exhibit B (Declaration of Officer Martin Parsons, in *Rios v. Noem*, No. 25-CV-2866-JES (S.D. Cal.)) ¶ 7.

However, Mexico will accept third-country deportees "only if [they] would willingly go to Mexico." *Id.* ¶ 11.

In recent weeks, several Cubans held at the Otay Mesa Detention Center have had a different experience than what Mexico's agreement with the United States seems to entail. A declaration from another Cuban national illustrates this experience:

> On October 1, 2025 at about 3:30 in the morning, I was told that I was being discharged from the detention center. I was very happy because I thought I was going to be released. They planed [me] in a van with other detainees and then [we were] taken to the Mexican border. They told me that I needed to cross into Mexico. They told me that if I did not cross the border, I would be put on a plane to Africa. I was afraid and confused. I asked if I could speak to a supervisor. After that, I was placed back into the van and brought back to the detention center.

Exhibit C (declaration of Carlos Rios); *accord* Exhibit D (declaration of Carlos Alberto Izquierdo-Matos).

As reporting from the Miami Herald confirms upon collecting the stories of twelve Cuban men deported to Mexico:

> Some said that officials told them they could either get off the bus in Mexico or be sent to an unspecified country in Africa. Others said they were not told where they were heading, and others said Mexican authorities left them near the Guatemala border and told [them] to

'head south' out of Mexico.

Claire Healy & Syria Ortiz-Blanes, *Cubans with criminal records in the U.S. are being quietly deported to Mexico*, Miami Herald (Oct. 21, 2025).[3]

Cuban nationals deported to Mexico "face an uncertain fate." Carla Gloria Colome, *Cubans deported by Trump to Mexico face an uncertain fate with no guarantees*, El Pais (Nov. 2, 2025).[4] Many are deported "without money, a phone, or identification documents," and "must apply for refugee status with the Mexican Commission for Refugee Assistance." *Id.*

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

Finally, when immigrants cannot be removed to their home country or to Mexico—including Cuban immigrants—ICE has begun deporting those individuals to third countries without adequate notice or a hearing. The Trump administration reportedly has negotiated with at least 58 countries to accept deportees from other nations. Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025. On June 25, 2025, the New York Times reported that seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are not their own citizens. *Id.* Since then, ICE has carried out highly publicized third country deportations to South Sudan and Eswatini.

The Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human

[3] https://www.miamiherald.com/news/local/immigration/article312432237.html.

[4] https://english.elpais.com/international/2025-11-02/cubans-deported-by-trump-to-mexico-face-an-uncertain-fate-with-no-guarantees.html

rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men to South Sudan. *See* Wong, *supra*. On July 15, ICE deported five men to the tiny African nation of Eswatini where they are reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human rights abuses or instability. For instance, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first. *See* Wong, *supra*.

On June 23 and July 3, 2025, the Supreme Court issued a stay of a national class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional requirements before removing an individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).[5] On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a "'meaningful opportunity' to assert claims

[5] Though the Supreme Court's order was unreasoned, the dissent noted that the government had sought a stay based on procedural arguments applicable only to class actions. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025) (Sotomayor, J., dissenting). Thus, "even if the Government [was] correct that classwide relief was impermissible" in *D.V.D.*, Respondents still "remain[] obligated to comply with orders enjoining [their] conduct with respect to individual plaintiffs" like Mr. Avila-Hebra. *Id.* In short, the Supreme Court's decision does not override this Court's authority to grant individual injunctive relief. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

for protection under the Convention Against Torture (CAT) before initiating removal to a third country" like the ones just described. Exh. E ("Third Country Removal Policy").

Under the new guidance, ICE may remove any immigrant to a third country "without the need for further procedures," as long as—in the view of the State Department—the United States has received "credible" "assurances" from that country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees, ICE may still remove immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours' notice. But "[i]n exigent circumstances," a removal may take place in as little as six hours, "as long as the alien is provided reasonably means and opportunity to speak with an attorney prior to the removal." *Id.*

Upon serving notice, ICE "will not affirmatively ask whether the alien is afraid of being removed to the country of removal." *Id.* (emphasis original). If the noncitizen "does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, [ICE] may proceed with removal to the country identified on the notice." *Id.* at 2. If the noncitizen "does affirmatively state a fear if removed to the country of removal" then ICE will refer the case to U.S. Citizenship and Immigration Services ("USCIS") for a screening for eligibility for withholding of removal and protection under the Convention Against Torture ("CAT"). *Id.* at 2. "USCIS will generally screen within 24 hours." *Id.* If USCIS determines that the noncitizen does not meet the standard, the individual will be removed. *Id.* If USCIS determines that the noncitizen has met the standard, then the policy directs ICE to either move to reopen removal proceedings "for the sole purpose of determining eligibility for [withholding of removal protection] and CAT" or designate another country for removal. *Id.*

CLAIMS FOR RELIEF

This Court should grant this petition and order two forms of relief.

First, it should order Mr. Avila-Hebra's immediate release. ICE failed to follow its own regulations requiring changed circumstances before re-detention, as well as a chance to promptly contest a re-detention decision. And *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Mr. Avila-Hebra, for whom there is "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001).

Second, it should enjoin the Respondents from removing Mr. Avila-Hebra to a third country, including Mexico, without first complying with the removal process set forth in 8 U.S.C. § 1231(b)(2) and without first providing notice and a sufficient opportunity to be heard before an immigration judge.

I. Claim 1: ICE failed to comply with its own regulations before re-detaining Mr. Avila-Hebra, violating his rights under the Fifth Amendment and the Administrative Procedures Act.

Two regulations establish the process due to someone who is re-detained in immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping framework to persons released upon good reason to believe that they will not be removed in the reasonably foreseeable future, as Mr. Avila-Hebra was. *See Phan v. Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025) (explaining this regulatory framework and granting a habeas petition for ICE's failure to follow these regulations); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (same).

These regulations permit an official to "return [the person] to custody" only when the person "violate[d] any of the conditions of release," 8 C.F.R. §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official "determines that there is a significant likelihood that the alien may be removed in

the reasonably foreseeable future," and makes that finding "on account of changed circumstances," § 241.13(i)(2).

No matter the reason for re-detention, the re-detained person is entitled to certain procedural protections. For one, "'[u]pon revocation,' the noncitizen 'will be notified of the reasons for revocation of his or her release or parole.'" *Phan*, 2025 WL 2898977 at *3, *4 (quoting §§ 241.4(l)(1), 241.13(i)(3)). Further, the person "'will be afforded an initial informal interview promptly after his or her return' to be given 'an opportunity to respond to the reasons for revocation stated in the notification.'" *Id.*

In the case of someone released under § 241.13(i), the regulations also explicitly require the interviewer to allow the re-detained person to "submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision." § 241.13(i)(3).

ICE is required to follow its own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established."). A court may review a re-detention decision for compliance with the regulations, and "where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner's release must be ordered." *Rokhfirooz*, 2025 WL 2646165 at *4 (collecting cases); *accord Phan*, 2025 WL 2898977 at *5.

ICE followed none of its regulatory prerequisites to re-detention here.

First, ICE did not identify a proper reason under the regulations to re-detain Mr. Avila-Hebra. He was not returned to custody because of a conditions violation, and there was apparently no determination before or at his arrest that there are "changed circumstances" such that there is "a significant likelihood that [Mr. Avila-Hebra] may be removed in the reasonably foreseeable future."

§ 241.13(i)(2).

Second, ICE did not notify Mr. Avila-Hebra of the reasons for his re-detention upon revocation of release. *See* §§ 241.4(l)(1), 241.13(i)(3). He was re-detained on September 28, 2025 without any explanation. Exh. A at ¶ 5.

Third, Mr. Avila-Hebra has yet to receive the informal interview required by regulation. Nor has he been afforded a meaningful opportunity to respond to the reasons for revocation or submit evidence rebutting his re-detention. Exh. A at ¶ 5-6. No one from ICE has ever invited him to contest his detention. *Id.*

Numerous courts have released re-detained immigrants after finding that ICE failed to comply with applicable regulations this summer and fall. *See, e.g.*, *Bui v. Warden*, 25-cv-02111-JES-DEB, Dkt. No. 18 (S.D. Cal. Oct. 23, 2025); *Khambounheuang v. Noem*, 25-cv-02575-JO-SBC, Dkt. No. 17 (S.D. Cal. Oct. 23, 2025); *Phan*, 2025 WL 2898977 at *5; *Rokhfirooz*, 2025 WL 2646165; *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

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

II. Claim 2: ICE may not remove Mr. Avila-Hebra to a third country, including Mexico, without following the mandatory consecutive procedures of 8 U.S.C. § 1231(b)(2).

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

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

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

This Court should therefore order that Mr. Avila-Hebra cannot be removed to a third country prior to the government making efforts for his removal to Cuba. *See Farah v. I.N.S.*, No. CIV. 02-4725DSDRLE, 2002 WL 31866481, at *4 (D. Minn. Dec. 20, 2002) (granting a habeas petition and prohibiting removal in violation of § 1231(b)(2)); *see also Jama*, 543 U.S. at 338 (reviewing a § 1231(b)(2) argument set forth in a habeas petition).

III. Claim 3: ICE may not remove Mr. Avila-Hebra to a third country without adequate notice and an opportunity to be heard.

In addition to unlawfully detaining him and the failure to comply with regulations and statute, ICE's practice in this case violates is procedures, and its procedures and policies themselves violate due process because they do not adequate notice and an opportunity to be heard. These policies violate the Fifth Amendment, the Convention Against Torture, and implementing regulations.

A. Legal background

U.S. law enshrines protections against dangerous and life-threatening removal decisions. By statute, the government is prohibited from removing an immigrant to any third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

Similarly, Congress codified protections enshrined in the CAT prohibiting the government from removing a person to a country where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

To comport with the requirements of due process, the government must provide notice of the third country removal and an opportunity to respond. Due process requires "written notice of the country being designated" and "the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)." *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

The government must also "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the

necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said]." *Aden*, 409 F. Supp. 3d at 1019. "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at 1041.

If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. The amount and type of notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen the noncitizen's immigration proceedings if the individual demonstrates "reasonable fear" and to provide "a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings" if the noncitizen is found to not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

"[L]ast minute" notice of the country of removal will not suffice, *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App'x 724 (9th Cir. 2016), and for good reason: To have a meaningful opportunity to apply for fear-based protection from removal, immigrants must have time to prepare and present relevant arguments and evidence. Merely telling a person where they may be sent, without giving them a chance to look into country conditions, does not give them a meaningful chance to determine whether and why they have a credible fear.

B. The June 6, 2025 memo's removal policies violate the Fifth Amendment, 8 U.S.C. § 1231, the Conviction Against Torture, and Implementing Regulations.

The policies in the June 6, 2025 memo do not adhere to these requirements. First, under the policy, ICE need not give immigrants *any* notice or *any* opportunity to be heard before removing them to a country that—in the State Department's estimation—has provided "credible" "assurances" against persecution and torture. Exh. B. By depriving immigrants of any chance to challenge the State Department's view, this policy violates "[t]he essence of due process," "the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

Second, even when the government has obtained no credible assurances against persecution and torture, the government can still remove the person with between 6 and 24 hours' notice, depending on the circumstances. Exh. B. Practically speaking, there is not nearly enough time for a detained person to assess their risk in the third country and martial evidence to support any credible fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may know nothing about a third country, like Eswatini or South Sudan, when they are scheduled for removal there. Yet if given the opportunity to investigate conditions, immigrants would find credible reasons to fear persecution or torture—like patterns of keeping deportees indefinitely and without charge in solitary confinement or extreme instability raising a high likelihood of death—in many of the third countries that have agreed to removal thus far. Due process requires an adequate chance to identify and raise these threats to health and life. This Court must prohibit the government from removing Mr. Avila-Hebra without these due process safeguards.

IV. Claim 4: Mr. Avila-Hebra's detention violates *Zadvydas* and 8 U.S.C. § 1231.

C. Legal background

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Avila-Hebra: Federal law requires ICE to detain an immigrant during the "removal period," which typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation agreement," or their countries "refuse to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives. If federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

Zadvydas held that § 1231(a)(6) presumptively permits the government to detain an immigrant for 180 days after his or her removal order becomes final. After those 180 days have passed, the immigrant must be released unless his or her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six months have passed, the petitioner must only make a prima facie case for relief—there is "good reason to believe that there is no significant likelihood of removal

in the reasonably foreseeable future." *Id.* Then the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.*[6] Using this framework, Mr. Avila-Hebra can make all the threshold showings needed to shift the burden to the government.

D. The six-month grace period has expired.

The six-month grace period has long since ended. The *Zadvydas* grace period is linked to the date the final order of removal is issued. It lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Indeed, the statute defining the beginning of the removal period is linked to the latest of three dates, all of which relevant here are tied to when the removal order is issued. 8 U.S.C. § 1231(a)(1)(B).[7]

Here, Mr. Avila-Hebra's order of removal was entered on April 3, 1998. Exh. A at ¶ 2.[8] Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in October 1998, three months after the removal period ended. *See, e.g.*, *Tadros v. Noem*, 2025 WL

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[6] Further, even before the 180 days have passed, the immigrant must still be released if he *rebuts* the presumption that his detention is reasonable. *See, e.g.*, *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar*, 2025 WL 2592543 at *6 (finding the presumption rebutted for a person who was released and, years later, re-detained for less than six months).

[7] Those dates are, specifically, (1) "[t]he date the order of removal becomes administratively final;" (2) "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order;" or (3) "[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." *Id.*

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

1678501, No. 25-cv-4108(EP), *2–*3. ICE will also, of course, have had almost three decades since his removal order was issued to remove his.[9]

E. The history of Cuba being uncooperative with repatriation provides very good reason to believe that Mr. Avila-Hebra will not likely be removed in the reasonably foreseeable future.

Because the six-month grace period has passed, this Court must evaluate Mr. Avila-Hebra's *Zadvydas* claim using the burden-shifting framework. At the first stage of the framework, Mr. Avila-Hebra must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts.

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[9] The government has sometimes argued that release and rearrest resets the six-month grace period completely, taking the clock back to zero. "Courts . . . broadly agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases).

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

"Good reason to believe." The "good reason to believe" standard is a relatively forgiving one. "A petitioner need not establish that there exists no possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "'[g]ood reason to believe' . . . place a burden upon the detainee to demonstrate no reasonably foreseeable, significant likelihood of removal or show that his detention is indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says: Petitioners need only give a "good reason"—not prove anything to a certainty.

"Significant likelihood of removal." This component focuses on <u>whether</u> Mr. Avila-Hebra will likely be removed: Continued detention is permissible only if it is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the *existence* of untapped possibilities, but also [the] probability of *success* in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words, even if "there remains *some* possibility of removal," a petitioner can still meet its burden if there is good reason to believe that successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

"In the reasonably foreseeable future." This component of the test focuses on <u>when</u> Mr. Avila-Hebra will likely be removed: Continued detention is permissible only if removal is likely to happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's removal efforts. If the Court has "no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3

(S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Avila-Hebra "would *eventually* receive" a travel document, he can still meet his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

Mr. Avila-Hebra readily satisfies this standard for two reasons.

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

Second, Mr. Avila-Hebra's own experience bears this out. ICE has now had almost three decades to deport him. He has fully cooperated with ICE's removal efforts throughout that time, including at yearly check-ins. Exh. A ¶ 3-4. And immigration is now seeking to remove Mr. Avila-Hebra to Mexico. *Id.* at ¶ 7.

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

F. *Zadvydas* unambiguously prohibits this Court from denying Mr. Avila-Hebra's petition because of his criminal history.

If released on supervision, Mr. Avila-Hebra poses no risk of danger or flight. He has been on supervision for almost three decades. Exh. A at ¶ 3. During that time, he has no new arrests, no violations, and has checked in regularly with ICE. *Id.* at ¶ 3.

Even if the government did try to argue that Mr. Avila-Hebra posed a danger or flight risk, however, *Zadvydas* squarely holds that those are not grounds

for detaining an immigrant when there is no reasonable likelihood of removal in the reasonably foreseeable future. 533 U.S. at 684–91.

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

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

The Court also noted that the government was free to use the many tools at its disposal to mitigate risk: "[O]f course, the alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions." *Id.* at 700. The Ninth Circuit later elaborated, "All aliens ordered released must comply with the stringent supervision requirements set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration officer periodically, answer certain questions, submit to medical or psychiatric testing as necessary, and accept reasonable restrictions on [their] conduct and activities, including severe travel limitations. More important, if [they] engage[ ] in any criminal activity during this time, including violation of [their] supervisory release conditions, [they] can be detained and incarcerated as part of the normal criminal process." *Ma*, 257 F.3d at 1115.

These conditions have proved sufficient to protect the public for over two decades. They will continue to do so while ICE keeps trying to deport Mr. Avila-Hebra.

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

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

VI. Prayer for relief

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Order Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(*l*), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Enjoin Respondents from removing Petitioner to any country other than Cuba, without first following the consecutive procedures of 8 U.S.C. § 1231(b)(2).
5. Enjoin Respondents from removing Petitioner to any country other than Cuba, unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
    a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;

b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;

c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;

d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.

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

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Conclusion

For those reasons, this Court should grant this habeas petition.

DATED: 11/13/25

Respectfully submitted,

Manuel Avila-Hebra

Petitioner

Exhibit A

MANUEL AVILA-HEBRA
[redacted]
Otay Mesa Detention Center
P.O. Box 439049
San Diego, CA 92143-9049

Pro Se[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MANUEL AVILA-HEBRA,

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.:

DECLARATION OF MANUEL AVILA-HEBRA

[1] Mr. Avila-Hebra is filing this petition for a writ of habeas corpus and all associated documents with the assistance of the Federal Defenders of San Diego, Inc. Federal Defenders has consistently used this procedure in seeking appointment for immigration habeas cases.

I, Manuel AVILA-HEBRA, declare:

1. I was born in Cuba in 1969. In 1994, I was in Guantanamo and came into the United States in 1995.

2. I convicted of a marijuana offense. Because of that conviction, in 1998, an immigration judge ordered me removed from the United States.

3. Since 1998, I have been on an order of supervision and reporting to immigration every year without any problems. I never missed an appointment. I have no convictions since that before 1997. I have no violations of supervision.

4. My next check-in was on January 6, 2026. But before that check-in, I was detained.

5. On September 28, 2025, I went out fishing. An official de un agency called Wildlife stopped me while I was fishing on a canal asked for my license. I had everything up-to-date and in order but they arrested me and turned me into ICE. I was sent to the detention center called Alcatraz. They took my fingerprints. I was there for 17 days. I did not speak to ICE. Then I was taken to another detention center in another Florida. I was there for 21 days.

6. I was never told the reasons for my detention. I have not been given an interview where I can challenge my detention.

7. At the beginning of October, while I was in Florida, I was called out of my cell and told me that the only country that would accept me was Mexico. They told me to sign a paper. They did not tell me I have an option. No one asked me if I feared going to Mexico. I did not know that Mexico would not accept me if I did not want to be removed willingly. I am afraid to go to Mexico. I am afraid they will send me any day.

8. A few weeks later, ICE brought me to San Diego at Otay Mesa Detention Center.

9. I cannot afford an attorney. I earn about [redacted] a month working on [redacted] I have not worked since my detention. I do not own a home and I own a 2008 Ford 150 and another 2021 car that I have paid one year out of a 72-month contract.

10. I do not have any legal education. I know nothing about immigration law. I do not have unrestricted access to the internet in custody. I do not speak much English.

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

I declare under penalty of perjury that the foregoing is true and correct, executed on 11/13/25, in San Diego, California.

[redacted]

Manuel Abitia-Tellebra

Declarant