Katie Hurrelbrink
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
katie_hurrelbrink@fd.org

Attorneys for Mr. Hernandez-Mejias

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAMIL HERNANDEZ-MEJIAS,

Petitioner,

v.

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

Respondents.

CIVIL CASE NO.: 25-CV-3615-LL

Amended[1] Petition for a Writ of Habeas Corpus

[1] Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to "amend its pleading once as a matter of course no later than 21 days after serving it." Fed. R. Civ. Pro. 15(a)(1)(A) (punctuation altered). It is less than 21 days since service. Mr. Hernandez-Mejias therefore files this amended petition as of right.

INTRODUCTION

This civil immigration habeas petition seeks three grounds of relief. First, it seeks to prevent Samil Hernandez-Mejias's indefinite detention pending deportation to Cuba absent the basic regulatory and due process guarantees of 8 C.F.R. §§ 241.4(l), 241.13(i), and *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). Second, it seeks to prevent his indefinite detention pending deportation to Cuba absent the basic statutory and due process guarantees outlined in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Third, it seeks to prevent his deportation to a third country without him first receiving basic due process guarantees of notice and opportunity to be heard as to his statutory rights to seek withholding of removal and Convention Against Torture relief.

Mr. Hernandez-Mejias was ordered removed to Cuba on February 13, 2020. It is very hard to deport people to Cuba. So ICE released him. In the over five years since, Mr. Hernandez-Mejias has never missed a check-in and has always cooperated with ICE.

Despite Mr. Hernandez-Mejias's long history of compliance, ICE re-arrested him on September 16, 2025. ICE did not provide any written or oral information about why Mr. Hernandez-Mejias was being re-detained or any chance to contest his redetention. He has been given no information indicating that he will be removed to Cuba in the reasonably foreseeable future. And ICE has confirmed that he is not willing to be voluntarily removed to Mexico, disqualifying him for removal there.

Courts in this district and around the country have ordered Cubans released from ICE custody for the same reasons. *See Rios v. Noem*, No. 25-CV-2866-JES, Doc. 15 (S.D. Cal. Nov. 10, 2025); *Rodriguez-Gutierrez v. Noem*, 25-cv-02726-BAS-SBC, Doc. 14 (S.D. Cal. Nov. 7, 2025); *Izquierdo-Matos v. Noem*, Doc. 12, 25-cv-02979-BJC-BLM (S.D. Cal. Nov. 18, 2025); *Arostegui-Campo v. Noem*, 25-cv-03064-JLS-MMP, Doc. 11 (S.D. Cal. Nov. 25. 2025). One court

underlined, "Rules matter. Hearings matter. In recognition of this cornerstone principle of our jurisprudence, a growing chorus of district courts have found that—in similar cases—the government's unlawful detention . . . . warrants immediate release." *Delkash v. Noem*, No. 25-cv-1675-HDV-AGR, 2025 WL 2683988 (C.D. Cal. Aug. 28, 2025).

STATEMENT OF FACTS

I. Mr. Hernandez-Mejias lived under supervision for 5 years and then was re-detained without an individualized reason for detention and without an opportunity to contest his re-detention.

Mr. Hernandez-Mejias was born in Cuba in 1986. Exh. A at ¶ 1. In 2019, he fled Cuba and came to the U.S. to seek asylum. He immediately turned himself in to border patrol. *Id.* He was detained throughout his asylum case, which he lost on February 13, 2020. *Id.* ICE detained him for another six months, before releasing him on an order of supervision on August 20, 2020. *Id.* at ¶¶ 1–2.

While on release, Mr. Hernandez-Mejias always checked in with ICE as scheduled. *Id.* at ¶ 2. He sustained no criminal convictions, not even a traffic ticket. *Id.*

Nevertheless, on September 16, 2025, ICE re-detained him. *Id.* at ¶ 3. ICE did not give him any written or oral explanation for why he was being redetained. *Id.* Nor did ICE give him an opportunity to contest his re-detention. *Id.* That has not changed to the present day. *Id.*

On November 20, 2025, an ICE agent met with Mr. Hernandez-Mejias to ask whether he wanted to voluntarily got to Mexico. *Id.* at ¶ 4. He said that he did not, explaining that he did not have any status or contacts there. *Id.*

Nevertheless, ICE brought Mr. Hernandez-Mejias to the U.S.-Mexico border in hopes that he would cross. *Id.* at ¶ 5. Once there, he reiterated that he was not willing to be voluntarily removed to Mexico. *Id.* He explained again that he had no contacts or status in Mexico. And he said that he was afraid of being

1 harmed there—he had heard stories of other immigrants getting kidnapped. *Id.*
2 ICE took him back to Otay Mesa. *Id.* Agents never met with him again about his
3 removal. *Id.* at ¶ 6.

4 **II. The repatriation agreement with Cuba allows it to use its discretion**
5 **in accepting Cuban nationals that entered the United States prior to**
6 **2017 on a case-by-case basis.**

7 It is no surprise that ICE has struggled to remove Mr. Hernandez-Mejias to
8 Cuba or Mexico. Cuba rarely accepts its citizens for repatriation, and Mexico
9 accepts Central Americans only if they voluntarily agree to removal there.

10 Prior to 2017, there was no repatriation agreement between the United
11 States and Cuba. *Clark v. Martinez*, 543 U.S. 371, 386 (2005). On January 12,
12 2017, the United States and Cuba signed a joint statement ("2017 Joint
13 Statement") by which Cuba agreed to the repatriation of some Cuban nationals.
14 *Cuba (17-112) – Joint Statement Concerning Normalization of Migration*
15 *Procedures*, Jan. 12, 2017, available at https://www.state.gov/17-112/.
16 Specifically, under the agreement Cuba "shall receive back all Cuban nationals
17 who after the signing" of the 2017 Joint Statement "found by the competent
18 authorities of the United States to have tried to irregularly enter or remain in that
19 country in violation of United States law." *Id.* at 2.

20 In practice, however, Cuba did not accept its nationals for removal. Despite
21 the 2017 Joint Statement, a 2019 report by the Office of Inspector General
22 classified Cuba as an "uncooperative country" in 2017, 2018, and 2019 based on
23 its failure to provide travel documents on a timely basis. Department of Homeland
24 Security, Office of Inspector General, Report No. OIG-19-28, *ICE Faces Barriers*
25 *in Timely Repatriation of Detained Aliens* (Mar. 11, 2019), available at
26 https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf
27 at pages 6-7, 10, 29. In May of 2018, Cuba was one of nine countries with the
28 uncooperative categorization. *Id.* at 10. That tendency was borne out in this case.

1 ICE proved unable to remove Mr. Hernandez-Mejias under the agreement, either
2 during his six months of detention in 2020 or in the five years after. Exh. A at
3 ¶¶ 1, 6.
4 Mexico has agreed to take some Cubans for third-country removal. *See*
5 Exh. C at ¶ 7. But Mexico will accept a deportee "only if [they] would willingly
6 go to Mexico." *Id.* at ¶ 11. Mr. Hernandez-Mejias does not qualify for repatriation
7 under the agreement, because—for understandable reasons, including fears of
8 harm—he is not willing to go to Mexico voluntarily. *Id.* at ¶¶ 4–5.

9 **III. The government is carrying out deportations to third countries**
10 **without providing sufficient notice and opportunity to be heard.**

11 When immigrants cannot be removed to their home country—including
12 Cuban immigrants—ICE has begun trying to deport those individuals to third
13 countries without adequate notice or a hearing. The Trump administration
14 reportedly has negotiated with at least 58 countries to accept deportees from other
15 nations. Edward Wong et al, *Inside the Global Deal-Making Behind Trump's*
16 *Mass Deportations*, N.Y. Times, June 25, 2025. On June 25, 2025, the New York
17 Times reported that seven countries—Costa Rica, El Salvador, Guatemala,
18 Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are
19 not their own citizens. *Id.* ICE has carried out highly publicized third country
20 deportations to South Sudan and Eswatini.
21 The Administration has reportedly negotiated with countries to have many
22 of these deportees imprisoned in prisons, camps, or other facilities. The
23 government paid El Salvador about $5 million to imprison more than 200
24 deported Venezuelans in a maximum-security prison notorious for gross human
25 rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica
26 took in hundreds of deportees from countries in Africa and Central Asia and
27 imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa
28 Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*,

1 BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men to South Sudan.
2 *See* Wong, *supra*. On July 15, ICE deported five men to the tiny African nation of
3 Eswatini where they are reportedly being held in solitary confinement. Gerald
4 Imray, *3 Deported by US held in African Prison Despite Completing Sentences,*
5 *Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human
6 rights abuses or instability. For instance, conditions in South Sudan are so
7 extreme that the U.S. State Department website warns Americans not to travel
8 there, and if they do, to prepare their will, make funeral arrangements, and appoint
9 a hostage-taker negotiator first. *See* Wong, *supra*.

10 On June 23 and July 3, 2025, the Supreme Court issued a stay of a national
11 class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of*
12 *Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D.
13 Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional
14 requirements before removing an individual to a third country. *U.S. Dep't of*
15 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025
16 WL 1832186 (U.S. July 3, 2025).[2] On July 9, 2025, ICE rescinded previous
17 guidance meant to give immigrants a "'meaningful opportunity' to assert claims
18 for protection under the Convention Against Torture (CAT) before initiating
19 removal to a third country" like the ones just described. Exh. B ("Third Country
20 Removal Policy").

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24 [2] 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
25 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
26 classwide relief was impermissible" in *D.V.D.*, Respondents still "remain[] obligated to comply with orders enjoining [their] conduct with respect to individual
27 plaintiffs" like Mr. Hernandez-Mejias. *Id.* In short, the Supreme Court's decision does not override this Court's authority to grant individual injunctive relief. *See*
28 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

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. Hernandez-Mejias 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. Hernandez-Mejias, 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. Hernandez-Mejias to a third country without first providing notice and a sufficient opportunity to be heard before an immigration judge.

I. Count 1: ICE failed to comply with its own regulations before re-detaining Mr. Hernandez-Mejias, violating his rights under applicable regulations and the Fifth Amendment.

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 re-detention generally. 8 C.F.R. § 241.13(i) applies to persons released after providing good reason to believe that they will not be removed in the reasonably foreseeable future, as Mr. Hernandez-Mejias was. *See Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (order from Judge Huie explaining this regulatory framework and granting a habeas petition for ICE's failure to follow these regulations).

These regulations permit an official to "return [the person] to custody" because they "violate[d] any of the conditions of release." 8 C.F.R. § 241.13(i)(1); *see also* § 241.4(*l*)(1).

Otherwise, they contain four major regulatory protections for people like Mr. Hernandez-Mejias, who did not violate any condition of release. They permit revocation of release only if the appropriate official (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable

future," § 241.13(i)(2), and (2) makes that finding "on account of changed circumstances." *Id.* No matter the reason for re-detention, (3) the re-detained person is entitled to "an initial informal interview promptly," during which they "will be notified of the reasons for revocation." §§ 241.4(*l*)(1); 241.13(i)(3). The interviewer must (4) "afford[] the [person] an opportunity to respond to the reasons for revocation," allowing them to "submit any evidence or information" relevant to re-detention and evaluating "any contested facts." *Id.*

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).

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

First, Mr. Hernandez-Mejias did not receive notice of the reasons for his re-detention upon revocation. Exh. A at ¶ 3. It is too late now to comply with that requisite.

Second, Mr. Hernandez-Mejias did not receive an informal interview permitting him to contest his redetention. Exh. A at ¶ 3. Any interview conducted now would not be prompt, as required by the regulation. *See, e.g., M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025) (27-day delay not prompt); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (two-month delay not prompt); *Soryadvongsa v. Noem*, 24-cv-2663-AGS-DDL, 2025 WL 3126821, at *1 (S.D. Cal. Nov. 8, 2025) (29-day delay not prompt).

Third, ICE did not revoke Mr. Hernandez-Mejias's release for a permissible reason. He was not returned to custody because of a conditions violation. Exh. A at ¶ 2. And there are no changed circumstances that justify re-detaining him. Mr. Hernandez-Mejias entered after the United States and Cuba signed the operative repatriation agreement in 2017. *Id.* at ¶ 1. ICE already tried and failed to remove Mr. Hernandez-Mejias under that agreement, which is why ICE released him in 2020. *Id.* And Mr. Hernandez-Mejias is ineligible for third-country removal to Mexico, as Mexico will only accept those willing to be voluntarily deported there. *Id.* at ¶ 4; Exh. C. Absent any evidence for "why obtaining a travel document is more likely this time around[,] Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Furthermore, past experience teaches that ICE almost certainly made no changed-circumstances determination before his arrest. *See Rokhfirooz*, 2025 WL 2646165 at *3.

Numerous courts have released re-detained immigrants after finding that ICE failed to comply with applicable regulations. *See, e.g.*, *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. Hernandez-Mejias] is entitled to his release (subject to the same Order of Supervision that governed his most recent release)." *Liu*, 2025 WL 1696526, at *3.

I. Count 2: Mr. Hernandez-Mejias's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Hernandez-Mejias: 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.

As an initial matter, *Zadvydas* held that detention is "presumptively reasonable" for at least six months. *Id.* at 701. This presumption is, in some

1 circumstances even before the running of six months, "rebuttable." *See Zavvar*,
2 2025 WL 2592543 at *5–*6 (explaining this point when granting *Zadvydas*
3 habeas relief).

4 Courts must use a burden-shifting framework to decide whether detention
5 remains authorized. First, the petitioner must make a prima facie case for relief:
6 He must prove that there is "good reason to believe that there is no significant
7 likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at
8 689.

9 If he does so, the burden shifts to "the Government [to] respond with
10 evidence sufficient to rebut that showing." *Id*. Ultimately, then, the burden of
11 proof rests with the government: The government must prove that there is a
12 "significant likelihood of removal in the reasonably foreseeable future," or the
13 immigrant must be released. *Id*.

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

24 Using this framework, Mr. Hernandez-Mejias can make all the threshold
25 showings needed to shift the burden to the government.

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B. The six-month grace period expired in 2020.

As an initial matter, the six-month grace period has long since ended. The *Zadvydas* grace period 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). Here, Mr. Hernandez-Mejias's order of removal was entered on February 13, 2020. Exh. A at ¶ 1. Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired three months after the removal period ended, in August 2020. Furthermore, Mr. Hernandez-Mejias was detained for that six-month period. Exh. A at ¶ 1. He was not released on an order of supervision until August 20, 2020. *Id.* And in 2025, he has suffered an additional three months of detention, from September 16, 2025 to today. *Id.* at ¶ 3. Thus, this threshold requirement is met.

C. There is good reason to believe that there is no significant likelihood of Mr. Hernandez-Mejias's removal in the reasonably foreseeable future.

Because the six-month grace period has passed, this Court must evaluate Mr. Hernandez-Mejias's *Zadvydas* claim using the burden-shifting framework. At the first stage of the framework, there must be "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.

"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.

"No significant likelihood of removal." This component focuses on whether Mr. Hernandez-Mejias 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 when Mr. Hernandez-Mejias 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. Hernandez-Mejias "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. Hernandez-Mejias readily satisfies the above standards for an obvious reason: ICE has already tried and failed to remove him under the operative repatriation agreements between the United States and Cuba and the United States and Mexico. Exh. A at ¶¶ 1, 4–5. Though Cuba agreed to accept Cubans who immigrate after 2017, it has not done so in practice. Accordingly, though Mr. Hernanez-Mejias entered in 2019, and though ICE detained him for a full six months in 2020 to try to effectuate his removal, ICE failed. *Id.* at ¶ 1. ICE did not succeed in removing his for the next five years, either. And ICE has not managed to remove him in 2025, despite detaining him for over three additional months. *Id.* at ¶ 3. ICE also tried to remove him to Mexico as a voluntary deportee, despite knowing that he did not agree to be removed there voluntarily. *Id.* at ¶¶ 4–5. ICE failed there too. *Id.* Five years' worth of failed efforts, including nine months during which Mr. Hernandez-Mejias was detained, provides a very good reason to doubt that Mr. Herandez-Mejias can be removed in the reasonably foreseeable future.

Thus, Mr. Hernandez-Mejias 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. Hernandez-Mejias must be released. *Zadvydas*, 533 U.S. at 701.

II. Count 3: ICE may not remove Mr. Hernandez-Mejias to a third country without adequate notice and an opportunity to be heard.

In addition to unlawfully detaining him, ICE's policies threaten his removal to a third country without adequate notice and an opportunity to be heard. These policies violate the Fifth Amendment, the Convention Against Torture, and implementing regulations. Though the government will not be able to prove that there is a significant prospect of removal in the reasonably foreseeable future, an unanticipated change of circumstances could open up a heretofore unavailable avenue to third-country removal. If that happens, ICE could remove Mr. Mejas-

1 Hernandez with as little as 24 hours' notice or no notice at all. This Court should
2 enter an order prohibiting such surprise removals, as they violate the Due Process
3 Clause.
4
5 **A. Legal background**

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

15 Similarly, Congress codified protections enshrined in the CAT prohibiting
16 the government from removing a person to a country where they would be tortured.
17 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of
18 the United States not to expel, extradite, or otherwise effect the involuntary return
19 of any person to a country in which there are substantial grounds for believing the
20 person would be in danger of being subjected to torture, regardless of whether the
21 person is physically present in the United States."); 28 C.F.R. § 200.1; *id.*
22 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

1 Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

2 The government must also "ask the noncitizen whether he or she fears
3 persecution or harm upon removal to the designated country and memorialize in
4 writing the noncitizen's response. This requirement ensures DHS will obtain the
5 necessary information from the noncitizen to comply with section 1231(b)(3) and
6 avoids [a dispute about what the officer and noncitizen said]." *Aden*, 409 F. Supp.
7 3d at 1019. "Failing to notify individuals who are subject to deportation that they
8 have the right to apply for asylum in the United States and for withholding of
9 deportation to the country to which they will be deported violates both INS
10 regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at
11 1041.

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

26 "[L]ast minute" notice of the country of removal will not suffice, *Andriasian*,
27 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App'x 724 (9th Cir. 2016), and
28 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. Hernandez-Mejias without these due process safeguards.

III. 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. Hernandez-Mejias hereby requests such a hearing on any material, disputed facts.

IV. Prayer for relief

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

1. Order Respondents to immediately release Petitioner from custody under the same conditions of supervision;
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, 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):
   (1) written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
   (2) a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;

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

(4) 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.

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

Respectfully submitted,

Dated: December 31, 2025

s/ Katie Hurrelbrink

Katie Hurrelbrink
Federal Defenders of San Diego, Inc.
Attorneys for Ms. Mardian
Email: katie_hurrelbrink@fd.org