

1 **Zandra L Lopez**
2 Federal Defenders of San Diego, Inc.
3 225 Broadway, Suite 900
4 San Diego, California 92101-5030
5 Telephone: (619) 234-8467
6 Facsimile: (619) 687-2666
7 Zandra_Lopez@fd.org

8 Attorneys for Mr. Lazaro Mora Gutierrez¹
9 A# 

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

12 **LAZARO MORA GUTIERREZ,**

13 **Petitioner,**

14 **v.**

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

24 **Respondents.**

25 **CIVIL CASE NO.: '26CV0112 RSH JLB**

26 **Petition**
27 **for a**
28 **Writ of Habeas Corpus**

¹ Federal Defenders of San Diego, Inc., is filing the instant petition with provisional appointment under Chief Judge Order No. 134. Undersigned counsel has been informed that Petitioner works in construction, does not own property, and does not have money to pay an attorney. He has been detained since October 22, 2025 and has been unable to work. A sworn statement will be subsequently provided to the Court.

1 INTRODUCTION

2 This civil immigration habeas petition seeks three grounds of relief. First, it
3 seeks to prevent Lazaro Mora Gutierrez’s indefinite detention pending deportation
4 to Cuba absent the basic regulatory and due process guarantees of 8 C.F.R.
5 §§ 241.4(l), 241.13(i), and *United States ex rel. Accardi v. Shaughnessy*, 347 U.S.
6 260, 268 (1954). Second, it seeks to prevent his indefinite detention pending
7 deportation to Cuba absent the basic statutory and due process guarantees outlined
8 in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Third, it seeks to prevent his
9 deportation to a third country without him first receiving basic due process
10 guarantees of notice and opportunity to be heard as to his statutory rights to seek
11 withholding of removal and Convention Against Torture relief.

12 Mr. Mora Gutierrez was ordered removed to Cuba in June 2017. It is very
13 hard to deport people to Cuba. So ICE released him after about six months of
14 detention. In the over eight years since, Mr. Mora Gutierrez has never missed a
15 check-in and has always cooperated with ICE.

16 Despite Mr. Mora Gutierrez’s long history of compliance, ICE re-arrested
17 him on October 22, 2025. ICE did not provide any written or oral information
18 about why Mr. Mora Gutierrez was being re-detained or any chance to contest his
19 redetention. He has been given no information indicating that he will be removed
20 to Cuba in the reasonably foreseeable future.

21 Courts in this district and around the country have ordered Cubans released
22 from ICE custody for the same reasons. *See Rios v. Noem*, No. 25-CV-2866-JES,
23 Doc. 15 (S.D. Cal. Nov. 10, 2025); *Rodriguez-Gutierrez v. Noem*, 25-cv-02726-
24 BAS-SBC, Doc. 14 (S.D. Cal. Nov. 7, 2025); *Izquierdo-Matos v. Noem*, Doc. 12,
25 25-cv-02979-BJC-BLM (S.D. Cal. Nov. 18, 2025); *Arostegui-Campo v. Noem*,
26 25-cv-03064-JLS-MMP, Doc. 11 (S.D. Cal. Nov. 25, 2025). One court
27 underlined, “Rules matter. Hearings matter. In recognition of this cornerstone
28 principle of our jurisprudence, a growing chorus of district courts have found

1 that—in similar cases—the government’s unlawful detention . . . warrants
2 immediate release.” *Delkash v. Noem*, No. 25-cv-1675-HDV-AGR, 2025 WL
3 2683988 (C.D. Cal. Aug. 28, 2025).

4 **STATEMENT OF FACTS**

5 **I. Mr. Mora Gutierrez lived under supervision for seven years and then**
6 **was re-detained without an individualized reason for detention and**
7 **without an opportunity to contest his re-detention.**

8 Mr. Mora Gutierrez was born in Cuba in 1975.

9 He came to the United States in 2016. On June 21, 2017, he was ordered
10 deported to Cuba. Exhibit A (Order of Supervision Documents) Because Cuba
11 would not accept him, he was placed on an order of supervision on January 4,
12 2018. *Id.* While on release, Mr. Mora Gutierrez consistently checked in to ICE
13 offices. *Id.* He reported to ICE on July 18, 2025. ICE told him to come back the
14 following year on July 20, 2026. *Id.*

15 But before his next check-in date, ICE arrested Mr. Mora Gutierrez on
16 October 22, 2025. ICE did not give him any written or oral explanation for why
17 he was being redetained. Nor did ICE give him an opportunity to contest his re-
18 detention.

19 ICE detained Mr. Mora Gutierrez in Florida and eventually brought him to
20 Otay Mesa Detention Center. Exhibit B (Jan. 8, 2026 DHS Immigrant Locator).

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

24 It is no surprise that ICE has struggled to remove Mr. Mora Gutierrez to
25 Cuba or Mexico. Cuba rarely accepts its citizens for repatriation, and Mexico
26 accepts Central Americans only if they voluntarily agree to removal there.

27 Prior to 2017, there was no repatriation agreement between the United
28 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

1 Statement”) by which Cuba agreed to the repatriation of some Cuban nationals.
2 *Cuba (17-112) – Joint Statement Concerning Normalization of Migration*
3 *Procedures*, Jan. 12, 2017, available at <https://www.state.gov/17-112/>.
4 Specifically, under the agreement Cuba “shall receive back all Cuban nationals
5 who after the signing” of the 2017 Joint Statement “found by the competent
6 authorities of the United States to have tried to irregularly enter or remain in that
7 country in violation of United States law.” *Id.* at 2.

8 In practice, however, Cuba did not accept its nationals for removal. Despite
9 the 2017 Joint Statement, a 2019 report by the Office of Inspector General
10 classified Cuba as an “uncooperative country” in 2017, 2018, and 2019 based on
11 its failure to provide travel documents on a timely basis. Department of Homeland
12 Security, Office of Inspector General, Report No. OIG-19-28, *ICE Faces Barriers*
13 *in Timely Repatriation of Detained Aliens* (Mar. 11, 2019), available at
14 <https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf>
15 at pages 6-7, 10, 29. In May of 2018, Cuba was one of nine countries with the
16 uncooperative categorization. *Id.* at 10. That tendency was borne out in this case.
17 ICE proved unable to remove Mr. Mora Gutierrez under the agreement.

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

20 When immigrants cannot be removed to their home country—including
21 Cuban immigrants—ICE has begun trying to deport those individuals to third
22 countries without adequate notice or a hearing. The Trump administration
23 reportedly has negotiated with at least 58 countries to accept deportees from other
24 nations. Edward Wong et al, *Inside the Global Deal-Making Behind Trump’s*
25 *Mass Deportations*, N.Y. Times, June 25, 2025. On June 25, 2025, the New York
26 Times reported that seven countries—Costa Rica, El Salvador, Guatemala,
27 Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are
28

1 not their own citizens. *Id.* ICE has carried out highly publicized third country
2 deportations to South Sudan and Eswatini.

3 The Administration has reportedly negotiated with countries to have many
4 of these deportees imprisoned in prisons, camps, or other facilities. The
5 government paid El Salvador about \$5 million to imprison more than 200
6 deported Venezuelans in a maximum-security prison notorious for gross human
7 rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica
8 took in hundreds of deportees from countries in Africa and Central Asia and
9 imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa
10 Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*,
11 BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men to South Sudan.
12 *See Wong, supra.* On July 15, ICE deported five men to the tiny African nation of
13 Eswatini where they are reportedly being held in solitary confinement. Gerald
14 Imray, *3 Deported by US held in African Prison Despite Completing Sentences*,
15 *Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human
16 rights abuses or instability. For instance, conditions in South Sudan are so
17 extreme that the U.S. State Department website warns Americans not to travel
18 there, and if they do, to prepare their will, make funeral arrangements, and appoint
19 a hostage-taker negotiator first. *See Wong, supra.*

20 On June 23 and July 3, 2025, the Supreme Court issued a stay of a national
21 class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of*
22 *Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D.
23 Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional
24 requirements before removing an individual to a third country. *U.S. Dep't of*
25 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025
26 WL 1832186 (U.S. July 3, 2025).² On July 9, 2025, ICE rescinded previous

27 _____
28 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

1 guidance meant to give immigrants a “‘meaningful opportunity’ to assert claims
2 for protection under the Convention Against Torture (CAT) before initiating
3 removal to a third country” like the ones just described. Exh. C (“Third Country
4 Removal Policy”).

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

14 Upon serving notice, ICE “will not affirmatively ask whether the alien is
15 afraid of being removed to the country of removal.” *Id.* (emphasis original). If the
16 noncitizen “does not affirmatively state a fear of persecution or torture if removed
17 to the country of removal listed on the Notice of Removal within 24 hours, [ICE]
18 may proceed with removal to the country identified on the notice.” *Id.* at 2. If the
19 noncitizen “does affirmatively state a fear if removed to the country of removal”
20 then ICE will refer the case to U.S. Citizenship and Immigration Services
21 (“USCIS”) for a screening for eligibility for withholding of removal and
22 protection under the Convention Against Torture (“CAT”). *Id.* at 2. “USCIS will
23

24 _____
25 class actions. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025)
26 (Sotomayor, J., dissenting). Thus, “even if the Government [was] correct that
27 classwide relief was impermissible” in *D.V.D.*, Respondents still “remain[]
28 obligated to comply with orders enjoining [their] conduct with respect to
individual plaintiffs” like Mr. Mora Gutierrez. *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).

1 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen
2 does not meet the standard, the individual will be removed. *Id.* If USCIS
3 determines that the noncitizen has met the standard, then the policy directs ICE to
4 either move to reopen removal proceedings “for the sole purpose of determining
5 eligibility for [withholding of removal protection] and CAT” or designate another
6 country for removal. *Id.*

7 CLAIMS FOR RELIEF

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

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

15 Second, it should enjoin the Respondents from removing Mr. Mora
16 Gutierrez to a third country without first providing notice and a sufficient
17 opportunity to be heard before an immigration judge.

18 **I. Count 1: ICE failed to comply with its own regulations before re-** 19 **detaining Mr. Mora Gutierrez, violating his rights under applicable** 20 **regulations and the Fifth Amendment.**

21 Two regulations establish the process due to someone who is re-detained in
22 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
23 re-detention generally. 8 C.F.R. § 241.13(i) applies to persons released after
24 providing good reason to believe that they will not be removed in the reasonably
25 foreseeable future, as Mr. Mora Gutierrez was. *See Rokhfirooz*, No. 25-CV-2053-
26 RSH-VET, 2025 WL 2646165 at *2 (order from Judge Huie explaining this
27 regulatory framework and granting a habeas petition for ICE’s failure to follow
28 these regulations).

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

4 Otherwise, they contain four major regulatory protections for people like
5 Mr. Mora Gutierrez, who did not violate any condition of release. They permit
6 revocation of release only if the appropriate official (1) “determines that there is a
7 significant likelihood that the alien may be removed in the reasonably foreseeable
8 future,” § 241.13(i)(2), and (2) makes that finding “on account of changed
9 circumstances.” *Id.* No matter the reason for re-detention, (3) the re-detained
10 person is entitled to “an initial informal interview promptly,” during which they
11 “will be notified of the reasons for revocation.” §§ 241.4(l)(1); 241.13(i)(3). The
12 interviewer must (4) “afford[] the [person] an opportunity to respond to the
13 reasons for revocation,” allowing them to “submit any evidence or information”
14 relevant to re-detention and evaluating “any contested facts.” *Id.*

15 ICE is required to follow its own regulations. *United States ex rel. Accardi*
16 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
17 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
18 abide by certain internal policies is well-established.”). A court may review a re-
19 detention decision for compliance with the regulations, and “where ICE fails to
20 follow its own regulations in revoking release, the detention is unlawful and the
21 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at *4
22 (collecting cases).

23 ICE followed none of its four regulatory prerequisites to re-detention here.
24 First, Mr. Mora Gutierrez did not receive notice of the reasons for his re-
25 detention upon revocation. It is too late now to comply with that requisite.

26 Second, Mr. Mora Gutierrez did not receive an informal interview
27 permitting him to contest his redetention. Any interview conducted now would
28 not be prompt, as required by the regulation. *See, e.g., M.S.L. v. Bostock*, Civ. No.

1 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025) (27-day
2 delay not prompt); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL
3 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (two-month delay not prompt);
4 *Soryadvongsa v. Noem*, 24-cv-2663-AGS-DDL, 2025 WL 3126821, at *1 (S.D.
5 Cal. Nov. 8, 2025) (29-day delay not prompt).

6 Third, ICE did not revoke Mr. Mora Gutierrez's release for a permissible
7 reason. He was not returned to custody because of a conditions violation. And
8 there are no changed circumstances that justify re-detaining him. Mr. Mora
9 Gutierrez entered before the United States and Cuba signed the operative
10 repatriation agreement in 2017. ICE already tried and failed to remove Mr. Mora
11 Gutierrez under that agreement, which is why ICE released him in January of
12 2018.

13 Absent any evidence for "why obtaining a travel document is more likely
14 this time around[,] Respondents' intent to eventually complete a travel document
15 request for Petitioner does not constitute a changed circumstance." *Hoac v.*
16 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July
17 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D.
18 Kan. June 17, 2025)). Furthermore, past experience teaches that ICE almost
19 certainly made no changed-circumstances determination before his arrest. *See*
20 *Rokhfirooz*, 2025 WL 2646165 at *3.

21 Numerous courts have released re-detained immigrants after finding that
22 ICE failed to comply with applicable regulations. *See, e.g., Rokhfirooz*, 2025 WL
23 2646165; *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988;
24 *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*,
25 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d
26 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL
27 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-
28 01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v.*

1 *Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18,
2 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4
3 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*,
4 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

5 “[B]ecause officials did not properly revoke petitioner’s release pursuant to
6 the applicable regulations, that revocation has no effect, and [Mr. Mora Gutierrez]
7 is entitled to his release (subject to the same Order of Supervision that governed
8 his most recent release).” *Liu*, 2025 WL 1696526, at *3.

9 **II. Count 2: Mr. Mora Gutierrez’s detention violates *Zadvydas* and 8**
10 **U.S.C. § 1231.**

11 **A. Legal background**

12 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
13 a problem affecting people like Mr. Mora Gutierrez: Federal law requires ICE to
14 detain an immigrant during the “removal period,” which typically spans the first
15 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After
16 that 90-day removal period expires, detention becomes discretionary—ICE may
17 detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6).
18 Ordinarily, this scheme would not lead to excessive detention, as removal
19 happens within days or weeks. But some detainees cannot be removed quickly.
20 Perhaps their removal “simply require[s] more time for processing,” or they are
21 “ordered removed to countries with whom the United States does not have a
22 repatriation agreement,” or their countries “refuse to take them,” or they are
23 “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v.*
24 *Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances,
25 detained immigrants can find themselves trapped in detention for months, years,
26 decades, or even the rest of their lives.

27 If federal law were understood to allow for “indefinite, perhaps permanent,
28 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at

1 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by
2 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

3 As an initial matter, *Zadvydas* held that detention is “presumptively
4 reasonable” for at least six months. *Id.* at 701. This presumption is, in some
5 circumstances even before the running of six months, “rebuttable.” *See Zavvar*,
6 2025 WL 2592543 at *5–*6 (explaining this point when granting *Zadvydas*
7 habeas relief).

8 Courts must use a burden-shifting framework to decide whether detention
9 remains authorized. First, the petitioner must make a prima facie case for relief:
10 He must prove that there is “good reason to believe that there is no significant
11 likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at
12 689.

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

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

28

1 Using this framework, Mr. Mora Gutierrez can make all the threshold
2 showings needed to shift the burden to the government.

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

4 As an initial matter, the six-month grace period has long since ended. The
5 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,
6 *three months* after the statutory removal period has ended.” *Kim Ho Ma v.*
7 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Mora Gutierrez was
8 ordered removed on June 21, 2017. Exh. A. He was released from immigration
9 detention on January 4, 2018. *Id.* Thus, his 90-day removal period began then.
10 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired three months
11 after the removal period ended, in December, 21 2017.

12 He was detained for over 6 months after the immigration order. He has now
13 been detained for an additional three months since October 22, 2025. Thus, this
14 threshold requirement is met.

15 **C. There is good reason to believe that there is no significant**
16 **likelihood of Mr. Mora Gutierrez’s removal in the reasonably**
foreseeable future.

17 Because the six-month grace period has passed, this Court must evaluate
18 Mr. Mora Gutierrez’s *Zadvydas* claim using the burden-shifting framework. At
19 the first stage of the framework, there must be “good reason to believe that there
20 is no significant likelihood of removal in the reasonably foreseeable future.”
21 *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts.

22 “**Good reason to believe.**” The “good reason to believe” standard is a
23 relatively forgiving one. “A petitioner need not establish that there exists no
24 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
25 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
26 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
27 foreseeable, significant likelihood of removal or show that his detention is
28 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,

1 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
2 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
3 Petitioners need only give a “good reason”—not prove anything to a certainty.

4 **“No significant likelihood of removal.”** This component focuses on
5 whether Mr. Mora Gutierrez will likely be removed: Continued detention is
6 permissible only if it is “significant[ly] like[ly]” that ICE will be able to remove
7 him. *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of
8 untapped possibilities, but also [the] probability of *success* in such possibilities.”
9 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis
10 added). In other words, even if “there remains *some* possibility of removal,” a
11 petitioner can still meet its burden if there is good reason to believe that
12 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
13 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

14 **“In the reasonably foreseeable future.”** This component of the test
15 focuses on when Mr. Mora Gutierrez will likely be removed: Continued detention
16 is permissible only if removal is likely to happen “in the reasonably foreseeable
17 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
18 removal efforts. If the Court has “no idea of when it might reasonably expect
19 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
20 is likely to occur—or even that it might occur—in the reasonably foreseeable
21 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
22 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
23 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
24 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Mora
25 Gutierrez “would *eventually* receive” a travel document, he can still meet his
26 burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v.*
27 *Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

28

1 Mr. Mora Gutierrez readily satisfies the above standards for an obvious
2 reason: ICE has already tried and failed to remove him under the operative
3 repatriation agreements between the United States and Cuba and the United States
4 and Mexico. Exh. A. Mr. Mora Gutierrez was ordered removed in June 2017 and
5 though ICE detained him for a full six months in 2017 to try to effectuate his
6 removal, ICE failed. *Id.* ICE did not succeed in removing his for the next seven
7 years, either. And ICE has not managed to remove him in 2025-2026, despite
8 detaining him for over three additional months.

9 Thus, Mr. Mora Gutierrez has met his initial burden, and the burden shifts
10 to the government. Unless the government can prove a “significant likelihood of
11 removal in the reasonably foreseeable future,” Mr. Mora Gutierrez must be
12 released. *Zadvydas*, 533 U.S. at 701.

13 **III. Count 3: ICE may not remove Mr. Mora Gutierrez to a third country**
14 **without adequate notice and an opportunity to be heard.**

15 In addition to unlawfully detaining him, ICE’s policies threaten his removal
16 to a third country without adequate notice and an opportunity to be heard. These
17 policies violate the Fifth Amendment, the Convention Against Torture, and
18 implementing regulations. Though the government will not be able to prove that
19 there is a significant prospect of removal in the reasonably foreseeable future, an
20 unanticipated change of circumstances could open up a heretofore unavailable
21 avenue to third-country removal. If that happens, ICE could remove Mr. Mora
22 Gutierrez with as little as 24 hours’ notice or no notice at all. This Court should
23 enter an order prohibiting such surprise removals, as they violate the Due Process
24 Clause.

25 **A. Legal background**

26 U.S. law enshrines protections against dangerous and life-threatening
27 removal decisions. By statute, the government is prohibited from removing an
28 immigrant to any third country where they may be persecuted or tortured, a form

1 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
2 The government “may not remove [a noncitizen] to a country if the Attorney
3 General decides that the [noncitizen’s] life or freedom would be threatened in that
4 country because of the [noncitizen’s] race, religion, nationality, membership in a
5 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
6 1208.16. Withholding of removal is a mandatory protection.

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

16 To comport with the requirements of due process, the government must
17 provide notice of the third country removal and an opportunity to respond. Due
18 process requires “written notice of the country being designated” and “the
19 statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2).”
20 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v.*
21 *U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1
22 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
23 1999).

24 The government must also “ask the noncitizen whether he or she fears
25 persecution or harm upon removal to the designated country and memorialize in
26 writing the noncitizen’s response. This requirement ensures DHS will obtain the
27 necessary information from the noncitizen to comply with section 1231(b)(3) and
28 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.

1 3d at 1019. “Failing to notify individuals who are subject to deportation that they
2 have the right to apply for asylum in the United States and for withholding of
3 deportation to the country to which they will be deported violates both INS
4 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at
5 1041.

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

20 “[L]ast minute” notice of the country of removal will not suffice,
21 *Andriasian*, 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App’x 724 (9th
22 Cir. 2016), and for good reason: To have a meaningful opportunity to apply for
23 fear-based protection from removal, immigrants must have time to prepare and
24 present relevant arguments and evidence. Merely telling a person where they may
25 be sent, without giving them a chance to look into country conditions, does not
26 give them a meaningful chance to determine whether and why they have a
27 credible fear. !
28

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

4 The policies in the June 6, 2025 memo do not adhere to these requirements.
5 First, under the policy, ICE need not give immigrants *any* notice or *any*
6 opportunity to be heard before removing them to a country that—in the State
7 Department’s estimation—has provided “credible” “assurances” against
8 persecution and torture. Exh. C. By depriving immigrants of any chance to
9 challenge the State Department’s view, this policy violates “[t]he essence of due
10 process,” “the requirement that a person in jeopardy of serious loss be given
11 notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*,
12 424 U.S. 319, 348 (1976) (cleaned up).

13 Second, even when the government has obtained no credible assurances
14 against persecution and torture, the government can still remove the person with
15 between 6 and 24 hours’ notice, depending on the circumstances. Exh. C.
16 Practically speaking, there is not nearly enough time for a detained person to
17 assess their risk in the third country and martial evidence to support any credible
18 fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may
19 know nothing about a third country, like Eswatini or South Sudan, when they are
20 scheduled for removal there. Yet if given the opportunity to investigate
21 conditions, immigrants would find credible reasons to fear persecution or
22 torture—like patterns of keeping deportees indefinitely and without charge in
23 solitary confinement or extreme instability raising a high likelihood of death—in
24 many of the third countries that have agreed to removal thus far. Due process
25 requires an adequate chance to identify and raise these threats to health and life.
26 This Court must prohibit the government from removing Mr. Mora Gutierrez
27 without these due process safeguards.
28

1 **IV. This Court must hold an evidentiary hearing on any disputed facts.**

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

5 **V. Prayer for relief**

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

- 7 1. Order Respondents to immediately release Petitioner from custody
8 under the same conditions of supervision;
- 9 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
10 § 1231(a)(6) unless and until Respondents obtain a travel document
11 for his removal;
- 12 3. Enjoin Respondents from re-detaining Petitioner without first
13 following all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i),
14 and any other applicable statutory and regulatory procedures;
- 15 4. Enjoin Respondents from removing Petitioner to any country other
16 than Cuba, unless they provide the following process, *see D.V.D. v.*
17 *U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL
18 1453640, at *1 (D. Mass. May 21, 2025):
 - 19 a) written notice to both Petitioner and Petitioner's counsel in a
20 language Petitioner can understand;
 - 21 b) a meaningful opportunity, and a minimum of ten days, to raise
22 a fear-based claim for CAT protection prior to removal;
 - 23 c) if Petitioner is found to have demonstrated "reasonable fear"
24 of removal to the country, Respondents must move to reopen
25 Petitioner's immigration proceedings;
 - 26 d) if Petitioner is not found to have demonstrated a "reasonable
27 fear" of removal to the country, a meaningful opportunity, and
28 a minimum of fifteen days, for the Petitioner to seek reopening
of his immigration proceedings.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Respectfully submitted,

Dated: January 8, 2026

s/ Zandra L. Lopez
Zandra L. Lopez
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Mora Gutierrez
Email: Zandra_Lopez @fd.org

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, the undersigned, will cause the attached petition for a writ of habeas corpus to be emailed to the U.S. Attorney’s Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Dated: January 8, 2026

s/ Zandra L. Lopez
Zandra L. Lopez
Federal Defenders of San Diego, Inc.
Email: Zandra_Lopez@fd.org

Exhibit A

LAZARO MORA GUTIERREZ
 [REDACTED]
 septiembre 22, 1973

ICE

Próxima fecha para reportarse: julio 20, 2026 entre 07:00 AM y 09:00 AM

Printed and recorded at the Miami (MIA) BPO Office on July 18, 2025
 Favor de guardar este recibí con sus registros. Guarde este recibí con sus registros.
 Para obtener información sobre un caso de la corte de inmigración por favor visite <https://www.dhs.gov/judicial> o llame al 800 898 7180

4220R

Impreso: julio 18, 2025 08:07 AM



Galaxy S24

~~XXXXXXXXXXXXXXXXXXXX~~

Printed: July 19, 2024 10:29:43 AM

Next Reporting Date:

July 19, 2025 between 9:00 AM and 11:00 AM

Participant reported on N/A. Identity verified through CART. System check show no new derogatory information.
No warrants, no warrants

For information on an Immigration court case, please go to: <https://nvcis.eoir.justice.gov> or call 800-898-7180

Please keep this receipt with your records. Store receipt away from sunlight



ICE



I-220R

Department of Homeland Security
Immigration and Customs Enforcement

Name: Gen Mora-Gutierrez, Lazaro

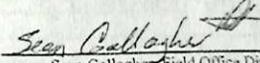
Order of Supervision

on June 21, 2017 you were ordered:
(Date of final order)

File No. 
Date: January 4, 2018

Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.
 Removed pursuant to proceedings commenced on or after April 1, 1997.
Because the Service has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

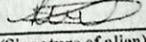
- That you appear in person at the time and place specified, upon each and every request of the Service, for identification and for deportation or removal.
- That upon request of the Service, you appear for medical or psychiatric examination at the expense of the United States Government.
- That you provide information under oath about your nationality, circumstances, habits, associations, and activities and such other information as the Service considers appropriate.
- That you do not travel outside Miami Field Office for more than 48 hours without first having notified this Service office of the dates and places of such proposed travel.
(Specify geographic limits, if any)
- That you furnish written notice to this Service office of any change of residence or employment within 48 hours of such change.
- That you report in person on January 17, 2018 at 10:00 A.M. to this Service office at: 2805 SW 145 Ave Miramar, FL 33027 Telephone: 954-843-5800 unless you are granted written permission to report on another date.
- That you assist the Immigration and Naturalization Service in obtaining any necessary travel documents.
- Other:
- See attached sheet containing other specified conditions (Continue on separate sheet if required)


Sean Gallagher, Field Office Director

Alien's Acknowledgement of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the Spanish language), the contents of this order and addendum, a copy of which has been given to me. I understand that failure to comply with the terms of this order and addendum may subject me to a fine, more restrictive release conditions, detention, criminal prosecution, and/or revocation of my employment authorization document.

D.Hartsfield
(Signature of ICE official serving order)

X 
(Signature of alien)

January 4, 2018
(Date)

Please note that all references in this order/addendum to "INS" or "Service" should now be considered to refer to U.S. Immigration and Customs Enforcement (ICE).
Form I-270B (Rev. 4/197) N

Department of Homeland Security
Immigration and Customs Enforcement

Continuation Page for Form I-220B Release on Order of Supervision I-220B

None
Gutierrez, Lazaro



Issue Date
January 4, 2018

X
Allen's Signature



Allen's Address
300 Vienna Drive F120
Palm Springs, FL 33461



RIGHT INDEX PRINT

Allen's Telephone Number (if any)
561-225-0774

PERSONAL REPORT RECORD

DATE	OFFICER	COMMENT/CHANGES
1/4/2018	D.Hartsfield	Released on OSUP, No SLRFT at this time
1/4/18	Hartsfield	Report to US Probation within 72 hours Elizabeth Patton 305-523-5370
1/15	Reported to Miramar ERO/Negative NCIC/NRD	1/17/2018 @ 7am
Date: 1/17/19	Reported to ICE-Miramar ERO/Negative NCIC/NRD	1/17/2019 @ 9AM
Date: 01/15/2021	Reported to ICE-Miramar ERO/Negative NCIC/NRD	01/15/2021 @ 11AM
Date: 4/22	Reported to ICE-Miramar ERO/Negative NCIC/NRD	4/22/2022 @ 11AM
Date: 7/11/23	Reported to ICE-Miramar ERO/Negative NCIC/NRD	7/11/2023 @ 9A.m
Date: 7/18/24	Reported to ICE-Miramar ERO/Negative NCIC/NRD	7/18/2024 @ 8m

Signature: D.Hartsfield

Title: Deportation Officer

Department of Homeland Security
Immigration and Customs Enforcement

Order of Supervision - Addendum

Name: Mora-Gutierrez, Lazaro

File No:

[REDACTED]

Date:

January 4, 2018

- That you do not associate with criminals or members of a gang that are known to be involved in criminal activity.
- That you register in a substance abuse program within 14 days and provide Immigration and Customs Enforcement (ICE) with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a program counselor.
- That you register in a sexual deviancy counseling program within 14 days and provide ICE with written proof of such within 30 days. You must provide ICE with the name of the program, the address of the program, the duration and objectives of the program, and the name of a program counselor.
- That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency/agencies and provide ICE with written proof of such registration within 10 days.
- That you do not commit any crimes or be associated with any criminal activity while on this Order of Supervision.
- That you report to a parole or probation officer as required within 5 business days and provide ICE with written verification of the officer's name, address, telephone number, and reporting requirements.
- You must follow all reporting and supervision requirements as mandated by the parole or probation officer.
- That you continue to follow any prescribed doctor's orders whether medical or psychological, including taking prescribed medications.
- That you make good faith and timely efforts to obtain a travel document and assist ICE in obtaining a travel document.
- That you submit a complete application for a travel document to all appropriate Embassies or Consulates, including those representing the countries of Cuba. You must present ICE with evidence that each Embassy or Consulate to which you apply has received your request and all required documents. This may be done, for example, by mailing your application(s) with a request for return receipt and providing the signed return receipt to ICE, by obtaining a tracking number when you mail your application(s) and providing the number to ICE, or by submitting written confirmation of receipt issued by the Embassy or Consulate.
- That you submit your application(s) for a travel document to all appropriate Embassies or Consulates and provide proof of receipt to ICE on or before _____.
- That you provide ICE a copy of your application(s) for a travel document that you submit to any Embassy or Consulate, including all supporting documents, photos, and other items provided to the Embassy or Consulate to support your application(s).

Please note that all references in this order/addendum to "INS" or "Service" should now be considered to refer to U.S. Immigration and Customs Enforcement (ICE).

Department of Homeland Security
Immigration and Customs Enforcement

Mora-Gutierrez, Lazaro

Order of Supervision - Addendum Continued

File No: 
Date: January 4, 2018

- That you provide ICE a copy of all correspondence related to your travel document application(s) that you send to, or receive from, an Embassy or Consulate.
- That you contact the Embassy or Consulate within 21 calendar days of making your application(s) to confirm that the information you provided is sufficient.
- That you comply with any requests from an Embassy or Consulate for an interview and make good faith efforts to submit further documentation if required by the Embassy or Consulate.
- Every time you report in person under this order of supervision, you must inform the local ICE office of all actions you have taken to obtain a travel document. You must provide any available written documentation to ICE regarding these actions and the status of your travel document application(s).
- That you provide ICE, upon request, with any and all information relevant to application(s) for a travel document. This may include, but is not limited to, information regarding your family history, including dates of birth, nationalities, addresses, and phone numbers as requested for such persons, whether in your country of nationality and/or citizenship or elsewhere, and your past residences, schools attended, etc.
- You will participate in a supervised release program, as described in the attached document. You will comply with the rules and requirements of this program, and cooperate with its administrators.

I agree to comply with the rules, requirements, and administrators in the supervised release program described in the attached document.

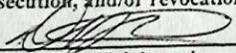
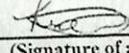
Alien's signature: X  Date: January 4, 2018
(Signature of alien)

Other:

Any violation of any of the above conditions may result in a fine, more restrictive release conditions, return to detention, criminal prosecution, and/or revocation of your employment authorization document.

Alien's Acknowledgement of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the Spanish language the contents of this order and addendum, a copy of which has been given to me. I understand that failure to comply with the terms of this order and addendum may subject me to a fine, more restrictive release conditions, detention, criminal prosecution, and/or revocation of my employment authorization document.

D. Hartsfield  X  January 4, 2018
(Signature of ICE official serving order) (Signature of alien) (Date)

Please note that all references in this order/addendum to "INS" or "Service" should now be considered to refer to U.S. Immigration and Customs Enforcement (ICE). Updated 4/25/2005

Exhibit B

1/8/26, 1:43 PM

search

 Official Website of the Department of Homeland Security

Report



Main Menu

Search Results: 1

LAZARO MORA GUTIERREZ

Country of Birth : Cuba

A-Number: 

Status : In ICE Custody

State: CA

Current Detention Facility: OTAY MESA DETENTION CENTER

** Click on the Detention Facility name to obtain facility contact information*

[BACK TO SEARCH >](#)

Related Information

- Helpful Info
 - Status of a Case
 - About the Detainee Locator
 - Brochure
 - ICE ERO Field Offices
 - ICE Detention Facilities
 - Privacy Notice

External Links

[Privacy - Terms](#)

1/8/26, 1:43 PM

search

Bureau of Prisons Inmate
Locator



[DHS.gov](#) [USA.gov](#) [OIG](#) [OpenFOIA](#) [Metrics](#) [No Site](#) [Site](#)
[Gov](#) [FearMap](#) [Policies](#)
[Act](#) [&](#)
[Plug-](#)
[Ins](#)

Exhibit C

CASE NO. PX 25-951
IDENTIFICATION: JUL 10 2025
ADMITTED: JUL 10 2025

To All ICE Employees
July 9, 2025

Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the district court's nationwide preliminary injunction in *D.V.D. v. Department of Homeland Security*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required certain procedures related to providing a "meaningful opportunity" to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country. Accordingly, all previous guidance implementing the district court's preliminary injunction related the third country removals issued in *D.V.D.* is hereby rescinded. Absent additional action by the Supreme Court, the stay will remain in place until any writ of certiorari is denied or a judgment following any decision issues.

Effective immediately, when seeking to remove an alien with a final order of removal—other than an expedited removal order under section 235(b) of the Immigration and Nationality Act (INA)—to an alternative country as identified in section 241(b)(1)(C) of the INA, ICE must adhere to Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, *Guidance Regarding Third Country Removals*, as detailed below. A "third country" or "alternative country" refers to a country other than that specifically referenced in the order of removal.

If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures. ICE will seek written confirmation from the Department of State that such diplomatic assurances were received and determined to be credible. HSI and ERO will be made aware of any such assurances. In all other cases, ICE must comply with the following procedures:

- An ERO officer will serve on the alien the attached Notice of Removal. The notice includes the intended country of removal and will be read to the alien in a language he or she understands.
- ERO will not affirmatively ask whether the alien is afraid of being removed to the country of removal.
- ERO will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal.
 - Any determination to execute a removal order under exigent circumstances less than 24 hours following service of the Notice of Removal must be approved by the DHS General Counsel, or the Principal Legal Advisor where the DHS General Counsel is not available.

- If the alien 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, ERO may proceed with removal to the country identified on the notice. ERO should check all systems for motions as close in time as possible to removal.
- If the alien does affirmatively state a fear if removed to the country of removal listed on the Notice of Removal, ERO will refer the case to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under section 241(b)(3) of the INA and the Convention Against Torture (CAT). USCIS will generally screen the alien within 24 hours of referral.
 - USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.
 - If USCIS determines that the alien has not met this standard, the alien will be removed.
 - If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the immigration court, USCIS will refer the matter to the immigration court for further proceedings. In cases where the alien was previously in proceedings before the immigration court, USCIS will notify the referring immigration officer of its finding, and the immigration officer will inform ICE. In such cases, ERO will alert their local Office of the Principal Legal Advisor (OPLA) Field Location to file a motion to reopen with the immigration court or the Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under section 241(b)(3) of the INA and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.

Notably, the Supreme Court's stay of removal does not alter any decisions issued by any other courts as to individual aliens regarding the process that must be provided before removing that alien to a third country.

Please direct any questions about this guidance to your OPLA field location.

Thank you for all you continue to do for the agency.

Todd M. Lyons
Acting Director
U.S. Immigration and Customs Enforcement

Attachments:

- U.S. Supreme Court Order
- Secretary Noem's Memorandum
- Notice of Removal