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

12 LUIS ORLANDO VIERA,  
13  
14 Petitioner,

15 v.

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

25 Respondents.

CIVIL CASE NO.:

'26CV115 RSH DDL

**Petition  
for a  
Writ of Habeas Corpus**

26  
27 <sup>1</sup> Federal Defenders of San Diego, Inc., is filing the instant petition with  
28 provisional appointment under Chief Judge Order No. 134. Undersigned counsel  
has been informed that Petitioner is retired car salesman, and he cannot afford an  
attorney. 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 Luis Orlando Viera’s indefinite detention pending deportation to  
4 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. Viera came to the United States from Cuba in 1966. He was ordered  
13 removed to Cuba on July 18, 2008. He was not removed from the country and  
14 was eventually placed on an order of supervision. Mr. Viera complied with the  
15 terms of his supervision.

16 Despite this, ICE re-arrested him on October 28, 2025 in Florida. ICE did  
17 not provide any written or oral information about why Mr. Viera was being re-  
18 detained or any chance to contest his redetention. He has been given no  
19 information indicating that he will be removed to Cuba in the reasonably  
20 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. Viera was under an order of supervision and then was re-detained**  
6 **without an individualized reason for detention and without an**  
7 **opportunity to contest his re-detention.**

8 Mr. Viera came to the United States from Cuba in 1966. He was  
9 subsequently ordered deported on July 18, 2008. Exhibit A (EOIR Automated  
10 Case Information).

11 A few ago, Mr. Viera was placed on an order of supervision. On October  
12 28, 2025, despite not violating the conditions of his supervision, ICE arrested Mr.  
13 Viera at an ICE check-in. He was not given a reason for his detention other than  
14 he had an order of deportation.

15 After his detention, ICE did not talk to Mr. Viera about his case for several  
16 months. Mr. Viera was recently moved from an immigration facility in Florida to  
17 the Otay Detention Center. *See* Exhibit B (Jan. 8, 2026 DHS Immigrant Locator).

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

21 It is no surprise that ICE has struggled to remove Mr. Viera to Cuba. Cuba  
22 rarely accepts its citizens for repatriation.

23 Prior to 2017, there was no repatriation agreement between the United  
24 States and Cuba. *Clark v. Martinez*, 543 U.S. 371, 386 (2005). On January 12,  
25 2017, the United States and Cuba signed a joint statement (“2017 Joint  
26 Statement”) by which Cuba agreed to the repatriation of some Cuban nationals.  
27 *Cuba (17-112) – Joint Statement Concerning Normalization of Migration*  
28 *Procedures*, Jan. 12, 2017, available at <https://www.state.gov/17-112/>.

Specifically, under the agreement Cuba “shall receive back all Cuban nationals

1 who after the signing” of the 2017 Joint Statement “found by the competent  
2 authorities of the United States to have tried to irregularly enter or remain in that  
3 country in violation of United States law.” *Id.* at 2.

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

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

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

26 The Administration has reportedly negotiated with countries to have many  
27 of these deportees imprisoned in prisons, camps, or other facilities. The  
28 government paid El Salvador about \$5 million to imprison more than 200

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

15 On June 23 and July 3, 2025, the Supreme Court issued a stay of a national  
16 class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of*  
17 *Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at \*1, 3 (D.  
18 Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional  
19 requirements before removing an individual to a third country. *U.S. Dep't of*  
20 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025  
21 WL 1832186 (U.S. July 3, 2025).<sup>2</sup> On July 9, 2025, ICE rescinded previous  
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23 <sup>2</sup> Though the Supreme Court's order was unreasoned, the dissent noted that the  
24 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)  
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. Viera. *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 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 generally screen within 24 hours.” *Id.* If USCIS determines that the noncitizen  
24 does not meet the standard, the individual will be removed. *Id.* If USCIS  
25 determines that the noncitizen has met the standard, then the policy directs ICE to  
26 either move to reopen removal proceedings “for the sole purpose of determining  
27 eligibility for [withholding of removal protection] and CAT” or designate another  
28 country for removal. *Id.*

1 **CLAIMS FOR RELIEF**

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

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

9 Second, it should enjoin the Respondents from removing Mr. Viera to a  
10 third country without first providing notice and a sufficient opportunity to be  
11 heard before an immigration judge.

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

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

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

26 Otherwise, they contain four major regulatory protections for people like  
27 Mr. Viera, who did not violate any condition of release. They permit revocation of  
28 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,”

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

8 ICE is required to follow its own regulations. *United States ex rel. Accardi*  
9 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,  
10 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to  
11 abide by certain internal policies is well-established.”). A court may review a re-  
12 detention decision for compliance with the regulations, and “where ICE fails to  
13 follow its own regulations in revoking release, the detention is unlawful and the  
14 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at \*4  
15 (collecting cases).

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

17 First, Mr. Viera did not receive notice of the reasons for his re-detention  
18 upon revocation. It is too late now to comply with that requisite.

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

27 Third, ICE did not revoke Mr. Viera’s release for a permissible reason. He  
28 was not returned to custody because of a conditions violation. And there are no

1 changed circumstances that justify re-detaining him. Mr. Viera entered before the  
2 United States and Cuba signed the operative repatriation agreement in 2017. ICE  
3 already tried and failed to remove Mr. Viera under that agreement, which is why  
4 ICE replaced him on an order of supervision.

5 Absent any evidence for “why obtaining a travel document is more likely  
6 this time around[,] Respondents’ intent to eventually complete a travel document  
7 request for Petitioner does not constitute a changed circumstance.” *Hoac v.*  
8 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D. Cal. July  
9 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at \*2 (D.  
10 Kan. June 17, 2025)). Furthermore, past experience teaches that ICE almost  
11 certainly made no changed-circumstances determination before his arrest. *See*  
12 *Rokhfirooz*, 2025 WL 2646165 at \*3.

13 Numerous courts have released re-detained immigrants after finding that  
14 ICE failed to comply with applicable regulations. *See, e.g., Rokhfirooz*, 2025 WL  
15 2646165; *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988;  
16 *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*,  
17 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d  
18 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL  
19 2452352, at \*7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-  
20 01204-AA, 2025 WL 2430267, at \*10–12 (D. Or. Aug. 21, 2025); *Escalante v.*  
21 *Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at \*2–3 (E.D. Tex. July 18,  
22 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at \*4  
23 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at \*2; *M.Q. v. United States*,  
24 2025 WL 965810, at \*3, \*5 n.1 (S.D.N.Y. Mar. 31, 2025).

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

1 **II. Count 2: Mr. Viera’s detention violates *Zadvydas* and 8 U.S.C. § 1231.**

2 **A. Legal background**

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

18 If federal law were understood to allow for “indefinite, perhaps permanent,  
19 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at  
20 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by  
21 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

22 As an initial matter, *Zadvydas* held that detention is “presumptively  
23 reasonable” for at least six months. *Id.* at 701. This presumption is, in some  
24 circumstances even before the running of six months, “rebuttable.” *See Zavvar*,  
25 2025 WL 2592543 at \*5–\*6 (explaining this point when granting *Zadvydas*  
26 habeas relief).

27 Courts must use a burden-shifting framework to decide whether detention  
28 remains authorized. First, the petitioner must make a prima facie case for relief:

1 He must prove that there is “good reason to believe that there is no significant  
2 likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at  
3 689.

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

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

19 Using this framework, Mr. Viera can make all the threshold showings  
20 needed to shift the burden to the government.

21 **B. The six-month grace period expired in 2008.**

22 As an initial matter, the six-month grace period has long since ended. The  
23 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,  
24 *three months* after the statutory removal period has ended.” *Kim Ho Ma v.*  
25 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Viera was ordered  
26 removed on July 18, 2008. Exh. A. Thus, his 90-day removal period began then.  
27 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired three months  
28

1 after the removal period ended, in December 2008. Thus, this threshold  
2 requirement is met.

3 **C. There is good reason to believe that there is no significant**  
4 **likelihood of Mr. Viera’s removal in the reasonably foreseeable**  
5 **future.**

6 Because the six-month grace period has passed, this Court must evaluate  
7 Mr. Viera’s *Zadvydas* claim using the burden-shifting framework. At the first  
8 stage of the framework, there must be “good reason to believe that there is no  
9 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,  
10 533 U.S. at 701. This standard can be broken down into three parts.

11 **“Good reason to believe.”** The “good reason to believe” standard is a  
12 relatively forgiving one. “A petitioner need not establish that there exists no  
13 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL  
14 10714999, at \*3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to  
15 believe’ . . . place a burden upon the detainee to demonstrate no reasonably  
16 foreseeable, significant likelihood of removal or show that his detention is  
17 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,  
18 2020 WL 3972319, at \*3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401  
19 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:  
20 Petitioners need only give a “good reason”—not prove anything to a certainty.

21 **“No significant likelihood of removal.”** This component focuses on  
22 whether Mr. Viera will likely be removed: Continued detention is permissible  
23 only if it is “significant[ly] like[ly]” that ICE will be able to remove him.  
24 *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of  
25 untapped possibilities, but also [the] probability of *success* in such possibilities.”  
26 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis  
27 added). In other words, even if “there remains *some* possibility of removal,” a  
28 petitioner can still meet its burden if there is good reason to believe that

1 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-  
2 8019, 2002 WL 31520362, at \*4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

3       **“In the reasonably foreseeable future.”** This component of the test  
4 focuses on when Mr. Viera will likely be removed: Continued detention is  
5 permissible only if removal is likely to happen “in the reasonably foreseeable  
6 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s  
7 removal efforts. If the Court has “no idea of when it might reasonably expect  
8 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal  
9 is likely to occur—or even that it might occur—in the reasonably foreseeable  
10 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at \*3  
11 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL  
12 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d  
13 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Viera  
14 “would *eventually* receive” a travel document, he can still meet his burden by  
15 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,  
16 2016 WL 6679830, at \*2 (E.D. Mich. Nov. 14, 2016).

17       Mr. Viera readily satisfies the above standards for an obvious reason: ICE  
18 has already tried and failed to remove him under the operative repatriation  
19 agreements between the United States and Cuba. Mr. Viera was ordered removed  
20 in July 2008 and ICE has not been able to effectuate his removal. ICE did not  
21 succeed in removing his for almost 20 years. And ICE has not managed to remove  
22 him during his current detention.

23       Thus, Mr. Viera has met his initial burden, and the burden shifts to the  
24 government. Unless the government can prove a “significant likelihood of  
25 removal in the reasonably foreseeable future,” Mr. Viera must be released.  
26 *Zadvydas*, 533 U.S. at 701.

1 **III. Count 3: ICE may not remove Mr. Viera to a third country without**  
2 **adequate notice and an opportunity to be heard.**

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

12 **A. Legal background**

13 U.S. law enshrines protections against dangerous and life-threatening  
14 removal decisions. By statute, the government is prohibited from removing an  
15 immigrant to any third country where they may be persecuted or tortured, a form  
16 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).  
17 The government “may not remove [a noncitizen] to a country if the Attorney  
18 General decides that the [noncitizen’s] life or freedom would be threatened in that  
19 country because of the [noncitizen’s] race, religion, nationality, membership in a  
20 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,  
21 1208.16. Withholding of removal is a mandatory protection.

22 Similarly, Congress codified protections enshrined in the CAT prohibiting  
23 the government from removing a person to a country where they would be  
24 tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be  
25 the policy of the United States not to expel, extradite, or otherwise effect the  
26 involuntary return of any person to a country in which there are substantial  
27 grounds for believing the person would be in danger of being subjected to torture,  
28 regardless of whether the person is physically present in the United States.”); 28

1 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also  
2 mandatory.

3 To comport with the requirements of due process, the government must  
4 provide notice of the third country removal and an opportunity to respond. Due  
5 process requires “written notice of the country being designated” and “the  
6 statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2).”  
7 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v.*  
8 *U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at \*1  
9 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.  
10 1999).

11 The government must also “ask the noncitizen whether he or she fears  
12 persecution or harm upon removal to the designated country and memorialize in  
13 writing the noncitizen’s response. This requirement ensures DHS will obtain the  
14 necessary information from the noncitizen to comply with section 1231(b)(3) and  
15 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.  
16 3d at 1019. “Failing to notify individuals who are subject to deportation that they  
17 have the right to apply for asylum in the United States and for withholding of  
18 deportation to the country to which they will be deported violates both INS  
19 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at  
20 1041.

21 If the noncitizen claims fear, measures must be taken to ensure that the  
22 noncitizen can seek asylum, withholding, and relief under CAT before an  
23 immigration judge in reopened removal proceedings. The amount and type of  
24 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and  
25 circumstances, he would have a reasonable opportunity to raise and pursue his  
26 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009  
27 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132  
28 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at \*1 (requiring the

1 government to move to reopen the noncitizen’s immigration proceedings if the  
2 individual demonstrates “reasonable fear” and to provide “a meaningful  
3 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening  
4 of their immigration proceedings” if the noncitizen is found to not have  
5 demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice  
6 and time for a respondent to file a motion to reopen and seek relief).

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

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

17 The policies in the June 6, 2025 memo do not adhere to these requirements.  
18 First, under the policy, ICE need not give immigrants *any* notice or *any*  
19 opportunity to be heard before removing them to a country that—in the State  
20 Department’s estimation—has provided “credible” “assurances” against  
21 persecution and torture. Exh. C. By depriving immigrants of any chance to  
22 challenge the State Department’s view, this policy violates “[t]he essence of due  
23 process,” “the requirement that a person in jeopardy of serious loss be given  
24 notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*,  
25 424 U.S. 319, 348 (1976) (cleaned up).

26 Second, even when the government has obtained no credible assurances  
27 against persecution and torture, the government can still remove the person with  
28 between 6 and 24 hours’ notice, depending on the circumstances. Exh. C.

1 Practically speaking, there is not nearly enough time for a detained person to  
2 assess their risk in the third country and martial evidence to support any credible  
3 fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may  
4 know nothing about a third country, like Eswatini or South Sudan, when they are  
5 scheduled for removal there. Yet if given the opportunity to investigate  
6 conditions, immigrants would find credible reasons to fear persecution or  
7 torture—like patterns of keeping deportees indefinitely and without charge in  
8 solitary confinement or extreme instability raising a high likelihood of death—in  
9 many of the third countries that have agreed to removal thus far. Due process  
10 requires an adequate chance to identify and raise these threats to health and life.  
11 This Court must prohibit the government from removing Mr. Viera without these  
12 due process safeguards.

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

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

17 **V. Prayer for relief**

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

- 19 1. Order Respondents to immediately release Petitioner from custody  
20 under the same conditions of supervision;
- 21 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.  
22 § 1231(a)(6) unless and until Respondents obtain a travel document  
23 for his removal;
- 24 3. Enjoin Respondents from re-detaining Petitioner without first  
25 following all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i),  
26 and any other applicable statutory and regulatory procedures;
- 27 4. Enjoin Respondents from removing Petitioner to any country other  
28 than Cuba, unless they provide the following process, *see D.V.D. v.*

1 *U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL  
2 1453640, at \*1 (D. Mass. May 21, 2025):

- 3 a) written notice to both Petitioner and Petitioner's counsel in a  
4 language Petitioner can understand;  
5 b) a meaningful opportunity, and a minimum of ten days, to raise  
6 a fear-based claim for CAT protection prior to removal;  
7 c) if Petitioner is found to have demonstrated "reasonable fear"  
8 of removal to the country, Respondents must move to reopen  
9 Petitioner's immigration proceedings;  
10 d) if Petitioner is not found to have demonstrated a "reasonable  
11 fear" of removal to the country, a meaningful opportunity, and  
12 a minimum of fifteen days, for the Petitioner to seek reopening  
13 of his immigration proceedings.

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

15  
16 Respectfully submitted,

17  
18 Dated: January 8, 2026

*s/ Zandra L. Lopez*

19 \_\_\_\_\_  
20 Zandra L. Lopez  
21 Federal Defenders of San Diego, Inc.  
22 Attorneys for Mr. Viera  
23 Email: Zandra\_Lopez @fd.org  
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**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

1/8/26, 4:00 PM

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### Court Closures Today January 8, 2026

Please check <https://www.justice.gov/eoir-operational-status> for up to date closures.

[Home](#) > [VIERA, LUIS ORLANDO](#)



# Automated Case Information

Name: VIERA, LUIS ORLANDO | A-Number:



## Next Hearing Information



*There are no future hearings for this case.*

## Court Decision and Motion Information

The immigration judge ordered **REMOVAL**.

### DECISION DATE

July 18, 2008

**COURT ADDRESS**

333 SOUTH MIAMI AVE., STE.700  
MIAMI, FL 33130



**BIA Case Information**

No appeal was received for this case.



**Court Contact Information**

If you require further information regarding your case, or wish to file additional documents, please contact the immigration court.

**COURT ADDRESS**

333 SOUTH MIAMI AVE., STE. 700  
MIAMI, FL 33130

**PHONE NUMBER**

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**EOIR** Automated Case Information

# Exhibit B

1/8/26, 4:31 PM

search

Official Website of the Department of Homeland Security



Report

Main Menu

# Search Results: 1

**LUIS VIERA**

**Country of Birth :** Cuba

**A-Number:** ~~XXXXXXXXXX~~

**Status :** In ICE Custody

**State:** CA

**Current Detention Facility:** OTAY MESA DETENTION CENTER

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

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Bureau of Prisons Inmate  
Locator



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# 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)**

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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