3:26-cv-00133-RSH-DDL Trujillo v. Noem et al
Robert S. Huie, presiding
David D. Leshner, referral
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History

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GIRALDO TRUJILLO,

Petitioner,

v.

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

Respondents.

CIVIL CASE NO.:

'26CV133 RSH DDL

Petition for a Writ of Habeas Corpus [28 U.S.C. § 2241]

INTRODUCTION

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

Mr. Trujillo was ordered removed to Cuba on October 12, 2004. It is very hard to deport people to Cuba. So ICE released him. In the over 21 since, Mr. Trujillo has never intentionally missed a check in.

Nevertheless, ICE re-arrested him on October 20, 2025. ICE did not provide oral information about why Mr. Trujillo was being re-detained or any chance to contest his redetention. And though ICE told Mr. Trujillo to sign some kind of notice when re-detaining him, ICE did not let him read it or give him a copy. He has been given no information indicating that he will be removed to Cuba in the reasonably foreseeable future. And he is not willing to be voluntarily removed to Mexico, disqualifying him for removal there.

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

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

STATEMENT OF FACTS

I. Mr. Trujillo lived under supervision for 21 years and then was re-detained without an individualized reason for detention and without an opportunity to contest his re-detention.

Mr. Trujillo was born in Cuba on [redacted] Exh. A at ¶ 1. When he was 17, around 1994, he went to Guantanamo Bay to request entry to the United States. *Id.* He got a green card. *Id.*

In 2004, he was convicted of credit card fraud. *Id.* at ¶ 2. He was subsequently ordered removed on October 12, 2004. *Id.* ICE held him in immigration detention for 90 days. *Id.* But when he could not be removed to Cuba or anywhere else, ICE released him on an order of supervision. *Id.* at ¶¶ 2–3.

Mr. Trujillo sustained a few convictions after his release, most recently in the early 2020s. *Id.* at ¶ 3. But though ICE put a hold on him while he was in prison, ICE later removed the hold and continued him on supervision. *Id.* Mr. Trujillo has never missed a check-in unless he was in custody. *Id.*

On October 20, 2025, ICE detained Mr. Trujillo at his check in. *Id.* ICE said that his release was being revoked and asked him to sign something. *Id.* Mr. Trujillo did not get a chance to read what he signed, nor was he given a copy. *Id.* ICE did not tell him anything orally about why his release was being revoked. *Id.* ICE did not give him a chance to explain why he should not be re-detained. *Id.* ICE did not tell him what changed to make his removal more likely than in the past decades. *Id.*

After his arrest, Mr. Trujillo was moved around to multiple detention centers. *Id.* at ¶ 5. He has never met with a deportation officer about his removal.

Id. He has tried to ask ICE employees who come into his pod about what will happen to him. But they just say to wait—no country has yet accepted him. *Id.*

Mr. Trujillo was recently transferred to Otay Mesa Detention Center. No one has given him any notice about a third-country removal, but rumors from other detainees lead him to believe that he is here for potential removal to Mexico. *Id.* at ¶ 6. But Mr. Trujillo is not willing to be removed to Mexico voluntarily. *Id.*

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

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

Prior to 2017, there was no repatriation agreement between the United States and Cuba. *Clark v. Martinez*, 543 U.S. 371, 386 (2005). On January 12, 2017, the United States and Cuba signed a joint statement ("2017 Joint Statement") by which Cuba agreed to the repatriation of some Cuban nationals. *Cuba (17-112) – Joint Statement Concerning Normalization of Migration Procedures*, Jan. 12, 2017, available at https://www.state.gov/17-112/. Specifically, under the agreement Cuba "shall receive back all Cuban nationals who after the signing" of the 2017 Joint Statement "found by the competent authorities of the United States to have tried to irregularly enter or remain in that country in violation of United States law." *Id.* at 2. Mr. Trujillo entered before 2017, meaning that he is not eligible for removal under the treaty. *Id.* at ¶ 1.

In any case, in practice, Cuba did not accept its nationals for removal after signing the treaty. Despite the 2017 Joint Statement, a 2019 report by the Office of Inspector General classified Cuba as an "uncooperative country" in 2017, 2018, and 2019 based on its failure to provide travel documents on a timely basis. Department of Homeland Security, Office of Inspector General, Report No. OIG-

19-28, *ICE Faces Barriers in Timely Repatriation of Detained Aliens* (Mar. 11, 2019), available at https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf at pages 6-7, 10, 29. In May of 2018, Cuba was one of nine countries with the uncooperative categorization. *Id.* at 10.

Mexico has agreed to take some Cubans for third-country removal. *See* Exh. C at ¶ 7. But Mexico will accept a deportee "only if [they] would willingly go to Mexico." *Id.* at ¶ 11. Mr. Trujillo does not qualify for repatriation under the agreement, because he is not willing to go to Mexico voluntarily. *Id.* at ¶ 6.

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

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

The Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*,

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

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

[1] Though the Supreme Court's order was unreasoned, the dissent noted that the government had sought a stay based on procedural arguments applicable only to class actions. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025) (Sotomayor, J., dissenting). Thus, "even if the Government [was] correct that classwide relief was impermissible" in *D.V.D.*, Respondents still "remain[] obligated to comply with orders enjoining [their] conduct with respect to individual plaintiffs" like Mr. Trujillo. *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).

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

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

CLAIMS FOR RELIEF

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

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

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

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

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

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

Otherwise, they contain four major regulatory protections for people like Mr. Trujillo, who did not violate any condition of release. They permit revocation of release only if the appropriate official (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," § 241.13(i)(2), and (2) makes that finding "on account of changed circumstances."

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

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

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

First, Mr. Trujillo did not receive notice of the reasons for his re-detention upon revocation. Exh. A at ¶ 4. ICE did put a piece of paper in front of him and ask him to sign it, but Mr. Trujillo does not know what it said—ICE did not give him a chance to read it or provide him with a copy. *Id.* Mr. Trujillo therefore never received any actual notice of why his release was being revoked.

Second, Mr. Trujillo did not receive an informal interview permitting him to contest his redetention. Exh. A at ¶ 4. Any interview conducted now would not be prompt, as required by the regulation. *See, e.g.*, *M.S.L. v. Bostock*, Civ. No. 6:25-cv-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025) (27-day delay not prompt); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025) (two-month delay not prompt); *Soryadvongsa v. Noem*, 24-cv-2663-AGS-DDL, 2025 WL 3126821, at *1 (S.D. Cal. Nov. 8, 2025) (29-day delay not prompt).

Third, ICE did not revoke Mr. Trujillo's release for a permissible reason. He was not returned to custody because of a conditions violation. Exh. A at ¶ 3. And there are no changed circumstances that justify re-detaining him. Mr. Trujillo is not party to the 2017 repatriation agreement between Cuba and the U.S., which applies only to post-2017 immigrants. *Id.* at ¶ 1. ICE already had the opportunity to remove Mr. Trujillo to Cuba without an agreement, when they held him for 90 days in 2004. *Id.* And Mr. Trujillo is ineligible for third-country removal to Mexico, as Mexico will only accept those willing to be voluntarily deported there. *Id.* at ¶ 6; Exh. C. Absent any evidence for "why obtaining a travel document is more likely this time around[,] Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025)). Furthermore, past experience teaches that ICE almost certainly made no changed-circumstances determination before his arrest. *See Rokhfirooz*, 2025 WL 2646165 at *3.

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

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

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

A. Legal background

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

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

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

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

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

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

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

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

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

As an initial matter, the six-month grace period has long since ended. The *Zadvydas* grace period lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Trujillo's order of removal was entered on October 12, 2004. Exh. A at ¶ 2. Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired three months after the removal period ended, in April 2005. Furthermore, though actual detention for six months is unnecessary, Mr. Trujillo has been detained for close to a cumulative six months: three months in 2004 and two-and-a-half months in 2025. Exh. A at ¶¶ 2, 4. Thus, this threshold requirement is met.

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

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

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

F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says: Petitioners need only give a "good reason"—not prove anything to a certainty.

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

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

Mr. Trujillo satisfies the above standards for an obvious reason: He is not eligible for repatriation under any treaty between Cuba and United States, and

ICE has proved unable to remove him anywhere for the last 21 years. Exh. A at ¶¶ 1–4. Not only is there no repatriation treaty applicable to pre-2017 immigrants. In practice, Cuba also has not accepted people eligible for repatriation under the operative agreement.

Furthermore, ICE cannot remove Mr. Trujillo to Mexico as a voluntary deportee, because he is not willing to go to Mexico (a country to which he has no connection) voluntarily. *Id.* at ¶ 6; Exh. C. Twenty-one years' worth of failed efforts, with no viable path to removal, provides a very good reason to doubt that Mr. Trujillo can be removed in the reasonably foreseeable future.

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

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

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

A. Legal background

U.S. law enshrines protections against dangerous and life-threatening removal decisions. By statute, the government is prohibited from removing an immigrant to any third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not remove [a noncitizen] to a country if the Attorney General

decides that the [noncitizen's] life or freedom would be threatened in that country because of the [noncitizen's] race, religion, nationality, membership in a particular social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

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

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

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

1041.

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

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

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

The policies in the June 6, 2025 memo do not adhere to these requirements. First, under the policy, ICE need not give immigrants *any* notice or *any* opportunity to be heard before removing them to a country that—in the State Department's

estimation—has provided "credible" "assurances" against persecution and torture. Exh. B. By depriving immigrants of any chance to challenge the State Department's view, this policy violates "[t]he essence of due process," "the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

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

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

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

IV. Prayer for relief

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

1. Order Respondents to immediately release Petitioner from custody on the same conditions applicable to him before his re-detention;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(*l*), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Enjoin Respondents from removing Petitioner to any country other than Cuba, unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
   (1) written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
   (2) a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
   (3) if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
   (4) if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.
5. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: January 6, 2026

s/ Katie Hurrelbrink

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

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.

Date: 1/6/2026

/s/ *Katie Hurrelbrink*
Katie Hurrelbrink

Exhibit A

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Attorneys for Mr. Trujillo

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GIRALDO TRUJILLO,

Petitioner,

v.

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

Respondents.

CIVIL CASE NO.:

First Declaration of Giraldo Trujillo

I, Giraldo Trujillo, declare:

1. I was born in Cuba on [redacted] I came to the United States through Guantanamo Bay when I was 17 years old in 1994. I got a green card.

2. In 2004, I was convicted of credit card fraud. I was ordered removed on October 12, 2004. ICE held me in immigration detention for 90 days before releasing me. ICE released me because ICE could not remove me to Cuba or anywhere else.

3. I was released on an order of supervision. I got a few convictions after my release. The most recent one was around 2021. I gave money to someone as part of a kick-back scheme. I got out of custody in 2024. ICE put a hold on me, but near the end of my sentence, it was taken off. I checked in with ICE after serving my sentence, and ICE continued me on supervision. Since 2004, I have never missed an ICE check in unless I was in custody.

4. On October 20, 2025, ICE detained me at my check-in. ICE said that I was being revoked and asked me to sign something. They did not let me read what I signed or give me a copy. ICE also did not tell me anything else about why my release was being revoked. ICE did not give me a chance to explain why I should not be redetained. No one told me what changed to make my removal more likely.

5. I was moved around to multiple detention centers. I have never seen a deportation officer about my removal. I've tried to ask people who come into my pod about what's happening in my case. They say that no country has accepted me, and I just have to wait. They've had lists of names of people who had travel documents, but I was never on the list.

6. No one has given me any notice that I will be removed anywhere, including Mexico. But from what I've heard from other detainees, I believe I may be here at Otay Mesa Detention Center for removal to Mexico. But I have been told that Mexico will only take third-country deportees if they are willing to

voluntarily be removed to Mexico. I am not willing to voluntarily be removed to Mexico.

7. I do not have any savings. I don't even have a bank account. I am not making any income in custody. I do not have a car or a house or any other assets. I have about $60,000 in credit card debt. I don't think I can afford an attorney.

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I declare under penalty of perjury that the foregoing is true and correct, executed on this date, 1/5/2026, in San Diego, California.

GIRALDO TRUJILLO
Declarant

Exhibit B

PLAINTIFFS' EXHIBIT NO. 2
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

Exhibit C

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Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CARLOS RIOS,

Petitioner,

v.

KRISTI NOEM; et al.,

Respondents.

Case No.: 25-cv-02866-JES-VET

NOTICE OF SUPPLEMENTAL INFORMATION

Respondents herein submit the attached declaration in support of their Response in Opposition to Petitioner's Habeas Petition and Application for Temporary Restraining Order. *See* Declaration of Martin Parsons.

Dated: November 5, 2025

Respectfully submitted,

ADAM GORDON
United States Attorney

s/ Erin M. Dimbleby
ERIN M. DIMBLEBY
Assistant U.S. Attorney
Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CARLOS RIOS, Petitioner, v. KRISTI NOEM, Secretary of the Department of Homeland Security; et al., Respondents.	Case No. 25-cv-02866-JES-VET **SUPPLEMENTAL DECLARATION OF MARTIN PARSONS**

I, Martin Parsons pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following statements are true and correct, to the best of my knowledge, information, and belief:

1. I am employed by the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), in the San Diego Field Office, as a Deportation Officer (DO). I have held this position since November 10, 2019.

2. I am currently assigned to the Otay Mesa suboffice and my responsibilities include enforcing final orders of deportation and removal from the United States for aliens and requesting travel documents from foreign consulates as part of the removal process.

3. I am currently responsible for monitoring this case. I make this declaration based upon my own personal knowledge and experience as a law enforcement officer and information provided to me in my official capacity as a DO in the ICE ERO San Diego Field Office. I make this declaration based on review of Petitioner Carlos Rios's alien file (A[redacted], consultation with other ICE officers, and review of official documents and records maintained by ICE.

4. Petitioner unlawfully entered the United States in 1988, and less than two years later, was convicted of murder and sentenced to twenty-seven years in prison.

5. On June 8, 2021, Petitioner was ordered removed to Cuba.

6. On July 27, 2021, Petitioner was released from ICE custody under an Order of Supervision because it was unable to repatriate him to Cuba.

7. On September 22, 2025, ICE re-detained Petitioner to execute his removal order. After ICE's attempt at repatriating Petitioner to Cuba was unsuccessful, ICE identified Mexico as a third country where Petitioner may be removed based on Mexico's recent agreement with the United States to accept individuals from Cuba, Haiti, Nicaragua, Venezuela, Guatemala, Honduras, and El Salvador for third country removal.

8. On September 29, 2025, ICE requested the Mexican government to accept twenty individuals, including Petitioner, for resettlement in Mexico. The Mexican government replied that same day, confirming its acceptance of the twenty individuals, and confirming their arrival time of October 1, 2025, at 10:00 a.m.

9. When a third country is identified for resettlement, standard ICE guidance and procedures provide that an ICE officer will provide written notice to the removable alien of the intended third country removal. The written notice identifies which country ICE intends to remove the alien to. ICE 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 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.

10. At this time, Petitioner's file does not contain a copy of a Notice of Third Country Removal, with Mexico identified as the country of removal.

11. On October 1, 2025, ICE drove Petitioner to the Mexican border to effectuate his third country resettlement, but Petitioner refused to willingly go to Mexico. Petitioner did not express a fear of removal to Mexico. The Mexican government was ready to accept Petitioner only if he would willingly go to Mexico. ICE cannot, and did not, force Petitioner to depart to Mexico, nor did it threaten Petitioner with removal to Africa.

12. As removal to Mexico was unsuccessful, ICE no longer intends to seek to remove Petitioner to Mexico. ICE is continuing to seek to identify a third country for repatriation. Once a new third country is identified, ICE will provide Petitioner with notice, and if Petitioner claims a fear of removal to the identified country, he will be referred to an asylum officer for processing of the fear-based claims.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed this 5th day of November 2025.

MARTIN T PARSONS

Digitally signed by MARTIN T PARSONS
Date: 2025.11.05 13:44:27 -08'00'

Martin Parsons
Deportation Officer
San Diego Field Office

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Attorneys for Mr. Trujillo

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GIRALDO TRUJILLO,

Petitioner,

v.

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

Respondents.

CIVIL CASE NO.:

'26CV133 RSH DDL

Motion for a Temporary Restraining Order

Giraldo Matan was ordered removed to his native country of Cuba in 2004. He spent the next 21 years on release, during which time ICE proved unable to remove him. Yet, in October 2025, ICE detained him. ICE did not comply with regulations in redetaining him, and ICE has not been able to remove him to a third country. He has a strong claim to release, and every additional day in detention works irreparable harm. And ICE's policy permits his removal to a third country

with little or no notice. This Court should therefore enter a temporary restraining order ("TRO") pending further litigation.

Argument

To obtain a TRO, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve "substantially identical" analysis). A "variant[] of the same standard" is the "sliding scale": "if a plaintiff can only show that there are 'serious questions going to the merits—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the balance of hardships tips *sharply* in the plaintiff's favor, and the other two *Winter* factors are satisfied." *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025) (internal quotation marks omitted). Under this approach, the four *Winter* elements are "balanced, so that a stronger showing of one element may offset a weaker showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). A TRO may be granted where there are "'serious questions going to the merits' and a hardship balance. . . tips sharply toward the plaintiff," and so long as the other *Winter* factors are met. *Id.* at 1132.

Here, this Court should issue a temporary restraining order because his unlawful immigration detention has caused, and will continue to cause, "immediate and irreparable injury . . . or damage." Fed. R. Civ. P. 65(b). This Court should therefore order Petitioner's release and enjoin removal to a third country with no or inadequate notice.

I. Petitioner is likely to succeed on the merits, or at a minimum, raises serious merits questions.

Concurrent with this TRO motion, Mr. Trujillo files a habeas petition setting forth in detail why he is likely to succeed on the merits. Mr. Trujillo will not repeat those arguments here, but he provides some examples of recent TRO or habeas petition grants in this district related to the claims he raises in this petition.

(1) *Regulatory and due process violations: Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025).

(2) Zadvydas violations: See Conchas-Valdez, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Alic v. Dep't of Homeland Sec./Immigr. Customs Enf't*, No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept. 30, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025).

(3) Third-country removal statutory and due process violations: Rebenok v. Noem, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025).

II. Petitioner will suffer irreparable harm absent injunctive relief.

Petitioner also meets the second factor, irreparable harm. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the "alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)).

Here, the potential irreparable harm to Petitioner is even more concrete. The Ninth Circuit has specifically recognized the "irreparable harms imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). That is because "[u]nlawful detention constitutes 'extreme or very serious damage, and that damage is not compensable in damages." *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017). And in Mr. Trujillo's case, his re-detention prevented him from getting the hip replacement surgery that he needs. Exh. A to Habeas Petition at ¶ 9.

Finally, "[i]t is beyond dispute that Petitioner would face irreparable harm from removal to a third country." *Nguyen*, 2025 WL 2419288, at *26. Recent third-country deportees have been held, indefinitely and without charge, in hazardous foreign prisons. *See* Wong et al., *supra*. They have been subjected to solitary confinement. *See* Imray, *supra*. They have been removed to countries so unstable that the U.S. government recommends making a will and appointing a hostage negotiator before traveling to them. *See* Wong, *supra*. These and other threats to Petitioner's health and life independently constitute irreparable harm.

III. The balance of hardships and the public interest weigh heavily in petitioner's favor.

The final two factors for a TRO—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner's favor. On the one hand, the government "cannot reasonably assert that it is harmed in any legally cognizable sense" by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S. at 436 (describing public interest in preventing noncitizens "from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (when government's treatment "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction."). On the other hand, Petitioner faces weighty hardships: unlawful, indefinite detention and removal to a third country where he is likely to suffer imprisonment or other serious harm. The balance of equities thus favors preventing the violation of "requirements of federal law," *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect against unlawful detention and prevent unlawful third country removal.

Respectfully submitted,

Dated: January 6, 2026

s/ Katie Hurrelbrink

KATIE HURRELBRINK
Federal Defenders of San Diego, Inc.
Email: Katie_Hurrelbrink@fd.org

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.

Date: 1/6/2026

/s/ *Katie Hurrelbrink*
Katie Hurrelbrink