

**3:26-cv-00138-DMS-SBC** Reinoso Martinez v. Noem et al

Dana M. Sabraw, presiding

Steve B. Chu, referral

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## History

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1 **Katie Hurrelbrink**  
 2 Federal Defenders of San Diego, Inc.  
 3 225 Broadway, Suite 900  
 4 San Diego, California 92101-5030  
 5 Telephone: (619) 234-8467  
 6 Facsimile: (619) 687-2666  
 7 katie\_hurrelbrink@fd.org  
 8 Attorneys for Mr. Reinoso Martinez

9  
 10 **UNITED STATES DISTRICT COURT**  
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 SANDY REINOSO MARTINEZ,

13 Petitioner,

14 v.

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

24 Respondents.

CIVIL CASE NO.: '26CV0138 DMS SBC

**Petition  
 for a  
 Writ of Habeas Corpus**

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1 INTRODUCTION

2 This civil immigration habeas petition seeks three grounds of relief. First, it  
3 seeks to prevent Sandy Reinoso Martinez’s indefinite detention pending  
4 deportation to Cuba absent the basic regulatory and due process guarantees of 8  
5 C.F.R. §§ 241.4(l), 241.13(i), and *United States ex rel. Accardi v. Shaughnessy*,  
6 347 U.S. 260, 268 (1954). Second, it seeks to prevent his indefinite detention  
7 pending deportation to Cuba absent the basic statutory and due process guarantees  
8 outlined 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. Reinoso Martinez was ordered removed to Cuba on October 16, 2017.  
13 But it is very hard to deport people to Cuba. So ICE released him. In the over  
14 eight years since, Mr. Reinoso Martinez has never missed a check-in.

15 Nevertheless, ICE re-arrested him on October 30, 2025. ICE did not  
16 provide any written or oral information about why Mr. Reinoso Martinez was  
17 being re-detained or any chance to contest his redetention. He has been given no  
18 information indicating that he will be removed to Cuba in the reasonably  
19 foreseeable future. And he confirmed that he is not willing to be voluntarily  
20 removed to Mexico, disqualifying him for removal there.

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. Reinoso Martinez lived under supervision for 5 years and then**  
6 **was re-detained without an individualized reason for detention and**  
7 **without an opportunity to contest his re-detention.**

8 Mr. Reinoso-Martinez was born in Cuba on  Exh. A at  
9 ¶ 1. He came to the U.S. around July 2017. *Id.* He immediately turned himself in  
10 and requested asylum. *Id.* He was unsuccessful—he was ordered removed on  
11 October 16, 2017. *Id.* ICE then tried to send him back to Cuba, but Cuba would  
12 not accept him. *Id.* He was therefore released on an order of supervision. *Id.*

13 While on supervision, he always checked in as ordered. *Id.* at ¶ 2. And  
14 though he sustained one conviction in 2018, ICE declined to re-detain him for  
15 that; they continued him on supervision. *Id.* He is currently trying to get legal  
16 status through his U.S. citizen wife. *Id.* at ¶ 5.

17 On October 30, 2025, however, ICE rearrested him. *Id.* at ¶ 3. ICE told him  
18 that his release was being revoked but didn’t say why. *Id.* He received no  
19 documentation explaining the revocation decision, and he got no opportunity to  
20 explain why he should not be re-detained. *Id.* That has not changed to the present  
21 day. *Id.*

22 On January 8, 2026, ICE took Mr. Reinoso Martinez to the U.S.-Mexico  
23 border. Exh A at ¶ 4. He told ICE that he was not willing to be voluntarily  
24 removed to Mexico. He is afraid of being kidnapped in Mexico, and he does not  
25 believe that he would be given any legal status there or be permitted to work. *Id.*  
26 ICE took him back to Otay Mesa Detention Center. *Id.* ICE has not told him  
27 anything else about efforts to remove him. *Id.*

28

1           **II. The repatriation agreement with Cuba allows it to use its discretion**  
2           **in accepting Cuban nationals that entered the United States prior to**  
3           **2017 on a case-by-case basis.**

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

7           Prior to 2017, there was no repatriation agreement between the United  
8 States and Cuba. *Clark v. Martinez*, 543 U.S. 371, 386 (2005). On January 12,  
9 2017, the United States and Cuba signed a joint statement (“2017 Joint  
10 Statement”) by which Cuba agreed to the repatriation of some Cuban nationals.  
11 *Cuba (17-112) – Joint Statement Concerning Normalization of Migration*  
12 *Procedures*, Jan. 12, 2017, available at <https://www.state.gov/17-112/>.

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

17           In practice, however, Cuba did not accept its nationals for removal. Despite  
18 the 2017 Joint Statement, a 2019 report by the Office of Inspector General  
19 classified Cuba as an “uncooperative country” in 2017, 2018, and 2019 based on  
20 its failure to provide travel documents on a timely basis. Department of Homeland  
21 Security, Office of Inspector General, Report No. OIG-19-28, *ICE Faces Barriers*  
22 *in Timely Repatriation of Detained Aliens* (Mar. 11, 2019), available at  
23 <https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf>  
24 at pages 6-7, 10, 29. In May of 2018, Cuba was one of nine countries with the  
25 uncooperative categorization. *Id.* at 10. That tendency was borne out in this case.  
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1 ICE proved unable to remove Mr. Reinoso Martinez under the agreement despite  
2 having eight years to do so. Exh. A at ¶ 1.

3 Mexico has agreed to take some Cubans for third-country removal. *See*  
4 Exh. C at ¶ 7. But Mexico will accept a deportee “only if [they] would willingly  
5 go to Mexico.” *Id.* at ¶ 11. Mr. Reinoso Martinez does not qualify for repatriation  
6 under the agreement, because—for understandable reasons, including fears of  
7 harm—he is not willing to go to Mexico voluntarily. Exh. A at ¶ 4.

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

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

20 The Administration has reportedly negotiated with countries to have many  
21 of these deportees imprisoned in prisons, camps, or other facilities. The  
22 government paid El Salvador about \$5 million to imprison more than 200  
23 deported Venezuelans in a maximum-security prison notorious for gross human  
24 rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica  
25 took in hundreds of deportees from countries in Africa and Central Asia and  
26 imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa  
27 Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*,  
28 BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men to South Sudan.

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

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

20 Under the new guidance, ICE may remove any immigrant to a third country  
21 “without the need for further procedures,” as long as—in the view of the State  
22

23  
24 <sup>1</sup> Though the Supreme Court’s order was unreasoned, the dissent noted that the  
25 government had sought a stay based on procedural arguments applicable only to  
26 class actions. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025)  
27 (Sotomayor, J., dissenting). Thus, “even if the Government [was] correct that  
28 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. Reinoso Martinez. *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 *Davis* holds that immigration statutes do not authorize the government to detain  
2 immigrants like Mr. Reinoso Martinez, for whom there is “no significant  
3 likelihood of removal in the reasonably foreseeable future.” 533 U.S. 678, 701  
4 (2001).

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

8  
9 **I. Count 1: ICE failed to comply with its own regulations before re-**  
10 **detaining Mr. Reinoso Martinez, violating his rights under applicable**  
11 **regulations and the Fifth Amendment.**

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

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

23 Otherwise, they contain four major regulatory protections for people like  
24 Mr. Reinoso Martinez, who was not re-detained for a conditions violation. They  
25 permit revocation of release only if the appropriate official (1) “determines that  
26 there is a significant likelihood that the alien may be removed in the reasonably  
27 foreseeable future,” § 241.13(i)(2), and (2) makes that finding “on account of  
28 changed circumstances.” *Id.* No matter the reason for re-detention, (3) the re-  
detained person is entitled to “an initial informal interview promptly,” during

1 which they “will be notified of the reasons for revocation.” §§ 241.4(l)(1);  
2 241.13(i)(3). The interviewer must (4) “afford[] the [person] an opportunity to  
3 respond to the reasons for revocation,” allowing them to “submit any evidence or  
4 information” relevant to re-detention and evaluating “any contested facts.” *Id.*

5 ICE is required to follow its own regulations. *United States ex rel. Accardi*  
6 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,  
7 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to  
8 abide by certain internal policies is well-established.”). A court may review a re-  
9 detention decision for compliance with the regulations, and “where ICE fails to  
10 follow its own regulations in revoking release, the detention is unlawful and the  
11 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at \*4  
12 (collecting cases).

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

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

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

25 Third, ICE did not revoke Mr. Reinoso Martinez’s release for a permissible  
26 reason. He was not returned to custody because of a conditions violation. Exh. A  
27 at ¶ 2. And there are no changed circumstances that justify re-detaining him.  
28 Mr. Reinoso Martinez entered after the United States and Cuba signed the

1 operative repatriation agreement in 2017. *Id.* at ¶ 1. ICE already tried and failed to  
2 remove Mr. Reinoso Martinez under that agreement, which is why ICE released  
3 him in 2020. *Id.* And Mr. Reinoso Martinez is ineligible for third-country removal  
4 to Mexico, as Mexico will only accept those willing to be voluntarily deported  
5 there. *Id.* at ¶ 4; Exh. C. Absent any evidence for “why obtaining a travel  
6 document is more likely this time around[,] Respondents’ intent to eventually  
7 complete a travel document request for Petitioner does not constitute a changed  
8 circumstance.” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL  
9 1993771, at \*4 (E.D. Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL,  
10 2025 WL 1696526, at \*2 (D. Kan. June 17, 2025)). If ICE cannot produce a  
11 documented and justified changed-circumstances determination from before his  
12 arrest, that is just one more reason to release him. *See Rokhfirooz*, 2025 WL  
13 2646165 at \*3.

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

26 “[B]ecause officials did not properly revoke petitioner’s release pursuant to  
27 the applicable regulations, that revocation has no effect, and [Mr. Reinoso  
28

1 Martinez] is entitled to his release (subject to the same Order of Supervision that  
2 governed his most recent release).” *Liu*, 2025 WL 1696526, at \*3.

3 **I. Count 2: Mr. Reinoso Martinez’s detention violates *Zadvydas* and 8**  
4 **U.S.C. § 1231.**

5 **A. Legal background**

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

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

25 As an initial matter, *Zadvydas* held that detention is “presumptively  
26 reasonable” for at least six months. *Id.* at 701. This presumption is, in some  
27 circumstances even before the running of six months, “rebuttable.” *See Zavvar*,

28

1 2025 WL 2592543 at \*5–\*6 (explaining this point when granting *Zadvydas*  
2 habeas relief).

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

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

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

23 Using this framework, Mr. Reinoso Martinez can make all the threshold  
24 showings needed to shift the burden to the government.

25  
26 **B. The six-month grace period expired in 2020.**

27 As an initial matter, the six-month grace period has long since ended. The  
28 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,

1 *three months* after the statutory removal period has ended.” *Kim Ho Ma v.*  
2 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Reinoso Martinez’s  
3 order of removal was entered on October 16, 2017. Exh. A at ¶ 1. Accordingly,  
4 his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas*  
5 grace period thus expired three months after the removal period ended, in April  
6 2018. The prerequisite is therefore met. Even if it somehow were not met,  
7 Mr. Reinoso Martinez would still be able to rebut the presumption that his  
8 detention remains reasonable, given that ICE has had over 8 years to try to  
9 remove him. *See Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at  
10 \*4 (D. Md. Sept. 8, 2025) (collecting cases). Either way, Mr. Reinoso Martinez  
11 can proceed with his *Zadvydas* claim.

12  
13 **C. There is good reason to believe that there is no significant**  
14 **likelihood of Mr. Reinoso Martinez’s removal in the reasonably**  
**foreseeable future.**

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

20 **“Good reason to believe.”** The “good reason to believe” standard is a  
21 relatively forgiving one. “A petitioner need not establish that there exists no  
22 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL  
23 10714999, at \*3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to  
24 believe’ . . . place a burden upon the detainee to demonstrate no reasonably  
25 foreseeable, significant likelihood of removal or show that his detention is  
26 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,  
27 2020 WL 3972319, at \*3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401  
28

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

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

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

27 Mr. Reinoso Martinez readily satisfies the above standards for an obvious  
28 reason: ICE has already tried and failed to remove him under the operative

1 repatriation agreements between the United States and Cuba and the United States  
2 and Mexico. Exh. A at ¶¶ 1, 4–5. Though Cuba agreed to accept Cubans who  
3 immigrate after 2017, it has not done so in practice. Accordingly, though  
4 Mr. Reinoso Martinez entered in 2017, ICE failed to remove him then. *Id.* at ¶ 1.  
5 ICE did not succeed in removing his for the next eight years, either. And ICE has  
6 not managed to remove him in 2025, despite detaining him for over two months.  
7 *Id.* at ¶ 3. ICE also tried to remove him to Mexico as a voluntary deportee, but  
8 because he is not willing to go there voluntarily, he could not be removed to  
9 Mexico either. *Id.* at ¶¶ 4–5. Eight years’ worth of failed efforts provides a very  
10 good reason to doubt that Mr. Reinoso Martiez can be removed in the reasonably  
11 foreseeable future.

12 Thus, Mr. Reinoso Martinez has met his initial burden, and the burden  
13 shifts to the government. Unless the government can prove a “significant  
14 likelihood of removal in the reasonably foreseeable future,” Mr. Reinoso Martinez  
15 must be released. *Zadvydas*, 533 U.S. at 701.

16 **II. Count 3: ICE may not remove Mr. Reinoso Martinez to a third**  
17 **country without adequate notice and an opportunity to be heard.**

18 In addition to unlawfully detaining him, ICE’s policies threaten his removal  
19 to a third country without adequate notice and an opportunity to be heard. These  
20 policies violate the Fifth Amendment, the Convention Against Torture, and  
21 implementing regulations. Though the government will not be able to prove that  
22 there is a significant prospect of removal in the reasonably foreseeable future, an  
23 unanticipated change of circumstances could open up a heretofore unavailable  
24 avenue to third-country removal. If that happens, ICE could remove Mr. Mejas-  
25 Hernandez with as little as 24 hours’ notice or no notice at all. This Court should  
26 enter an order prohibiting such surprise removals, as they violate the Due Process  
27 Clause.  
28

1           **A. Legal background**

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

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

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

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

1 necessary information from the noncitizen to comply with section 1231(b)(3) and  
2 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.  
3 3d at 1019. “Failing to notify individuals who are subject to deportation that they  
4 have the right to apply for asylum in the United States and for withholding of  
5 deportation to the country to which they will be deported violates both INS  
6 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at  
7 1041.

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

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

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

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

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





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

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

5 **IV. Prayer for relief**

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

- 7 1. Order Respondents to immediately release Petitioner from custody under  
8 the same conditions of supervision;
- 9 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.  
10 § 1231(a)(6) unless and until Respondents obtain a travel document for  
11 his removal;
- 12 3. Enjoin Respondents from re-detaining Petitioner without first following  
13 all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other  
14 applicable statutory and regulatory procedures;
- 15 4. Enjoin Respondents from removing Petitioner to any country other than  
16 Cuba, unless they provide the following process, *see D.V.D. v. U.S. Dep't*  
17 *of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at \*1 (D.  
18 Mass. May 21, 2025):
- 19 (1) written notice to both Petitioner and Petitioner's counsel in a  
20 language Petitioner can understand;
- 21 (2) a meaningful opportunity, and a minimum of ten days, to raise a  
22 fear-based claim for CAT protection prior to removal;
- 23 (3) if Petitioner is found to have demonstrated "reasonable fear" of  
24 removal to the country, Respondents must move to reopen  
25 Petitioner's immigration proceedings;
- 26  
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(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 9, 2026

s/ Katie Hurrelbrink

Katie Hurrelbrink  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Reinoso Martinez  
Email: katie\_hurrelbrink@fd.org

**PROOF OF SERVICE**

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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: January 9, 2026 /s/ Katie Hurrelbrink  
Katie Hurrelbrink

# **Exhibit A**

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

8 Attorneys for Mr. Reinoso Martinez

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

11 SANDY REINOSO MARTINEZ,

12 Petitioner,

13 v.

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

23 Respondents.

CIVIL CASE NO.:

**First Declaration  
of  
Sandy Reinoso Martinez**

24 I, Sandy Reinoso-Martinez, declare:

25 1. My name is Sandy Reinoso-Martinez. I was born in Cuba on 

26  I came to the United States in around July 2017. I immediately turned  
27 myself in to border patrol and requested asylum. I was ordered removed on  
28 October 16, 2017. ICE tried to send me back to Cuba, but Cuba would not  
take me. ICE therefore released me on an order of supervision.

- 1 2. While on supervision, I always checked in as ordered. I got one conviction  
2 in 2018. But after I served my sentence, ICE declined to take me into  
3 custody; ICE let me continue on supervision. I had no other convictions after  
4 that.  
5
- 6 3. Nevertheless, ICE rearrested me on October 30, 2025. ICE just told me that  
7 my release was revoked. ICE did not give me any documents explaining why  
8 my release was revoked. ICE gave me no opportunity to explain why I should  
9 not be redetained. To the present day, ICE still has not explained why I was  
10 re-detained or given me a chance to contest my redetention.  
11
- 12 4. On January 8, 2026, ICE took me to the U.S.-Mexico border. I told ICE that  
13 I was not willing to be voluntarily removed to Mexico. I told them that I'm  
14 not Mexican. ICE took me back to the detention center. I am afraid of being  
15 in Mexico, because I could be kidnapped there. Plus, I do not believe I would  
16 get legal papers to be in Mexico. I think I would just get a passage of safe  
17 conduct that would last 10 days. I wouldn't be able to work.  
18
- 19 5. I have an open marriage petition in the U.S. with my U.S. citizen wife.  
20
- 21 6. ICE has not told me anything else about their efforts to remove me.  
22
- 23 7. I have a bank account, but it's empty now because we used all of our money  
24 to pay an attorney to try to get me legal status through my wife. I am not  
25 making any money while in custody. I have a 2015 Dodge Challenger. I do  
26 not have any other assets.  
27  
28



# **Exhibit B**

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

# Exhibit C

1 ADAM GORDON  
2 United States Attorney  
3 ERIN M. DIMBLEBY  
4 Assistant U.S. Attorney  
5 California Bar No. 323359  
6 Office of the U.S. Attorney  
7 880 Front Street, Room 6293  
8 San Diego, CA 92101-8893  
9 Telephone: (619) 546-6987  
10 Email: [Erin.Dimbleby@usdoj.gov](mailto:Erin.Dimbleby@usdoj.gov)

11 Attorneys for Respondents

12  
13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 CARLOS RIOS,

16 Petitioner,

17 v.

18 KRISTI NOEM; et al.,

19 Respondents.

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

21 **NOTICE OF SUPPLEMENTAL**  
22 **INFORMATION**

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

26 Dated: November 5, 2025

27 Respectfully submitted,

28 ADAM GORDON  
United States Attorney

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

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**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.

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

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

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

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

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

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

21          9. When a third country is identified for resettlement, standard ICE guidance and  
22 procedures provide that an ICE officer will provide written notice to the removable alien of  
23 the intended third country removal. The written notice identifies which country ICE intends  
24 to remove the alien to. ICE will generally wait at least 24 hours following service of the  
25 Notice of Removal before effectuating removal. In exigent circumstances, ERO may  
26 execute a removal order six or more hours after service of the Notice of Removal as long as  
27 the alien is provided reasonable means and opportunity to speak with an attorney prior to  
28 removal.

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

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

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

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

15 Executed this 5<sup>th</sup> day of November 2025.

16 MARTIN T  
17 PARSONS

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18 Martin Parsons  
19 Deportation Officer  
20 San Diego Field Office  
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1 **Katie Hurrelbrink**  
2 Bar No. 325632  
3 Federal Defenders of San Diego, Inc.  
4 225 Broadway, Suite 900  
5 San Diego, California 92101-5030  
6 Telephone: (619) 234-8467  
7 Facsimile: (619) 687-2666  
8 katie\_hurrelbrink@fd.org

9 Attorneys for Mr. Reinoso Martinez

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

12 SANDY REINOSO MARTINEZ,

13 Petitioner,

14 v.

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

24 Respondents.

CIVIL CASE NO.: '26CV0138 DMS SBC

**Motion for a  
Temporary Restraining Order**

25 Mr. Reinoso Martienz is a Cuban citizen who was ordered removed in  
26 2017. He has spent the last eight years on an order of supervision, never missing a  
27 check in. Yet ICE redetained him on October 30, 2025. ICE did not comply with  
28 its regulations in redetaining him, and ICE has not proved able to remove him to  
Cuba, Mexico, or any other country. He has a strong claim to release, and every  
additional day in detention works irreparable harm. And ICE's policy permits his

1 removal to a third country with little or no notice. This Court should therefore  
2 enter a temporary restraining order (“TRO”) pending further litigation.

### 3 **Argument**

4 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on  
5 the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
6 relief, that the balance of equities tips in his favor, and that an injunction is in the  
7 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);  
8 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7  
9 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve  
10 “substantially identical” analysis). A “variant[] of the same standard” is the  
11 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions  
12 going to the merits—a lesser showing than likelihood of success on the merits—  
13 then a preliminary injunction may still issue if the balance of hardships tips  
14 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”  
15 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)  
16 (internal quotation marks omitted). Under this approach, the four *Winter* elements  
17 are “balanced, so that a stronger showing of one element may offset a weaker  
18 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131  
19 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going  
20 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so  
21 long as the other *Winter* factors are met. *Id.* at 1132.

22 Here, this Court should issue a temporary restraining order because his  
23 unlawful immigration detention has caused, and will continue to cause,  
24 “immediate and irreparable injury . . . or damage.” Fed. R. Civ. P. 65(b). This  
25 Court should therefore order Petitioner’s release and enjoin removal to a third  
26 country with no or inadequate notice.  
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28

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

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

8 (1) *Regulatory and due process violations: Constantinovici v. Bondi*, \_\_ F.  
9 Supp. 3d \_\_, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025);  
10 *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept.  
11 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, \*3–\*5  
12 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB  
13 (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-  
14 2334-JES, \*3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES,  
15 ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-  
16 02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025).

17 (2) *Zadvydas violations: See Conchas-Valdez*, 2025 WL 2884822, No. 25-  
18 cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Alic v. Dep't of Homeland Sec./Immigr.*  
19 *Customs Enf't*, No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept.  
20 30, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept.  
21 25, 2025).

22 (3) *Third-country removal statutory and due process violations: This Court*  
23 *should enjoin ICE from removing Mr. Ngo to a third country without providing an*  
24 *opportunity to assert fear of persecution or torture before an immigration judge.*  
25 *See, e.g., Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v.*  
26 *Noem*, 2025 WL 2770623 at \*3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF  
27 No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No.  
28 25-cv-2502-JES, \*4 (S.D. Cal. Oct. 9, 2025).

1 **II. Petitioner will suffer irreparable harm absent injunctive relief.**

2 Petitioner also meets the second factor, irreparable harm. “It is well  
3 established that the deprivation of constitutional rights ‘unquestionably constitutes  
4 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)  
5 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation  
6 of a constitutional right is involved, most courts hold that no further showing of  
7 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02  
8 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and*  
9 *Procedure*, § 2948.1 (2d ed. 2004)).

10 Here, the potential irreparable harm to Petitioner is even more concrete. The  
11 Ninth Circuit has specifically recognized the “irreparable harms imposed on anyone  
12 subject to immigration detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th  
13 Cir. 2017). That is because “[u]nlawful detention constitutes ‘extreme or very  
14 serious damage, and that damage is not compensable in damages.’” *Hernandez v.*  
15 *Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

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

24 **III. The balance of hardships and the public interest weigh heavily in**  
25 **petitioner’s favor.**

26 The final two factors for a TRO—the balance of hardships and public  
27 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,  
28 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. On the

1 one hand, the government “cannot reasonably assert that it is harmed in any legally  
2 cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d  
3 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent  
4 violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556 U.S.  
5 at 436 (describing public interest in preventing noncitizens “from being wrongfully  
6 removed, particularly to countries where they are likely to face substantial harm”);  
7 *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019)  
8 (when government’s treatment “is inconsistent with federal law, . . . the balance of  
9 hardships and public interest factors weigh in favor of a preliminary injunction.”).  
10 On the other hand, Petitioner faces weighty hardships: unlawful, indefinite  
11 detention and removal to a third country where he is likely to suffer imprisonment  
12 or other serious harm. The balance of equities thus favors preventing the violation  
13 of “requirements of federal law,” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d  
14 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect against unlawful  
15 detention and prevent unlawful third country removal.

16  
17 Respectfully submitted,

18  
19 Dated: January 9, 2026

*s/ Katie Hurrelbrink*

20 **KATIE HURRELBRINK**

21 Federal Defenders of San Diego, Inc.

22 Email: [Katie\\_Hurrelbrink@fd.org](mailto:Katie_Hurrelbrink@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.

Date: January 9, 2026

/s/ Katie Hurrelbrink  
Katie Hurrelbrink