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[redacted]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ESTEBAN RIVERO,

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.: '26CV0148 BJC JLB

Petition for a Writ of Habeas Corpus

[1] Federal Defenders of San Diego, Inc., is filing the instant petition with provisional appointment under Chief Judge Order No. 134.

INTRODUCTION

This civil immigration habeas petition seeks to prevent Esteban Rivero's indefinite detention pending deportation 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). It also 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. Rivero came to the United States in 1995 from Cuba. In 2010, Mr. Rivero was ordered removed but the immigration judge granted him relief from removal to Cuba under the Convention Against Torture. So ICE released him after about 76 days of detention. In the 15 years since, Mr. Rivero has never missed a check-in and has always complied with the conditions of his supervision.

Despite Mr. Rivero's long history of compliance, ICE re-arrested him on November 1, 2025. ICE did not provide any written or oral information about why Mr. Rivero was being re-detained or any chance to contest his redetention.

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. Rivero lived under supervision for 15 years and then was re-detained without an individualized reason for detention and without an opportunity to contest his re-detention.

Mr. Rivero was born in Cuba in 1961. He came to the United States as a political refugee in 1995. Exhibit A, Declaration of Petitioner, at ¶ 1.

On December 8, 2010, he was ordered deported to Cuba.[2] It was his understanding that the judge granted him relief from removal to Cuba under the Convention Against Torture. *Id.* at ¶ 2. Because ICE was unable to remove him, Mr. Rivero was placed on an order of supervision in 2011. Exh. A at ¶ 3. While on release, Mr. Rivero consistently checked in to ICE offices. *Id.* at ¶ 3. He complied with all his conditions and did not even have a traffic ticket. *Id.* at ¶ 3.

On November 1, 2025, Mr. Rivero reported to his annual check-in with ICE in Miramar, Florida. *Id.* at ¶ 4. The ICE agents did not tell him why he was being detained. *Id.* Nor did ICE give him an opportunity to contest his re-detention. *Id.* at ¶ 4-5. ICE only said that he was no longer under an order of supervision and that the process had now changed. *Id.* at ¶ 4. Mr. Rivero was sent him to multiple detention centers in Florida, including the one called Alcatraz, and then to Texas, and he is now at the Otay Detention Center in San Diego. *Id.*

II. 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,

[2] https://acis.eoir.justice.gov/en/caseInformation

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).[3] 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").

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

[3] 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. Mora Gutierrez. *Id.* In short, the Supreme Court's decision does not override this Court's authority to grant individual injunctive relief. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

("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. Rivero 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. Rivero, 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. Rivero 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. Rivero, 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. Rivero 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. Rivero, 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. Rivero did not receive notice of the reasons for his re-detention upon revocation. It is too late now to comply with that requisite.

Second, Mr. Rivero did not receive an informal interview permitting him to

contest his redetention. 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. Rivero's release for a permissible reason. He was not returned to custody because of a conditions violation. And there are no changed circumstances that justify re-detaining him.

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. Rivero] is entitled to his release (subject to the same Order of Supervision that governed his most recent release)." *Liu*, 2025 WL 1696526, at *3.

II. Count 2: ICE may not remove Mr. Rivero to a third country without adequate notice and an opportunity to be heard.

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

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. Rivero 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. Rivero hereby requests such a hearing on any material, disputed facts.

IV. Prayer for relief

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

1. Order Respondents to immediately release Petitioner from custody under the same conditions of supervision;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(*l*), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Enjoin Respondents from removing Petitioner to a third country, 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):
   a) written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
   b) a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
   c) if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
   d) 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 11, 2026

s/ Zandra L. Lopez

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PROOF OF SERVICE

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

Dated: January 11, 2026

s/ Zandra L. Lopez

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ESTEBAN RIVERO,

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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.:

Petitioner Esteban Rivero

I, Esteban Rivero, declare as follows:

1. I was born in 1961 in Cuba. I came to the United States in 1995 as a political refugee.
2. On December 8, 2010, an immigration judge ordered my deportation. The judge granted me relief from removal to Cuba under the Convention Against Torture. After the judge's order, I remained in immigration custody for about 76 days.
3. I was then released under an order of supervision. I have been under that order of supervision for 15 years. During that time, I complied with all the conditions of supervision. I do not even have a traffic ticket. I consistently applied and received a work permit. For many years I worked as an electrician.
4. On November 1, 2025, I reported to my annual check-in with ICE in Miramar, Florida. The ICE agents did not tell him why I was being detained. They only said that I was no longer under an order of supervision and that the process had now changed. They did not tell me what had changed. I was sent to Alcatraz detention center, then Glaze detention center, and then to Texas, and I am now in Otay Mesa Detention Center in San Diego.
5. To this date, no one has told him the reason for my detention and at no point was I able to contest my detention.
6. A few days ago, I was sent to the border with Mexico. I told them that I did not want to go. I was brought back to the detention center. If I am sent to Mexico, Mexico would deport me to Cuba. That would be contrary to the court's order that granted me protection through the Convention Against Torture.
7. I am now retired and live with my brother. I received very little social security based on my many years of working in this country. My brother is the one that supports me financially. I do own a home but that is the only property I own and my brother also lives in that house.
8. Each line of this declaration has been read to me in Spanish.

I declare under penalty of perjury that the foregoing is true and correct, executed on Jan. 11, 2026, in San Diego, California.

Miguel Tan-Gutierrez

Declarant

I declare under penalty of perjury that the foregoing is true and correct, executed on January 11, 2026, in San Diego, California.

Esteban Rivero

Declarant

Exhibit B

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 <u>not</u> 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