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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CARLOS VALDES VALDES,

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.: '26CV0300 TWR BJW

Petition for Writ of Habeas Corpus

[Civil Immigration Habeas Petition Under 28 U.S.C. § 2241]

[1] Federal Defenders of San Diego, Inc., is filing the instant petition with provisional appointment under Chief Judge Order No. 134. Petitioner's financial eligibility for representation is included in a sworn statement attached to this petition.

INTRODUCTION

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

Mr. Valdes Valdes was ordered removed to Cuba in 2002 after the government received a reversal on appeal of an immigration judge's grant of asylum. ICE placed him on an order supervision. For over 20 years, Mr. Valdes Valdes complied with all the terms of his supervision.

In December 2025, Mr. Valdes Valdes reported to his annual check-in. ICE placed a GPS ankle monitor on him and told him he could return home here in San Diego. About a week later, ICE called and asked him to come to ICE offices to sign some papers. When he went to ICE offices, he was led to a room with five ICE agents who were waiting to arrest him. They arrested him right away.

Mr. Valdes Valdes does not recall receiving a written notice of revocation of his supervised release. He did not receive an interview

where he could contest his detention. Since his detention, no one from ICE has spoke to him.

Mr. Valdes Valdes previously received a kidney replacement. While detained at Otay Mesa Detention Center, he received medical tests that indicated that his kidney is declining and he needs to see a specialist.

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. Petitioner lived under supervision for several years and then is re-detained without an individualized reason for detention and without an opportunity to contest his re-detention.

In 1980, Mr. Valdes Valdes came to the United States from Cuba as a political refugee. Exhibit A, Declaration of Carlos Valdes Valdes ¶ 1. In 2002, an immigration judge granted him asylum. *Id.* at ¶ 2. Mr. Valdes Valdes was not aware that the government appealed and the

asylum grant was reversed. *Id.*[2] The government informed him of the order of removal and placed him on an order of supervision. Id. at ¶¶ 2-3.

For over 20 years, Mr. Valdes Valdes complied with the conditions of supervision and went to his yearly check-ins. *Id.* at ¶ 3.

On December 10, 2025, he reported for his annual check-in in downtown San Diego. ICE placed a GPS monitor on his ankle. *Id.* at ¶¶ 4-5. On December 18, ICE called Mr. Valdes Valdes and told him to come down to ICE offices to sign papers. When Mr. Valdes Valdes arrived at ICE offices, there were five ICE agents waiting for him in a room. *Id.* They immediately arrested him. *Id.* Mr. Valdes Valdes does not remember getting a notice that stated the reasons for his revocation. *Id.* He was not given an interview for him to contest the reasons for his detention. *Id.* No one from ICE has spoken to him since his detention. *Id.*

Mr. Valdes Valdes has a kidney transplant. *Id.* at 6. The medical staff at Otay Mesa Detention Center recently informed him that the test results show that his kidney is failing and he needs to see an outside specialist. *Id.*

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

Prior to 2017, there was no repatriation agreement between the United States and Cuba. *Clark v. Martinez*, 543 U.S. 371, 386 (2005). On January 12, 2017, the United States and Cuba signed a joint statement ("2017 Joint Statement") by which Cuba agreed to the repatriation of some Cuban nationals. *Cuba (17-112) – Joint Statement Concerning Normalization of Migration Procedures*, Jan. 12, 2017,

[2] *See also* EOIR, *Automated Case Information*, https://acis.eoir.justice.gov/en/.

available at https://www.state.gov/17-112/. The 2017 Joint Statement required Cuba to accept some Cuban nationals but allowed it to use its discretion to accept others on a case-by-case basis.

Specifically, under the agreement Cuba "shall receive back all Cuban nationals who after the signing" of the 2017 Joint Statement "found by the competent authorities of the United States to have tried to irregularly enter or remain in that country in violation of United States law." *Id.* at 2. The agreement also stated that Cuba "shall accept individuals included in the list of 2,746 to be returned in accordance with the Joint Communiqué of December 14, 1984," who came to the United States in 1980 via the Port of Mariel. *Id.* Cuba is not required to accept a third group of Cuban Nationals. Under the 2017 Joint Statement, Cuba agrees to "consider and decide on a case-by-case basis the return of other Cuban nationals presently in the United States of America who before the signing of this Joint Statement had been found by the competent authorities of the United States to have tried to irregularly enter or remain in that country in violation of United States law." *Id.* Petitioner falls into this last group of Cuban Nationals since he was found to "have tried to irregularly enter or remain in that country" prior to the 2017 Joint Statement.

Moreover, despite the 2017 Joint Statement, a 2019 report by the Office of Inspector General classified Cuba as an "uncooperative country" in 2017, 2018, and 2019 based on its failure to provide travel documents on a timely basis. Department of Homeland Security, Office of Inspector General, Report No. OIG-19-28, *ICE Faces Barriers in Timely Repatriation of Detained Aliens* (Mar. 11, 2019), available at

https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf at pages 6-7, 10, 29. In May of 2018, Cuba was one of nine countries with the uncooperative categorization. *Id.* at 10.

As of the filing of this petition, Petitioner cannot find available numbers of pre-2017 Cuban nationals who have been repatriated to Cuba.

Based on the facts of Mr. Valdes Valdes's individual case, it is evident that ICE has not obtained travel documents from Cuba. This is evident because for ICE has been unsuccessful in obtaining travel documents for more than 20 years.

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

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

The Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other

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

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

(U.S. July 3, 2025).[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

[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 Petitioner. *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).

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

CLAIMS FOR RELIEF

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

First, it should order Mr. Valdes Valdes's immediate release. ICE failed to follow its own regulations requiring changed circumstances before re-detention, written notice, 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. Valdes Valdes, 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 Petitioner 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. Valdes Valdes, 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 Petitioner 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. Valdes Valdes, 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. Mr. Valdes Valdes was not returned to custody because of a conditions violation. There are no changed circumstances that justify re-detaining him, and no record of a determination before or after his arrest that "there is a significant likelihood that [Petitioner] may be removed in the reasonably foreseeable future." *Id.* at *3 (quoting 8 C.F.R. § 241.13(i)(3)(1)). 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)). Nor has Mr. Valdes Valdes received the interview required by regulation, or been afforded a meaningful opportunity to respond to the reasons for revocation. Exhibit A, ¶5-6. No one from ICE has ever invited him to contest his detention. *Id.*

Numerous courts have released re-detained immigrants after finding that ICE failed to comply with applicable regulations this summer and fall. *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. Valdes Valdes] is entitled to his release (subject to the same Order of Supervision that governed his most recent release)." *Liu*, 2025 WL 1696526, at *3.

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

A. Legal background

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Valdes Valdes: Federal law requires ICE to detain an immigrant during the "removal period," which typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period

expires, detention becomes discretionary—ICE may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation agreement," or their countries "refuse to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives.

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

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

Courts must use a burden-shifting framework to decide whether detention remains authorized. First, the petitioner must make a prima facie case for relief: He must prove that there is "good reason to believe

that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 689.

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

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

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

B. The six-month grace period expired at the latest in 2005.

As an initial matter, the six-month grace period has long since ended. The *Zadvydas* grace period lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Petitioner's 2002 grant of asylum was appealed

by the government and it was later reversed. [4] It appears that the most final date of removal was on **August 10, 2004**, more than 20 years ago. Accordingly, his 90-day removal period would have begun then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired three months after the removal period ended, in **February 2005**.

The government has sometimes argued that release and rearrest resets the six-month grace period completely, taking the clock back to zero. "Courts . . . broadly agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases). This proposal would create an obvious end run around *Zadvydas*, because ICE could detain an immigrant indefinitely by releasing and quickly rearresting them every six months.

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

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

[4] https://acis.eoir.justice.gov/en/caseInformation (indicating a 2002 grant of relief that was later reopened and subsequently sustained by the BIA on August 10, 2004.)

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

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

"In the reasonably foreseeable future." This component of the test focuses on <u>when</u> Petitioner will likely be removed: Continued detention is permissible only if removal is likely to happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This

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

Petitioner readily satisfies the above standards for two reasons.

First, as explained above, the 2017 Joint Statement between the United States and Cuba gives Cuba the discretion to accept individuals on a case-by-case basis. Even following the 2017 Joint Statement, the United States has categorized Cuba as uncooperative in providing travel documents in a timely manner.

Second, Petitioner own experience bears this out. ICE has now had at least 20 years to deport him. He has fully cooperated with ICE's removal efforts throughout that time, including at yearly check-ins. Yet ICE has not informed Petitioner of any communication with Cuba or the likelihood of obtaining travel documents from Cuba.

Third, there is doubt he can be removed to a third country. It is anticipated the government will argue that it intends to remove Petitioner to Mexico. But it is unclear what, if any, communications the government has had with Mexico regarding Petitioner's removal. No one from ICE has spoken to Petitioner about his case since his detention. Exhibit A, Decl. of Valdes Valdes at ¶ 6. What's more,

Mexico's acceptance of Petitioner appears to be contingent on the noncitizen's consent. *Arenado-Borges v. Bondi*, No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *4 (W.D. Wash. Dec. 19, 2025). "This evidence of Mexico's acceptance policy casts further doubt on the Government's ability to remove" petitioner to a third country. *Id.* Removal to another third country is also doubtful because ICE has not identified any other third country.

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

II. Count 3: ICE may not remove Petitioner 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.

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 Petitioner 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). Petitioner 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 any country other than Cuba, unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
    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 19, 2026

s/ Zandra L. Lopez

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Attorneys for Mr. Valdes Valdeszz
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Exhibit A

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Attorneys for Mr. Carlos Valdes Valdes

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CARLOS VALDES VALDES,

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.:

DECLARATION OF CARLOS VALDES VALDES

I, Carlos Valdes Valdes, declare:

1. I was born in 1960 in Cuba and came to the United States in 1980. I came in as a political refuge.

2. In 2002, an immigration judge granted me asylum. After the immigration judge's order, DHS appealed my case but no one told me about the appeal. Because I did not know about DHS's appeal, I did not appear in court and the immigration judge's order was reversed. Six months after the immigration judge's order, I received a letter to go to ICE. I went to ICE and they told me

about the reversal of my asylum and was told there was an order of deportation to Cuba.

3. ICE placed me on an order of supervision because I could not be removed to Cuba. For over 20 years, I have not had any problems. I have made all my appointments with ICE. I have not violated any conditions of supervision.

4. On December 10, 2025, I reported for my annual check-in in downtown San Diego. I was told that they could not remove me to Cuba and that I had to report to an office on F street to get GPS ankle monitor. I went to an office on F Street in downtown to get the GPS. They placed the monitor on my ankle. After that, someone came to my house to check in on me. ICE told me that I had to report to ICE again on December 22.

5. On December 18, they called me to tell me that I had to sign some papers. I got there at noon. When I got there, I entered a big office and there were about five ICE agents waiting for me. They detained me right away.

6. I do not remember receiving any written notice as to why they were revoking my supervised release. I was not given an interview so that I could contest my detention. I have not talked to an ICE agent since my arrest.

7. When I was detained, I asked if I could have my medication sent to me because if I do not take it, I can die. I have a kidney transplant. Recently, I had tests done here at Otay Mesa Detention Center and I was told that the results show that my kidney is declining and I have kidney disease. This week, they told me that they would send me to an outside kidney specialist.

8. I cannot afford an attorney. I am retired and currently work in maintenance at the apartment building where I live. I make enough to pay my rent and utilities and other basic necessities every month but I do not have extra money.

I declare under penalty of perjury that the foregoing is true and correct, executed on this date, January 19, 2026, in San Diego, California.

[redacted]

Declarant
Carlos Valdes-Valdes

Exhibit B

PLAINTIFFS' EXHIBIT NO. 2
CASE NO. PX 25-951
IDENTIFICATION: JUL 10 2025
ADMITTED: JUL 10 2025

To All ICE Employees
July 9, 2025

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

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

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

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

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

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

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

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

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

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

Attachments:

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