

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. Feh



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

11 VALORIA FEH,

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 JEREMY CASEY, Warden at Imperial
22 Regional Detention Center,

23 Respondents.

CIVIL CASE NO.: 26-cv-578-LL

**Traverse in Support of
Petition for a Writ
of Habeas Corpus**

24 This Court should grant Mr. Feh’s petition on both grounds. The
25 government concedes that ICE currently has not identified any third country to
26 which Mr. Feh can be removed, meaning that the government cannot meet its
27 burden under *Zadvydas*. And if—despite all evidence to the contrary—ICE is able
28 to remove Mr. Feh to a third country, ICE must at a minimum give him the
process set forth in *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). Twenty-four hours’

1 notice or less is not near enough to satisfy the Constitution. This Court should
2 therefore grant this petition on both counts.

3 **ARGUMENT**

4 **I. Count 1: The government’s Return confirms that ICE has no reason to**
5 **think Mr. Feh can be removed in the reasonably foreseeable future.**

6 Mr. Feh must be released under *Zadvydas v. Davis*, because there is “no
7 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
8 678, 701 (2001). The government does not deny that Mr. Feh has been in custody
9 for six months,¹ meaning that the government has the burden to prove he can be
10 removed. But the government has not begun to do so. Deportation Officer (“DO”)
11 Arredondo admits that ICE has not even identified a third country that might
12 possibly take Mr. Feh, let alone asked any country take him. Doc. 4-1 at ¶¶ 10-11.
13 In fact, DO Arredondo has only followed up with ERO Removal International
14 Operations Division (HQRIO), the unit charged with third-country removals, once,
15 and HQRIO just advised that they were still working on it. *Id.*

16 Finally, ICE’s complete failure to identify a plausible path to removal is
17 especially damning in light of the undisputed empirical evidence in the petition,
18 which establishes that “alternative-country removal is rare.” *Johnson v. Guzman-*
19 *Chavez*, 594 U.S. 523, 537 (2021).

20 Furthermore, DO Vasquez does not provide any evidence about how long a
21 third-country removal might take—no statistics, no anecdotes, no guesses, no
22

23 ¹ Because the government’s briefing does not argue that the grace period has not
24 elapsed, this Court should deem any such argument forfeited and not consider the
25 matter further. *See United States v. Castillo-Marin*, 684 F.3d 914, 919 (9th Cir.
26 2012). That said, DO Arredondo’s declaration mentions his view that the order
27 became final on August 29, 2025, not quite six months ago. Doc. 4-1 at ¶ 9. Even
28 if that were true, this Court should find that Mr. Feh has rebutted the presumption
of reasonableness, *see, e.g., Villanueva v. Tate*, No. CV H-25-3364, 2025 WL
2774610, at *10 (S.D. Tex. Sept. 26, 2025); *Puertas Mendoza v. Bondi*, No. SA-
25-CA-00890-XR, 2025 WL 3142089, at *2 (W.D. Tex. Oct. 22, 2025); *Munoz-*
Saucedo v. Pittman, 789 F. Supp. 3d 387, 397 (D.N.J. 2025), or at least continue
this case until February 29, when the grace period will have indisputably elapsed.

1 nothing. That, too, is fatal. “[D]etention may not be justified on the basis that
2 removal to a particular country is likely *at some point* in the future; *Zadvydas*
3 permits continued detention only insofar as removal is likely in the *reasonably*
4 *foreseeable* future.” *Hassoun*, 2019 WL 78984, at *6. “The government’s active
5 efforts to obtain travel documents from the Embassy are not enough to demonstrate
6 a likelihood of removal in the reasonably foreseeable future where the record before
7 the Court contains no information to suggest a timeline on which such documents
8 will actually be issued.” *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL
9 3972319, at *4 (W.D.N.Y. July 14, 2020). “[I]f DHS has no idea of when it might
10 reasonably expect [Mr. Feh] to be repatriated, this Court certainly cannot conclude
11 that his removal is likely to occur—or even that it *might* occur—in the reasonably
12 foreseeable future.” *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

13 ICE’s plan to eventually request a travel document for Mr. Feh does not
14 move the needle, because good faith efforts to secure a travel document do not
15 satisfy *Zadvydas*. The petitioner in *Zadvydas* appealed a “Fifth Circuit h[olding]
16 [that] [the petitioner’s] continued detention [was] lawful as long as good faith
17 efforts to effectuate deportation continue and [the petitioner] failed to show that
18 deportation will prove impossible.” 533 U.S. at 702 (cleaned up). The Supreme
19 Court reversed, finding that the Fifth Circuit’s good-faith-efforts standard
20 “demand[ed] more than our reading of the statute can bear.” *Id.*

21 Thus, “under *Zadvydas*, the reasonableness of Petitioner’s detention does not
22 turn on the degree of the government’s good faith efforts. Indeed, the *Zadvydas*
23 court explicitly rejected such a standard. Rather, the reasonableness of Petitioner’s
24 detention turns on whether and to what extent the government’s efforts are likely to
25 bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5
26 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is required to demonstrate
27 the likelihood of not only the *existence* of untapped possibilities, but also of a
28 probability of success in such possibilities.” *Elashi v. Sabol*, 714 F. Supp. 2d 502,

1 506 (M.D. Pa. 2010). Here, then, “[w]hile the respondent asserts that [Mr. Feh’s]
2 travel document requests” with a third country will be lodged, “this is insufficient.
3 It is merely an assertion of good-faith efforts to secure removal; it does not make
4 removal likely in the reasonably foreseeable future.” *Gilali v. Warden of McHenry*
5 *Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019).

6 With no evidence of any likelihood of removal at any time, the government
7 has not met its burden, and this Court must grant the petition.

8 **II. Count 2: Twenty-four hours’ notice before third-country removal is not**
9 **sufficient for due process.**

10 The record therefore reflects that Mr. Feh will not be removed to a third
11 country in the reasonably foreseeable future. But ICE would remove him to a third
12 country if it could, and something could unexpectedly change to make that feasible.
13 To protect against that possibility, this Court should require the government to
14 provide the notice set forth in *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-
15 10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025), before removing
16 Mr. Feh to any other third country. The government’s typical arguments to the
17 contrary are meritless.

18 *First*, the Supreme Court’s decision in *D.V.D.* does not affect this Court’s
19 authority to order injunctive relief in this individual case. In *D.V.D.*, the government
20 sought a stay based on procedural arguments applicable only to class actions. *Dep’t*
21 *of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025) (Sotomayor, J.,
22 dissenting). But “even if the Government [was] correct that classwide relief was
23 impermissible” in *D.V.D.*, Respondents still “remain[] obligated to comply with
24 orders enjoining [their] conduct with respect to individual plaintiffs” like Mr. Feh.
25 *Id.* Thus, the Supreme Court’s decision does not override this Court’s authority to
26 grant individual injunctive relief. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025
27 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

28

1 *Second*, Mr. Feh can seek this relief in this habeas petition despite the
2 pending class action. The Ninth Circuit held as much in analogous circumstances
3 in *Pride v. Correa*, which permitted a detained person to individually challenge his
4 own inadequate medical care despite a pending class action challenging medical
5 care at the facility. 719 F.3d 1130, 1137 (9th Cir. 2013). The Ninth Circuit reasoned
6 that “[i]ndividual claims for injunctive relief related to medical treatment are
7 discrete from the claims for systemic reform addressed in” a class action. *Id.*
8 “Consequently, where an inmate brings an independent claim for injunctive relief
9 solely on his own behalf for medical care that relates to him alone, there is no
10 duplication of claims or concurrent litigation.” *Id.* Otherwise, individual plaintiffs
11 “would be powerless to petition the courts for redress of the violation until” a class
12 action, which can take years to finish, “has been fully resolved.” *Id.* The Court
13 therefore rejected the contention that “an individual claim for injunctive relief may
14 be delayed because a pending class action seeks systemic reform relating to the
15 same general subject matter.” *Id.*

16 So too here. Mr. Feh brings individual claims related to him alone, rather
17 than asking for the systemic reforms sought in *D.V.D.* And per the government’s
18 arguments in *D.V.D.*, these claims must be brought on an individual basis; they
19 cannot be brought in a class action. The government’s position therefore would bar
20 Mr. Feh from seeking relief individually, even while the government argues in
21 *D.V.D.* that he cannot get that relief as part of a class. This Court should reject that
22 “heads, I win; tails, you lose” reasoning. Under *Plata*, “[t]he class certification
23 order in *D.V.D.* does not prevent this Court from adjudicating Petitioner’s claims
24 regarding third-country removal.” *Nguyen v. Scott*, 796 F. Supp. 3d 703, 730 (W.D.
25 Wash. 2025).

26 *Third*, 24 hours’ notice is not near enough to satisfy due process. Mr. Feh
27 may not even have heard of the third country to which ICE intends to deport him,
28 let alone have extensive information about the dangers he could face there. He will

1 need time to research the country conditions before he can make a fair, intelligent
2 decision about whether he fears removal. And if he does fear removal, but ICE does
3 not consider his fear reasonable, he will need time to obtain an attorney and file a
4 motion to reopen. That is why the court in *D.V.D.* laid out a two-step timeline for
5 receiving notice about third countries: Petitioners need 10 days to decide whether
6 to raise a fear-based claim and, if ICE decides that they do not have a reasonable
7 fear, an additional 15 days to move to reopen. *D.V.D. v. U.S. Dep't of Homeland*
8 *Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025).
9 This Court should follow suit.

10 Critically, the government in this case does not even promise to give 24
11 hours' notice—it simply says that that's "generally" what ICE does, while
12 acknowledging that it sometimes gives even less. Doc. 4 at 4. Thus, this Court
13 cannot find that notice of 24 hours *or less* satisfies due process.

14 **III. Section 1252(g) does not deprive this Court of jurisdiction on any issue**
15 **in this petition.**

16 Finally, § 1252(g) does not bar review of "all claims arising from deportation
17 proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482
18 (1999). Instead, courts "have jurisdiction to decide a purely legal question that does
19 not challenge the Attorney General's discretionary authority." *Ibarra-Perez v.*
20 *United States*, ___ F.4th ___, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025)
21 (cleaned up).

22 "[Section] 1252(g) does not prohibit challenges to unlawful practices merely
23 because they are in some fashion connected to removal orders." *Id.* Instead, 1252(g)
24 is "limited . . . to actions challenging the Attorney General's discretionary decisions
25 to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v.*
26 *United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments
27 that the government "entirely lacked the authority, and therefore the discretion," to
28 carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to "discretionary

1 decisions that [the Secretary] actually has the power to make, as compared to the
2 violation of his mandatory duties.” *Ibarra-Perez*, 2025 WL 2461663, at *9.

3 The same logic applies to all of Mr. Feh’s claims, because he challenges only
4 violations of ICE’s mandatory duties under statutes, regulations, and the
5 Constitution. Accordingly, “[t]hough 8 U.S.C § 1252(g), precludes this Court from
6 exercising jurisdiction over the executive’s decision to ‘commence proceedings,
7 adjudicate cases, or execute removal orders against any alien,’ this Court has habeas
8 jurisdiction over the issues raised here, namely the lawfulness of [Mr. Feh’s]
9 continued detention and the process required in relation to third country removal.”
10 *Y.T.D.*, 2025 WL 2675760, at *5. Many courts agree. *See, e.g., Kong*, 62 F.4th at
11 617 (“§ 1252(g) does not bar judicial review of Kong’s challenge to the lawfulness
12 of his detention,” including ICE’s “fail[ure] to abide by its own regulations”);
13 *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (“[S]ection 1252(g) does not
14 bar courts from reviewing an alien detention order[.]”); *Parra v. Perryman*, 172
15 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a “claim concern[ing]
16 detention”); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3
17 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was “failing
18 to carry out non-discretionary statutory duties and provide due process”); *D.V.D. v.*
19 *U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025)
20 (1252(g) did not bar review of “the purely legal question of whether the
21 Constitution and relevant statutes require notice and an opportunity to be heard
22 prior to removal of an alien to a third country”).

23
24 Respectfully submitted,

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s/ Katie Hurrelbrink

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