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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Ysmel Santos-Diaz,

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.: 26-cv-00582-BAS-DEB

Traverse

INTRODUCTION

This Court should grant Mr. Santos-Diaz's petition on all three grounds. The government now confirms that it provided Mr. Santos-Diaz with an utterly conclusory revocation notice, which several courts have repeatedly deemed insufficient to comply with due process. That alone justifies release.

Additionally, the government concedes that it does not know when or where Mr. Santos-Diaz will be sent. Cuba, as it has for more than a decade, refused to accept him. Mexico will not allow him to self-deport there. And to this day, ICE has not identified another third country, meaning the government cannot meet its burden under *Zadvydas*. *See Reinoso Martinez v. Noem*, 26-cv-00138-DMS-SBC, Doc. 7 (Jan. 29, 2026) (granting on *Zadvydas* grounds for Cuban national).

Finally, if—despite all evidence to the contrary—ICE is able to remove Mr. Santos-Diaz 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' notice is not near enough to satisfy the Constitution. Given that the government has indicated that they are seeking a third country and tend to give Mr. Santos-Diaz little, to no, due process, a court order is necessary.

This Court should therefore grant this petition on all three counts.

ARGUMENT

I. Count 1: As Courts in this district have repeatedly warned, the notice in this case is insufficient to satisfy Due Process.

Mr. Santos-Diaz's petition noted several potential regulatory violations in connection with his re-detention. The government's evidence now establishes at least three such violations.

1. Too vague and confusing to satisfy due process

First, the notice provided to Mr. Santos-Diaz on January 12, 2026, is far too vague to satisfy due process. The notice of revocation appears to be a check-the-box form. Doc. 6-1 at 7. The form gives the agent four options for revoking supervision. *Id*. In Mr. Santos-Diaz's notice, the agent checked off three of the four boxes. There are multiple problems with this.

For one, at least one of the boxes checked by the agent appears to be *unrelated* to Mr. Santos-Diaz's type of supervision. Specifically, the box states that supervision is revoked because the "*purposes of release have been served*." ECF No. 6-1 at 4 (emphasis added). 8 U.S.C. § 1182(d)(5)(A) permits for individuals to be paroled into the country so they can seek asylum outside of detention. "[W]hen the *purpose of the parole has been served*," § 1182(d)(5)(A) provides that "the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1182(d)(5)(A)) (emphasis added). But, Mr. Santos-Diaz was not paroled into the country, and this type of regulation is inapplicable to him.

Another checked box simply states the supervision is being revoked because "[i]t is appropriate to enforce your removal order, which became administratively final on 03/01/2010." ECF No. 6-1 at 4. The generic form then continues to state: "thorough review of your case and the removal options available at this time." *Id*. District courts in this district and others have deemed such "wholly conclusory" notices insufficient. *Saengphet v. Noem,* No. 3:25-CV-2909-JES-BLM, 2025 WL 3240808, at *7 (S.D. Cal. Nov. 20, 2025) (finding similar language in notice to be too "conclusory" to provide adequate notice); *Nguyen v. Noem*, No. 25-CV-3062-JES-VET, 2025 WL 3251374, at *3 (S.D. Cal. Nov. 21, 2025) (finding notice informing detainee that he could be expeditiously removed insufficient); *McSweeney v. Warden of Otay Mesa Det. Facility*, No.

3:25-CV-02488-RBM-DEB, 2025 WL 2998376, at *5 (S.D. Cal. Oct. 24, 2025) (holding that language in notice stating that "ICE has determined that you can be expeditiously removed from the United States pursuant to an outstanding order of removal" was "conclusory and unclear" and failed to provide adequate notice of the basis of the revocation decision); *J.L.R.P., v. Wofford et al.*, No. 1:25-CV-01464-KES-SKO (HC), 2025 WL 3190589, at *7 (E.D. Cal. Nov. 14, 2025) (holding that same language in the notice of revocation of release "did not provide any specific changed circumstance applicable to petitioner").

"This is because Respondents fail to indicate which facts contained within Petitioner's alien file—or what specific circumstances, that are relevant to Petitioner, have changed and therefore—justify the revocation of Petitioner's release." *Id.*; *see, e.g.*, *Van Ngo v. Noem*, No. 25-CV-3234 JLS (MMP), 2025 WL 3470438, at *3 (S.D. Cal. Dec. 3, 2025) (same); *Arostegui-Campo v. Noem*, No. 25-CV-3064 JLS (MMP), 2025 WL 3280886, at *3 (S.D. Cal. Nov. 25, 2025) (same); *Dipraseuth v. Noem*, No. 25-CV-3471 JLS (BJW), 2025 WL 3677674, at *2 (S.D. Cal. Dec. 18, 2025) (same).

2. Lack of any real notice

Second, the lack of real notice taints the informal interview provided on December 11, 2025 "[D]ue to the notice's insufficiency, [Mr. Santos-Diaz] [was] not . . . informed of the grounds for his revocation to adequately contest the revocation." *Van Ngo*, 2025 WL 3470438, at *3. Thus, "the Government's provision of such conclusory 'reasons,' is highly likely to result in Petitioner losing his challenge before it even begins." *Saengphet*, 2025 WL 3240808, at *5. "Petitioner must be told *what* circumstances had changed or *why* there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3)." *Sarail A. v. Bondi*, No. 25-CV-2144 (ECT/JFD), 2025 WL 2533673, at *10 (D. Minn. Sept. 3, 2025). "Thus, while an informal interview apparently occurred, Petitioner could

not have responded to the reasons for revocation, because they were not given." *Id.*

3. There is no changed circumstances because there are no countries that will accept him.

Third, there are, in actuality, no changed circumstances justifying re-detention. Mr. Santos-Diaz still cannot be removed to any country to which he has a personal connection, and ICE has identified no other country that might even possibly take him. ECF No. 6-1, Decl Crespo at ¶¶ 9, 11. Neither Cuba nor Mexico will accept Mr. Santos-Diaz. That is the same state of affairs that has persisted for years. 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)).

The "regulation require[s] an individualized determination by ICE that, based on changed circumstances, removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023) (numbering omitted). Courts have therefore "demanded an individualized analysis" of why *this* person—Mr. Santos-Diaz—will likely be removed. *Nguyen*, 2025 WL 2419288, at *17 (citing *Nguyen*, 2025 WL 1725791, at *4).

Contrary to the government's arguments, these lapses violate due process and entitle Mr. Santos-Diaz to release without a showing of prejudice, as courts in this district have repeatedly found. *See, e.g.*, *Ghafouri v. Noem*, 25-cv-2675-RBM, Dkt. 11 at 9–12 (S.D. Cal. Nov. 4, 2025); 25-cv-2740-BJC, Doc. 13 at 8 (S.D. Cal. Nov. 13, 2025); *Soryadvongsa v. Noem*, 25-cv-2663-AGS, Dkt. 11 at 4–5 (S.D. Cal. Nov. 8, 2025). "There are two types of regulations: (1) those that protect fundamental due process rights, and (2) and those that do not." *Martinez v.*

Barr, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). "A violation of the first type of regulation . . . implicates due process concerns even without a prejudice inquiry." *Id.* (cleaned up).

Here, "[t]here can be little argument that ICE's requirement that noncitizens be afforded an informal interview—arguably the most bare-bones form of an opportunity to be heard—derives from the fundamental constitutional guarantee of due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. 2025). Indeed, "[w]hen the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(*l*) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*). Thus, these regulations fall squarely into the first category requiring no prejudice showing.

If Mr. Santos-Diaz did need to show prejudice, however, he could, because he has a very good argument that there are no changed circumstances in his case. There is therefore a "plausible scenario[] in which the outcome of the proceedings would have been different if a more elaborate process were provided," *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up).

For this reason alone, Mr. Santos-Diaz must be released.

II. Count 2: Mr. Santos-Diaz's detention violates *Zadvydas* and 8 U.S.C. § 1231.

Additionally, Mr. Santos-Diaz's continued detention violates 8 U.S.C. § 1231 as interpreted in *Zadvydas*, because there is no significant likelihood of her removal in the reasonably foreseeable future.

First, the government does not contest that the six-month grace period under *Zadvydas* has passed. Return, ECF No. 6.

Second, the government provides no evidence that Mr. Santos-Diaz can be removed to *any* country. Petitioner's petition provided good reason to think that he would not be removed in the reasonably foreseeable future, because the evidence showed that he could not be removed to Cuba or Mexico. The government now admits that Cuba declined to accept her for removal. Crespo Decl. at ¶ 9. And Mexico will also not accept him. *Id.* at ¶ 11.

The government has not identified a country for removal. It appears that the government has not even started looking for another country for removal. Mr. Santos-Diaz is simply detained for purposes of being detained. ECF No. 6 at 4.

Thus, the government has not proved that Petitioner will be removed in the reasonably foreseeable future.

III. Count 3: ICE may not remove Mr. Santos-Diaz to a third country without adequate notice and an opportunity to be heard.

The record therefore reflects that Petitioner will not be removed to a third country in the reasonably foreseeable future. But ICE would remove him to a third country if it could, and something could unexpectedly change to make that feasible. To protect against that possibility, this Court should require the government to provide the notice 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), before removing Petitioner to any other third country. The government's three arguments to the contrary are meritless.

First, the Supreme Court's decision in *D.V.D.* does not affect this Court's authority to order injunctive relief in this individual case. In *D.V.D.*, the government 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). But "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.* Thus, 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).

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

So too here. Petitioner brings individual claims related to him alone, rather than asking for the systemic reforms sought in *D.V.D.* And per the government's

arguments in *D.V.D.*, these claims must be brought on an individual basis; they cannot be brought in a class action. The government's position therefore would bar Petitioner from seeking relief individually, even while the government argues in *D.V.D.* that he cannot get that relief as part of a class. This Court should reject that "heads, I win; tails, you lose" reasoning. Under *Plata*, "[t]he class certification order in *D.V.D.* does not prevent this Court from adjudicating Petitioner's claims regarding third-country removal." *Nguyen v. Scott*, 796 F. Supp. 3d 703, 730 (W.D. Wash. 2025).

Third, 24 hours' notice is not near enough to satisfy due process. Petitioner may not even have heard of the third country to which ICE intends to deport him, let alone have extensive information about the dangers he could face there. He will need time to research the country's conditions before he can make a fair, intelligent decision about whether he fears removal. And if he does fear removal, but ICE does not consider her fear reasonable, he will need time to obtain an attorney and file a motion to reopen. That is why the court in *D.V.D.* laid out a two-step timeline for receiving notice about third countries: Petitioners need 10 days to decide whether to raise a fear-based claim and, if ICE decides that they do not have a reasonable fear, an additional 15 days to move to reopen. *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). This Court should follow suit.

A. Section 1252(g) does not deprive this Court of jurisdiction on any issue in this petition.

Finally, contrary to the government's arguments, § 1252(g) does not bar review of "all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts "have jurisdiction to decide a purely legal question that does not challenge the Attorney

General's discretionary authority." *Ibarra-Perez v. United States*, __ F.4th __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned up).

In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed," *id*. at *7[1]—the same claim that Petitioner raises here with respect to third-country removals. The Court reasoned that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id*. Instead, 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id*. at 800. Thus, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

The same logic applies to all of Petitioner's claims, because he challenges only violations of ICE's mandatory duties under statutes, regulations, and the Constitution. Accordingly, "[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Petitioner] continued detention and the process required in relation to third

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[1] Mr. Ibarra-Perez raised this claim in a post-removal Federal Tort Claims Act ("FTCA") case, *id*. at *2, while this is a pre-removal habeas petition. But the analysis under § 1252(g) remains the same, because both Mr. Ibarra-Perez and Petitioner are challenging the same kind of agency action. *See Kong*, 62 F.4th at 616–17 (explaining that a decision about § 1252(g) in an FTCA case would also affect habeas jurisdiction).

country removal." *Y.T.D.*, 2025 WL 2675760, at *5. Many courts agree. *See, e.g.*, *Kong*, 62 F.4th at 617 ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention," including ICE's "fail[ure] to abide by its own regulations"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim concern[ing] detention"); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was "failing to carry out non-discretionary statutory duties and provide due process"); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard prior to removal of an alien to a third country").

Respectfully submitted,

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s/ Zandra L. Lopez

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