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

REY CARLOS TRUJILLO
PEDRAZA,

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.: **'26CV1461 BAS JLB**

**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. Trujillo was ordered removed to Cuba in 2019. Fifty-five days later, he was placed under an order of supervision.

ICE re-arrested him on November 12, 2025. ICE provided him with a Notice of Revocation that stated that "based on a review of your file and/or your personal interview on account of the changed circumstances in your case. ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in your case." The notice did not claim that ICE was revoking my release based on a violation of my release conditions. The notice did not say what the changed circumstances were.

ICE did not give him a prompt interview so that he could contest his detention.

1 Since his detention, ICE has provided Mr. Trujillo no information
2 indicating that he will be removed to Cuba in the reasonably
3 foreseeable future. ICE has taken him to the border with Mexico, but
4 Mr. Trujillo does not want to go to Mexico. Thus, ICE has cannot
5 remove Mr. Trujillo in the reasonably foreseeable future.

6 Courts in this district and around the country have ordered
7 Cubans released from ICE custody for the same reasons. *See Rios v.*
8 *Noem*, No. 25-CV-2866-JES, Doc. 15 (S.D. Cal. Nov. 10, 2025);
9 *Rodriguez-Gutierrez v. Noem*, 25-cv-02726-BAS-SBC, Doc. 14 (S.D. Cal.
10 Nov. 7, 2025); *Izquierdo-Matos v. Noem*, Doc. 12, 25-cv-02979-BJC-
11 BLM (S.D. Cal. Nov. 18, 2025); *Arostegui-Campo v. Noem*, 25-cv-03064-
12 JLS-MMP, Doc. 11 (S.D. Cal. Nov. 25, 2025). One court underlined,
13 “Rules matter. Hearings matter. In recognition of this cornerstone
14 principle of our jurisprudence, a growing chorus of district courts have
15 found that—in similar cases—the government’s unlawful detention . . .
16 . warrants immediate release.” *Delkash v. Noem*, No. 25-cv-1675-HDV-
17 AGR, 2025 WL 2683988 (C.D. Cal. Aug. 28, 2025).

18 Courts have also released Cuban nationals that cannot be
19 removed to Cuba and do not voluntarily leave to Mexico under
20 *Zadvydas* grounds. *See e.g. Hernandez-Blanco v. Noem*, 26-cv-00425-
21 DMS-JLB, Doc. 8 (Feb. 23, 2026) (granting on *Zadvydas* grounds for
22 Cuban national); *Reinoso Martinez v. Noem*, 26-cv-00138-DMS-SBC,
23 Doc. 7 (Jan. 29, 2026) (same).
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STATEMENT OF FACTS

I. Mr. Trujillo 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 2011, Mr. Trujillo came to the United States from Cuba. Exhibit A, Declaration of Rey Carlos Trujillo Pedraza ¶ 1. Everyone in his family is a United States Citizen, including his mother, siblings, children, and cousins. *Id.* He was ordered removed on February 14, 2019. *Id.* ¶ 2.² He was detained for 55 days after the order of removal. *Id.* Because the government could not remove him to Cuba, it released him under an order of supervision. *Id.* ¶ 2-3.

Mr. Trujillo reported every year. *Id.* ¶ 3.

On March 16, 2025, Mr. Trujillo was arrested for violating probation. *Id.* at ¶ 4.

On November 12, 2025, he was arrested by ICE. The next day, ICE provided him with a Notice of Revocation of Release. The notice said that his release was being revoked “based on a review of your file and/or your personal interview on account of the changed circumstances in your case. ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in your case.” *Id.* at ¶ 5. The notice did not claim that ICE was revoking his release based on a violation of his release conditions. *Id.* The notice did not say what the changed circumstances were. *Id.* The ICE officers giving him the notice didn’t say anything else about why they were revoking his release. *Id.*

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

1 ICE did not give him a chance to explain why he should not be re-
2 detained, either when he was detained or at any time afterward. *Id.* at
3 ¶ 6. ICE did not ask me if he had anything to say about the revocation
4 of his release. *Id.* He tried to say something about his children in the
5 US, but as he was speaking, he was already being handcuffed. *Id.*

6 No one from ICE has said anything to Mr. Trujillo about trying to
7 remove him to Cuba. *Id.* at ¶ 7.

8 On March 7, 2026, ICE took Mr. Trujillo to the Mexican border
9 and tried to get him to walk across. *Id.* at 8. Mr. Trujillo did not want
10 to go. *Id.*

11 ICE has moved Mr. Trujillo to several different detention centers
12 since his arrest. *Id.* at ¶9. Every time he gets transferred, ICE chains
13 his hands, feet, and waist. *Id.* Once, he was chained in a bus for 16
14 hours. *Id.* During another transfer, he had to sleep on the floor for five
15 days. *Id.* There was no medical attention. *Id.* For five days, all he and
16 the other detainees ate was turkey sandwiches, chips, and water. *Id.*
17 The handcuffs stayed on even while eating. *Id.*

18
19 **II. The repatriation agreement with Cuba allows it to use**
20 **its discretion in accepting Cuban nationals that entered**
21 **the United States prior to 2017 on a case-by-case basis.**

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

1 required Cuba to accept some Cuban nationals but allowed it to use its
2 discretion to accept others on a case-by-case basis.

3 Specifically, under the agreement Cuba “shall receive back all
4 Cuban nationals who after the signing” of the 2017 Joint Statement
5 “found by the competent authorities of the United States to have tried
6 to irregularly enter or remain in that country in violation of United
7 States law.” *Id.* at 2. The agreement also stated that Cuba “shall accept
8 individuals included in the list of 2,746 to be returned in accordance
9 with the Joint Communiqué of December 14, 1984,” who came to the
10 United States in 1980 via the Port of Mariel. *Id.* Cuba is not required
11 to accept a third group of Cuban Nationals. Under the 2017 Joint
12 Statement, Cuba agrees to “consider and decide on a case-by-case basis
13 the return of other Cuban nationals presently in the United States of
14 America who before the signing of this Joint Statement had been found
15 by the competent authorities of the United States to have tried to
16 irregularly enter or remain in that country in violation of United
17 States law.” *Id.* Petitioner falls into this last group of Cuban Nationals
18 since he was found to “have tried to irregularly enter or remain in that
19 country” prior to the 2017 Joint Statement.
20

21 Moreover, despite the 2017 Joint Statement, a 2019 report by the
22 Office of Inspector General classified Cuba as an “uncooperative
23 country” in 2017, 2018, and 2019 based on its failure to provide travel
24 documents on a timely basis. Department of Homeland Security, Office
25 of Inspector General, Report No. OIG-19-28, *ICE Faces Barriers in*
26 *Timely Repatriation of Detained Aliens* (Mar. 11, 2019), available at
27 <https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28->
28

1 Mar19.pdf at pages 6-7, 10, 29. In May of 2018, Cuba was one of nine
2 countries with the uncooperative categorization. *Id.* at 10.

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

6 Based on the facts of Mr. Trujillo's individual case, it is evident
7 that ICE has not obtained travel documents from Cuba. This is evident
8 because for ICE has been unsuccessful in obtaining travel documents.

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

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

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

18 On June 23 and July 3, 2025, the Supreme Court issued a stay of
19 a national class-wide preliminary injunction issued in *D.V.D. v. U.S.*
20 *Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL
21 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), which required ICE to
22 follow statutory and constitutional requirements before removing an
23 individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*,
24 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186
25 (U.S. July 3, 2025).³ On July 9, 2025, ICE rescinded previous guidance
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28 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)

1 meant to give immigrants a “‘meaningful opportunity’ to assert claims
2 for protection under the Convention Against Torture (CAT) before
3 initiating removal to a third country” like the ones just described. Exh.
4 B (“Third Country Removal Policy”).

5 Under the new guidance, ICE may remove any immigrant to a
6 third country “without the need for further procedures,” as long as—in
7 the view of the State Department—the United States has received
8 “credible” “assurances” from that country that deportees will not be
9 persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not
10 to persecute or torture releasees, ICE may still remove immigrants there
11 with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’ notice.
12 But “[i]n exigent circumstances,” a removal may take place in as little
13 as six hours, “as long as the alien is provided reasonably means and
14 opportunity to speak with an attorney prior to the removal.” *Id.*

15
16 Upon serving notice, ICE “will not affirmatively ask whether the
17 alien is afraid of being removed to the country of removal.” *Id.*
18 (emphasis original). If the noncitizen “does not affirmatively state a
19 fear of persecution or torture if removed to the country of removal
20 listed on the Notice of Removal within 24 hours, [ICE] may proceed
21 with removal to the country identified on the notice.” *Id.* at 2. If the
22 noncitizen “does affirmatively state a fear if removed to the country of
23 removal” then ICE will refer the case to U.S. Citizenship and
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25 (Sotomayor, J., dissenting). Thus, “even if the Government [was] correct that
26 classwide relief was impermissible” in *D.V.D.*, Respondents still “remain[]
27 obligated to comply with orders enjoining [their] conduct with respect to individual
28 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).

1 Immigration Services (“USCIS”) for a screening for eligibility for
2 withholding of removal and protection under the Convention Against
3 Torture (“CAT”). *Id.* at 2. “USCIS will generally screen within 24
4 hours.” *Id.* If USCIS determines that the noncitizen does not meet the
5 standard, the individual will be removed. *Id.* If USCIS determines that
6 the noncitizen has met the standard, then the policy directs ICE to
7 either move to reopen removal proceedings “for the sole purpose of
8 determining eligibility for [withholding of removal protection] and
9 CAT” or designate another country for removal. *Id.*

10 CLAIMS FOR RELIEF

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

13 First, it should order Mr. Trujillo immediate release. ICE failed
14 to follow its own regulations requiring changed circumstances before
15 re-detention, as well as a chance to promptly contest a re-detention
16 decision. And *Zadvydas v. Davis* holds that immigration statutes do
17 not authorize the government to detain immigrants like Mr. Trujillo,
18 for whom there is “no significant likelihood of removal in the
19 reasonably foreseeable future.” 533 U.S. 678, 701 (2001).

20 Second, it should enjoin the Respondents from removing
21 Petitioner to a third country without first providing notice and a
22 sufficient opportunity to be heard before an immigration judge.

24 I. Count 1: ICE failed to comply with its own regulations 25 before re-detaining Mr. Trujillo, violating his rights under 26 applicable regulations and the Fifth Amendment.

27 Two regulations establish the process due to someone who is re-
28 detained in immigration custody following a period of release. 8 C.F.R.

1 § 241.4(l) applies to re-detention generally. 8 C.F.R. § 241.13(i) applies
2 to persons released after providing good reason to believe that they will
3 not be removed in the reasonably foreseeable future, as Mr. Trujillo
4 was. *See Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at
5 *2 (order from Judge Huie explaining this regulatory framework and
6 granting a habeas petition for ICE's failure to follow these regulations).

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

10 Otherwise, they contain four major regulatory protections for
11 people like Mr. Trujillo, who did not violate any condition of release.
12 They permit revocation of release only if the appropriate official (1)
13 "determines that there is a significant likelihood that the alien may be
14 removed in the reasonably foreseeable future," § 241.13(i)(2), and (2)
15 makes that finding "on account of changed circumstances." *Id.* No
16 matter the reason for re-detention, (3) the re-detained person is
17 entitled to "an initial informal interview promptly," during which they
18 "will be notified of the reasons for revocation." §§ 241.4(l)(1);
19 241.13(i)(3). The interviewer must (4) "afford[] the [person] an
20 opportunity to respond to the reasons for revocation," allowing them to
21 "submit any evidence or information" relevant to re-detention and
22 evaluating "any contested facts." *Id.*

23 ICE is required to follow its own regulations. *United States ex rel.*
24 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*,
25 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that
26 agencies may be required to abide by certain internal policies is well-
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1 established.”). A court may review a re-detention decision for
2 compliance with the regulations, and “where ICE fails to follow its own
3 regulations in revoking release, the detention is unlawful and the
4 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at
5 *4 (collecting cases).

6 ICE followed none of its four regulatory prerequisites to re-
7 detention here. Mr. Trujillo was not told he was returned to custody
8 because of a conditions violation. There are no changed circumstances
9 that justify re-detaining him, and no record of a determination before
10 or after his arrest that “there is a significant likelihood that
11 [Petitioner] may be removed in the reasonably foreseeable future.” *Id.*
12 at *3 (quoting 8 C.F.R. § 241.13(i)(3)(1)). Absent any evidence for “why
13 obtaining a travel document is more likely this time around[,]”
14 Respondents’ intent to eventually complete a travel document request
15 for Petitioner does not constitute a changed circumstance.” *Hoac v.*
16 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D.
17 Cal. July 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL
18 1696526, at *2 (D. Kan. June 17, 2025)). Nor has Mr. Trujillo received
19 the interview required by regulation, or been afforded a meaningful
20 opportunity to respond to the reasons for revocation. Exhibit A, ¶5-6.
21 No one from ICE has ever invited him to contest his detention. *Id.*

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

10
11 “[B]ecause officials did not properly revoke petitioner’s release
12 pursuant to the applicable regulations, that revocation has no effect,
13 and [Mr. Trujillo] is entitled to his release (subject to the same Order
14 of Supervision that governed his most recent release).” *Liu*, 2025 WL
15 1696526, at *3.

16 **I. Count 2: Mr. Trujillo’s detention violates *Zadvydas* and 8**
17 **U.S.C. § 1231.**

18 **A. Legal background**

19 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court
20 considered a problem affecting people like Mr. Bueno Angulo: Federal
21 law requires ICE to detain an immigrant during the “removal period,”
22 which typically spans the first 90 days after the immigrant is ordered
23 removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period
24 expires, detention becomes discretionary—ICE may detain the migrant
25 while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
26 this scheme would not lead to excessive detention, as removal happens
27 within days or weeks. But some detainees cannot be removed quickly.
28 Perhaps their removal “simply require[s] more time for processing,” or

1 they are “ordered removed to countries with whom the United States
2 does not have a repatriation agreement,” or their countries “refuse to
3 take them,” or they are “effectively ‘stateless’ because of their race
4 and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th
5 Cir. 2001). In these and other circumstances, detained immigrants can
6 find themselves trapped in detention for months, years, decades, or
7 even the rest of their lives.

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

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

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

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

3 To underline the government’s burden, good faith is beside the
4 point. “[U]nder *Zadvydas*, the reasonableness of Petitioner’s detention
5 does not turn on the degree of the government’s good faith efforts.
6 Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather,
7 the reasonableness of Petitioner’s detention turns on whether and to
8 what extent the government’s efforts are likely to bear fruit.” *Hassoun*
9 *v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan.
10 2, 2019). Accordingly, “the Government is required to demonstrate the
11 likelihood of not only the *existence* of untapped possibilities, but also of
12 a probability of success in such possibilities.” *Elashi v. Sabol*, 714 F.
13 Supp. 2d 502, 506 (M.D. Pa. 2010).
14

15 Using this framework, Mr. Trujillo can make all the threshold
16 showings needed to shift the burden to the government.

17 **B. The six-month grace period expired in 2019.**

18 As an initial matter, the six-month grace period has long since
19 ended. The *Zadvydas* grace period lasts for “*six months* after a final
20 order of removal—that is, *three months* after the statutory removal
21 period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5
22 (9th Cir. 2001). Here, Petitioner’s order of removal was entered in
23 **February 2019**.⁴ Accordingly, his 90-day removal period began then. 8
24 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired three
25 months after the removal period ended, in **August 2019**. Moreover,
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28 ⁴ <https://acis.eoir.justice.gov/en/caseInformation>.

1 Mr. Trujillo has already spent **four months** in immigration custody.
2 In addition to the almost **two months** back in 2019. Ex. A at ¶ 2.
3 Thus, this threshold requirement is met.

4 The government has sometimes argued that release and rearrest
5 resets the six-month grace period completely, taking the clock back to
6 zero. “Courts . . . broadly agree” that this is not correct. *Diaz-Ortega v.*
7 *Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and*
8 *recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019);
9 *see also Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6
10 (N.D. Cal. Apr. 19, 2018) (collecting cases). This proposal would create
11 an obvious end run around *Zadvydas*, because ICE could detain an
12 immigrant indefinitely by releasing and quickly rearresting them
13 every six months.
14

15 **C. There is good reason to believe that there is no**
16 **significant likelihood of Mr. Trujillo’s removal in the**
17 **reasonably foreseeable future.**

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

24 **“Good reason to believe.”** The “good reason to believe”
25 standard is a relatively forgiving one. “A petitioner need not establish
26 that there exists no possibility of removal.” *Freeman v. Watkins*, No.
27 CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor
28 does “[g]ood reason to believe’ . . . place a burden upon the detainee to

1 demonstrate no reasonably foreseeable, significant likelihood of
2 removal or show that his detention is indefinite; it is something less
3 than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319,
4 at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d
5 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
6 Petitioners need only give a “good reason”—not prove anything to a
7 certainty.

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

20 **“In the reasonably foreseeable future.”** This component of
21 the test focuses on when Petitioner will likely be removed: Continued
22 detention is permissible only if removal is likely to happen “in the
23 reasonably foreseeable future.” *Zadvydass*, 533 U.S. at 701. This
24 inquiry places a time limit on ICE’s removal efforts. If the Court has
25 “no idea of when it might reasonably expect [Petitioner] to be
26 repatriated, this Court certainly cannot conclude that his removal is
27 likely to occur—or even that it might occur—in the reasonably
28 foreseeable future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020

1 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and*
2 *recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020)
3 (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)).
4 Thus, even if this Court concludes that Petitioner “would *eventually*
5 receive” a travel document, he can still meet his burden by giving good
6 reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016
7 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

8 Petitioner readily satisfies the above standards for two reasons.

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

14 *Second*, Petitioner own experience bears this out. ICE has now
15 had almost 7 years to deport him. He has fully cooperated with ICE’s
16 removal efforts throughout that time, including at yearly check-ins.
17 Yet ICE has not informed Mr. Trujillo of any communication with
18 Cuba or the likelihood of obtaining travel documents from Cuba.

19 *Third*, there is doubt he can be removed to a third country. For
20 one, Mexico’s acceptance of Petitioner is contingent on the noncitizen’s
21 consent. *See Rios v. Noem et al.*, No. 3:25-cv-02866-JES-VET (S.D. Cal.
22 2025), Doc. 13-1 at ¶ 11 (“Mexican government was ready to accept
23 Petitioner only if he would willingly go to Mexico.”). “This evidence of
24 Mexico’s acceptance policy casts further doubt on the Government’s
25 ability to remove” petitioner to a third country. *Arenado-Borges v. Bondi*,
26 No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *4 (W.D. Wash. Dec. 19,
27 2025); *See also Sanchez v. Bondi*, No. C25-2573-KKE, 2026 WL 160882,
28 at *3 (W.D. Wash. Jan. 21, 2026) (doubting removal in the reasonably

1 foreseeable future based on Mexico's acceptance policy and petitioner's
2 medical condition); *Reinoso Martinez v. Noem*, 26-cv-00138-DMS-SBC,
3 Doc. 7 (Jan. 29, 2026) (granting on *Zadvydas* grounds based where
4 Cuban national did not willingly go to Mexico); *Pena-Gil v. Lyons*, No.
5 25-CV-03268-PAB-NRN, 2025 WL 3268333, at *3 (D. Colo. Nov. 24,
6 2025) (finding *Zadvydas* violation for Cuban national that did not agree
7 to voluntarily be removed to Mexico).

8 And even if a third country is later identified, the government must
9 first provide Petitioner with notice and an opportunity to apply for
10 protection as to *that* country as well, if appropriate. 8 U.S.C. §
11 1231(b)(3). *See also Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
12 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v.*
13 *Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf Protsenko v. U.S. Att'y*
14 *Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005 (per curiam) (permitting
15 removal to third country only where individuals received "ample notice
16 and an opportunity to be heard.")

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

21 **D. *Zadvydas* unambiguously prohibits this Court from**
22 **denying Mr. Trujillo's petition because of his criminal**
23 **history.**

24 If released on supervision, Mr. Trujillo poses no risk of danger or
25 flight. He has been on supervision for over two decades.

26 Regardless, *Zadvydas* squarely holds that risk of danger or flight
27 are not grounds for detaining an immigrant when there is no
28 reasonable likelihood of removal in the reasonably foreseeable future.
533 U.S. at 684–91.

1 The two petitioners in *Zadvydas* both had significant criminal
2 history. Mr. Zadvydas himself had “a long criminal record, involving
3 drug crimes, attempted robbery, attempted burglary, and theft,” as well
4 as “a history of flight, from both criminal and deportation proceedings.”
5 *Id.* at 684. The other petitioner, Kim Ho Ma, was “involved in a gang-
6 related shooting [and] convicted of manslaughter.” *Id.* at 685. The
7 government argued that both men could be detained regardless of their
8 likelihood of removal, because they posed too great a risk of danger or
9 flight. *Id.* at 690–91.

10 The Supreme Court rejected that argument. The Court
11 appreciated the seriousness of the government’s concerns. *Id.* at 691.
12 But the Court found that the immigrant’s liberty interests were
13 weightier. *Id.* The Court had never countenanced “potentially
14 permanent” “civil confinement,” based only on the government’s belief
15 that the person would misbehave in the future. *Id.*

16 The Court also noted that the government was free to use the
17 many tools at its disposal to mitigate risk: “[O]f course, the alien’s
18 release may and should be conditioned on any of the various forms of
19 supervised release that are appropriate in the circumstances, and the
20 alien may no doubt be returned to custody upon a violation of those
21 conditions.” *Id.* at 700. The Ninth Circuit later elaborated, “All aliens
22 ordered released must comply with the stringent supervision
23 requirements set out in 8 U.S.C. § 1231(a)(3). [They] will have to
24 appear before an immigration officer periodically, answer certain
25 questions, submit to medical or psychiatric testing as necessary, and
26 accept reasonable restrictions on [their] conduct and activities,
27 including severe travel limitations. More important, if [they] engage[]
28 in any criminal activity during this time, including violation of [their]

1 supervisory release conditions, [they] can be detained and incarcerated
2 as part of the normal criminal process.” *Ma*, 257 F.3d at 1115.

3 These conditions have proved sufficient to protect the public over
4 the last two decades. They will continue to do so while ICE keeps
5 trying to deport Mr. Trujillo.

6 **II. Count 3: ICE may not remove Mr. Trujillo to a third**
7 **country without adequate notice and an opportunity to be**
8 **heard.**

9 In addition to unlawfully detaining him, ICE’s policies threaten
10 his removal to a third country without adequate notice and an
11 opportunity to be heard. These policies violate the Fifth Amendment,
12 the Convention Against Torture, and implementing regulations.

13 **A. Legal background**

14 U.S. law enshrines protections against dangerous and life-
15 threatening removal decisions. By statute, the government is prohibited
16 from removing an immigrant to any third country where they may be
17 persecuted or tortured, a form of protection known as withholding of
18 removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government “may not remove
19 [a noncitizen] to a country if the Attorney General decides that the
20 [noncitizen’s] life or freedom would be threatened in that country
21 because of the [noncitizen’s] race, religion, nationality, membership in a
22 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§
23 208.16, 1208.16. Withholding of removal is a mandatory protection.

24 Similarly, Congress codified protections enshrined in the CAT
25 prohibiting the government from removing a person to a country where
26 they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. §
27 1231 note) (“It shall be the policy of the United States not to expel,
28 extradite, or otherwise effect the involuntary return of any person to a

1 country in which there are substantial grounds for believing the person
2 would be in danger of being subjected to torture, regardless of whether
3 the person is physically present in the United States.”); 28 C.F.R. §
4 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
5 mandatory.

6 To comport with the requirements of due process, the government
7 must provide notice of the third country removal and an opportunity to
8 respond. Due process requires “written notice of the country being
9 designated” and “the statutory basis for the designation, i.e., the
10 applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d
11 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep’t of Homeland*
12 *Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21,
13 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

14 The government must also “ask the noncitizen whether he or she
15 fears persecution or harm upon removal to the designated country and
16 memorialize in writing the noncitizen’s response. This requirement
17 ensures DHS will obtain the necessary information from the noncitizen
18 to comply with section 1231(b)(3) and avoids [a dispute about what the
19 officer and noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019. “Failing to
20 notify individuals who are subject to deportation that they have the
21 right to apply for asylum in the United States and for withholding of
22 deportation to the country to which they will be deported violates both
23 INS regulations and the constitutional right to due process.”
24 *Andriasian*, 180 F.3d at 1041.

25 If the noncitizen claims fear, measures must be taken to ensure
26 that the noncitizen can seek asylum, withholding, and relief under CAT
27 before an immigration judge in reopened removal proceedings. The
28 amount and type of notice must be “sufficient” to ensure that “given [a

1 noncitizen's] capacities and circumstances, he would have a reasonable
2 opportunity to raise and pursue his claim for withholding of
3 deportation." *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*,
4 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th
5 Cir. 1998)); *cf.* *D.V.D.*, 2025 WL 1453640, at *1 (requiring the
6 government to move to reopen the noncitizen's immigration proceedings
7 if the individual demonstrates "reasonable fear" and to provide "a
8 meaningful opportunity, and a minimum of fifteen days, for the non-
9 citizen to seek reopening of their immigration proceedings" if the
10 noncitizen is found to not have demonstrated "reasonable fear"); *Aden*,
11 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to
12 file a motion to reopen and seek relief).

13 "[L]ast minute" notice of the country of removal will not suffice,
14 *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App'x
15 724 (9th Cir. 2016), and for good reason: To have a meaningful
16 opportunity to apply for fear-based protection from removal, immigrants
17 must have time to prepare and present relevant arguments and
18 evidence. Merely telling a person where they may be sent, without giving
19 them a chance to look into country conditions, does not give them a
20 meaningful chance to determine whether and why they have a credible
21 fear.

22 **B. The June 6, 2025 memo's removal policies violate the**
23 **Fifth Amendment, 8 U.S.C. § 1231, the Conviction**
24 **Against Torture, and Implementing Regulations.**

25 The policies in the June 6, 2025 memo do not adhere to these
26 requirements. First, under the policy, ICE need not give immigrants *any*
27 notice or *any* opportunity to be heard before removing them to a country
28 that—in the State Department's estimation—has provided "credible"

1 “assurances” against persecution and torture. Exh. B. By depriving
2 immigrants of any chance to challenge the State Department’s view, this
3 policy violates “[t]he essence of due process,” “the requirement that a
4 person in jeopardy of serious loss be given notice of the case against him
5 and opportunity to meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348
6 (1976) (cleaned up).

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

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

26 Resolution of a prolonged-detention habeas petition may require
27 an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir.
28 2009). Petitioner hereby requests such a hearing on any material,
disputed facts.

1 **IV. Prayer for relief**

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

- 4 1. Order Respondents to immediately release Petitioner from
5 custody under the same conditions of supervision;
- 6 2. Enjoin Respondents from re-detaining Petitioner under 8
7 U.S.C. § 1231(a)(6) unless and until Respondents obtain a
8 travel document for his removal;
- 9 3. Enjoin Respondents from re-detaining Petitioner without first
10 following all procedures set forth in 8 C.F.R. §§ 241.4(l),
11 241.13(i), and any other applicable statutory and regulatory
12 procedures;
- 13 4. Enjoin Respondents from removing Petitioner to any country
14 other than Cuba, unless they provide the following process, *see*
15 *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM,
16 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
 - 17 a. written notice to both Petitioner and Petitioner's counsel
18 in a language Petitioner can understand;
 - 19 b. a meaningful opportunity, and a minimum of ten days, to
20 raise a fear-based claim for CAT protection prior to
21 removal;
 - 22 c. if Petitioner is found to have demonstrated "reasonable
23 fear" of removal to the country, Respondents must move
24 to reopen Petitioner's immigration proceedings;
 - 25 d. if Petitioner is not found to have demonstrated a
26 "reasonable fear" of removal to the country, a meaningful
27
28

1 opportunity, and a minimum of fifteen days, for the
2 Petitioner to seek reopening of his immigration
3 proceedings.
4

5 5. Order all other relief that the Court deems just and proper.
6

7 Respectfully submitted,

8 Dated: March 8, 2026

s/ Zandra L. Lopez

Zandra L. Lopez

Federal Defenders of San Diego, Inc.

Attorneys for Petitioner

Email: Zandra_Lopez@fd.org

Exhibit A

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

REY CARLOS TRUJILLO PEDRAZA,

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
REY CARLOS TRUJILLO
PEDRAZA**

1 I, Rey Carlos Trujillo Pedraza, declare:

2 1. I was born on [REDACTED] in Cuba. I came to the United States
3 with my family in 2011. Everyone else in my family is a citizen now. My three
4 kids, my mom, my sister, my brother, my cousins—they're all US citizens. There
5 are more than 30 people in my family, and all of them are Americans.

6 2. I was ordered removed to Cuba on February 14, 2019. ICE detained me for
7 about 55 days. ICE could not remove me to Cuba, so they released me on an order
8 of supervision.

9 3. ICE told me to report every year. I always reported as ordered, unless I was
10 in custody and could not attend.

11 4. I was arrested on March 16, 2025 and was given a sentence for violating
12 my probation. I finished serving my sentence on November 12, 2025. I was
13 immediately transferred to ICE custody.

14 5. On November 13, 2025, ICE gave me a Notice of Revocation of Release.
15 The notice said that my release was being revoked "based on a review of your file
16 and/or your personal interview on account of the changed circumstances in your
17 case. ICE has determined that there is a significant likelihood of removal in the
18 reasonably foreseeable future in your case." The notice did not claim that ICE was
19 revoking my release based on a violation of my release conditions. The notice did
20 not say what the changed circumstances were. The ICE officers giving me the
21 notice didn't say anything else about why they were revoking my release.

22 6. ICE did not give me a chance to explain why I should not be re-detained,
23 either when I was detained or at any time afterward. ICE did not ask me if I had
24 anything to say about the revocation of my release. I tried to say something about
25 my children in the US, but as I was speaking, they were already handcuffing me.
26 They weren't listening or writing down what I was saying.

27 7. No one from ICE has said anything about trying to remove me to Cuba.
28

1 8. On March 7, 2026, ICE took me to the Mexican border and tried to get me
2 to walk across. I told the ICE officers that I didn't want to go to Mexico. I don't
3 have any family in Mexico. ICE told me that I'd have to wait in custody for three
4 years until Trump left office. I said that I'd rather be in detention for three years
5 than go to Mexico. ICE put me back in the van and took me back to Otay Mesa.

6 9. ICE has moved me to several different detention centers since my arrest. I
7 have been detained in five states. Every time I get transferred, ICE chains my
8 hands, feet, and waist. Once, I was chained in a bus for 16 hours. During another
9 transfer, I had to sleep on the floor for five days. My hands were swollen but no
10 medical attention was available for us. All we got to eat for five days was turkey
11 sandwiches, chips, and water. They wouldn't take off the handcuffs even to allow
12 us to eat.

13 10. I have permanent custody of my daughters. My mom is taking care of my
14 daughters while I'm in custody.

15 11. I do not have any savings. I am not making any money while in detention. I
16 do not own a house or a car or anything else valuable. I cannot afford an attorney.

17 I, Katie Hurrelbrink, declare under penalty that I read every line of this
18 declaration to Rey Carlos Trujillo Pedraza with a Spanish interpreter, and he
19 confirmed that it was true and correct.
20

21 Date: 3/8/2025

Signed: /s/ Katie Hurrelbrink