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

12 **JUAN CARLOS ESTRADA-**
13 **ALMAGER,**

14 Petitioner,

15 v.

16 **KRISTI NOEM, Secretary of the**
17 **Department of Homeland Security,**
18 **PAMELA JO BONDI, Attorney**
19 **General, TODD M. LYONS, Acting**
20 **Director, Immigration and Customs**
21 **Enforcement, JESUS ROCHA,**
22 **Acting Field Office Director, San**
23 **Diego Field Office, CHRISTOPHER**
24 **LAROSE, Warden at Otay Mesa**
25 **Detention Center,**

26 Respondents.

Civil Case No.: '26CV1556 JES BJW

Petition for Writ
of
Habeas Corpus

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

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

1 INTRODUCTION

2 Mr. Estrada-Almager has been in the United States for over 30
3 years. He was ordered deported over 20 years ago to Cuba and has
4 been under ICE supervision since then.

5 On February 24, 2026, ICE stopped Mr. Estrada on his way to
6 work in Ramona. ICE did not give him notice that they were taking
7 away his liberty because he violated supervision or that something had
8 changed such that now they would be able to finally remove him to
9 Cuba. ICE did not give him an interview so he could fight his
10 detention. And since he has been detained, ICE has told him that Cuba
11 will not accept him. Thus, it is unlikely that they will be able to remove
12 him to Cuba in the reasonably foreseeable future.

13 This civil immigration habeas petition seeks three grounds of
14 relief. First, it seeks to prevent Petitioner's indefinite detention
15 pending deportation to Cuba or a third country absent the basic
16 *regulatory and due process guarantees of 8 C.F.R. §§ 241.4(l),*
17 *241.13(i), and United States ex rel. Accardi v. Shaughnessy, 347 U.S.*
18 *260, 268 (1954).* Second, it seeks to prevent his *indefinite detention*
19 *pending deportation to Cuba* absent the basic statutory and due
20 process guarantees outlined in *Zadvydas v. Davis, 533 U.S. 678 (2001).*
21 Third, it seeks to prevent his deportation to a *third country* without
22 him first receiving basic due process guarantees of notice and
23 opportunity to be heard as to his statutory rights to seek withholding
24 of removal and Convention Against Torture relief.
25

26 Courts in this district and around the country have ordered
27 Cubans released from ICE custody for the same reasons. *See Rios v.*
28 *Noem, No. 25-CV-2866-JES, Doc. 15 (S.D. Cal. Nov. 10, 2025);*

1 *Rodriguez-Gutierrez v. Noem*, 25-cv-02726-BAS-SBC, Doc. 14 (S.D. Cal.
2 Nov. 7, 2025); *Izquierdo-Matos v. Noem*, Doc. 12, 25-cv-02979-BJC-
3 BLM (S.D. Cal. Nov. 18, 2025); *Arostegui-Campo v. Noem*, 25-cv-03064-
4 JLS-MMP, Doc. 11 (S.D. Cal. Nov. 25, 2025). One court underlined,
5 “Rules matter. Hearings matter. In recognition of this cornerstone
6 principle of our jurisprudence, a growing chorus of district courts have
7 found that—in similar cases—the government’s unlawful detention . . .
8 . warrants immediate release.” *Delkash v. Noem*, No. 25-cv-1675-HDV-
9 AGR, 2025 WL 2683988 (C.D. Cal. Aug. 28, 2025).

10 Courts have also released Cuban nationals that cannot be
11 removed to Cuba and do not voluntarily leave to Mexico under
12 *Zadvydas* grounds. See e.g. *Hernandez-Blanco v. Noem*, 26-cv-00425-
13 DMS-JLB, Doc. 8 (Feb. 23, 2026) (granting on *Zadvydas* grounds for
14 Cuban national); *Reinoso Martinez v. Noem*, 26-cv-00138-DMS-SBC,
15 Doc. 7 (Jan. 29, 2026) (same); *Rivero v. Noem*, 26-cv-00148-BJC-JLB,
16 Doc. 10 (March 9, 2026) (same).

18 STATEMENT OF FACTS

19 I. Mr. Estrada lived under supervision for decades and 20 then is re-detained without an individualized reason 21 for detention and without an opportunity to contest his 22 re-detention.

23 In 1994, Mr. Estrada came to the United States from Cuba.
24 Exhibit A, Declaration of Juan Carlos Estrada-Almager ¶1. He became
25 a Legal Permanent Resident. *Id.* In 2003, Mr. Estrada was ordered
26 deported to Cuba. *Id.* at ¶2. He was then placed on an order of
27 supervision. *Id.* at ¶3.
28

1 On February 24, 2026, Mr. Estrada was arrested in Ramona on
2 his way to work and taken into ICE custody. *Id.* at ¶4. He was given a
3 notice of revocation that did not indicate changed circumstances or a
4 violation of supervision. *Id.* at ¶5.

5 ICE has informed Mr. Estrada that Cuba will not accept him. *Id.*
6 at ¶7. ICE took him to the border of with Mexico but Mr. Estrada does
7 not want to voluntarily go to Mexico. *Id.* at ¶6. Mexico will only accept
8 non-Mexicans that willingly want to go to Mexico. *Sanchez v. Bondi*,
9 No. C25-2573-KKE, 2026 WL 160882, at *3 (W.D. Wash. Jan. 21, 2026)
10 (doubting removal in the reasonably foreseeable future based on
11 Mexico’s acceptance policy and petitioner’s medical condition).

12 Mr. Estrada is currently detained at Otay Mesa Detention
13 Center. *Id.* at ¶ 9.

14
15 **II. The repatriation agreement with Cuba allows it to use**
16 **its discretion in accepting Cuban nationals that entered**
17 **the United States prior to 2017 on a case-by-case basis.**

18 Prior to 2017, there was no repatriation agreement between the
19 United States and Cuba. *Clark v. Martinez*, 543 U.S. 371, 386 (2005).
20 On January 12, 2017, the United States and Cuba signed a joint
21 statement (“2017 Joint Statement”) by which Cuba agreed to the
22 repatriation of some Cuban nationals. *Cuba (17-112) – Joint Statement*
23 *Concerning Normalization of Migration Procedures*, Jan. 12, 2017,
24 available at <https://www.state.gov/17-112/>. The 2017 Joint Statement
25 required Cuba to accept some Cuban nationals but allowed it to use its
26 discretion to accept others on a case-by-case basis.

27 Specifically, under the agreement Cuba “shall receive back all
28 Cuban nationals who after the signing” of the 2017 Joint Statement

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

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

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).² On July 9, 2025, ICE rescinded previous guidance
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27 _____
28 ² 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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26 (Sotomayor, J., dissenting). Thus, “even if the Government [was] correct that
27 classwide relief was impermissible” in *D.V.D.*, Respondents still “remain[]
28 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).

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. Estrada immediate release. ICE failed
14 to follow its own regulations requiring changed circumstances before
15 re-detention. ICE did not give Mr. Estrada a chance to promptly
16 contest a re-detention decision. And *Zadvydas v. Davis* holds that
17 immigration statutes do not authorize the government to detain
18 immigrants like Mr. Estrada, for whom there is “no significant
19 likelihood of removal in the reasonably foreseeable future.” 533 U.S.
20 678, 701 (2001).

21 Second, it should enjoin the Respondents from removing
22 Petitioner to a third country without first providing notice and a
23 sufficient opportunity to be heard before an immigration judge.
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1 **I. Count 1: ICE failed to comply with its own regulations**
2 **before re-detaining Mr. Estrada, violating his rights under**
3 **applicable regulations and the Fifth Amendment.**

4 Two regulations establish the process due to someone who is re-
5 detained in immigration custody following a period of release. 8 C.F.R.
6 § 241.4(l) applies to re-detention generally. 8 C.F.R. § 241.13(i) applies
7 to persons released after providing good reason to believe that they will
8 not be removed in the reasonably foreseeable future, as Mr. Estrada
9 was. *See Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at
10 *2 (order from Judge Huie explaining this regulatory framework and
11 granting a habeas petition for ICE’s failure to follow these regulations).

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

15 Otherwise, they contain four major regulatory protections for
16 people like Mr. Estrada, who did not violate any condition of release.
17 They permit revocation of release only if the appropriate official (1)
18 “determines that there is a significant likelihood that the alien may be
19 removed in the reasonably foreseeable future,” § 241.13(i)(2), and (2)
20 makes that finding “on account of changed circumstances.” *Id.* No
21 matter the reason for re-detention, (3) the re-detained person is
22 entitled to “an initial informal interview promptly,” during which they
23 “will be notified of the reasons for revocation.” §§ 241.4(l)(1);
24 241.13(i)(3). The interviewer must (4) “afford[] the [person] an
25 opportunity to respond to the reasons for revocation,” allowing them to
26 “submit any evidence or information” relevant to re-detention and
27 evaluating “any contested facts.” *Id.*
28

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

10 ICE followed none of its four regulatory prerequisites to re-
11 detention here. ICE did not give notice of changed circumstances such
12 that removal is significantly likely in the reasonably foreseeable
13 future. There are no changed circumstances that justify re-detaining
14 him, and because the order of removal is to Cuba, it is unlikely that
15 there is a record of a determination before or after his arrest that
16 “there is a significant likelihood that [Petitioner] may be removed in
17 the reasonably foreseeable future.” *Id.* at *3 (quoting 8 C.F.R.
18 § 241.13(i)(3)(1)). Absent any evidence for “why obtaining a travel
19 document is more likely this time around[,] Respondents’ intent to
20 eventually complete a travel document request for Petitioner does not
21 constitute a changed circumstance.” *Hoac v. Becerra*, No. 2:25-CV-
22 01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025)
23 (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D.
24 Kan. June 17, 2025)). And Mr. Estrada did not receive a prompt
25 interview.
26

27 Numerous courts have released re-detained immigrants after
28

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

14
15 “[B]ecause officials did not properly revoke petitioner’s release
16 pursuant to the applicable regulations, that revocation has no effect,
17 and [Mr. Estrada] is entitled to his release (subject to the same Order
18 of Supervision that governed his most recent release).” *Liu*, 2025 WL
19 1696526, at *3.

20 **I. Count 2: Mr. Estrada’s detention violates *Zadvydas* and 8**
21 **U.S.C. § 1231.**

22 **A. Legal background**

23 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court
24 considered a problem affecting people like Petitioner: Federal law
25 requires ICE to detain an immigrant during the “removal period,”
26 which typically spans the first 90 days after the immigrant is ordered
27 removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period
28 expires, detention becomes discretionary—ICE may detain the migrant

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

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

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

23 Courts must use a burden-shifting framework to decide whether
24 detention remains authorized. First, the petitioner must make a prima
25 facie case for relief: He must prove that there is “good reason to believe
26 that there is no significant likelihood of removal in the reasonably
27 foreseeable future.” *Zadvydas*, 533 U.S. at 689.
28

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

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

17
18 Using this framework, Mr. Estrada can make all the threshold
19 showings needed to shift the burden to the government.

20 **B. The six-month grace period expired in 2004.**

21 As an initial matter, the six-month grace period has long since
22 ended. The *Zadvydas* grace period lasts for “*six months* after a final
23 order of removal—that is, *three months* after the statutory removal
24 period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5
25 (9th Cir. 2001). Here, Petitioner’s order of removal was entered in
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27
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1 **August 2003.**³ Accordingly, his 90-day removal period began then. 8
2 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired three
3 months after the removal period ended, in **February 2004**. Thus, this
4 threshold requirement is met.

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

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

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

25 **“Good reason to believe.”** The “good reason to believe”
26 standard is a relatively forgiving one. “A petitioner need not establish
27

28 ³ <https://acis.eoir.justice.gov/en/caseInformation>.

1 that there exists no possibility of removal.” *Freeman v. Watkins*, No.
2 CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor
3 does “[g]ood reason to believe’ . . . place a burden upon the detainee to
4 demonstrate no reasonably foreseeable, significant likelihood of
5 removal or show that his detention is indefinite; it is something less
6 than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319,
7 at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d
8 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
9 Petitioners need only give a “good reason”—not prove anything to a
10 certainty.

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

23 **“In the reasonably foreseeable future.”** This component of
24 the test focuses on when Petitioner will likely be removed: Continued
25 detention is permissible only if removal is likely to happen “in the
26 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This
27 inquiry places a time limit on ICE’s removal efforts. If the Court has
28 “no idea of when it might reasonably expect [Petitioner] to be

1 repatriated, this Court certainly cannot conclude that his removal is
2 likely to occur—or even that it might occur—in the reasonably
3 foreseeable future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020
4 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and*
5 *recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020)
6 (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)).
7 Thus, even if this Court concludes that Petitioner “would *eventually*
8 receive” a travel document, he can still meet his burden by giving good
9 reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016
10 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

11 Petitioner readily satisfies the above standards for two reasons.

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

17 *Second*, Petitioner’s own experience bears this out. ICE has now
18 had more than 20 years to deport him. He has fully cooperated with
19 ICE’s removal efforts throughout that time, including at check-ins.
20 Plus, there is very little likelihood of obtaining travel documents from
21 Cuba.

22 *Third*, there is doubt he can be removed to a third country. For
23 one, Mexico’s acceptance of Petitioner is contingent on the noncitizen’s
24 consent. *See Rios v. Noem et al.*, No. 3:25-cv-02866-JES-VET (S.D. Cal.
25 2025), Doc. 13-1 at ¶ 11 (“Mexican government was ready to accept
26 Petitioner only if he would willingly go to Mexico.”). “This evidence of
27 Mexico’s acceptance policy casts further doubt on the Government’s
28 ability to remove” petitioner to a third country. *Arenado-Borges v. Bondi*,

1 No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *4 (W.D. Wash. Dec. 19,
2 2025); *See also Sanchez v. Bondi*, No. C25-2573-KKE, 2026 WL 160882,
3 at *3 (W.D. Wash. Jan. 21, 2026) (doubting removal in the reasonably
4 foreseeable future based on Mexico’s acceptance policy and petitioner’s
5 medical condition); *Reinoso Martinez v. Noem*, 26-cv-00138-DMS-SBC,
6 Doc. 7 (Jan. 29, 2026) (granting on *Zadvydas* grounds based where
7 Cuban national did not willingly go to Mexico); *Pena-Gil v. Lyons*, No.
8 25-CV-03268-PAB-NRN, 2025 WL 3268333, at *3 (D. Colo. Nov. 24,
9 2025) (finding *Zadvydas* violation for Cuban national that did not agree
10 to voluntarily be removed to Mexico).

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

20 Thus, Mr. Estrada has met his initial burden, and the burden
21 shifts to the government. Unless the government can prove a
22 “significant likelihood of removal in the reasonably foreseeable future,”
23 Mr. Estrada must be released. *Zadvydas*, 533 U.S. at 701.

24 **D. *Zadvydas* unambiguously prohibits this Court from**
25 **denying Mr. Estrada’s petition because of his criminal**
history.

26 If released on supervision, Mr. Estrada poses no risk of danger or
27 flight. He has been on supervision for over two decades.
28

1 Regardless, *Zadvydas* squarely holds that risk of danger or flight
2 are not grounds for detaining an immigrant when there is no
3 reasonable likelihood of removal in the reasonably foreseeable future.
4 533 U.S. at 684–91.

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

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

20 The Court also noted that the government was free to use the
21 many tools at its disposal to mitigate risk: “[O]f course, the alien’s
22 release may and should be conditioned on any of the various forms of
23 supervised release that are appropriate in the circumstances, and the
24 alien may no doubt be returned to custody upon a violation of those
25 conditions.” *Id.* at 700. The Ninth Circuit later elaborated, “All aliens
26 ordered released must comply with the stringent supervision
27 requirements set out in 8 U.S.C. § 1231(a)(3). [They] will have to
28 appear before an immigration officer periodically, answer certain

1 questions, submit to medical or psychiatric testing as necessary, and
2 accept reasonable restrictions on [their] conduct and activities,
3 including severe travel limitations. More important, if [they] engage []
4 in any criminal activity during this time, including violation of [their]
5 supervisory release conditions, [they] can be detained and incarcerated
6 as part of the normal criminal process.” *Ma*, 257 F.3d at 1115.

7 These conditions have proved sufficient to protect the public over
8 the last two decades. They will continue to do so while ICE keeps
9 trying to deport Mr. Estrada.

10 **II. Count 3: ICE may not remove Mr. Estrada to a third**
11 **country without adequate notice and an opportunity to be**
12 **heard.**

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

17 **A. Legal background**

18 U.S. law enshrines protections against dangerous and life-
19 threatening removal decisions. By statute, the government is prohibited
20 from removing an immigrant to any third country where they may be
21 persecuted or tortured, a form of protection known as withholding of
22 removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government “may not remove
23 [a noncitizen] to a country if the Attorney General decides that the
24 [noncitizen’s] life or freedom would be threatened in that country
25 because of the [noncitizen’s] race, religion, nationality, membership in a
26 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§
27 208.16, 1208.16. Withholding of removal is a mandatory protection.

28 Similarly, Congress codified protections enshrined in the CAT

1 prohibiting the government from removing a person to a country where
2 they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. §
3 1231 note) (“It shall be the policy of the United States not to expel,
4 extradite, or otherwise effect the involuntary return of any person to a
5 country in which there are substantial grounds for believing the person
6 would be in danger of being subjected to torture, regardless of whether
7 the person is physically present in the United States.”); 28 C.F.R. §
8 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
9 mandatory.

10 To comport with the requirements of due process, the government
11 must provide notice of the third country removal and an opportunity to
12 respond. Due process requires “written notice of the country being
13 designated” and “the statutory basis for the designation, i.e., the
14 applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d
15 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep’t of Homeland*
16 *Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21,
17 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

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

1 If the noncitizen claims fear, measures must be taken to ensure
2 that the noncitizen can seek asylum, withholding, and relief under CAT
3 before an immigration judge in reopened removal proceedings. The
4 amount and type of notice must be “sufficient” to ensure that “given [a
5 noncitizen’s] capacities and circumstances, he would have a reasonable
6 opportunity to raise and pursue his claim for withholding of
7 deportation.” *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*,
8 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th
9 Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the
10 government to move to reopen the noncitizen’s immigration proceedings
11 if the individual demonstrates “reasonable fear” and to provide “a
12 meaningful opportunity, and a minimum of fifteen days, for the non-
13 citizen to seek reopening of their immigration proceedings” if the
14 noncitizen is found to not have demonstrated “reasonable fear”); *Aden*,
15 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to
16 file a motion to reopen and seek relief).

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

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1 **B. The June 6, 2025 memo’s removal policies violate the**
2 **Fifth Amendment, 8 U.S.C. § 1231, the Conviction**
3 **Against Torture, and Implementing Regulations.**

4 The policies in the June 6, 2025 memo do not adhere to these
5 requirements. First, under the policy, ICE need not give immigrants *any*
6 notice or *any* opportunity to be heard before removing them to a country
7 that—in the State Department’s estimation—has provided “credible”
8 “assurances” against persecution and torture. Exh. B. By depriving
9 immigrants of any chance to challenge the State Department’s view, this
10 policy violates “[t]he essence of due process,” “the requirement that a
11 person in jeopardy of serious loss be given notice of the case against him
12 and opportunity to meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348
(1976) (cleaned up).

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

3 **III. This Court must hold an evidentiary hearing on any**
4 **disputed facts.**

5 Resolution of a prolonged-detention habeas petition may require
6 an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir.
7 2009). Petitioner hereby requests such a hearing on any material,
8 disputed facts.

9 **IV. Prayer for relief**

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

- 12 1. Order Respondents to immediately release Petitioner from
13 custody under the same conditions of supervision;
- 14 2. Enjoin Respondents from re-detaining Petitioner under 8
15 U.S.C. § 1231(a)(6) unless and until Respondents obtain a
16 travel document for his removal;
- 17 3. Enjoin Respondents from re-detaining Petitioner without first
18 following all procedures set forth in 8 C.F.R. §§ 241.4(l),
19 241.13(i), and any other applicable statutory and regulatory
20 procedures;
- 21 4. Enjoin Respondents from removing Petitioner to any country
22 other than Cuba, unless they provide the following process, *see*
23 *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM,
24 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
25 a. written notice to both Petitioner and Petitioner's counsel
26 in a language Petitioner can understand;
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- 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: March 12, 2026

s/ Zandra L. Lopez
Zandra L. Lopez
Federal Defenders of San Diego, Inc.
Attorneys for Petitioner
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Exhibit A

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Attorneys for Petitioner

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

JUAN CARLOS ESTRADA-
ALMAGER,

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 JUAN
CARLOS ESTRADA-
ALMAGER**

I, Juan Carlos Estrada-Almager, declare:

1. I was born  in Cuba. I came to the United States in 1994. I became a lawful permanent resident.

2. I was deported in 2003. I have been on an order of supervision with ICE for over 20 years.

3. On February 24, 2026, I was arrested in Romana as I was going to work. I was stopped by ICE. They told me they were looking

1 for another Juan. When they checked the system, they saw that I had
2 an order of deportation.

3
4 4. The ICE officers took me downtown where I was for a day
5 and a half. I was told that I was being detained because there is an
6 order of deportation against me. ICE gave me a notice of revocation
7 that did not say what had changed. It did not say that I was detained
8 because of a violation.

9 5. I was not given an interview where I can fight my
10 detention.

11 6. A few days later, I was taken to the border to Mexico, but I
12 did not want to go.

13 7. I was told that Cuba does not want to accept me.

14 8. I am detained at Otay Mesa Detention Center.

15 9. This declaration as read to me line by line in the Spanish
16 language and I understand it to be true and correct.
17

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19
20 I, Zandra Lopez, declare under penalty of perjury that I read every line of this
21 declaration to Maritza Rodriguez Garcia, and she confirmed that it was true and
22 correct.

23 Date: March 12, 2026

Signed: /s/ Zandra Lopez

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