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

12 DAYMON ELIUD GUTIERREZ-
13 ARAUZ,

14 Petitioner,

15 v.

16 MARKWAYNE MULLIN, Secretary of
17 the Department of Homeland Security,
18 TODDLE BLANCHE, Acting Attorney
19 General, TODD M. LYONS, Acting
20 Director, Immigration and Customs
21 Enforcement, JESUS ROCHA, Acting
22 Field Office Director, San Diego Field
23 Office, CHRISTOPHER LAROSE,
24 Warden at Otay Mesa Detention Center,

25 Respondents.

Civil Case No.: 26-cv-2082-RBM-VET

**Amended Petition for Writ
of
Habeas Corpus**

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

INTRODUCTION

Daymon Eliud Gutierrez-Arauz is a citizen of Nicaragua who was ordered removed on March 18, 2026. Since then, ICE has not removed him. This Court should order him immediately released because “there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678 (2001).

STATEMENT OF FACTS

Mr. Gutierrez-Arauz was born in Nicaragua and fled in order to seek asylum. Exhibit A, Declaration of Daymon Eliud Gutierrez-Arauz at ¶ 1. In December 2022, immigration officials paroled him into the country to allow him to apply for asylum. *Id.* at ¶ 1.

For several years, Mr. Gutierrez-Arauz was attending all his court hearings and applying for asylum. *Id.* at ¶ 2. However, in November 2025, ICE arrested him in New Jersey where he was living. *Id.* at ¶ 2. They did so based on a warrant that they had for a different person. *Id.* at ¶ 2.

Mr. Gutierrez-Arauz was transferred to Otay Mesa Detention Center, where his removal proceedings continued. *Id.* at ¶ 3. On March 18, 2026, an immigration judge ordered him removed. *Id.* at ¶ 3. He did not appeal this decision to the Board of Immigration Appeals. *Id.* at ¶ 3.

In the three months since he was ordered removed, Mr. Gutierrez-Arauz has remained in immigration custody. *Id.* at ¶ 4. He does not know when ICE will remove him to Nicaragua. *Id.* at ¶ 4.

CLAIMS FOR RELIEF

This Court should grant this petition and order Mr. Gutierrez-Arauz’s immediate release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants for whom there is “no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001).

1 **I. Count One: Petitioner’s detention violates *Zadvydas* and 8 U.S.C.**
2 **§ 1231.**

3 **A. Legal background**

4 Mr. Gutierrez-Arauz’s continued incarceration violates the statute
5 authorizing detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678
6 (2001), the Supreme Court considered a problem affecting similarly situated
7 people. Federal law requires ICE to detain an immigrant during the “removal
8 period,” which typically spans the first 90 days after the immigrant is ordered
9 removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires,
10 detention becomes discretionary—ICE may detain the migrant while continuing
11 to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to
12 excessive detention, as removal happens within days or weeks. But some
13 detainees cannot be removed quickly. Perhaps their removal “simply require[s]
14 more time for processing,” or they are “ordered removed to countries with whom
15 the United States does not have a repatriation agreement,” or their countries
16 “refuse to take them,” or they are “effectively ‘stateless’ because of their race
17 and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir.
18 2001). In these and other circumstances, detained immigrants can find themselves
19 trapped in detention for months, years, decades, or even the rest of their lives.

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

24 As an initial matter, *Zadvydas* held that detention is “presumptively
25 reasonable” for at least six months. *Id.* at 701. This acts as a kind of grace period
26 for effectuating removals.

27 Following the six-month grace period, courts must use a burden-shifting
28 framework to decide whether detention remains authorized. First, the petitioner

1 must make a prima facie case for relief: She must prove that there is “good reason
2 to believe that there is no significant likelihood of removal in the reasonably
3 foreseeable future.” *Id.*

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

9 Here, the 90-day removal period has expired for Mr. Gutierrez-Arauz.
10 Because his order of removal became final on March 18, 2026, his mandatory
11 detention period has ended.

12 **B. There is good reason to believe that there is no significant**
13 **likelihood of removal in the reasonably foreseeable future.**

14 Because the 90-day mandatory detention period has expired, this Court
15 must evaluate Petitioner’s *Zadvydas* claim using the burden-shifting framework.
16 At the first stage of the framework, there must be “good reason to believe that
17 there is no significant likelihood of removal in the reasonably foreseeable future.”
18 *Zadvydas*, 533 U.S. at 701. This standard can be broken down into three parts.

19 **“Good reason to believe.”** The “good reason to believe” standard is a
20 relatively forgiving one. “A petitioner need not establish that there exists no
21 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
22 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
23 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
24 foreseeable, significant likelihood of removal or show that his detention is
25 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
26 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
27 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
28 Petitioner need only give a “good reason”—not prove anything to a certainty.

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

11 **“In the reasonably foreseeable future.”** This component of the test
 12 focuses on when Petitioner will likely be removed: Continued detention is
 13 permissible only if removal is likely to happen “in the reasonably foreseeable
 14 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
 15 removal efforts. If the Court has “no idea of when it might reasonably expect
 16 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
 17 is likely to occur—or even that it might occur—in the reasonably foreseeable
 18 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
 19 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
 20 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
 21 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that the Petitioner
 22 “would *eventually* receive” a travel document, he can still meet his burden by
 23 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
 24 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

25 Mr. Gutierrez-Arauz has good reason to think that ICE cannot remove him,
 26 since months of effort have borne no fruit. Thus, he has met his initial burden.
 27 And because the government’s failure to remove him shows that his removal is
 28 //

1 not significantly likely in the reasonably foreseeable future, this Court should
2 immediately grant his habeas petition.

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

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

7 **III. Prayer for relief**

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

- 9 1. Order Respondents to immediately release Petitioner from custody;
- 10 2. Enjoin Respondents from re-detaining Petitioner unless and until ICE
- 11 provides evidence of a scheduled removal; and
- 12 3. Order all other relief that the Court deems just and proper.

13
14 Respectfully submitted,

15 Dated: June 24, 2026

16 /s/ Kara Hartzler

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