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

12 RUDY PEREZ,¹

13 Petitioner,

14 v.

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

24 Respondents.

Civil Case No.: '26CV2360 CAB JLB

**Petition for Writ
 of
 Habeas Corpus**

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

26 ¹ Mr. Perez previously filed a habeas petition in 26-cv-904-JES challenging the
 27 government's attempts to remove him to Mexico even though he is a citizen of
 28 Guatemala. Because the instant case raises claims of an entirely different nature,
 Mr. Perez does not believe it qualifies as a related case; however, he includes this
 information out of an abundance of caution.

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1 **I. Introduction**

2 Rudy Perez is a gay man from Guatemala who was ordered removed and
3 deported to Guatemala on December 19, 2012. He reentered in 2015, was taken
4 into immigration custody in September 2025, and was granted withholding of
5 removal on January 15, 2026, due to a history of severe persecution on account of
6 his sexual orientation.

7 This habeas petition contends that Mr. Perez should be released under
8 *Zadvydas v. Davis*, 533 U.S. 678 (2001). The only question is when the removal
9 period began. As Judge Sabraw recently found, the plain language of statute
10 establishes that the removal period began when Mr. Perez was ordered removed in
11 December 2012 because “the presumptively reasonable six-month period of
12 detention does not stop and re-start if the individual is released and later re-
13 detained.” *Baythavong v. Noem*, 26-cv-1138-DMS-MSB, at *2 (S.D. Cal. Apr. 6,
14 2026). Even if this Court disagrees and finds that an individual must be in custody
15 for the presumptively reasonable six-month period, Mr. Perez has been detained
16 for seven months in ICE custody since his December 2012 order of removal. But
17 at a minimum, it has been 90 days since the IJ granted Mr. Perez withholding of
18 removal such that his detention is not mandatory and he can satisfy the rebuttable
19 presumption.

20 **II. Statement of Facts**

21 Mr. Perez has a history of severe persecution of the basis of his sexual
22 orientation. Exhibit A, Declaration of Rudy Perez, at ¶ 1. Fleeing such violence,
23 Mr. Perez first attempted to enter the United States in November 2012 through the
24 border between El Paso, Texas and Mexico. *Id.* at ¶ 2. He was apprehended,
25 ordered removed, and deported to Guatemala in December 2012. *Id.* at ¶ 2.
26 Mr. Perez attempted a second entry in December 2015 and has been in the United
27 States ever since. *Id.* at ¶ 3.

28

1 Mr. Perez eventually moved to Hawaii and was charged with a DUI and
2 then prosecuted for illegal reentry under 8 U.S.C. § 1326. *Id.* at ¶ 4. During this
3 prosecution, the government’s charging information stated that Mr. Perez was
4 ordered removed in December 2012. *See* Exhibit B, Information.

5 After Mr. Perez’s criminal proceedings concluded, ICE took him into
6 custody in September 2025. Exh. A at ¶ 4. An asylum officer conducted a
7 reasonable fear interview and determined that Mr. Perez had not established a
8 reasonable fear of persecution or torture pursuant to 8 C.F.R. § 208.31 if he were
9 returned to Guatemala. *Id.* at ¶ 5. Mr. Perez sought review of that decision before
10 an immigration judge. *Id.* at ¶ 5. The judge vacated the asylum officer’s decision
11 and placed Mr. Perez in withholding-only proceedings. *Id.* at ¶ 5. The judge then
12 granted him withholding of removal to Guatemala on January 15, 2026. *Id.* at ¶ 5.

13 In February 2026, ICE told Mr. Perez they were going to deport him to
14 Mexico and transferred him to the Otay Mesa Detention Center in San Diego. *Id.*
15 at ¶ 6. Since his arrival, ICE officials have tried to coerce Mr. Perez into going to
16 Mexico on several occasions. *Id.* at ¶ 6. But Mr. Perez has stated that he does not
17 want to go to Mexico because he is afraid of being persecuted there. *Id.* at ¶ 7.
18 Because he is not willing to go to Mexico voluntarily, the Mexican officials will
19 not accept him. *Id.* at ¶ 7.

20 **III. Legal Analysis**

21 Regardless of when this Court believes the presumptively reasonable six-
22 month removal period started, Mr. Perez should be released under *Zadvydas v.*
23 *Davis*, 533 U.S. 678 (2001).

24 **A. Legal framework**

25 Mr. Perez’s detention violates the statute authorizing detention, 8 U.S.C.
26 § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court
27 considered a problem affecting similarly situated people. Federal law requires ICE
28 to detain an immigrant during the “removal period,” which typically spans the

1 first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2).
2 After that 90-day removal period expires, detention becomes discretionary—ICE
3 may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6).

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

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

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

20 Following the six-month grace period, courts must use a burden-shifting
21 framework to decide whether detention remains authorized. First, the petitioner
22 must make a prima facie case for relief: He must prove that there is “good reason
23 to believe that there is no significant likelihood of removal in the reasonably
24 foreseeable future.” *Id.*

25 If he does so, the burden shifts to “the Government [to] respond with
26 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of
27 proof rests with the government: The government must prove that there is a
28

1 “significant likelihood of removal in the reasonably foreseeable future,” or the
2 immigrant must be released. *Id.*

3 **B. As Judge Sabraw held, the plain language of the statute states**
4 **that the six-month removal period began when Mr. Perez was**
5 **ordered removed in December 2012.**

6 The Immigration and Nationality Act states that the government “shall
7 detain” a noncitizen ordered removed during the 90-day “removal period.” 8
8 U.S.C. 1231(a)(2)(A). This removal period “begins on the latest of the
9 following”:

- 10 (i) The date the order of removal becomes administratively final.
- 11 (ii) If the removal order is judicially reviewed and if a court orders a stay
12 of the removal of the alien, the date of the court’s final order.
- 13 (iii) If the alien is detained or confined (except under an immigration
14 process), the date the alien is released from detention or confinement.

15 8 U.S.C. 1231(a)(1)(B). Here, neither (ii) nor (iii) apply because Mr. Perez’s
16 removal order is not being “judicially reviewed” and he is being detained “under
17 an immigration process.” Because Mr. Perez’s order of removal became
18 “administratively final” in December 2012, the plain language of the statute
19 mandates a finding that the six-month removal period elapsed over a decade ago,
20 in June 2013. *See also* 8 C.F.R. § 235.3(b)(7) (stating that an expedited removal
21 order that is “reviewed and approved by the appropriate supervisor” is
22 “considered final”).

23 That is precisely what Judge Sabraw recently held in *Baythavong v. Noem*,
24 26-cv-1138-DMS-MSB (S.D. Cal. Apr. 6, 2026). There, the noncitizen was
25 ordered removed and then released on an order of supervision for approximately
26 seven years. When ICE redetained him, Judge Sabraw noted that “Respondents
27 failed to cite any authority to support their position that the presumptively
28 reasonable period of detention only applies when the individual is actually in

1 detention, i.e., that the nearly seven-year period in which Petitioner was on
2 supervision is not relevant to the *Zadydas* argument.” *Id.* at *2. “On the
3 contrary,” Judge Sabraw explained, “courts have held the presumptively
4 reasonable six-month period of detention does not stop and re-start if the
5 individual is released and later re-detained.” *Id.* at *2–3 (citing cases).

6 The fact that an immigration judge granted Mr. Perez withholding of
7 removal in January 2026 did not reset the clock. “[R]emovability and withholding
8 relief are distinct.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2021). Thus,
9 “the finality of the order of removal does not depend *in any way* on the outcome
10 of the withholding-only proceedings.” *Id.* at 539 (emphasis added). And
11 “[b]ecause the validity of removal orders is not affected by the grant of
12 withholding-only relief,” which is what Mr. Perez received, “[the] initiation of
13 withholding-only proceedings does not render non-final an otherwise
14 ‘administratively final’ order of removal.” *Id.* at 540. Indeed, the Supreme Court
15 just reiterated this principle in *Riley v. Bondi*, 606 U.S. 259, 269 (2025), where it
16 held that an order regarding relief for withholding of removal and Convention
17 Against Torture “is not a final order of removal and does not affect the validity of
18 a previously issued order of removal or render that order non-final.”

19 Here, then, Mr. Perez’s statutory removal period began when he was
20 ordered removed in December 2012 and was not impacted by the IJ’s subsequent
21 grant of withholding of removal in withholding-only proceedings. Thus, over a
22 decade has passed since the removal period began, and Mr. Perez’s six-month
23 *Zadydas* grace period has long since passed.

24 **C. Even if the presumptively reasonable period of detention only**
25 **applied when an individual is in detention, Mr. Perez has been in**
26 **ICE custody for seven months.**

27 Should this Court nevertheless believe—contrary to the plain language of
28 the statute—that the “removal period” requires an individual to be detained for six
months after receiving an order of removal, Mr. Perez would nevertheless satisfy

1 that requirement. That is because Mr. Perez received an administratively final
2 order of removal in December 2012 and was subsequently detained in ICE
3 custody from September 2025 to the present. Exh. A at ¶ 4.

4 Because Mr. Perez has spent over six months in custody post-final removal
5 order, there is “good reason to believe that there is no significant likelihood of
6 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Thus,
7 the burden shifts to the government to prove that there is a “significant likelihood
8 of removal in the reasonably foreseeable future.” *Id.* Because the government
9 cannot remove Mr. Perez to Guatemala and has not convinced him to go to
10 Mexico, the government will not be able to meet this burden.

11 **D. At a minimum, this Court should find that Mr. Perez has shown**
12 **his detention is not “presumptively reasonable.”**

13 Even if this Court believes—contrary to the statute; *Guzman Chavez*, 594
14 U.S. at 537; and *Riley*, 606 U.S. at 269—that the IJ’s grant of withholding
15 somehow “reset” the *Zadvydas* removal period, Mr. Perez can nevertheless satisfy
16 the rebuttable presumption of detention. Although *Zadvydas* held that detention is
17 “presumptively reasonable” for at least six months, 533 U.S. at 701, Mr. Perez
18 can rebut this presumption because he cannot be removed to Guatemala or
19 Mexico—the only potential countries that Respondents have identified for
20 removal.

21 As explained, the IJ granted Mr. Perez withholding of removal to
22 Guatemala, which prevents the government from deporting him there. Exh. A at ¶
23 5. What’s more, Respondents have repeatedly pressured Mr. Perez to voluntarily
24 depart to Mexico, and Mr. Perez has repeatedly declined to do so because he fears
25 persecution there as well as in Guatemala. *Id.* at ¶ 7. Because Mr. Perez cannot be
26 removed to Guatemala or Mexico, and Respondents have identified no other
27 countries that will accept him, this Court should find at a minimum that he has
28 rebutted the presumptively reasonable six-month period.

1 **IV. This Court must hold an evidentiary hearing on any disputed facts.**

2 Resolution of a prolonged-detention habeas petition may require an
3 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).

4 Petitioner hereby requests such a hearing on any material, disputed facts.

5 **V. Prayer for relief**

6 For the foregoing reasons, Mr. Perez respectfully requests that this Court
7 order his immediate release under *Zadvydas*.

8
9 Respectfully submitted,

10
11 Dated: April 14, 2026

s/ Kara Hartzler

Federal Defenders of San Diego, Inc.

Attorneys for Mr. Perez

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Proof of Service

I, the undersigned, will cause the attached Petition for Writ of Habeas Corpus to be emailed to the U.S. Attorney’s Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

\Dated: April 14, 2026

s/ Kara Hartzler
Kara Hartzler