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

12 **LEONEL AMILCAR GOMEZ**
13 **CABRERA,**

14 Petitioner,

15 v.

16 **MARKWAYNE MULLIN**, Secretary of
17 the Department of Homeland Security,
18 **TODD 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, **JEREMY CASEY**, Warden at
24 Imperial Regional Detention Center,

25 Respondents.

Case No.: 26-cv-2330-BTM-DEB

**Amended Petition for Writ
of
Habeas Corpus**

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

26 _____
27 ¹ Federal Defenders of San Diego, Inc., is filing the amended petition pursuant to
28 this Court's orders dated April 29, 2026, and April 16, 2026. Mr. Gomez
Cabrera's financial eligibility for representation is included in a sworn statement
attached to this amended petition.

I. Introduction

Mr. Gomez Cabrera is an indigenous coffee farmer who grew up working on his family's land in Honduras. He has spent years attending protests and advocating for indigenous land rights. In December 2018, [REDACTED]

[REDACTED] Exhibit C at 42–43. Mr. Gomez Cabrera fled his family land and came to the United States. He has been living here since. Exhibit A ¶ 3.

In January 2025, Mr. Gomez Cabrera was arrested by ICE while traveling in the interior of the country. Exhibit A ¶ 4; *see also* Exhibit C at 12. He had been previously caught at the border and removed in 2008, so in January 2025, ICE reinstated his prior order. Exhibit C at 12, 57. An immigration judge referred him to withholding-only proceedings. Exhibit B. He has continued to pursue those claims and has remained detained at the Imperial Regional Detention Center.

Mr. Gomez Cabrera must be released under conditions set by ICE under 8 U.S.C. § 1231(a)(3) and (a)(6). He has been subject to a reinstated order of removal for the past year and thus detained under § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021) (holding that immigrants in withholding-only proceedings are subject to the detention rules of § 1231(a)); *see also Riley v. Bondi*, 606 U.S. 259, 269 (2025) (confirming this rule). Because the government cannot show that there is a “significant likelihood of removal in the reasonably foreseeable future,” as required to continue detention under § 1231(a), this Court should order Mr. Gomez Cabrera’s release. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

1 **II. Statement of facts**

2 **A. Mr. Gomez Cabrera comes to the U.S. from Honduras, is**
3 **ordered removed in January 2025, and is pursuing withholding-**
4 **of-removal relief while he remains detained.**

5 Mr. Gomez Cabrera is an indigenous Lenca man from Honduras. Exhibit C
6 at 40. He grew up working on his father's land in Honduras growing coffee. *Id.*
7 His father taught him indigenous growing practices and emphasized the
8 importance of employing and working with other indigenous people. *Id.*

9 As a young adult, Mr. Gomez Cabrera doubted whether he wanted to
10 continue his family's tradition. He tried to go north to work in the United States in
11 2008. He was arrested at the border and ordered removed. Upon his return to his
12 family's land, he decided to fully embrace coffee growing. *Id.*

13 He also became more politically active. *Id.* at 40–41. In 2015, he joined the
14 [REDACTED] and he started
15 attending meetings and going to protests to protect indigenous land from
16 development. *Id.* at 41. [REDACTED]
17 [REDACTED]

18 In December 2018, during the coffee harvest season, Mr. Gomez Cabrera
19 began hearing rumors that [REDACTED]
20 [REDACTED] threatening and attacking indigenous
21 farmers. *Id.* One day, he was pulled over while driving his motorcycle by
22 members of this group. [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 *Id.*

26 In February 2019, one of the men who had threatened him at gun point
27 approached him and reiterated that Mr. Gomez Cabrera needed to leave or he
28 would be killed. *Id.* at 43. Mr. Gomez Cabrera reported the threat to his political

1 groups and family members, who corroborate his report. His sister-in-law
2 explained that as recently as February 2025, “there are many people still waiting
3 for him to collect [on] the threat.” Exhibit C at 48.

4 In April 2019, Mr. Gomez Cabrera fled to the United States. Exhibit A ¶ 3.

5 In January 2025, ICE arrested Mr. Gomez Cabrera as he was traveling
6 within the United States. Exhibit C at 12. It quickly reinstated his 2008 removal
7 order. *See* Exhibit B; Exhibit C at 12; *see also* *Guzman Chavez*, 594 U.S. at 529–
8 30 (outlining the reinstatement of removal process established in 8 U.S.C.
9 § 1231(a)(5) and 8 C.F.R. §§ 241.8, 1241.8).

10 Mr. Gomez Cabrera sought the limited form of relief he was entitled to in
11 reinstatement of removal proceedings: withholding-only proceedings. *See id.* at
12 531–32 (outlining the withholding of removal process established in 8 C.F.R.
13 §§ 208.31, 1208.31). In February 2025, an immigration judge placed Mr. Gomez
14 Cabrera in withholding-only proceedings. Exhibit B.

15 In June 2025, an immigration judge found Mr. Gomez Cabrera credible but
16 denied his application for withholding of removal, reasoning that his experiences
17 did not rise to the level of past persecution. Exhibit C at 29, 38; *but see Flores*
18 *Molina v. Garland*, 37 F.4th 626, 633–37 (9th Cir. 2022) (“being forced to flee
19 from one’s home in the face of an immediate threat of severe physical violence or
20 death is squarely encompassed within the rubric of persecution,” and the Ninth
21 Circuit has “repeatedly held that threats may be compelling evidence of past
22 persecution, particularly when they are specific and menacing and are
23 accompanied by evidence of violent confrontations, near-confrontations and
24 vandalism”).

25 Mr. Gomez Cabrera appealed to the BIA, which affirmed in February 2026.
26 *See* Exhibit C at 1–27 (BIA decision and appellate brief); *see also* Ximena
27 Bustillo & Rahul Mukherjee, *An immigration court few have heard of is quietly*
28 *shaping policy behind the scenes*, NPR (Mar. 20, 2026) (reporting that in 2025 the

1 BIA “backed Department of Homeland Security lawyers in 97% of publicly
2 posted cases; that’s at least 30 percentage points higher than the average from the
3 last 16 years”).²

4 Mr. Gomez Cabrera filed a petition for review of the BIA’s decision to the
5 Ninth Circuit in late February 2026. *See* Exhibit D (Ninth Circuit docket). His
6 opening brief is currently due on May 11, 2026. *Id.* The median time for
7 resolution of a Ninth Circuit appeal is 11.9 months. *See* U.S. Courts, *Table B-*
8 *4:U.S. Courts of Appeals Median Times for Cases Termination on the Merits*
9 (Sept. 30, 2025).³

10 **III. This Court has jurisdiction.**

11 This Court has jurisdiction to consider Mr. Gomez Cabrera’s claim of
12 unlawful detention under 28 U.S.C. § 2241 while he is in detention at the Imperial
13 Regional Detention Center.

14 The government’s recent argument otherwise, that 8 U.S.C. § 1252(g) strips
15 this Court of jurisdiction, “has been repeatedly ‘rejected as implausible’ by the
16 Supreme Court.” *Soryadvongsa v. Noem*, No. 25-cv-2663-AGS, 2025 WL
17 3126821, *1 (S.D. Cal. Nov. 8, 2025) (quoting *Department of Homeland Sec. v.*
18 *Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). The government’s argument
19 “would eliminate judicial review of immigration [detainees’] claims of unlawful
20 detention . . . inconsistent with *Jennings v. Rodriguez* and the history of judicial
21 review of the detention of noncitizens under 28 U.S.C. § 2241.” *Phan v. Noem*,
22 No. 25-cv-2422-RBM, 2025 WL 2898977, *3 (S.D. Cal. Oct. 10, 2025)
23 (collecting cases agreeing on this jurisdictional point).

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25
26 ² Available at <https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation>.

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28 ³ Available at <https://www.uscourts.gov/data-news/data-tables/2025/09/30/judicial-business/b-4>.

IV. Claim: Mr. Gomez Cabrera's detention violates *Zadvydas* and § 1231.

A. The statute, as interpreted by *Zadvydas*, renders detention mandatory for 90 days after removal is ordered and allowable six months after removal is ordered only if there is a significant likelihood of removal in the reasonably foreseeable future.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem: Federal law requires ICE to detain an immigrant during the “removal period,” which typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain the immigrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal “simply require[s] more time for processing,” or they are “ordered removed to countries with whom the United States does not have a repatriation agreement,” or their countries “refuse to take them,” or they are “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives. If federal law were understood to allow for “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting the statute requiring mandatory detention § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

Zadvydas held that § 1231(a)(6) presumptively permits the government to detain an immigrant for six months under the statute. After those six months have passed, the immigrant must be released unless his or his removal is likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. After six months have passed, the petitioner must only make a prima facie case for relief—there is “good

1 reason to believe that there is no significant likelihood of removal in the
2 reasonably foreseeable future.” *Id.* Then the burden shifts to “the Government [to]
3 respond with evidence sufficient to rebut that showing.” *Id.*⁴ Mr. Gomez Cabrera
4 can make all the threshold showings needed to shift the burden to the government.

5 **B. Mr. Gomez Cabrera’s six-month grace period expired in 2025.**

6 The six-month grace period has ended. The *Zadvydas* grace period is linked
7 to the date the final order of removal is issued. It lasts for “six months after a final
8 order of removal—that is, three months after the statutory removal period has
9 ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001).

10 Mr. Gomez Cabrera’s reinstated order of removal was entered in January 2026,
11 and thus became final at some time in summer 2025, regardless of ongoing
12 withholding-only proceedings. *See Guzman-Chavez*, 594 U.S. 530–47 (holding
13 that people subject to reinstated orders of removal in withholding-only
14 proceedings are detained under § 1231(a)).

15 **C. Mr. Gomez Cabrera provides good reason to believe that he will
16 not likely be removed in the reasonably foreseeable future.**

17 This Court uses a burden-shifting framework to evaluate Mr. Gomez
18 Cabrera’s *Zadvydas* claim. At the first stage of the framework, Mr. Gomez
19 Cabrera must “provide[] good reason to believe that there is no significant
20 likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at
21 701. This standard can be broken down into three parts.

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

26 _____
27 ⁴ Further, even before the six months have passed, the immigrant must still be
28 released if he rebuts the presumption that his detention is reasonable. *See, e.g., Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases on rebutting the *Zadvydas* presumption before six months have passed).

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

“Significant likelihood of removal.” This component focuses on whether Mr. Gomez Cabrera will likely be removed: Continued detention is permissible only if it is “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of untapped possibilities, but also [the] probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added).

In other words, even if “there remains *some* possibility of removal,” a petitioner can still meet its burden if there is good reason to believe that successful removal is not significantly likely. *Kacanik v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

“In the reasonably foreseeable future.” This component of the test focuses on when Mr. Gomez Cabrera will likely be removed: Continued detention is permissible only if removal is likely to happen “in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s removal efforts.

If the Court has “no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y.

2019)). Thus, even if this Court concludes that Mr. Gomez Cabrera “would eventually receive” a travel document, he can still meet his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

Mr. Gomez Cabrera satisfies this standard several times over. He has been detained on a reinstated removal order under § 1231(a) since January 2025 based on his strong withholding of removal claim. He has demonstrated good reason to believe that he will not be removed to Honduras at all, and certainly not in the reasonably foreseeable future. Mr. Gomez Cabrera has thus shown good reason to believe his removal is not significantly likely in the reasonably foreseeable future. In light of this information, the government cannot rebut this showing, and this Court should grant the petition.

D. The remedy for a *Zadvydas* violation is release on conditions set by ICE under § 1231(a)(3).

As noted earlier, *Zadvydas* interpreted 8 U.S.C. § 1231(a)(6), which permits ICE to detain immigrants past the removal period if certain conditions are met. 533 U.S. at 698. Applying the constitutional avoidance canon, the Supreme Court held that immigrants may no longer be held under 8 U.S.C. § 1231(a)(6), but must be released when removal proves unforeseeable. *Id.* at 700–01.

Section 1231(a)(6) dictates what happens next: “An alien ordered removed . . . if released, shall be subject to the terms of supervision in paragraph (3).” Paragraph (3) states that “[i]f the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General,” including several conditions that must be imposed. 8 U.S.C. § 1231(a)(3). The Attorney General has delegated authority to officials within ICE. *See* 8 C.F.R. § 241.5(a).

Thus, an immigrant released from detention under § 1231(a)(6) as interpreted in *Zadvydas* is subject to conditions set by ICE under § 1231(a)(3).

V. This Court must hold an evidentiary hearing on any disputed facts.

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

VI. Prayer for relief

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

1. Order and enjoin Respondents to immediately release Petitioner from custody subject to conditions set by Respondents under 8 U.S.C. § 1231(a)(3); and
2. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: April 30, 2026

s/ Jessie Agatstein

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