

1 **Jessie Agatstein**
2 Cal. Bar No. 319817
3 **Federal Defenders of San Diego, Inc.**
4 225 Broadway, Suite 900
5 San Diego, California 92101-5030
6 Telephone: (619) 234-8467
7 Facsimile: (619) 687-2666
8 jessie_agatstein@fd.org

9 Attorneys for Mr. Gomez Cabrera

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

13 LEONEL AMILCAR GOMEZ
14 CABRERA,

15 Petitioner,

16 v.

17 MARKWAYNE MULLIN, Secretary of
18 the Department of Homeland Security,
19 TODD BLANCHE, Acting Attorney
20 General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, JEREMY CASEY, Warden at
Imperial Regional Detention Center,

21 Respondents.

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

**Traverse in Support of
Amended Petition for Writ of
Habeas Corpus**

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

22 Mr. Gomez Cabrera was ordered deported to Honduras in a final
23 reinstatement of removal order in January 2025. ECF No. 8, Exhibit B, Exhibit C
24 at 12, 57. He continues to be in withholding-only proceedings ever since. In the
25 meantime, he has remained detained at the Imperial Regional Detention Center,
26 with no end in sight. There is no indication the government can deport him
27 anytime soon. As a result, as he explained in his habeas petition challenging his
28 indefinite detention under the statute 8 U.S.C. § 1231(a)(6), *see Johnson v.*
Guzman Chavez, 594 U.S. 523, 526 (2021), he has good reason to believe his

1 removal is not significantly likely in the reasonably foreseeable future. *See* ECF
2 No. 8. The burden has thus shifted to the government to show that his removal *is*
3 significantly likely. Otherwise, his continued detention is not justified, and his
4 release is required under § 1231(a)(6) as that statute was construed in *Zadvydas v.*
5 *Davis*, 333 U.S. 678, 701 (2001).

6 The government does not make any showing to meet its burden. In fact,
7 while the government agrees Mr. Gomez Cabrera is detained under 8 U.S.C.
8 § 1231(a)(6), the government does not make any argument at all under *Zadvydas*.
9 ECF No. 11 at 2.

10 Instead, the government notes in one sentence that it “does not oppose this
11 Court ordering that Petitioner receive an individualized bond hearing before an
12 immigration judge.” *Id.* The government does not explain why that would be a
13 proper remedy under § 1231(a)(6) and (a)(3). It cites only to a district court
14 decision in which the petitioner in withholding-only proceedings requested a bond
15 hearing as a matter of due process—and did not address the construction of
16 § 1231(a) or proper remedies under *Zadvydas*. ECF No. 11 at 2.

17 As Mr. Gomez Cabrera noted in his petition, the proper remedy for a
18 person detained under § 1231(a)(6) for more than six months without any
19 significant likelihood of removal in the reasonably foreseeable future is release on
20 conditions set by ICE under § 1231(a)(3). ECF No. 8 at 8. *Zadvydas* holds that as
21 a matter of statutory construction, immigrants who are ordered removed but who
22 cannot be removed in the reasonably foreseeable future cannot be held
23 indefinitely under § 1231(a)(6) because they are a flight risk or danger. By
24 ordering a bond hearing, this Court would give an immigration judge the power to
25 detain Mr. Gomez Cabrera indefinitely if he is a flight risk or danger.

26 To elaborate further: *Zadvydas* construed § 1231(a)(6) to authorize
27 detention under that statute beyond the 90-day removal period until “removal is
28 not reasonable foreseeable.” *Zadvydas*, 533 U.S. at 700. Once that moment hits—

1 and, presumptively, it will not for the first six months of detention under
2 § 1231(a)(6)—the statutory remedy is release. The Court was careful to explain
3 the remedy of release comes with conditions: “of course, the alien’s release may
4 and should be conditioned on any of the various forms of supervised release that
5 are appropriate in the circumstances,” citing to 8 U.S.C. § 1231(a)(3). *Id.*; accord
6 *Thai v. Ashcroft*, 366 F.3d 790, 797, 799 (9th Cir. 2004). But the remedy was still
7 “release.” *Id.*

8 Indeed, Congress established a full statutory and regulatory scheme for
9 people who cannot be deported but remain detained under § 1231(a). It is to be
10 subject to conditions imposed by ICE under 8 U.S.C. § 1231(a)(3) and its
11 implementing regulations. *See, e.g., Esmaeili v. Noem*, No., 2026 WL 240661 *4
12 (S.D. Cal. Jan. 26, 2026) (collecting cases and ordering immediate release on
13 supervision conditions under § 1231(a)(3) and its implementing regulations, even
14 for petitioners with significant criminal history).

15 That Mr. Gomez Cabrera’s withholding-only proceedings remain ongoing
16 does not change the statutory remedy the Supreme Court construed when it
17 addressed the limitations on the government’s detention authority under
18 § 1231(a)(6). Indeed, in another context, the Supreme Court explained several
19 years later, “the statutory text” of § 1231(a)(6) “provides for no distinction”
20 between people detained under it. *Clark v. Martinez*, 543 U.S. 371, 379 (2005).
21 Whether a person is detained under it after their proceedings have entirely
22 concluded, or whether a person is detained under it for another reason, the
23 government “cannot justify giving the *same* detention provision a different
24 meaning when such aliens are involved.” *Id.* at 380. “It is not at all unusual to
25 give a statute’s ambiguous language a limiting construction called for by one of
26 the statute’s applications, even though other of the statute’s applications, standing
27 alone, would not support the same limitation.” *Id.* There is no reason to “give
28 § 1231(a)(6) a different meaning”—or a different and non-statutory remedy of a

1 bond hearing, rather than release on conditions as the existing statute provides for
2 as a remedy under § 1231(a)(3). *Id.* at 382.

3 Finally, ordering a bond hearing for a statutory violation of § 1231(a)(6)
4 would seem to conflict with the Supreme Court's decision in *Guzman Chavez*.
5 There, the Court made clear that because "§ 1231, not § 1226, governs the
6 detention of aliens subject to reinstated orders of removal, . . . those aliens are not
7 entitled to a bond hearing while they pursue withholding of removal." *Guzman*
8 *Chavez*, 594 U.S. at 526. Instead, this Court should follow the normal course for
9 individuals detained under § 1231(a)(6) beyond the presumptively reasonable six
10 months without a significantly likelihood of removal in the reasonably foreseeable
11 future, and thus it should order release on conditions set by ICE under
12 § 1231(a)(3).

13 Mr. Gomez Cabrera thus respectfully requests that this Court order
14 Respondents to immediately release Petitioner from custody, subject to conditions
15 Respondents deem appropriate under 8 U.S.C. § 1231(a)(3).

16
17 Respectfully submitted,

18 Dated: May 8, 2026

19 s/ Jessie Agatstein
20 Federal Defenders of San Diego, Inc.
21 Attorneys for Mr. Gomez Cabrera
22 Email: jessie_agatstein@fd.org
23
24
25
26
27
28