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9 Attorneys for Ms. Cordero¹

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 ARISDALIA MERINO CORDERO,

13 Petitioner,

14 v.

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

25 Respondents.

Case No.: 26-cv-2382-BJC-GC

AMENDED² Petition for Writ
of
Habeas Corpus

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

¹ Federal Defenders of San Diego, Inc., is filing the instant petition with provisional appointment under Chief Judge Order No. 134. Petitioner financial eligibility for representation is included in a statement attached to this petition. Because of the limited availability during the legal call, counsel was not able to finalize the CJA 23 form but will file one with the Court on a later date.

² The Assigned Assistant United States Attorney advised undersigned counsel that he does not oppose the filing of this amended petition.

I. Introduction

Ms. Cordero came to the United States from Cuba with her husband in 2022. Immigration and Customs Enforcement (ICE) determined that she was not a flight risk or danger to the community and allowed Ms. Cordero and her husband to enter the country on their own recognizance.

After being released from custody, she informed ICE that she had changed her address from Florida to Texas. Despite this, the government sent a notice to appear (NTA) with a new date for immigration court to the old Florida address. The NTA was later returned to the immigration court as not deliverable. Because of the lack of notice, Ms. Cordero did not appear in court and she was ordered removed to Cuba in absentia on April 30, 2025.

On March 16, 2026, she was a passenger in a car driven by her husband. Border patrol stopped them. Despite both having unexpired work permits, border patrol agents arrested both of them without any explanation and placed them at the Imperial Regional Detention Center.

Pro se petitions were filed on behalf of both of them. District Judge Schopler granted Ms. Cordero's husband's petition for immediate release after the government did not oppose the requested relief. *Gonzalez Mendoza v. Garland*, Case No. 26-cv-02383-AGS-DEB, Doc. 5 (April 24, 2026).

This civil immigration habeas petition seeks to prevent Ms. Cordero's indefinite detention. It also seeks to prevent her deportation to a third country without her first receiving basic due process guarantees of notice and opportunity to be heard as to her statutory

1 rights to seek withholding of removal and Convention Against Torture
2 relief.

3 Petitioner's continued detention violates her statutory and
4 regulatory rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the
5 Fifth Amendment. She must be released under *Zadvydas* because—
6 *having proved unable to remove her for more than six months —*
7 *the government cannot show that there is a “significant*
8 *likelihood of removal in the reasonably foreseeable future.”* 533
9 U.S. at 701. *See, e.g., Rodriguez-Gutierrez v. Noem, et al.*, 25-cv-02726-
10 BAS-SBC, ECF No. 14 (Nov. 7, 2025) (finding *Zadvydas* violation of
11 Cuban national); *Arenado-Borges v. Bondi*, No. 2:25-CV-02193-JNW,
12 2025 WL 3687518, at *4 (W.D. Wash. Dec. 19, 2025) (same); *Pena-Gil*
13 *v. Lyons*, No. 25-CV-03268-PAB-NRN, 2025 WL 3268333, at *3 (D.
14 Colo. Nov. 24, 2025) (finding *Zadvydas* violation for Cuban national
15 that did not agree to voluntarily be removed to Mexico); *Conchas-*
16 *Valdez v. Casey, et al.*, 2025 WL 2884822, No. 25-cv-2469-DMS (S.D.
17 Cal. Oct. 6, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13
18 (S.D. Cal. Sept. 25, 2025) (granting habeas petitions releasing
19 noncitizens due to *Zadvydas* violations).

20 *This Court should enjoin ICE from removing Petitioner to*
21 *a third country without providing an opportunity to assert fear*
22 *of persecution or torture before an immigration judge. See, e.g.,*
23 *Louangmilith v. Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, *4
24 (S.D. Cal. Oct. 9, 2025); *Rebenok*, No. 25-cv-2171-TWR, ECF No. 13;
25 *Van Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v. Noem*, No.
26 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025) (all either
27 granting temporary restraining orders or habeas petitions ordering the
28

government to not remove petitioners to third countries pending litigation or reopening of their immigration cases).

II. Statement of Facts

A. After ICE permitted Ms. Cordero to enter the country, she submitted a change of address form.

Ms. Cordero was born in Cuba. Exhibit A, Declaration of Arisdalia Merino Cordero, at ¶ 1. In June of 2022, she and her husband came to the United States seeking asylum. *Id.* at ¶ 2. After a background check, ICE permitted both of them to enter into the country while their asylum claims were pending. *Id.* at ¶ 2.

According to the Record of Deportable/Inadmissible Alien (I-213), Ms. Cordero was given an EOIR-33 form and told to file this with DHS should she change her address. See Exhibit B, I-213, at 3. The agent noted that Ms. Cordero did “not appear to be a threat to national security, or public safety, and was released from the custody of the Department of Homeland Security (DHS) by ‘Order of Recognizance’ (O.R.) pending her immigration hearing. This release was authorized through proper channels.” *Id.*

On August 10, 2022, according to ICE instructions, Ms. Cordero submitted the EOIR-33 form that showed a change of address from Florida to Texas. See Exhibit C, Aug. 10, 2022 Submitted EOIR-33 Change of Address Form.

Name - Last, First, Middle, Suffix (if applicable): Arisdalia Merino Cordero		A-Number: [REDACTED]
My FORMER address and phone number were: In care of other person (if any) [REDACTED] Number, Street, Apartment (if any) Tampa, Florida 33634 City, State and ZIP code, Country (if other than U.S.) [REDACTED] Phone Number (include country code if other than U.S.) [REDACTED] Email Address [REDACTED]		
My CURRENT address and phone number are: In care of other person (if any) [REDACTED] Number, Street, Apartment (if any) Houston, TX 77032 City, State and ZIP code, Country (if other than U.S.) [REDACTED] Phone Number (include country code if other than U.S.) [REDACTED] Email Address [REDACTED]		
I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I am the person named above associated with the A-Number listed above, and that the information contained in this form is true and correct to the best of my knowledge.		
SIGN HERE → X [Signature]		Date 08/10/2022

Ms. Cordero later appeared to an immigration hearing and she was told that the hearing would not be held. Exh. A at ¶ 4. She was told to wait for a notice regarding a future court date. *Id.*

B. After sending a notice to appear to the wrong address, DHS ordered Ms. Cordero removed in absentia.

On April 23, 2025, EOIR sent Ms. Cordero a notice of hearing for April 20, 2025. Exhibit D, April 23, 2025 Notice to Appear. The notice was sent to the old Florida address, not the changed address in Texas. *Id.* On April 30, the immigration court ordered Ms. Cordero removed because she did not appear for the hearing. See Exhibit D, April 30, 2025 IJ Order. The notice to appear and the IJ order were both returned to the immigration court as “not deliverable.” See Exhibit D.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Orlando IMMIGRATION COURT

LEAD FILE: 
IN REMOVAL PROCEEDINGS
DATE: Apr 23, 2025

TO: MERINO CORDERO, ARISDALIA

TAMPA, FL 33634

RE: 240-336-064 MERINO CORDERO, ARISDALIA

Notice of Internet-Based Hearing

Your case has been scheduled for a MASTER hearing before the immigration court on:

Your hearing is not in person. You will access your hearing by using the web page below.
URL: <https://eoir.webex.com/meet/IJ.Espinal>

Date: Apr 30, 2025
Time: 1:00 P.M. ET
Court Address: 500 N. Orange Avenue Ste.1100, Orlando, FL 32801

Representation: You may be represented in these proceedings, at no expense to the Government, by an attorney or other representative of your choice who is authorized and qualified to represent persons before an immigration court. If you are represented, your attorney or representative must also appear at your hearing and be ready to proceed with your case. Enclosed and online at <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers> is a list of free legal service providers who may be able to assist you.

Failure to Appear: If you fail to appear at your hearing and the Department of Homeland Security establishes by clear, unequivocal, and convincing evidence that written notice of your hearing was provided and that you are removable, you will be ordered removed from the United States. Exceptions to these rules are only for exceptional circumstances.

Change of Address: The court will send all correspondence, including hearing notices, to you based on the most recent contact information you have provided, and your immigration proceedings can be forwarded to

RECEIVED

MAY 05 2025

IMMIGRATION COURT
ORLANDO, FL

1
2 **C. Almost a year later, ICE arrested Ms. Cordero**
3 **without any notice or opportunity to be heard.**

4 After the order of removal, Ms. Cordero remained in the Texas
5 address she provided to ICE. Her work permit continued to be valid.
6 Exh. A at ¶ 3.

7 On March 16, 2026, Ms. Cordero was a passenger in a car driven
8 by her husband. Exh. A at ¶ 6. Border patrol agents arrested her and
9 her husband despite both having valid work permits. *Id.* It was not
10 until after her detention that she learned that there was a final order
11 of removal. *Id.*

12 **D. Almost a year after her removal, ICE cannot remove**
13 **Ms. Cordero to Cuba.**

14 ICE does not appear to have travel documents to remove Ms.
15 Cordero to Cuba. She has not received any information as to when or
16 where she will be removed. Exh. A at ¶ 7.

17 Meanwhile, her husband was released through habeas petition.
18 *Gonzalez Mendoza v. Garland*, Case No. 26-cv-02383-AGS-DEB, Doc. 5
(April 24, 2026).

19 **E. The government is carrying out deportations to third**
20 **countries without providing sufficient notice and**
21 **opportunity to be heard.**

22 When immigrants cannot be removed to their home country, ICE
23 has begun deporting those individuals to third countries without
24 adequate notice or a hearing. *See* Edward Wong et al., *Inside the*
25 *Global Deal-Making Behind Trump's Mass Deportations*, N.Y. TIMES
26 (June 25, 2025).³ The Administration reportedly has negotiated with at
27 least 58 countries to accept deportees from other nations. *Id.* On June

28 ³ Available at <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html> (updated June 26, 2025).

1 25, 2025, the New York Times reported that seven countries—Costa
2 Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and
3 Rwanda—had agreed to accept deportees who are not their own
4 citizens. *Id.*

5 This summer and fall, ICE has carried out highly publicized third
6 country deportations to prisons in South Sudan, Eswatini, Ghana, and
7 Rwanda. Nokukhanya Musi & Gerald Imray, *10 more deportees from*
8 *the US arrive in the African nation of Eswatini*, Associated Press (Oct.
9 6, 2025).⁴ At least four men deported to Eswatini have remained in a
10 maximum-security prison there for nearly three months without
11 charge and without access to counsel; another six are detained
12 incommunicado in South Sudan, and another seven are being held in
13 an undisclosed facility in Rwanda. *Id.*

14 The Administration has reportedly negotiated with countries to
15 have many of these deportees imprisoned in prisons, camps, or other
16 facilities. The government paid El Salvador about \$5 million to
17 imprison more than 200 deported Venezuelans in a maximum-security
18 prison notorious for gross human rights abuses, known as CECOT. *See*
19 *id.* In February, Panama and Costa Rica took in hundreds of deportees
20 from countries in Africa and Central Asia and imprisoned them in
21 hotels, a jungle camp, and a detention center. *Id.*; Vanessa
22 Buschschluter, *Costa Rican court orders release of migrants deported*
23 *from U.S.*, BBC (Jun. 25, 2025).⁵ On July 4, 2025, ICE deported eight
24 men to South Sudan. *See Wong, supra*. On July 15, ICE deported five
25 men to the tiny African nation of Eswatini where they are reportedly
26

27 ⁴ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

28 ⁵ Available at <https://www.bbc.com/news/articles/cwyrn42kp7no>.

1 being held in solitary confinement. Gerald Imray, *3 Deported by US*
2 *held in African Prison Despite Completing Sentences, Lawyers Say*,
3 PBS (Sept. 2, 2025).⁶ Many of these countries are known for human
4 rights abuses or instability. For instance, conditions in South Sudan
5 are so extreme that the U.S. State Department website warns
6 Americans not to travel there, and if they do, to prepare their will,
7 make funeral arrangements, and appoint a hostage-taker negotiator
8 first. *See Wong, supra*.

9 On June 23 and July 3, 2025, the Supreme Court issued a stay of
10 a national class-wide preliminary injunction issued in *D.V.D. v. U.S.*
11 *Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL
12 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), which required ICE to
13 follow statutory and constitutional requirements before removing an
14 individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*,
15 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186
16 (U.S. July 3, 2025).⁷ On July 9, 2025, ICE rescinded previous guidance
17 meant to give immigrants a “meaningful opportunity” to assert claims
18 for protection under the Convention Against Torture (CAT) before
19
20

21 ⁶ Available at <https://www.pbs.org/newshour/nation/3-deported-by-u-s-held-in-african-prison-despite-completing-sentences-lawyers-say>.

22 ⁷ Though the Supreme Court’s order was unreasoned, the dissent noted
23 that the government had sought a stay based on procedural arguments
24 applicable only to class actions. *Dep’t of Homeland Sec. v. D.V.D.*, 145
25 S. Ct. 2153, 2160 (2025) (Sotomayor, J., dissenting). Thus, “even if the
26 Government [was] correct that classwide relief was impermissible” in
27 *D.V.D.*, Respondents still “remain[] obligated to comply with orders
28 enjoining [his] 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 initiating removal to a third country” like the ones just described.
2 Third Country Removal Policy, Exhibit E.

3 Under the new guidance, ICE may remove any immigrant to a
4 third country “without the need for further procedures,” as long as—in
5 the view of the State Department—the United States has received
6 “credible” “assurances” from that country that deportees will not be
7 persecuted or tortured. *Id.* at 1. If a country fails to credibly promise
8 not to persecute or torture releasees, ICE may still remove immigrants
9 there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’
10 notice. But “[i]n exigent circumstances,” a removal may take place in
11 as little as six hours, “as long as the alien is provided reasonably
12 means and opportunity to speak with an attorney prior to the
13 removal.” *Id.*

14 Upon serving notice, ICE “will not affirmatively ask whether the
15 alien is afraid of being removed to the country of removal.” *Id.*
16 (emphasis original). If the noncitizen “does not affirmatively state a
17 fear of persecution or torture if removed to the country of removal
18 listed on the Notice of Removal within 24 hours, [ICE] may proceed
19 with removal to the country identified on the notice.” *Id.* at 2. If the
20 noncitizen “does affirmatively state a fear if removed to the country of
21 removal” then ICE will refer the case to U.S. Citizenship and
22 Immigration Services (“USCIS”) for a screening for eligibility for
23 withholding of removal and protection under the Convention Against
24 Torture (“CAT”). *Id.* at 2. “USCIS will generally screen within 24
25 hours.” *Id.* If USCIS determines that the noncitizen does not meet the
26 standard, the individual will be removed. *Id.* If USCIS determines that
27 the noncitizen has met the standard, then the policy directs ICE to
28 either move to reopen removal proceedings “for the sole purpose of

determining eligibility for [withholding of removal protection] and CAT” or designate another country for removal. *Id.*

Under this policy, the United States has deported noncitizens to prisons and military camps in Rwanda, Eswatini, South Sudan, and Ghana. Many are still detained to this day, in countries to which they have never been, without charge. *See Musi & Gerald Imray, supra.*

CLAIMS FOR RELIEF

This Court should grant this petition and order two forms of relief.

First, it should order Petitioner’s immediate release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Petitioner, for whom there is “no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001).

Second, it should enjoin the Respondents from removing Petitioner to a third country without first providing notice and a sufficient opportunity to be heard before an immigration judge.

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

A. Legal background

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Petitioner: 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 migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens

1 within days or weeks. But some detainees cannot be removed quickly.
2 Perhaps their removal “simply require[s] more time for processing,” or
3 they are “ordered removed to countries with whom the United States
4 does not have a repatriation agreement,” or their countries “refuse to
5 take them,” or they are “effectively ‘stateless’ because of their race
6 and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th
7 Cir. 2001). In these and other circumstances, detained immigrants can
8 find themselves trapped in detention for months, years, decades, or
9 even the rest of their lives. If federal law were understood to allow for
10 “indefinite, perhaps permanent, detention,” it would pose “a serious
11 constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the
12 Supreme Court avoided the constitutional concern by interpreting
13 § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

14 *Zadvydas* held that § 1231(a)(6) presumptively permits the
15 government to detain an immigrant for 180 days after his or her
16 removal order becomes final. After those 180 days have passed, the
17 immigrant must be released unless his or her removal is reasonably
18 foreseeable. *Zadvydas*, 533 U.S. at 701. After six months have passed,
19 the petitioner must only make a prima facie case for relief—there is
20 “good reason to believe that there is no significant likelihood of
21 removal in the reasonably foreseeable future.” *Id.* Then the burden
22 shifts to “the Government [to] respond with evidence sufficient to rebut
23 that showing.” *Id.*

24 Petitioner can make all the threshold showings needed to shift
25 the burden to the government.
26
27
28

1 **B. The six-month grace period expired on October 30, 2025.**

2 The six-month grace period has ended. The *Zadvydas* grace
3 period is linked to the date the final order of removal is issued. It lasts
4 for “*six months* after a final order of removal—that is, *three months*
5 after the statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*,
6 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Indeed, the statute defining
7 the beginning of the removal period is linked to the latest of three
8 dates, all of which relevant here are tied to when the removal order is
9 issued. 8 U.S.C. § 1231(a)(1)(B).⁸

10 Here, Petitioner’s order of removal was entered on April 30, 2-25.
11 Accordingly, her 90-day removal period began then, ending on **July 30**.
12 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period expired three
13 months after that removal period on **October 30, 2025**. *See, e.g.,*
14 *Tadros v. Noem*, 2025 WL 1678501, No. 25-cv-4108(EP), *2-*3.
15 *Zadvydas* established this six-month grace period to give ICE a fair
16 chance to effectuate the removal before a court gets involved. 533 U.S.
17 at 700–01. That was why the Court chose to expand the grace period
18 beyond the 90-day statutory removal period: because Congress likely
19 did not “believe[] that all reasonably foreseeable removals could be
20 accomplished in that time.” *Id.* at 701.

21 Because the six-month grace period has passed, this Court must
22 evaluate Petitioner’s *Zadvydas* claim using the burden-shifting
23 framework. At the first stage of the framework, Petitioner must
24

25 ⁸ Those dates are, specifically, (1) “[t]he date the order of removal
26 becomes administratively final;” (2) “[i]f the removal order is judicially
27 reviewed and if a court orders a stay of the removal of the alien, the
28 date of the court’s final order;” or (3) “[i]f the alien is detained or
confined (except under an immigration process), the date the alien is
released from detention or confinement.” *Id.*

1 “provide[] good reason to believe that there is no significant likelihood
2 of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at
3 701. This standard can be broken down into three parts.

4 **“Good reason to believe.”** The “good reason to believe”
5 standard is a relatively forgiving one. “A petitioner need not establish
6 that there exists no possibility of removal.” *Freeman v. Watkins*, No.
7 CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor
8 does “[g]ood reason to believe’ . . . place a burden upon the detainee to
9 demonstrate no reasonably foreseeable, significant likelihood of
10 removal or show that his detention is indefinite; it is something less
11 than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319,
12 at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d
13 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
14 Petitioners need only give a “good reason”—not prove anything to a
15 certainty.

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

27 **“In the reasonably foreseeable future.”** This component of
28 the test focuses on when Petitioner will likely be removed: Continued

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

15 Petitioner satisfies this standard. *First*, ICE has had more than
16 six months following the final order of removal to remove Ms. Cordero.
17 “[A]s the period of prior post removal confinement grows, what counts
18 as the ‘reasonably foreseeable future’ conversely would have to shrink.”
19 *Zadvydas*, 533 U.S. at 701. She provided her valid address to EOIR in
20 2022. Exh. B. Despite knowing where she lives and knowing that she
21 maintained a valid work permit, ICE has not appeared able to remove
22 her to Cuba.

23 *Second*, Cuba, the country she was deported to in an
24 uncooperative country.

25 *Third*, ICE has not identified a country that they intend to
26 remove her to. Moreover, there is doubt she can be removed to a third
27 country. For one, Mexico’s acceptance of Petitioner is contingent on the
28 noncitizen’s consent. *See Rios v. Noem et al.*, No. 3:25-cv-02866-JES-

VET (S.D. Cal. 2025), Doc. 13-1 at ¶ 11 (“Mexican government was ready to accept Petitioner only if he would willingly go to Mexico.”); *D.A.M v. Noem*, No. 25-cv-02657-JLS-VET (S.D. Cal. Jan 12, 2026), Doc. 26-1 at ¶ 7 (explaining that the “Mexican consulate informed ICE ERO that Mexico would not accept Petitioner for removal against his will.”). “This evidence of Mexico’s acceptance policy casts further doubt on the Government’s ability to remove” petitioner to a third country. *Arenado-Borges v. Bondi*, No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *4 (W.D. Wash. Dec. 19, 2025).

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

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

II. Claim 2: ICE may not remove Petitioner to a third country without adequate notice and an opportunity to be heard.

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

1 **A. Legal background: The Convention Against Torture,**
2 **statutory withholding of removal, and due process**
3 **prohibit deportation to third countries without**
4 **meaningful notice and an opportunity to be heard.**

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

16 Similarly, Congress codified protections enshrined in the CAT
17 prohibiting the government from removing a person to a country where
18 they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C.
19 § 1231 note) (“It shall be the policy of the United States not to expel,
20 extradite, or otherwise effect the involuntary return of any person to a
21 country in which there are substantial grounds for believing the person
22 would be in danger of being subjected to torture, regardless of whether
23 the person is physically present in the United States.”); 28 C.F.R.
24 § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
25 mandatory.

26 To comport with the requirements of due process, the government
27 must provide notice of the third country removal and an opportunity to
28 respond. Due process requires “written notice of the country being
designated” and “the statutory basis for the designation, i.e., the

1 applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d
2 998, 1019 (W.D. Wash. 2019); accord *D.V.D. v. U.S. Dep’t of Homeland*
3 *Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21,
4 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

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

16 If the noncitizen claims fear, measures must be taken to ensure
17 that the noncitizen can seek asylum, withholding, and relief under
18 CAT before an immigration judge in reopened removal proceedings.
19 The amount and type of notice must be “sufficient” to ensure that
20 “given [a noncitizen’s] capacities and circumstances, he would have a
21 reasonable opportunity to raise and pursue his claim for withholding of
22 deportation.” *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v.*
23 *Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405,
24 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at *1 (requiring the
25 government to move to reopen the noncitizen’s immigration
26 proceedings if the individual demonstrates “reasonable fear” and to
27 provide “a meaningful opportunity, and a minimum of fifteen days, for
28 the non-citizen to seek reopening of their immigration proceedings” if

1 the noncitizen is found to not have demonstrated “reasonable fear”);
2 *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a
3 respondent to file a motion to reopen and seek relief).

4 “[L]ast minute” notice of the country of removal will not suffice,
5 *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x
6 724 (9th Cir. 2016), and for good reason: To have a meaningful
7 opportunity to apply for fear-based protection from removal,
8 immigrants must have time to prepare and present relevant
9 arguments and evidence. Merely telling a person where they may be
10 sent, without giving them a chance to look into country conditions,
11 does not give them a meaningful chance to determine whether and why
12 they have a credible fear.

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

15 The policies in the June 6, 2025 memo do not adhere to these
16 requirements. The memo “contravenes Ninth Circuit law.” *Nguyen v.*
17 *Scott*, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21,
18 2025) (explaining how the July 9, 2025 ICE memo contravenes Ninth
19 Circuit law on the process due to noncitizens in detail); *see also Van*
20 *Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D. Cal.
21 Sept. 29, 2025) (granting temporary restraining order preventing a
22 noncitizen’s deportation to a third country pending litigation in light of
23 due process problems); *Nguyen Tran*, No. 25-cv-2391-BTM-BLM, ECF
24 No. 6 (S.D. Cal. Sept. 18, 2025) (same).

25 First, under the policy, ICE need not give immigrants *any* notice
26 or *any* opportunity to be heard before removing them to a country
27 that—in the State Department’s estimation—has provided “credible”
28 “assurances” against persecution and torture. By depriving immigrants

1 of any chance to challenge the State Department's view, this policy
2 violates "[t]he essence of due process," "the requirement that a person
3 in jeopardy of serious loss be given notice of the case against him and
4 opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)
5 (cleaned up).

6 Second, even when the government has obtained no credible
7 assurances against persecution and torture, the government can still
8 remove the person with between six and 24 hours' notice, depending on
9 the circumstances. Exh. B. Practically speaking, there is not nearly
10 enough time for a detained person to assess their risk in the third
11 country and marshal evidence to support any credible fear—let alone a
12 chance to file a motion to reopen with an immigration judge. An
13 immigrant may know nothing about a third country, like Eswatini or
14 South Sudan, when they are scheduled for removal there.

15 Yet if given the opportunity to investigate conditions, immigrants
16 would find credible reasons to fear persecution or torture—like
17 patterns of keeping deportees indefinitely and without charge in
18 solitary confinement or extreme instability raising a high likelihood of
19 death—in many of the third countries that have agreed to removal
20 thus far.

21 Due process requires an adequate chance to identify and raise
22 these threats to health and life. This Court must prohibit the
23 government from removing Petitioner without these due process
24 safeguards.

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

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

7 **IV. Prayer for relief**

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

- 10 1. Order and enjoin Respondents to immediately release
11 Petitioner from custody;
- 12 2. Enjoin Respondents from removing Petitioner to a third
13 country, unless they provide the following process, *see*
14 *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-
15 BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
 - 16 a. written notice to both Petitioner and Petitioner's counsel
17 in a language Petitioner can understand;
 - 18 b. a meaningful opportunity, and a minimum of ten days, to
19 raise a fear-based claim for CAT protection prior to
20 removal;
 - 21 c. if Petitioner is found to have demonstrated "reasonable
22 fear" of removal to the country, Respondents must move
23 to reopen Petitioner's immigration proceedings;
 - 24 d. if Petitioner is not found to have demonstrated a
25 "reasonable fear" of removal to the country, a meaningful
26 opportunity, and a minimum of fifteen days, for the
27 Petitioner to seek reopening of her immigration
28 proceedings.

1 3. Order all other relief that the Court deems just and proper.

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3 Respectfully submitted,

4
5 Dated: April 30, 2026

s/ Zandra L. Lopez

6 Zandra L. Lopez

7 Federal Defenders of San Diego, Inc.

8 Attorneys for Petitioner
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