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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HUGO DIAZ BETANCOURT,

Petitioner,

v.

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

Respondent.

CASE NO.: '26CV2640 JAO MSB

**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 amended petition with provisional appointment under Chief Judge Order No. 134. The attached declaration addresses Petitioner's financial eligibility.

INTRODUCTION

Petitioner received a grant of withholding to Nicaragua in 2024. He was released from custody under an order of supervision but received an intervening criminal conviction. He has now been re-detained for almost six months with no significant likelihood of removal in the reasonably foreseeable future.

Because “there is no significant likelihood of removal in the reasonably foreseeable future,” Mr. Diaz Betancourt must be released. *Zadvydas v. Davis*, 533 U.S. 678 (2001). That holds true even if the Court were to find that the six-month presumption restarts at the time of Mr. Diaz Betancourt’s redetention. Mr. Diaz Betancourt is now only a few weeks shy of being detained for six months. **Many courts have held that *Zadvydas*’s six-month presumptively reasonable removal period is “just that—a presumption,” which can be rebutted with sufficiently compelling evidence.** *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018); *see also Cruz Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *7 n.5 (D. Md. Aug. 11, 2025); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D.N.J. 2025); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025); *Sweid v. Cantu*, No. CV-25-03590-PHX-DWL (CDB), 2025 WL 3033655, at *3 (D. Ariz. Oct. 30, 2025); *Puertas Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *2 (W.D. Tex. Oct. 22, 2025); *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 n.6 (D. Mass. 2018); *Ali v. Dep’t of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020); *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025); *Douglas v. Baker*, No. 25-CV-2243-ABA, 2025 WL 2687354, at *3 (D. Md. Sept. 19, 2025); *Jamal v. Sessions*, No. 5:18-06015-CV-RK, 2018 WL 1440609, at *2 (W.D. Mo. Mar. 22, 2018); *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008). Because Mr. Diaz Betancourt can prove that he will not be removed in the reasonably foreseeable future, he must be released.

1 Should the Court find that Petitioner has not met the rebuttable
2 presumption, the Court should stay the matter until the six-month period expires,
3 May 18, 2026.² At that time, the Court can evaluate then whether the government
4 can meet its burden of establishing significant likelihood of removal in the
5 reasonably foreseeable future.

6
7 **STATEMENT OF FACTS**

8 **I. Petitioner has been redetained for almost six months.**

9 Petitioner was born in Nicaragua and came to the United States in 2021. See
10 Exhibit A, Declaration of Hugo Diaz Betancourt, at ¶ 1-2. At that time, he was
11 charged with illegal reentry in the Western District of Texas. *Id.* at ¶ 2.

12 While detained in immigration custody, Mr. Diaz Betancourt requested
13 asylum. *Id.* at ¶ 3. On March 4, 2024, immigration judge ordered him removed and
14 simultaneously granted him withholding of removal to Nicaragua under the
15 Convention Against Torture. *Id.* at ¶ 4. He was released from immigration custody
16 the next day. *Id.*

17 Mr. Diaz Bentacourt was subsequently convicted of a DUI, and then brought
18 back to the Western District of Texas where he was sentenced to 14 months custody
19 for violations of supervised release. *Id.* at ¶ 6.

20 On November 18, 2025, Mr. Diaz Betancourt was taken into immigration
21 custody. *Id.* at ¶ 7. Since his detention, no one has spoken to him about obtaining
22 travel documents for his removal. *Id.* at ¶ 8. An ICE agent once asked him if he
23 would want to go to Mexico and Mr. Diaz Betancourt responded in the negative.
24 *Id.*

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28 ² The Court can also set a status hearing at around the six-month date to see if the
government has had success of obtaining travel documents.

1 **II. The government is carrying out deportations to third countries without**
2 **providing sufficient notice and opportunity to be heard.**

3 When immigrants cannot be removed to their home country—including
4 Cuban immigrants—ICE has begun trying to deport those individuals to third
5 countries without adequate notice or a hearing. The Trump administration
6 reportedly has negotiated with at least 58 countries to accept deportees from other
7 nations. Edward Wong et al, *Inside the Global Deal-Making Behind Trump's*
8 *Mass Deportations*, N.Y. Times, June 25, 2025. On June 25, 2025, the New York
9 Times reported that seven countries—Costa Rica, El Salvador, Guatemala,
10 Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are
11 not their own citizens. *Id.* ICE has carried out highly publicized third country
12 deportations to South Sudan and Eswatini.

13 The Administration has reportedly negotiated with countries to have many
14 of these deportees imprisoned in prisons, camps, or other facilities. The
15 government paid El Salvador about \$5 million to imprison more than 200
16 deported Venezuelans in a maximum-security prison notorious for gross human
17 rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica
18 took in hundreds of deportees from countries in Africa and Central Asia and
19 imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa
20 Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*,
21 BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men to South Sudan.
22 *See Wong, supra.* On July 15, ICE deported five men to the tiny African nation of
23 Eswatini where they are reportedly being held in solitary confinement. Gerald
24 Imray, *3 Deported by US held in African Prison Despite Completing Sentences*,
25 *Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human
26 rights abuses or instability. For instance, conditions in South Sudan are so
27 extreme that the U.S. State Department website warns Americans not to travel
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1 there, and if they do, to prepare their will, make funeral arrangements, and appoint
2 a hostage-taker negotiator first. *See Wong, supra*.

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

14 Under the new guidance, ICE may remove any immigrant to a third country
15 “without the need for further procedures,” as long as—in the view of the State
16 Department—the United States has received “credible” “assurances” from that
17 country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails
18 to credibly promise not to persecute or torture releasees, ICE may still remove
19 immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours’
20 notice. But “[i]n exigent circumstances,” a removal may take place in as little as
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23 ³ Though the Supreme Court’s order was unreasoned, the dissent noted that the
24 government had sought a stay based on procedural arguments applicable only to
25 class actions. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025)
26 (Sotomayor, J., dissenting). Thus, “even if the Government [was] correct that
27 classwide relief was impermissible” in *D.V.D.*, Respondents still “remain[]
28 obligated to comply with orders enjoining [their] 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 six hours, “as long as the alien is provided reasonably means and opportunity to
2 speak with an attorney prior to the removal.” *Id.*

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

18 CLAIMS FOR RELIEF

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

20 First, it should order Petitioner’s immediate release. *Zadvydas v. Davis*
21 holds that immigration statutes do not authorize the government to detain
22 immigrants like Petitioner, for whom there is “no significant likelihood of
23 removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001). Second,
24 it should enjoin the Respondents from removing Petitioner to a third country
25 without first providing notice and a sufficient opportunity to be heard before an
26 immigration judge.

1 **I. Count 1: Mr. Diaz Betancourt's detention violates *Zadvydas* and 8**
 2 **U.S.C. § 1231.**

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

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

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

26 Following the six-month grace period, courts must use a burden-shifting
 27 framework to decide whether detention remains authorized. First, the petitioner
 28 must make a prima facie case for relief: He must prove that there is "good reason

1 to believe that there is no significant likelihood of removal in the reasonably
2 foreseeable future.” *Id.*

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

8 **II. Courts across the country agree that the six-month presumption is**
9 **rebuttable.**

10 Mr. Diaz Betancourt argues that the six-month period has passed since he
11 was ordered removed on March 4, 2024. Since that time, ICE has not been able to
12 remove him.

13 Even if the time period were to begin again with his re-detention due to his
14 criminal conviction, Mr. Diaz Betancourt is only about 14 days shy of being
15 detained for six months post final order of removal. But as *Zadvydas* makes clear,
16 detention is only “*presumptively* reasonable” for six months. 533 U.S. at 701
17 (emphasis added). Numerous courts have concluded that the six-month
18 presumption is “just that, a presumption, one that can be rebutted upon a showing
19 that removal is *not* reasonably foreseeable.” *Cruz Medina v. Noem*, No. 25-CV-
20 1768-ABA, 2025 WL 2306274, at *7 n.5 (D. Md. Aug. 11, 2025); *accord Munoz-*
21 *Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D.N.J. 2025); *Zavvar v. Scott*, No.
22 CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025); *Trinh v.*
23 *Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020); *Sweid v. Cantu*, No. CV-
24 25-03590-PHX-DWL (CDB), 2025 WL 3033655, at *3 (D. Ariz. Oct. 30, 2025);
25 *Puertas Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *2
26 (W.D. Tex. Oct. 22, 2025); *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 n.6 (D.
27 Mass. 2018); *Ali v. Dep’t of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex.
28 2020); *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9 (S.D.

1 Tex. Sept. 26, 2025); *Douglas v. Baker*, No. 25-CV-2243-ABA, 2025 WL
 2 2687354, at *3 (D. Md. Sept. 19, 2025); *Jamal v. Sessions*, No. 5:18-06015-CV-
 3 RK, 2018 WL 1440609, at *2 (W.D. Mo. Mar. 22, 2018). “A close reading of
 4 *Zadvydas*” refutes any attempt to turn that presumption into a bright-line rule.
 5 *Cesar*, 542 F. Supp. 2d at 902.

6 Prohibiting all detention challenges before the six-month mark would go
 7 against *Zadvydas*’s most fundamental holding: that “if removal is not reasonably
 8 foreseeable, the court should hold continued detention unreasonable and no longer
 9 authorized by statute.” *Zadvydas*, 533 U.S. at 699–700. “The fundamental
 10 principle in *Zadvydas* . . . is that where removal is not reasonably foreseeable,
 11 detention is unconstitutional.” *Cesar*, 542 F. Supp. 2d at 902. “*Zadvydas*
 12 unequivocally held that ‘once removal is no longer reasonably foreseeable,
 13 continued detention is no longer authorized.’” *Puerta Mendoza*, 2025 WL
 14 3142089, at *2. It follows that “[i]f there comes a point during the six-month
 15 period at which it is ‘no longer reasonably foreseeable’ that a person will actually
 16 be removed, then detention ‘is no longer authorized,’” and the petitioner must be
 17 released. *Cruz Medina*, 2025 WL 2306274, at *6 (quoting *Zadvydas*, 533 U.S. at
 18 699–700). To hold otherwise would be to render *Zadvydas* “internally
 19 inconsistent.” *Zavvar*, 2025 WL 2592543, at *5.

20 *Zadvydas* did not back away from that fundamental principle when
 21 describing the six-month presumption. “At no point did the *Zadvydas* Court
 22 preclude a noncitizen from challenging their detention before the end of the
 23 presumptively reasonable six-month period.” *Trinh*, 466 F. Supp. 3d at 1092. To
 24 the contrary, the Court said that it was “adopting a *presumption* of reasonableness
 25 before the six-month period expires. A presumption is just that: a default, a
 26 starting point.” *Cruz Medina*, 2025 WL 2306274, at *5. “The *Zadvydas* Court did
 27 not say that the presumption is irrebuttable, and there is nothing inherent in the
 28 operation of the presumption itself that requires it to be irrebuttable.” *Cesar*, 542

1 F. Supp. 2d at 903; *accord Sweid*, 2025 WL 3033655, at *3 (“*Zadvydas* did not
2 hold that this presumption is conclusive in all cases and under all sets of facts.”).

3 Furthermore, when introducing the six-month presumption, the Court
4 “noted that such presumptions are intended to ‘guide lower court
5 determinations.’” *Zavvar*, 2025 WL 2592543, at *5. A “guide” is “not a
6 categorical prohibition on claims challenging detention less than six months.”
7 *Trinh*, 466 F. Supp. 3d at 1093.

8 Finally, *Zadvydas* analogized to the “similar” rule in *County of Riverside v.*
9 *McLaughlin*, 500 U.S. 44, 56–58 (1991), in which the Court “adopt[ed] [a]
10 presumption, based on lower court estimate of time needed to process arrestee,
11 that 48–hour delay in probable-cause hearing after arrest is reasonable, hence
12 constitutionally permissible.” *Zadvydas*, 533 U.S. at 701 (describing *Riverside*).
13 *Riverside*’s 48-hour rule “is a rebuttable presumption.” *Cesar*, 542 F. Supp. 2d at
14 904. It stands to reason that “the *Zadvydas* presumption, like the *Riverside*
15 presumption, is rebuttable.” *Munoz-Saucedo*, 789 F. Supp. 3d at 397.

16 In short, then, “[t]he presumption of reasonableness is the default, but if a
17 person ‘can prove’ that his removal is not reasonably foreseeable, then he can
18 overcome that presumption.” *Munoz-Saucedo*, 789 F. Supp. 3d at 397 (quoting
19 *Riverside*, 500 U.S. at 56).

20 **III. There is no significant likelihood of removal in the reasonably**
21 **foreseeable future to a Third Country.**

22 Because Mr. Diaz Betancourt must rebut the six-month presumption, he
23 bears the burden to show that “there is no significant likelihood of removal in the
24 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701.

25 First, Petitioner cannot be removed to his home country. An immigration
26 judge found that it is more-likely-than-not that he would risk being tortured if
27 removed to that country. Exh. B.

28 *Second*, there no significant likelihood of removal when the government has

1 not yet provided “documentation regarding petitioner’s deportation to a third
2 country and were twice unsuccessful in deporting petitioner to Mexico.” *Pena-Gil*
3 *v. Lyons*, No. 25-CV-03268-PAB-NRN, 2025 WL 3268333, at *3 (D. Colo. Nov.
4 24, 2025) (noting ICE officers “attempted to persuade petitioner to voluntarily go
5 to Mexico” and “transferred petitioner to several [detention] locations during its
6 efforts to convince petitioner to voluntarily go to Mexico.”); *See also Reinoso*
7 *Martinez v. Noem*, 26-cv-00138-DMS-SBC, Doc. 7 (Jan. 29, 2026) (granting on
8 *Zadvydas* grounds where government had not identified third country after
9 petitioner did not voluntarily go to third country, Mexico).

10 *Third*, Mexico’s acceptance is contingent on the noncitizen’s consent.
11 *Garcia Cruz v. Hott*, No. 2:26CV234, 2026 WL 1103566, at *2 (E.D. Va. Apr. 23,
12 2026). In *Rios v. Noem et al.*, No. 3:25-cv-02866-JES-VET (S.D. Cal. 2025), an
13 ICE Detention Officer stated that Mexico refused to accept a Cuban national
14 because he did not agree to be removed to Mexico. He explained: “ICE drove
15 Petitioner to the Mexican border to effectuate his third country resettlement, but
16 Petitioner refused to willingly go to Mexico. Petitioner did not express a fear of
17 removal to Mexico. The Mexican government was ready to accept Petitioner only
18 if he would willingly go to Mexico.” *Id.* ¶ 11. “This evidence of Mexico’s
19 acceptance policy casts further doubt on the Government’s ability to remove”
20 petitioner. *Arenado-Borges v. Bondi*, No. 2:25-CV-02193-JNW, 2025 WL
21 3687518, at *4 (W.D. Wash. Dec. 19, 2025); *Serpas v. Simon*, No. 1:25cv2369,
22 ECF No. 15, at 7 (E.D. Va. Feb. 2, 2026) (Trenga, J.) (finding that the recent
23 identification of Mexico as a possible country of removal several years after
24 “withholding of removal as to El Salvador” had been granted was of little import
25 because that process was “still in nascent stages with it being unclear whether
26 Respondents have even obtained Mexico’s affirmative assent to Petitioner’s
27 removal”).

1 *Fourth*, ICE has not identified an alternative third country. Even if a third
2 country is later identified, the government must first provide Petitioner with
3 notice and an opportunity to apply for protection as to *that* country as well, if
4 appropriate. 8 U.S.C. § 1231(b)(3). *See also Andriasian v. INS*, 180 F.3d 1033,
5 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El*
6 *Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf Protsenko v. U.S. Att’y*
7 *Gen.*, 149 F. App’x 947, 953 (11th Cir. 2005 (per curiam) (permitting removal to
8 third country only where individuals received “ample notice and an opportunity to
9 be heard.”).

10 ICE does not appear to have made any progress in removing Mr. Diaz
11 Betancourt in almost six months since his redetention. That matters, because even
12 when Mr. Diaz Betancourt bears the burden, the *Zadvydas* standard remains the
13 same: He must show that removal is not significantly likely in the reasonably
14 foreseeable future. *See Cesar*, 542 F. Supp. 2d at 903. And *Zadvydas* itself made
15 clear that good faith efforts do not themselves show that removal is significantly
16 likely. The petitioner in *Zadvydas* appealed a “Fifth Circuit h[olding] [that] [the
17 petitioner’s] continued detention [was] lawful as long as good faith efforts to
18 effectuate deportation continue and [the petitioner] failed to show that deportation
19 will prove impossible.” 533 U.S. at 702 (cleaned up). The Supreme Court
20 reversed, finding that the Fifth Circuit’s good-faith-efforts standard “demand[ed]
21 more than our reading of the statute can bear.” *Id.*

22 For all of these reasons, Mr. Diaz Betancourt has rebutted the presumption,
23 and he must be released.

24 **IV. Count 2: ICE may not remove Petitioner to a third country without**
25 **adequate notice and an opportunity to be heard.**

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

1 implementing regulations. Though the government will not be able to prove that
2 there is a significant prospect of removal in the reasonably foreseeable future, an
3 unanticipated change of circumstances could open up a heretofore unavailable
4 avenue to third-country removal. If that happens, ICE could remove Petitioner
5 with as little as 24 hours' notice or no notice at all. This Court should enter an
6 order prohibiting such surprise removals, as they violate the Due Process Clause.

7 **A. Legal background**

8 U.S. law enshrines protections against dangerous and life-threatening
9 removal decisions. By statute, the government is prohibited from removing an
10 immigrant to any third country where they may be persecuted or tortured, a form
11 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
12 The government “may not remove [a noncitizen] to a country if the Attorney
13 General decides that the [noncitizen’s] life or freedom would be threatened in that
14 country because of the [noncitizen’s] race, religion, nationality, membership in a
15 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
16 1208.16. Withholding of removal is a mandatory protection.

17 Similarly, Congress codified protections enshrined in the CAT prohibiting
18 the government from removing a person to a country where they would be
19 tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be
20 the policy of the United States not to expel, extradite, or otherwise effect the
21 involuntary return of any person to a country in which there are substantial
22 grounds for believing the person would be in danger of being subjected to torture,
23 regardless of whether the person is physically present in the United States.”); 28
24 C.F.R. § 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 must
27 provide notice of the third country removal and an opportunity to respond. Due
28 process requires “written notice of the country being designated” and “the

1 statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2).”
2 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v.*
3 *U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1
4 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
5 1999).

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

16 If the noncitizen claims fear, measures must be taken to ensure that the
17 noncitizen can seek asylum, withholding, and relief under CAT before an
18 immigration judge in reopened removal proceedings. The amount and type of
19 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
20 circumstances, he would have a reasonable opportunity to raise and pursue his
21 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
22 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
23 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the
24 government to move to reopen the noncitizen’s immigration proceedings if the
25 individual demonstrates “reasonable fear” and to provide “a meaningful
26 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening
27 of their immigration proceedings” if the noncitizen is found to not have
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demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

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

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

The policies in the June 6, 2025 memo do not adhere to these requirements. First, under the policy, ICE need not give immigrants *any* notice or *any* opportunity to be heard before removing them to a country that—in the State Department’s estimation—has provided “credible” “assurances” against persecution and torture. Exh. C. By depriving immigrants of any chance to challenge the State Department’s view, this policy violates “[t]he essence of due process,” “the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

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

1 scheduled for removal there. Yet if given the opportunity to investigate
2 conditions, immigrants would find credible reasons to fear persecution or
3 torture—like patterns of keeping deportees indefinitely and without charge in
4 solitary confinement or extreme instability raising a high likelihood of death—in
5 many of the third countries that have agreed to removal thus far. Due process
6 requires an adequate chance to identify and raise these threats to health and life.
7 This Court must prohibit the government from removing Petitioner without these
8 due process safeguards.

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

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

13 **VI. Prayer for relief**

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

- 15 1. Order Respondents to immediately release Petitioner from custody
16 under the prior conditions of supervision;
- 17 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
18 § 1231(a)(6) unless and until Respondents obtain a travel document
19 for Petitioner's removal;
- 20 3. Enjoin Respondents from re-detaining Petitioner without first
21 following all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i),
22 and any other applicable statutory and regulatory procedures;
- 23 4. Enjoin Respondents from removing Petitioner to any country other
24 than Cuba, unless they provide the following process, *see D.V.D. v.*
25 *U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL
26 1453640, at *1 (D. Mass. May 21, 2025):
 - 27 a) written notice to both Petitioner and Petitioner's counsel in a
28 language Petitioner can understand;

- b) a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
 - c) if Petitioner is found to have demonstrated “reasonable fear” of removal to the country, Respondents must move to reopen Petitioner’s immigration proceedings;
 - d) if Petitioner is not found to have demonstrated a “reasonable fear” of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of Petitioner’s immigration proceedings.
5. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: April 26, 2026

s/ Zandra L. Lopez

Zandra L. Lopez
Federal Defenders of San Diego, Inc.
Attorneys for Petitioner
Email: Zandra.Lopez@fd.org

PROOF OF SERVICE

I, the undersigned, will cause the attached petition for a 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 26, 2026

s/ Zandra L. Lopez

Zandra L. Lopez

Federal Defenders of San Diego, Inc.

Email: Zandra_Lopez@fd.org

Exhibit A

Zandra L. Lopez

California Bar No. 216567

Federal Defenders of San Diego, Inc.

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San Diego, California 92101-5030

Telephone: (619) 234-8467

Facsimile: (619) 687-2666

Zandra_Lopez@fd.org

Attorneys for Mr. HUGO DIAZ BETANCOURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HUGO DIAZ BETANCOURT
(Calderwood)

Petitioner,

v.

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

Respondents.

Civil Case No.:

**Declaration of HUGO DIAZ
BETANCOURT**

1
2 I, HUGO DIAZ BETANCOURT, declare:

3 1. I was born in Nicaragua in 1984. My parents were also born
4 in Nicaragua. My A# is 

5 2. When I entered the United States in 2021, I was arrested
6 and charged with illegal reentry in Texas. I was sentence to 28 months
7 custody.

8 3. Afterwards, while I was in immigration custody, I requested
9 asylum.

10 4. On March 4, 2024, an immigration judge granted
11 withholding of removal to Nicaragua under the Convention Against
12 Torture.

13 5. On March 5, I was released from ICE custody under an
14 order of supervision.

15 6. I was later convicted of a DUI in Illinois. Because of the
16 DUI in Illinois, my supervised release was revoked in the federal court
17 and I was sentenced to 14 months custody.

18 7. When I was released on November 18, 2025 from federal
19 custody, I was transferred to ICE custody. A few days later I was taken
20 to the Otay Mesa Detention Center where I remain today.

21 8. Since I have been in ICE custody, no ICE agent has spoken
22 to me about getting travel documents for my removal. A woman did
23 come to speak to me once, she did not identify herself as an ICE officer.
24 She asked me if I wanted to go to Mexico and I said no. No one has
25 talked to me about what will happen to me if I am removed to Mexico
26 or any other country.
27
28

1 9. I do not have money to pay for an attorney. I have been
2 detained for almost two years.

3 10. Each line of this declaration has been read to me in
4 Spanish. I understand and agree with the statements contained
5 herein.
6

7 I, Zandra Lopez, declare under penalty of perjury that I read
8 every line of this declaration to HUGO DIAZ BETANCOURT, with the
9 assistance of a Pashto interpreter, and he confirmed that it was true
10 and correct.
11

12 Date: April 14, 2026

Signed: /s/ *Zandra Lopez*
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Exhibit B

CASE NO. PX 25-951

IDENTIFICATION: JUL 10 2025

ADMITTED: JUL 10 2025

To All ICE Employees
July 9, 2025

Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the district court's nationwide preliminary injunction in *D.V.D. v. Department of Homeland Security*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required certain procedures related to providing a "meaningful opportunity" to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country. Accordingly, all previous guidance implementing the district court's preliminary injunction related the third country removals issued in *D.V.D.* is hereby rescinded. Absent additional action by the Supreme Court, the stay will remain in place until any writ of certiorari is denied or a judgment following any decision issues.

Effective immediately, when seeking to remove an alien with a final order of removal—other than an expedited removal order under section 235(b) of the Immigration and Nationality Act (INA)—to an alternative country as identified in section 241(b)(1)(C) of the INA, ICE must adhere to Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, *Guidance Regarding Third Country Removals*, as detailed below. A "third country" or "alternative country" refers to a country other than that specifically referenced in the order of removal.

If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures. ICE will seek written confirmation from the Department of State that such diplomatic assurances were received and determined to be credible. HSI and ERO will be made aware of any such assurances. In all other cases, ICE must comply with the following procedures:

- An ERO officer will serve on the alien the attached Notice of Removal. The notice includes the intended country of removal and will be read to the alien in a language he or she understands.
- ERO will not affirmatively ask whether the alien is afraid of being removed to the country of removal.
- ERO will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal.
 - Any determination to execute a removal order under exigent circumstances less than 24 hours following service of the Notice of Removal must be approved by the DHS General Counsel, or the Principal Legal Advisor where the DHS General Counsel is not available.

- If the alien does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, ERO may proceed with removal to the country identified on the notice. ERO should check all systems for motions as close in time as possible to removal.
- If the alien does affirmatively state a fear if removed to the country of removal listed on the Notice of Removal, ERO will refer the case to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under section 241(b)(3) of the INA and the Convention Against Torture (CAT). USCIS will generally screen the alien within 24 hours of referral.
 - USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.
 - If USCIS determines that the alien has not met this standard, the alien will be removed.
 - If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the immigration court, USCIS will refer the matter to the immigration court for further proceedings. In cases where the alien was previously in proceedings before the immigration court, USCIS will notify the referring immigration officer of its finding, and the immigration officer will inform ICE. In such cases, ERO will alert their local Office of the Principal Legal Advisor (OPLA) Field Location to file a motion to reopen with the immigration court or the Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under section 241(b)(3) of the INA and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.

Notably, the Supreme Court's stay of removal does not alter any decisions issued by any other courts as to individual aliens regarding the process that must be provided before removing that alien to a third country.

Please direct any questions about this guidance to your OPLA field location.

Thank you for all you continue to do for the agency.

Todd M. Lyons
Acting Director
U.S. Immigration and Customs Enforcement

Attachments:

- U.S. Supreme Court Order
- Secretary Noem's Memorandum
- Notice of Removal