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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, et
al.,

Respondents.

CASE NO.: 26-cv-02640-JAO-MSB

Traverse

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

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1 **I. INTRODUCTION**

2 This Court should grant Mr. Diaz's petition on both grounds. In this case,
3 there is a final order of removal granting withholding of removal to Nicaragua
4 from over two years ago. ICE re-detained Mr. Diaz six months ago. The
5 government concedes that ICE currently has not identified any third country to
6 which Mr. Diaz can be removed. It also concedes that the third country of Mexico
7 has already declined to accept him. And it concedes that ICE has not yet identified
8 a third country for removal.

9 Thus, the evidence before this Court is that there is no significant likelihood
10 of removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 533 U.S. 678,
11 701 (2001). And if—despite all evidence to the contrary—ICE is able to remove
12 Mr. Diaz to a third country, ICE must at a minimum give him the process set forth
13 in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL
14 1453640, at *1 (D. Mass. May 21, 2025). Twenty-four hours' notice or less is not
15 near enough to satisfy the Constitution. This Court should therefore grant this
16 petition on both counts.

17 **II. ARGUMENT**

18 **A. Claim 1: The government's Return confirms that ICE has no**
19 **reason to think Mr. Diaz can be removed in the reasonably**
20 **foreseeable future.**

21 **1. Mr. Diaz's petition is ripe for review and the sixth month**
22 **presumptive period has now expired.**

23 The government's return first argues that Mr. Diaz's petition should be
24 dismissed because it is "not ripe for review." Return, ECF No. 4 at 6. That
25 argument is without merit. The government relies on two cases. Neither one of
26 them supports the argument here.

27 In *Khalilova v. Smith*, No. 25-CV-2140 JLS (DDL), 2025 WL 3089522, at
28 *3 (S.D. Cal. Nov. 5, 2025), the habeas petition was filed within the first 90-days
from the July 28, 2025 final order of removal. In other words, the petition was

1 filed within the period that the statute mandates detention. 8 U.S.C. § 1231(a)(2)
 2 (the Attorney General “shall detain” the alien during the 90-day removal period
 3 under subsection (a)(1)). Thus, it makes sense for the district court to have found
 4 that a petition filed within a mandatory detention period was not yet ripe for
 5 review. The government also cites *Ao v. Noem*, No. 25-CV-03256-BAS-VET,
 6 2025 WL 3535207, at *1 (S.D. Cal. Dec. 9, 2025) for the holding that the petition
 7 was not ripe for review. Return ECF No. 4 at 6. The case does not say that. To the
 8 contrary, the district court in *Ao* agreed with Petitioner that the six-month
 9 presumptive period is rebuttable and can be reviewed. *Id.* The district court
 10 simply found that in that case, the petitioner had not met his burden. *Id.* Of note,
 11 in that case, the district court’s decision was made at four months following the
 12 July 21, 2025 final order of removal. *Id.*

13 This case is not like those cases. In this case, the six-month period has
 14 passed and even if it has not, Mr. Diaz can rebut any presumption. The six month
 15 period has passed because *Zadvydas* grace period is linked to the date the final
 16 order of removal is issued. It lasts for “*six months* after a final order of removal—
 17 that is, *three months* after the statutory removal period has ended.” *Kim Ho Ma v.*
 18 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Indeed, the statute defining the
 19 beginning of the removal period is linked to the latest of three dates, all of which
 20 relevant here are tied to when the removal order is issued. 8 U.S.C.

21 § 1231(a)(1)(B).¹

22 In this case, there has been a cumulative of **approximately 11 months**
 23 following the final order of removal. On March 3, 2024, Mr. Diaz received his
 24

25
 26 ¹ Those dates are, specifically, (1) “[t]he date the order of removal becomes
 27 administratively final;” (2) “[i]f the removal order is judicially reviewed and if a
 28 court orders a stay of the removal of the alien, the 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.” 8 USC
 § 1231(a)(1)(B).

1 order of removal and granted withholding of removal to Nicaragua. ECF 1,
2 Exhibit A, Declaration of Hugo Diaz Betancourt, at 21 ¶¶ 3–4; Cole Decl., ECF 4-
3 1 at ¶ 9. Because ICE could not remove Mr. Diaz, he was released the next day
4 and placed under an order of supervision.. ECF 1 at 21, ¶¶ 4–5. Between March
5 and sometime around November of 2024, Mr. Diaz continued to be in the
6 community and the government did not indicate what efforts, if any, it made to
7 remove Mr. Diaz during that **approximate five-month period**.

8 In addition to that five-month period, Mr. Diaz has now been re-detained a
9 few days shy of an **additional six-month period**. ECF 1 at 21, ¶¶ 4–5; ECF 4-1 at
10 ¶ 11. Thus, ICE has had a cumulative of approximately 11 months to attempt to
11 remove Mr. Diaz following the final order of removal. 8 USC § 1231(a)(1)(B)(1).

12 Moreover, even if the Court has found that the six-month period has not yet
13 expired, Mr. Diaz has rebutted any presumption. Or in the alternative, the Court
14 can continue this case for six days, i.e. November 18, 2026, when the grace period
15 will have indisputably elapsed.

16 **2. More than two years after the order of removal and six**
17 **months of detention, the government has yet to identify**
18 **when or where Mr. Diaz will be removed.**

19 Mr. Diaz must be released under *Zadvydas v. Davis*, because there is “no
20 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
21 678, 701 (2001).

22 The government concedes that Mr. Diaz cannot be removed to his home
23 country and can now only be removed to a third country. Return, ECF No. 4 at 3–
24 4.

25 The government has also not been able to remove Mr. Diaz to a third
26 country and there is no significant likelihood of removal to a third country in the
27 reasonably foreseeable future. Five months after Mr. Diaz’s re-detention, on April
28 16, the third country of Mexico, informed ICE that they would not accept
Mr. Diaz. ECF No. 4-1, Cole Decl. at ¶ 17. What’s more the government does not

1 dispute that even if ICE were to attempt to remove Mr. Diaz to Mexico again,
 2 Mexico's acceptance is contingent on the noncitizen's consent. Petition, ECF No.
 3 1 at 10-11); *Pantoja v. Bondi*, No. C25-2440JLR, 2026 WL 408096, at *3 (W.D.
 4 Wash. Jan. 30, 2026) (granting on *Zadydas* grounds after noting that
 5 "Respondents say nothing about why they believe Mexico would accept him [as a
 6 third country] despite his unwillingness to go there"). This is a problem for the
 7 government because Mr. Diaz has already declined. ECF No. 4-1, Cole Decl. at
 8 ¶ 14 (noting that Mr. Diaz "declined remov[al] option to Mexico").

9 At this point, two years after an order of removal and six months after re-
 10 detention, the government has not even been able to name the country that Mr.
 11 Diaz will be removed to. At most, the government can only say at this point that
 12 "continues to diligently seek to identify a third country for Petitioner's removal."
 13 *Id.* at ¶ 19. Good faith efforts without more are not enough under *Zadvydas*. 533
 14 U.S. at 702. Thus, there is no significant likelihood of removal in the reasonably
 15 foreseeable future.

16 For all of these reasons, Mr. Diaz must be released.

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

19 The record therefore reflects that Mr. Diaz will not be removed to a third
 20 country in the reasonably foreseeable future. But ICE would remove him to a
 21 third country if it could, and something could unexpectedly change to make that
 22 feasible. To protect against that possibility, this Court should require the
 23 government to provide the notice set forth in *D.V.D. v. U.S. Dep't of Homeland*
 24 *Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025),
 25 before removing Mr. Diaz to any other third country. The government's three
 26 arguments to the contrary are meritless.

27 *First*, the Supreme Court's decision in *D.V.D.* does not affect this Court's
 28 authority to order injunctive relief in this individual case. In *D.V.D.*, the

1 government sought a stay based on procedural arguments applicable only to class
2 actions. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025)
3 (Sotomayor, J., dissenting). But “even if the Government [was] correct that
4 classwide relief was impermissible” in *D.V.D.*, Respondents still “remain[]
5 obligated to comply with orders enjoining [their] conduct with respect to
6 individual plaintiffs” like Mr. Diaz. *Id.* Thus, the Supreme Court’s decision does
7 not override this Court’s authority to grant individual injunctive relief. *See*
8 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *20–23 (W.D. Wash.
9 Aug. 21, 2025).

10 *Second*, Mr. Diaz can seek this relief in this habeas petition despite the
11 pending class action. The Ninth Circuit held as much in analogous circumstances
12 in *Pride v. Correa*, which permitted a detained person to individually challenge
13 his own inadequate medical care despite a pending class action challenging
14 medical care at the facility. 719 F.3d 1130, 1137 (9th Cir. 2013). The Ninth
15 Circuit reasoned that “[i]ndividual claims for injunctive relief related to medical
16 treatment are discrete from the claims for systemic reform addressed in” a class
17 action. *Id.* “Consequently, where an inmate brings an independent claim for
18 injunctive relief solely on his own behalf for medical care that relates to him
19 alone, there is no duplication of claims or concurrent litigation.” *Id.* Otherwise,
20 individual plaintiffs “would be powerless to petition the courts for redress of the
21 violation until” a class action, which can take years to finish, “has been fully
22 resolved.” *Id.* The Court therefore rejected the contention that “an individual
23 claim for injunctive relief may be delayed because a pending class action seeks
24 systemic reform relating to the same general subject matter.” *Id.*

25 So too here. Mr. Diaz brings individual claims related to him alone, rather
26 than asking for the systemic reforms sought in *D.V.D.* And per the government’s
27 arguments in *D.V.D.*, these claims must be brought on an individual basis; they
28 cannot be brought in a class action. The government’s position therefore would

1 bar Mr. Diaz from seeking relief individually, even while the government argues
 2 in *D.V.D.* that he cannot get that relief as part of a class. This Court should reject
 3 that “heads, I win; tails, you lose” reasoning. Under *Plata*, “[t]he class
 4 certification order in *D.V.D.* does not prevent this Court from adjudicating
 5 Petitioner’s claims regarding third-country removal.” *Nguyen v. Scott*, 796 F.
 6 Supp. 3d 703, 730 (W.D. Wash. 2025).

7 *Third*, 24 hours’ notice is not near enough to satisfy due process. Mr. Diaz
 8 may not even have heard of the third country to which ICE intends to deport him,
 9 let alone have extensive information about the dangers he could face there. He
 10 will need time to research the country conditions before he can make a fair,
 11 intelligent decision about whether he fears removal. And if he does fear removal,
 12 but ICE does not consider his fear reasonable, he will need time to obtain an
 13 attorney and file a motion to reopen. That is why the court in *D.V.D.* laid out a
 14 two-step timeline for receiving notice about third countries: Petitioners need 10
 15 days to decide whether to raise a fear-based claim and, if ICE decides that they do
 16 not have a reasonable fear, an additional 15 days to move to reopen. *D.V.D. v.*
 17 *U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1
 18 (D. Mass. May 21, 2025). This Court should follow suit.

19
 20 Respectfully submitted,

21
 22 Dated: May 12, 2026

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 28