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

12 RENE HERRERA WILSON,
13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, Secretary of
16 the Department of Homeland Security,
17 PAMELA JO BONDI, Attorney General,
18 TODD M. LYONS, Acting Director,
19 Immigration and Customs Enforcement,
20 JESUS ROCHA, Acting Field Office
21 Director, San Diego Field Office,
22 CHRISTOPHER LAROSE, Warden at
23 Otay Mesa Detention Center,

24 Respondents.

CIVIL CASE NO.:

'26CV2729 DMS DEB

**Petition
for a
Writ of Habeas Corpus**

25
26
27 ¹ Federal Defenders of San Diego, Inc., is filing the instant petition with
28 provisional appointment under Chief Judge Order No. 134. A sworn statement
attached as Exhibit A provides information regarding his financial eligibility to
appointment of counsel.

1 INTRODUCTION

2 This civil immigration habeas petition seeks three grounds of relief. First, it
3 seeks to prevent Rene Herrera Wilson's indefinite detention pending deportation
4 to Cuba absent the basic regulatory and due process guarantees of 8 C.F.R.
5 §§ 241.4(l), 241.13(i), and *United States ex rel. Accardi v. Shaughnessy*, 347 U.S.
6 260, 268 (1954). Second, it seeks to prevent his indefinite detention pending
7 deportation to Cuba absent the basic statutory and due process guarantees outlined
8 in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Third, it seeks to prevent his
9 deportation to a third country without him first receiving basic due process
10 guarantees of notice and opportunity to be heard as to Petitioner's statutory rights
11 to seek withholding of removal and Convention Against Torture relief.

12 Mr. Wilson was ordered removed years ago. He believes that in addition to
13 an order of removal, an immigration judge also granted him withholding of
14 removal. Because ICE could not remove Mr. Wilson to Cuba, he was released
15 under an order of supervision. For at least six years, he has been under
16 supervision, where he has checked in with ICE and complied with he conditions
17 of his release.

18 Despite this, ICE re-arrested Mr. Wilson on April 16, 2026. ICE has
19 provided no information indicating that Petitioner will be removed in the
20 reasonably foreseeable future. ICE did not provide him with proper notice for the
21 reasons for revocation of supervision and did not provide him with the prompt
22 interview where he could contest his detention.

23 Courts in this district have released petitioner in similar situations either
24 because of regulation violations or the unlikelihood of removing Cuban nationals.
25 *See e.g., Rios v. Noem*, No. 25-CV-2866-JES, Doc. 15 (S.D. Cal. Nov. 10, 2025)
26 (granting based on regulation violations); *Rodriguez-Gutierrez v. Noem*, 25-cv-
27 02726-BAS-SBC, Doc. 14 (S.D. Cal. Nov. 7, 2025) (same); *Izquierdo-Matos v.*
28 *Noem*, Doc. 12, 25-cv-02979-BJC-BLM (S.D. Cal. Nov. 18, 2025) (same);

1 *Arostegui-Campo v. Noem*, 25-cv-03064-JLS-MMP, Doc. 11 (S.D. Cal. Nov. 25.
2 2025) (same); *Benitez-Oliva v. Noem*, 26-cv-00493, Doc. 10 (Feb. 19, 2026); *See*
3 *also Chamberlain-Salazar v. Noem*, 26-cv-00294-BJC-SBC, Doc. 10 (Feb. 27,
4 2026) (granting based on no significant likelihood of removal in the reasonable
5 foreseeable future); *Hernandez-Blanco v. Noem*, 26-cv-00425-DMS-JLB, Doc. 8
6 (Feb. 23, 2026) (same); *Bueno-Angulo v. Noem*, 26-cv-00256-RBM-JLB, Doc. 8
7 (Jan. 26, 2026) (same).

8
9 One court underlined, “Rules matter. Hearings matter. In recognition of this
10 cornerstone principle of our jurisprudence, a growing chorus of district courts
11 have found that—in similar cases—the government’s unlawful detention
12 warrants immediate release.” *Delkash v. Noem*, No. 25-cv-1675-HDV-AGR, 2025
13 WL 2683988 (C.D. Cal. Aug. 28, 2025).

14 STATEMENT OF FACTS

15 **I. Mr. Wilson lived under supervision for several years and then was re-**
16 **detained without an individualized reason for detention and without an**
opportunity to contest his re-detention.

17 Mr. Wilson was born in 1961. Exhibit A, Declaration of Rene Herrera
18 Wilson, at ¶ 1. He came to the United States in 1994 as a refugee. *Id.* at ¶ 2.

19 He believes that he was ordered removed by an immigration judge in 1997.
20 *Id.* at ¶ 3. After the immigration judge ordered him removed, he was detained in
21 immigration custody for about four months. *Id.* He was released from detention
22 and placed under an order of immigration supervision. *Id.*

23 In 2018, after a criminal conviction, he was detained by immigration again.
24 *Id.* at ¶ 4. Mr. Wilson believes that around 2019, he was granted withholding of
25 removal. *Id.* The EOIR Automated Case Information states that there is an order
26 of removal from February of 2020. *See* Exhibit B.

27 Either way, Mr. Wilson states that he was released from immigration
28 custody and he has been on an order of supervision for at least six years. Exh. A

1 at ¶ 6. Once a year, he would report to ICE check-ins. *Id.* He would also report to
2 his parole officer. *Id.*

3 On April 16, 2026, Mr. Wilson went to report to his parole officer and ICE
4 agents were waiting for him. *Id.* at ¶7-8. The agents arrested him without
5 explanation and did not give him an opportunity to contest his detention, *Id.* ICE
6 did not provide him with proper notice for the revocation of supervision nor the
7 proper opportunity to contest the revocation. *Id.*

8 ICE has provided Mr. Wilson no information indicating that he will be
9 removed in the reasonably foreseeable future. *Id.* at ¶10.

10 Mr. Wilson is detained at Otay Mesa Detention Center. *Id.* at 9. He has
11 paralysis on his left side and walks with the assistance of a walker. *Id.* at 10.

12 **II. Cuba rarely accepts its nationals for removal.**

13 Mr. Wilson believes that he has withholding of removal to Cuba but
14 understands that the EOIR states that he has an order of removal, without any
15 indication of withholding.

16 Even if he does have an order of removal to Cuba, ICE cannot remove him
17 to that country. Cuba rarely accepts its citizens for repatriation. What's more,
18 Mexico accepts Central Americans only if they voluntarily agree to removal there.

19 Prior to 2017, there was no repatriation agreement between the United
20 States and Cuba. *Clark v. Martinez*, 543 U.S. 371, 386 (2005). On January 12,
21 2017, the United States and Cuba signed a joint statement (“2017 Joint
22 Statement”) by which Cuba agreed to the repatriation of some Cuban nationals.

23 *Cuba (17-112) – Joint Statement Concerning Normalization of Migration*
24 *Procedures*, Jan. 12, 2017, available at <https://www.state.gov/17-112/>.

25 Specifically, under the agreement Cuba “shall receive back all Cuban nationals
26 who after the signing” of the 2017 Joint Statement “found by the competent
27
28

1 authorities of the United States to have tried to irregularly enter or remain in that
2 country in violation of United States law.” *Id.* at 2.

3 In practice, however, Cuba did not accept its nationals for removal. Despite
4 the 2017 Joint Statement, a 2019 report by the Office of Inspector General
5 classified Cuba as an “uncooperative country” in 2017, 2018, and 2019 based on
6 its failure to provide travel documents on a timely basis. Department of Homeland
7 Security, Office of Inspector General, Report No. OIG-19-28, *ICE Faces Barriers*
8 *in Timely Repatriation of Detained Aliens* (Mar. 11, 2019), available at
9 <https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf>
10 at pages 6-7, 10, 29. In May of 2018, Cuba was one of nine countries with the
11 uncooperative categorization. *Id.* at 10.

12 That tendency was borne out in this case. ICE proved unable to remove
13 Petitioner under the agreement. Moreover, for the past at least six years, ICE has
14 not been able to remove him.

15 **III. The government is carrying out deportations to third countries without**
16 **providing sufficient notice and opportunity to be heard.**

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

27 The Administration has reportedly negotiated with countries to have many
28 of these deportees imprisoned in prisons, camps, or other facilities. The

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

16 On June 23 and July 3, 2025, the Supreme Court issued a stay of a national
17 class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of*
18 *Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D.
19 Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional
20 requirements before removing an individual to a third country. *U.S. Dep't of*
21 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025
22 WL 1832186 (U.S. July 3, 2025).² On July 9, 2025, ICE rescinded previous

23
24 ² Though the Supreme Court's order was unreasoned, the dissent noted that the
25 government had sought a stay based on procedural arguments applicable only to
26 class actions. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025)
27 (Sotomayor, J., dissenting). Thus, "even if the Government [was] correct that
28 classwide relief was impermissible" in *D.V.D.*, Respondents still "remain[]
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.

1 guidance meant to give immigrants a “‘meaningful opportunity’ to assert claims
2 for protection under the Convention Against Torture (CAT) before initiating
3 removal to a third country” like the ones just described. Exh. C (“Third Country
4 Removal Policy”).

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

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

28 _____
Aug. 21, 2025).

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

3
4 **CLAIMS FOR RELIEF**

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

6 First, it should order Mr. Wilson’s immediate release. ICE failed to follow
7 its own regulations requiring changed circumstances before re-detention, as well
8 as a chance to promptly contest a re-detention decision. And *Zadvydas v. Davis*
9 holds that immigration statutes do not authorize the government to detain
10 immigrants like Petitioner, for whom there is “no significant likelihood of
11 removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001).

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

15 **I. Count 1: ICE failed to comply with its own regulations before re-**
16 **detaining Petitioner, violating Petitioner’s rights under applicable**
17 **regulations and the Fifth Amendment.**

18 Two regulations establish the process due to someone who is re-detained in
19 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to
20 re-detention generally. 8 C.F.R. § 241.13(i) applies to persons released after
21 providing good reason to believe that they will not be removed in the reasonably
22 foreseeable future, as Mr. Wilson was. *See Rokhfirooz*, No. 25-CV-2053-RSH-
23 VET, 2025 WL 2646165 at *2 (order from Judge Huie explaining this regulatory
24 framework and granting a habeas petition for ICE’s failure to follow these
25 regulations).

26 These regulations permit an official to “return [the person] to custody”
27 because they “violate[d] any of the conditions of release.” 8 C.F.R. § 241.13(i)(1);
28 *see also* § 241.4(l)(1).

Otherwise, they contain four major regulatory protections for people like

1 Petitioner, who did not violate any condition of release. They permit revocation of
2 release only if the appropriate official (1) “determines that there is a significant
3 likelihood that the alien may be removed in the reasonably foreseeable future,”
4 § 241.13(i)(2), and (2) makes that finding “on account of changed circumstances.”
5 *Id.* No matter the reason for re-detention, (3) the re-detained person is entitled to
6 “an initial informal interview promptly,” during which they “will be notified of
7 the reasons for revocation.” §§ 241.4(l)(1); 241.13(i)(3). The interviewer must (4)
8 “afford[] the [person] an opportunity to respond to the reasons for revocation,”
9 allowing them to “submit any evidence or information” relevant to re-detention
10 and evaluating “any contested facts.” *Id.*

11 ICE is required to follow its own regulations. *United States ex rel. Accardi*
12 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
13 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to
14 abide by certain internal policies is well-established.”). A court may review a re-
15 detention decision for compliance with the regulations, and “where ICE fails to
16 follow its own regulations in revoking release, the detention is unlawful and the
17 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at *4
18 (collecting cases).

19 ICE followed none of its four regulatory prerequisites to re-detention here.

20 First, Mr. Wilson did not receive proper notice of the reasons for re-
21 detention upon revocation.

22 Second, Mr. Wilson did not receive an informal interview permitting his to
23 contest re-detention.

24 Third, ICE did not revoke Mr. Wilson’s release for a permissible reason.
25 He was not returned to custody because of a conditions violation. And there are
26 no changed circumstances that justify re-detaining him.

27 Absent any evidence for “why obtaining a travel document is more likely
28 this time around[,] Respondents’ intent to eventually complete a travel document

1 request for Petitioner does not constitute a changed circumstance.” *Hoac v.*
2 *Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July
3 16, 2025) (citing *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D.
4 Kan. June 17, 2025)). Furthermore, past experience teaches that ICE almost
5 certainly made no changed-circumstances determination before the arrest. *See*
6 *Rokhfirooz*, 2025 WL 2646165 at *3.

7 Numerous courts have released re-detained immigrants after finding that
8 ICE failed to comply with applicable regulations. *See, e.g., Rokhfirooz*, 2025 WL
9 2646165; *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988;
10 *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*,
11 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d
12 383, 387 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL
13 2452352, at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-
14 01204-AA, 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v.*
15 *Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18,
16 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4
17 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*,
18 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

19 “[B]ecause officials did not properly revoke petitioner's release pursuant to
20 the applicable regulations, that revocation has no effect, and [Petitioner] is entitled
21 to [her] release (subject to the same Order of Supervision that governed [her] most
22 recent release).” *Liu*, 2025 WL 1696526, at *3.

23 **II. Count 2: Petitioner’s detention violates *Zadvydas* and 8 U.S.C. § 1231.**

24 **A. Legal background**

25 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
26 a problem affecting people like Petitioner: Federal law requires ICE to detain an
27 immigrant during the “removal period,” which typically spans the first 90 days
28 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-

1 day removal period expires, detention becomes discretionary—ICE may detain
2 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
3 this scheme would not lead to excessive detention, as removal happens within
4 days or weeks. But some detainees cannot be removed quickly. Perhaps their
5 removal “simply require[s] more time for processing,” or they are “ordered
6 removed to countries with whom the United States does not have a repatriation
7 agreement,” or their countries “refuse to take them,” or they are “effectively
8 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,
9 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained
10 immigrants can find themselves trapped in detention for months, years, decades,
11 or even the rest of their lives.

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

16 As an initial matter, *Zadvydas* held that detention is “presumptively
17 reasonable” for at least six months. *Id.* at 701. This presumption is, in some
18 circumstances even before the running of six months, “rebuttable.” *See Zavvar*,
19 2025 WL 2592543 at *5–*6 (explaining this point when granting *Zadvydas*
20 habeas relief).

21 Courts must use a burden-shifting framework to decide whether detention
22 remains authorized. First, the petitioner must make a prima facie case for relief:
23 Petitioner must prove that there is “good reason to believe that there is no
24 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
25 533 U.S. at 689.

26 If Petitioner does so, the burden shifts to “the Government [to] respond
27 with evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of
28 proof rests with the government: The government must prove that there is a

1 “significant likelihood of removal in the reasonably foreseeable future,” or the
2 immigrant must be released. *Id.*

3 To underline the government’s burden, good faith is beside the point.
4 “[U]nder *Zadvydas*, the reasonableness of Petitioner's detention does not turn on
5 the degree of the government's good faith efforts. Indeed, the *Zadvydas* court
6 explicitly rejected such a standard. Rather, the reasonableness of Petitioner's
7 detention turns on whether and to what extent the government's efforts are likely
8 to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5
9 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is required to
10 demonstrate the likelihood of not only the *existence* of untapped possibilities, but
11 also of a probability of success in such possibilities.” *Elashi v. Sabol*, 714 F.
12 Supp. 2d 502, 506 (M.D. Pa. 2010).

13 Using this framework, Mr. Wilson can make all the threshold showings
14 needed to shift the burden to the government.

15 **B. The six-month grace period expired in at least 2020.**

16 As an initial matter, the six-month grace period has long since ended. The
17 *Zadvydas* grace period lasts for “*six months* after a final order of removal—that is,
18 *three months* after the statutory removal period has ended.” *Kim Ho Ma v.*
19 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, the immigration judge’s
20 order of removal because final on **February 10, 2020**. Exh. B. Thus, Mr.
21 Wilson’s 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The
22 *Zadvydas* grace period expired on **August 10, 2020**. It has now been six years
23 since the grace period has expired. Thus, this threshold requirement is met.

24 **C. There is good reason to believe that there is no significant**
25 **likelihood of Mr. Wilson’s removal in the reasonably foreseeable**
26 **future.**

27 Because the six-month grace period has passed, this Court must evaluate
28 Mr. Wilson’s *Zadvydas* claim using the burden-shifting framework. At the first
stage of the framework, there must be “good reason to believe that there is no

1 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
2 533 U.S. at 701. This standard can be broken down into three parts.

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

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

23 **“In the reasonably foreseeable future.”** This component of the test
24 focuses on when Petitioner will likely be removed: Continued detention is
25 permissible only if removal is likely to happen “in the reasonably foreseeable
26 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
27 removal efforts. If the Court has “no idea of when it might reasonably expect
28 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal

1 is likely to occur—or even that it might occur—in the reasonably foreseeable
2 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
4 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
5 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Petitioner
6 “would eventually receive” a travel document, he can still meet his burden by
7 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
8 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

9 Mr. Wilson readily satisfies the above standards for an obvious reason:

10 If there is a final order of removal to Cuba (without withholding) ICE has
11 already tried and failed to remove him under the operative repatriation agreements
12 between the United States and Cuba. His order of removal became final in
13 February of 2020 and ICE could not effectuate his removal ICE did not succeed
14 in removing him for the next six years, either. And ICE has not managed to
15 remove him now.

16 And if Mr. Wilson was given withholding of removal, ICE cannot be
17 removed to Cuba. An immigration judge found that it is more-likely-than-not that
18 they would risk being tortured if removed to that country. Moreover, Mexico’s
19 acceptance may be contingent on the noncitizen’s consent. In *Rios v. Noem et al.*,
20 No. 3:25-cv-02866-JES-VET (S.D. Cal. 2025), an ICE Detention Officer stated
21 that Mexico refused to accept a Cuban national because he did not agree to be
22 removed to Mexico. He explained: “ICE drove Petitioner to the Mexican border to
23 effectuate his third country resettlement, but Petitioner refused to willingly go to
24 Mexico. Petitioner did not express a fear of removal to Mexico. The Mexican
25 government was ready to accept Petitioner only if he would willingly go to
26 Mexico.” *Id.* ¶ 11. “This evidence of Mexico’s acceptance policy casts further
27 doubt on the Government’s ability to remove” petitioner. *Arenado-Borges v.*
28

1 *Bondi*, No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *4 (W.D. Wash. Dec. 19,
2 2025).

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

7 **III. Count 3: ICE may not remove Mr. Wilson to a third country without**
8 **adequate notice and an opportunity to be heard.**

9 In addition to unlawfully detaining Mr. Wilson, ICE’s policies threaten him
10 removal to a third country without adequate notice and an opportunity to be heard.
11 These policies violate the Fifth Amendment, the Convention Against Torture, and
12 implementing regulations. Though the government will not be able to prove that
13 there is a significant prospect of removal in the reasonably foreseeable future, an
14 unanticipated change of circumstances could open up a heretofore unavailable
15 avenue to third-country removal. If that happens, ICE could remove Petitioner
16 with as little as 24 hours’ notice or no notice at all. This Court should enter an
17 order prohibiting such surprise removals, as they violate the Due Process Clause.

18 **A. Legal background**

19 U.S. law enshrines protections against dangerous and life-threatening
20 removal decisions. By statute, the government is prohibited from removing an
21 immigrant to any third country where they may be persecuted or tortured, a form
22 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A).
23 The government “may not remove [a noncitizen] to a country if the Attorney
24 General decides that the [noncitizen’s] life or freedom would be threatened in that
25 country because of the [noncitizen’s] race, religion, nationality, membership in a
26 particular social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16,
27 1208.16. Withholding of removal is a mandatory protection.

28 Similarly, Congress codified protections enshrined in the CAT prohibiting

1 the government from removing a person to a country where they would be
2 tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be
3 the policy of the United States not to expel, extradite, or otherwise effect the
4 involuntary return of any person to a country in which there are substantial
5 grounds for believing the person would be in danger of being subjected to torture,
6 regardless of whether the person is physically present in the United States.”); 28
7 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
8 mandatory.

9 To comport with the requirements of due process, the government must
10 provide notice of the third country removal and an opportunity to respond. Due
11 process requires “written notice of the country being designated” and “the
12 statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2).”
13 *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v.*
14 *U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1
15 (D. Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
16 1999).

17 The government must also “ask the noncitizen whether he or she fears
18 persecution or harm upon removal to the designated country and memorialize in
19 writing the noncitizen’s response. This requirement ensures DHS will obtain the
20 necessary information from the noncitizen to comply with section 1231(b)(3) and
21 avoids [a dispute about what the officer and noncitizen said].” *Aden*, 409 F. Supp.
22 3d at 1019. “Failing to notify individuals who are subject to deportation that they
23 have the right to apply for asylum in the United States and for withholding of
24 deportation to the country to which they will be deported violates both INS
25 regulations and the constitutional right to due process.” *Andriasian*, 180 F.3d at
26 1041.

27 If the noncitizen claims fear, measures must be taken to ensure that the
28 noncitizen can seek asylum, withholding, and relief under CAT before an

1 immigration judge in reopened removal proceedings. The amount and type of
2 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
3 circumstances, he would have a reasonable opportunity to raise and pursue his
4 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
5 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
6 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the
7 government to move to reopen the noncitizen’s immigration proceedings if the
8 individual demonstrates “reasonable fear” and to provide “a meaningful
9 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening
10 of their immigration proceedings” if the noncitizen is found to not have
11 demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice
12 and time for a respondent to file a motion to reopen and seek relief).

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

21
22 **B. The June 6, 2025 memo’s removal policies violate the Fifth**
23 **Amendment, 8 U.S.C. § 1231, the Conviction Against Torture,**
24 **and Implementing Regulations.**

25 The policies in the June 6, 2025 memo do not adhere to these requirements.
26 First, under the policy, ICE need not give immigrants *any* notice or *any*
27 opportunity to be heard before removing them to a country that—in the State
28 Department’s estimation—has provided “credible” “assurances” against
persecution and torture. Exh. C. By depriving immigrants of any chance to

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

5 Second, even when the government has obtained no credible assurances
6 against persecution and torture, the government can still remove the person with
7 between 6 and 24 hours’ notice, depending on the circumstances. Exh. C.
8 Practically speaking, there is not nearly enough time for a detained person to
9 assess their risk in the third country and martial evidence to support any credible
10 fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may
11 know nothing about a third country, like Eswatini or South Sudan, when they are
12 scheduled for removal there. Yet if given the opportunity to investigate
13 conditions, immigrants would find credible reasons to fear persecution or
14 torture—like patterns of keeping deportees indefinitely and without charge in
15 solitary confinement or extreme instability raising a high likelihood of death—in
16 many of the third countries that have agreed to removal thus far. Due process
17 requires an adequate chance to identify and raise these threats to health and life.
18 This Court must prohibit the government from removing Petitioner without these
19 due process safeguards.

20 **IV. This Court must hold an evidentiary hearing on any disputed facts.**

21 Resolution of a prolonged-detention habeas petition may require an
22 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).
23 Petitioner hereby requests such a hearing on any material, disputed facts.
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1 **V. Prayer for relief**

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

- 3 1. Order Respondents to immediately release Petitioner from custody
4 under the same conditions of supervision;
- 5 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
6 § 1231(a)(6) unless and until Respondents obtain a travel document
7 for Petitioner’s removal;
- 8 3. Enjoin Respondents from re-detaining Petitioner without first
9 following all procedures set forth in 8 C.F.R. §§ 241.4(I), 241.13(i),
10 and any other applicable statutory and regulatory procedures;
- 11 4. Enjoin Respondents from removing Petitioner to any country other
12 than Cuba, unless they provide the following process, *see D.V.D. v.*
13 *U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL
14 1453640, at *1 (D. Mass. May 21, 2025):
- 15 a) written notice to both Petitioner and Petitioner’s counsel in a
16 language Petitioner can understand;
- 17 b) a meaningful opportunity, and a minimum of ten days, to raise
18 a fear-based claim for CAT protection prior to removal;
- 19 c) if Petitioner is found to have demonstrated “reasonable fear”
20 of removal to the country, Respondents must move to reopen
21 Petitioner’s immigration proceedings;
- 22 d) if Petitioner is not found to have demonstrated a “reasonable
23 fear” of removal to the country, a meaningful opportunity, and
24 a minimum of fifteen days, for the Petitioner to seek reopening
25 of Petitioner’s immigration proceedings.
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1 5. Order all other relief that the Court deems just and proper.
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Respectfully submitted,

Dated: April 29, 2026

s/ Zandra L. Lopez
Zandra L. Lopez
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Wilson
Email: Zandra_Lopez @fd.org

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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 29, 2026

s/ Zandra L. Lopez

Zandra L. Lopez

Federal Defenders of San Diego, Inc.

Email: Zandra.Lopez@fd.org

EXHIBIT

A

1 **ZANDRA L. LOPEZ**
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2 **FEDERAL DEFENDERS OF SAN DIEGO, INC.**
3 225 Broadway, Suite 900
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5 Zandra_Lopez@fd.org
6 Attorneys for Mr. Wilson
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 Rene Herrera WILSON,
12 Petitioner,


CASE NO.:

13 v.

**DECLARATION OF RENE HERRERA
WILSON**

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

20
21 I, Rene Herrera WILSON, declare:

- 22
23 1. I was born in Cuba on 
24 2. I came to the United States from Cuba in May 1994, a as refugee.
25 3. In 1997, I was ordered removed to Cuba. After the immigration judge's
26 order, I was detained for about four months. I was released and then placed on
27 an order of supervision.
28

1 4. In 2018, I had a criminal conviction and was then placed in immigration
2 detention. I was detained again for about 11 months. Around 2019, an
3 immigration judge granted me withholding of removal.

4 5. I believe that I still have an order of withholding of removal.

5 6. I have been under an order of supervision with ICE. Once a year, I must
6 check in with ICE. I was also reporting to a parole officer.

7 7. On April 16, 2026, I went to report with my parole officer and ICE agents
8 were waiting for me.

9 8. The agents arrested me without any explanation. I did not understand
10 because I thought I had withholding of removal. They did not give me an
11 opportunity to challenge my arrest. I did not receive an interview. Everything
12 happened so fast.

13 9. Since then, I have been detained at the Otay Mesa Detention Center.

14 10. An officer has told me that ICE cannot send me to Cuba. The officer asked
15 me if I want to go to Mexico and I said no. I cannot go to a country that I do
16 not know. And I am older. I am 64 years old and I have mental health issues. I
17 also have some paralysis in my leg. I walk with the assistance of a walker. I
18 cannot go to another country like this.

19 11. I do not have funds to pay for an attorney. I am unhoused.

20 12. This declaration has been read to me in the Spanish language.

21 I, Zandra Lopez, declare under penalty of perjury that I read every line of this
22 declaration to RENE HERRERA WILSON, and she confirmed that it was true and
23 correct.

24 Date: April 29, 2026

Signed: /s/ Zandra Lopez