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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 Respondents.

CIVIL CASE NO.: 26-cv-02729-
DMS-DEB

Traverse

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INTRODUCTION

Mr. Wilson, a Cuban national, was granted withholding of removal to Cuba many years ago. He cannot be sent to Cuba. Six years after the immigration judge's order, ICE has yet to identify a third country for removal. Although not having any country to remove him to, Mr. Wilson's order of supervision was revoked. According to the evidence presented in the return, at the time of the 2026 re-detention, Mr. Wilson was under an order of supervision issued in 2023. The notice of revocation does not allege any violations from that 2023 supervision. Instead, it only lists violations that preceded it. In other words, Mr. Wilson is being re-detained based on alleged violations for which he had already been detained by ICE prior to 2023.

This Court should grant Mr. Wilson's petition on all three grounds.

First, the Court should grant immediate release on *Zadvydas* grounds. Mr. Wilson cannot be removed to Cuba because of an immigration judge order (IJ) and ICE has yet to identify a third country six years after the IJ order. The government has not provided any evidence that Mr. Wilson can be removed in the reasonably foreseeable future to any country.

Second, the government's response does not rebut that ICE committed regulatory violations in the course of re-detaining Mr. Wilson. The government does not point to any notice of changed circumstances at the time of revocation that justified detention. And at the time of the revocation, the only basis given for the revocation was dated and preceded ICE's decision to put him on the current term of supervision.

Finally, if—despite all evidence to the contrary—ICE is able to remove Mr. Wilson to a third country, ICE must at a minimum give him the process set forth in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025). Twenty-four hours' notice is not near enough to satisfy the Constitution.

1 This Court should therefore grant this petition on all three counts. This
2 Court should order immediate release and order that ICE provide Mr. Wilson due
3 process before removing him to a third country in the future.

4 **ARGUMENT**

5 **I. Count 2: Mr. Wilson’ detention violates *Zadvydas* and 8 U.S.C. § 1231.**

6 **A. The six-month grace period has long expired.**

7 In his Petition, Mr. Wilson argued that the six-month grace period under
8 *Zadvydas* has long since ended following his order of removal and grant of
9 withholding of removal to Cuba under Convention Against Torture. ECF 1 at 11.
10 The government’s return does not say anything about this and thus does not dispute
11 the passing of the grace period.

12 **B. The government has not identified a third country that could**
13 **possibly take Mr. Wilson, let alone established a significant**
14 **likelihood that that will happen in the reasonably foreseeable**
15 **future.**

16 Mr. Wilson’s continued detention violates 8 U.S.C. § 1231 as interpreted in
17 *Zadvydas*, because there is no significant likelihood of his removal in the
18 reasonably foreseeable future.

19 In his petition, Mr. Wilson set out good reasons to believe that there was no
20 significant likelihood of removal in the reasonably foreseeable future. Petitioner
21 cannot be removed to Cuba because he received relief under the Convention
22 Against Torture. And there has been no identification of a third country.

23 In response, the government claims only that ICE can continue to detain
24 Petitioner while it searches for another third country. ECF 4 at 5; Cole Decl., ECF
25 4-1 at ¶ 24-25. But it cannot identify a country, nor can it give an estimate as to
26 when a third country will be found. *Id.* “[M]ere generalizations, divorced from
27 any documentary support,” do not “suffice for *Zadvydas* purposes.” *Azzo v. Noem*,
28 No. 25-cv-3122-RBM-BJW, 2025 WL 353208, *4 n.3. (S.D. Cal. Dec. 10, 2025).

1 Thus, the government has not proved that Petitioner will be removed in the
2 reasonably foreseeable future. The government gives generalities likely because
3 third country removals is already exceedingly unlikely, a “lack of effort only
4 reinforces the conclusion that the Petitioner’s removal is not likely to occur in the
5 reasonably foreseeable future.” *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002
6 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002); *see also Conchas-Valdez v. Casey*,
7 25-cv-2469-DMS, Dkt. 9, at 6 (S.D. Cal. Oct. 6, 2025) (granting a petition in part
8 because “the Government’s minimal work on [the] case . . . [did] not instill
9 confidence that it will be able to secure [CAT] Petitioner’s removal in the
10 reasonably foreseeable future”).

11 **II. Count 1: Government’s evidence does not show that Mr. Wilson**
12 **received proper notice prior to re-detention.**

13 Section 241.13 provides that an OSUP may be revoked: (1) if the noncitizen
14 “violates any of the conditions of release”; or (2) if it is determined “that there is a
15 significant likelihood that the [noncitizen] may be removed in the reasonably
16 foreseeable future.” 8 C.F.R. §§ 241.13(i)(1), 241.13(i)(2), 241.4(l)(1). Regardless
17 of the reasons, the noncitizen must be “be notified of the reasons for revocation of
18 his or her release” and receive an “initial informal interview promptly” after being
19 detained, to “afford the [noncitizen] an opportunity to respond to the reasons for
20 revocation stated in the notification.” *Id.* § 241.13(i)(3).

21 In this case, although it appears that a notice was provided, the reasons given
22 were based on an already expired order of supervision. Thus, they cannot be valid
23 reasons to revoke. According to the evidence in the return, “[o]n February 11, 2020,
24 Petitioner was released from ICE custody on an Order of Supervision.” Cole Decl,
25 ¶ 19. The Notice of Revocation then alleges that Mr. Wilson had two convictions,
26 one in 2021 and the other in 2022. ECF 4-3 at 2. According to Deportation Officer
27 Cole, Mr. Wilson, “[o]n October 26, 2023, Petitioner was issued a *new* Order of
28 Supervision.” Cole Decl, ¶ 19 (emphasis added). This suggests that Mr. Wilson was

1 re-detained by ICE following his 2021 and 2022 convictions before given a new
2 order of supervision in 2023.

3 Thus, the Notice of Revocation does not contain notice of any violations of
4 conditions after the October 26, 2023 order of supervision. Nor does the Notice of
5 Revocation contain any changed circumstances in being able to remove him to a
6 third country.

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 The record therefore reflects that Petitioner will not be removed to a third
10 country in the reasonably foreseeable future. But ICE would remove him to a third
11 country if it could, and something could unexpectedly change to make that feasible.
12 To protect against that possibility, this Court should require the government to
13 provide the notice set forth in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-
14 10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025), before removing
15 Petitioner to any other third country. The government's three arguments to the
16 contrary are meritless.

17 *First*, the Supreme Court's decision in *D.V.D.* does not affect this Court's
18 authority to order injunctive relief in this individual case. In *D.V.D.*, the government
19 sought a stay based on procedural arguments applicable only to class actions. *Dep't*
20 *of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025) (Sotomayor, J.,
21 dissenting). But "even if the Government [was] correct that classwide relief was
22 impermissible" in *D.V.D.*, Respondents still "remain[] obligated to comply with
23 orders enjoining [their] conduct with respect to individual plaintiffs" like Petitioner.
24 *Id.* Thus, the Supreme Court's decision does not override this Court's authority to
25 grant individual injunctive relief. *See Nguyen v. Scott*, No. 2:25-CV-01398, 2025
26 WL 2419288, at *20–23 (W.D. Wash. Aug. 21, 2025).

27 *Second*, Petitioner can seek this relief in this habeas petition despite the
28 pending class action. The Ninth Circuit held as much in analogous circumstances

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

14 So too here. Petitioner brings individual claims related to him alone, rather
15 than asking for the systemic reforms sought in *D.V.D.* And per the government’s
16 arguments in *D.V.D.*, these claims must be brought on an individual basis; they
17 cannot be brought in a class action. The government’s position therefore would bar
18 Petitioner from seeking relief individually, even while the government argues in
19 *D.V.D.* that he cannot get that relief as part of a class. This Court should reject that
20 “heads, I win; tails, you lose” reasoning. Under *Plata*, “[t]he class certification
21 order in *D.V.D.* does not prevent this Court from adjudicating Petitioner’s claims
22 regarding third-country removal.” *Nguyen v. Scott*, 796 F. Supp. 3d 703, 730 (W.D.
23 Wash. 2025).

24 *Third*, 24 hours’ notice is not near enough to satisfy due process. Petitioner
25 may not even have heard of the third country to which ICE intends to deport him,
26 let alone have extensive information about the dangers he could face there. He will
27 need time to research the country conditions before he can make a fair, intelligent
28 decision about whether he fears removal. And if he does fear removal, but ICE does

1 not consider his fear reasonable, he will need time to obtain an attorney and file a
2 motion to reopen. That is why the court in *D.V.D.* laid out a two-step timeline for
3 receiving notice about third countries: Petitioners need 10 days to decide whether
4 to raise a fear-based claim and, if ICE decides that they do not have a reasonable
5 fear, an additional 15 days to move to reopen. *D.V.D. v. U.S. Dep't of Homeland*
6 *Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025).
7 This Court should follow suit.

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Respectfully submitted,

Dated: May 14, 2026

s/ Zandra L. Lopez
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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

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