

1 **Kara Hartzler**  
2 Cal. Bar No. 293751  
3 **Federal Defenders of San Diego, Inc.**  
4 225 Broadway, Suite 900  
5 San Diego, California 92101-5030  
6 Telephone: (619) 234-8467  
7 Facsimile: (619) 687-2666  
8 Kara\_hartzler@fd.org

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

11 **OBDULIO NOE LOPEZ,**  
12 **Petitioner,**

13 **v.**

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

Civil Case No.: 26-cv-2746-JES-AHG

24 **SUPPLEMENTAL BRIEF IN**  
25 **SUPPORT OF PETITION FOR**  
26 **WRIT OF HABEAS CORPUS**

1           Following Respondents’ clarification about the procedural history in this  
2 case, Petitioner Obdulio Noe Lopez argued that he had been subject to a final  
3 order of removal for 13 years and thus should be released under *Zadvydas v.*  
4 *Davis*, 533 U.S. 678 (2001). ECF 10. In their supplemental briefing, Respondents  
5 do not dispute that the six-month *Zadvydas* removal period has passed. ECF 12.  
6 Rather, their only argument is that there is a “significant likelihood of removal in  
7 the reasonably foreseeable future” because “Guatemalans do not require travel  
8 documents to travel to Guatemala,” “[r]emoval efforts remain ongoing,” “ICE is  
9 in the process of identifying a removal flight” for Mr. Lopez, and that once it  
10 does, “his removal can be effectuated promptly.” ECF 12 at 2.

11           This amounts to the kind of vague, good-faith platitudes that other courts  
12 have found does not satisfy *Zadvydas*. In *Zadvydas* itself, the petitioner appealed a  
13 “Fifth Circuit h[olding] [that] [the petitioner’s] continued detention [was] lawful  
14 as long as good faith efforts to effectuate deportation continue and [the petitioner]  
15 failed to show that deportation will prove impossible.” 533 U.S. at 702 (cleaned  
16 up). The Supreme Court reversed, finding that the Fifth Circuit’s good-faith-  
17 efforts standard “demand[ed] more than our reading of the statute can bear.” *Id.*

18           Thus, “under *Zadvydas*, the reasonableness of Petitioner’s detention does  
19 not turn on the degree of the government’s good faith efforts. Indeed, the  
20 *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of  
21 Petitioner’s detention turns on whether and to what extent the government’s efforts  
22 are likely to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL  
23 78984, at \*5 (W.D.N.Y. Jan. 2, 2019). Accordingly, “the Government is required  
24 to demonstrate the likelihood of not only the *existence* of untapped possibilities,  
25 but also of a probability of success in such possibilities.” *Elashi v. Sabol*, 714 F.  
26 Supp. 2d 502, 506 (M.D. Pa. 2010).

27           Here, then, vague assurances that “[r]emoval efforts remain ongoing” and  
28 Mr. Lopez’s removal “can be effectuated promptly,” ECF 12 at 2, are not enough.

1 As other courts have found, such assurances are “insufficient” because they are  
2 “merely an assertion of good-faith efforts to secure removal” and “do[ ] not make  
3 removal likely in the reasonably foreseeable future.” *Gilali v. Warden of McHenry*  
4 *Cnty.*, No. 19-CV-837, 2019 WL 5191251, at \*5 (E.D. Wis. Oct. 15, 2019).

5 What’s more, Respondents do not dispute that Mr. Lopez came to the  
6 United States in 1990 and has not been to Guatemala in 36 years. ECF 6 at 1.  
7 They do not claim to have a current or expired passport for him or any other type  
8 of identity document confirming his nationality. ECF 12. Nor do they provide any  
9 proof that Guatemala recognizes Mr. Lopez as a Guatemalan citizen. ECF 12.  
10 Absent such proof, Respondents have not shown that Guatemala will accept  
11 Mr. Lopez such that there is a significant likelihood of removal in the reasonably  
12 foreseeable future.

13 For these reasons, this Court should grant Mr. Lopez’s petition under  
14 *Zadvydas* and order his immediate release.

15  
16 Respectfully submitted,

17  
18 Dated: May 28, 2026

*s/ Kara Hartzler*  
Federal Defenders of San Diego, Inc.  
Attorneys for Petitioner  
Email: kara\_hartzler@fd.org