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

DERICK JOSE AGUILAR-
GONZALEZ,

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.: 26-cv-2923-DMS-SBC

**Supplemental Briefing in Support of
Petition for a Writ of Habeas
Corpus**

INTRODUCTION

Derick Jose Aguilar-Gonzalez was born in Venezuela and was paroled into the United States to allow him to apply for asylum in 2022. But an immigration judge pretermitted his application for asylum and ordered him removed to Ecuador on March 16, 2026, under the Asylum Cooperative Agreement. Over three months have passed since he was ordered removed, yet Respondents have not physically deported him to Ecuador.

This is likely because the Asylum Cooperative Agreement with Ecuador has an annual cap of 300 cases. *See* Exhibit A, “The U.S.-Ecuador Asylum Cooperative Agreement: Why It Fails the Law and Endangers Asylum Seeker,” Center for Gender and Refugee Studies, March 25, 2026. But “[s]ince November 2025, more than 8,000 non-Ecuadorian nationals have had Ecuador designated as a country of removal pursuant to the ACA.” *Id.* In other words, less than 4% of individuals ordered removed to Ecuador could be physically removed there in any given year. And in practice, immigration judges have ordered more than 15,000 asylum seekers removed to third countries but have only carried out 100-200 of those removals. Because this “success” rate of about 1% shows that “there is no significant likelihood of removal in the reasonably foreseeable future,” *Zadvydas v. Davis*, 533 U.S. 678 (2001), this Court should order Mr. Aguilar-Gonzalez’s release.

STATEMENT OF FACTS

Mr. Aguilar-Gonzalez was born in Venezuela. *See* Exhibit B, Declaration of Derick Jose Aguilar-Gonzalez at ¶ 1. He entered the United States around September 20, 2022, to apply for asylum. *Id.* at ¶ 1. Officials initially took him into custody and then paroled him into the country. *Id.* at ¶ 1.

After he was paroled, Mr. Aguilar-Gonzalez was placed in removal proceedings and applied for asylum. *Id.* at ¶ 2. He attended all of his immigration

1 court hearings and received a work permit and a Social Security number. *Id.* at
2 ¶ 2.

3 In September 2025, Mr. Aguilar-Gonzalez was arrested and taken to Otay
4 Mesa Detention Center. *Id.* at ¶ 3. He continued to apply for asylum, but the
5 government lawyer moved to pretermitt his application for asylum and order him
6 removed to Ecuador. *Id.* at ¶ 3. The immigration judge granted this motion and
7 ordered him removed to Ecuador on March 16, 2026. *Id.* at ¶ 3.

8 Mr. Aguilar-Gonzalez tried to appeal, but his immigration lawyer did not
9 mail his appeal in time. *Id.* at ¶ 4. It arrived several days late, and the BIA refused
10 to accept it. *Id.* at ¶ 4. Thus, the BIA said that his removal order was final as of
11 March 16, 2026. *Id.* at ¶ 4.

12 Although Mr. Aguilar-Gonzalez's order of removal became final over three
13 months ago, ICE has not removed him to Ecuador. *Id.* at ¶ 5.

14 CLAIM FOR RELIEF

15 This Court should grant this petition and order Mr. Aguilar-Gonzalez's
16 immediate release. *Zadvydas v. Davis* holds that immigration statutes do not
17 authorize the government to detain immigrants for whom there is "no significant
18 likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701
19 (2001). Because Mr. Aguilar-Gonzalez is a citizen of Venezuela but was ordered
20 removed to Ecuador under ACA, and because only about 1% of individuals are
21 actually being removed to ACA countries such as Ecuador, he can make this
22 showing.

23 I. Count One: Petitioner's detention violates *Zadvydas* and 8 U.S.C. 24 § 1231.

25 A. Legal background

26 Mr. Aguilar-Gonzalez's continued incarceration violates the statute
27 authorizing detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678
28 (2001), the Supreme Court considered a problem affecting similarly situated

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

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

18 As an initial matter, *Zadvydas* held that detention is “presumptively
19 reasonable” for at least six months. *Id.* at 701. This acts as a kind of grace period
20 for effectuating removals.

21 Following the six-month grace period, courts must use a burden-shifting
22 framework to decide whether detention remains authorized. First, the petitioner
23 must make a prima facie case for relief: She must prove that there is “good reason
24 to believe that there is no significant likelihood of removal in the reasonably
25 foreseeable future.” *Id.*

26 If she does so, the burden shifts to “the Government [to] respond with
27 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 **B. There is good reason to believe there is no significant likelihood**
 4 **of removal to Ecuador under the Asylum Cooperative**
 5 **Agreement.**

6 Respondents agree that Mr. Aguilar-Gonzalez’s order of removal “became
 7 administratively final on March 16, 2026.” ECF No. 4 at 1. Thus, the 90-day
 8 mandatory detention removal period for Mr. Aguilar-Gonzalez expired several
 9 weeks ago on June 14, 2026. Accordingly, this Court must release Mr. Aguilar-
 10 Gonzalez if he can show there is “good reason to believe that there is no
 11 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
 12 533 U.S. at 701. He can.

13 First, the text of the Asylum Cooperative Agreement between the United
 14 States and Ecuador does not state how many deportees Ecuador shall accept per
 15 year. *See* Agreement Between the Government of the United States of America
 16 and the Government of the Republic of Ecuador Relating to the Transfer of Third-
 17 Country Nationals to Ecuador, 90 Fed. Reg. 51376 (Nov. 17, 2025).¹ However,
 18 “[p]revious declarations indicated that Ecuador may receive 300 refugees”
 19 annually from the United States under this agreement.² But since November 2025,
 20 immigration judges have pretermitted the asylum applications of 8,675
 21 individuals and ordered them removed to Ecuador.³ In other words, even if
 22 Ecuador accepted the maximum number of annual deportees, only 3.4% of people
 23 ordered removed to Ecuador would actually be physically deported there.

24 _____
 25 ¹ <https://immpolicytracking.org/policies/united-states-and-ecuador-sign-asylum-cooperative-agreement/#/tab-policy-documents>.

26 ² <https://mixedmigration.org/articles/the-us-seeks-to-remake-cooperation-on-migration-through-bilateral-agreements/>.

27 ³ <https://www.refugeesinternational.org/statements-and-news/human-rights-first-and-refugees-international-third-country-deportation-watch-details-scope-secrecy-and-human-toll-of-third-country-transfer-agreements/>.

1 But reports suggest that Ecuador is actually accepting far fewer. “Most third
 2 countries have received only a few dozen people or fewer, on flights without a regular
 3 cadence.”⁴ According to a Human Rights First and Refugees International report,
 4 immigration judges have “[p]retermitted more than 15,000 individual asylum
 5 claims under the Asylum Cooperative Agreements (ACA)” but only physically
 6 deported “between 100-200 people to ACA countries.”⁵ This means that a person
 7 ordered deported to an ACA country has a .6% and 1.3% chance of actually being
 8 removed there. This easily satisfies the burden of showing that there is “no
 9 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
 10 533 U.S. at 701.

11 Importantly, Mr. Aguilar-Gonzalez was *only* ordered removed to Ecuador,
 12 not to Venezuela—the country of his citizenship and the only country that would
 13 likely accept him. *See* ECF 4-3 at 4. Because Mr. Aguilar-Gonzalez has thus
 14 shown there is “good reason to believe that there is no significant likelihood of
 15 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701, this
 16 Court should order his immediate release.

17 **II. This Court must hold an evidentiary hearing on any disputed facts.**

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

21 **III. Prayer for relief**

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

- 23 1. Order Respondents to immediately release Petitioner from custody;

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 25
 26 ⁴ <https://www.thirdcountrydeportationwatch.org/>.

27 ⁵ <https://www.humanrightsfirst.org/library/human-rights-first-and-refugees-international-third-country-deportation-watch-details-scope-secrecy-and-human-toll-of-third-country-transfer-agreements>.

2. Enjoin Respondents from re-detaining Petitioner unless and until ICE obtains a travel document for his removal; and
3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: July 2, 2026

/s/ Kara Hartzler

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