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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YASMANY CASTRO-NAPOLES,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, 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.: '26CV3212 LEK AHG

Petition for Writ of Habeas Corpus

[28 U.S.C. § 2241]

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[1] Federal Defenders of San Diego, Inc., is filing the instant petition with 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 Mr. Castro-Napoles is a Cuban national that was ordered removed four
3 years ago. But he could not be physically removed to Cuba. In May of 2026, he
4 was detained when he and his friend mistakenly drove to a military base.
5 Mr. Castro-Napoles has had no information about whether ICE has sought a
6 travel document or even begun the process of seeking his deportation to Cuba.
7 Worse yet, on July 9, 2025, ICE adopted a new policy permitting removals to
8 third countries with no notice, six hours' notice, or 24 hours' notice depending on
9 the circumstances, providing no meaningful opportunity to make a fear-based
10 claim against removal.
11 Mr. Castro-Napoles's detention violates his statutory and regulatory rights,
12 *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. His detention
13 violates his statutory and regulatory rights, *Zadvydas v. Davis*, 533 U.S. 678
14 (2001), and the Fifth Amendment. Courts in this district have agreed in similar
15 circumstances as to each of his claims. Specifically:
16 *(1) Zadvydas violations:* Petitioner must also be released under *Zadvydas*
17 because—having proved unable to remove him in the past—the government
18 cannot show that there is a "significant likelihood of removal in the reasonably
19 foreseeable future." *Id.* at 701. *See, e.g.*, *Conchas-Valdez*, 2025 WL 2884822, No.
20 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Alic v. Dep't of Homeland*
21 *Sec./Immigr. Customs Enf't*, No. 25-CV-01749-AJB-BLM, 2025 WL 2799679
22 (S.D. Cal. Sept. 30, 2025); *Rebenok v. Noem*, No. 25-cv-2171-TWR, ECF No. 13
23 (S.D. Cal. Sept. 25, 2025) (granting habeas petitions releasing noncitizens due to
24 *Zadvydas* violations).
25 *(2) Regulatory and due process violations:* Petitioner must be released
26 because ICE's failure to follow its own regulations about notice and an
27 opportunity to be heard violate due process. *See, e.g.*, *See Tran v. Noem*, 25-cv-
28 02391-BTM-BLM (S.D. Cal. Oct. 27, 2025); *McSweeney v. Warden*, 25-cv-

02488-RBM-DEB (S.D. Cal. Oct. 24, 2025); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *Ho v. Noem*, 25-cv-02453-BAS-BLM, ECF 11 (Oct. 10, 2025) (all either granting temporary restraining orders releasing noncitizens, or granting habeas petitions outright, due to ICE regulatory violations during recent re-detentions of released noncitizens previously ordered removed).

(3) *Statutory violations of the removal statute*: As the Supreme Court has made clear, 8 U.S.C. § 1231(b)(2) "provides four consecutive removal commands." *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005). First, "the Attorney General shall remove the alien to the country the alien so designates." 8 U.S.C. § 1231(b)(2)(A)(ii). The designated country is Cuba. The Attorney General may "disregard [that] designation" only if certain criteria are met. 8 U.S.C. § 1231(b)(2)(C)(i). Here, ICE did not follow the consecutive commands of § 1231(b)(2) by seeking to removal of Mr. Castro-Napoles to a third country prior the designated country of Cuba. *See Farah v. I.N.S.*, No. CIV. 02-4725DSDRLE, 2002 WL 31866481, at *4 (D. Minn. Dec. 20, 2002) (granting a habeas petition and prohibiting removal in violation of § 1231(b)(2)).

(4) Third-country removal due process violations: This Court should enjoin ICE from removing Petitioner to a third country without providing an opportunity to assert fear of persecution or torture before an immigration judge. *See, e.g.*, *Rebenok v. Noem*, No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v. Noem*, 2025

WL 2770623 at *3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025); *Ho v. Noem*, 25-cv-02453-BAS-BLM, ECF 11 (Oct. 10, 2025) (all either granting temporary restraining orders or habeas petitions ordering the government to not remove petitioners to third countries pending litigation or reopening of their immigration cases).

This Court should grant this habeas petition and issue appropriate injunctive relief on all four grounds addressed below.

STATEMENT OF FACTS

I. ICE has not been able to remove Mr. Castro-Napoles to Cuba.

Mr. Castro-Napoles was born in Cuba and entered the United States in 2019. Exh. A, Castro-Napoles Decl. at ¶ 1-2. On July 21, 2022, an immigration judge ordered him removed to Cuba. *Id.* at ¶ 3.[2] Because he could not be removed, he was not detained and was living in Houston, Texas. *Id.*

On May 8, 2026, Mr. Castro-Napoles was a passenger in a car when his friend accidently drove to the entrance of a military base. *Id.* at ¶ 4. He was detained and taken by ICE. *Id.* The only explanation they gave him was that there was an order of removal. *Id.*

Since Mr. Castro-Napoles's detention at Otay Mesa Detention Center, he has not spoken to any ICE agent about what they plan to do with him. *Id.* at ¶5. He has not heard when or when they intend to remove him. *Id.*

[2] EOIR, *Automated Case Information*, https://acis.eoir.justice.gov/en/.

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II. The repatriation agreement with Cuba allows it to use its discretion in accepting Cuban nationals that entered the United States prior to 2017 on a case-by-case basis.

Prior to 2017, there was no repatriation agreement between the United States and Cuba. *Clark v. Martinez*, 543 U.S. 371, 386 (2005). On January 12, 2017, the United States and Cuba signed a joint statement ("2017 Joint Statement") by which Cuba agreed to the repatriation of some Cuban nationals. *Cuba (17-112) – Joint Statement Concerning Normalization of Migration Procedures*, Jan. 12, 2017, available at https://www.state.gov/17-112/. The 2017 Joint Statement required Cuba to accept some Cuban nationals but allowed it to use its discretion to accept others on a case-by-case basis.

Specifically, under the agreement Cuba "shall receive back all Cuban nationals who after the signing" of the 2017 Joint Statement "found by the competent authorities of the United States to have tried to irregularly enter or remain in that country in violation of United States law." *Id.* at 2. The agreement also stated that Cuba "shall accept individuals included in the list of 2,746 to be returned in accordance with the Joint Communiqué of December 14, 1984," who came to the United States in 1980 via the Port of Mariel. *Id.* Cuba is not required to accept a third group of Cuban Nationals. Under the 2017 Joint Statement, Cuba agrees to "consider and decide on a case-by-case basis the return of other Cuban nationals presently in the United States of America who before the signing of this Joint Statement had been found by the competent authorities of the United States to have tried to irregularly enter or remain in that country in violation of United States law." *Id.* Mr. Castro-Napoles falls into this last group of Cuban Nationals since he was found to "have tried to irregularly enter or remain in that country" prior to the 2017 Joint Statement.

Moreover, despite the 2017 Joint Statement, a 2019 report by the Office of Inspector General classified Cuba as an "uncooperative country" in 2017, 2018,

and 2019 based on its failure to provide travel documents on a timely basis. Department of Homeland Security, Office of Inspector General, Report No. OIG-19-28, *ICE Faces Barriers in Timely Repatriation of Detained Aliens* (Mar. 11, 2019), available at https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf at pages 6-7, 10, 29. In May of 2018, Cuba was one of nine countries with the uncooperative categorization. *Id.* at 10.

Based on the facts of Mr. Castro-Napoles's individual case, it is evident that ICE has not obtained travel documents from Cuba. This is evident because ICE has had 4 years to obtain travel documents and has not done so.

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

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

The Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa

Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men to South Sudan. *See* Wong, *supra*. On July 15, ICE deported five men to the tiny African nation of Eswatini where they are reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human rights abuses or instability. For instance, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first. *See* Wong, *supra*.

On June 23 and July 3, 2025, the Supreme Court issued a stay of a national class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional requirements before removing an individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).[3] On July 9, 2025, ICE rescinded previous guidance meant to give immigrants a "'meaningful opportunity' to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country" like the ones just described. Exh. B ("Third Country Removal Policy").

[3] Though the Supreme Court's order was unreasoned, the dissent noted that the government had sought a stay based on procedural arguments applicable only to class actions. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2160 (2025) (Sotomayor, J., dissenting). Thus, "even if the Government [was] correct that 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 Mr. Izquierdo-Matos. *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. Aug. 21, 2025).

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

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

CLAIMS FOR RELIEF

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

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

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

I. Claim 1: Mr. Castro-Napoles's detention violates *Zadvydas* and 8 U.S.C. § 1231.

A. Legal background

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Castro-Napoles: Federal law requires ICE to detain an immigrant during the "removal period," which typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation agreement," or their countries "refuse to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years,

decades, or even the rest of their lives. If federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

Zadvydas held that § 1231(a)(6) presumptively permits the government to detain an immigrant for 180 days after his or her removal order becomes final. After those 180 days have passed, the immigrant must be released unless his or her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six months have passed, the petitioner must only make a prima facie case for relief—there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* Then the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.* Using this framework, Mr. Castro-Napoles can make all the threshold showings needed to shift the burden to the government.

B. The six-month grace period has expired.

The six-month grace period has long since ended. The *Zadvydas* grace period is linked to the date the final order of removal is issued. It lasts for "*six months* after a final order of removal—that is, *three months* after the statutory removal period has ended." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Indeed, the statute defining the beginning of the removal period is linked to the latest of three dates, all of which relevant here are tied to when the removal order is issued. 8 U.S.C. § 1231(a)(1)(B).[4]

[4] Those dates are, specifically, (1) "[t]he date the order of removal becomes administratively final;" (2) "[i]f the removal order is judicially reviewed and if a 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." *Id.*

Here, Mr. Castro-Napoles's order of removal was entered in July of 2022. Exh. A at ¶ 2.[5] Accordingly, his 90-day removal period began then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in **January 2023**, three months after the removal period ended. *See, e.g.*, *Tadros v. Noem*, 2025 WL 1678501, No. 25-cv-4108(EP), *2–*3. ICE will also, of course, have had almost 4 years since his removal order was issued to remove him.[6]

C. The history of Cuba being uncooperative with repatriation provides very good reason to believe that Mr. Castro-Napoles will not likely be removed in the reasonably foreseeable future.

Because the six-month grace period has passed, this Court must evaluate Mr. Castro-Napoles's *Zadvydas* claim using the burden-shifting framework. At

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[5] EOIR, *Automated Case Information*, https://acis.eoir.justice.gov/en/.

[6] The government has sometimes argued that release and rearrest resets the six-month grace period completely, taking the clock back to zero. "Courts . . . broadly agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases).

It has also sometimes argued that rearrest creates a new three-month grace period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). "Pursuant to the statute, the removal period, and in turn the [six-month] presumptively reasonable period, begins from the latest of 'the date the order of removal becomes administratively final,' the date of a reviewing court's final order where the removal order is judicially removed <u>and</u> that court orders a stay of removal, or the alien's release from detention or confinement where he was detained for reasons other than immigration purposes at the time of his final order of removal." *Id.* None of these statutory starting points have anything to do with whether or when an immigrant is detained. *See id.* Because the statutorily-defined removal period has nothing to do with release and rearrest, releasing and rearresting the immigrant cannot reset the removal period.

1 the first stage of the framework, Mr. Castro-Napoles must "provide[] good reason
2 to believe that there is no significant likelihood of removal in the reasonably
3 foreseeable future." *Zadvydas*, 533 U.S. at 701. This standard can be broken down
4 into three parts.
5 **"Good reason to believe."** The "good reason to believe" standard is a
6 relatively forgiving one. "A petitioner need not establish that there exists no
7 possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
8 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "'[g]ood reason to
9 believe' . . . place a burden upon the detainee to demonstrate no reasonably
10 foreseeable, significant likelihood of removal or show that his detention is
11 indefinite; it is something less than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW,
12 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
13 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
14 Petitioners need only give a "good reason"—not prove anything to a certainty.
15 **"Significant likelihood of removal."** This component focuses on whether
16 Mr. Castro-Napoles will likely be removed: Continued detention is permissible
17 only if it is "significant[ly] like[ly]" that ICE will be able to remove him.
18 *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the *existence* of
19 untapped possibilities, but also [the] probability of *success* in such possibilities."
20 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis
21 added). In other words, even if "there remains *some* possibility of removal," a
22 petitioner can still meet its burden if there is good reason to believe that
23 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
24 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).
25 **"In the reasonably foreseeable future."** This component of the test
26 focuses on when Mr. Castro-Napoles will likely be removed: Continued detention
27 is permissible only if removal is likely to happen "in the reasonably foreseeable
28 future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's

1 removal efforts. If the Court has "no idea of when it might reasonably expect
2 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal
3 is likely to occur—or even that it might occur—in the reasonably foreseeable
4 future." *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
5 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
6 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
7 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Castro-
8 Napoles "would *eventually* receive" a travel document, he can still meet his
9 burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v.*
10 *Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

11 Mr. Castro-Napoles readily satisfies this standard for two reasons.

12 *First*, as explained above, the 2017 Joint Statement between the United
13 States and Cuba gives Cuba the discretion to accept individuals on a case-by-case
14 basis. Even following the 2017 Joint Statement, the United States has categorized
15 Cuba as uncooperative in providing travel documents in a timely manner.

16 *Second*, Mr. Castro-Napoles's own experience bears this out. ICE has now
17 had almost four years to deport him. Yet ICE has not informed Mr. Castro-
18 Napoles of any communication with Cuba or the likelihood of obtaining travel
19 documents from Cuba.

20 Thus, Mr. Castro-Napoles has met his initial burden, and the burden shifts
21 to the government. Unless the government can prove a "significant likelihood of
22 removal in the reasonably foreseeable future," Mr. Castro-Napoles must be
23 released. *Zadvydas*, 533 U.S. at 701.
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II. Claim 2: ICE failed to comply with its own regulations before re-detaining Mr. Castro-Napoles, violating his rights under the Fifth Amendment and the Administrative Procedures Act.

Two regulations establish the process due to someone who is re-detained in immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping framework to persons released upon good reason to believe that they will not be removed in the reasonably foreseeable future, as Mr. Castro-Napoles was. *See Phan v. Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025) (explaining this regulatory framework and granting a habeas petition for ICE's failure to follow these regulations); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 at *2 (same).

These regulations permit an official to "return [the person] to custody" only when the person "violate[d] any of the conditions of release," 8 C.F.R. §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," and makes that finding "on account of changed circumstances," § 241.13(i)(2).

No matter the reason for re-detention, the re-detained person is entitled to certain procedural protections. For one, "'[u]pon revocation,' the noncitizen 'will be notified of the reasons for revocation of his or her release or parole.'" *Phan*, 2025 WL 2898977 at *3, *4 (quoting §§ 241.4(l)(1), 241.13(i)(3)). Further, the person "'will be afforded an initial informal interview promptly after his or her return' to be given 'an opportunity to respond to the reasons for revocation stated in the notification.'" *Id.*

In the case of someone released under § 241.13(i), the regulations also explicitly require the interviewer to allow the re-detained person to "submit any evidence or information that he or she believes shows there is no significant

1 likelihood he or she be removed in the reasonably foreseeable future, or that he or
2 she has not violated the order of supervision." § 241.13(i)(3).

3 ICE is required to follow its own regulations. *United States ex rel. Accardi*
4 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,
5 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to
6 abide by certain internal policies is well-established."). A court may review a re-
7 detention decision for compliance with the regulations, and "where ICE fails to
8 follow its own regulations in revoking release, the detention is unlawful and the
9 petitioner's release must be ordered." *Rokhfirooz*, 2025 WL 2646165 at *4
10 (collecting cases); *accord Phan*, 2025 WL 2898977 at *5.

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

12 First, ICE did not identify a proper reason under the regulations to re-detain
13 Mr. Castro-Napoles. There was apparently no determination before or at his arrest
14 that there are "changed circumstances" such that there is "a significant likelihood
15 that [Mr. Castro-Napoles] may be removed in the reasonably foreseeable future."
16 § 241.13(i)(2).

17 Second, ICE did not notify Mr. Castro-Napoles of the reasons for his re-
18 detention upon revocation of release. *See* §§ 241.4(l)(1), 241.13(i)(3). He was re-
19 detained when he was a passenger in car. The only basis for the detention was that
20 there is a removal order from four years prior.

21 Third, based on information and belief, Mr. Castro-Napoles has received
22 the informal interview required by regulation. Nor has he been afforded a
23 meaningful opportunity to respond to the reasons for revocation or submit
24 evidence rebutting his re-detention. No one from ICE has ever invited him to
25 contest his detention.

26 Numerous courts have released re-detained immigrants after finding that
27 ICE failed to comply with applicable regulations this summer and fall. *See, e.g.*,
28 *Bui v. Warden*, 25-cv-02111-JES-DEB, Dkt. No. 18 (S.D. Cal. Oct. 23, 2025);

1 *Khambounheuang v. Noem*, 25-cv-02575-JO-SBC, Dkt. No. 17 (S.D. Cal. Oct.
2 23, 2025); *Phan*, 2025 WL 2898977 at *5; *Rokhfirooz*, 2025 WL 2646165;
3 *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Ceesay v.*
4 *Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.
5 Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387
6 (D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352,
7 at *7–9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA,
8 2025 WL 2430267, at *10–12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No.
9 9:25-CV-00182-MJT, 2025 WL 2491782, at *2–3 (E.D. Tex. July 18, 2025);
10 *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D.
11 Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at *2; *M.Q. v. United States*, 2025
12 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025).

13 "[B]ecause officials did not properly revoke petitioner's release pursuant to
14 the applicable regulations, that revocation has no effect, and [Mr. Castro-Napoles]
15 is entitled to his release (subject to the same Order of Supervision that governed
16 his most recent release)." *Liu*, 2025 WL 1696526, at *3.

17 **III. Claim 3: ICE may not remove Mr. Castro-Napoles to a third**
18 **country without following the mandatory consecutive procedures of**
19 **8 U.S.C. § 1231(b)(2).**

20 The government may not legally pursue its plan to remove Mr. Castro-
21 Napoles to a third country, because 8 U.S.C. § 1231(b)(2) requires that ICE first
22 seek removal to the Cuba.

23 "Th[at] statute . . . provides four consecutive removal commands." *Jama v.*
24 *Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005). First, "the Attorney General
25 shall remove the alien to the country the alien so designates." 8 U.S.C.
26 § 1231(b)(2)(A)(ii). Here, the designated country is Cuba.

27 The Attorney General may "disregard [that] designation if" one of four
28 criteria are met, but none are here. Mr. Castro-Napoles did not "fail[] to designate

1 a country promptly." 8 U.S.C. § 1231(b)(2)(C)(i). ICE also has not presented any
2 evidence that Cuba has failed to respond to a request to remove Mr. Castro-Napoles
3 to that country. § 1231(b)(2)(C)(ii)-(iv).
4 This Court should therefore order that Mr. Castro-Napoles cannot be
5 removed to a third country prior to the government making efforts for his
6 removal to Cuba. *See Farah v. I.N.S.*, No. CIV. 02-4725DSDRLE, 2002 WL
7 31866481, at *4 (D. Minn. Dec. 20, 2002) (granting a habeas petition and
8 prohibiting removal in violation of § 1231(b)(2)); *see also Jama*, 543 U.S. at
9 338 (reviewing a § 1231(b)(2) argument set forth in a habeas petition).
10 **IV. Claim 4: ICE may not remove Mr. Castro-Napoles to a third**
11 **country without adequate notice and an opportunity to be heard.**
12 In addition to unlawfully detaining him and the failure to comply with
13 regulations and statute, ICE's policies threaten his removal to a third country
14 without adequate notice and an opportunity to be heard. These policies violate the
15 Fifth Amendment, the Convention Against Torture, and implementing regulations.
16
17 **A. Legal background**
U.S. law enshrines protections against dangerous and life-threatening
18 removal decisions. By statute, the government is prohibited from removing an
19 immigrant to any third country where they may be persecuted or tortured, a form
20 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The
21 government "may not remove [a noncitizen] to a country if the Attorney General
22 decides that the [noncitizen's] life or freedom would be threatened in that country
23 because of the [noncitizen's] race, religion, nationality, membership in a particular
24 social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16.
25 Withholding of removal is a mandatory protection.
26 Similarly, Congress codified protections enshrined in the CAT prohibiting
27 the government from removing a person to a country where they would be tortured.
28 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of

1 the United States not to expel, extradite, or otherwise effect the involuntary return
2 of any person to a country in which there are substantial grounds for believing the
3 person would be in danger of being subjected to torture, regardless of whether the
4 person is physically present in the United States."); 28 C.F.R. § 200.1; *id.*
5 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.
6 To comport with the requirements of due process, the government must
7 provide notice of the third country removal and an opportunity to respond. Due
8 process requires "written notice of the country being designated" and "the statutory
9 basis for the designation, i.e., the applicable subsection of § 1231(b)(2)." *Aden v.*
10 *Nielsen*, 409 F. Supp. 3d 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S.*
11 *Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D.
12 Mass. May 21, 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).
13 The government must also "ask the noncitizen whether he or she fears
14 persecution or harm upon removal to the designated country and memorialize in
15 writing the noncitizen's response. This requirement ensures DHS will obtain the
16 necessary information from the noncitizen to comply with section 1231(b)(3) and
17 avoids [a dispute about what the officer and noncitizen said]." *Aden*, 409 F. Supp.
18 3d at 1019. "Failing to notify individuals who are subject to deportation that they
19 have the right to apply for asylum in the United States and for withholding of
20 deportation to the country to which they will be deported violates both INS
21 regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at
22 1041.
23 If the noncitizen claims fear, measures must be taken to ensure that the
24 noncitizen can seek asylum, withholding, and relief under CAT before an
25 immigration judge in reopened removal proceedings. The amount and type of
26 notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and
27 circumstances, he would have a reasonable opportunity to raise and pursue his
28 claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009

(citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen the noncitizen's immigration proceedings if the individual demonstrates "reasonable fear" and to provide "a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings" if the noncitizen is found to not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

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

B. The June 6, 2025 memo's removal policies violate the Fifth Amendment, 8 U.S.C. § 1231, the Conviction Against Torture, and Implementing Regulations.

The policies in the June 6, 2025 memo do not adhere to these requirements. First, under the policy, ICE need not give immigrants *any* notice or *any* opportunity to be heard before removing them to a country that—in the State Department's estimation—has provided "credible" "assurances" against persecution and torture. Exh. B. By depriving immigrants of any chance to challenge the State Department's view, this policy violates "[t]he essence of due process," "the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

Second, even when the government has obtained no credible assurances against persecution and torture, the government can still remove the person with

between 6 and 24 hours' notice, depending on the circumstances. Exh. B. Practically speaking, there is not nearly enough time for a detained person to assess their risk in the third country and martial evidence to support any credible fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may know nothing about a third country, like Eswatini or South Sudan, when they are scheduled for removal there. Yet if given the opportunity to investigate conditions, immigrants would find credible reasons to fear persecution or torture—like patterns of keeping deportees indefinitely and without charge in solitary confinement or extreme instability raising a high likelihood of death—in many of the third countries that have agreed to removal thus far. Due process requires an adequate chance to identify and raise these threats to health and life. This Court must prohibit the government from removing Mr. Castro-Napoles without these due process safeguards.

V. This Court must hold an evidentiary hearing on any disputed facts.

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

VI. Prayer for relief

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

1. Order Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(*l*), 241.13(i), and any other applicable statutory and regulatory procedures;

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4. Enjoin Respondents from removing Petitioner to any country other than Cuba, without first following the consecutive procedures of 8 U.S.C. § 1231(b)(2).
5. Enjoin Respondents from removing Petitioner to any country other than Cuba, unless they provide the following process, *see 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):
   a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;
   b. a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal;
   c. if Petitioner is found to have demonstrated "reasonable fear" of removal to the country, Respondents must move to reopen Petitioner's immigration proceedings;
   d. if Petitioner is not found to have demonstrated a "reasonable fear" of removal to the country, a meaningful opportunity, and a minimum of fifteen days, for the Petitioner to seek reopening of his immigration proceedings.
6. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: May 22, 2026

s/ Zandra L. Lopez

Zandra L. Lopez
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Castro
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: May 22, 2026

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

EXHIBIT

A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YASMANY CASTRO-NAPOLES,

Petitioner,

v.

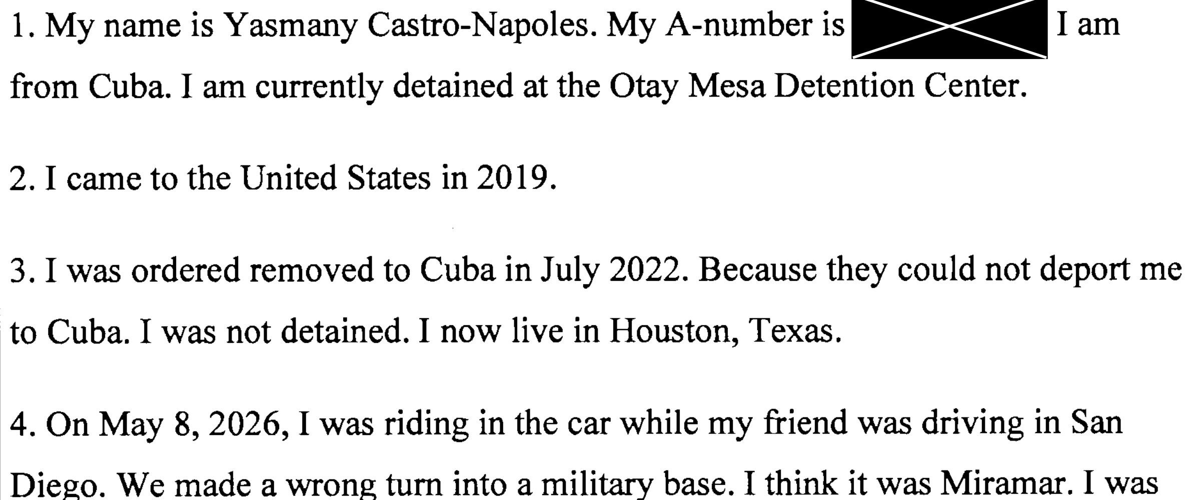
MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Case No.:

Declaration of Mr. Castro-Napoles

I declare the following is true and correct under penalty of perjury:



1. My name is Yasmany Castro-Napoles. My A-number is [redacted] I am from Cuba. I am currently detained at the Otay Mesa Detention Center.

2. I came to the United States in 2019.

3. I was ordered removed to Cuba in July 2022. Because they could not deport me to Cuba. I was not detained. I now live in Houston, Texas.

4. On May 8, 2026, I was riding in the car while my friend was driving in San Diego. We made a wrong turn into a military base. I think it was Miramar. I was

1 arrested and brought to immigration detention. I was only told that there is an
2 order of deportation for me.
3
4 5. Since my detention, I have not spoken to any ICE agents.
5
6 6. I cannot afford an attorney. I do not have a fix income. I do not have savings or property.
7
8 7. Each line of this declaration has been read to me in Spanish. I understand and
9 agree with the statements contained herein.
10
11
12 I, Zandra Lopez, declare under penalty of perjury that I read every line of this
13 declaration to Yasmany Castro-Napoles, and he confirmed that it was true and
14 correct.
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EXHIBIT

B

PLAINTIFFS' EXHIBIT NO. 2
CASE NO. PX 25-951
IDENTIFICATION: JUL 10 2025
ADMITTED: JUL 10 2025

To All ICE Employees
July 9, 2025

Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the district court's nationwide preliminary injunction in *D.V.D. v. Department of Homeland Security*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required certain procedures related to providing a "meaningful opportunity" to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country. Accordingly, all previous guidance implementing the district court's preliminary injunction related the third country removals issued in *D.V.D.* is hereby rescinded. Absent additional action by the Supreme Court, the stay will remain in place until any writ of certiorari is denied or a judgment following any decision issues.

Effective immediately, when seeking to remove an alien with a final order of removal—other than an expedited removal order under section 235(b) of the Immigration and Nationality Act (INA)—to an alternative country as identified in section 241(b)(1)(C) of the INA, ICE must adhere to Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, *Guidance Regarding Third Country Removals*, as detailed below. A "third country" or "alternative country" refers to a country other than that specifically referenced in the order of removal.

If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures. ICE will seek written confirmation from the Department of State that such diplomatic assurances were received and determined to be credible. HSI and ERO will be made aware of any such assurances. In all other cases, ICE must comply with the following procedures:

- An ERO officer will serve on the alien the attached Notice of Removal. The notice includes the intended country of removal and will be read to the alien in a language he or she understands.
- ERO will not affirmatively ask whether the alien is afraid of being removed to the country of removal.
- ERO will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal.
    - Any determination to execute a removal order under exigent circumstances less than 24 hours following service of the Notice of Removal must be approved by the DHS General Counsel, or the Principal Legal Advisor where the DHS General Counsel is not available.

- If the alien does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, ERO may proceed with removal to the country identified on the notice. ERO should check all systems for motions as close in time as possible to removal.
- If the alien does affirmatively state a fear if removed to the country of removal listed on the Notice of Removal, ERO will refer the case to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under section 241(b)(3) of the INA and the Convention Against Torture (CAT). USCIS will generally screen the alien within 24 hours of referral.
    - USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.
    - If USCIS determines that the alien has not met this standard, the alien will be removed.
    - If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the immigration court, USCIS will refer the matter to the immigration court for further proceedings. In cases where the alien was previously in proceedings before the immigration court, USCIS will notify the referring immigration officer of its finding, and the immigration officer will inform ICE. In such cases, ERO will alert their local Office of the Principal Legal Advisor (OPLA) Field Location to file a motion to reopen with the immigration court or the Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under section 241(b)(3) of the INA and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.

Notably, the Supreme Court's stay of removal does not alter any decisions issued by any other courts as to individual aliens regarding the process that must be provided before removing that alien to a third country.

Please direct any questions about this guidance to your OPLA field location.

Thank you for all you continue to do for the agency.

Todd M. Lyons
Acting Director
U.S. Immigration and Customs Enforcement

Attachments:

- U.S. Supreme Court Order
- Secretary Noem's Memorandum
- Notice of Removal