

1 Zandra Luz Lopez
2 California State Bar. No. 216567
3 Federal Defenders of San Diego, Inc.
4 225 Broadway, Suite 900
5 San Diego, California 92101-5030
6 Telephone: (619) 234-8467
7 Zandra_Lopez@fd.org

8 Attorneys for Mr. Hildebrando Martinez

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 SERGIO HILDEBRANDO
12 MARTINEZ,

13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, Secretary
16 of the Department of Homeland
17 Security,

18 Respondents.

Case No.: 26-cv-03799-CAB-
JLB

Traverse

1 **I. Introduction**

2 For 13 years, Mr. Hildebrando Martinez has been living in the
3 United States after an immigration judge granted him relief under the
4 Convention Against Torture. For 13 years, the government has not
5 been able to remove him to a third country. And for those 13 years,
6 Petitioner has not violated any immigration or criminal laws. Despite
7 not having any country to remove him to, Petitioner's immigration
8 supervision was revoked and he sits detained in immigration custody
9 for over three months.

10 This Court should grant the Petition on all three grounds.

11 First, the Court should grant immediate release on *Zadvydas*
12 grounds. The government has not yet identified a third country for
13 removal. It's only response the *Zadvydas* claim is that Petitioner is
14 obstructing his removal to the third country of Mexico. But the
15 government does not engage with the numerous cases from across the
16 country, cited in the Petition, that have consistently stated that Mexico
17 will only accept those that willingly go to Mexico. It does not rebut the
18 arguments in the Petition that a person cannot obstruct their removal
19 by simply stating the truth. The government also does not engage with
20 the fact that Petitioner has expressed legitimate concerns about
21 whether removal to Mexico would result in his re foulment to El
22 Salvador. Because its now been 13 years since the removal order and
23 three months since his re-detention and the government still does not
24 know where he will be sent to, this Court should grant immediate
25 release.

26 Second, the government's response does not rebut that ICE
27 committed regulatory and due process violations in the course of re-
28 detaining Petitioner. The government does not point to any violation of

1 supervision or changed circumstances at the time of revocation that
2 justified detention. In fact, the evidence shows that Petitioner cannot
3 be removed to El Salvador because he was granted CAT relief. And at
4 the time of the revocation, the government had not even reached out to
5 any third country for removal.

6 Finally, if—despite all evidence to the contrary—ICE is able to
7 remove Petitioner to a third country, ICE must at a minimum give him
8 the process set forth in *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV
9 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025).

10 Twenty-four hours’ notice is not near enough to satisfy the
11 Constitution.

12 This Court should therefore grant this petition on all three
13 counts. This Court should order immediate release and order that ICE
14 provide Petitioner due process before removing him to a third country
15 in the future.

16 II. Argument

17 A. Count 1: Petitioner’s yearlong post removal detention 18 violates *Zadvydas* and 8 U.S.C. § 1231.

19 1. The six-month grace period has long expired.

20 In his Petition, Mr. Hildebrando Martinez argued that the six-
21 month grace period under *Zadvydas* has long since ended following his
22 order of removal and grant of deferral of removal to El Salvador under
23 Convention Against Torture. ECF 1 at 10. The government’s return does
24 not say anything about this and thus does not dispute the passing of the
25 grace period.

26 Petitioner’s continued detention violates 8 U.S.C. § 1231 as
27 interpreted in *Zadvydas*, because there is no significant likelihood of
28 Petitioner’s removal in the reasonably foreseeable future.

2. **The government provides no evidence that Petitioner can be removed to El Salvador, Mexico, or any other country.**

Mr. Hildebrando Martinez's petition provided good reason to think that he would not be removed in the reasonably foreseeable future, because the evidence showed that he could not be removed to El Salvador or a third country. Petitioner cannot be removed to El Salvador because he received relief under the Convention Against Torture.

And the government does not even attempt to dispute that Mexico will accept only those who voluntarily agree to go there. Petition, ECF No. 1 at 12-13. District courts have repeatedly recognized that the Mexican government does not accept individuals who do not willingly accept removal to Mexico. *Rea-Hernandez v. Bondi*, No. 2:25-CV-02609-TL, 2026 WL 322874, at *5 (W.D. Wash. Feb. 6, 2026); *Lambert v. Warden*, No. EP-26-CV-00427-DB, 2026 WL 926216, at *2 (W.D. Tex. Apr. 6, 2026); *Constant v. Perry*, No. 1:25-CV-1916 (RDA/WEF), 2026 WL 1463965, at *5 (E.D. Va. Feb. 11, 2026); *Jumel Coke v. Bondi*, No. C26-71, 2026 WL 221514, at *2 (W.D. Wash. Jan. 28, 2026); *Olea Sanchez v. Bondi*, No. C25-2573, 2026 WL 160882, at *3 (W.D. Wash. Jan. 21, 2026); *Suarez-Ramirez v. Bondi*, 2026 WL 115020, at *2 (D. Nev. Jan 15, 2026); *Pena-Gil v. Lyons*, 2025 WL 3268333, at *1, *3, *4 (D. Colo. Nov. 24, 2025); *see also Capote v. Warden, Glades Cnty. Det. Ctr.*, No. 2:26-CV-1348-JES-NPM, 2026 WL 1453372, at *2, n.2 (M.D. Fla. May 22, 2026); *Arenado-Borges v. Bondi*, No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *4 (W.D. Wash. Dec. 19, 2025); *Rios v. Noem et al.*, No. 3:25-cv-02866-JES-VET (S.D. Cal. 2025).¹

¹ In his declaration, Mr. Hildebrando Martinez notes sometimes he was told by ICE agents that he did not have to go to Mexico if he did not want to go and other times,

1 The government does not deny any of this. The government claims
2 only that ICE can continue to detain Petitioner while it searches for
3 another third country. ECF 6-2, Declaration of Kerry A. Irving, ¶¶ 29-
4 31. But it cannot identify a country, nor can it give an estimate as to
5 when a third country will be found. *Id.* “[M]ere generalizations, divorced
6 from any documentary support,” do not “suffice for *Zadvydas* purposes.”
7 *Azzo v. Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 353208, *4 n.3. (S.D.
8 Cal. Dec. 10, 2025). Thus, the government has not proved that Petitioner
9 will be removed in the reasonably foreseeable future. The government
10 gives generalities likely because third country removals is already
11 exceedingly unlikely, a “lack of effort only reinforces the conclusion that
12 the Petitioner’s removal is not likely to occur in the reasonably
13 foreseeable future.” *Kacanik v. Elwood*, No. CIV.A. 02-8019, 2002 WL
14 31520362, at *5 (E.D. Pa. Nov. 8, 2002); *see also Conchas-Valdez v.*
15 *Casey*, 25-cv-2469-DMS, Dkt. 9, at 6 (S.D. Cal. Oct. 6, 2025) (granting a
16 petition in part because “the Government’s minimal work on [the] case .
17 . . [did] not instill confidence that it will be able to secure [CAT]
18 Petitioner’s removal in the reasonably foreseeable future”).

19 Finally, the government appears to implicitly suggest, without
20 analysis, that the continued detention is justified because Petitioner
21 would not voluntarily go to Mexico. ECF 6 at 2. That is incorrect. True,
22 the removal period can be extended if the noncitizen “fails or refuses to
23 make timely application in good faith for travel or other documents
24 necessary to the alien’s departure or conspires or acts to prevent the
25 alien’s removal subject to an order of removal.” 8 U.S.C.

26 § 1231(a)(1)(C). But the Ninth Circuit is clear: Section “1231(a)(1)(C)

27
28 he felt forced. ECF 1 at 26, ¶¶ 7-8.

1 pertains only to *intentionally obstructionist, bad faith tactics* that are
2 designed to frustrate the government's attempts to effectuate a
3 removal order” *Diouf v. Mukasey*, 542 F.3d 1222, 1232 (9th Cir.
4 2008) (emphasis added). The government does not engage with this
5 Ninth Circuit precedent in its Return.

6 Here, Petitioner did not obstruct. Petitioner has legitimate
7 concerns about what it means to be sent to Mexico. Petitioner has
8 questions about what Petitioner's status would be in Mexico. No one
9 has told him that if he goes to Mexico, he will not be sent back to El
10 Salvador. Thus, Petitioner did not engage in bad faith obstruction by
11 truthfully notifying the authorities that Petitioner did not meet
12 Mexico's criteria for third-country deportees. Petitioner was not
13 required to pretend that Petitioner consented. Telling the truth was
14 not bad faith obstruction.

15 **B. Count 2: Government has not produced any evidence**
16 **that Petitioner's re-detention was on account of**
17 **changed circumstances or that he received a prompt**
interview in connection with his re-detention.

18 Mr. Hildebrando Martinez's petition alleged several regulatory
19 violations, any one of which would offend due process and require his
20 release. The government does not rebut any of them.

21 First, the government lacks regulatory authority to revoke a
22 noncitizen's release, and violates its own regulations, when it is unable
23 to show sufficient evidence that a determination took place *before, or at,*
24 *the time it re-detained* petitioner, based on changed circumstances,
25 which justified the revocation of petitioner's release. *Rokhfirooz v.*
26 *Larose*, 804 F. Supp. 3d 1095, 1099 (S.D. Cal. 2025); *Tran v. Noem*, No.
27 3:25-CV-02391-BTM-BLM, 2025 WL 3005347, at * 2 (S.D. Cal. Oct. 27,
28 2025); *Arowosegbe v. Mullin*, No. 26-CV-3104 JAO (JLB), 2026 WL

1 1653485, at *3 (S.D. Cal. June 8, 2026). Although Petitioner was given
2 an administrative arrest warrant at the time of his arrest [Gov Exhibit
3 4, ECF 6-1 at 12], that warrant says nothing about the reasons for
4 revoking his supervision. It does not provide any “changed
5 circumstances” such that there is now “a significant likelihood that
6 [Petitioner] may be removed in the reasonably foreseeable future.” §
7 241.13(i)(2). Instead, the warrant only states that his identity was
8 confirmed and he is removable. Gov Exhibit 4, ECF 6-1 at 12.

9
10 The government claims that Petitioner was given written notice
11 that ICE intended to remove him to Mexico. ECF 6 at 6 (citing Exhibit
12 3). But that notice was given to Petitioner two months after he was re-
13 detained. ECF 6-1 at 10. That does not equate to revocation “on account
14 of changed circumstances” based on a “determin[ation] that there is a
15 significant likelihood that the alien may be removed in the reasonably
16 foreseeable future” as required by § 241.13(i)(2). The government does
17 not provide any evidence that at the time of revocation there was a
18 determination of changed circumstances that complies with the
19 regulations.

20 Furthermore, ICE did not “afford[] [Petitioner] an opportunity to
21 respond to the reasons for revocation.” 8 C.F.R. §§ 241.13(i)(3);
22 241.4(l)(1). The government does not have documentation of an informal
23 interview occurring. But even if an informal interview was given here,
24 “Petitioner could not have responded to the reasons for revocation,
25 because they were not given.” *Sarail A. v. Bondi*, 803 F. Supp. 3d 775,
26 787 (D. Minn. 2025).

1 Proper notice and an informal interview process would have
2 provided Petitioner a chance to persuade ICE not to exercise its
3 *discretion* to detain him. 8 C.F.R. § 241.13(i)(2). He would have had a
4 strong argument against re-detention had ICE given him a prompt
5 interview. Petitioner had no immigration or criminal violations since
6 2013. He was working and supporting his young family. ECF 1 at 25.
7 And ICE was fully capable of trying to get a travel document while
8 Petitioner remained at liberty. ICE agents could simply have asked him
9 to check in whenever they need additional signatures or information
10 from him. There is therefore a “plausible scenario[] in which the outcome
11 of the proceedings would have been different if a more elaborate process
12 were provided,” *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th
13 Cir. 2007) (cleaned up): A reasonable interviewer might well have
14 decided not to detain a model releasee when detention was unnecessary
15 to effectuate ICE’s goals.
16

17 Accordingly, for this reason alone, this Court must order
18 Petitioner’s immediate release.

19 **C. Count 3: ICE may not remove Petitioner to a third**
20 **country without adequate notice and an opportunity**
21 **to be heard.**

22 The record therefore reflects that Petitioner will not be removed
23 to a third country in the reasonably foreseeable future. But ICE would
24 remove Petitioner to a third country if it could, and something could
25 unexpectedly change to make that feasible. To protect against that
26 possibility, this Court should require the government to provide the
27 notice set forth in *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-
28 10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025), before

1 removing Petitioner to any other third country. The government's
2 three arguments to the contrary are meritless.

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

15 *Second*, Petitioner can seek this relief in this habeas petition
16 despite the pending class action. The Ninth Circuit held as much in
17 analogous circumstances in *Pride v. Correa*, which permitted a
18 detained person to individually challenge his own inadequate medical
19 care despite a pending class action challenging medical care at the
20 facility. 719 F.3d 1130, 1137 (9th Cir. 2013). The Ninth Circuit
21 reasoned that "[i]ndividual claims for injunctive relief related to
22 medical treatment are discrete from the claims for systemic reform
23 addressed in" a class action. *Id.* "Consequently, where an inmate
24 brings an independent claim for injunctive relief solely on his own
25 behalf for medical care that relates to him alone, there is no
26 duplication of claims or concurrent litigation." *Id.* Otherwise,
27 individual plaintiffs "would be powerless to petition the courts for
28 redress of the violation until" a class action, which can take years to

1 finish, “has been fully resolved.” *Id.* The Court therefore rejected the
2 contention that “an individual claim for injunctive relief may be
3 delayed because a pending class action seeks systemic reform relating
4 to the same general subject matter.” *Id.*

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

17 *Third*, 24 hours’ notice is not near enough to satisfy due process.
18 Petitioner may not even have heard of the third country to which ICE
19 intends to deport him, let alone have extensive information about the
20 dangers Petitioner could face there. Petitioner will need time to
21 research the country conditions before Petitioner can make a fair,
22 intelligent decision about whether Petitioner fears removal. And if
23 Petitioner does fear removal, but ICE does not consider Petitioner’s
24 fear reasonable, petitioner will need time to obtain an attorney and file
25 a motion to reopen. That is why the court in *D.V.D.* laid out a two-step
26 timeline for receiving notice about third countries: Petitioners need 10
27 days to decide whether to raise a fear-based claim and, if ICE decides
28 that he does not have a reasonable fear, an additional 15 days to move

1 to reopen. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-
2 BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025). This Court
3 should follow suit.

4
5 Respectfully submitted,

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7 Dated: July 14, 2026, 2026

s/ Zandra L. Lopez

8 Zandra L. Lopez
9 Federal Defenders of San Diego, Inc.

10 Attorneys for Petitioner
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