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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, et al

Respondents.

CIVIL CASE NO.: 26-cv-03212-RFL-AHG

TRAVERSE

INTRODUCTION

Mr. Castro-Napoles was ordered removed to Cuba several years ago. The government's Return does not rebut that there is no significant likelihood of removal to any country in the reasonably foreseeable future. The Return also does not rebut the fact that Mr. Castro-Napoles did not receive notice or an opportunity to respond prior to revoking his release and detaining him.

Thus, this Court should therefore grant this petition and order immediate release.

ARGUMENT

I. Claim 1: Petitioner's petition is not premature and Petitioner's detention violates *Zadvydas* and 8 U.S.C. § 1231.

In its Return, the government argues that the habeas petition is premature. It also claims that even if not premature, the government can establish a significant likelihood of removal to Cuba in the reasonable foreseeable future. It makes this claim without providing any evidence.

The petition is not premature. Under the Immigration and Nationality Act, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). Relevant here, the "removal period" began on "the date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i)–(iii); s*ee also Johnson v. Guzman Chavez*, 594 U.S. 523, 534 (2021) ("[T]he removal period begins when an alien is 'ordered removed,' and the removal order becomes 'administratively final.'"). Because it is undisputed that the removal order became final almost four years ago on August 22, 2022 [ECF 5-2 at ¶8], the *Zadvydas* grace period expired six months later in February 2023.

According to the government, however, the date of the final order of removal is irrelevant and what matters is how long the person has been detained. Return, ECF 5-1 at 4. Courts have rejected that argument and have concluded that the period

after the final order of removal, while the petitioner is released from detention, is "relevant to the calculation of the *Zadvydas* grace period." *Nguyen v. Mullin*, No. 26-CV-2815-JAO (JLB), 2026 WL 1480803, at *3 (S.D. Cal. May 26, 2026). That is, the "presumptively reasonable period for Petitioner's detention expire[s] 6 months after his removal order [is] issued" and the clock does not reset with the recent detention. *Baythavong v. Noem*, 26-cv-1138-DMS-MSB, ECF 7 at *2–3 (S.D. Cal. Apr. 6, 2026); *Nguyen*, 2026 WL 1480803, at *3 (same). That is because "there is nothing in the relevant statutory language to suggest that the removal period restarts or resets automatically with another arrest or subsequent redetention," and there is nothing in *Zadvydas* directing the courts "to treat the six-month presumption of reasonableness in this manner." *Nguyen v. Noem*, No. 5:25-CV-176, 2026 WL 237282, at *7 (S.D. Tex. Jan. 28, 2026). Thus, the presumptively reasonable period for Mr. Castro-Napoles's detention expired six months after his removal order became final in 2023.

Because the presumptive period has long passed, the burden therefore shifts to the government to prove that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. The government does not meet that standard.

The government provides no evidence that Mr. Castro-Napoles can be removed to *any* country. Petitioner'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 Cuba or Mexico.

First, the government admits that he cannot be removed to Mexico because Mr. Castro-Napoles declined to accept his for removal to that country. Deportation Officer Lowry Decl. at ¶ 12. Mexico will not accept non-Mexican citizens who do not willingly want to go. *See* Petition, ECF 1 at 14; *see also Reinoso Martinez v. Noem*, 26-cv-00138-DMS-SBC, Doc. 7 (Jan. 29, 2026) (granting on *Zadvydas* grounds for Cuban national that did not agree to self-deport to Mexico); *Hernandez*

Blanco v. Noem, 26cv0425-DMS-JLB, Doc. 8 (same); *D.A.M. v. Noem*, 25-cv-02657-JLS-VET, Doc. 28 (granting on *Zadvydas* grounds for Salvadorian national that did not agree to self-deport to Mexico).

Second, there is no evidence that Mr. Castro-Napoles can be removed to Cuba. In the Petition, Mr. Castro-Napoles emphasized how repatriation to Cuba is significantly less likely for those Cubans that entered the country prior to 2017. Petition, ECF 1 at 5-6. It is true that Mr. Castro-Napoles entered after the 2017 repatriation agreement but that does not change the fact that it is highly unlikely to repatriate any Cuban at this time. That is particularly evident in this case since the government's first attempt to remove him was not to Cuba, but to Mexico. It is also evident because the government has not had any success in obtaining travel documents during the four years following the order of removal. Moreover, several courts have found that it is unlikely to remove a Cuban national to Cuba even when they entered after 2017. *See e.g., Martinez*, 2026 WL 559778, at *1 (finding no significant likelihood of removal to Cuba for petitioner who entered United States in 2021); *Boza-Rosales v. Blanche*, No. C26-0624 TSZ, 2026 WL 1412456, at *3 (W.D. Wash. May 15, 2026) (finding no significant likelihood of removal to Cuba for petitioner who entered United States in 2019).

What's more, the government provides no evidence, whatsoever, as to why it believes it will be able to remove Mr. Castro-Napoles to Cuba. DO Decl. at ¶¶ 13-15. Nor does DO Lowry provide any evidence about how long a removal to Cuba might take—no statistics, no anecdotes, no guesses, no nothing. *Id.* That, too, is fatal. "[D]etention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *6 (W.D.N.Y. Jan. 2, 2019). "The government's active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable

future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). "[I]f DHS has no idea of when it might reasonably expect [Mr. Castro-Napoles] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it *might* occur—in the reasonably foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

ICE's plan to eventually "submit a request to the Cuban government to accept [Mr. Castro-Napoles's] repatriation" [DO Lowry Decl. at ¶ 14] does not move the needle, either, because good faith efforts to secure a travel document do not satisfy *Zadvydas*. The petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun*, 2019 WL 78984, at *5. Accordingly, "the Government is required to demonstrate the likelihood of not only the *existence* of untapped possibilities, but also of a probability of success in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010). Here, then, "[w]hile the respondent asserts that [Mr. Castro-Napoles's] travel document requests" with Cuba will be lodged, "this is insufficient. It is merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably

foreseeable future." *Gilali v. Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019).

With no evidence of any likelihood of removal at any time, the government has not met its burden, and this Court must grant the petition on *Zadvydas* grounds, too.

II. Claim 2: ICE committed regulatory violations in connection with Petitioner's detention.

Petitioner alleged several regulatory violations, any one of which would offend due process and require Petitioner's release. The government's response does not rebut any of Petitioner's claims.

As an initial matter, the government argues that ICE did not need to comply with the regulation's requirements when revoking Mr. Castro-Napoles's release. Return, ECF 5 at 6-7. The government's argument again seems to be based on the lack of a prior detention. This argument is without merit.

The only case relied on by the government for this argument is distinguishable. Return ECF 5 at 6-7 (citing *Lin v. Francis,* 2025 WL 3751855, at *3 (S.D.N.Y. Dec. 29, 2025)). In *Lin*, the petitioner was ordered removed in absentia and had no contact with ICE in the ensuing 12 years before he was detained. *See Lin*, 2025 WL 3751855, at *1–2. That means the petitioner was likely in hiding from ICE. That is not the case here. Mr. Castro-Napoles was present at his deportation hearing. ECF 5-2 at 9-12. There is no indication of a failure to appear on the part of Mr. Castro-Napoles. There was simply an order of removal that became final and ICE chose not to detain him and allow him to be released into the community. Presumably, that choice was made because it was not significantly likely to remove him to Cuba in the reasonably foreseeable future. *Martinez v. Noem*, No. 26-CV-752 JLS (VET), 2026 WL 559778, at *2 (S.D. Cal. Feb. 27, 2026); *See also Zadvydas*, 533 U.S. at 699–700, 121 S.Ct.

2491 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.").

Next, the government's Return does not actually respond to the merits of the argument. It does not provide a position on how it believes ICE complied with the regulatory requirements. Respondents have thus waived any argument to the contrary. S*ee United States v. Cabrera*, 796 F. Supp. 3d 660, 664 (S.D. Cal. 2025) (recognizing that "a party waives argument when it fails to respond to an argument made to the court" quoting *United States v. Caceres-Olla*, 738 F.3d 1051, 1053 n.1 (9th Cir. 2013)).

Even if this Court were to find that this issue was not waived, there was no evidence of Mr. Castro-Napoles receiving notice or being given an opportunity to contest his detention. Here, because there was no notice for revocation, no prompt interview, and no changed circumstances, ICE failed to comply with its own regulations requiring immediate release. "[W]hen ICE fails to follow its own regulations in revoking release, the detention is unlawful, and the petitioner's release must be ordered." *Truong v. Noem*, No. 25-cv-2597-JES-MMP, 2025 WL 2988357, at *6 (S.D. Cal. Oct. 22, 2025) (collecting cases).

These lapses violate due process and entitle Petitioner to release without a showing of prejudice, as courts in this district have repeatedly found. *See, e.g.*, *Ghafouri v. Noem*, 25-cv-2675-RBM, Dkt. 11 at 9–12 (S.D. Cal. Nov. 4, 2025); 25-cv-2740-BJC, Doc. 13 at 8 (S.D. Cal. Nov. 13, 2025); *Soryadvongsa v. Noem*, 25-cv-2663-AGS, Dkt. 11 at 4–5 (S.D. Cal. Nov. 8, 2025). "There are two types of regulations: (1) those that protect fundamental due process rights, and (2) and those that do not." *Martinez v. Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). "A violation of the first type of regulation . . . implicates due process concerns even without a prejudice inquiry." *Id.* (cleaned up).

Here, "[t]here can be little argument that ICE's requirement that noncitizens be afforded an informal interview—arguably the most bare-bones

form of an opportunity to be heard—derives from the fundamental constitutional guarantee of due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. 2025). Indeed, "[w]hen the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(*l*) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*). Thus, these regulations fall squarely into the first category requiring no prejudice showing.

Accordingly, this Court should order Petitioner's immediate release.

Respectfully submitted,

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s/ Zandra L. Lopez

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