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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SOL DE LA ROSA GUARIN,

Petitioner,

v.

CHRISTOPHER J. LAROSE; et al.,

Respondents.

Case No.: 25-CV-3085-DMS-VET

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Respondents respectfully submit this response to Petitioner's habeas petition in accordance with the Court's order, ECF No. 3. Petitioner is currently detained in Immigration and Customs Enforcement (ICE) custody at the Otay Mesa Detention Center. Since May 22, 2025, Petitioner has been subject to a final order of removal under the Immigration and Nationality Act (INA). While Petitioner was granted withholding of removal to Spain, ICE is presently seeking to remove him to an alternate (third) country and has submitted requests to that effect to Sweden, Canada, and Australia. *See* Declaration of Hugo Lara Ramirez (Ramirez Decl.) at ¶ 5. Those requests remain pending. *Id.* Thus, ICE's position is that Petitioner is lawfully detained pursuant to the INA because there is a significant likelihood that Petitioner will be removed to an alternate country. *Id.*[1]

II. ARGUMENT

A. Petitioner is Subject to a Final Removal Order and is Lawfully Detained.

A noncitizen ordered removed must be detained for 90 days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period). The statute "limits an alien's post-removal period detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has held that a six-month period of post-removal order detention constitutes a "presumptively reasonable period of detention." *Id.* at 683. Release is not mandated after the expiration of the six-month period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

In *Zadvydas*, the Supreme Court held: "[T]he habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, *assuring*

[1] The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

the alien's presence at the moment of removal." *Id.* at 699 (emphasis added). In so holding, the Court recognized that detention is presumptively reasonable pending efforts to obtain travel documents, because the noncitizen's assistance is needed to obtain the travel documents, and a noncitizen who is subject to an imminent, executable warrant of removal becomes a significant flight risk, especially if he or she is aware that it is imminent.

The Court also held that the detention could exceed six months: "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing and that the noncitizen has the initial burden of proving that removal is not significantly likely." *Id.* The Ninth Circuit has emphasized, "*Zadvydas* places the burden on the alien to show, after a detention period of six months, that there is 'good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

Here, Petitioner's removal order became final on May 22, 2025. Thus, Petitioner's six-month presumptively reasonable removal period will not end until approximately November 22, 2025. Courts have repeatedly declined to grant habeas relief where the presumptively reasonable six-month period has not yet elapsed. *See Khalilova v. Smith*, No. 25-CV-2140 JLS (DDL), 2025 WL 3089522 (S.D. Cal. Nov. 5, 2025); *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) detention poses a constitutional issue"); *Guerra-Castro v. Parra*, No. 25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) ("The Court finds that the

Petition is premature because Petitioner has not been detained for more than six months; *Ali v. Barlow*, 446 F. Supp. 2d 604, 609-10 (E.D. Va. 2006) (finding habeas petition was unripe for review where *Zadvydas* six-month period had not expired; dismissing petition without prejudice); *Gonzales v. Naranjo*, No. EDCV 12-1392 DSF (FFM), 2012 WL 6111358 (C.D. Cal. 2012) (same); *Waraich v. Ashcroft*, No. CVF051036, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same). *But see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period.").

Petitioner nevertheless contends that his current detention runs afoul of *Zadvydas*. But even if Petitioner's total time in detention since his May 2025 removal order is approaching the end of six months of presumptive reasonableness, his claim still fails at the next step because he cannot meet his burden to establish "that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Rather, ICE has submitted a declaration outlining the steps it has taken since May 22, 2025, to secure Petitioner's removal to a third country, including submitting requests to Sweden, Canada, and Australia. Ramirez Decl. at ¶ 5. Those requests remain pending. According to the declaring officer's experience, "there is a significant likelihood of Petitioner's removal to a third country in the reasonably foreseeable future." *Id.* ¶ 12.

Courts properly deny *Zadvydas* claims under such circumstances. *See Malkandi v. Mukasey*, 2008 WL 916974, at *1 (W.D. Wash. Apr. 2, 2008) (denying *Zadvydas* petition where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Off. Dir.*, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner "failed to satisfy his burden of showing that there is no significant likelihood of his removal in the reasonably foreseeable future" where he had been detained more than seven months post-final order).

That Petitioner does not yet have a specific date of anticipated removal does not make his detention unconstitutionally indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222, 1233 (9th Cir. 2008) (explaining that a demonstration of "no significant likelihood of removal in the

reasonably foreseeable future" would include a country's refusal to accept a noncitizen or that removal is barred by our own laws). On the contrary, evidence of progress, even slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy. *See, e.g.*, *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at *5 (S.D. Cal. Aug. 15, 2019) (slip op.) ("the record at this stage in the litigation does not support a finding that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future."); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because "Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal").

Petitioner's continued detention thus remains lawful under 8 U.S.C. § 1231(a) and *Zadvydas*.

B. Petitioner May Properly Be Removed to an Alternate Country

Petitioner is subject to a final, executable order of removal, which means that he has no right to remain in the United States. He has a temporary right not to be repatriated to Spain, but he has no right not to be resettled in a third country. ICE has longstanding authority to remove noncitizens and resettle them in third countries where removal to the country designated in the final order is "impracticable, inadvisable, or impossible." 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b) (outlining framework for designation). Accordingly, noncitizens like Petitioner, who have received protection against removal to the designated country (either withholding of removal under 8 U.S.C. § 1231(b)(3) or protection under the Convention Against Torture) may lawfully be removed and resettled in alternate countries.

Section 1231(b)(2)(E) provides that the Secretary of Homeland Security shall remove the noncitizen to any of the following countries:

> (i) The country from which the alien was admitted to the United States.
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.

> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
> (iv) The country in which the alien was born.
> (v) The country that had sovereignty over the alien's birthplace when the alien was born.
> (vi) The country in which the alien's birthplace is located when the alien is ordered removed.
> (vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

Id. Accordingly, if the Secretary of Homeland Security is unable to remove a noncitizen to a country of designation or an alternative country in subparagraph (D), the Secretary may, in her discretion, remove the noncitizen to any country listed in subparagraphs (E)(i) through (E)(vi).

Here, Petitioner's removal order became final on May 22, 2025. Since that time, ICE Enforcement and Removal Operations (ERO) has worked to effectuate Petitioner's removal as expeditiously as possible. Ramirez Decl. at ¶¶ 4–11. The Removal Management Division and International Operations Division for DHS has submitted requests for Petitioner's removal to Sweden, Canada, and Australia. *Id.* at ¶ 5. Responses to those requests remain pending. *Id.* ERO has continued to follow up on the status of the requests. *Id.* at ¶ 6–11. According to the declaring officer's experience, "there is a significant likelihood of Petitioner's removal to a third country in the reasonably foreseeable future." *Id.* at ¶ 12.

C. Petitioner's Complaints of Procedural Defects in His Detention Do Not Establish a Basis for Habeas Relief

Petitioner also claims that ICE violated the Administrative Procedure Act and the *Accardi* rule by failing to conduct a proper post-order custody review pursuant to 8 CFR § 241.4. Specifically, Petitioner contends that he did not receive a custody review within 90 days of his removal order, that he was not provided with 30 days' written notice of the ultimate custody review, and that he was not given the opportunity to be assisted by an individual of his choosing in preparing or submitting information in response to the notice.

Yet even if that were true, Petitioner could not establish that he was prejudiced by that omission as required to state an APA claim. *See Cmty. Legal Servs. in E. Palo Alto v.*

United States Dep't of Health & Hum. Servs., 780 F. Supp. 3d 897, 921 (N.D. Cal. 2025) ("To establish an APA claim under the *Accardi* doctrine, Plaintiffs must show both that (1) the Government violated its own regulations, and (2) Plaintiffs suffer substantial prejudice as a result of that violation."). Nor is a failure to follow regulations sufficient to establish a constitutional violation. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) ("The mere failure of an agency to follow its regulations is not a violation of due process."); *United States v. Tatoyan,* 474 F.3d 1174, 1178 (9th Cir.2007) ("Compliance with . . . internal [customs] agency regulations is not mandated by the Constitution") (internal quotation marks omitted); *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that the judge had violated the rule by failing to inquire into the alien's background, any error was harmless because there was no showing that the petitioner was qualified for relief from deportation).

Thus, whatever procedural deficiencies or delays may have occurred, they do not warrant Petitioner's release, and indeed could be cured by means well short of release.

D. To the Extent Petitioner Challenges His Removal Order, the Court Lacks Subject Matter Jurisdiction Over Such Claims

Finally, to the extent Petitioner challenges the execution of his removal order, such challenges are barred by 8 U.S.C. § 1252(g). Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547–48 (1989). Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added); *Reno v. Am.-Arab*

Anti-Discrimination Comm., 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."). A challenge to the execution of his removal order necessarily arises "from the decision or action by the Attorney General to . . . execute removal orders," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

III. CONCLUSION

Because Petitioner was not prejudiced by any procedural error, and because he has not established that there is no significant likelihood of his removal to a third country, his detention is lawful. The Court should deny the Petition.

DATED: November 17, 2025

Respectfully submitted,

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