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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FIDEL EDUARDO AROSTEGUI-CAMPO,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security; et al.,

Respondents.

Case No.: 25-cv-03064-JLS-MMP

RESPONSE IN OPPOSITION TO PETITIONER'S HABEAS PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

Petitioner has filed a habeas petition and a motion for temporary restraining order. As the petition and motion assert the same claims and relief, Respondents herein respond to both for the sake of judicial efficiency. For the reasons set forth below, Respondents ask the Court to deny Petitioner's habeas petition and request for interim relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Cuba, who entered the United States in 1971 and was later convicted of controlled substances offenses. *See* Declaration of Daniel Negrin ("Negrin Decl.") at ¶ 4; ECF No. 1 at 26. Based on Petitioner's convictions, an

Immigration Judge ordered him deported to Cuba on January 29, 1987. *See* Exh. 1.[1] After being released from Immigration and Customs Enforcement's (ICE) custody, Petitioner was convicted of multiple subsequent offenses and sentenced to state custody. *See* Negrin Decl. at ¶¶ 5–8; Exh. 2 at 3. Following his criminal custody, Petitioner was transferred to immigration custody on October 27, 1993, and later released on January 26, 1994, on an Order of Supervision because ICE was unable to repatriate him to Cuba. *See* Negrin Decl. at ¶ 6.

On April 20, 1995, ICE re-detained Petitioner due to a criminal violation of his parole and transferred him to state custody on September 13, 1995. He was released from state custody on September 10, 1998. *See id.* at ¶ 7.

On March 8, 2000, Petitioner was again convicted of a controlled substance offense and sentenced to state imprisonment. *See* Exh. 3 at 15–16. Following Petitioner's release from state custody, ICE re-detained Petitioner on September 11, 2003. *See* Negrin Decl. at ¶ 8. Because repatriation efforts to Cuba was unsuccessful, ICE released Petitioner from immigration custody on February 6, 2004, on an Order of Supervision. *Id.*

On October 21, 2025, ICE re-detained Petitioner to execute his deportation order. *Id.* at ¶ 9. At that time, Petitioner was served a formal Notice of Revocation of Release. *Id.*; Exh. 4. Also at that time, Petitioner was interviewed about his legal status to remain in the United States and was verbally informed that his Order of Supervision was being revoked and that he was being detained to execute his final order of removal. *See* Negrin Decl. at ¶ 9; Declaration of Michael Richardson ("Richardson Decl.") at ¶¶ 3, 4.

Since his re-detention, ICE has been working diligently to effectuate his removal. *See* Negrin Decl. at ¶ 10. After repatriation efforts to Cuba proved unsuccessful, ICE identified Mexico as a third country where Petitioner may be removed. *See id.* at ¶¶ 11–

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

12. While in the process of pursuing removal efforts to Mexico, ICE was notified of the Court's order preventing Petitioner's removal. *See id.* at ¶ 13. To comply with the Court's order, ICE paused its efforts to remove Petitioner to Mexico because once Mexico accepts the request for Petitioner's removal, removal will become imminent. *See id.* ICE has served Petitioner a formal Notice of Third Country Removal, informing him of ICE's intent to remove him to Mexico. *See id.* at ¶ 15. Petitioner has not expressed a fear of removal to Mexico. *See id.* at ¶ 16.

Based on a recent agreement between Mexico and the United States and ICE's prior success obtaining Mexico's acceptances in similar cases, ICE expects that Mexico will accept Petitioner for third country resettlement within a day of the request. *See* Negrin Decl. at ¶¶ 12, 14. Once the Court's order staying removal is lifted, ICE can promptly execute removal within a week. *See id.* at ¶ 17. According to the declaring officer, based on his review of this case and assuming Petitioner's compliance with ICE's removal efforts, "there is a significant likelihood of his removal in the reasonably foreseeable future." *Id.* at ¶ 18.

III. ARGUMENT

"Section 241(a) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered removed from the United States." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022). The INA provides that an alien 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 under subsection (a)(1)). Section 1231(a)(6) "authorizes further detention if the Government fails to remove the alien during those 90 days." *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). The statute, however, is limited to "a period reasonably necessary to bring about the alien's removal from the United States" and "does not permit indefinite detention." *Id.* at 689. The Supreme Court has held that a six-month period of post-removal detention constitutes

a "presumptively reasonable period of detention." *Id.* at 701. 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.*

As an initial matter, Petitioner raises two distinct issues: (1) the agency's reason for revoking his release and his return to custody; and (2) whether his current detention is unconstitutionally prolonged under the *Zadvydas* standard. The regulatory standard for revocation—which is not the same as the constitutional standard—provides that "The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. 241.13(i)(2). As discussed below, however, this regulation does not govern whether detention is constitutional or not for purposes of a habeas claim.

Rather, the constitutionality of Petitioner's post-final order is governed by the Supreme Court's directives in *Zadvydas*. In that regard, Petitioner filed his habeas petition on November 10, 2025—less than one month after he was re-detained. ECF No. 1. Petitioner claims that because he was previously in immigration custody when he was ordered deported in 1987, the government now has a burden to show that his current detention is constitutional. But Petitioner fails to show that his total detention exceeds the constitutional period articulated in *Zadvydas*. Petitioner was not, as he claims, placed in immigration custody post-final order for four years. *See id.* at 2, 4, 16. Rather, the record indicates that the bulk of the time he spent in custody after 1987 was for terms of state imprisonment following various offenses he committed after his deportation order, in violation of his orders of supervised release. *See* Negrin Decl. at ¶¶ 6–8; Exh. 2 at 3; Exh. 3 at 15–16. Even assuming Petitioner has been detained past the six-month presumptively reasonable period, the Supreme Court emphasized that this "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." *Zadvydas*, 533 U.S. at 701. No such showing can be made here.

Shortly after Petitioner was re-detained on October 21, 2025, ICE completed the process for his repatriation to Cuba, but the repatriation was not successful. *See* Negrin Decl. at ¶¶ 9–11. On October 31, 2025, the Cuban government did not accept Petitioner for removal. *See id.* at ¶ 11. ICE is thus entitled to pursue Petitioner's removal to a third country under 8 U.S.C. § 1231(b). *See* 8 U.S.C. § 1231(b)(2)(C) (allowing for third country removal where the petitioner's country of designation is not willing to accept him); § 1231(b)(2)(E) (allowing third country resettlement where removal to the country designated in the final order is "impracticable, inadvisable, or impossible").

Once repatriation efforts to Cuba proved unsuccessful, ICE diligently pursued Petitioner's third country resettlement to Mexico. *See* Negrin Decl. at ¶¶ 12–13. To comply with the Court's order staying removal, however, ICE has paused its removal efforts because it anticipates Mexico to accept Petitioner for removal, and once that acceptance is received, removal will be imminent. *See id.* at ¶ 13.

Once the stay of removal is lifted, ICE will resume its efforts to remove Petitioner to Mexico and will request for Mexico to accept Petitioner. *See id.* at ¶ 14. Once ICE submits the request, ICE expects to receive a response from the Mexican government within a day and expects the country to approve the request based on its recent acceptances of other similarly situated Cuban individuals for resettlement. *See id.* ICE can promptly effectuate Petitioner's removal to Mexico within a week of the stay being lifted. *See id.* at ¶ 17.

On November 18, 2025, ICE served Petitioner a Notice of Third Country Removal, notifying him of ICE's intent to remove him to Mexico. *See id.* at ¶¶ 15–16; Exh. 5. He has not expressed a fear of being removed to Mexico. *See id.* at ¶ 16. He also did not mention any such fear in his petition, despite alluding to the possibility of removal to that country. *See* ECF No. 1 at 27. Because Petitioner has not raised a fear-based claim against his removal to Mexico, there is no basis for Petitioner's request

for an immigration judge to reopen his removal proceedings.[2] ICE has issued Petitioner written notice of its intent to remove him to Mexico and has not obstructed his ability to express a fear of removal to the country. Thus, Petitioner has been provided notice and a meaningful opportunity to respond in this case.

Further, Petitioner's request that Respondents be enjoined from re-detaining Petitioner unless and until they obtain a travel document for his removal finds no home in *Zadvydas*. The Supreme Court explained: "[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 the alien's presence at the moment of removal*." 533 U.S. at 699 (emphasis added). In so holding, the *Zadvydas* 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 removal is imminent. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208–09 (9th Cir. 2022) ("The risk of a detainee absconding . . . inevitably escalates as the time for removal becomes more imminent.").

Additionally, the Supreme Court was clear that the Constitution prevents only "indefinite" or "potentially permanent" detention. *Zadvydas*, 533 U.S. at 696, 699. Again, once the Court lifts the stay of removal, ICE will send Mexico a request to accept Petitioner and expects the country to approve the request the next day and a prompt removal within the week. Considering the high probability of Petitioner's removal to Mexico, the Court cannot find that there is no significant likelihood of removal in the reasonably foreseeable future in this case. Accordingly, because *Zadvydas* dictates that "an alien may be held in confinement until it has been determined that there is no

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[2] The Ninth Circuit has explicitly held that 8 U.S.C. § 1252(g) divests district courts of jurisdiction to issue a stay of removal pending the adjudication of pending motions to reopen removal proceedings. *Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022).

significant likelihood of removal in the reasonably foreseeable future," the Constitution's due process protections do not entitle Petitioner to release.

Additionally, Petitioner claims that the agency failed to comply with its regulations revoking Petitioner's Order of Supervision. But ICE did provide Petitioner a Notice of Revocation of Release at the time of his arrest and detention. *See* Exh. 4; Negrin Decl. at ¶ 9. Officer Richardson served Petitioner with the notice, which informed him that he would remain in custody based on changed circumstances in his case and advised him that he must comply with ICE's efforts to execute his removal. *See* Exh. 4 at 2. Officer Richardson also thereafter interviewed Petitioner regarding his legal status to remain in the United States and told him that his Order of Supervision was being revoked and that he was being detained to execute his final order of removal. *See id.* (Notice of Revocation served at 10: 45 a.m.); Exh. 2 at 2 (Officer Richardson's interview at around 11:30 a.m.); Richardson Decl. at ¶¶ 3–4. During Officer Richardson's interview, Petitioner had the opportunity to respond to ICE's reasons for revoking his Order of Supervision. *See id.*

But even assuming the agency's compliance with the relevant regulations fell short, Petitioner has not established prejudice nor 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) (holding that "[c]ompliance with . . . internal [customs] agency regulations is not mandated by the Constitution" (internal quotation marks omitted)); *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* "enunciate[s] principles of federal administrative law rather than of constitutional law").

At the time of his re-detention, Petitioner knew he was subject to a final order of deportation. *See* ECF No. 1 at 26. He also knew, based on his Order of Supervision, that although he was released, ICE would be continuing to make efforts to execute his removal order. *See* Exh. 6 at 1. And as illustrated above, because Respondents had, and

continue to have, an evidentiary basis to determine there is a significant likelihood that Petitioner will be removed, any challenge that Petitioner would have raised under the regulations would have failed. *See, e.g.*, *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).

Moreover, the regulations addressing revocation of release here do not provide substantive rights that override the statutory detention authority. *See Morales Sanchez v. Bondi*, No. 5:25cv02530 AB DTB, at *4 (C.D. Cal. Oct. 3, 2025) ("While the regulations cited by Petitioner, 8 C.F.R. §§ 241.13(i)(1)–(2) and 241.4, establish procedural safeguards—including the requirements that revocation be based on a condition of release violation or on a significant likelihood of removal, and that the noncitizen receive notice and an informal interview—they do not create independent substantive rights that override the statutory grant of detention authority.") (citing *Jane Doe 1 v. Nielsen*, 357 F. Supp. 3d 972, 1000 (N.D. Cal. 2018) (concluding that agency rules must prescribe substantive law, not merely procedural or policy guidance, to be enforceable)).

Petitioner also does not have a protected liberty interest in remaining free from detention where ICE has exercised its discretion under a valid removal order and its regulatory authority. *See Moran v. U.S. Dep't of Homeland Sec.*, No. EDCV2000696DOCJDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (dismissing claim that § 241.4(l) was a violation of the petitioners' procedural due process rights and noting that they "fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders."). Although the regulation provides detainees some opportunity to respond to the reasons for revocation, "it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation when, in the opinion of the revoking

official, the purposes of release have been served or the conduct of the alien, *or any other circumstance*, indicates that release would no longer be appropriate.'" *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (citing §§ 241.4(l)(2)(i), (iv)) (simplified and emphasis in original), *abrogated on other grounds as recognized by Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

As noted above, Petitioner received written notice of the reason ICE revoked his Order of Supervision, as well as an informal interview. Even assuming the notice and interview were not in perfect compliance with 8 C.F.R. § 241.13, the shortcoming does not entitle Petitioner to release.

In *Doe v. Smith*, for example, the district court held that even if the petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation . . . should result in release." No. CV 18-11363-FDS, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "[I]t is difficult to see an actionable injury stemming from such a violation. Doe is not challenging the underlying justification for the removal order. . . . Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity." *Id.*

Similarly, in *Ahmad v. Whitaker*, the government revoked the petitioner's release but did not provide him an informal interview. *See* No. C18-287-JLR-BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued that the revocation of his release was unlawful because the regulations prohibited re-detention without, among other things, an opportunity to be heard. *Id.* In rejecting his claim, the court held that although the regulations called for an informal interview, petitioner could not establish "any actionable injury from this violation of the regulations" because the government had procured a travel document for the petitioner, and his removable was reasonably foreseeable. *Id.*

The same is true here. Petitioner does not challenge his removal order, nor could

he. And ICE has been working expeditiously to effectuate his removal and expects to receive Mexico's acceptance of Petitioner shortly after the Court lifts the stay of removal in this case. 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. *See Doe 1*, 357 F. Supp. 3d at 1000 (concluding that agency rules must prescribe substantive law, not merely procedural or policy guidance, to be enforceable); *accord Morales Sanchez*, No. 5:25cv02530 AB DTB, at *4 (finding that 8 C.F.R. §§ 241.13(i)(1)–(2) and 241.4 "do not create independent substantive rights that override the statutory grant of detention authority.")

Based on the foregoing, Petitioner cannot show entitlement to habeas relief.

IV. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Court deny the habeas petition and motion for temporary restraining order.

DATED: November 18, 2025

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