ADAM GORDON
United States Attorney
KIM A. C. GREGG
Assistant U.S. Attorney
California Bar No. 318764
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-8437
Facsimile: (619) 546-7751
Email: Kim.Gregg@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOHNNY AZZO,

Petitioner,

v.

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

Respondents.

Case No. 25-cv-03122-RBM-BJW

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 respond to both herein for the sake of judicial efficiency. For the reasons set forth below, Respondents ask the Court to deny the habeas petition and request for interim relief.

II. BACKGROUND

Petitioner is a native and citizen of Lebanon who came to the United States in 1985, overstayed his visa, and was later convicted of federal controlled substance offenses and sentenced to 60 months in prison. *See* Declaration of Hugo Lara Ramirez ("Decl.") at ¶ 4.

On August 3, 2004, an Immigration Judge ("IJ") ordered Petitioner removed to Lebanon but granted him deferral of removal under the Convention Against Torture. Exh. 1.[1] The order became final when the Board of Immigration Appeals affirmed the IJ's decision on February 14, 2005. *See* Decl. at ¶ 5.

Following Petitioner's criminal incarceration, he was transferred to immigration custody on May 1, 2007. *See id.* at ¶ 6. On November 20, 2007, ICE released Petitioner on an Order of Supervision because it was unable to execute his removal order at that time. *Id.* at ¶ 7.

On October 21, 2025, ICE re-detained Petitioner to execute his removal order. *Id.* at ¶ 8. At that time, ICE served him with a Notice of Revocation of Release, informing him that his Order of Supervision was being revoked due to changed circumstances in his case, namely that ICE has determined that there is a significant likelihood of his removal to a third country in the reasonably foreseeable future. *See id.* at ¶ 8; Exh. 2. ICE further verbally explained to Petitioner that the Department of Homeland Security is actively seeking third country removal in his case. *See* Decl. at ¶ 8; Exh. 3 at 2. On November 20, 2025, ICE conducted an informal interview of Petitioner to afford him an opportunity to respond to the reasons stated in his Notice of Revocation. Decl. at ¶ 11; Exh. 4.

Since Petitioner's detention, ICE has been and continues to work diligently to identify a third country for Petitioner's removal and believes there is a significant likelihood of removal in the reasonably foreseeable future. *See* Decl. at ¶¶ 9, 10, 13.

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

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

(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.*

ICE re-detained Petitioner on October 21, 2025, invoking its authority to pursue third-country removal under the INA. If an individual ordered removed "is not removed to his or her country of choice or citizenship, he or she shall be removed to any of the following countries" listed in 8 U.S.C. § 1231(b)(2)(E):

> (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.

Hadera v. Gonzales, 494 F.3d 1154, 1156–57 (9th Cir. 2007) (quoting § 1231(b)(2)(E)(i)–(vi)). "If removal to any of these countries is 'impracticable, inadvisable, or impossible,' the individual shall be removed to 'another country whose government will accept the alien into that country.'" *Id.* (quoting § 1231(b)(2)(E)(vii)).

Petitioner was granted deferral of removal to Lebanon—his country of birth and citizenship, as well as the country designated during his removal proceedings. Petitioner has not designated any other country for removal. Apart from Lebanon, there appears to be no other country that would meet the definitions under subsections (i) through (vi), and Petitioner has made no showing to the contrary. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025) ("A prisoner bears the burden of demonstrating that 'he is in custody in violation of the Constitution or laws or treaties of the United States.'") (quoting 28 U.S.C. § 2241(c)(3), brackets omitted). Because removal to the above enumerated countries is "impracticable, inadvisable, or impossible," ICE may remove Petitioner to a third country that will accept Petitioner's removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

Even assuming that the six-month presumptively reasonable period of post-final order detention under *Zadvydas* has passed in this case, release is not mandated unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. As illustrated in Petitioner's brief, recent developments in international relations between the United States and several other countries have made probable ICE's removal of immigrants, like Petitioner, that it previously was unable to remove to third countries. *See* ECF No. 1 at 6–9 (describing the United States' recent foreign policy deals with countries around the world). Against this backdrop and invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE re-detained Petitioner on October 21, 2025, to execute his removal to a third country. *See* Decl. at ¶ 8; Exh. 3 at 2 ("AZZO were [sic] informed that DHS has determined that AZZO is subject to detention, as DHS is actively seeking third country removal.").

Since Petitioner's detention, ICE has worked diligently to coordinate his removal. *See* Decl. at ¶ 9. On November 6, 2025, local Enforcement and Removal Operations (ERO) contacted a Detention and Deportation Officer at ERO Headquarters assigned to the Middle East and Europe region concerning third country removal in this case. *Id.* at ¶ 10. And although ERO Headquarters is still in the process of identifying

countries that may be willing to accept Petitioner for removal, the record indicates that ICE is working as expeditiously as possible and "believes there is a significant likelihood of removal to a third country in the reasonably foreseeable future." Decl. at ¶ 13. *See also Zadvydas*, 533 U.S. at 700 (instructing district courts "to listen with care when the Government's foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.").

Petitioner may argue that the government is still working to locate a third country for resettlement and that it did not already locate one for resettlement before taking him back into custody. But *Zadvydas* does not require the government to pre-arrange a noncitizen's removal or have a travel document in hand before detaining them. *See Zadvydas*, 533 U.S. at 699 (emphasizing that the post-final order detention statute's basic purpose is "assuring the alien's presence at the moment of removal."); *see also 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.").

As it stands, it would be premature to conclude that there is no significant likelihood of removal in the reasonably foreseeable future before permitting ICE an opportunity to complete its diligent efforts to effect Petitioner's removal. 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) ("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").

1 Additionally, Petitioner claims that the agency failed to comply with its
2 regulations for revoking his Order of Supervision. But ICE did provide Petitioner a
3 Notice of Revocation of Release upon revocation. Petitioner argues that the notice was
4 not provided "upon" revocation because he was detained during his annual ICE
5 check-in on October 10, 2025, and ICE did not provide the notice until October 21,
6 2025. ECF No. 1 at 12–13. Respondents have found no record of Petitioner being in
7 ICE custody on October 10, 2025. To the contrary, Petitioner's Form I-213, Record of
8 Deportable/Inadmissible Alien, shows that Petitioner's ICE check-in occurred on
9 October 21, 2025, and that he was served with the Notice of Revocation of Release that
10 same day. *See* Exhs. 2; 3 at 2.

11 Petitioner's complaint that the notice does not explain what circumstances have
12 changed and why is unavailing. The notice conveys that there are changed
13 circumstances in Petitioner's case because ICE has determined there to be a significant
14 likelihood that he would be removed to a third country in the reasonably foreseeable
15 future, and accordingly, determined it appropriate to enforce his removal order at this
16 time—something it could not do before but can do now due to the developments in
17 foreign affairs discussed above. *See* Exh. 2. If the words on the notice were not enough,
18 the record shows that the same officer who served Petitioner the notice explained to him
19 that he was being detained because "DHS is actively seeking third country removal."
20 Exh. 3 at 2 (Form I-213 completed by Officer Diep); Exh. 2 at 2 (proof of service of the
21 Notice of Revocation of Release by Officer Diep). Respondents complied with the
22 regulations because ICE provided Petitioner with written notice, and Petitioner
23 understood the reasons for the revocation of his release in this case. *See* ECF No. 1 at
24 28 (Petitioner acknowledging the reason for his detention).

25 As for the informal interview referenced in Petitioner's Notice of Revocation of
26 Release, Petitioner argues that he has not received one and that any such interview
27 conducted on or after November 12, 2025 (the date of his petition), would not be a
28 prompt one under the regulations. ECF No. 1 at 13. The regulations, however, do not

1 define what "promptly" means. And despite raising the issue, Petitioner offers no
2 definition for the term either. Here, ICE conducted the interview on November 20,
3 2025—less than a month of Petitioner's detention yet still providing him enough time
4 to prepare and gather information to challenge the reasons stated in his Notice of
5 Revocation of Release. *See* Decl. at ¶ 11; Exh. 4. Because any definition of "promptly"
6 in this context would need to account for the time necessary to afford a noncitizen a
7 meaningful opportunity to prepare their challenge to the revocation, Petitioner's
8 informal interview was promptly provided in this case. Ultimately, though, Petitioner's
9 informal interview did not result in a change of his custody status because his only
10 response was: "I am not going to any other country. I was granted withholding of
11 removal to my country Lebanon." Decl. at ¶ 11; Exh. 4.

12 Even if the agency's compliance with the regulations fell short, Petitioner has not
13 established prejudice nor a constitutional violation. *See Brown v. Holder*, 763 F.3d
14 1141, 1148–50 (9th Cir. 2014) ("The mere failure of an agency to follow its regulations
15 is not a violation of due process."); *United States v. Tatoyan,* 474 F.3d 1174, 1178 (9th
16 Cir.2007) ("Compliance with . . . internal [customs] agency regulations is not mandated
17 by the Constitution") (internal quotation marks omitted); *United States v.*
18 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that
19 the judge had violated the rule by failing to inquire into the alien's background, any
20 error was harmless because there was no showing that the petitioner was qualified for
21 relief from deportation).

22 Petitioner also asserts that he is afraid that once a third country is identified, ICE
23 will immediately deport him there without being given adequate time to investigate
24 whether he could be persecuted in that country. ICE attests, however, that once a third
25 country is identified, it "will provide Petitioner with written notice, and if Petitioner
26 claims a fear of removal to the identified country, he will be referred to an asylum
27 officer for processing of the fear-based claims." Decl. at ¶ 14. The evidence further
28 shows that ICE will generally wait at least 24 hours following the notice of third country

1 removal before executing it, and under no circumstances would removal be executed in
2 less time than that without the noncitizen being provided "reasonable means and
3 opportunity to speak with an attorney prior to removal." *Id.* at ¶ 12. Thus, Petitioner's
4 concern that he will not receive adequate notice and an opportunity to be heard prior to
5 his third country removal is not borne out by the evidence in this case.
6 Lastly, Petitioner asserts that he "has struggled to maintain his sugar levels and
7 manage his diabetes" while in custody because starchy food is served and he receives
8 less insulin than usual at the detention center. ECF No. 1 at 6. To the extent Petitioner
9 is seeking relief on this basis, such a claim is not cognizable here. Habeas relief "is
10 limited to attacks upon the legality or duration of confinement." *Pinson v. Carvajal*, 69
11 F.4th 1059, 1065 (9th Cir. 2023). Claims alleging "unconstitutional conditions of
12 confinement, is not cognizable in habeas." *Zelaya-Gonzalez v. Matuszewski*, No. 23-cv-
13 151-JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. Apr. 25, 2023). Because a Section
14 2241 habeas petition is not the proper vehicle to challenge conditions of confinement,
15 the Court lacks jurisdiction over such claims here. *See id.* (citing *Nettles v. Grounds*,
16 830 F.3d 922, 933 (9th Cir. 2016) ("We have long held that prisoners may not challenge
17 mere conditions of confinement in habeas corpus.")); *Giron Rodas v. Lyons*, No. 25-cv-
18 1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) ("Like in *Pinson*,
19 the Court lacks jurisdiction over Petitioner's § 2241 habeas petition since it cannot be
20 fairly read as attacking 'the legality or duration of confinement.'") (citation omitted).

21 **IV. CONCLUSION**

22 For the reasons stated herein, Respondents respectfully request that the Court
23 deny the habeas petition.
24
25 DATED: November 21, 2025

ADAM GORDON
United States Attorney

26 *s/ Kim A. C. Gregg*
27 KIM A. C. GREGG
Assistant United States Attorney
28

Attorneys for Respondents