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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
11

12 FELIX ENI,

Petitioner,

13
14 v.

15
16 KRISTI NOEM, Secretary of the
Department of Homeland Security, et al.,

17
18 Respondents.
19

Case No.: 25-cv-03524-JLS-DEB

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

20 **I. INTRODUCTION**

21 Petitioner has filed a habeas petition and a motion for a temporary restraining
22 order. As the petition and motion assert the same claims and relief, Respondents respond
23 to both herein for the sake of judicial efficiency. For the reasons set forth below,
24 Respondents ask the Court to deny the habeas petition and request for interim relief.
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II. BACKGROUND¹

Petitioner is a native and citizen of Nigeria. In March 1980, he entered the United States on a student visa. ECF No. 1 at 2; Declaration of Marcus Vera (Vera Decl.) at ¶ 4. On or about June 25, 1985, Petitioner was convicted of theft by deception, a misdemeanor, in Kentucky and was sentenced to twelve (12) months in prison. Vera Decl. at ¶ 5.

On January 31, 2008, Petitioner was referred to ICE and subsequently taken into custody. Vera Decl. at ¶ 6. ICE has information regarding a deportation order that was issued on or about April 3, 1987, however, there is no actual record to confirm the entry of his deportation. *Id.* For this reason, Petitioner was issued a Notice to Appear instead of a reinstatement of a prior deportation order. *Id.*

On January 31, 2008, Petitioner was served with a Notice to Appear and placed in removal proceedings. Vera Decl. at ¶ 7. He was charged with inadmissibility under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA) for being present without being admitted or paroled after inspection. *Id.* On September 18, 2008, Petitioner was ordered removed to Nigeria, but the Immigration Judge granted withholding of removal to Nigeria under Section 241(b)(3) of the INA. *Id.* at ¶ 8. Petitioner and DHS both waived appeal so the order of removal became final on this date. *Id.*

On October 28, 2008, Petitioner was released from ICE custody on Order of Supervision. Vera Decl. at ¶ 9. On November 1, 2025, Petitioner was re-detained by ICE. *Id.* at ¶ 10. On that date, a Notice of Revocation of Release and an informal interview were provided to Petitioner. *Id.*; Exh. 1 (revocation document); Exh. 2 (informal interview document).

Since Petitioner's re-detention, ERO has worked diligently to execute his removal. Vera Decl. at ¶ 11. To that end, on November 12, 2025, ERO contacted ERO

¹ Exhibits 1 through 6 provide additional background on Petitioner's case.

1 Removal and International Operations (RIO) to seek a third country for removal. *Id.*
2 On December 12, 2025, ERO requested an update on finding a third country. *Id.* at ¶
3 12. ERO is pending further response from RIO on identifying a third country for
4 removal. *Id.* Should ERO identify a third country for removal, Petitioner will be
5 notified in writing of the third country at least twenty-four (24) hours prior to removal.
6 *Id.* at ¶ 13.

7 III. ARGUMENT

8 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
9 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
10 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
11 (2022). The INA provides that an alien ordered removed must be detained for 90 days
12 pending the government’s efforts to secure the alien’s removal through negotiations
13 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
14 detain” the alien during the 90-day removal period under subsection (a)(1)).

15 Section 1231(a)(6) “authorizes further detention if the Government fails to
16 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
17 The statute, however, is limited to “a period reasonably necessary to bring about the
18 alien’s removal from the United States” and “does not permit indefinite detention.” *Id.*
19 at 689. The Supreme Court has held that a six-month period of post-removal detention
20 constitutes a “presumptively reasonable period of detention.” *Id.* at 701. Release is not
21 mandated after the expiration of the six-month period unless “there is no significant
22 likelihood of removal in the reasonably foreseeable future.” *Id.*

23 Under the INA, if an individual ordered removed “is not removed to his or her
24 country of choice or citizenship, he or she shall be removed to any of the following
25 countries” listed in 8 U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154,
26 1156–57 (9th Cir. 2007). The enumerated countries are:

- 27 (i) The country from which the alien was admitted to the United States
28 (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

1 States.

2 (iii) A country in which the alien resided before the alien entered the
country from which the alien entered the United States.

3 (iv) The country in which the alien was born.

4 (v) The country that had sovereignty over the alien's birthplace when the
alien was born.

5 (vi) The country in which the alien's birthplace is located when the alien
6 is ordered removed.

7 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is
8 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another
9 country whose government will accept the alien into that country.’” *Id.* (quoting
10 § 1231(b)(2)(E)(vii)).

11 Here, Petitioner was granted deferral of removal to Nigeria—his country of birth
12 and citizenship, as well as the country designated during his removal proceedings.
13 Petitioner has not designated any other country for removal. Apart from Nigeria, there
14 appears to be no other country that would meet the definitions under subsections (i)
15 through (vi), and Petitioner has made no showing to the contrary. *See Rokhfirooz v.*
16 *Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15,
17 2025) (“A prisoner bears the burden of demonstrating that ‘he is in custody in violation
18 of the Constitution or laws or treaties of the United States.’”) (quoting 28 U.S.C. §
19 2241(c)(3), brackets omitted). Because removal to the above enumerated countries is
20 “impracticable, inadvisable, or impossible,” ICE may remove Petitioner to a third
21 country that will accept Petitioner’s removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

22 As illustrated in Petitioner’s brief, recent developments in international relations
23 between the United States and several other countries have made probable ICE’s
24 removal of immigrants, like Petitioner, that it previously was unable to remove to third
25 countries. *See* ECF No. 1 at 9-10 (describing the United States’ recent foreign policy
26 deals with countries around the world). Against this backdrop, ICE re-detained
27 Petitioner and is seeking to execute his removal to a third country. *See* Vera Decl. at ¶¶
28 11-12.

1 Since Petitioner’s detention, ICE has worked diligently to coordinate his
2 removal. *See Vera Decl.* at ¶¶ 11-12. To that end, on November 12, 2025, ICE’s
3 Enforcement and Removal Operations (ERO) sent a request to its Removal and
4 International Operations (RIO) for specialized assistance with identifying a third
5 country for Petitioner’s removal. *See id.* at ¶ 11. On December 12, 2025, ERO requested
6 an update on RIO’s efforts to identify a third country and a response to that request is
7 currently pending. *Id.* at ¶ 12. Although ERO RIO is still in the process of identifying
8 countries that may be willing to accept Petitioner for removal, the record indicates that
9 ICE is working diligently to execute Petitioner’s removal. *Id.* at ¶ 11. *See also*
10 *Zadvydas*, 533 U.S. at 700 (instructing district courts “to listen with care when the
11 Government’s foreign policy judgments, including, for example, the status of
12 repatriation negotiations, are at issue, and to grant the Government appropriate leeway
13 when its judgments rest upon foreign policy expertise.”).

14 As it stands, it would be premature to conclude that there is no significant
15 likelihood of removal in the reasonably foreseeable future before permitting ICE an
16 opportunity to complete its diligent efforts to effect Petitioner’s removal. Evidence of
17 progress, even slow progress, in negotiating a petitioner’s repatriation will satisfy
18 *Zadvydas* until the petitioner’s detention grows unreasonably lengthy. *See, e.g., Sereke*
19 *v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5 (S.D. Cal. Aug. 15, 2019)
20 (“The record at this stage in the litigation does not support a finding that there is no
21 significant likelihood of Petitioner’s removal in the reasonably foreseeable future.”);
22 *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at *3 (S.D.
23 Cal. Oct. 13, 2020) (denying petition because “Respondents have set forth evidence that
24 demonstrates progress and the reasons for the delay in Petitioner’s removal”).

25 Additionally, Petitioner claims that the agency failed to comply with its
26 regulations for revoking his Order of Supervision. In fact, on November 1, 2025,
27 Petitioner was provided written notice of the revocation of his release as well as an
28 informal interview. *See Vera Decl.* ¶ 10; Exh. 1-2. But even if the agency’s compliance

1 with the regulations fell short, Petitioner has not established prejudice nor a
2 constitutional violation. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014)
3 (“The mere failure of an agency to follow its regulations is not a violation of due
4 process.”); *United States v. Tatoyan*, 474 F.3d 1174, 1178 (9th Cir.2007) (“Compliance
5 with . . . internal [customs] agency regulations is not mandated by the Constitution”)
6 (internal quotation marks omitted); *United States v. Barraza-Leon*, 575 F.2d 218, 221–
7 22 (9th Cir. 1978) (holding that even assuming that the judge had violated the rule by
8 failing to inquire into the alien’s background, any error was harmless because there was
9 no showing that the petitioner was qualified for relief from deportation).

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

21 Petitioner also does not have a protected liberty interest in remaining free from
22 detention where ICE has exercised its discretion under a valid removal order and its
23 regulatory authority. *See Moran v. U.S. Dep’t of Homeland Sec.*, No.
24 EDCV2000696DOCJDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020)
25 (dismissing claim that § 241.4(l) was a violation of the petitioners’ procedural due
26 process rights and noting that they “fail to point to any constitutional, statutory, or
27 regulatory authority to support their contention that they have a protected interest in
28 remaining at liberty in the United States while they have valid removal orders.”).

1 Although the regulation provides detainees some opportunity to respond to the reasons
2 for revocation, “it provides no other procedural and no meaningful substantive limit on
3 this exercise of discretion as it allows revocation when, in the opinion of the revoking
4 official, the purposes of release have been served or the conduct of the alien, *or any*
5 *other circumstance*, indicates that release would no longer be appropriate.” *Rodriguez*
6 *v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (citing §§ 241.4(l)(2)(i), (iv)) (simplified,
7 emphasis in original), *abrogated on other grounds as recognized by Rodriguez Diaz v.*
8 *Garland*, 53 F.4th 1189 (9th Cir. 2022).

9 Petitioner also asserts that he is afraid that once a third country is identified, ICE
10 will immediately deport him there without being given adequate time to investigate
11 whether he could be persecuted in that country. ICE attests, however, that once a third
12 country is identified, “. . . Petitioner will be notified in writing of the third country at
13 least twenty-four (24) hours prior to removal.” Vera Decl. at ¶ 13. Thus, Petitioner’s
14 concern that he will not receive adequate notice prior to his third country removal is not
15 borne out by the evidence in this case.

16 Lastly, in his declaration, Petitioner asserts that he has had difficulties with his
17 diet and exercise due to his detention. To the extent Petitioner is seeking relief on this
18 basis, such a claim is not cognizable here. Habeas relief “is limited to attacks upon the
19 legality or duration of confinement.” *Pinson v. Carvajal*, 69 F.4th 1059, 1065 (9th Cir.
20 2023). Claims alleging “unconstitutional conditions of confinement, is not cognizable
21 in habeas.” *Zelaya-Gonzalez v. Matuszewski*, No. 23-cv-151-JLS-KSC, 2023 WL
22 3103811, at *3 (S.D. Cal. Apr. 25, 2023). Because a Section 2241 habeas petition is not
23 the proper vehicle to challenge conditions of confinement, the Court lacks jurisdiction
24 over such claims here. *See id.* (citing *Nettles v. Grounds*, 830 F.3d 922, 933 (9th Cir.
25 2016) (“We have long held that prisoners may not challenge mere conditions of
26 confinement in habeas corpus.”)); *Giron Rodas v. Lyons*, No. 25-cv-1912-LL-AHG,
27 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks
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1 jurisdiction over Petitioner's § 2241 habeas petition since it cannot be fairly read as
2 attacking 'the legality or duration of confinement.'" (citation omitted).

3 **IV. CONCLUSION**

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

6 DATED: December 16, 2025

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