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

11
12 Eddy Othoman JOSEPH,

Case No.: 25-cv-03560-JES-KSC

13
14 Petitioner,

**RESPONSE IN OPPOSITION TO
PETITIONER'S HABEAS PETITION**

15 v.

16 Jeremy CASEY, Warden, Imperial
17 Regional Detention Facility, et al.,

18 Respondents.
19

20 **I. INTRODUCTION**

21 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. For the reasons set
22 forth below, Respondents ask the Court to deny the habeas petition.
23

24 **II. BACKGROUND**

25 Petitioner is a native and citizen of Angola, who illegally entered the United
26 States at an unknown date and location. Arredondo Declaration (Decl.) at ¶ 5. On
27 October 5, 1996, U.S. Border Patrol apprehended Petitioner and issued him an Order to
28 Show Cause, Form I-221. *Id.*

1 On April 7, 1997, an immigration judge (IJ) ordered Petitioner deported to
2 Angola. Arredondo Decl. at ¶ 6. Petitioner appealed the IJ's decision to the Board of
3 Immigration Appeals (BIA) on April 30, 1997. *Id.* at ¶ 7. On July 19, 2001, the BIA
4 administratively closed Petitioner's proceedings before the Board due to his eligibility
5 to apply for Temporary Protective Status (TPS), although there is no record that
6 Petitioner ever applied for TPS. *Id.* at ¶ 8.

7 On May 5, 2003, the Office of the Principal Legal Advisor (OPLA) filed a Motion
8 to Reinstate Proceedings with the BIA. Arredondo Decl. at ¶ 9. On June 17, 2004, the
9 BIA affirmed the immigration judge's decision. *Id.* at ¶ 10. On July 12, 2004, Petitioner
10 filed a Petition for Review (PFR) with the U.S. Court of Appeals for the Ninth Circuit.
11 *Id.* at ¶ 11. On March 19, 2008, the Ninth Circuit denied Petitioner's PFR and issued a
12 Mandate on May 12, 2008. *Id.* at ¶ 11.

13 On January 25, 2011, U.S. Immigration and Customs Enforcement (ICE),
14 Enforcement and Removal Operations (ERO) in St. Louis, Missouri arrested Petitioner.
15 Arredondo Decl. at ¶ 13. He was released on an Order of Supervision, Form I-220B, on
16 January 27, 2011. *Id.*

17 On May 29, 2025, Petitioner was re-detained by ICE and on that date, a Notice
18 of Revocation of Release was served on Petitioner. Arredondo Decl. at ¶ 14. Since
19 Petitioner's re-detention, ERO has worked diligently to execute his removal. *Id.* at ¶ 15.

20 Angola will issue travel documents for the removal of its citizens, and on July 3,
21 2025, a travel document request (TDR) was emailed to the Consulate General of Angola
22 in Houston, Texas. Arredondo Decl. at ¶ 16. On July 7, 2025, Petitioner was interviewed
23 by the Consulate General of Angola in Houston, Texas, but on July 14, 2025, ERO was
24 informed by the Angolan Consulate that the TD request was denied due to no evidence
25 of Angolan citizenship. *Id.* at ¶¶ 17-18; *See* Exhibit (Exh) 1 (formal request for travel
26 documents to the Consul General of Angola of June 20, 2025). On July 30, 2025, a TDR
27 was submitted to the Embassy of the Republic of South Africa as a third country
28 removal option, but on August 18, 2025, ERO was informed that the request for a travel

1 document from the South African Embassy was denied. *Id.* at ¶¶ 19-20; *See* Exh 2
2 (formal request for travel documents to the Embassy of South Africa of July 30, 2025).

3 ERO is working with ERO Headquarters Removal and International Operations
4 (HQ-RIO) to seek a third country for removal. Arredondo Decl. at ¶ 21. On December
5 5, 2025, ERO received an email from HQ-RIO stating that HQ-RIO is actively working
6 with the Department of State and DHS on avenues to remove Petitioner to a third
7 country. *Id.* at ¶ 22. Should ERO identify a third country for removal, Petitioner will be
8 notified in writing of the third country at least twenty-four (24) hours prior to his
9 removal. *Id.* at ¶ 23. ERO is simultaneously seeking additional evidence of Petitioner’s
10 Angolan citizenship in order to re-submit a TDR to the Consulate General of Angola.
11 *Id.* at ¶ 24.

12 III. ARGUMENT

13 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
14 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
15 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
16 (2022). The INA provides that an alien ordered removed must be detained for 90 days
17 pending the government’s efforts to secure the alien’s removal through negotiations
18 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
19 detain” the alien during the 90-day removal period under subsection (a)(1)).

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

28 Under the INA, if an individual ordered removed “is not removed to his or her

1 country of choice or citizenship, he or she shall be removed to any of the following
2 countries” listed in 8 U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154,
3 1156–57 (9th Cir. 2007). The enumerated countries are:

- 4 (i) The country from which the alien was admitted to the United States
- 5 (ii) The country in which is located the foreign port from which the alien
6 left for the United States or for a foreign territory contiguous to the United
7 States.
- 8 (iii) A country in which the alien resided before the alien entered the
9 country from which the alien entered the United States.
- 10 (iv) The country in which the alien was born.
- 11 (v) The country that had sovereignty over the alien's birthplace when the
12 alien was born.
- 13 (vi) The country in which the alien’s birthplace is located when the alien
14 is ordered removed.

15 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is
16 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another
17 country whose government will accept the alien into that country.’” *Id.* (quoting
18 § 1231(b)(2)(E)(vii)).

19 Here, Petitioner was ordered removed to Angola—his country of birth and
20 citizenship—as well as the country designated during his removal proceedings.
21 Petitioner has not designated any other country for removal. Apart from Angola, there
22 appears to be no other country that would meet the definitions under subsections (i)
23 through (vi), and Petitioner has made no showing to the contrary. *See Rokhfirooz v.*
24 *Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15,
25 2025) (“A prisoner bears the burden of demonstrating that ‘he is in custody in violation
26 of the Constitution or laws or treaties of the United States.’”) (quoting 28 U.S.C. §
27 2241(c)(3), brackets omitted). Because removal to the above enumerated countries is
28 “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).

Recent developments in international relations between the United States and
several other countries have made probable ICE’s removal of immigrants, like

1 Petitioner, that it previously was unable to remove to third countries. Against this
2 backdrop, ICE is also seeking to execute Petitioner's removal to a third country. *See*
3 *Arredondo Decl.* at ¶¶ 19-22.

4 Since Petitioner's detention, ICE has worked diligently to coordinate his
5 removal. *See Arredondo Decl.* at ¶¶ 15, 16-22; *See Exh. 1, 2* To that end, ICE's ERO
6 has sought and received specialized assistance from HQ-RIO with identifying a third
7 country for Petitioner's removal. *See id.* at ¶ 11. On December 5, 2025, HQ RIO
8 provided an update to ERO on HQ-RIO's efforts to identify a third country for
9 Petitioner's removal. *Id.* at ¶ 22. HQ-RIO stated that it is actively working with the
10 Department State and the Department of Homeland Security "on avenues to remove
11 Petitioner to a third country. *Id.*; *See also Zadvydas*, 533 U.S. at 700 (instructing district
12 courts "to listen with care when the Government's foreign policy judgments, including,
13 for example, the status of repatriation negotiations, are at issue, and to grant the
14 Government appropriate leeway when its judgments rest upon foreign policy
15 expertise.").

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

27 Additionally, Petitioner claims that the agency failed to comply with its
28 regulations for revoking his Order of Supervision. In fact, on May 29, 2025. Petitioner

1 was provided written notice of the revocation of his release. *See* Arredando Decl.¶ 14;
2 Exh. 3 (Notice of Revocation of Release of May 29, 2025). But even if the agency’s
3 compliance with the regulations fell short, Petitioner has not established prejudice nor
4 a constitutional violation. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014)
5 (“The mere failure of an agency to follow its regulations is not a violation of due
6 process.”); *United States v. Tatoyan*, 474 F.3d 1174, 1178 (9th Cir.2007) (“Compliance
7 with . . . internal [customs] agency regulations is not mandated by the Constitution”)
8 (internal quotation marks omitted); *United States v. Barraza-Leon*, 575 F.2d 218, 221–
9 22 (9th Cir. 1978) (holding that even assuming that the judge had violated the rule by
10 failing to inquire into the alien’s background, any error was harmless because there was
11 no showing that the petitioner was qualified for relief from deportation).

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

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

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

11 IV. CONCLUSION

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

14 DATED: December 17, 2025

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