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

12 **PATRIS LABULO,**

13 **Petitioner,**

14 **v.**

15 **KRISTI NOEM, Secretary of the**  
16 **Department of Homeland Security,**  
17 **PAMELA JO BONDI, Attorney General,**  
18 **TODD M. LYONS, Acting Director,**  
19 **Immigration and Customs Enforcement,**  
20 **JESUS ROCHA, Acting Field Office**  
21 **Director, San Diego Field Office,**  
22 **CHRISTOPHER LAROSE, Warden at**  
23 **Otay Mesa Detention Center,**

24 **Respondents.**

Civil Case No.: 25-cv-3602-BAS-SBC

**Traverse in**  
**Support of**  
**Petition for Writ of**  
**Habeas Corpus**

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## INTRODUCTION

Having received the government's Return and exhibits, this Court should grant Mr. Labulo's petition. To do so, the Court need only acknowledge the government's admissions of its failure to comply with the regulations and its demonstrated inability to remove Mr. Labulo to South Sudan or a third country.

First, this Court should grant the petition on Claim One because the government admits it has not complied with its own regulations. For persons like Mr. Labulo, those regulations permit re-detention only if ICE: (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2); (2) makes that finding "on account of changed circumstances," *id.*; (3) provides "an initial informal interview promptly," *id.* §§ 241.4(l)(1), 241.13(i)(3); and (4) "affords the [person] an opportunity to respond to the reasons for revocation," *id.* Yet ICE did none of these things when it arrested Mr. Labulo on August 18, 2025. The government admits that it did not provide Mr. Labulo a Notice of Revocation or an informal interview under 8 C.F.R. § 241.13(i)(3) and thus did not comply with the regulations. Dkt. 5 at 9; Dkt. 5-2 at ¶ 11. This alone justifies granting Mr. Labulo's release.

Second, this Court should grant the petition on Claim Two because the government provides no independent evidence to satisfy the success element ("a significant likelihood of removal") or timing element ("in the reasonably foreseeable future") of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The government admits that while Mr. Labulo is "a native and citizen of South Sudan," the immigration judge granted him relief under the Convention Against Torture that prevents his removal to South Sudan. Dkt. 5-2 at ¶ 4, 5, 8; Dkt. 5 at 2-3. The government also admits Mr. Labulo is not a citizen of Sudan and that Sudan has repeatedly refused to issue him a travel document. Dkt. 5-2 at ¶ 10, 12; Dkt. 5 at 3. And the government admits that it has tried and failed to remove

1 Mr. Labulo to a third country for the last three months. Dkt 5-2 at ¶ 13-15; Dkt. 5  
2 at 3. Because the government cannot satisfy the success or the timing elements of  
3 *Zadvydas*, release is also warranted on that basis.

4 **ARGUMENT**

5 **I. Mr. Labulo’s claims succeed on the merits.**

6 **A. Claim One: ICE did not adhere to the regulations governing re-**  
7 **detention.**

8 ICE’s admitted regulatory violations alone are sufficient to grant the habeas  
9 petition. The government effectively admits that ICE violated the regulations in at  
10 least three ways: 1) by revoking Mr. Labulo’s supervised release without a valid  
11 basis; 2) by failing to provide notice of why it was revoking Mr. Labulo’s  
12 supervised release; and 3) by failing to provide Mr. Labulo an informal interview.

13 First, ICE had no valid basis to revoke Mr. Labulo’s supervised release.  
14 ICE may revoke a noncitizen’s supervised release and return them to ICE custody  
15 due to failure to comply with conditions of release, 8 C.F.R. § 241.13(i)(1), or if,  
16 “on account of changed circumstances, the Service determines that there is a  
17 significant likelihood that the [noncitizen] may be removed in the reasonably  
18 foreseeable future.” *Id.* § 241.13(i)(2).

19 But here, the government does not claim that Mr. Labulo failed to comply  
20 with his conditions of release.<sup>1</sup> Nor does the government point to any “changed  
21 circumstances” establishing that he could be removed in the near future. To the  
22 contrary, the government admits that: 1) the immigration judge’s grant of relief  
23 under the Convention Against Torture precludes removing Mr. Labulo to South  
24 Sudan; 2) Sudan does not consider Mr. Labulo a citizen and will not accept him  
25 absent proof of Sudanese citizenship; and 3) ICE has tried and failed to remove  
26

27 <sup>1</sup> Though the government alleges that Mr. Labulo “caused a disturbance at the  
28 ICE office,” it gives no details about this incident and never claims that it rose to  
the level of violating his conditions of supervised release. Dkt. 5-2 at ¶ 11.

1 Mr. Labulo to another country for three months. Dkt. 5-2 at ¶ 4, 8, 12–15; Dkt. 5  
2 at 2–3. Thus, the government’s own admissions show that there was no basis to  
3 revoke Mr. Labulo’s supervised release and take him into custody.

4 Second, even if there *had been* a basis to revoke Mr. Labulo’s supervised  
5 release, ICE did not provide him notice of that basis. Under the regulations, ICE  
6 must “notif[y] [the person] of the reasons for revocation of his or her release.” 8  
7 C.F.R. § 241.13(i)(3). But here, “Respondents acknowledge that Petitioner was  
8 not provided a notice of revocation or informal interview after he was re-  
9 detained.” Dkt. 5 at 9; Dkt. 5-2 at ¶ 11. Thus, the government’s own admissions  
10 show that Mr. Labulo did not receive the notice the regulations require.

11 Third, ICE did not provide Mr. Labulo an informal interview. Under  
12 § 241.13(i)(3), ICE must “conduct an initial informal interview promptly” after  
13 re-detention “to afford the alien an opportunity to respond to the reasons for  
14 revocation stated in the notification.” During the interview, the person “may  
15 submit any evidence or information” showing that the prerequisites to re-  
16 detention have not been met, and the interviewer must evaluate “any contested  
17 facts.” *Id.* Neither regulation allows ICE to re-detain someone with no interview  
18 and no chance to contest the decision. *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR),  
19 2025 WL 2452352, at \*8 n.3 (S.D.N.Y. Aug. 26, 2025) (finding that either  
20 § 241.4 or § 241.13 led to the same result). Yet the government admits that is  
21 precisely what happened here. Dkt. 5 at 9; Dkt. 5-2 at ¶ 11.

22 The government’s only argument is that “[e]ven if the agency failed to  
23 follow its own regulations, Petitioner cannot establish that he was prejudiced by  
24 these acts or omissions.” Dkt. 5 at 10. But “the government offers no compelling  
25 authority that a habeas petitioner must demonstrate this form of prejudice.”  
26 *Soryadvongsa v. Noem*, No. 25-CV-2663-AGS-DDL, 2025 WL 3126821, at \*3  
27 (S.D. Cal. Nov. 8, 2025). “Especially in the context of civil detentions—when  
28 constitutional safeguards are at their zenith,” courts have been “unwilling to

1 import such a prejudice analysis into regulations or binding caselaw that don't  
2 mention it." *Id.* Indeed, a violation of a regulation that protects fundamental due  
3 process rights "implicates due process concerns even without a prejudice inquiry."  
4 *Touch v. Noem*, No. 3:25-CV-03118-RBM-AHG, 2025 WL 3296280, at \*1 (S.D.  
5 Cal. Nov. 26, 2025) (quotations omitted).

6 Courts in this district have held that when "ICE violated regulations  
7 intended to provide due process protections," the petitioner "was prejudiced." *Id.*  
8 That is because "[r]egulations such as 8 C.F.R. §§ 241.4(l) and 241.13(i), which  
9 provide notice and an opportunity to be heard before indefinite detention, . . .  
10 serve as the minimal process due before depriving a person of liberty." *Martinez*  
11 *v. Noem*, No. 25-CV-2740-BJC-BJW, 2025 WL 3171738, at \*4 (S.D. Cal. Nov.  
12 13, 2025). Thus, such claims are "actionable" regardless of whether a petitioner  
13 "demonstrates prejudice." *Id.*

14 Moreover, "[i]t is well established that the deprivation of constitutional  
15 rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695  
16 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government's arguments, the  
17 Ninth Circuit has specifically recognized the "irreparable harms imposed on  
18 anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976,  
19 995 (9th Cir. 2017). Thus, Mr. Labulo need not show prejudice, and even if he  
20 did, four-and-a-half months of unjustified immigration detention certainly  
21 qualifies as prejudicial.

22 **B. Claim Two: The government has not proved that there is a**  
23 **significant likelihood of removal in the reasonably foreseeable**  
24 **future.**

25 This Court may also order Mr. Labulo's immediate release under *Zadvydas*  
26 *v. Davis*, 533 U.S. 678, 701 (2001). Since Mr. Labulo's order of removal became  
27 final on May 10, 2022, the government admits that it has detained him for over  
28 nine months and has not been able to remove him during that time. Dkt. 5-2 at ¶  
9-15. Because the government has not identified *any* country willing to accept

1 Mr. Labulo, his removal is not significantly likely in the reasonably foreseeable  
2 future.

3 As an initial matter, DO Wilson admits that Mr. Labulo was detained for  
4 five months after being ordered removed. Dkt. 5-2 at ¶ 9–10. DO Wilson also  
5 admits that Mr. Labulo has been detained for four-and-a-half months since his re-  
6 arrest on August 18, 2025. Dkt. 5-2 at ¶ 11. This means that Mr. Labulo has been  
7 detained for over nine months since his final order of removal.

8 Yet the government appears to suggest that the six-month grace period  
9 starts over every time ICE re-detains someone. Dkt. 5 at 6. “Courts . . . broadly  
10 agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at \*7 n.6  
11 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL  
12 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-  
13 LB, 2018 WL 1876907, at \*6 (N.D. Cal. Apr. 19, 2018) (collecting cases);  
14 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at \*13 (W.D. Wash.  
15 Aug. 21, 2025). Even a cursory review of § 1231(a)(1)(B) shows that the statute  
16 defines three, specific starting dates for the removal period, none of which involve  
17 re-detention. *See Bailey v. Lynch*, No. CV 16-2600 (JLL), 2016 WL 5791407, at  
18 \*2 (D.N.J. Oct. 3, 2016) (explaining this). The six-month grace period has  
19 therefore ended, and so—contrary to the government’s claims—Mr. Labulo need  
20 not rebut the “presumptively reasonable period of detention.” Dkt. 5 at 6.

21 Because the six-month grace period has passed, this Court moves on to the  
22 burden-shifting framework. The government does not deny that Mr. Labulo has  
23 provided “good reason” to doubt his reasonably foreseeable removal, thereby  
24 forfeiting the issue. *Moallin v. Cangemi*, 427 F. Supp. 2d 908, 928 (D. Minn.  
25 2006). The burden therefore shifts to the government to prove that there is a  
26 “significant likelihood of removal in the reasonably foreseeable future.”

27 *Zadvydas*, 533 U.S. at 701. That standard has a success element (“significant

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1 likelihood of removal”) and a timing element (“in the reasonably foreseeable  
2 future”).

3 For the reasons previously explained, the government has provided neither.  
4 The government admits that Mr. Labulo “was granted deferral of removal under  
5 CAT to South Sudan—his country of citizenship and one of the two countries to  
6 which the immigration judge ordered him removed.” Dkt. 5 at 7. The government  
7 also freely admits that Sudan, the other country to which Mr. Labulo was ordered  
8 removed, “has not agreed to accept him.” Dkt. 5 at 7. The government thus admits  
9 that removal to the countries enumerated in the statute is “impracticable,  
10 inadvisable, or impossible.” Dkt. 5 at 7. And while the government claims that  
11 this gives it license to remove Mr. Labulo to a third country, it admits that it has  
12 tried and failed to do so for at least three months. Dkt. 5 at 7–8. In fact, the  
13 government admits that it is “still in the process of identifying countries that may  
14 be willing to accept Petitioner for removal” and does not even identify a single  
15 prospective country. Dkt. 5 at 8. And though the government claims that “ICE is  
16 working diligently” to identify such a country, “the reasonableness of Petitioner's  
17 detention does not turn on the degree of the government's good faith efforts.”  
18 *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at \*5 (W.D.N.Y.  
19 Jan. 2, 2019). Rather, the reasonableness of Petitioner’s detention turns on  
20 whether and to what extent the government's efforts are likely to bear fruit.” *Id.*

21 Here, the government has provided no evidence or persuasive assurances  
22 that Mr. Labulo can be removed or that such a removal would happen in the  
23 reasonably foreseeable future. Thus, this Court could grant his immediate release  
24 on this claim alone.

25 **II. Section 1252(g) does not deprive this Court of jurisdiction.**

26 Finally, this Court has jurisdiction to consider Mr. Labulo’s claims.  
27 Contrary to the government’s arguments, 8 U.S.C. § 1252(g) does not bar review  
28 of “all claims arising from deportation proceedings.” *Reno v. Am.-Arab Anti-*

1 *Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts “have  
2 jurisdiction to decide a purely legal question that does not challenge the Attorney  
3 General's discretionary authority.” *Ibarra-Perez v. United States*, \_\_ F.4th \_\_,  
4 2025 WL 2461663, at \*6 (9th Cir. Aug. 27, 2025) (cleaned up).

5 In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not  
6 prohibit immigrants from asserting a “right to meaningful notice and an  
7 opportunity to present a fear-based claim before [they] [are] removed,” *id.* at  
8 \*7<sup>2</sup>—the same claim that Mr. Labulo raises here with respect to third-country  
9 removals. The Court reasoned that “§ 1252(g) does not prohibit challenges to  
10 unlawful practices merely because they are in some fashion connected to removal  
11 orders.” *Id.* Instead, § 1252(g) is “limited . . . to actions challenging the Attorney  
12 General's discretionary decisions to initiate proceedings, adjudicate cases, and  
13 execute removal orders.” *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018).  
14 It does not apply to arguments that the government “entirely lacked the authority,  
15 and therefore the discretion,” to carry out a particular action. *Id.* at 800. Thus,  
16 § 1252(g) applies to “discretionary decisions that [the Secretary] actually has the  
17 power to make, as compared to the violation of his mandatory duties.” *Ibarra-*  
18 *Perez*, 2025 WL 2461663, at \*9.

19 The same logic applies to Mr. Labulo’s claims, because he challenges only  
20 violations of ICE’s mandatory duties under statutes, regulations, and the  
21 Constitution. Accordingly, “[t]hough 8 U.S.C § 1252(g), precludes this Court  
22 from exercising jurisdiction over the executive's decision to ‘commence  
23 proceedings, adjudicate cases, or execute removal orders against any alien,’ this  
24 Court has habeas jurisdiction over the issues raised here, namely the lawfulness of  
25

26 <sup>2</sup> Mr. Ibarra-Perez raised this claim in a post-removal Federal Tort Claims Act  
27 (“FTCA”) case, *id.* at \*2, while this is a pre-removal habeas petition. But the  
28 analysis under § 1252(g) remains the same, because both Mr. Ibarra-Perez and  
Mr. Labulo are challenging the same kind of agency action. *See Kong*, 62 F.4th at  
616–17 (explaining that a decision about § 1252(g) in an FTCA case would also  
affect habeas jurisdiction).

1 [Mr. Labulo’s] continued detention and the process required in relation to third  
2 country removal.” *Y.T.D.*, 2025 WL 2675760, at \*5. Many courts agree. *See, e.g.*,  
3 *Kong*, 62 F.4th at 617 (“§ 1252(g) does not bar judicial review of Kong’s  
4 challenge to the lawfulness of his detention,” including ICE’s “fail[ure] to abide  
5 by its own regulations”); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000)  
6 (“[S]ection 1252(g) does not bar courts from reviewing an alien detention  
7 order[.]”); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not  
8 apply to a “claim concern[ing] detention”); *J.R. v. Bostock*, No. 2:25-CV-01161-  
9 JNW, 2025 WL 1810210, at \*3 (W.D. Wash. June 30, 2025) (1252(g) did not  
10 apply to claims that ICE was “failing to carry out non-discretionary statutory  
11 duties and provide due process”); *D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F.  
12 Supp. 3d 355, 377–78 (D. Mass. 2025) (§ 1252(g) did not bar review of “the  
13 purely legal question of whether the Constitution and relevant statutes require  
14 notice and an opportunity to be heard prior to removal of an alien to a third  
15 country”).

16 **Conclusion**

17 For these reasons, this Court should grant the petition and order  
18 Mr. Labulo’s immediate release.

19 Respectfully submitted,

20 Dated: January 5, 2026

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