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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SAMIL HERNANDEZ-MEJIAS,

Petitioner,

v.

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

Respondents.

Case No.: 25-cv-3615-LL-DDL

RESPONDENTS' RETURN TO PETITIONER'S AMENDED HABEAS PETITION

I. Introduction

On December 16, 2025, Petitioner Samil Hernandez-Mejias has filed a habeas petition. ECF No. 1. On December 22, 2025, the Court issued an order to show cause as to why the petition should not be granted and conditionally appointed Petitioner counsel. ECF No. 2. On December 31, 2025, Petitioner filed an amended habeas petition. ECF No. 5. For the reasons set forth below, the Court should dismiss the amended petition.

II. Factual and Procedural Background[1]

Petitioner is a citizen and national of Cuba. Ex. 1 at 1; *see also* First Declaration of Samil Hernandez-Mejias (Hernandez-Mejias Decl.) ¶ 1, ECF No. 5-1 at 2. In July 2019, Petitioner entered the United States from Mexico. Ex. 2 at 1; *see also* Hernandez-Mejias Decl. ¶ 1. Petitioner did not possess legal documentation to be in or enter the United States, and he was not admitted or paroled into the United States after inspection by an immigration officer. Ex. 2 at 1. Petitioner was charged as removable from the United States and placed in removal proceedings. *See generally* Ex. 2. On February 13, 2020, an immigration judge ordered him removed to Cuba. Ex. 3. Petitioner appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). *See generally* Ex. 4. On August 20, 2020, Immigration and Customs Enforcement (ICE) released Petitioner from immigration custody. Ex. 5. On November 12, 2020, the BIA dismissed the appeal. Ex. 4. Therefore, Petitioner's order of removal became final on November 12, 2020.[2]

On September 16, 2025, ICE re-detained Petitioner for purposes of executing his final removal order. *See* Declaration of Hugo Lara Ramirez (Ramirez Decl.) ¶ 10. At

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

[2] "An order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the [Immigration and Nationality Act] shall become final . . . Upon dismissal of an appeal by the Board of Immigration Appeals[.]" 8 CFR § 1241.1(a).

that time, Petitioner was served a Form I-200, Warrant for Arrest of Alien. *See* Ex. 6. Petitioner was also shown a Form I-205, Warrant of Removal/Deportation. *See* Ex. 7. ICE does not have record that Petitioner was served a formal Notice of Revocation of Release or given an informal interview. Ramirez Decl. ¶ 10.

Since his re-detention, ICE has been working diligently to effectuate his removal. *See id.* ¶ 11. After repatriation efforts to Cuba proved unsuccessful, ICE identified Mexico as a third country where Petitioner may be removed. *See id.* ¶¶ 11, 13. Upon receiving the government of Mexico's agreement to accept Petitioner, ICE notified Petitioner that he was being removed to Mexico. *Id.* ¶¶ 13–14. ICE transported Petitioner to the Mexico border to effectuate his third country resettlement, but Petitioner refused to go to Mexico. *Id.* ¶ 15. Petitioner was thereafter returned to ICE custody. *See id.* ICE is actively working to identify another third country for Petitioner's resettlement. *Id.* ¶ 16. According to the declaring officer, "[s]hould ICE identify a third country for removal, Petitioner will be notified in writing of the third country at least 24 hours prior to removal. If Petitioner claims a fear of removal to the identified country, he will be referred to an asylum officer for processing of the fear-based claim." *Id.* ¶ 17.

III. Argument

A. Claims and requests barred by 8 U.S.C. § 1252.

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000). To the extent Petitioner's claims arise from—or seek to enjoin—the decision to execute his removal order, they are jurisdictionally barred under 8 U.S.C. § 1252(g). *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien

1 under this chapter.") (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*,
2 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special
3 attention upon, and make special provision for, judicial review of the Attorney
4 General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and]
5 execut[ing] removal orders"—which represent the initiation or prosecution of various
6 stages in the deportation process.") (quoting 8 U.S.C. § 1252(g)). In other words,
7 section 1252(g) removes district court jurisdiction over "three discrete actions that the
8 Attorney General may take: her 'decision or action' to 'commence proceedings,
9 adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis
10 removed). Here, Petitioner's claims necessarily arise "from the decision or action by
11 the Attorney General to . . . execute removal orders," over which Congress has explicitly
12 foreclosed district court jurisdiction. 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1252(f)(2)
13 ("Notwithstanding any other provision of law, no court shall enjoin the removal of any
14 alien pursuant to a final order under this section unless the alien shows by clear and
15 convincing evidence that the entry or execution of such order is prohibited as a matter
16 of law."). Accordingly, to the extent Petitioner's claims arise from—or seek to enjoin—
17 the decision to execute his removal order, the Court should deny and dismiss those
18 claims for lack of jurisdiction under 8 U.S.C. § 1252.

19 20 **B. Petitioner's detention is lawful, and he has not established that there is no significant likelihood of removal in the reasonably foreseeable future.**

21 Petitioner is properly detained under 8 U.S.C. § 1231(a), and his continued
22 detention is not unconstitutionally indefinite. Since Petitioner's re-detention, ICE
23 Enforcement and Removal Operations (ERO) has worked diligently to effectuate
24 Petitioner's removal first to Cuba, and after that proved unsuccessful, to a third country.
25 *See* Ramirez Decl. ¶ 11, 13–15.

26 ICE's authority to detain, release, and re-detain noncitizens who are subject to a
27 final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found
28 to be unlawfully present in the United States and a final order of removal has been

entered, the government ordinarily secures the alien's removal during a subsequent 90-day statutory "removal period." 8 U.S.C. § 1231(a)(1). The statute provides that the Attorney General "shall detain" the alien during this removal period. 8 U.S.C. § 1231(a)(2).

The Supreme Court held in *Zadvydas* that when removal is not accomplished during the 90-day removal period, the statute "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that six months constitutes a "presumptively reasonable period of detention." *Id.* at 701. Courts have repeatedly declined to grant habeas relief where the presumptively reasonable six-month period has not yet elapsed. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) detention poses a constitutional issue."); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) ("The Court finds that the Petition is premature because Petitioner has not been detained for more than six months. Petitioner has been in detention since May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas*.") (citations omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes the release based on changed circumstances, "the revocation would merely restart the 90-day removal period, not necessarily the presumptively reasonable six-month detention period under *Zadvydas*").

Here, Petitioner's removal order became final on November 12, 2020. *See* Ex. 4; Ramirez Decl. ¶ 8. Petitioner had already been released on an order of supervision on August 20, 2020. Ex. 5; Ramirez Decl. ¶ 7. Petitioner was detained for the first time post-final order of removal on September 16, 2025. *See id.* ¶ 10. Thus, Petitioner's six-month presumptively reasonable removal period will not end until approximately

1 March 16, 2026. Courts have repeatedly declined to grant habeas relief where the
2 presumptively reasonable six-month period has not yet elapsed. *See Khalilova v. Smith*,
3 No. 25-CV-2140 JLS (DDL), 2025 WL 3089522 (S.D. Cal. Nov. 5, 2025) (denying
4 similar habeas petition brought on same grounds); *Ali v. Barlow*, 446 F. Supp. 2d 604,
5 609–10 (E.D. Va. 2006) (finding habeas petition was unripe for review where *Zadvydas*
6 six-month period had not expired; dismissing petition without prejudice); *Gonzales v.*
7 *Naranjo*, No. EDCV 12-1392 DSF (FFM), 2012 WL 6111358 (C.D. Cal. 2012) (same);
8 *Waraich v. Ashcroft*, No. CVF051036, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19,
9 2005) (same).

10 Even after the period of presumptive reasonableness has run, release is not
11 required under *Zadvydas* unless "there is *no* significant likelihood of removal in the
12 reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701 (emphasis added). As the
13 Supreme Court instructed, "the habeas court must ask whether the detention in question
14 exceeds a period reasonably necessary to secure removal. It should measure
15 reasonableness primarily in terms of the statute's basic purpose, namely, *assuring the*
16 *alien's presence at the moment of removal*." *Id.* at 699 (emphasis added). In so holding,
17 the Supreme Court recognized that detention is presumptively reasonable pending
18 efforts to obtain travel documents, because the noncitizen's assistance is often needed
19 to obtain the travel documents, and because a noncitizen who is subject to an imminent,
20 executable warrant of removal becomes a significant flight risk, especially if he or she
21 is aware that it is imminent.

22 The Supreme Court also instructed that detention could exceed six months: "This
23 6-month presumption, of course, does not mean that every alien not removed must be
24 released after six months." *Id.* at 701. "After this 6-month period, once the alien
25 provides good reason to believe that there is no significant likelihood of removal in the
26 reasonably foreseeable future, the Government must respond with evidence sufficient
27 to rebut that showing." *Id.* The Ninth Circuit has emphasized, "*Zadvydas* places the
28 burden on the alien to show, after a detention period of six months, that there is 'good

reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

Petitioner is subject to a final, executable order of removal, which means that he has no right to remain in the United States. ICE has long-standing authority to remove noncitizens and resettle them in third countries where removal to the country designated in the final order is "impracticable, inadvisable, or impossible." 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b) (outlining framework for designation). Accordingly, noncitizens like Petitioner whose country of designation refuses to accept them may be removed and resettled in third countries.

Section 1231(b)(2)(E) provides that the Secretary of Homeland Security shall remove the noncitizen to any of the following countries:

> (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.
> (vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

Id. Accordingly, if the Secretary of Homeland Security is unable to remove a noncitizen to a country of designation or an alternative country in subparagraph (D), the Secretary may, in her discretion, remove the noncitizen to any country listed in subparagraphs (E)(i) through (E)(vi).

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1 Here, shortly after Petitioner was re-detained, ICE completed the process for his
2 repatriation to Cuba, but the repatriation was not successful. *See* Ramirez Decl. ¶¶ 11.
3 The Cuban government did not accept Petitioner for removal. *Id.* Petitioner's contention
4 that ICE is not entitled to pursue Petitioner's removal to a third country under 8 U.S.C.
5 § 1231(b) is thus unavailing. *See* 8 U.S.C. § 1231(b)(2)(C) (allowing for third country
6 removal where the petitioner's country of designation is not willing to accept him);
7 § 1231(b)(2)(E) (allowing third country resettlement where removal to the country
8 designated in the final order is "impracticable, inadvisable, or impossible"). Once
9 repatriation efforts to Cuba proved unsuccessful, ICE diligently pursued Petitioner's
10 third country resettlement to Mexico. *See* Ramirez Decl. ¶¶ 13–15. Mexico agreed to
11 accept Petitioner. *Id.* ¶ 13. Petitioner was notified and driven to the Mexico border for
12 removal. *Id.* ¶ 14–15. Petitioner did not express a fear of being removed to Mexico but
13 refused to willingly depart. *Id.* ¶ 15. He was thus deemed a "failure to comply." *Id.* As
14 such, Petitioner's attempt at showing that there is no likelihood of removal while he
15 refused to cooperate should thus be given no weight. *See, e.g.*, *Diouf v. Mukasey*, 542
16 F.3d 1222, 1233 (9th Cir. 2008) (holding that the government could continue to detain
17 the petitioner because it successfully completed his travel arrangements and "was not
18 removed at those times solely because of his own refusal to cooperate").

19 On this record, Petitioner cannot sustain his burden, and it would be premature
20 to conclude otherwise before permitting ICE an opportunity to complete its diligent
21 efforts to effect his removal. Evidence of progress, even slow progress, in negotiating a
22 petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows
23 unreasonably lengthy. *See, e.g.*, *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF
24 No. 5 at *5 (S.D. Cal. Aug. 15, 2019) (slip op.) ("The record at this stage in the litigation
25 does not support a finding that there is no significant likelihood of Petitioner's removal
26 in the reasonably foreseeable future."); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-
27 BLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because
28

"Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal").

Lastly, Petitioner's claim that he may not be removed to a third country without adequate notice and an opportunity to be heard is subject to ongoing litigation, with the Supreme Court staying an injunction imposed by a district court ordering the government to provide notice and an opportunity to be heard like that requested here. *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Given the Supreme Court's reversal of that injunction, Respondents' position is that imposition of a similar injunction would be reversed here. Moreover, ICE attests that if a third country is identified, "Petitioner will be notified in writing of the third country at least 24 hours prior to removal. If Petitioner claims a fear of removal to the identified country, he will be referred to an asylum officer for processing of the fear-based claim." Ramirez Decl. ¶ 17.

Based on the foregoing, Petitioner cannot prevail on his *Zadvydas* and third country removal claims.

C. Petitioner's complaints about procedural deficiencies in his re-detention do not establish a basis for habeas relief.

Additionally, Petitioner claims that the agency failed to comply with its regulations for revoking his Order of Supervision. ECF No. 5 at 8–11 (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). But Petitioner was served a Warrant for Arrest of Alien at the time of his arrest. *See* Ex. 6. Petitioner was also provided with a Warrant of Removal/Deportation at that time. *See* Ex. 7.

But even assuming the agency's compliance with the 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) ("Compliance with . . . internal [customs] agency regulations is not mandated by the Constitution") (internal quotation marks omitted);

1 *Bd. of Curators of Univ. of Mo. v. Horowitz,* 435 U.S. 78, 92 n.8 (1978) (holding that
2 *Accardi* "enunicate[s] principles of federal administrative law rather than of
3 constitutional law").

4 At the time of his re-detention, Petitioner knew he was subject to a final order of
5 removal and had no right to remain in the United States. *See* Hernandez-Mejias Decl.
6 ¶ 1; *see also* Exs. 3, 4. He also knew that although he was released in 2020, he was
7 under an Order of Supervision that could be revoked. *See* Hernandez-Mejias Decl. ¶ 2;
8 *see also* Ex. 5. And as demonstrated above, in September 2025, ICE had, and continues
9 to have, authority to detain Petitioner based on the presumptively reasonable period of
10 detention under *Zadvydas* and its determination that they could effectuate his removal
11 promptly. Thus, any challenge Petitioner would have made during an informal
12 interview after his re-detention would have failed. *See, e.g., United States v.*
13 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that
14 the judge had violated the rule by failing to inquire into the alien's background, any
15 error was harmless because there was no showing that the petitioner was qualified for
16 relief from deportation).

17 Petitioner also does not have a protected liberty interest in remaining free from
18 detention where ICE has exercised its discretion under a valid removal order and its
19 regulatory authority. *See Moran v. U.S. Dep't of Homeland Sec.*, No.
20 EDCV2000696DOCJDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020)
21 (dismissing claim that § 241.4(l) was a violation of the petitioners' procedural due
22 process rights and noting that they "fail to point to any constitutional, statutory, or
23 regulatory authority to support their contention that they have a protected interest in
24 remaining at liberty in the United States while they have valid removal orders").
25 Although the regulation provides detainees some opportunity to respond to the reasons
26 for revocation, "it provides no other procedural and no meaningful substantive limit on
27 this exercise of discretion as it allows revocation when, in the opinion of the revoking
28 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).[3]

While it is unclear whether Petitioner's conversations with ICE officers to date amount to an informal interview under the regulations, the alleged noncompliance with 8 C.F.R. § 241.13 does not entitle Petitioner to release. For example, in *Ahmad v. Whitaker*, the government revoked the petitioner's release but did not provide him an informal interview. *Ahmad v. Whitaker*, No. C18-27-JLR-BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner argued the revocation of his release was unlawful because, he contended, the federal regulations prohibited re-detention without, among other things, an opportunity to be heard. *Id.* at *5. 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 given that ICE had procured a travel document and scheduled [petitioner's] removal." *Id.*

Similarly, in *Doe v. Smith*, the court held that even if an ICE detained petitioner had not received a timely interview following her return to custody, there was "no apparent reason why a violation of the regulation, even assuming it occurred, should result in release." *Doe v. Smith*, No. 18-11363-FDS, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, "it 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.*

So too here. Petitioner does not challenge his removal order, nor could he. And again, ICE has been working expeditiously to effectuate his removal. Whatever

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[3] This case was abrogated on other grounds as recognized by *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

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 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); *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").

With Petitioner's removal likely to occur in the reasonably foreseeable future, no purpose would be served by this Court's ordering his release—other than frustrating "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. Therefore, Petitioner cannot show entitlement to habeas relief on his claim that ICE failed to follow agency regulations.

IV. Conclusion

For the foregoing reasons, Petitioner cannot show entitlement to habeas relief and Respondents respectfully request that the Court dismiss the amended habeas petition.

DATED: January 5, 2026

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