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

10 ZHILBERT KHACHIKIAN,
11 Petitioner,
12 v.
13 JEREMY CASEY, Warden, Imperial
Regional Detention Facility, *et al.*,
14 Respondents.
15

Case No. 25-cv-03737-GPC-JLB

**RESPONDENTS' RETURN IN
OPPOSITION TO PETITIONER'S
HABEAS PETITION**

1 **I. INTRODUCTION**

2 Petitioner Zhilbert Khachikian has filed a habeas petition seeking an order
3 requiring his release from Immigration and Customs Enforcement (ICE) custody or a
4 bond hearing. ECF No. 1. For the reasons set forth below, the Court should deny
5 Petitioner’s requested relief and dismiss the petition.

6 **II. FACTUAL BACKGROUND**

7 Petitioner came to the United States from Iran in February 1999. *Id.* at ¶ 28;
8 Declaration of Salvador Perez, Jr. (“Perez Decl.”) at ¶ 6. Petitioner was charged with
9 being present in the United States without having been admitted or paroled after
10 inspection by an immigration officer, in violation of INA § 212(a)(6)(A)(i) (8 U.S.C.
11 § 1182(a)(6)(A)(i)). Perez Decl. at ¶ 7. On October 25, 1999, Petitioner was ordered
12 removed to Iran. *Id.* at ¶ 9; ECF No. 1 at 2. Petitioner filed an appeal of the removal
13 order with the Board of Immigration Appeals (BIA), which the BIA dismissed on April
14 15, 2002. Perez Decl. at ¶¶ 10–11. Petitioner then filed a motion to reopen removal
15 proceedings, which the BIA denied on July 22, 2003. *Id.* at ¶¶ 12–13. Petitioner then
16 filed a motion for reconsideration, which the BIA denied on October 2, 2003. *Id.* at
17 ¶¶ 14–15. Petitioner filed a petition for review with the Ninth Circuit, which was denied
18 on February 11, 2005. *Id.* at ¶¶ 16–17. The Ninth Circuit issued the mandate on April
19 5, 2005. *Id.* at ¶ 17.

20 Following the entry of his final order of removal and the dismissal of his petition
21 for review, Petitioner was arrested on August 25, 2008, and released on an order of
22 supervision on the same date. *Id.* at ¶ 18; ECF No. 1 at ¶ 4; ECF No. 1-2.

23 On November 16, 2025, ICE re-detained Petitioner to execute his removal order
24 to Iran. Perez Decl. at ¶ 19. The following day, November 17, 2025, ICE provided
25 Petitioner with a Notice of Revocation of Release informing him that his order of
26 supervision had been revoked. *Id.* at ¶ 20; ECF No. 1 at ¶ 43; ECF No. 1-3. The Notice
27 of Revocation of Release stated, in part:

28 ////

1 ICE has determined that you can be removed from the United States
2 pursuant to the outstanding order of removal against you. On July 22,
3 2003, you were ordered removed to IRAN by an Immigration Judge and
4 you are subject to an administrative final order of removal. You were
5 released on an order of supervision on or about August 25, 2008. ICE has
6 determined the purpose of your release has been served and it is
7 appropriate to enforce the removal order.

8 ECF No. 1-3 (emphasis in original).

9 On November 17, 2025, ICE also offered Petitioner an opportunity to make a
10 statement concerning the revocation of the order of supervision, but he declined to
11 participate in this informal interview. Perez Decl. at ¶ 20; Exhibit A (Alien Informal
12 Interview Upon Revocation of Order of Supervision).¹

13 ICE is not seeking to remove Petitioner to a third country. Perez Decl. at ¶¶ 21–
14 27. On December 8, 2025, ICE’s Enforcement and Removal Operations (ERO)
15 requested that Petitioner complete Form I-217, *Information for Travel Document or*
16 *Passport*, in connection with a travel document request to the Iran Interests Section of
17 the Embassy of Pakistan to the United States (hereinafter, Iran Interests Section).² *Id.* at
18 ¶ 21. Petitioner refused to comply with that request. *Id.*

19 Despite Petitioner’s unwarranted refusal to complete Form I-217, ERO
20 completed that form using biographical information available to it in DHS records and
21 databases. *Id.* at ¶ 22. On December 22, 2025, ERO forwarded a finalized travel
22 document request to the Iran Interests Section in Washington, D.C. *Id.* at ¶ 23. The
23 travel document request is currently pending before the Iran Interests Section. *Id.* at
24 ¶ 24. Once an Iran travel document is obtained via the Iran Interests Section, ICE
25 anticipates that Petitioner will promptly be scheduled for a removal flight to Iran. *Id.* at
26 ¶ 25. The Department of Homeland Security has recently been successful in effectuating

27 ¹ The attached Exhibit A is a true copy of a document obtained from Immigration and
28 Customs Enforcement (ICE) counsel.

² In the absence of formal diplomatic relations between the United States and Iran since
1980, the Iran Interests Section of the Pakistan Embassy manages the diplomatic and
consular affairs of Iran in the United States.

1 final orders of removal to Iran via charter flights. *Id.* at ¶ 26 (confirming that DHS
2 removed 135 Iranian nationals in fiscal year 2025). Under these circumstances, ICE
3 “believe[s] that there is a significant likelihood of Petitioner’s removal to Iran in the
4 reasonably foreseeable future.” *Id.* at ¶ 27.

5 III. ARGUMENT

6 A. Because Petitioner’s Claim Regarding Third Countries is Unfounded, This 7 Court Lacks Jurisdiction Over Petitioner’s Fifth Claim for Relief.

8 The Constitution limits federal judicial power to designated “cases” and
9 “controversies.” U.S. Const., art. III, § 2; *see also SEC v. Med. Comm. for Human*
10 *Rights*, 404 U.S. 403, 407 (1972) (federal courts may only entertain matters that present
11 a “case” or “controversy” within the meaning of Article III). “Absent a real and
12 immediate threat of future injury there can be no case or controversy, and thus no Article
13 III standing for a party seeking injunctive relief.” *Wilson v. Brown*, No. 05-cv-1774-
14 BAS-MDD, 2015 WL 8515412, at *3 (S.D. Cal. Dec. 11, 2015) (citing *Friends of the*
15 *Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) (“[I]n a
16 lawsuit brought to force compliance, it is the plaintiff’s burden to establish standing by
17 demonstrating that, if unchecked by the litigation, the defendant’s allegedly wrongful
18 behavior will likely occur or continue, and that the threatened injury is certainly
19 impending.”) (simplified)). At the “irreducible constitutional minimum,” standing
20 requires that a petitioner demonstrate the following: (1) an injury in fact (2) that is fairly
21 traceable to the challenged action of the United States and (3) likely to be redressed by
22 a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

23 Here, Petitioner’s fifth claim for relief alleges, “[t]o the extent that Respondents
24 are detaining Petitioner with the intent to remove him to a third country without notice
25 or the opportunity to demonstrate that he is at a particularized risk of torture or
26 persecution in that third country, the detention is unlawful.” ECF No. 1 at ¶ 97. But
27 Respondents are not seeking to remove Petitioner to a third country and are instead
28 working to promptly remove Petitioner to Iran. *See Perez Decl.* at ¶¶ 21–27. As such,

1 there is no controversy concerning third-country resettlement for this Court to resolve.
2 Federal courts do not have jurisdiction “to give opinions upon moot questions or
3 abstract propositions, or to declare principles or rules of law which cannot affect the
4 matter in issue in the case before it.” *Church of Scientology of Cal. v. United States*,
5 506 U.S. 9, 12 (1992) (internal quotations and citations omitted). “A claim is moot if it
6 has lost its character as a present, live controversy.” *Am. Rivers v. Nat’l Marine*
7 *Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (citation omitted). The Court
8 therefore lacks jurisdiction over Petitioner’s claims concerning third-country
9 resettlement because there is no live case or controversy. *See Powell v. McCormack*,
10 395 U.S. 486, 496 (1969); *Murphy v. Hunt*, 455 U.S. 478, 481 (1982).

11 **B. Claims and Requests Barred by 8 U.S.C. § 1252.**

12 Petitioner bears the burden of establishing that this Court has subject matter
13 jurisdiction over his claims. *See Ass’n of Am. Med. Colls. v. United States*, 217 F.3d
14 770, 778–79 (9th Cir. 2000). To the extent Petitioner’s claims arise from—or seek to
15 enjoin—the decision to execute his removal order, they are jurisdictionally barred under
16 8 U.S.C. § 1252(g). *See* 8 U.S.C. § 1252(g) (“Except as provided in this section and
17 *notwithstanding any other provision of law* (statutory or nonstatutory), *including*
18 *section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and
19 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on
20 behalf of any alien arising from the decision or action by the Attorney General to
21 commence proceedings, adjudicate cases, or *execute removal orders* against any alien
22 under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*,
23 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special
24 attention upon, and make special provision for, judicial review of the Attorney
25 General’s discrete acts of “commenc[ing] proceedings, adjudicat[ing] cases, [and]
26 execut[ing] removal orders”—which represent the initiation or prosecution of various
27 stages in the deportation process.”) (quoting 8 U.S.C. § 1252(g)). In other words, section
28 1252(g) removes district court jurisdiction over “three discrete actions that the Attorney

1 General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases,
2 or execute removal orders.’” *Reno*, 525 U.S. at 482 (emphasis removed). Here,
3 Petitioner’s claims necessarily arise “from the decision or action by the Attorney
4 General to . . . execute removal orders,” over which Congress has explicitly foreclosed
5 district court jurisdiction. 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1252(f)(2)
6 (“Notwithstanding any other provision of law, no court shall enjoin the removal of any
7 alien pursuant to a final order under this section unless the alien shows by clear and
8 convincing evidence that the entry or execution of such order is prohibited as a matter
9 of law.”). Accordingly, to the extent Petitioner’s claims arise from—or seek to enjoin—
10 the decision to execute his removal order, the Court should deny and dismiss those
11 claims for lack of jurisdiction under 8 U.S.C. § 1252.

12 **C. Petitioner Other Claims Fail.**

13 Alternatively, even if this Court determines that it has jurisdiction over
14 Petitioner’s claims, Petitioner has not established that he is entitled to relief.

15 **1. Petitioner’s Detention is Lawful, and He Has Not Established That**
16 **There is No Significant Likelihood of Removal in the Reasonably**
17 **Foreseeable Future.**

18 ICE’s authority to detain, release, and re-detain noncitizens who are subject to a
19 final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found
20 to be unlawfully present in the United States and a final order of removal has been
21 entered, the government ordinarily secures the alien’s removal during a subsequent 90-
22 day statutory “removal period.” 8 U.S.C. § 1231(a)(1). The statute provides that the
23 Attorney General “shall detain” the alien during this removal period. 8 U.S.C.
24 § 1231(a)(2).

25 The Supreme Court held in *Zadvydas* that when removal is not accomplished
26 during the 90-day removal period, the statute “limits an alien’s post-removal-period
27 detention to a period reasonably necessary to bring about the alien’s removal from the
28 United States” and does not permit “indefinite detention.” *Zadvydas*, 533 U.S. at 689.

1 The Supreme Court has held that six months constitutes a “presumptively reasonable
2 period of detention.” *Id.* at 701. Courts have repeatedly declined to grant habeas relief
3 where the presumptively reasonable six-month period has not yet elapsed. *See*
4 *Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22,
5 2025) (“The government is entitled to its six-month presumptive period before
6 Petitioner’s continued § 1231(a)(6) detention poses a constitutional issue.”); *Guerra-*
7 *Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July
8 17, 2025) (“The Court finds that the Petition is premature because Petitioner has not
9 been detained for more than six months. Petitioner has been in detention since May 29,
10 2025; therefore, his two-month detention is lawful under *Zadvydas*.”) (citations
11 omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn.
12 Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes
13 the release based on changed circumstances, “the revocation would merely restart the
14 90-day removal period, not necessarily the presumptively reasonable six-month
15 detention period under *Zadvydas*”).

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

28 ////

1 The Supreme Court also instructed that detention could exceed six months: “This
2 6-month presumption, of course, does not mean that every alien not removed must be
3 released after six months. To the contrary, an alien may be held in confinement until it
4 has been determined that there is no significant likelihood of removal in the reasonably
5 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
6 reason to believe that there is no significant likelihood of removal in the reasonably
7 foreseeable future, the Government must respond with evidence sufficient to rebut that
8 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the
9 alien to show, after a detention period of six months, that there is ‘good reason to believe
10 that there is no significant likelihood of removal in the reasonably foreseeable future.’”
11 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
12 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

13 Here, Petitioner contends that his current detention runs afoul of *Zadvydas*. But
14 even if Petitioner’s total time in detention exceeds the six months of presumptive
15 reasonableness, his claim still fails at the next step because he cannot meet his burden
16 to establish “that there is no significant likelihood of removal in the reasonably
17 foreseeable future.” *Zadvydas*, 533 U.S. at 701. Petitioner was re-detained for removal
18 on November 16, 2025, after ICE had been successfully removing Iranian citizens for
19 several years. *See* ICE Annual Report Fiscal Year 2024, at p. 99,
20 <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (last visited Dec. 31,
21 2025) (reporting that removals to Iran ranged from 10 to 27 per fiscal year during fiscal
22 years 2019–2024); Perez Decl. at ¶ 26 (135 Iranian nationals removed in fiscal year
23 2025). On December 22, 2025, ERO forwarded a finalized travel document request to
24 the Iran Interests Section in Washington, D.C. Perez Decl. at ¶ 23. The travel document
25 request is currently pending before the Iran Interests Section. *Id.* at ¶ 24. Once an Iran
26 travel document is obtained via the Iran Interests Section, ICE anticipates that Petitioner
27 will promptly be scheduled for a removal flight to Iran. *Id.* at ¶ 25. The Department of
28 Homeland Security has recently been successful in effectuating final orders of removal

1 to Iran via charter flights. *Id.* at ¶ 26. Under these circumstances, ICE “believe[s] that
2 there is a significant likelihood of Petitioner’s removal to Iran in the reasonably
3 foreseeable future.” *Id.* at ¶ 27.

4 Petitioner complains that the government did not already obtain his travel
5 document before taking him back into detention. ECF No. 1 at ¶ 7. *Zadvydas* does not
6 require the government to pre-arrange a noncitizen’s removal travel before arresting
7 them, which would often be extremely difficult if not impossible. The constitutional
8 standard is whether there is “a significant likelihood of removal” in the “reasonably
9 foreseeable future.” The law does not require that “every [noncitizen] not removed must
10 be released after six months.” *Zadvydas*, 533 U.S. at 701. Instead, the Supreme Court
11 was clear that the Constitution prevents only “indefinite” or “potentially permanent”
12 detention. *Id.* at 689–91. Courts properly deny *Zadvydas* claims under such
13 circumstances. *See Malkandi v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1
14 (W.D. Wash. April 2, 2008) (denying *Zadvydas* petition where petitioner had been
15 detained more than 14 months post-final order); *Nicia v. ICE Field Office Dir.*, No.
16 C13–0092–RSM, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding
17 petitioner “failed to satisfy his burden of showing that there is no significant likelihood
18 of his removal in the reasonably foreseeable future” where he had been detained more
19 than seven months post-final order).

20 That Petitioner does not yet have a specific date of anticipated removal does not
21 make his detention unconstitutionally indefinite. *See Diouf v. Mukasey*, 542 F. 3d 1222,
22 1233 (9th Cir. 2008) (explaining that a demonstration of “no significant likelihood of
23 removal in the reasonably foreseeable future” would include a country’s refusal to
24 accept a noncitizen or that removal is barred by our own laws). On the contrary, as
25 courts in this district have found, “evidence of progress, albeit slow progress, in
26 negotiating a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s
27 detention grows unreasonably lengthy.” Exhibit B, *Kim v. Ashcroft*, Case No. 02-cv-
28 1524-J-LAB, ECF No. 25 at 8:8–10 (S.D. Cal. June 2, 2003) (finding that petitioner’s

1 one year and four-month detention does not violate *Zadvydas* given respondent’s
2 production of evidence showing governments’ negotiations are in progress and there is
3 reason to believe that removal is likely in the foreseeable future); *see also Marquez v.*
4 *Wolf*, No. 20-cv-1769-WQHBLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020)
5 (denying petition because “Respondents have set forth evidence that demonstrates
6 progress and the reasons for the delay in Petitioner’s removal”); Exhibit C, *Sereke v.*
7 *DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5:4–6 (S.D. Cal. Aug. 15, 2019)
8 (“[T]he record at this stage in the litigation does not support a finding that there is no
9 significant likelihood of Petitioner’s removal in the reasonably foreseeable future.”).

10 Petitioner’s continued detention is thus not unconstitutionally prolonged under
11 *Zadvydas*.

12 **2. Petitioner’s Refusal to Cooperate with ICE’s Efforts to Obtain a**
13 **Travel Document Authorizes His Continued Detention.**

14 The government is also authorized to detain Petitioner due to his refusal to
15 cooperate with ICE’s efforts to obtain a travel document, pursuant to 8 U.S.C.
16 § 1231(a)(1)(C):

17 The removal period shall be extended beyond a period of 90 days and the
18 alien may remain in detention during such extended period if the alien fails
19 or refuses to make timely application in good faith for travel or other
20 documents necessary to the alien’s departure or conspires or acts to prevent
the alien’s removal subject to an order of removal.

21 In *Pelich v. I.N.S.*, 329 F.3d 1057 (9th Cir. 2003), the Ninth Circuit analyzed
22 section 1231(a)(1)(C) in the context of the government’s detention of a noncitizen past
23 the presumptively reasonable six months recognized by *Zadvydas* where the noncitizen
24 refused to cooperate with the Immigration and Naturalization Service’s (INS) efforts to
25 remove him:

26 There is significant evidence in the record that, unlike the detainees in
27 *Zadvydas*, Pelich himself is responsible for his plight. Pelich has
28 steadfastly refused to fill out a Polish passport application, which directly
impedes Poland’s ability to determine whether Pelich qualifies for Polish

1 travel documents. In the January letter, the Polish consulate explicitly
2 reserved its determination of Pelich's citizenship status pending review of
3 the information requested in the letter, including the passport application.
4 Compounding the dilemma is the fact that Pelich has provided the INS
5 with conflicting information regarding his name, his parents' names, his
6 parents' birthplaces and residences, his birthplace and his nationality.

7 . . . The risk of indefinite detention that motivated the Supreme Court's
8 statutory interpretation in *Zadvydas* does not exist when an alien is the
9 cause of his own detention. Unlike the aliens in *Zadvydas*, Pelich has the
10 "keys[to his freedom] in his pocket" and could likely effectuate his
11 removal by providing the information requested by the INS. . . .

12 . . .
13 Since Pelich falls within the category of non-cooperative detainee, he
14 cannot legitimately object to his continued detention when that very
15 detention is caused by his own conduct. Pelich could likely effectuate his
16 own removal (and free himself from detention) by providing the Polish
17 government with the requested information. It naturally follows that his
18 detention is not destined to be indefinite. To the contrary, Pelich's behavior
19 places him within that class of aliens properly detained pursuant to 8
20 U.S.C. § 1231(a)(1)(C).

21 *Pelich*, 329 F.3d at 1059–60.

22 The Ninth Circuit later held:

23 [C]onsistent with *Zadvydas* and *Pelich*, that when an alien refuses to
24 cooperate fully and honestly with officials to secure travel documents from
25 a foreign government, the alien cannot meet his or her burden to show there
26 is no significant likelihood of removal in the reasonably foreseeable future.
27 We cannot know whether an alien's removal is a "remote possibility," until
28 the alien makes a full and honest effort to secure travel documents. A
particular alien may have a very good chance of being removed, but if that
alien is refusing to cooperate fully with officials to secure travel
documents, neither the INS nor a court can sensibly ascertain the alien's
chance of removal. . . . We conclude that 8 U.S.C. § 1231(a)(1)(C),
interpreted mindful of the concerns underlying *Zadvydas* and *Pelich*,
authorizes the INS's continued detention of a removable alien so long as
the alien fails to cooperate fully and honestly with officials to obtain travel
documents.

1 *Lema v. I.N.S.*, 341 F.3d 853, 856–57 (9th Cir. 2003); *see also Parra v. Perryman*, 172
2 F.3d 954, 958 (9th Cir. 1999) (“A criminal alien who insists on postponing the
3 inevitable has no constitutional right to remain at large during the ensuing delay, and
4 the United States has a powerful interest in maintaining the detention in order to ensure
5 that removal actually occurs”); *Ford v. Quarantillo*, 142 F. Supp. 2d 585, 588 (D.N.J.
6 2001) (in deciding propriety of continued detention, the court determined whether the
7 alien’s “continued detainment [was] the result of his conspiring or acting to prevent his
8 removal”); *Moro v. I.N.S.*, 58 F. Supp. 2d 854, 859 (N.D. Ill. 1999) (8 U.S.C.
9 § 1231(a)(1)(C) “places a burden of good-faith cooperation on aliens in securing their
10 removal”); *Castillo-Gradis v. Turnage*, 752 F. Supp. 937, 941 (S.D. Cal. 1990)
11 (requiring release “absent a showing of . . . delay caused by the alien’s own actions”)
12 (citing *Dor v. District Director*, 891 F.2d 997, 1003 (2d Cir. 1989) (refusing to order
13 release when petitioner was “largely responsible for the very delay of deportation of
14 which he complain[ed]”)).

15 Here, ICE requested that Petitioner complete travel document request forms on
16 December 8, 2025, but he refused to complete the forms. Perez Decl. at ¶ 21.
17 Petitioner’s refusal to cooperate authorizes ICE’s continued detention under 8 U.S.C.
18 § 1231(a)(1)(C). The Ninth Circuit made it clear in *Pelich* and *Lema* that a noncitizen
19 cannot be heard to complain of continued detention when he has frustrated the
20 government’s efforts to effectuate a valid removal order.

21 **3. Petitioner’s Complaints About Procedural Defects in his Detention Do**
22 **Not Establish a Basis for Habeas Relief.**

23 Petitioner also claims that ICE failed to comply with its regulations when ICE
24 revoked his order of supervision. This claim is unsupported by the evidence.

25 A noncitizen who is not removed within the removal period may be released from
26 ICE custody “pending removal . . . subject to supervision under regulations prescribed
27 by the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C.
28 § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and the

1 order may be revoked under 8 C.F.R. § 241.4(l)(2)(iii) where “appropriate to enforce a
2 removal order.” *See also* 8 C.F.R. § 241.5 (conditions of release after removal period).
3 ICE may also revoke the order of supervision where, “on account of changed
4 circumstances, [ICE] determines that there is a significant likelihood that the alien may
5 be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). The
6 regulations further provide:

7 Upon revocation, the alien will be notified of the reasons for revocation of
8 his or her release or parole. The alien will be afforded an initial informal
9 interview promptly *after* his or her return to Service custody to afford the
10 alien an opportunity to respond to the reasons for revocation stated in the
notification.

11 8 C.F.R. § 214.4(l) (emphasis added).

12 Here, Petitioner claims that his detention is unlawful because the agency failed
13 to comply with its regulations when re-detaining him. Specifically, Petitioner argues
14 that ICE did not have any reason to believe that removal to Iran was significantly likely
15 to occur in the reasonably foreseeable future, ICE did not provide him with notice of
16 the reasons for revoking his order of supervision, ICE did not provide him an informal
17 interview, and he has not been afforded a meaningful opportunity to respond to the
18 reasons for revocation or submit evidence rebutting his re-detention. ECF No. 1 at ¶¶ 9–
19 10, 70–73. Notably, the regulations do not require written notice, advance notice, an
20 advanced interview, nor for DHS to prove to the satisfaction of a petitioner that changed
21 circumstances are present.³ Moreover, ICE provided Petitioner with a Notice of
22 Revocation of Release on the day after he was re-detained. The Notice of Revocation
23 of Release informed Petitioner of the “changed circumstances” justifying his re-
24

25 ³ There are obvious law enforcement reasons for not providing “advance” notice of a
26 re-detention before executing a warrant of removal, just as there is no requirement to
27 provide prior notice of execution of an arrest warrant. Providing such notice “creates a
28 risk that the alien will leave town before the delivery or deportation date.” *United States*
v. Gonzales & Gonzales Bonds & Ins. Agency, Inc., 103 F. Supp. 3d 1121, 1137 (N.D.
Cal. 2015).

1 detention:

2 *ICE has determined that you can be removed from the United States*
3 *pursuant to the outstanding order of removal against you. On July 22,*
4 *2003, you were ordered removed to IRAN by an Immigration Judge and*
5 *you are subject to an administrative final order of removal You were*
6 *released on an order of supervision on or about August 25, 2008. ICE has*
determined the purpose of your release has been served and it is
appropriate to enforce the removal order.

7 ECF No. 1-3 (emphasis in original).

8 ICE also provided Petitioner with an opportunity for an informal interview
9 regarding his detention status on November 17, 2025. Perez Decl. at ¶ 20; Exhibit A
10 (Alien Informal Interview Upon Revocation of Order of Supervision).

11 Finally, it is clear that there *are* changed circumstances here—namely, ICE’s
12 recent ability to schedule removal flights to Iran. Removals to Iran have been
13 successfully executed throughout the past six years. *See* ICE Annual Report Fiscal Year
14 2024, at p. 99, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf> (last
15 visited Dec. 31, 2025); Perez Decl. at ¶ 26. These facts are fatal to Petitioner’s claim,
16 because even if the agency had failed to provide Petitioner with “advance notice” of the
17 revocation, or neglected to conduct the informal interview, Petitioner could not
18 establish that he was prejudiced by those omissions nor that a constitutional level
19 violation has occurred. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014)
20 (“[T]he mere failure of an agency to follow its regulations is not a violation of due
21 process.”); *United States v. Tatoyan*, 474 F.3d 1174, 1178 (9th Cir. 2007) (holding that
22 “[c]ompliance with . . . internal [customs] agency regulations is not mandated by the
23 Constitution”) (simplified); *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78,
24 92 n.8 (1978) (holding that *Accardi* “enunciate[s] principles of federal administrative
25 law rather than of constitutional law”).

26 For example, in *Ahmad v. Whitaker*, the government revoked the petitioner’s
27 release but did not provide him an informal interview. *Ahmad v. Whitaker*, No. C18-27-
28 JLR-BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and*

1 *recommendation adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The petitioner
2 argued the revocation of his release was unlawful because, he contended, the federal
3 regulations prohibited re-detention without, among other things, an opportunity to be
4 heard. *Id.* at *5. In rejecting his claim, the court held that although the regulations called
5 for an informal interview, petitioner could not establish “any actionable injury from this
6 violation of the regulations given that ICE had procured a travel document and
7 scheduled [petitioner’s] removal.” *Id.* Similarly, in *Doe v. Smith*, the court held that
8 even if an ICE detained petitioner had not received a timely interview following her
9 return to custody, there was “no apparent reason why a violation of the regulation, even
10 assuming it occurred, should result in release.” *Doe v. Smith*, No. 18-11363-FDS, 2018
11 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). The court elaborated, “it is difficult to see
12 an actionable injury stemming from such a violation. Doe is not challenging the
13 underlying justification for the removal order. . . . Nor is this a situation where a prompt
14 interview might have led to her immediate release—for example, a case of mistaken
15 identity.” *Id.*

16 So too here. At the time of his re-detention, Petitioner knew he was subject to a
17 final order of removal to Iran. Petitioner was informed of the reason for his re-detention
18 when he was served the Notice of Revocation of Release on November 17, 2025. And
19 because Respondents had, and continue to have, an evidentiary basis to conclude there
20 is a significant likelihood that Petitioner will be removed to Iran in the reasonably
21 foreseeable future, any challenge that Petitioner would have raised to the revocation
22 prior to or after his re-detention would have failed. Because Petitioner cannot show
23 prejudice under these circumstances, the alleged violation of agency regulations does
24 not warrant release here. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir.
25 2009), *opinion amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir.
26 2010) (“While the regulation provides the detainee some opportunity to respond to the
27 reasons for revocation, it provides no other procedural and no meaningful substantive
28 limit on this exercise of discretion as it allows revocation ‘when, in the opinion of the

1 revoking official . . . [t]he purposes of release have been served . . . [or] [t]he conduct
2 of the alien, or *any other circumstance*, indicates that release would no longer be
3 appropriate.”) (emphasis in original) (citing 8 C.F.R. §§ 241.4(l)(2)(i), (iv)); *Carnation*
4 *Co. v. Sec’y of Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“[V]iolations of procedural
5 regulations should be upheld if there is no significant possibility that the violation
6 affected the ultimate outcome of the agency’s action.” (citation omitted)); *United States*
7 *v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow
8 regulations requiring that an arrested alien be advised of his right to speak to his consul
9 was not prejudicial and thus not a ground for challenging the conviction); *United States*
10 *v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming
11 that the judge had violated the rule by failing to inquire into the alien’s background, any
12 error was harmless because there was no showing that the petitioner was qualified for
13 relief from deportation).

14 With Petitioner’s removal likely to occur in the reasonably foreseeable future,
15 no purpose would be served by this Court’s ordering his release—other than frustrating
16 “the statute’s basic purpose, namely, assuring the alien’s presence at the moment of
17 removal.” *Zadvydas*, 533 U.S. at 699.

18 IV. CONCLUSION

19 For the foregoing reasons, the Court should deny Petitioner’s requests for relief
20 and dismiss the petition.

21
22 Dated: January 2, 2026

Respectfully submitted,

24 ADAM GORDON
25 United States Attorney

26 s/ Matthew Riley
27 MATTHEW RILEY
28 Assistant United States Attorney
Attorney for Respondents

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7 Attorneys for Respondents

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

10 ZHILBERT KHACHIKIAN,
11
12 Petitioner,
13
14 v.
15 JEREMY CASEY, Warden, Imperial
Regional Detention Facility, *et al.*,
16
17 Respondents.

Case No. 25-cv-03737-GPC-JLB

TABLE OF EXHIBITS

EXHIBITS:

- 1
2 A. Alien Informal Interview Upon Revocation of Order of Supervision, dated
3 November 17, 2025
4 B. Order Granting Motion for Reconsideration, *Kim v. Ashcroft*, Case No. 02-cv-
5 1524-J-LAB, ECF No. 25 (S.D. Cal. June 2, 2003)
6 C. Order, *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 (S.D.
7 Cal. Aug. 15, 2019)

8 Dated: January 2, 2026

Respectfully submitted,

9
10 ADAM GORDON
United States Attorney

11
12 *s/ Matthew Riley*
13 MATTHEW RILEY
Assistant United States Attorney
14 Attorney for Respondents
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EXHIBIT A

ALIEN INFORMAL INTERVIEW

UPON REVOCATION OF ORDER OF SUPERVISION UNDER

8 C.F.R. § 241.4(l); 8 C.F.R. § 241.13(i)

STATEMENT OF KHACHIKIAN, Zhilbert [Detainee]

A File # 

Detention Location Los Angeles, CA

INTERVIEWING ICE OFFICER: Romero, R Deportation Officer Los Angeles
[Print Name, Title & Duty Station]

On November 17 2025, I conducted an initial informal interview of the detainee listed above in order to afford the alien an opportunity to respond to the reasons for revocation of his or her order of supervision stated in the notification letter. At the interview, the alien made the following oral response regarding the reasons for revocation:

I will wait for my lawyer.

The detainee [did] [did not] provide a written statement. The detainee [did] [did not] provide any documents. Any documents provided are attached.



Signature of Interviewing Officer

FOR INTERNAL USE ONLY

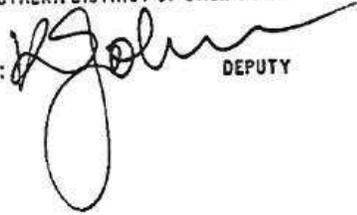
EXHIBIT B

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CLERY, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KININE KIM,

CASE NO. 02CV1524-J (LAB)



Petitioner,

ORDER GRANTING MOTION
FOR RECONSIDERATION

v.

JOHN ASHCROFT, ET AL.

Respondents.

On August 5, 2002, Petitioner Kinine Kim, represented by counsel, filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. He challenged his custody by the Immigration and Naturalization Services ("INS") alleging that he has been indefinitely detained in violation of 8 U.S.C. § 1231(a)(6) and sought release from custody under the conditions of supervision set out in 8 U.S.C. § 1231(a)(3). The Court initially denied the Petition without prejudice as to refile and later granted the refiled Petition and ordered that Petitioner be released on bond. Respondent timely filed its Motion to Alter or Amend the Judgment pursuant to Rule 59(a), (e). For the reasons set forth below, the Motion is granted, the renewed Petition for Writ of Habeas Corpus is denied and Respondent may continue to detain Petitioner. The Court grants Petitioner leave to refile his petition in six months if he has not been removed at that time and is able to plead facts sufficient to satisfy *Zadvydas v. Davis*,

1 533 U.S. 678 (2001).

2 *Background*¹

3 Petitioner is a Cambodian national and refugee from Thailand who became a permanent
4 resident on February 10, 1983. The state of California convicted him of assault with a firearm
5 upon a person in violation of the California Penal Code § 245A(2); second degree burglary in
6 violation of California Penal Code § 459; and driving with a suspended/revoked driver's
7 license and failing to pay the \$792 fine. When he filed his Petition on August 5, 2002, he had
8 been in the custody of the Immigration and Naturalization Service ("INS") since November
9 19, 2001 and had been the subject of a final order of removal since January 17, 2002.
10 Petitioner's January 22, 2002 request for a travel document from the Cambodian government
11 was denied on January 25, 2002. The Cambodian government denied the application because
12 it had no repatriation agreement with the United States. On March 22, 2002, the United States
13 and the Cambodian government signed a "Memorandum Between the Government of the
14 United States and the Royal Government of Cambodia for the Establishment and Operation
15 of a United States-Cambodia Joint Commission on Repatriation," (hereinafter
16 "Memorandum"), providing procedures for the repatriation of each other's nationals to their
17 home state. After the Memorandum was signed, Petitioner filed a new application for travel
18 documents on April 8, 2002. He was interviewed by Cambodian officials in early October
19 2002. At the time Petitioner filed, the Cambodian government had not decided whether to
20 repatriate him.

21 In its Answer to the Petition, Respondent requested a stay of the proceedings pending
22 the INS' review of Petitioner's circumstances to determine if there was a significant likelihood
23 of removal in the reasonably foreseeable future pursuant to interim rules that have since been
24 codified at 8 C.F.R. § 241.13. The Court found that although the six month period during
25 which detention is presumptively reasonable had passed, that Petitioner had not met his burden
26 of showing good reason why there is no significant likelihood of removal in the reasonably

27 _____
28 ¹ These facts are set forth in the Court's Order Denying Petition Without Prejudice and
are reiterated here for convenience.

1 foreseeable future. The Court denied the Petition without prejudice as to refiling if, within 45
2 days, the Government of Cambodia had not responded or had denied repatriation.

3 Petitioner renewed his Petition after the 45 days had passed. This time, the Court
4 granted the Petition, stating that although the United States and Cambodian governments were
5 cooperating to repatriate Cambodian nationals detained by the INS, that

6 Respondent ha[d] not made a sufficiently strong showing that Petitioner's
7 repatriation [was] likely in the foreseeable future given that Petitioner ha[d] been
8 in INS custody since November 19, 2001 and that his order of removal ha[d]
been final since January 17, 2002.

9 *Order Granting Petition for Writ of Habeas Corpus* (March 3, 2003) at 2.

10 Respondent raises two distinct but related issues, contending that the Court
11 impermissibly shifted the burden of proof to the Respondent and that application of the correct
12 standard requires that the Petition be denied because "the passage of time alone is not
13 sufficient to require the release of an alien detainee." *Mem. of P & A.* at 2. According to
14 Respondent, the burden remains with the alien to *prove* that his removal is not significantly
15 likely in the foreseeable future." *Id.* (emphasis added). The Court acknowledges that its March
16 3, 2003 Order imprecisely recited the standard, but disagrees with Respondent's contentions
17 that the alien must *prove* that removal is not significantly likely in the foreseeable future and
18 that the length of detention alone is always insufficient to show that there is good reason to
19 conclude that there is no significant likelihood of removal in the reasonably foreseeable future.
20 The Court nonetheless agrees with Respondent that continued detention is authorized under
21 *Zadvydas*.

22 *Discussion*

23 The Attorney General has the discretion to arrest and detain certain classes of aliens,
24 including those who like Petitioner, who are removable because they have been convicted of
25 specified crimes, pending a decision on whether the alien is to be removed from the United
26 States. 8 U.S.C. § 1226(a)(2), (c). Generally, an alien must be removed within 90 days of an
27 issuance of a final order of removal. 8 U.S.C. § 1231(a)(1). However, "under no circumstance
28 during the removal period" shall the Attorney General release an alien who has been found

1 inadmissible because he has committed certain crimes specified and defined in sections
2 1182(a)(2), (3) or section 1227(a)(2), (a)(4)(B). 8 U.S.C. § 1231(a)(2). In *Zadvydas v. Davis*,
3 533 U.S. 678 (2001), the United States Supreme Court rejected the Government's argument
4 that section 1226(a)(2) authorized indefinite detention and read into the section as implicitly
5 limiting an alien's post-removal period detention to a period reasonably necessary to bring
6 about that alien's removal from the United States. *Id.* at 690.

7 Contrary to Respondent's argument, *Zadvydas* does not impose on the alien the burden
8 of *proving* that his removal is not significantly likely in the foreseeable future. Rather,
9 *Zadvydas* creates a burden-shifting procedure setting forth the burdens of proof for when
10 removal is reasonably foreseeable. Once the presumptively reasonable six-month period of
11 detention has expired, the alien must "provide [] good reason to believe that there is no
12 significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701; *Xi v. United*
13 *States I.N.S.*, 298 F.3d 832, 840 (9th Cir. 2002). *Zadvydas* thus sets forth what the alien must
14 plead and does not impose an evidentiary burden. *Fahim v. Ashcroft*, 227 F. Supp.2d 1359
15 (2002)(holding that petitioner did not allege a significant likelihood that his removal is unlikely
16 in the foreseeable future). Once the alien has provided "good reason," the Respondent "must
17 respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701; *Xi*, 298
18 F.3d at 840. The burden is therefore on Respondent to produce admissible, credible evidence
19 concerning the likelihood of removal in the foreseeable future. While the Court did not
20 specifically define "reasonably foreseeable future," it did set some parameters that guide our
21 understanding of the phrase. The alien must allege something more than that there is no
22 pending repatriation agreement and must consider the likelihood of successful future
23 negotiations, but the alien does not have to show "the absence of *any* prospect of removal."
24 *Id.* at 702 (emphasis in original).

25 The original Petition alleged that Petitioner had been in custody for longer than the
26 presumptively reasonable six month period and that it was not certain that he would be
27 removed in the reasonably foreseeable future because the Cambodian government had denied
28 travel documents for Cambodian detainees in San Diego because they, like Petitioner, were

1 born in Thailand, and because Cambodian government officials had informed Petitioner during
2 his interview that he was not likely to receive travel documents because he was born in
3 Thailand. The Petitioner lodged documents showing that the other Cambodians were denied
4 travel documents for reasons other than those alleged by Petitioner, and the Court found that
5 the alleged statements by the Cambodian government officials were inadmissible hearsay.
6 Respondent produced evidence showing that the United States and Cambodian governments
7 were making progress in arranging for the repatriation of Cambodian nationals. Specifically,
8 the two countries had entered into the Memorandum on March 22, 2002. Moreover, Petitioner
9 had been interviewed by Cambodian government officials. The Memorandum had already
10 resulted in the removal of a number of Cambodian nationals. Thus, there were no institutional
11 barriers to repatriation.

12 The Court denied the original Petition subject to renewal because "Petitioner has not
13 shown good reason why there is no significant likelihood of removal in the reasonably
14 foreseeable future." *Order Denying Petition for Writ of Habeas Corpus* (Dec. 6, 2002) at 5.
15 The amended Petition, filed on February 4, 2003, alleged that the Cambodian government had
16 still not responded to Respondent's request for travel documents for the Petitioner and that
17 Petitioner remained in custody. In other words, Petitioner argued that the passage of time alone
18 demonstrated that Respondents were not able to effectuate his repatriation in the reasonably
19 foreseeable future.

20 In response to Petitioner's allegations in the amended Petition, Respondent filed an
21 amended Return and new evidence in the form of a declaration by an INS official stating that
22 two additional groups of Cambodians had in fact been repatriated since the original Return was
23 filed. Respondent argued that the renewed Petition should be denied because "the process is
24 functioning and . . . there is [no] evidence that Petitioners in particular have been rejected by
25 the Cambodian government." *Amended Return* at 4. In a footnote, Respondent stated that
26 another flight had been scheduled to Cambodia, "demonstrating that the March 22, 2002
27 memorandum is producing significant results in terms of an established removal process." *Id.*
28 n. 4.

1 In *Fahim v. Ashcroft*, 227 F. Supp.2d 1359 (2002), another district court held that the
2 petitioner had not met his burden of alleging a significant likelihood that his removal is
3 unlikely in the foreseeable future. The facts of that case are strikingly similar to those here.
4 The petitioner “relie[d] on the bare fact that the Egyptian consulate ha[d] not yet issued any
5 travel documents for him despite the efforts of the INS to secure them” and on his family’s
6 statement that the Egyptian consulate had not responded to their inquiries. *Id.* at 1365. The
7 petitioner alleged “that it is unknown whether the Egyptian government will ever issue the
8 requested travel documents.” *Id.* The district court found that those bare allegations were
9 speculative and insufficient because they did not include allegations of institutional or
10 individual barriers to repatriation. Evidence showed that Egypt was in fact repatriating
11 nationals and “the lack of visible progress since the INS requested travel documents from the
12 Egyptian government” was not sufficient to show no significant likelihood of removal in the
13 foreseeable future.

14 In reaching its conclusion, the *Fahim* court relied heavily on the rationale set forth in
15 an opinion issued from this district. See *Khan v. Fasano*, 194 F. Supp.2d 1134 (S.D. Cal.
16 2001)(Keep, J.). *Khan* held that new information presented in support of a motion for
17 reconsideration showed that progress was being made for the petitioner’s deportation and that
18 institutional barriers were therefore not present. *Id.* at 1136. The court rejected petitioner’s
19 argument that the lack of visible progress showed that there are individual barriers. In the
20 court’s view, the lack of visible progress “simply show[ed] that the bureaucratic gears of the
21 INS are slowly grinding away. Progress, however slow, is being made on his individual case:
22 travel documents have been requested and there is scheduled a meeting with the Pakistani
23 Consulate to discuss [petitioner’s] status.” *Id.* at 1137. The court also noted that the newly-
24 formed HQPDU, as a specialized unit within the INS, was entitled to significant deference
25 from the judiciary.” *Id.*

26 ///

27 ///

28 ///

1 Both the *Khan* and *Fahim* courts contrasted the facts of their cases with those of the
2 petitioners in *Zadvydas*. In *Zadvydas*, the Supreme Court addressed a situation where the
3 petitioners were nationals of countries with which the United States had no repatriation
4 agreement and the petitioners “faced detention that appeared to be ‘indefinite and potentially
5 permanent.’” *Khan*, 194 F. Supp.2d at 1136; *Fahim*, 227 F. Supp.2d at 1366. There was,
6 therefore, “virtually no hope of repatriating [them] back to [their] native land[s].” *Fahim*, 227
7 F. Supp.2d at 1366.

8 This Court agrees with the *Khan* and *Fahim* courts that evidence of progress, albeit slow
9 progress, in negotiating a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s
10 detention grows unreasonably lengthy.² At some point in time, however, lengthy detention
11 demands almost immediate repatriation or release on bond. What “counts as the ‘reasonably
12 foreseeable future’” shrinks as the period of prior postremoval confinement grows. *Zadvydas*,
13 533 U.S. at 401. While the Court is unable to say precisely when detention becomes
14 unreasonably lengthy given the degree of certainty regarding removal, the Court is confident
15 that Petitioner’s detention has not yet reached that point. Petitioner has been in custody
16 following his state prison sentence since November 19, 2001, or approximately one year and
17 four months at the time the Court granted the Petition. Petitioner’s one year and four month
18 detention does not violate *Zadvydas* given Respondent’s production of evidence showing that
19 the United States and Cambodian governments’ negotiations are in progress and there is,
20 therefore, reason to believe that removal is likely in the foreseeable future.

21 *Conclusion*

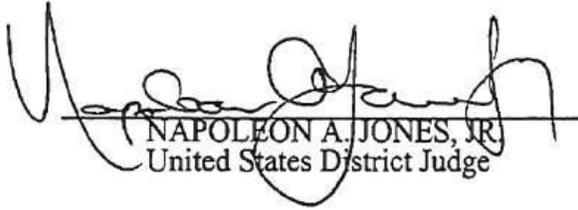
22 For the reasons set forth below, the Motion for Reconsideration is GRANTED, the
23 renewed Petition for Writ of Habeas Corpus is DENIED and Respondent may continue to
24 detain Petitioner. The Court grants Petitioner leave to refile his petition six months from the
25

26 ² The Court notes that the *Khan* court concluded that the petitioner had failed to meet his
27 burden of providing good reason to believe that there is no significant likelihood of removal in the
28 reasonably foreseeable future. *Khan*, 194 F. Supp.2d at 1137. This Court believes that conclusion
misstates the petitioner’s burden, which is one of pleading not of proving.

1 date stamped "Filed" on this Order if he has not been removed at that time and is able to plead
2 facts sufficient to satisfy *Zadvydas v. Davis*, 533 U.S. 678 (2001).

3 **IT IS SO ORDERED.**

4 DATED: June 2, 2003


NAPOLEON A. JONES, JR.
United States District Judge

5
6
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EXHIBIT C

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMAN HABTAI SEREKE,
Petitioner,
v.
DHS,
Respondent.

Case No.: 19-cv-1250-WQH-AGS

ORDER

HAYES, Judge:

The matter before the Court is the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 filed by Petitioner Aman Habtai Sereke. (ECF No. 1).

I. BACKGROUND

Petitioner is a native and citizen of Eritrea who is currently detained at the Otay Mesa Detention Center. (Ex. A, ECF No. 3-1 at 4). On January 10, 2018, Petitioner applied for asylum at the San Ysidro port of entry. (Ex. A, ECF No. 3-1 at 4). On January 11, 2018, Immigration and Customs Enforcement (ICE) took Petitioner into custody. (Wu Decl. ¶ 4, ECF No. 3-1). On September 12, 2018, an immigration judge ordered Petitioner removed, and appeal was waived. (Ex. C, ECF No. 3-1 at 11).

On July 5, 2019, Petitioner filed the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, naming the Department of Homeland Security (DHS) as Respondent. (ECF No. 1). Petitioner seeks release from custody on the grounds that his detention has been unlawfully prolonged because immigration authorities have failed to remove him.

1 On July 11, 2019, the Court issued an Order to Show Cause why the Petition should
2 not be granted. (ECF No. 2). The Court ordered that a return be filed by July 23, 2019,
3 and that any traverse be filed by July 30, 2019. *Id.*

4 On July 22, 2019, Respondent filed a return. (ECF No. 3).

5 On July 22, 2019, Petitioner filed exhibits to the Petition. (ECF No. 4).

6 The record reflects no additional filings.

7 II. DISCUSSION

8 Petitioner alleges that immigration authorities have been unable to remove him to
9 Eritrea because of difficult diplomatic relations with the Eritrean government and the
10 Eritrean consulate's failure to issue travel documents. (ECF No. 1 ¶ 6). Petitioner alleges
11 that on June 24, 2019, a deportation officer brought Petitioner a document stating that
12 Petitioner would be released. *Id.* ¶ 8. Petitioner alleges that on June 26, 2019, the
13 deportation officer brought Petitioner a document stating that Petitioner's detention would
14 continue. *Id.* Petitioner alleges that he was served a document containing errors regarding
15 Petitioner's immigration history. *Id.* Petitioner claims that his indefinite detention is
16 unjustified and violates the Due Process Clause of the Fifth Amendment. *Id.* ¶ 9. Petitioner
17 requests that he be released from immigration custody and alleges that "[u]pon his release,
18 [P]etitioner will reside to . . . Austin, TX." *Id.* ¶¶ 1, 10.

19 Respondent contends that habeas relief is not warranted. Respondent contends that
20 Petitioner's removal is significantly likely in the reasonably foreseeable future, because
21 Petitioner's removal will occur in the coming months when Petitioner's travel documents
22 are renewed and Petitioner's travel arrangements are finalized. Respondent asserts that on
23 June 24, 2019, ICE issued Petitioner a Release Notification before becoming aware that
24 previous issues with immigration removals to Eritrea had been resolved. (ECF No. 3 at 3
25 n.2). Respondent asserts that on June 24, 2019, ICE issued Petitioner a Decision to
26 Continue Detention containing an erroneous reference to an appeal. *Id.* at 3 n.1.

27 A federal court may grant a petition for writ of habeas corpus pursuant to 28 U.S.C.
28 § 2241 if a petitioner can demonstrate that he "is in custody in violation of the Constitution

1 or laws or treaties of the United States.” 28 U.S.C. § 2241(a), (c)(3). “Ordinarily, when
2 an alien is ordered removed from the United States, the Attorney General is obliged to
3 facilitate that individual’s actual removal within 90 days, a period called the ‘removal
4 period.’” *Xi v. U.S. Immigration & Naturalization Serv.*, 298 F.3d 832, 834 (9th Cir. 2002)
5 (quoting 8 U.S.C. § 1231(a)(1)). The statute requires the Attorney General “to detain an
6 individual who has been ordered removed on certain specified grounds” and “authorizes
7 detention beyond the removal period.” *Id.* at 835 (citing §§ 1231(a)(2), (6)). However,
8 “the statute ‘does not permit indefinite detention.’” *Id.* at 836 (quoting *Zadvydas v. Davis*,
9 533 U.S. 678, 689 (2001)). In *Zadvydas*, the Supreme Court stated, “In our view, the
10 statute, read in light of the Constitution’s demands, limits an alien’s post-removal-period
11 detention to a period reasonably necessary to bring about that alien’s removal from the
12 United States.” 533 U.S. at 689.

13 In *Xi*, the Court of Appeals stated that “under the parameters established in
14 *Zadvydas*, [a petitioner’s] continued detention is permissible if his removal is reasonably
15 foreseeable.” 298 F.3d at 839 (citation omitted). The petitioner “has the burden to provide
16 ‘good reason to believe that there is no significant likelihood of removal in the reasonably
17 foreseeable future’” and “the government must then ‘respond with evidence sufficient to
18 rebut the detainee’s showing.’” *Id.* at 839–840 (quoting *Zadvydas*, 533 U.S. at 701
19 (alteration omitted)). The petitioner’s allegations must go beyond “the absence of an extant
20 or pending repatriation agreement” and give “due weight to the likelihood of successful
21 future negotiations”; however, the allegations need not demonstrate “the absence of any
22 prospect of removal.” *Zadvydas*, 533 U.S. at 702; *see also Fahim v. Ashcroft*, 227 F. Supp.
23 2d 1359, 1365 (N.D. Ga. 2002) (“[B]are allegations are insufficient to demonstrate a
24 significant unlikelihood of . . . removal in the reasonably foreseeable future.”). Courts have
25 determined that alleging a “lack of visible progress since the request of travel documents”
26 does not show a “significant likelihood of removal; it simply shows that the bureaucratic
27 gears of the INS are slowly grinding away.” *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137
28 (S.D. Cal. 2001); *see also Fahim*, 227 F. Supp. 2d at 1366; *Novikov v. Gartland*, No. 5:17-

1 CV-164, 2018 WL 4100694, at *2–3, *adopted*, No. 5:17-CV-164, 2018 WL 4688733 (S.D.
2 Ga. Sept. 28, 2018). The government may rebut the detainee’s showing with “evidence of
3 progress . . . in negotiating a petitioner’s repatriation.” *Kim v. Ashcroft*, 02cv1524-J(LAB),
4 at 8 (S.D. Cal. June 2, 2003) (citing *Khan*, 194 F. Supp. 2d at 1134; *Fahim*, 227 F. Supp.
5 2d at 1359). In such cases, it may be appropriate to deny the petition for habeas corpus
6 without prejudice and with leave to refile at a later date if the petitioner is still not removed.
7 *See Khan*, 194 F. Supp. 2d at 1138; *Kim*, 02cv1524-J(LAB); *Novikov*, 2018 WL 4100694,
8 at *3.

9 In this case, the evidence provided by the government includes the declaration of
10 Alice Wu, a Detention and Deportation Officer with the DHS ICE, Enforcement and
11 Removal Operations (ERO). (Wu Decl. ¶ 1, ECF No. 3-1). Wu states in the declaration:

12 6. On September 21, 2018, ERO San Diego field office submitted a travel
13 document (TD) packet to the Embassy of Eritrea. On October 1, 2018, RIO
14 presented this TD packet at the Embassy of Eritrea in Washington D.C. and a
15 TD was issued on December 28, 2018. However, for some months, ICE has
16 encountered difficulties in executing removal orders to Eritrea due to the
17 inability to secure a travel itinerary that met with the approval of all
18 governments involved in getting Eritrean nationals ordered removed from the
19 United States back to Asmara, Eritrea.

20 7. In late June of 2019, the Department of State notified ICE that the issues
21 with travel to Eritrea had been resolved and commercial flights could be
22 resumed for aliens ordered removed from the United States. The TD issued in
23 December 2018 has since expired. On July 12, 2019, the ICE ERO San Diego
24 office confirmed that Petitioner’s travel document (TD) is in process for
25 renewal with the Eritrean Embassy. While the government of Eritrea is
26 working on issuance of a new TD, ICE will prepare an itinerary for Mr.
27 Sereke’s removal from the United States via commercial airline.

28 Mr. Sereke’s removal is significantly likely in the reasonably foreseeable
future. ICE anticipates that his removal will take place in approximately two
months from the date the TD is issued.

29 *Id.* ¶¶ 6–7.

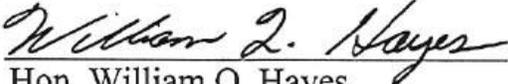
30 Respondent has set forth evidence that demonstrates progress and the reasons for the
31 delay in Petitioner’s removal. Respondent has shown that the Eritrean government

1 previously issued travel documents within three months of the government's submission.
2 Respondent has shown that, as of July 12, 2019, the renewal of Petitioner's travel
3 documents is in progress. Respondent has shown that Petitioner's removal is anticipated
4 within two months of the issuance of travel documents. The Court concludes that the
5 record at this stage in the litigation does not support a finding that there is no significant
6 likelihood of Petitioner's removal in the reasonably foreseeable future. *See Zadvydas*, 533
7 U.S. at 701; *see also Fahim*, 227 F. Supp. 2d at 1366 ("In short, petitioner has not alleged
8 facts indicating that Egypt will never issue him papers nor has he alleged any reasons why
9 Egypt . . . would not ultimately comply with a request from the United States Government
10 in this particular instance."); *Khan*, 194 F. Supp. 2d at 1138 ("Progress, however slow, is
11 being made on his individual case: travel documents have been requested . . ."); *Novikov*,
12 2018 WL 4100694, at *3 ("Novikov does not explain how the past lack of progress in the
13 issuance of his travel documents means that Ukraine will not produce the documents in the
14 foreseeable future."). The Court concludes that dismissal without prejudice is proper in
15 this case based on the possibility that Petitioner's continued detention could give rise to a
16 plausible claim for relief. *See Khan*, 194 F. Supp. 2d at 1138 (granting leave to refile if
17 removal was not effectuated within six months); *Novikov*, 2018 WL 4100694, at *3
18 (recommending dismissal without prejudice).

19 III. CONCLUSION

20 IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus pursuant to
21 28 U.S.C. § 2241 is denied without prejudice and with leave to refile in the event that
22 Petitioner is not removed in the next five months, or in the event that circumstances change
23 and Petitioner can demonstrate entitlement to relief.

24 Dated: August 15, 2019

25 
26 Hon. William Q. Hayes
27 United States District Court
28

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12 Attorneys for Respondents

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 ZHILBERT KHACHIKIAN,

16 Petitioner,

17 v.

18 JEREMY CASEY, Warden, Imperial
19 Regional Detention Facility, et al.,

20 Respondents.
21

Case No. 25-cv-03737-GPC-JLB

**DECLARATION OF
SALVADOR PEREZ, JR.**

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1 I, Salvador Perez, Jr, declare the following under 28 U.S.C. § 1746, and state
2 that under the penalty of perjury, the following is true and correct to the best of my
3 knowledge and belief:

4 1. I am a Deportation Officer with the U.S. Department of Homeland
5 Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and
6 Removal Operations (ERO), in the Calexico, California suboffice of the San Diego
7 Field Office.

8 2. I have been employed by DHS as a law enforcement officer since July
9 2020, when I began working as a Customs and Border Protection Officer for U.S.
10 Customs and Border Protection, Office of Field Operations. I have worked for ICE
11 as a law enforcement officer since April 2023, and have held my position as a
12 Deportation Officer since that date. My responsibilities include supervising a docket
13 of aliens detained at the Imperial Regional Detention Facility in Calexico, California
14 in compliance with all relevant laws, regulations, and agency policies.

15 3. This declaration is based on my personal knowledge and experience as
16 a law enforcement officer and information provided to me in my official capacity as
17 a Deportation Officer.

18 4. I have reviewed official files and records maintained by DHS relating
19 to Zhilbert Khachikian, hereinafter referred to as Petitioner.

20 5. Petitioner is a native and citizen of the Islamic Republic of Iran
21 (hereinafter, Iran). He was born in 1953 in Tehran, Iran.

22 6. On or about February 3, 1999, Petitioner entered the United States at or
23 near San Ysidro, California without being admitted or paroled after inspection by an
24 Immigration Officer.

25 7. On June 24, 1999, a Notice to Appear for removal proceedings under
26 Immigration and Nationality Act (hereinafter, INA) § 240 was issued to Petitioner.
27 The Notice to Appear charged that Petitioner was inadmissible to, and therefore
28 subject to removal from, the United States pursuant to INA § 212(a)(6)(A)(i), as an

1 alien present in the United States without being admitted or paroled or who has
2 arrived in the United States at any time or place other than as designated by the
3 Attorney General.

4 8. On October 25, 1999, an Immigration Judge denied Petitioner's
5 applications for asylum, statutory withholding of removal, and withholding of
6 removal under the regulations implementing Article III of the United Nations
7 Convention Against Torture. In denying those applications, the Immigration Judge
8 also made an adverse credibility determination.

9 9. On October 25, 1999, an Immigration Judge ordered Petitioner
10 removed to Iran on the charge contained in the Notice to Appear.

11 10. On November 8, 1999, Petitioner appealed the Immigration Judge's
12 decision to the Board of Immigration Appeals (BIA).

13 11. On April 15, 2002, the BIA dismissed Petitioner's appeal.

14 12. On July 25, 2002, Petitioner filed a motion to reopen with the BIA.

15 13. On July 22, 2003, the BIA denied Petitioner's motion to reopen.

16 14. On August 20, 2003, Petitioner filed a motion to reconsider the denial
17 of the motion to reopen with the BIA.

18 15. On October 2, 2003, the BIA denied Petitioner's motion for
19 reconsideration.

20 16. On August 20, 2003, Petitioner filed a petition for review of the denial
21 of the motion to reopen with the U.S. Court of Appeals for the Ninth Circuit.

22 17. On February 11, 2005, the Ninth Circuit denied Petitioner's petition for
23 review. The court's mandate issued on April 5, 2005.

24 18. On August 25, 2008, ICE detained Petitioner on the final order of
25 removal. ICE released him on an order of supervision on the same date.

26 19. On November 16, 2025, ICE re-detained Petitioner to execute his
27 removal order to Iran.

28 ////

1 20. On November 17, 2025, Petitioner was served with a Notice of
2 Revocation of Release notifying him that his order of supervision had been revoked
3 as of November 16, 2025. On November 17, 2025, Petitioner was also offered an
4 opportunity to make a statement concerning the revocation of the order of
5 supervision. He declined to participate in this informal interview.

6 21. On December 8, 2025, ERO requested that Petitioner complete Form I-
7 217, *Information for Travel Document or Passport*, in connection with a travel
8 document request to the Iran Interests Section of the Embassy of Pakistan to the
9 United States (hereinafter, Iran Interests Section).¹ Petitioner refused to comply with
10 that request.

11 22. Despite Petitioner's unwarranted refusal to complete Form I-217, ERO
12 completed that form using biographical information available to it in DHS records
13 and databases.

14 23. On December 22, 2025, ERO forwarded a finalized travel document
15 request to the Iran Interests Section in Washington, D.C.

16 24. The travel document request is currently pending before the Iran
17 Interests Section.

18 25. Once an Iran travel document is obtained via the Iran Interests Section,
19 I anticipate that Petitioner will promptly be scheduled for a removal flight to Iran.

20 26. DHS has been successful in effectuating final orders of removal to Iran
21 via charter flights. During Fiscal Year 2025, DHS conducted the removal of 135
22 Iranian nationals to Iran.

23 27. Under these circumstances, I believe that there is a significant
24 likelihood of Petitioner's removal to Iran in the reasonably foreseeable future.

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28 ¹ In the absence of formal diplomatic relations between the United States and Iran
since 1980, the Iran Interests Section of the Pakistan Embassy manages the
diplomatic and consular affairs of Iran in the United States.

1 I declare under penalty of perjury under the law of the United States that the
2 foregoing is true and correct.

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Dated:

SALVADOR Digitally signed by
PEREZ JR SALVADOR PEREZ JR
Date: 2026.01.02
16:46:02 -08'00'

Salvador Perez, Jr.
Deportation Officer
San Diego Field Office, Calexico Suboffice
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement U.S.
Department of Homeland Security