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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABDULGANI DAVUT,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 25-cv-3740-CAB-DDL

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

In his habeas petition, Mr. Davut explained that he was an Afghani national whose parents were killed by the Taliban. Dkt. 1 at 1–2. He made his way to the U.S., was released from immigration custody, and was granted withholding of removal in July 2025. But on December 1, 2025, after an Afghani national killed two National Guardsmen in Washington D.C., Mr. Davut and many other Afghanis were rounded up and detained despite having no connection to the accused shooter. Though Mr. Davut has been detained for over a month, he has received no notice of the reasons for his detention and no indication of when he will ever be released.

The government never mentions or acknowledges this shooting. Having received the government's Return and exhibits, this Court should grant Mr. Davut's petition based on the government's admission of its failure to comply with the regulations and its inability to reconcile its position with Ninth Circuit case law.

First, this Court should grant the petition on Claim One because the government admits it has not complied with its own regulations. While the government claims that 8 C.F.R. § 241.4 does not apply because Mr. Davut was released on parole under 8 U.S.C. § 1182(a)(5), rather than an order of supervision, § 241.4(*l*)(1) on its face applies to noncitizens who were "grant[ed] release *or parole*" under § 1182(a)(5). 8 C.F.R. § 241.4(a) (emphasis added). And even if § 241.4 did not apply, which it does, the government admits that "Petitioner was not provided written notice of the revocation of his parole" under 8 C.F.R. § 212.5(e)(2), which would provide an alternative regulatory violation justifying his release. Dkt. 5 at 10.

Second, the government has no response to Mr. Davut's argument that ICE's current third-country removal policy—to which it intends to subject Mr. Davut—does not provide him "with adequate notice and an opportunity to be

heard before removing him to a third country." *Azzo v. Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 353208, *8 (S.D. Cal. Dec. 10, 2025) (granting habeas petition and enjoining the respondents from removing the petitioner absent the process outlined in *DVD v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 WL 1453640 (D. Mass. May 21, 2025)). The government has no response to Mr. Davut's argument that it is proper for this Court to prohibit Respondents from removing him to a third country without first providing him notice of his statutory rights to apply for asylum and withholding from those third countries and a meaningful opportunity to be heard on those claims. For these reasons, this Court should grant Mr. Davut the relief requested.

ARGUMENT

I. Mr. Davut's claims succeed on the merits.

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

In his habeas petition, Mr. Davut first argued that ICE's failure to follow its own regulations under 8 C.F.R. § 241.4 and § 241.13 require his immediate release. Dkt. 1 at 4–9. Specifically, these regulations state that: 1) ICE may only revoke an individual's order of supervised release if there are changed circumstances or a conditions violation; 2) ICE must notify the person upon revocation of the reasons for their redetention; and 3) ICE must provide an informal interview with a meaningful opportunity to contest redetention. Dkt. 1 at 5–6. Because ICE did not comply with any of these regulations, Mr. Davut argued that this Court should order his immediate release.

The government first argues[1] that because Mr. Davut was released on parole under 8 U.S.C. § 1182(d)(5), rather than on an order of supervised release, "the regulations [he] points to as being violated are inapplicable." Dkt. 5 at 9. But the plain language of 8 C.F.R. § 241.4(*l*)(1) applies to "[a]ny alien described in paragraph (a) or (b)(1) of this section who has been released under an order of supervision *or other conditions of release*." (emphasis added). If this language left any doubt, the "paragraph (a)" this section refers to the agency's "authority to continue an alien in custody or grant release *or parole* under sections 241(a)(6) and *[1182](d)(5)(A)* of the Act." 8 C.F.R. § 241.4(a) (emphases added). In other words, the very language of the regulation Mr. Davut relied on says that it applies to individuals released on "parole" under § 1182(d)(5)(A), which is exactly the authority the government says was used to release Mr. Davut. *See* Dkt. 5 at 10 ("Petitioner was previously released from custody on parole issued pursuant to 8 U.S.C. § 1182(d)(5).")

But even if § 241.4 did *not* apply (which it does), the government admits that it violated another regulation that applies to parole. Specifically, "Respondents acknowledge that Petitioner was not provided written notice of the revocation of his parole. *See* Negrin Decl. at ¶ 10; 8 C.F.R. § 212.5(e)(2)." Dkt. 5 at 10. The government is correct that parole shall only be terminated "upon written notice to the alien." 8 C.F.R. § 212.5(e)(2)(i). And the government admits that Mr. Davut never received this written notice. Dkt. 5 at 10. Thus, this Court need look no further than the government's own admissions to establish a regulatory violation.

What's more, the government never disputes that it committed regulatory violations under § 241.4(*l*)(1)—i.e., that it had no basis to revoke Mr. Davut's

[1] The government's first and longest argument is that Mr. Davut does not qualify for release under *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001) because the six-month removal period has not lapsed. Dkt. 5 at 5–9. But Mr. Davut's habeas petition never asserted a *Zadvydas* argument. *See* Dkt. 1.

parole and did not provide him timely notice or an informal interview. Although it claims that Mr. Davut was "non-compliant with the terms of his release," it never cites any facts showing that he was non-compliant or explain what he actually did that constitutes non-compliance. Dkt. 5 at 10. The only possible basis for an allegation of "non-compliance" was Mr. Davut's statement in his declaration that ICE called him at 11 p.m. on November 30, 2025, and he called them back first thing the next morning. *See* Dkt. 1, Exh. A at ¶ 10. Any conclusion that this constitutes "non-compliance" would be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under the Administrative Procedures Act. 5 U.S.C. § 706(2)(A).

Moreover, the government never responds to the most likely reason for the revocation. In his habeas petition, Mr. Davut explained that on November 26, 2025, an Afghan national named Rahmanullah Lakanwal shot two National Guardsmen in Washington D.C., which led the government to embark on a widespread round-up of Afghani citizens. *See* Dkt. 1 at 3–4. In Sacramento, for instance, "Afghan men arrived one by one to the ICE office Dec. 1 after being asked to immediately report there" and were immediately handcuffed and taken into custody. "ICE Arrests of Afghans Are on the Rise in the Wake of National Guard Attack, Immigration Lawyers Say," Associated Press, Dec. 9, 2025, *available at*: https://apnews.com/article/afghansice-immigration-b4f5f1563f04fed7f85af2070efea12d. Like these men, Mr. Davut was arrested on December 1—thus, it is not realistic to believe that the revocation of his parole was due to a vague and unexplained assertion of "non-compliance," rather than the government's decision to round up Afghani nationals.

Nevertheless, the government argues that "[e]ven if the agency failed to follow its own regulations, Petitioner cannot establish that he was prejudiced by these acts or omissions." Dkt. 5 at 10. But "the government offers no compelling authority that a habeas petitioner must demonstrate this form of prejudice."

Soryadvongsa v. Noem, No. 25-CV-2663-AGS-DDL, 2025 WL 3126821, at *3 (S.D. Cal. Nov. 8, 2025). "Especially in the context of civil detentions—when constitutional safeguards are at their zenith," courts have been "unwilling to import such a prejudice analysis into regulations or binding caselaw that don't mention it." *Id.* Indeed, a violation of a regulation that protects fundamental due process rights "implicates due process concerns even without a prejudice inquiry." *Touch v. Noem*, No. 3:25-CV-03118-RBM-AHG, 2025 WL 3296280, at *1 (S.D. Cal. Nov. 26, 2025) (quotations omitted).

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

Moreover, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And contrary to the government's arguments, the Ninth Circuit has specifically recognized the "irreparable harms imposed on anyone subject to immigration detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Thus, Mr. Davut need not show prejudice, and even if he did, a month and a half of unjustified immigration detention certainly qualifies as prejudicial. Thus, this Court should order Mr. Davut immediately released given the government's own admission of its regulatory violation.

B. Claim Two: The government has no legal argument for how ICE's third-country removal process complies with existing Ninth Circuit law.

This Court should also prohibit ICE from removing Mr. Davut to a third country without adequate notice and a meaningful opportunity to be heard regarding his statutory and related rights to seek asylum, withholding of removal, and Convention Against Torture relief as to that third country.

The government identifies certain components of the third-country removal policy challenged in this habeas petition. *See* Dkt. 5 at 3–4. But the government does not explain how this policy complies with due process or Ninth Circuit law.

"This policy contravenes Ninth Circuit law." *Nguyen v. Scott*, 796 F. Supp. 3d 703, 728 (W.D. Wash. 2025). "It would be impossible to comply both with Ninth Circuit precedent and the policy." *Id.* "'Failing to notify individuals who are subject to deportation that they have the right to apply . . . for withholding of deportation to the country to which they will deported violates both INS regulations and the constitutional right to due process.'" *Id.* at 727 (quoting *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999)). Yet that is exactly what existing ICE policy allows for. The government has no response on this point.

Nor does the government articulate any reason why this Court cannot order it to provide Mr. Davut with notice and a meaningful opportunity to be heard before deporting him to an as-yet unidentified third country. *See* ECF No. 9 at 6. "This relief has been granted in similar matters." *Azzo*, 2025 WL 3535208 at *8 n.6. Indeed, just this summer, the Supreme Court confirmed that habeas petitioners may raise claims regarding the process due to them in removal proceedings, and that district courts should use those habeas petitions to articulate "in the first instance the precise process necessary to satisfy the Constitution." *AARP v. Trump*, 605 U.S. 91, 95 (2025).

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

Finally, this Court has jurisdiction to consider Mr. Davut's claims. Contrary to the government's arguments, 8 U.S.C. § 1252(g) does not bar review of "all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, courts "have jurisdiction to decide a purely legal question that does not challenge the Attorney General's discretionary authority." *Ibarra-Perez v. United States*, 154 F.4th 989, 996 (9th Cir. 2025) (cleaned up).

In *Ibarra-Perez*, the Ninth Circuit squarely held that § 1252(g) does not prohibit immigrants from asserting a "right to meaningful notice and an opportunity to present a fear-based claim before [they] [are] removed," *id.* at 997[2]—the same claim that Mr. Davut raises here with respect to third-country removals. The Court reasoned that "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Id.* Instead, § 1252(g) is "limited . . . to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018). It does not apply to arguments that the government "entirely lacked the authority, and therefore the discretion," to carry out a particular action. *Id.* at 800. Thus, § 1252(g) applies to "discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." *Ibarra-Perez*, 2025 WL 2461663, at *9.

The same logic applies to Mr. Davut's claims, because he challenges only violations of ICE's mandatory duties under statutes, regulations, and the

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

Constitution. Accordingly, "[t]hough 8 U.S.C § 1252(g), precludes this Court from exercising jurisdiction over the executive's decision to 'commence proceedings, adjudicate cases, or execute removal orders against any alien,' this Court has habeas jurisdiction over the issues raised here, namely the lawfulness of [Mr. Davut's] continued detention and the process required in relation to third country removal." *Y.T.D.*, 2025 WL 2675760, at *5. Many courts agree. *See, e.g.*, *Kong*, 62 F.4th at 617 ("§ 1252(g) does not bar judicial review of Kong's challenge to the lawfulness of his detention," including ICE's "fail[ure] to abide by its own regulations"); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (1252(g) did not apply to a "claim concern[ing] detention"); *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025) (1252(g) did not apply to claims that ICE was "failing to carry out non-discretionary statutory duties and provide due process"); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (§ 1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard prior to removal of an alien to a third country").

Conclusion

For these reasons, this Court should grant the petition and order Mr. Davut's immediate release. It. should also order the Respondents to provide the process identified in the habeas petition before removing Mr. Davut to an unidentified third country.

Respectfully submitted,

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s/ Kara Hartzler

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