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

10 ANGELA THERESA  
VELASQUEZ CHINGA,

11 Petitioner,

12 v.

13 KRISTI NOEM, *et al.*,

14 Respondents.

Case No.: 26-cv-00105-RBM-KSC

**RESPONDENTS' RESPONSE IN  
OPPOSITION TO PETITIONER'S  
HABEAS PETITION AND  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER**

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1 **I. INTRODUCTION**

2 Petitioner Angela Theresa Velasquez Chinga has filed a habeas petition and  
3 motion for a temporary restraining order. As the petition and motion assert the same  
4 claims and relief, Respondents respond to both herein for the sake of judicial efficiency.  
5 For the reasons set forth below, the Court should deny Petitioner’s requests for relief  
6 and dismiss the petition.

7 **II. FACTUAL BACKGROUND**

8 Petitioner is a native and citizen of Ecuador. On June 2, 2012, Petitioner applied  
9 for admission into the United States from Mexico through the San Ysidro Port of Entry.  
10 She provided a Lawful Permanent Resident card to the primary officer and falsely  
11 claimed to be the person identified in the document. Declaration of Gloria S. Solares  
12 (“Solares Decl.”) ¶ 5-6. During secondary inspection, she admitted to being an imposter  
13 and gave her true identity. *Id.* However, Petitioner still claimed to be a Mexican citizen  
14 and she was subsequently served with a Notice and Order of Expedited Removal and  
15 returned to Mexico. *Id.*

16 On March 3, 2014, Petitioner illegally entered the United States near Otay Mesa,  
17 California. *Id.* ¶ 7. During questioning by United States Border Patrol, Petitioner again  
18 claimed to be a citizen and national of Mexico. *Id.* However, upon attempting to remove  
19 Petitioner to Mexico, a Mexican immigration officer determined that Petitioner was a  
20 citizen of Ecuador. *Id.* Petitioner was thereafter issued an Expedited Removal to  
21 Ecuador on March 13, 2014, and removed to Ecuador on April 11, 2014. *Id.*

22 On November 4, 2016, Petitioner applied for admission into the United States  
23 from Mexico through the San Ysidro Port of Entry and requested asylum. *Id.* ¶ 8.  
24 Petitioner was found to be inadmissible to the United States pursuant to Immigration  
25 and Nationality Act (INA) Section 212(a)(7)(A)(i)(I). *Id.* She was served with a Notice  
26 to Appear and taken into custody pending INA Section 240 removal proceedings before  
27 an immigration judge. *Id.* On November 6, 2016, Petitioner was released from custody  
28 via parole with reporting requirements. *Id.* ¶ 9.

1 On July 18, 2018, an immigration judge denied Petitioner’s application for  
2 asylum, withholding of removal, and protection under the Convention Against Torture  
3 (Form I-589), and ordered her removed from the United States to Ecuador. *Id.* ¶ 10.  
4 Petitioner appealed to the Board of Immigration Appeals (BIA) and on September 15,  
5 2020, the BIA dismissed Petitioner’s appeal. *Id.* ¶ 10-11. Petitioner then filed a Petition  
6 for Review (PFR) with the United States Circuit Court of Appeals for the Ninth Circuit  
7 (Ninth Circuit) on September 29, 2020. *Id.* ¶ 12. On January 21, 2022, the Ninth Circuit  
8 denied Petitioner’s PFR. *Id.* Petitioner’s removal order became final when the Ninth  
9 Circuit issued its mandate on March 15, 2022. *Id.*

10 On November 5, 2025, Petitioner reported to ERO for a scheduled appointment.  
11 At the appointment, she was informed that she was being placed under arrest. She was  
12 served with an I-200, Warrant for Arrest of Alien, and remanded into custody for  
13 removal to Ecuador. *Id.* ¶ 13.

14 Since Petitioner’s re-detention on November 5, 2025, ICE has worked diligently  
15 to effectuate her removal to Ecuador. *Id.* ¶ 16. On January 9, 2026, this Court enjoined  
16 transfer of Petitioner outside of the Southern District of California. ECF No. 3. At this  
17 time, Petitioner is scheduled to be removed to Ecuador on January 26, 2026. *Id.* ¶ 16.  
18 However, should ERO be unable to remove Petitioner on January 26, 2026, due to the  
19 Court’s order, ERO will request that Petitioner be manifested on the next available  
20 flight. *Id.* ¶ 17.

### 21 III. ARGUMENT

22 An alien ordered removed must be detained for ninety (90) days pending the  
23 government’s efforts to secure the alien’s removal through negotiations with foreign  
24 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall detain” the alien  
25 during the 90-day removal period). The statute “limits an alien’s post-removal detention  
26 to a period reasonably necessary to bring about the alien’s removal from the United  
27 States” and does not permit “indefinite detention.” *Zadvydas v. Davis*, 533 U.S. 678,  
28 689 (2001). The Supreme Court has held that a six-month period of post-removal

1 detention constitutes a “presumptively reasonable period of detention.” *Id.* at 683.  
2 Release is not mandated after the expiration of the six-month period unless “there is no  
3 significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

4 In *Zadvydas*, the Supreme Court held: “[T]he habeas court must ask whether the  
5 detention in question exceeds a period reasonably necessary to secure removal. It should  
6 measure reasonableness primarily in terms of the statute’s basic purpose, namely,  
7 *assuring the alien’s presence at the moment of removal.*” *Id.* at 699 (emphasis added).  
8 In so holding, the Court recognized that detention is presumptively reasonable pending  
9 efforts to obtain travel documents, because the noncitizen’s assistance is needed to  
10 obtain the travel documents, and a noncitizen who is subject to an imminent, executable  
11 warrant of removal becomes a significant flight risk, especially if he or she is made  
12 aware that removal is imminent.

13 The Supreme Court also held that the detention could exceed six months: “This  
14 6-month presumption, of course, does not mean that every alien not removed must be  
15 released after six months. To the contrary, an alien may be held in confinement until it  
16 has been determined that there is no significant likelihood of removal in the reasonably  
17 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good  
18 reason to believe that there is no significant likelihood of removal in the reasonably  
19 foreseeable future, the Government must respond with evidence sufficient to rebut that  
20 showing and that the noncitizen has the initial burden of proving that removal is not  
21 significantly likely.” *Id.*

22 Here, the Petition should be denied. Petitioner brings this challenge 72 days into  
23 a detention period that the Supreme Court held is presumed reasonable until the 6-  
24 month-mark. The Ninth Circuit has also emphasized, “*Zadvydas* places the burden on  
25 the alien to show, *after a detention period of six months*, that there is ‘good reason to  
26 believe that there is no significant likelihood of removal in the reasonably foreseeable  
27 future.’” *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533  
28 U.S. at 701) (emphasis added); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

1 Accordingly, Petitioner’s detention in this case should be presumed reasonable until  
2 May 5, 2026. *See Ali v. Barlow*, 446 F.Supp. 2d 604, 609–10 (E.D. Va. 2006) (finding  
3 habeas petition was unripe for review where *Zadvydas* six-month period had not  
4 expired; dismissing petition without prejudice); *Gonzales v. Naranjo*, No. EDCV 12–  
5 1392 DSF (FFM), 2012 WL 6111358, at \*4–5 (C.D. Cal. Nov. 5, 2012) (same);  
6 *Waraich v. Ashcroft*, No. CVF051036RECSMSHC, 2005 WL 2671406, at \*1 (E.D. Cal.  
7 Oct. 19, 2005) (same). *But see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal.  
8 2020) (“At no point did the *Zadvydas* Court preclude a noncitizen from challenging  
9 their detention before the end of the presumptively reasonable six-month period.”).

10 Even if Petitioner’s detention exceeded six months in this case, she cannot show  
11 that there is no significant likelihood of removal in the reasonably foreseeable future.  
12 Plainly, this Court’s order enjoining transfer out of the Southern District of California  
13 is now the only obstacle to her removal to Ecuador in just 11 days. Solares Decl. ¶ 15–  
14 16. Because Petitioner has only been in custody for 72 days, and her removal from the  
15 United States is imminent, it is premature for Petitioner to seek administrative or  
16 judicial review of this process. Evidence of progress, even slow progress, in negotiating  
17 a petitioner’s repatriation will satisfy *Zadvydas* until the petitioner’s detention grows  
18 unreasonably lengthy. *See, e.g., Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF  
19 No. 5 at 5 (S.D. Cal. Aug. 15, 2019) (“The record at this stage in the litigation does not  
20 support a finding that there is no significant likelihood of Petitioner’s removal in the  
21 reasonably foreseeable future.”); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM,  
22 2020 WL 6044080, at \*3 (S.D. Cal. Oct. 13, 2020) (denying petition because  
23 “Respondents have set forth evidence that demonstrates progress and the reasons for  
24 the delay in Petitioner’s removal”). Here, Petitioner cannot show that there is no  
25 significant likelihood of removal in the reasonably foreseeable future and the Court  
26 should deny the petition.

27 Petitioner also suggests that ICE will immediately remove her without being  
28 given adequate time to investigate whether she could be persecuted in that country. *See*

1 ECF No. 1 at 13-16. However, Petitioner’s claims for asylum, withholding of removal  
2 to Ecuador, and protection under the Convention Against Torture, have all been  
3 adjudicated, appealed, and denied, and she has been ordered removed to Ecuador.  
4 Solares Decl. at ¶ 8-15.

5 As to the regulatory violation claims, Congress has explicitly foreclosed district  
6 court jurisdiction over “the decision or action by the Attorney General to commence  
7 proceedings [and] adjudicate cases[.]” 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1226(e)  
8 (“No court may set aside any action or decision by the Attorney General under this  
9 section regarding the detention or release of any alien or the grant, revocation, or denial  
10 of bond or parole.”); *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (“§ 1226(e)  
11 precludes an alien from ‘challeng[ing] a “discretionary judgment” by the Attorney  
12 General or a “decision” that the Attorney General has made regarding his detention or  
13 release”); *Hassan v. Chertoff*, 593 F.3d 785, 789-90 (9th Cir. 2010) (per curiam)  
14 (finding no jurisdiction over discretionary decision to revoke parole because DHS  
15 followed the regulations at issue).

16 Here, Petitioner was initially released on discretionary parole “pending a final  
17 decision in [her] exclusion/deportation hearing” pursuant to 8 C.F.R. Section 212.5. *See*  
18 Exhibit (Ex.) 1. Under 8 C.F.R. Section 212.5(e)(1)(ii), parole shall be automatically  
19 terminated “at the expiration of the time for which parole was authorized” and “no  
20 written notice shall be required.” 8 C.F.R. Section 212.5(e)(1)(ii). Here, once  
21 Petitioner’s removal order became final on March 15, 2022, the purpose her parole was  
22 authorized for expired and no notice was required. Solares Decl. ¶ 12. Furthermore,  
23 DHS retains discretion to revoke parole for noncitizens.

24 Even if the agency’s compliance with the regulations had fallen short, Petitioner  
25 has not established prejudice nor a constitutional violation. *See Brown v. Holder*, 763  
26 F.3d 1141, 1148–50 (9th Cir. 2014) (“The mere failure of an agency to follow its  
27 regulations is not a violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174,  
28 1178 (9th Cir.2007) (“Compliance with . . . internal [customs] agency regulations is not

1 mandated by the Constitution”) (internal quotation marks omitted); *United States v.*  
2 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that  
3 the judge had violated the rule by failing to inquire into the alien’s background, any  
4 error was harmless because there was no showing that the petitioner was qualified for  
5 relief from deportation). As Petitioner cannot show prejudice under these  
6 circumstances, the alleged violation of agency regulations does not warrant the relief  
7 she seeks. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion*  
8 *amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) (“While the  
9 regulation provides the detainee some opportunity to respond to the reasons for  
10 revocation, it provides no other procedural and no meaningful substantive limit on this  
11 exercise of discretion as it allows revocation ‘when, in the opinion of the revoking  
12 official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien,  
13 or any other circumstance, indicates that release would no longer be appropriate.’”)  
14 (emphasis in original) (citing 8 C.F.R. §§ 241.4(l)(2)(i), (iv)); *Carnation Co. v. Sec’y of*  
15 *Labor*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“violations of procedural regulations  
16 should be upheld if there is no significant possibility that the violation affected the  
17 ultimate outcome of the agency’s action” (citation omitted)); *United States v.*  
18 *Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow regulations  
19 requiring that an arrested alien be advised of his right to speak to his consul was not  
20 prejudicial and thus not a ground for challenging the conviction); *United States v.*  
21 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that  
22 the judge had violated the rule by failing to inquire into the alien’s background, any  
23 error was harmless because there was no showing that the petitioner was qualified for  
24 relief from deportation).

25       Moreover, for individuals, such as Petitioner, who are subject to a final order of  
26 removal and subject to mandatory detention under 8 U.S.C. § 1231(a) for purposes of  
27 removal, the constitutional question is whether detention is indefinite based on a finding  
28 of there being no significant likelihood of removal in the reasonably foreseeable future.

1 *See Zadvydas*, 533 U.S. at 701. In that proper context, if Petitioner’s current detention  
2 were to be found to be unlawful, the proper remedy would be release “subject to  
3 supervision under regulations prescribed by the Attorney General.” 8 U.S.C. §  
4 1231(a)(3).

5 To the extent Petitioner is challenging ICE’s decision to detain her for the  
6 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)  
7 (“Except as provided in this section and *notwithstanding any other provision of law*  
8 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*  
9 *corpus provision*, and sections 1361 and 1651 of such title, no court shall have  
10 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the  
11 decision or action by the Attorney General to commence proceedings, adjudicate cases,  
12 or *execute removal orders* against any alien under this chapter.”) (emphasis added); *see*  
13 *also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There  
14 was good reason for Congress to focus special attention upon, and make special  
15 provision for, judicial review of the Attorney General’s discrete acts of “commenc[ing]  
16 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent  
17 the initiation or prosecution of various stages in the deportation process.”); *Limpin v.*  
18 *United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly  
19 dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to  
20 arrest and detain an alien at the commencement of removal proceedings are not within  
21 any court’s jurisdiction”).

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should deny Petitioner’s request for  
3 injunctive relief and dismiss the petition as premature under *Zadvydas*.

4 DATED: January 15, 2026

5 Respectfully submitted,

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