

1 ADAM GORDON  
United States Attorney  
2 KIM A. C. GREGG  
Assistant U.S. Attorney  
3 California Bar No. 318764  
Office of the U.S. Attorney  
4 880 Front Street, Room 6293  
San Diego, CA 92101-8893  
5 Telephone: (619) 546-8437  
Email: Kim.Gregg@usdoj.gov  
6 Attorneys for Respondents  
7

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

10 LAZARO MORA GUTIERREZ,  
11  
12 Petitioner,  
13 v.  
14 KRISTI NOEM, Secretary of the  
Department of Homeland Security; et  
15 al.,  
16 Respondents.

Case No.: 26-cv-112-RSH-JLB  
**RESPONSE IN OPPOSITION TO  
PETITIONER’S HABEAS PETITION  
AND APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER**  
[NO ORAL ARGUMENT REQUESTED]

17 **I. INTRODUCTION**

18 Petitioner has filed a habeas petition and a motion for temporary restraining  
19 order. As the petition and motion assert the same claims and relief, Respondents herein  
20 respond to both for the sake of judicial efficiency. For the reasons below, Respondents  
21 ask the Court to deny Petitioner’s habeas petition and request for interim relief.

22 **II. FACTUAL AND PROCEDURAL BACKGROUND**

23 Petitioner is a citizen and national of Cuba with a final, executable order of  
24 removal as of June 21, 2017. *See* ECF No. 1 at 3. On January 4, 2018, Immigration and  
25 Customs Enforcement (ICE) released Petitioner on an order of supervision because it  
26 was unable to remove him to Cuba. *See* Declaration of Gunnar Pedersen (“Pedersen  
27 Decl.”) at ¶ 9. “On October 24, 2025, ICE re-detained Petitioner to execute his removal  
28 order. Petitioner was not provided a written notice of revocation of release or an

1 informal interview.” *Id.* at ¶ 10. Since his re-detention, ICE has worked diligently to  
2 effectuate his removal. *See id.* at ¶ 11. After repatriation efforts to Cuba proved  
3 unsuccessful, ICE identified Mexico as a third country where Petitioner may be  
4 removed. *See id.* On December 12, 2025, ICE provided Petitioner with a written notice,  
5 informing him of his intended removal to Mexico. *See id.*; Exh. 1.<sup>1</sup> He did not express  
6 a fear of removal to Mexico. *See Pedersen Decl.* at ¶ 11. Petitioner was scheduled for  
7 third country removal to Mexico on December 19, 2025, but Petitioner failed to comply  
8 with the removal efforts. *See id.* at ¶ 12. “At this time, ICE may identify alternative third  
9 countries that may be willing to accept Petitioner for removal.” *Id.* at ¶ 13.

### 10 III. ARGUMENT

11 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8  
12 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered  
13 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575  
14 (2022). The INA provides that an alien ordered removed must be detained for 90 days  
15 pending the government’s efforts to secure the alien’s removal through negotiations  
16 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall  
17 detain” the alien during the 90-day removal period under subsection (a)(1)). Section  
18 1231(a)(6) “authorizes further detention if the Government fails to remove the alien  
19 during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). The statute,  
20 however, is limited to “a period reasonably necessary to bring about the alien’s removal  
21 from the United States” and “does not permit indefinite detention.” *Id.* at 689. The  
22 Supreme Court has held that a six-month period of post-removal detention constitutes  
23 a “presumptively reasonable period of detention.” *Id.* at 701. Release is not mandated  
24 after the expiration of the six-month period unless “there is no significant likelihood of  
25 removal in the reasonably foreseeable future.” *Id.*

26  
27  
28 <sup>1</sup> The attached exhibits are copies of true documents, with redactions of private information, obtained from ICE counsel.

1 As illustrated in Petitioner’s brief, recent developments in international relations  
2 between the United States and several other countries have made probable ICE’s  
3 removal of immigrants, like Petitioner, that it previously was unable to remove to third  
4 countries. *See* ECF No. 1 at 4 (“The Trump administration reportedly has negotiated  
5 with at least 58 countries to accept deportees from other nations.”). Against this  
6 backdrop, ICE re-detained Petitioner to enforce his removal order and has worked  
7 diligently to execute his removal first to Cuba, then to Mexico. *See* Pedersen Decl. at  
8 ¶ 11.

9 If an individual ordered removed “is not removed to his or her country of choice  
10 or citizenship, he or she shall be removed to any of the following countries” listed in 8  
11 U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154, 1156–57 (9th Cir. 2007).  
12 The enumerated countries are:

- 13 (i) The country from which the alien was admitted to the United States.
- 14 (ii) The country in which is located the foreign port from which the alien  
15 left for the United States or for a foreign territory contiguous to the United  
16 States.
- 17 (iii) A country in which the alien resided before the alien entered the  
18 country from which the alien entered the United States.
- 19 (iv) The country in which the alien was born.
- 20 (v) The country that had sovereignty over the alien's birthplace when the  
21 alien was born.
- 22 (vi) The country in which the alien’s birthplace is located when the alien  
23 is ordered removed.

24 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is  
25 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another  
26 country whose government will accept the alien into that country.’” *Id.* (quoting  
27 § 1231(b)(2)(E)(vii)).

28 The Cuban government has not accepted Petitioner for removal. *See* Pedersen  
Decl. at ¶ 11. Petitioner has not designated any other country for removal. Apart from  
Cuba, there appears to be no other country that would meet the definitions under  
subsections (i) through (vi), and Petitioner has made no showing to the contrary. *See*

1 *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at \*2 (S.D. Cal.  
2 Sept. 15, 2025) (“A prisoner bears the burden of demonstrating that ‘he is in custody in  
3 violation of the Constitution or laws or treaties of the United States.’”) (quoting 28  
4 U.S.C. § 2241(c)(3), brackets omitted). Because removal to the above enumerated  
5 countries is “impracticable, inadvisable, or impossible,” ICE may remove Petitioner to  
6 a third country that will accept Petitioner’s removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

7 Once repatriation efforts to Cuba proved unsuccessful, ICE diligently pursued  
8 Petitioner’s third country resettlement. *See* Pedersen Decl. at ¶ 11. To that end, ICE  
9 identified Mexico as a third country that would accept Petitioner for resettlement and  
10 provided Petitioner with written notice of the intended removal on December 12, 2025.  
11 *See id.*; Exh. 1. Petitioner did not raise a fear of removal to Mexico, so he was scheduled  
12 for removal the following week. *See* Pedersen Decl. at ¶¶ 11–12. Petitioner, however,  
13 failed to comply with removal efforts. *See id.* at ¶ 12. According to ICE, it may proceed  
14 with identifying alternative third countries for Petitioner’s removal. *See id.* at ¶ 13.

15 As to Petitioner’s regulatory violation claims, “Petitioner was not provided a  
16 written notice of revocation of release or an informal interview.” Pedersen Decl. at ¶ 10.  
17 *But see Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) (“The mere failure  
18 of an agency to follow its regulations is not a violation of due process.”); *United States*  
19 *v. Tatoyan*, 474 F.3d 1174, 1178 (9th Cir.2007) (“Compliance with . . . internal  
20 [customs] agency regulations is not mandated by the Constitution”) (internal quotation  
21 marks omitted); *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978)  
22 (holding that even assuming that the judge had violated the rule by failing to inquire  
23 into the alien’s background, any error was harmless because there was no showing that  
24 the petitioner was qualified for relief from deportation).

25 Petitioner also suggests that once ICE decides to pursue third country removal  
26 and identifies a country, he will be immediately deported there without adequate notice  
27 and an opportunity to be heard. *See* ECF No. 1 at 14. The claim is belied by what  
28 transpired in his case. As discussed above, ICE gave Petitioner written notice about his

1 anticipated removal to Mexico, which was scheduled for December 19, 2025. *See*  
2 Pedersen Decl. at ¶ 12; Exh. 1. Petitioner did not then (and does not now) raise a fear  
3 of removal to Mexico. *See* Pedersen Decl. at ¶ 12. Because Petitioner was afforded  
4 written notice of his intended third country removal and seven days to raise any  
5 fear-based claim, ICE provided him meaningful notice and an opportunity to be heard  
6 concerning his removal to Mexico. ICE’s declaration also shows that should another  
7 third country be identified in this case, it “will provide Petitioner with written notice,  
8 and if Petitioner claims a fear of removal to the identified country, he will be referred  
9 to an asylum officer for processing of the fear-based claims.” *Id.* at ¶ 15. The declaration  
10 further reflects that under no circumstances would third country removal be executed  
11 less than 24 hours following the notice of third country removal, unless the noncitizen  
12 was provided “reasonable means and opportunity to speak with an attorney prior to  
13 removal.” *Id.* at ¶ 14. Thus, Petitioner’s concern that he will not receive adequate notice  
14 and an opportunity to be heard prior to his third country removal is not borne out by the  
15 evidence in this case.<sup>2</sup>

16 To the extent Petitioner is challenging ICE’s decision to detain him for the  
17 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)  
18 (“Except as provided in this section and *notwithstanding any other provision of law*  
19 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*  
20 *corpus provision*, and sections 1361 and 1651 of such title, no court shall have  
21 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the  
22 decision or action by the Attorney General to commence proceedings, adjudicate cases,  
23 or *execute removal orders* against any alien under this chapter.”) (emphasis added); *see*  
24

---

25 <sup>2</sup> Respondents note that Petitioner’s challenge to the July 9, 2025 ICE memo is subject  
26 to ongoing litigation, with the Supreme Court staying an injunction imposed by a district  
27 court ordering the government to provide notice and an opportunity to be heard like that  
28 requested here. *See Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Given  
the Supreme Court’s reversal of that injunction, Respondents’ position is that  
imposition of a similar injunction would be reversed here.

1 *also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There  
2 was good reason for Congress to focus special attention upon, and make special  
3 provision for, judicial review of the Attorney General’s discrete acts of “commenc[ing]  
4 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent  
5 the initiation or prosecution of various stages in the deportation process.”); *Limpin v.*  
6 *United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly  
7 dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to  
8 arrest and detain an alien at the commencement of removal proceedings are not within  
9 any court’s jurisdiction”).

10 **IV. CONCLUSION**

11 For the reasons stated herein, Respondents respectfully request the Court to deny  
12 the habeas petition and motion for temporary restraining order.

13 DATED: January 16, 2026

ADAM GORDON

United States Attorney

15 *s/ Kim A. C. Gregg*

16 KIM A. C. GREGG

Assistant United States Attorney

17 Attorneys for Respondents  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28