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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 LUIS ORLANDO VIERA,
12
13 Petitioner,
14 v.
15 KRISTI NOEM, Secretary of the
Department of Homeland Security; et al.,
16
17 Respondents.

Case No.: 26-cv-00115-RSH-DDL
**RESPONSE IN OPPOSITION TO
PETITIONER’S HABEAS PETITION
AND APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**
[NO ORAL ARGUMENT REQUESTED]

18 I. INTRODUCTION

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

23 II. FACTUAL AND PROCEDURAL BACKGROUND

24 Petitioner is a citizen and national of Cuba with a final, executable order of
25 removal as of July 18, 2008. *See* Declaration of Carlos Nunez (“Nunez Decl.”) at ¶¶ 4,
26 6; ECF No. 1 at 2. On October 28, 2024, Petitioner reported to the Immigration and
27 Customs Enforcement’s (ICE) Miami Enforcement and Removal Operations (ERO)
28 Field Office and was placed on an Order of Supervision (OSUP). *See* Nunez Decl. at

1 ¶ 8. He was then ordered to report back to Miami ERO the following year, on October
2 30, 2025. *Id.*

3 On October 30, 2025, the Miami ERO detained Petitioner to execute his removal
4 order. *Id.* at ¶ 9. Petitioner was then provided “with written notice of the Revocation of
5 Release and an opportunity to respond to the revocation during an informal interview.”
6 *Id.*; Exh. 1 at 2.¹ After repatriation efforts to Cuba proved unsuccessful, ICE pursued
7 Mexico as a third country where Petitioner may be removed. *See* Nunez Decl. at ¶ 11.
8 On November 26, 2025, the Miami ERO provided Petitioner with a written notice,
9 informing him of his anticipated removal to Mexico. *See id.* at ¶ 10; Exh. 1 at 4.
10 Petitioner was later transferred to the Otay Mesa Detention Center in San Diego,
11 California, to effectuate his removal to Mexico. *See* Nunez Decl. at ¶ 12. The removal
12 was set to occur on January 8, 2026, “but the Mexican government denied repatriation.”
13 *Id.* at ¶ 13. According to ICE, “Miami ERO will attempt to identify a third country that
14 may be willing to accept Petitioner for removal.” *Id.* at ¶ 14.

15 III. III. ARGUMENT

16 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
17 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
18 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
19 (2022). The INA provides that an alien ordered removed must be detained for 90 days
20 pending the government’s efforts to secure the alien’s removal through negotiations
21 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
22 detain” the alien during the 90-day removal period under subsection (a)(1)).

23 Section 1231(a)(6) “authorizes further detention if the Government fails to
24 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
25 The statute, however, is limited to “a period reasonably necessary to bring about the
26 alien’s removal from the United States” and “does not permit indefinite detention.” *Id.*

27 _____
28 ¹ The attached exhibits are copies of true documents, with redactions of private
information, obtained from ICE counsel.

1 at 689. The Supreme Court has held that a six-month period of post-removal detention
2 constitutes a “presumptively reasonable period of detention.” *Id.* at 701. Release is not
3 mandated after the expiration of the six-month period unless “there is no significant
4 likelihood of removal in the reasonably foreseeable future.” *Id.*

5 As illustrated in Petitioner’s brief, recent developments in international relations
6 between the United States and several other countries have made probable ICE’s
7 removal of immigrants, like Petitioner, that it previously was unable to remove. *See*
8 ECF No. 1 at 4 (“The Trump administration reportedly has negotiated with at least 58
9 countries to accept deportees from other nations.”). Against this backdrop, ICE
10 re-detained Petitioner to enforce his removal order and has worked diligently to execute
11 his removal first to Cuba, then to Mexico. *See* Nunez Decl. at ¶¶ 9–12.

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

15 The enumerated countries are:

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

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

1 The Cuban government has not accepted Petitioner for removal. *See* Nunez Decl.
2 at ¶ 11. Petitioner has not designated any other country for removal. Apart from Cuba,
3 there appears to be no other country that would meet the definitions under subsections
4 (i) through (vi), and Petitioner has made no showing to the contrary. *See Rokhfirooz v.*
5 *Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15,
6 2025) (“A prisoner bears the burden of demonstrating that ‘he is in custody in violation
7 of the Constitution or laws or treaties of the United States.’”) (quoting 28 U.S.C.
8 § 2241(c)(3), brackets omitted). Because removal to the above enumerated countries is
9 “impracticable, inadvisable, or impossible,” ICE may remove Petitioner to a third
10 country that will accept Petitioner’s removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

11 Once repatriation efforts to Cuba proved unsuccessful, ICE diligently pursued
12 Petitioner’s third country resettlement. *See* Nunez Decl. at ¶ 11. To that end, ICE
13 identified Mexico as a third country that would accept Petitioner for resettlement and
14 provided Petitioner with written notice of the intended removal on November 26, 2025.
15 *See* Exh. 1 at 4. There is no indication that Petitioner raised any fear of removal to
16 Mexico. He was scheduled for removal on January 8, 2026, “but the Mexican
17 government denied repatriation.” Nunez Decl. at ¶ 13. At this time, Miami ERO, which
18 has primary control over Petitioner’s case, “will attempt to identify a third country that
19 may be willing to accept Petitioner for removal.” *Id.* at ¶ 14.

20 As to Petitioner’s regulatory violation claims, the Miami ERO does not have
21 documentation of the informal interview provided but attests that one was provided
22 along with the written notice of revocation of release. *See id.* at ¶ 9; *see also* Exh. 1 at
23 2–3. Even assuming the agency’s compliance with the regulations fell short, Petitioner
24 has not established prejudice nor a constitutional violation. *See Brown v. Holder*, 763
25 F.3d 1141, 1148–50 (9th Cir. 2014) (“The mere failure of an agency to follow its
26 regulations is not a violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174,
27 1178 (9th Cir. 2007) (“Compliance with . . . internal [customs] agency regulations is
28 not mandated by the Constitution” (internal quotation marks omitted)). Because

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

22 Petitioner also suggests that once ICE decides to pursue third country removal
23 and identifies a country, he will be immediately deported there without adequate notice
24 and an opportunity to be heard. *See* ECF No. 1 at 14. The claim is belied by what
25 transpired in his case. As discussed above, ICE gave Petitioner written notice informing
26 him of his anticipated removal to Mexico. *See* Nunez Decl. at ¶ 10; Exh. 1 at 4. Because
27 Petitioner was afforded written notice of his intended third country removal and over a
28

1 month before his removal to raise any fear-based claim, ICE provided him meaningful
2 notice and an opportunity to be heard concerning his third country removal.

3 ICE's declaration also shows that should another third country be identified in
4 this case, it "will provide Petitioner with written notice, and if Petitioner claims a fear
5 of removal to the identified country, he will be referred to an asylum officer for
6 processing of the fear-based claims." *Id.* at ¶ 16. The declaration further reflects that
7 under no circumstances would third country removal be executed less than 24 hours
8 following the notice of third country removal, unless the noncitizen was provided
9 "reasonable means and opportunity to speak with an attorney prior to removal." *Id.* at
10 ¶ 15. Thus, Petitioner's concern that he will not receive adequate notice and an
11 opportunity to be heard prior to his third country removal is not borne out by the
12 evidence in this case.² *See also Mora Gutierrez v. Noem et al.*, Case No. 26-cv-112-
13 RSH-JLBB, ECF No. 6 at 3 (S.D. Cal. Jan. 16, 2026) (Huie, J.) (denying a similar
14 request for "a permanent injunction regulating the terms under which Petitioner may be
15 detained in the future or removed to a country other than Cuba" because "it exceeds the
16 scope of relief available to Petitioner on his habeas petition.").

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

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

10 **IV. IV. CONCLUSION**

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

13 DATED: January 23, 2026

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