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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 SANDY REINOSO MARTINEZ,

Petitioner,

12 v.

13 KRISTI NOEM, Secretary of the
14 Department of Homeland Security; et al.,

15 Respondents.
16
17

Case No.: 26-cv-0138-DMS-SBC

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

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 October 16, 2017. *See* Declaration of Authur McLaughlin ("McLaughlin
26 Decl.") at ¶ 6. On November 9, 2017, Immigration and Customs Enforcement (ICE)
27 released Petitioner on an order of supervision because it was unable to remove him to
28 Cuba. *See id.* On October 30, 2025, ICE re-detained Petitioner to execute his removal

1 order, and was “provided written notice of revocation of release and an informal
2 interview” that same day. *Id.* at ¶ 8; *see* Exh. 1.¹

3 Since his re-detention, ICE has worked diligently to effectuate his removal. *See*
4 *id.* at ¶ 10. After repatriation efforts to Cuba proved unsuccessful, ICE identified
5 Mexico as a third country where Petitioner may be removed. *See id.* On November 21,
6 2025, ICE provided Petitioner with a written notice, informing him of his intended
7 removal to Mexico. *See id.*; Exh. 2. He did not express a fear of removal to Mexico at
8 that time. *See* McLaughlin Decl. at ¶ 10. Petitioner’s removal to Mexico was set to occur
9 on January 8, 2026, but “Petitioner failed to comply with removal to Mexico.” *Id.* at
10 ¶ 11. “At this time, ICE is still in the process of identifying third countries that may be
11 willing to accept Petitioner for removal.” *Id.* at ¶ 12.

12 III. ARGUMENT

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

20 Section 1231(a)(6) “authorizes further detention if the Government fails to
21 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
22 The statute, however, is limited to “a period reasonably necessary to bring about the
23 alien’s removal from the United States” and “does not permit indefinite detention.” *Id.*
24 at 689. The Supreme Court has held that a six-month period of post-removal detention
25 constitutes a “presumptively reasonable period of detention.” *Id.* at 701. Release is not
26 mandated after the expiration of the six-month period unless “there is no significant
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28 ¹ The attached exhibits are copies of true documents, with redactions of private
information, obtained from ICE counsel.

1 likelihood of removal in the reasonably foreseeable future.” *Id.*

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

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

13 The enumerated countries are:

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

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

29 The Cuban government has not accepted Petitioner for removal. *See* McLaughlin
30 Decl. at ¶ 10. Petitioner has not designated any other country for removal. Apart from
31 Cuba, there appears to be no other country that would meet the definitions under

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

8 Once repatriation efforts to Cuba proved unsuccessful, ICE diligently pursued
9 Petitioner’s third country resettlement. *See* McLaughlin Decl. at ¶ 10. To that end, ICE
10 identified Mexico as a third country that would accept Petitioner for resettlement and
11 provided Petitioner with written notice of the intended removal on November 21, 2025.
12 *See id.*; Exh. 2. Petitioner did not raise a fear of removal to Mexico at that time, so he
13 was scheduled for removal on January 8, 2026. *See* McLaughlin Decl. at ¶¶ 10–11.
14 Petitioner, however, failed to comply with removal efforts. *See id.* at ¶ 11. “At this time,
15 ICE is still in the process of identifying third countries that may be willing to accept
16 Petitioner for removal.” *Id.* at ¶ 12.

17 As to Petitioner’s regulatory violation claims, ICE does not have documentation
18 of the informal interview provided but attests that one was provided along with the
19 written notice of revocation of release. *See id.* at ¶ 8; Exh. 1. Even assuming the
20 agency’s compliance with the regulations fell short, Petitioner has not established
21 prejudice nor a constitutional violation. *See Brown v. Holder*, 763 F.3d 1141, 1148–50
22 (9th Cir. 2014) (“The mere failure of an agency to follow its regulations is not a
23 violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174, 1178 (9th Cir.
24 2007) (holding that “[c]ompliance with . . . internal [customs] agency regulations is not
25 mandated by the Constitution” (internal quotation marks omitted)); *United States v.*
26 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that
27 the judge had violated the rule by failing to inquire into the alien’s background, any
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1 error was harmless because there was no showing that the petitioner was qualified for
2 relief from deportation).

3 Petitioner also suggests that once ICE decides to pursue third country removal
4 and identifies a country, he will be immediately deported there without adequate notice
5 and an opportunity to be heard. *See* ECF No. 1 at 15. The claim is belied by what
6 transpired in his case. As discussed above, ICE gave Petitioner written notice informing
7 him of his anticipated removal to Mexico. *See* McLaughlin Decl. at ¶ 10; Exh. 2.
8 Petitioner did not raise a fear of removal to Mexico at that time. *See* McLaughlin Decl.
9 at ¶ 10. Because Petitioner was afforded written notice of his intended third country
10 removal and over a month before the removal to raise any fear-based claim, ICE
11 provided him meaningful notice and an opportunity to be heard concerning his third
12 country removal.

13 ICE's declaration also shows that should another third country be identified in
14 this case, it "will provide Petitioner with written notice, and if Petitioner claims a fear
15 of removal to the identified country, he will be referred to an asylum officer for
16 processing of the fear-based claims." *Id.* at ¶ 14. The declaration further reflects that
17 under no circumstances would third country removal be executed less than 24 hours
18 following the notice of third country removal, unless the noncitizen was provided
19 "reasonable means and opportunity to speak with an attorney prior to removal." *Id.* at
20 ¶ 13. Thus, Petitioner's concern that he will not receive adequate notice and an
21 opportunity to be heard prior to his third country removal is not borne out by the
22 evidence in this case.²

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

18 **IV. CONCLUSION**

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

21 DATED: January 16, 2026

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