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13 **UNITED STATES DISTRICT COURT**  
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 MARWAN ABDULLAHI  
16 ABDIRAHMAN,

17 Petitioner,

18 v.

19 KRISTI NOEM; et al.,

20 Respondents.

Case No.: 26-cv-00177-RBM-AHG

**RESPONSE IN OPPOSITION TO  
HABEAS PETITION AND MOTION  
FOR TEMPORARY RESTRAINING  
ORDER**

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1 **I. INTRODUCTION**

2 Petitioner has filed a habeas petition and a motion for temporary restraining  
3 order. As the petition and motion assert the same claims and relief, Respondents respond  
4 to both herein for the sake of judicial efficiency. For the reasons set forth below,  
5 Respondents ask the Court to deny the habeas petition and request for interim relief.

6 **II. BACKGROUND<sup>1</sup>**

7 Petitioner is a native and citizen of Somalia. On July 12, 2023, Petitioner illegally  
8 entered the United States near Otay Mesa, California. He was apprehended by Border  
9 Patrol on the same date. At that time, Petitioner did not have a valid visa or other  
10 authorization to enter the United States. On July 13, 2023, Petitioner was served with  
11 a Notice to Appear for removal proceedings before an Immigration Judge (IJ). The  
12 Notice to Appear charged Petitioner with inadmissibility under INA § 212(a)(6)(A)(I)  
13 as an alien who is present in the United States without having been admitted or paroled  
14 or who arrived at a time or place other than as designated. On or about July 16, 2023,  
15 Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations  
16 (ERO) enrolled Petitioner in Alternatives to Detention (ATD) upon his release from  
17 Border Patrol custody. On October 3, 2023, Petitioner filed for asylum and for  
18 Withholding of Removal in his removal proceedings.

19 On November 14, 2023, Petitioner was arrested by ICE pursuant to an  
20 Administrative Warrant of Arrest. *See also* Exhibit 1 (Form I-213). Petitioner has been  
21 in custody since that time.

22 1. On June 6, 2024, the IJ denied Petitioner’s asylum claim, and ordered  
23 Petitioner removed to Somalia. *See also* ECF No. 1 at 2. On May 28, 2025, the IJ  
24 granted Petitioner’s application for withholding of removal to Somalia under Section  
25 241(b)(3) of the Immigration and Nationality Act (Act). Both the order of removal and  
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27 <sup>1</sup> The information below is set forth in the attached Declaration of Gabriel Herrera  
28 (Herrera Decl.). The other attached exhibit is a true copy of a document obtained from  
ICE counsel, with redactions of private information,

1 grant of withholding of removal as to Somalia became administratively final on June  
2 28, 2025.

3 On October 16, 2025, Petitioner was served with a letter informing him that ICE  
4 had determined that he would remain in custody beyond the removal period because he  
5 had not demonstrated that, if released, he would not pose a significant risk of flight  
6 pending removal from the United States. ICE’s efforts to locate a third country to which  
7 Petitioner may be removed are ongoing. The ERO San Diego Field Office has contacted  
8 ERO Removal International Operations Division in Washington, D.C. (HQRIO) to  
9 request an update on its efforts to identify a third country for removal in this case on  
10 three dates: July 28, 2025, August 22, 2025, and January 16, 2026. As of January 16,  
11 2026, a third country for removal has not been identified in this case, but HQRIO has  
12 advised the San Diego Field Office that it is actively working in coordination with the  
13 Department of State to identify third countries to which aliens on final orders of removal  
14 may be removed.

### 15 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 Detention authority under this statute, however, is limited to “a period reasonably  
26 necessary to bring about the alien’s removal from the United States” and “does not  
27 permit indefinite detention.” *Id.* at 689. The Supreme Court has held that a six-month  
28 period of post-removal detention constitutes a “presumptively reasonable period of  
detention.” *Id.* at 701. Release is not mandated after the expiration of the six-month

1 period unless “there is no significant likelihood of removal in the reasonably foreseeable  
2 future.” *Id.*

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

6 The enumerated countries are:

7 (i) The country from which the alien was admitted to the United States

8 (ii) The country in which is located the foreign port from which the alien  
9 left for the United States or for a foreign territory contiguous to the United  
10 States.

11 (iii) A country in which the alien resided before the alien entered the  
12 country from which the alien entered the United States.

13 (iv) The country in which the alien was born.

14 (v) The country that had sovereignty over the alien's birthplace when the  
15 alien was born.

16 (vi) The country in which the alien’s birthplace is located when the alien  
17 is ordered removed.

18 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is  
19 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another  
20 country whose government will accept the alien into that country.’” *Id.* (quoting  
21 § 1231(b)(2)(E)(vii)).

22 Here, Petitioner was granted withholding of removal to Somalia—his country of  
23 birth and citizenship, as well as the country designated during his removal proceedings.  
24 Apart from Somalia, there appears to be no other country that would meet the definitions  
25 under subsections (i) through (vi), and Petitioner has made no showing to the contrary.  
26 *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at \*2 (S.D.  
27 Cal. Sept. 15, 2025) (“A prisoner bears the burden of demonstrating that ‘he is in  
28 custody in violation of the Constitution or laws or treaties of the United States.’”) (quoting 28 U.S.C. § 2241(c)(3), brackets omitted). Because removal to the above  
enumerated countries is “impracticable, inadvisable, or impossible,” ICE may remove  
Petitioner to a third country that will accept Petitioner’s removal. 8 U.S.C.

1 § 1231(b)(2)(E)(vii). In invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE  
2 continues to detain Petitioner for purposes of executing his removal order to a third  
3 country.

4 Since Petitioner’s re-detention, ICE has worked expeditiously to effectuate his  
5 resettlement in a third country. The ERO San Diego Field Office has contacted ERO  
6 Removal International Operations Division in Washington, D.C. (HQRIO) to request  
7 an update on its efforts to identify a third country for removal in this case on three dates:  
8 July 28, 2025, August 22, 2025, and January 16, 2026. Herrera Decl. ¶¶ 15-17. As of  
9 January 16, 2026, a third country for removal has not been identified in this case, but  
10 HQRIO is actively working in coordination with the Department of State to identify  
11 third countries to which aliens on final orders of removal may be removed. *Id.* at 17.  
12 The record indicates that ICE is working diligently. *See also Zadvydas*, 533 U.S. at 700  
13 (instructing district courts “to listen with care when the Government’s foreign policy  
14 judgments, including, for example, the status of repatriation negotiations, are at issue,  
15 and to grant the Government appropriate leeway when its judgments rest upon foreign  
16 policy expertise.”).

17 As it stands, it would be premature to conclude that there is no significant  
18 likelihood of removal in the reasonably foreseeable future before permitting ICE an  
19 opportunity to complete the diligent efforts it has taken to effect Petitioner’s removal.  
20 ICE has taken the exact steps it needs to take to ensure their removal efforts bear fruit.  
21 Evidence of progress, even slow progress, in negotiating a petitioner’s repatriation will  
22 satisfy *Zadvydas* until the petitioner’s detention grows unreasonably lengthy. *See, e.g.,*  
23 *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5 (S.D. Cal. Aug. 15,  
24 2019) (“The record at this stage in the litigation does not support a finding that there is  
25 no significant likelihood of Petitioner’s removal in the reasonably foreseeable future.”);  
26 *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at \*3 (S.D.  
27 Cal. Oct. 13, 2020) (denying petition because “Respondents have set forth evidence that  
28 demonstrates progress and the reasons for the delay in Petitioner’s removal”).

1           Petitioner also suggests that once a third country is identified, ICE will  
2 immediately deport him there without being given adequate time to investigate whether  
3 he could be persecuted in that country. However, Petitioner’s own statements call that  
4 conclusion into question. As Petitioner admits, the ICE officers have met with him and  
5 given him information on the process. See ECF No. 1-2 at 3. Petitioner’s concern that  
6 he will not receive adequate notice and an opportunity to be heard prior to his third  
7 country removal is not borne out by the evidence in this case.

8           As to the regulatory violation claims, even if the agency’s compliance with the  
9 regulations fell short, Petitioner has not established prejudice nor a constitutional  
10 violation. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) (“The mere  
11 failure of an agency to follow its regulations is not a violation of due process.”); *United*  
12 *States v. Tatoyan*, 474 F.3d 1174, 1178 (9th Cir.2007) (“Compliance with . . . internal  
13 [customs] agency regulations is not mandated by the Constitution”) (internal quotation  
14 marks omitted); *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978)  
15 (holding that even assuming that the judge had violated the rule by failing to inquire  
16 into the alien’s background, any error was harmless because there was no showing that  
17 the petitioner was qualified for relief from deportation). As Petitioner cannot show  
18 prejudice under these circumstances, the alleged violation of agency regulations does  
19 not warrant the relief he seeks. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th  
20 Cir. 2009), *opinion amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir.  
21 2010) (“While the regulation provides the detainee some opportunity to respond to the  
22 reasons for revocation, it provides no other procedural and no meaningful substantive  
23 limit on this exercise of discretion as it allows revocation ‘when, in the opinion of the  
24 revoking official . . . [t]he purposes of release have been served . . . [or] [t]he conduct  
25 of the alien, or *any other circumstance*, indicates that release would no longer be  
26 appropriate.’”) (emphasis in original) (citing 8 C.F.R. §§ 241.4(l)(2)(i), (iv)); *Carnation*  
27 *Co. v. Sec’y of Labor*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“violations of procedural  
28 regulations should be upheld if there is no significant possibility that the violation

1 affected the ultimate outcome of the agency’s action” (citation omitted)); *United States*  
2 *v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow  
3 regulations requiring that an arrested alien be advised of his right to speak to his consul  
4 was not prejudicial and thus not a ground for challenging the conviction); *United States*  
5 *v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming  
6 that the judge had violated the rule by failing to inquire into the alien’s background, any  
7 error was harmless because there was no showing that the petitioner was qualified for  
8 relief from deportation).

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

26 Because the record shows that Petitioner is not entitled to habeas relief, there is  
27 no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S.  
28 465, 474 (2007) (“[I]f the record refutes the applicant’s factual allegations or otherwise

1 precludes habeas relief, a district court is not required to hold an evidentiary hearing.”).

2 **IV. CONCLUSION**

3 For the reasons stated herein, Respondents respectfully request that the Court  
4 deny the requests for relief and dismiss the petition.

5 DATED: January 20, 2026

Respectfully submitted,

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*s/Shital H. Thakkar*

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Attorney for Respondents

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