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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AMIN ESMAEILI,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, *et al.*,

Respondents.

Case No. 26-cv-00203-GPC-MSB

RESPONDENTS' RETURN IN OPPOSITION TO PETITIONER'S HABEAS PETITION

I. INTRODUCTION

Petitioner has filed a habeas petition seeking, among other things, immediate release from Immigration and Customs Enforcement (ICE) custody. ECF No. 1. For the reasons set forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Iran. Declaration of Amin Esmaeili ("Esmaeili Decl.") at ¶ 2; Declaration of Ramon Meraz ("Meraz Decl.") at ¶ 3.[1] He was lawfully admitted to the United States as an immigrant on March 1, 2006. Esmaeili Decl. at ¶ 2; Meraz Decl. at ¶ 3. On or about June 27, 2011, Petitioner was convicted of the following: assault with a deadly weapon and sentenced to serve three years in prison; two counts of burglary and sentenced to serve four years in prison; and robbery resulting in a sentence of two years in prison. Meraz Decl. at ¶ 4. On January 5, 2015, Petitioner was released from state custody following the completion of his criminal sentence and was transferred to ICE to initiate removal proceedings. *Id.* at ¶ 5. He was issued a Notice to Appear the same day under sections 237(a)(2)(A)(iii) and 237(a)(2)(A)(ii) of the Immigration and Nationality Act (INA) (8 U.S.C. §§ 1227(a)(2)(A)(iii) and 1227(a)(2)(A)(ii)) as an alien who has been conviction of an aggravated felony and two or more crimes involving moral turpitude. *Id.*; Exhibit A (Notice to Appear).[2] On August 21, 2015, an immigration judge granted Petitioner's request for release from ICE custody on a $10,000.00 bond and an ankle monitor. Meraz Decl. at ¶ 6; Exhibit B (Order of the Immigration Judge with Respect to Custody). Petitioner was released from ICE custody on August 27, 2015. *Id.* On or about January 6, 2017, Petitioner was arrested by local law enforcement on a parole violation. *Id.* at ¶ 7. Following his release from local custody, he was transferred to ICE custody on October 30, 2017, pending

[1] Petitioner's declaration is found at pages 27–30 of ECF No. 1.

[2] The attached Exhibits A–D are true copies, with redactions of private and confidential information, of documents obtained from ICE counsel.

removal proceedings. *Id.* On May 9, 2018, an immigration judge ordered Petitioner removed to Iran and granted deferral of removal under the Convention Against Torture (CAT). *Id.* at ¶ 8; Esmaeili Decl. at ¶ 3; Exhibit C (Order of the Immigration Judge). Both parties waived appeal of the decision and it became a final order of removal. Meraz Decl. at ¶ 8. Petitioner was released from ICE custody on May 10, 2018, under an Order of Supervision based on the order granting deferral of removal. *Id.* at ¶ 9; Esmaeili Decl. at ¶ 3.

On January 6, 2025, Petitioner arrived at the San Ysidro, California Port of Entry and requested admission to the United States. Meraz Decl. at ¶ 10; Exhibit D (Form I-213, Record of Deportable/Inadmissible Alien). At that time, he was not in possession of a valid entry document. Meraz Decl. at ¶ 10. He was issued an expedited order of removal under INA § 212(a)(7)(A)(i)(I) (8 U.S.C. § 1182(a)(7)(A)(i)(I)), as an alien not in possession of a valid entry document at the time of an application for admission. *Id.* He was transferred to the Otay Mesa Detention Center pending removal on January 9, 2025. *Id.* On or about January 15, 2025, San Diego Enforcement and Removal Operations (ERO) decided not to proceed with the expedited removal order but instead decided to effectuate Petitioner's 2018 order of removal. *Id.* at ¶ 11. ICE does not intend to remove Petitioner to Iran. *Id.*

Since January 15, 2025, ICE has worked diligently to identify an alternate country for removal and requested repatriation to the following countries: Panama, United Arab Emirates, Mexico, and Qatar. *Id.* at ¶ 12. On May 25, 2025, the government of Panama declined to accept Petitioner for repatriation. *Id.* at ¶ 13. A decision from the governments of the United Arab Emirates, Mexico, and Qatar remain pending. *Id.* On September 22, 2025, San Diego ERO contacted ERO's Removal and International Operations (RIO) for assistance to identify a third country for removal. *Id.* at ¶ 14. San Diego ERO sent a request to RIO for updates on whether a third country has been identified on the following dates: October 8, 2025; November 14, 2025; December 31, 2025; and January 15, 2026. *Id.* at ¶ 15. On October 30, 2025, RIO advised San Diego

ERO that ICE is diligently working with the Department of State to identify an alternate country for removal. *Id.* at ¶ 16.

When a third country is identified for resettlement, standard ICE guidance and procedures provide that an ICE officer will provide written notice to the removable alien of the intended third country removal. *Id.* at ¶ 17. The written notice identifies the country to which country ICE intends to remove the alien. *Id.* ICE will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal. *Id.* Once a third country is identified, ICE will provide Petitioner with written notice, and if Petitioner claims a fear of removal to the identified country, he will be referred to an asylum officer for processing of the fear-based claims. *Id.* at ¶ 18.

III. ARGUMENT

A. Claims and Requests Barred by 8 U.S.C. § 1252.

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000). To the extent Petitioner's claims arise from—or seek to enjoin—the decision to execute his removal order, they are jurisdictionally barred under 8 U.S.C. § 1252(g). *See* 8 U.S.C. § 1252(g) ("Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.") (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney

1 General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and]
2 execut[ing] removal orders"—which represent the initiation or prosecution of various
3 stages in the deportation process.") (quoting 8 U.S.C. § 1252(g)). In other words, section
4 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney
5 General may take: her 'decision or action' to 'commence proceedings, adjudicate cases,
6 or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Here,
7 Petitioner's claims necessarily arise "from the decision or action by the Attorney
8 General to . . . execute removal orders," over which Congress has explicitly foreclosed
9 district court jurisdiction. 8 U.S.C. § 1252(g); *see also* 8 U.S.C. § 1252(f)(2)
10 ("Notwithstanding any other provision of law, no court shall enjoin the removal of any
11 alien pursuant to a final order under this section unless the alien shows by clear and
12 convincing evidence that the entry or execution of such order is prohibited as a matter
13 of law."). Accordingly, to the extent Petitioner's claims arise from—or seek to enjoin—
14 the decision to execute his removal order, the Court should deny and dismiss those
15 claims for lack of jurisdiction under 8 U.S.C. § 1252.

16 **B. <u>Petitioner's Detention Is Lawful.</u>**

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

24 Section 1231(a)(6) "authorizes further detention if the Government fails to
25 remove the alien during those 90 days." *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
26 Detention authority under this statute, however, is limited to "a period reasonably
27 necessary to bring about the alien's removal from the United States" and "does not
28 permit indefinite detention." *Id.* at 689. The Supreme Court has held that a six-month

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 period unless "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

Here, Respondents acknowledge that the six-month period of presumptively reasonable detention has passed. However, based on ICE's diligent efforts to locate a third country for Petitioner's removal, as discussed below, Respondents submit that his detention remains lawful because his removal to a third country is significantly likely to occur in the reasonably foreseeable future.

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

> (i) The country from which the alien was admitted to the United States.
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
> (iv) The country in which the alien was born.
> (v) The country that had sovereignty over the alien's birthplace when the alien was born.
> (vi) The country in which the alien's birthplace is located when the alien is ordered removed.

Id. (quoting 8 U.S.C. § 1231(b)(2)(E)(i)–(vi)). "If removal to any of these countries is 'impracticable, inadvisable, or impossible,' the individual shall be removed to 'another country whose government will accept the alien into that country.'" *Id.* (quoting 8 U.S.C. § 1231(b)(2)(E)(vii)).

Here, Petitioner was granted deferral of removal under CAT to Iran, his country of citizenship. *See* Esmaeili Decl. at ¶ 3; Meraz Decl. at ¶ 8; Exhibit C. Apart from Iran, 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 Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025) ("A prisoner bears the burden of demonstrating that 'he is in 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. § 1231(b)(2)(E)(vii).

Recent developments in international relations between the United States and several other countries have made probable ICE's removal of immigrants, like Petitioner, that it previously was unable to remove to third countries. Against this backdrop and invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE continues to detain Petitioner for purposes of enforcing his removal order to a third country. *See* Meraz Decl. at ¶¶ 12–16.

Since Petitioner's re-detention in January 2025, ICE has worked as expeditiously as possible to effectuate his resettlement in a third country. Specifically, since January 15, 2025, ICE has worked diligently to identify an alternate country for removal and requested repatriation to the following countries: Panama, United Arab Emirates, Mexico, and Qatar. Meraz Decl. at ¶ 12. On May 25, 2025, the government of Panama declined to accept Petitioner for repatriation. *Id.* at ¶ 13. A decision from the governments of the United Arab Emirates, Mexico, and Qatar remain pending. *Id.* On September 22, 2025, San Diego ERO contacted RIO for assistance to identify a third country for removal. *Id.* at ¶ 14. San Diego ERO sent a request to RIO for updates on whether a third country has been identified on the following dates: October 8, 2025; November 14, 2025; December 31, 2025; and January 15, 2026. *Id.* at ¶ 15. On October 30, 2025, RIO advised San Diego ERO that ICE is diligently working with the Department of State to identify an alternate country for removal. *Id.* at ¶ 16. Although RIO is still in the process of identifying countries that may be willing to accept Petitioner for removal, the record reflects that ICE is working diligently. *Id.* at ¶¶ 12–

16; *see also Zadvydas*, 533 U.S. at 700 (instructing district courts "to listen with care when the Government's foreign policy judgments, including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.").

As courts in this district have found, "evidence of progress, albeit slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy." Exhibit E, *Kim v. Ashcroft*, Case No. 02-cv-1524-J-LAB, ECF No. 25 at 8:8–10 (S.D. Cal. June 2, 2003) (finding that petitioner's one year and four-month detention does not violate *Zadvydas* given respondent's production of evidence showing governments' negotiations are in progress and there is reason to believe that removal is likely in the foreseeable future); *see also Marquez v. Wolf*, No. 20-cv-1769-WQHBLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because "Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal"); Exhibit F, *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5:4–6 (S.D. Cal. Aug. 15, 2019) ("[T]he record at this stage in the litigation does not support a finding that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future.").

B. <u>Procedural Defects Do Not Require Release from Detention.</u>

Petitioner also challenges the manner of his re-detention, claiming that Respondents failed to provide him a notice of revocation of release or an informal interview. *See* ECF No. 1 at 9:16–12:20. Respondents acknowledge that Petitioner was not provided a notice of revocation or informal interview after he was re-detained when he re-entered the United States in January 2025. These facts, however, do not warrant release.

A noncitizen who is not removed within the removal period may be released from ICE custody "pending removal . . . subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C. § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and the

order may be revoked under 8 C.F.R. § 241.4(*l*)(2)(iii) where "appropriate to enforce a removal order." *See also* 8 C.F.R. § 241.5 (conditions of release after removal period). ICE may also revoke the order of supervision where, "on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). The regulations further provide:

> Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.

8 C.F.R. § 241.4(*l*)(1).

Even if the agency failed to follow its own regulations, Petitioner cannot establish that he was prejudiced by these acts or omissions. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) ("[T]he mere failure of an agency to follow its regulations is not a violation of due process."); *United States v. Tatoyan,* 474 F.3d 1174, 1178 (9th Cir. 2007) (holding that "[c]ompliance with . . . internal [customs] agency regulations is not mandated by the Constitution") (simplified); *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* "enunciate[s] principles of federal administrative law rather than of constitutional law").

Indeed, "whether his challenge is framed in constitutional or regulatory terms, [Petitioner] must demonstrate how he was prejudiced by the alleged error." *Reynoso Perez v. Garland*, No. 20-72326, 2023 WL 154961, at *1 (9th Cir. 2023) (quoting *Gomez-Velazco v. Sessions*, 879 F.3d 989, 993 (9th Cir. 2018) ("As a general rule, an individual may obtain relief for a due process violation only if he shows that the violation caused him prejudice, meaning the violation potentially affected the outcome of the immigration proceeding.")).

Consider the case in *Thurton v. Garland*, No. 20-73025, 2021 WL 4690959 (9th Cir. Oct. 7, 2021). There, the petitioner alleged that the Department of Homeland

Security (DHS) violated due process when DHS violated its own regulation, arguing that he should have been granted 10 days to file a response to a Notice of Intent to Issue a Final Administrative Deportation Order. The government failed to provide him an opportunity to respond, and it conceded that this was a procedural error. *Id.* at *1. Nevertheless, on appeal, the Ninth Circuit held that the petitioner had "not demonstrated how he was prejudiced by the error," and therefore concluded that the agency's error was harmless. *Id.* (citing *United States v. Calderon-Medina*, 591 F.2d 529, 531 (9th Cir. 1979)).

This logic applies with equal force here. In his petition, Petitioner fails to advance any facts or any argument demonstrating what actual prejudice, if any, he allegedly suffered because he was not provided a notice of revocation of release or provided an informal interview after he was detained when he entered the United States in January 2025 without proper documentation. Even now, with the assistance of counsel and an opportunity to make his case, Petitioner has not presented the information he would have disclosed to immigration officials that would have impacted ICE's decision to detain him for purposes of removal. He has therefore failed to carry his burden of demonstrating a significant possibility that any violation affected the ultimate outcome of the agency's action, namely, re-detaining Petitioner and facilitating his removal. And because Respondents had, and continue to have, an evidentiary basis to conclude there is a likelihood that Petitioner will be removed in the reasonably foreseeable future, any challenge that Petitioner would have raised to the revocation prior to or after his re-detention would have failed.

Because Petitioner cannot show prejudice under these circumstances, the alleged violation of agency regulations does not warrant the relief he seeks. *See, e.g.*, *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) ("While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows

revocation 'when, in the opinion of the revoking official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate.'") (emphasis in original) (citing 8 C.F.R. §§ 241.4(*l*)(2)(i), (iv)); *Carnation Co. v. Sec'y of Labor*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) ("violations of procedural regulations should be upheld if there is no significant possibility that the violation affected the ultimate outcome of the agency's action" (citation omitted)); *United States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS' failure to follow regulations requiring that an arrested alien be advised of his right to speak to his consul was not prejudicial and thus not a ground for challenging the conviction); *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that the judge had violated the rule by failing to inquire into the alien's background, any error was harmless because there was no showing that the petitioner was qualified for relief from deportation).

In his petition, Petitioner cites various decisions within this district for the proposition that ICE's failure to follow its own regulations should result in an automatic release from detention. *See* ECF No. 1 at 11:23–12:16. Most of these cases, however, do not discuss prejudice or harmless error, nor did they arise in the context of an alien who voluntarily self-deported after being ordered removed and subsequently presented himself to immigration officials upon re-entering the United States without proper documentation. Should this Court apply a prejudice-and-harmless-error standard, Respondents contend that release under a habeas petition is not the appropriate remedy. *See Karki v. Raycraft*, No. 2:25-cv-13186, 2025 WL 3516782, at *6–7 (E.D. Mich. Dec. 8, 2025) (dismissing habeas action premised on a lack of notice and informal interview because "any deprivation of process by the Government's failure to follow *its regulatory procedures is harmless* and the Court cannot justify ordering Karki's release.") (emphasis added).

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IV. AN EVIDENTIARY HEARING IS NOT NEEDED

2 Because the record shows that Petitioner is not entitled to habeas relief, there is
3 no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S.
4 465, 474 (2007) ("[I]f the record refutes the applicant's factual allegations or otherwise
5 precludes habeas relief, a district court is not required to hold an evidentiary hearing.").

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V. CONCLUSION

7 For the foregoing reasons, the Court should deny Petitioner's requests for relief
8 and dismiss the petition.
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10 Dated: January 20, 2026

Respectfully submitted,

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United States Attorney

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s/ Matthew Riley
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