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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KAZEM MAJD,

Petitioner,

v.

CHRISTOPHER J. LAROSE,

Respondent,

Case No.: 26-cv-00245-JES-BLM

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

I. INTRODUCTION

Petitioner Kazem Majd has filed a habeas petition and motion for a temporary restraining order. As the petition and motion assert the same claims and relief, Respondents respond to both herein for the sake of judicial efficiency. 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 Jason Cole ("Cole Decl.") ¶ 3. On or about June 17, 1966, Petitioner legally entered the United States under a non-immigrant student visa. *Id.* ¶ 4. On February 26, 1974, he adjusted his status to that of Lawful Permanent Resident. *Id.*

Since then, Petitioner has been investigated for fraud, *Id.* ¶ 6, arrested for possession with intent to distribute narcotics in Pennsylvania, *Id.* ¶ 7, arrested for smuggling narcotics in Maryland, *Id.*, convicted of smuggling narcotics into Canada and sentenced to seven years' custody, *Id.* ¶ 8, deported from Canada and refused entry back into the United States, *Id.* ¶ 9, convicted of grand theft in Florida, *Id.* ¶ 10, convicted of retail in Florida, *Id.* ¶ 11, convicted of theft in Maryland, *Id.* ¶ 12, convicted of petty theft in California, *Id.* ¶ 13, and convicted of felony possession or passing counterfeit items in California. Petitioner has also been a fugitive in multiple criminal cases in which he was released on bond. *Id.* ¶ 7.

On July 14, 1999, Petitioner was taken into ICE custody and issued a Notice to Appear charging him with removability under INA § 237(a)(2)(A)(iii) due to an aggravated felony conviction. *Id.* ¶ 15. On September 13, 1999, an Immigration Judge (IJ) terminated removal proceedings. *Id.* On that same date, Petitioner was released from ICE custody on Order of Recognizance. *Id.* ¶ 16. On February 28, 2002, a Notice to Appear was issued to Petitioner charging him with removability under INA § 237(a)(2)(A)(ii), for having been convicted of two or more crimes involving moral turpitude; § 237(a)(2)(B)(i), for having been convicted of a drug offense; and §

237(a)(2)(A)(iii), for having been convicted of an aggravated felony. *Id.* ¶ 17.

On May 3, 2004, Petitioner was sentenced to 12 months' custody on an assault charge and 18 months' custody for bankruptcy fraud, to run concurrently. *Id.* ¶ 18. On May 12, 2004, Petitioner was taken into ICE custody. *Id.* ¶ 19.

On July 26, 2004, an IJ ordered Petitioner removed to Iran. *Id.* ¶ 20. On October 26, 2004, Petitioner was released from ICE custody on an Order of Supervision. *Id.* ¶ 21. On February 13, 2013, Petitioner was convicted of petty theft and for falsely representing himself to a police officer for which he was sentenced to ten days in jail. *Id.* ¶ 22. On February 15, 2013, Petitioner was taken into ICE custody. *Id.* ¶ 23. On that same day, he was released on Order of Supervision. *Id.*

On December 11, 2025, ICE re-detained Petitioner and served him with written notice that his release on an order of supervision was being revoked due to changed circumstances. *Id.* ¶ 24. Petitioner was also provided with an informal interview. *Id.* Since Petitioner's re-detention in December 2025, ICE has worked diligently to effectuate his removal to Iran. *Id.* ¶ 26. On December 24, 2025, ICE sent a travel document request to ERO Removal and International (RIO) headquarters for review. *Id.* ¶ 28. On December 29, 2025, RIO approved the travel document request. *Id.* ¶ 29. On January 13, 2026, ICE submitted a request to RIO for an update on the travel document request and is awaiting a response. *Id.* ¶ 31. ICE is not aware of anything that would prevent the consulate's issuance of a travel document for Petitioner and once ICE receives it, Petitioner's removal can be effectuated promptly. *Id.* ¶ 32.

III. ARGUMENT

An alien ordered removed must be detained for ninety (90) days pending the government's efforts to secure the alien's removal through negotiations with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien during the 90-day removal period). The statute "limits an alien's post-removal detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678,

689 (2001). The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 683. 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.* at 701.

In *Zadvydas*, the Supreme Court held: "[T]he habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, *assuring the alien's presence at the moment of removal*." *Id.* at 699 (emphasis added). The Court recognized that detention is presumptively reasonable pending efforts to obtain travel documents, because the noncitizen's assistance is needed to obtain the travel documents, and a noncitizen who is subject to an imminent, executable warrant of removal becomes a significant flight risk, especially if he or she is made aware that removal is imminent.

The Supreme Court also held that the detention could exceed six months: "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing and that the noncitizen has the initial burden of proving that removal is not significantly likely." *Id.*

Petitioner is subject to a final, executable order of removal, which means that he has no right to remain in the United States. He also has no right to prevent being removed to Iran specifically. ICE has long-standing authority to remove noncitizens and resettle them in third countries where removal to the country designated in the final order is "impracticable, inadvisable, or impossible." 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b) (outlining framework for designation). Accordingly,

noncitizens who have received protection against removal to the designated country (either withholding of removal under 8 U.S.C. § 1231(b)(3) or CAT protection), may be removed and resettled in third countries. Here, however, Petitioner has received no such protection of removal to Iran. Since his re-detention 42 days ago, ICE has worked as expeditiously as possible to effectuate Petitioner's removal to Iran. Cole Decl. ¶¶ 24-32.

Here, the Petition should be denied as premature. Petitioner brings this challenge 42 days into a detention period that the Supreme Court held is presumed to be reasonable for six-months. The Ninth Circuit has also emphasized, "*Zadvydas* places the burden on the alien to show, *after a detention period of six months*, that there is 'good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701) (emphasis added); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003). Accordingly, Petitioner's detention in this case should be considered reasonable until June of 2026 before any challenge should be entertained. *See Ali v. Barlow*, 446 F.Supp. 2d 604, 609–10 (E.D. Va. 2006) (finding habeas petition was unripe for review where *Zadvydas* six-month period had not expired; dismissing petition without prejudice); *Gonzales v. Naranjo*, No. EDCV 12–1392 DSF (FFM), 2012 WL 6111358, at *4–5 (C.D. Cal. Nov. 5, 2012) (same); *Waraich v. Ashcroft*, No. CVF051036RECSMSHC, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same). *But see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period.").

Even if Petitioner's detention had extended beyond six months, he cannot show that there is no significant likelihood of removal in the reasonably foreseeable future. Since it has only been 42 days, it is premature for Petitioner to seek administrative or judicial review of that process. Evidence of progress, even slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows

unreasonably lengthy. *See, e.g.*, *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5 (S.D. Cal. Aug. 15, 2019) ("The 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."); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 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"). Here, there has been demonstrable progress in the last 42 days as ICE's request for travel documents has since been approved. Cole Decl. ¶¶ 29-32. Because Petitioner cannot show that there is no significant likelihood of removal in the reasonably foreseeable future, the Court should dismiss the petition without prejudice.

As to the regulatory violation claims, Petitioner was provided with both a written Notice of Revocation of Release, as well as an informal interview. *See* Exhibit 1. However, even if the agency's compliance with the regulations fell short, Petitioner has not established prejudice nor a constitutional violation. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) ("The 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) ("Compliance with . . . internal [customs] agency regulations is not mandated by the Constitution") (internal quotation marks omitted); *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). As 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).

To the extent Petitioner is challenging ICE's decision to detain him for the purpose of removal, such a challenge is precluded by statute. *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); *see also 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 General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly

dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

IV. CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's request for injunctive relief and dismiss the petition as premature under *Zadvydas*.

DATED: January 21, 2026

Respectfully submitted,

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