

1 ADAM GORDON
United States Attorney
2 KIM A. C. GREGG
Assistant U.S. Attorney
3 California Bar No. 318764
Office of the U.S. Attorney
4 880 Front Street, Room 6293
San Diego, CA 92101-8893
5 Telephone: (619) 546-8437
Email: Kim.Gregg@usdoj.gov
6 Attorneys for Respondents

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ISMAIL HADI,

11 Petitioner,

12 v.

13 KRISTI NOEM, Secretary of U.S.
14 Department of Homeland Security, et al.,

15 Respondents.

Case No.: 26-cv-255-RSH-JLB

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

**REQUEST FOR EXPEDITED
HEARING AND RULING**

16
17 **I. INTRODUCTION**

18 The Somalian government has issued a travel document for Petitioner, and he is
19 scheduled for removal during the first week of February. Because Petitioner’s removal
20 is imminent, and the Court lacks jurisdiction over whether and when the Department of
21 Homeland Security (DHS) executes a final order of removal, Respondents respectfully
22 ask the Court to advance the February 5, 2026 hearing on Petitioner’s habeas petition
23 to January 29, 2026, or the next available hearing date, and deny his request for
24 immediate release.¹

25
26 ¹ Given the petition and motion for temporary restraining order assert the same claims
27 and seek the same relief, Respondents respectfully respond to both herein for purposes
28 of judicial efficiency. Respondents request a January 29, 2026 hearing date, subject to
the Court’s availability to hear this petition along with the other habeas petitions
previously scheduled for a hearing that day.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 Petitioner is a citizen and national of Somalia, who entered the United States in
3 2006, and was later convicted of sexual assault and placed in removal proceedings. *See*
4 Exh. 1 at 3; Exh. 2 at 2, 4.² An Immigration Judge ordered him removed to Somalia on
5 November 17, 2014. *See* Exh. 1 at 4. Petitioner did not appeal the decision, so his
6 removal order is administratively final. *See* Declaration of Lizbeth Bribiesca
7 (“Bribiesca Decl.”) at ¶ 11. Immigration and Customs Enforcement (ICE) subsequently
8 released Petitioner from custody on an Order of Supervision on June 18, 2015, because
9 it could not remove him to Somalia at that time. *See id.* at ¶ 12; Exh. 3.

10 On July 15, 2025, ICE re-detained Petitioner to execute his outstanding order of
11 removal. *See* Bribiesca Decl. at ¶ 13. Petitioner was not provided with a written Notice
12 of Revocation of Release or an informal interview concerning the revocation of his
13 release. *See id.* On December 17, 2025, the Somalian government issued Petitioner a
14 temporary travel document. *See id.* at ¶ 15. Petitioner is scheduled to depart for Somalia
15 during the first week of February.³ *See id.* at ¶ 17. The travel document expires in March.
16 *See id.* at ¶ 15.

17 **III. ARGUMENT**

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

25 _____
26 ² The attached exhibits are true copies, with redactions of private information, of
27 documents obtained from ICE counsel.

28 ³ Undersigned counsel has reviewed Petitioner’s travel document and flight itinerary
and can lodge them with the Court, under seal, should the Court deem it necessary.

1 Section 1231(a)(6) “authorizes further detention if the Government fails to
2 remove the alien during those 90 days.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).
3 The statute, however, is limited to “a period reasonably necessary to bring about the
4 alien’s removal from the United States” and “does not permit indefinite detention.” *Id.*
5 at 689. The Supreme Court has held that a six-month period of post-removal detention
6 constitutes a “presumptively reasonable period of detention.” *Id.* at 701. Release is not
7 mandated after the expiration of the six-month period unless “there is no significant
8 likelihood of removal in the reasonably foreseeable future.” *Id.*

9 **A. The Balance of Equities Now that ICE has Petitioner’s Travel Document**
10 **and Removal Scheduled Weighs Against Granting Habeas Relief Here.**

11 “A federal court’s jurisdiction is limited to cases or controversies.” *Am. Rivers v.*
12 *Nat’l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (citing U.S. Const.
13 art. III, § 2; *Powell v. McCormack*, 395 U.S. 486, 496 n. 7 (1969)). “If an event occurs
14 that prevents the court from granting effective relief, the claim is moot and must be
15 dismissed.” *Id.* In the context of a habeas petition, the mootness “analysis is specifically
16 limited to the sort of equitable relief [the court] may grant in response to a habeas
17 petition.” *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005). Under 28 U.S.C.
18 § 2241 “the writ of habeas corpus” shall not issue unless the petitioner “is in custody in
19 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
20 § 2241(c)(3).

21 Here, although Respondents fell short of complying with the regulations for
22 revoking Petitioner’s order of supervision, the Court should not issue the writ because
23 Petitioner is presently in lawful custody for purposes of executing his removal in a
24 couple of weeks. *See* Bribiesca Decl. at ¶¶ 13, 16–17. ICE has obtained Petitioner’s
25 travel document and scheduled his flight to Somalia for the first week of February. *See*
26 *id.* at ¶¶ 15–17. Given that ICE has all it needs to carry out Petitioner’s removal to
27 Somalia, the Court cannot order immediate release because such an order would
28 impinge on DHS’s discretionary authority over when to execute a removal order—a

1 discrete action over which this Court lacks jurisdiction. *See* 8 U.S.C. § 1252(g) (“Except
2 as provided in this section and *notwithstanding any other provision of law* (statutory or
3 nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision,*
4 . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any
5 alien arising from the decision or action by the Attorney General to commence
6 proceedings, adjudicate cases, or *execute removal orders* against any alien under this
7 chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S.
8 471, 483 (1999) (“There was good reason for Congress to focus special attention upon,
9 and make special provision for, judicial review of the Attorney General’s discrete acts
10 of commencing proceedings, adjudicating cases, and executing removal orders—which
11 represent the initiation or prosecution of various stages in the deportation process.”)
12 (simplified).

13 In *Rauda v. Jennings*, for example, the Ninth Circuit rejected the petitioner’s
14 attempt at escaping “§ 1252(g)’s bar by arguing that his challenge pertains not to the
15 Attorney General’s discretionary authority, but rather to the Attorney General’s
16 allegedly unlawful decision to ‘remove him now’” because “the discretion to decide
17 *whether* to execute a removal order includes the discretion to decide *when* to do it. Both
18 are covered by the statute.” 55 F.4th 773, 777 (9th Cir. 2022) (citation omitted, emphasis
19 in original). More recently, in *Ibarra-Perez v. United States*, the Ninth Circuit noted
20 with approval *Rauda*’s holding that § 1252(g) bars challenges to ICE’s discretionary
21 authority about “when” and “whether” to execute removal and explained that the statute
22 would bar a claim, “for example, that ICE should have delayed his removal”—the very
23 effect that granting immediate release would have here. 154 F.4th 989, 997 (9th Cir.
24 2025).

25 The Court would not be alone in denying habeas relief under these circumstances.
26 In *Omdara v. Noem*, Chief Judge Bashant considered a petition analogous to this one:
27 the petitioner challenged the agency’s compliance with regulations, but ICE had
28 obtained the petitioner’s travel document and scheduled their flight. *See* No. 25-cv-

1 2834-BAS-MMP, ECF No. 12 (S.D. Cal. Nov. 14, 2025). Balancing the equities, the
2 Chief Judge declined to order immediate release and allowed ICE’s removal efforts to
3 proceed. *See id.* at ECF Nos. 12–15.

4 Also analogous, in *Nejad v. LaRose*, Judge Schopler denied a habeas petition
5 raising the same regulatory violation claims, because after the petition was filed, the
6 petitioner’s removal proceedings were reopened—thereby subjecting him to mandatory
7 detention under 8 U.S.C. § 1226(c). *See* No. 25-cv-02425-AGS-JLB, ECF No. 13 (S.D.
8 Cal. Jan. 15, 2026).⁴ In denying the petition, the district court explained that even if it
9 agreed with petitioner’s regulatory violation claim, it could not grant release on those
10 grounds because the present posture of the case required the government to detain him
11 under § 1226(c). *See id.* Like the reopened proceedings in *Nejad*, ICE’s receipt of
12 Petitioner’s travel document and scheduling of his flight are intervening events that
13 prevent the Court from granting release on the regulatory violation grounds because
14 doing so would contravene the INA. There can be no dispute that Petitioner is subject
15 to imminent removal, and the INA entitles the government to promptly carry out that
16 removal and precludes judicial review over that decision. *See* 8 U.S.C. § 1252(g); *Reno*,
17 525 U.S. at 483; *Rauda*, 55 F.4th at 777; *Ibarra-Perez*, 154 F.4th at 997.

18 Additionally instructive, in *Ahmad v. Whitaker*, the government revoked the
19 petitioner’s release but did not provide him an informal interview. *See* No. C18-27-JLR-
20 BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and recommendation*
21 *adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The court rejected the petitioner’s
22 regulatory claim because although the regulations called for an informal interview,
23 petitioner could not establish “any actionable injury from this violation of the
24 regulations given that ICE had procured a travel document and scheduled [petitioner’s]
25 removal.” *Id.* The same is true in this case. Because ICE has procured Petitioner’s travel
26 document to Somalia and scheduled his removal, there is no actionable injury stemming

27 _____
28 ⁴ The district court explained its ruling on the record at the January 15, 2026 hearing on
the petition.

1 from the alleged regulatory violations. *See id.*; *see also Doe v. Smith*, No. 18-11363-
2 FDS, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018) (finding “no apparent reason
3 why a violation of the regulation, even assuming it occurred, should result in release,”
4 explaining that “it is difficult to see an actionable injury stemming from such a violation.
5 Doe is not challenging the underlying justification for the removal order. . . . Nor is this
6 a situation where a prompt interview might have led to her immediate release—for
7 example, a case of mistaken identity.”).

8 Because the Court cannot grant effective relief based on the regulatory violation
9 claims without encroaching on § 1252(g), Respondents respectfully ask the Court to
10 dismiss the claim as moot. *See Am. Rivers*, 126 F.3d at 1123; *Burnett*, 432 F.3d at 999.

11 Should the Court decline to dismiss the claim as moot, it should be denied
12 because Petitioner cannot show that the outcome of his case would have been different
13 had ICE provided him with a written notice and interview concerning his revocation.
14 At the time of his re-detention, Petitioner knew he was subject to a final order of
15 removal and had no right to remain in the United States. He does not challenge the
16 validity of his removal order or offer any indication that he intends to do so. And as
17 illustrated in Petitioner’s brief, at the time of his detention in July 2025, ICE had an
18 evidentiary basis to determine that it could obtain a travel document for Petitioner and
19 that there is a significant likelihood that he would be removed to Somalia in the
20 reasonably foreseeable future. *See generally* ECF No. 1 at 3–4 (describing the
21 Administration’s recent foreign policy negotiations that have allowed ICE to execute
22 removal orders to countries it was unable to in the past). Indeed, ICE has obtained
23 Petitioner’s travel document and can execute his removal promptly. *See Bribiesca Decl.*
24 at ¶¶ 15–17.

25 Thus, any challenge Petitioner would have made during an informal interview
26 after his re-detention would have failed. Because Petitioner cannot show prejudice
27 under these circumstances, the alleged violation of agency regulations does not warrant
28 release here. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion*

1 amended and superseded on other grounds, 591 F.3d 1105 (9th Cir. 2010) (“While the
2 regulation provides the detainee some opportunity to respond to the reasons for
3 revocation, it provides no other procedural and no meaningful substantive limit on this
4 exercise of discretion as it allows revocation ‘when, in the opinion of the revoking
5 official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien,
6 or any other circumstance, indicates that release would no longer be appropriate.’”) (emphasis in original) (citing 8 C.F.R. §§ 241.4(D)(2)(i), (iv)); *Carnation Co. v. Sec’y of*
7 *Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“[V]iolations of procedural regulations
8 should be upheld if there is no significant possibility that the violation affected the
9 ultimate outcome of the agency’s action.” (citation omitted)); *United States v.*
10 *Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow regulations
11 requiring that an arrested alien be advised of his right to speak to his consul was not
12 prejudicial and thus not a ground for challenging the conviction); *United States v.*
13 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that
14 the judge had violated the rule by failing to inquire into the alien’s background, any
15 error was harmless because there was no showing that the petitioner was qualified for
16 relief from deportation).

17
18 With removal imminent and the government’s interest in promptly executing a
19 long-outstanding removal order at its zenith, an order granting immediate release at this
20 juncture would only frustrate “the statute’s basic purpose, namely, assuring the alien’s
21 presence at the moment of removal.”⁵ *Zadvydas*, 533 U.S. at 699; see *Rodriguez Diaz*
22 *v. Garland*, 53 F.4th 1189, 1208–09 (9th Cir. 2022) (“The risk of a detainee absconding
23 . . . inevitably escalates as the time for removal becomes more imminent.”);
24 *Rojas-Espinoza v. Bondi*, 160 F.4th 991, 999 (9th Cir. 2025) (“There is *always* a public
25

26
27
28 ⁵ For example, in a similar case before Judge Bencivengo, the petitioner was ordered released and thereafter provided written notice of his removal and ordered to report to ICE on a certain date for execution of his removal, but the petitioner did not show up. See *Cabrera-Trillo v. Noem et al.*, No. 25-cv-02865-CAB-MSB, ECF Nos. 18, 19. (Dec. 12, 2025).

1 interest in prompt execution of removal orders: The continued presence of an alien
2 lawfully deemed removable undermines the streamlined removal proceedings . . . and
3 permits and prolongs a continuing violation of United States law.”) (emphasis in
4 original, brackets omitted, quoting *Nken v. Holder*, 556 U.S. 418, 436 (2009)). This is
5 especially true where, as here, Petitioner’s travel document expires in about a month,
6 and releasing him poses a significant risk that Petitioner may abscond and thwart ICE’s
7 prompt removal efforts.⁶ See Bribiesca Decl. at ¶ 15. Because the balance of equities
8 weighs against granting immediate release, the Court should deny ordering relief on the
9 regulatory violation claim.

10 **B. Petitioner’s *Zadvydas* Claim Fails Because His Removal is Imminent.**

11 There can be no dispute that there is a significant likelihood that Petitioner will
12 be removed to Somalia in the reasonably foreseeable future because ICE has obtained
13 a travel document for Petitioner and his flight to Somalia is scheduled to depart in a
14 couple of weeks. See Bribiesca Decl. at ¶¶ 15–17. Because “an alien may be held in
15 confinement until it has been determined that there is no significant likelihood of
16 removal in the reasonably foreseeable future,” Petitioner is not entitled to release under
17 *Zadvydas*. 533 U.S. at 701.

18 **C. Petitioner’s Third Country Claim Fails Because ICE is Removing Him to
19 Somalia, Not a Third Country.**

20 Petitioner also requests a permanent injunction regulating the terms under which
21 he may be detained in the future or removed to a country other than Somalia. The Court
22 should deny the claim because ICE is removing Petitioner to Somalia, not to a third
23 country. See Bribiesca Decl. at ¶¶ 13, 17. Moreover, as this Court has found in other
24 cases requesting the same relief, such an injunction “exceeds the scope of relief
25

26 _____
27 ⁶ Should the Court be inclined to order immediate release notwithstanding Petitioner’s
28 imminent removal, Respondents ask that ICE be permitted to place Petitioner on GPS
monitoring to minimize the risk of absconding—a condition contemplated in his prior
order of supervision. See Exh. 3 at 2.

1 available to Petitioner on his habeas petition.” *Mora Gutierrez v. Noem et al.*, No. 26-
2 cv-112-RSH-JLBB, ECF No. 6 at 3 (S.D. Cal. Jan. 16, 2026).

3 **IV. CONCLUSION**

4 For the reasons stated herein, Respondents respectfully request the Court to
5 advance the February 5, 2026 hearing and deny the habeas petition and motion for
6 temporary restraining order.

7 DATED: January 27, 2026

ADAM GORDON
United States Attorney

9 s/ Kim A. C. Gregg
10 KIM A. C. GREGG
Assistant United States Attorney

11 Attorneys for Respondents
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28