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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

VICTOR HUGO SANCHEZ CANTERO, Petitioner, v. KRISTI NOEM, Secretary of the Department of Homeland Security; et al., Respondents.	Case No.: 26-cv-0257-TWR-VET **RESPONSE IN OPPOSITION TO PETITIONER'S HABEAS PETITION** Judge: Todd W. Robinson Date: January 22, 2026 Time: 1:30 p.m. Courtroom: 14A

I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Cuba who was ordered removed in 2005. *See* Ex. 1, Immigration Judge (IJ) Removal Order. Petitioner unlawfully entered the United States in 1996 but was subsequently paroled. On January 15, 1999, Petitioner was convicted of Assault with a Deadly Weapon and sentenced to 3 years in prison. *See* Ex. 2, Gloria Solis Decl. at ¶ 4. On June 20, 2025, Petitioner was arrested for attempted rape but released and has a criminal history. *See* Ex. 3, I-213. Petitioner was apprehended on June 25, 2025, and since his re-detention, ICE has worked diligently to effectuate his removal. Solis Decl. at ¶¶ 8-15. The government attempted to remove him

to Mexico on October 22, 2025, but he refused to comply and could not be removed. *Id.* at ¶ 13. Cuba has decline to accept Petitioner for repatriation. *Id.* at ¶ 9. ICE is still in the process of identifying third countries that may be willing to accept Petitioner for removal. *Id.* at ¶ 14.

II. ARGUMENT

"Section 241(a) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered removed from the United States." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022). The INA provides that an alien ordered removed must be detained for 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 under subsection (a)(1)).

Section 1231(a)(6) "authorizes further detention if the Government fails to remove the alien during those 90 days." *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). The statute, however, is limited to "a period reasonably necessary to bring about the alien's removal from the United States" and "does not 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.*

As illustrated in Petitioner's brief, 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. *See* ECF No. 1 at 5 ("The Trump administration reportedly has negotiated with at least 58 countries to accept deportees from other nations."). Against this backdrop, ICE re-detained Petitioner to enforce his removal order and has worked diligently to execute his removal first to Cuba, then to Mexico.

If an individual ordered removed "is not removed to his or her country of choice

1 or citizenship, he or she shall be removed to any of the following countries" listed in 8
2 U.S.C. § 1231(b)(2)(E). *Hadera v. Gonzales*, 494 F.3d 1154, 1156–57 (9th Cir. 2007).
3 The enumerated countries are:

4 (i) The country from which the alien was admitted to the United States.
5 (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
6 States.
7 (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
8 (iv) The country in which the alien was born.
9 (v) The country that had sovereignty over the alien's birthplace when the alien was born.
10 (vi) The country in which the alien's birthplace is located when the alien is ordered removed.
11

12 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). "If removal to any of these countries is
13 'impracticable, inadvisable, or impossible,' the individual shall be removed to 'another
14 country whose government will accept the alien into that country.'" *Id.* (quoting
15 § 1231(b)(2)(E)(vii)).

16 The Cuban government has not accepted Petitioner for removal. Petitioner has
17 not designated any other country for removal. Apart from Cuba, there appears to be no
18 other country that would meet the definitions under subsections (i) through (vi), and
19 Petitioner has made no showing to the contrary. *See Rokhfirooz v. Larose*, No. 25-CV-
20 2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025) ("A prisoner bears
21 the burden of demonstrating that 'he is in custody in violation of the Constitution or
22 laws or treaties of the United States.'") (quoting 28 U.S.C. § 2241(c)(3), brackets
23 omitted). Because removal to the above enumerated countries is "impracticable,
24 inadvisable, or impossible," ICE may remove Petitioner to a third country that will
25 accept Petitioner's removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

26 Once repatriation efforts to Cuba proved unsuccessful, ICE diligently pursued
27 Petitioner's third country resettlement. To that end, ICE identified Mexico as a third
28 country that would accept Petitioner for resettlement and provided Petitioner with

written notice of the intended removal. Petitioner did not raise a fear of removal to Mexico at that time, so he was scheduled for removal on October 22, 2025. *See* Solis Decl. at ¶¶ 12-13. Petitioner, however, failed to comply with removal efforts. *Id.* ICE is still in the process of identifying countries that may be willing to accept Petitioner for removal.

As to Petitioner's regulatory violation claims, ICE does not have documentation of the informal interview provided but he has had opportunity to voice his objections to removal or comply. 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) (holding that "[c]ompliance 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).

Petitioner also suggests that once ICE decides to pursue third country removal and identifies a country, he will be immediately deported there without adequate notice and an opportunity to be heard. The claim is belied by what transpired in his case. As discussed above, ICE gave Petitioner written notice informing him of his anticipated removal to Mexico. Petitioner did not raise a fear of removal to Mexico at that time. Because Petitioner was afforded written notice of his intended third country removal and over a month before the removal to raise any fear-based claim, ICE provided him meaningful notice and an opportunity to be heard concerning his removal to Mexico. Petitioner's concern that he will not receive adequate notice and an opportunity to be heard prior to his third country removal is not borne out by the evidence in this case. [1]

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[1] Respondents note that Petitioner's challenge to the July 9, 2025 ICE memo is subject to ongoing litigation, with the Supreme Court staying an injunction imposed by a district court ordering the government to provide notice and an opportunity to be heard

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").

III. CONCLUSION

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

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like that 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.