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

10 MILLON GEBREMEDHIN,
11 *Petitioner,*
12 *v.*
13 KRISTI NOEM, *et al.,*
14 *Respondents.*

Case No.: 26-cv-00322-TWR-DEB

**RETURN TO HABEAS PETITION
AND MOTION FOR TEMPORARY
RESTRAINING ORDER**

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1 I. INTRODUCTION

2 Petitioner Millon Gebremedhin has filed a habeas petition and motion for a
3 temporary restraining order. As the petition and motion assert the same claims and
4 relief, Respondents respond to both herein for the sake of judicial efficiency. For the
5 reasons set forth below, the Court should deny Petitioner’s requests for relief and
6 dismiss the petition.

7 II. FACTUAL BACKGROUND

8 Petitioner is a native and citizen of Ethiopia. Declaration of Concepcion
9 Arredondo (“Arredondo Decl.”) ¶ 4. On November 26, 2023, Petitioner unlawfully
10 entered the United States from Mexico and was served with a Notice to Appear charging
11 him with inadmissibility under INA § 212(a)(6)(A)(i) for being present without having
12 been admitted or paroled. *Id.* ¶ 5. On November 27, 2003, Petitioner was enrolled in the
13 Alternatives to Detention (ATD) program and then released from ICE custody on an
14 Order of Recognizance. *Id.* ¶ 6. On or about April 19, 2024, Petitioner filed an
15 application for asylum, withholding of removal, and protection under the Convention
16 Against Torture (CAT). *Id.* ¶ 7.

17 On March 27, 2025, Petitioner was taken into ICE custody. *Id.* ¶ 8. On May 1,
18 2025, an Immigration Judge (IJ) denied Petitioner’s request for a change in custody
19 status. *Id.* ¶ 9. On June 20, 2025, the IJ denied all forms of relief and ordered Petitioner
20 removed to Ethiopia. *Id.* ¶ 10. Petitioner did not file an appeal and the IJ’s order of
21 removal became final on July 20, 2025. *Id.*

22 On or about October 22, 2025, ICE submitted a travel document request to ERO
23 Removal and International Operations (RIO) headquarters for review. *Id.* ¶ 11. On
24 December 18, 2025, RIO approved the travel document request. *Id.* ¶ 12. ICE is not
25 seeking to remove Petitioner to a third country and, once ICE receives the travel
26 document for Petitioner, his removal can be effectuated promptly. *Id.* ¶ 13-14.
27 Assuming Petitioner’s compliance with removal efforts, ICE believes there is a
28 significant likelihood of his removal in the reasonably foreseeable future. *Id.* ¶ 15.

III. ARGUMENT

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2 An alien ordered removed must be detained for ninety (90) days pending the
3 government's efforts to secure the alien's removal through negotiations with foreign
4 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien
5 during the 90-day removal period). The statute "limits an alien's post-removal detention
6 to a period reasonably necessary to bring about the alien's removal from the United
7 States" and does not permit "indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678,
8 689 (2001). The Supreme Court has held that a six-month period of post-removal
9 detention constitutes a "presumptively reasonable period of detention." *Id.* at 683.
10 Release is not mandated after the expiration of the six-month period unless "there is no
11 significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

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

21 The Supreme Court also held that the detention could exceed six months: "This
22 6-month presumption, of course, does not mean that every alien not removed must be
23 released after six months. To the contrary, an alien may be held in confinement until it
24 has been determined that there is no significant likelihood of removal in the reasonably
25 foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides good
26 reason to believe that there is no significant likelihood of removal in the reasonably
27 foreseeable future, the Government must respond with evidence sufficient to rebut that
28 showing and that the noncitizen has the initial burden of proving that removal is not

1 significantly likely.” *Id.*

2 Here, the Petition should be dismissed as premature. Petitioner is subject to a
3 final, executable order of removal, which means that he has no right to remain in the
4 United States. He also has no right not to be repatriated to Ethiopia. Though Petitioner
5 has been in custody for approximately seven months since his final order of removal,
6 he cannot meet his burden to show that there is no significant likelihood of removal in
7 the reasonably foreseeable future. The Ninth Circuit has agreed, “*Zadvydas places the*
8 *burden on the alien* to show, after a detention period of six months, that there is ‘good
9 reason to believe that there is no significant likelihood of removal in the reasonably
10 foreseeable future.’” *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting
11 *Zadvydas*, 533 U.S. at 701) (emphasis added); *see also Xi v. INS*, 298 F.3d 832, 840
12 (9th Cir. 2003). Moreover, ERO has made continuous progress in effectuating
13 Petitioner’s removal. Arredondo Decl. ¶ 11-15. Most recently, ERO’s request for travel
14 documents was approved on December 18, 2025. *Id.* ¶ 12. Evidence of progress, even
15 slow progress, in negotiating a petitioner’s repatriation will satisfy *Zadvydas* until the
16 petitioner’s detention grows unreasonably lengthy. *See, e.g., Sereke v. DHS*, Case No.
17 19-cv-1250-WQH-AGS, ECF No. 5 at 5 (S.D. Cal. Aug. 15, 2019) (“The record at this
18 stage in the litigation does not support a finding that there is no significant likelihood
19 of Petitioner’s removal in the reasonably foreseeable future.”); *Marquez v. Wolf*, Case
20 No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020)
21 (denying petition because “Respondents have set forth evidence that demonstrates
22 progress and the reasons for the delay in Petitioner’s removal”). Accordingly, since
23 travel documents for Petitioner were just recently approved, Petitioner cannot meet his
24 burden of showing that there is no significant likelihood of removal in the reasonably
25 foreseeable future and the Court should dismiss the petition without prejudice.

26 As to the regulatory violation claims, Petitioner appears to have contributed to
27 his own re-detention by refusing to be placed on electronic monitoring and thus
28 violating the conditions of release Petitioner agreed to abide by. *See Ex. 1 at 2-3; see*

1 also Ex. 2 at 1, 5. Though, even if the agency’s compliance with the regulations fell
2 short, Petitioner has not established prejudice nor a constitutional violation. *See Brown*
3 *v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) (“The mere failure of an agency to
4 follow its regulations is not a violation of due process.”); *United States v. Tatoyan*,
5 474 F.3d 1174, 1178 (9th Cir.2007) (“Compliance with . . . internal [customs] agency
6 regulations is not mandated by the Constitution”) (internal quotation marks omitted);
7 *United States v. Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even
8 assuming that the judge had violated the rule by failing to inquire into the alien’s
9 background, any error was harmless because there was no showing that the petitioner
10 was qualified for relief from deportation). As Petitioner cannot show prejudice under
11 these circumstances, the alleged violation of agency regulations does not warrant the
12 relief he seeks. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009),
13 *opinion amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010)
14 (“While the regulation provides the detainee some opportunity to respond to the reasons
15 for revocation, it provides no other procedural and no meaningful substantive limit on
16 this exercise of discretion as it allows revocation ‘when, in the opinion of the revoking
17 official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien,
18 or any other circumstance, indicates that release would no longer be appropriate.’”)
19 (emphasis in original) (citing 8 C.F.R. §§ 241.4(l)(2)(i), (iv)); *Carnation Co. v. Sec’y of*
20 *Labor*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“violations of procedural regulations
21 should be upheld if there is no significant possibility that the violation affected the
22 ultimate outcome of the agency’s action” (citation omitted)); *United States v.*
23 *Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow regulations
24 requiring that an arrested alien be advised of his right to speak to his consul was not
25 prejudicial and thus not a ground for challenging the conviction); *United States v.*
26 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that
27 the judge had violated the rule by failing to inquire into the alien’s background, any
28 error was harmless because there was no showing that the petitioner was qualified for

1 relief from deportation).

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

19 **IV. CONCLUSION**

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

22 DATED: January 26, 2026

23 Respectfully submitted,

24 ADAM GORDON
25 United States Attorney

26 *s/ Hunter V. Norton*
27 HUNTER V. NORTON
28 Assistant United States Attorney
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