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

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11 FAOUZI ZERMANE,

Petitioner,

Case No.: 26-cv-405-TWR-KSC

**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS**

12
13
14 v.

15 KRISTI NOEM, Secretary of the
Department of Homeland Security;
16 PAMELA J. BONDI, Attorney General;
17 TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement;
18 JESUS ROCHA, Acting Field Office
Director, San Diego Field Office;
19 CHRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center,

20
21 Respondents.
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24 **I. INTRODUCTION**

25 Respondents respectfully ask the Court to deny the petition because the
26 government complied with the regulations, Petitioner has been in post-final order
27 detention for only seven weeks, and the record indicates he will be afforded notice
28 and an opportunity to be heard prior to being removed to a third country.

1 revocation during an informal interview. *See id.* at 3. His responses did not result in a
2 change of custody status.

3 Since Petitioner’s detention, ICE has worked as expeditiously as possible to
4 effectuate his removal to a third country. *See* Barroga Decl. at ¶ 14. On January 26,
5 2026, the San Diego Enforcement and Removal Operations (ERO) requested assistance
6 from its Removal and International Operations (RIO) division in Washington D.C. to
7 identify a third country where Petitioner may be removed. *See id.* RIO is actively
8 working with the Department of State and DHS on avenues to resettle noncitizens to a
9 third country. *See id.* at ¶ 15. Petitioner’s case is being monitored by RIO-Africa, and
10 the San Diego ERO will be notified once a third country has been identified. *See id.*

11 **III. ARGUMENT**

12 **A. ICE Provided Petitioner with the Notice of Revocation of Release and**
13 **Informal Interview Under the Regulations.**

14 A noncitizen who is not removed within the statutory removal period may be
15 released from ICE custody “pending removal . . . subject to supervision under
16 regulations prescribed by the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A),
17 1231(a)(3); *see also* 8 U.S.C. § 1231(a)(6). An order of supervision may be issued under
18 8 C.F.R. § 241.4, and the order may be revoked under 8 C.F.R. § 241.4(l)(2) where, for
19 example, the noncitizen “violates any condition of release” or where “appropriate to
20 enforce a removal order.” *See also* 8 C.F.R. § 241.5 (conditions of release after removal
21 period). ICE may also revoke the order of supervision where, “on account of changed
22 circumstances, [ICE] determines that there is a significant likelihood that the alien may
23 be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). The
24 regulations further provide:

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

1 8 C.F.R. § 214.4(l).

2 Here, despite being provided with a written Notice of Revocation of Release and
3 an informal interview, Petitioner nonetheless argues that ICE failed to follow its
4 regulations. As an initial matter, the notice explains: “Due to multiple violations of your
5 ATD reporting conditions, you will be remanded into custody.” *See* Exh. 2 at 1; Barroga
6 Decl. at ¶¶ 12 (attesting that Petitioner violated the conditions of his release on March
7 19, 2025, and December 9, 2025, when he failed to check in with ICE as ordered on
8 those days). The regulations confer broad discretion to revoke release for violation of
9 “any condition of release.” *See* 8 C.F.R. § 241.4(l)(2). As the Ninth Circuit explained:

10 While the regulation provides the detainee some opportunity to respond to
11 the reasons for revocation, it provides no other procedural and no
12 meaningful substantive limit on this exercise of discretion as it allows
13 revocation “when, in the opinion of the revoking official . . . the purposes
14 of release have been served . . . or the conduct of the alien, *or any other*
circumstance, indicates that release would no longer be appropriate.

15 *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (quoting § 241.4(l)(2)(i), (iv),
16 brackets omitted, emphasis in original). As the regulation provides “no other procedural
17 and no meaningful substantive limit” on ICE’s discretion to revoke release in this case,
18 Petitioner’s challenge to the notice and the reasoning provided fails. *See id.*

19 Additionally, the notice explains that there are changed circumstances in
20 Petitioner’s case because ICE determined it could execute his outstanding order of
21 removal and expeditiously remove him to a third country. *See* Exh. 2 at 1. Although
22 Petitioner argues that he could not fully understand the notice, the ICE officers verbally
23 explained to him the reasons for the revocation. *See* ECF No. 1 at 29. Indeed, at his
24 informal interview, Petitioner offered responses that demonstrate that he knew and
25 understood that ICE had revoked his release to remove him to a third country and for
26 reporting violations. *See* Exh. 2 at 3 (Petitioner contesting that he missed any
27 appointments and claiming he was in the hospital, and stating that he was granted
28 withholding of removal to Algeria and Mexico).

1 Respondents complied with the regulations in this case because ICE provided
2 Petitioner with a Notice of Revocation of Release and informal interview, and the record
3 reflects that Petitioner understood the reasons that ICE revoked his release in this case.

4 *See id.*

5 **B. Petitioner’s Seven-Week Post-Removal Order Confinement is Well Within**
6 **the *Zadvydas* Presumptively Reasonable Period and is Thus not Ripe for**
7 **Review.**

8 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
9 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
10 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
11 (2022). The INA provides that an alien ordered removed must be detained for 90 days
12 pending the government’s efforts to secure the alien’s removal through negotiations
13 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
14 detain” the alien during the 90-day removal period under subsection (a)(1)).

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

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

- 27 (i) The country from which the alien was admitted to the United States.
- 28 (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.

1 (iii) A country in which the alien resided before the alien entered the
2 country from which the alien entered the United States.

3 (iv) The country in which the alien was born.

4 (v) The country that had sovereignty over the alien's birthplace when the
5 alien was born.

6 (vi) The country in which the alien's birthplace is located when the alien
7 is ordered removed.

8 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is
9 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another
10 country whose government will accept the alien into that country.’” *Id.* (quoting
11 § 1231(b)(2)(E)(vii)).

12 Here, Petitioner was granted withholding of removal to Algeria and Mexico—
13 the countries designated during his removal proceedings. Apart from Algeria and
14 Mexico, there appears to be no other country that would meet the definitions under
15 subsections (i) through (vi), and Petitioner has made no showing to the contrary. *See*
16 *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal.
17 Sept. 15, 2025) (“A prisoner bears the burden of demonstrating that ‘he is in custody in
18 violation of the Constitution or laws or treaties of the United States.’”) (quoting 28
19 U.S.C. § 2241(c)(3), brackets omitted). Because removal to the above enumerated
20 countries is “impracticable, inadvisable, or impossible,” ICE may remove Petitioner to
21 a third country that will accept Petitioner’s removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

22 As illustrated in other petitions filed by the Federal Defenders in this district,
23 recent developments in international relations between the United States and several
24 other countries have made probable ICE’s removal of immigrants, like Petitioner, that
25 it previously was unable to remove to third countries. *See, e.g., Varona v. Noem et al.*,
26 25-cv-3328-JES-SBC, ECF No. 1 at 6 (S.D. Cal. Nov. 26, 2025) (“The Trump
27 administration reportedly has negotiated with at least 58 countries to accept deportees
28 from other nations.”). Against this backdrop, Petitioner’s prior violations of his
conditions of release, and invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE
detained Petitioner on December 19, 2026, to execute his outstanding removal order.

1 See Barroga Decl. at ¶ 13.

2 Petitioner has been in post-final order custody for seven weeks. *See id.* Because
3 the length of Petitioner’s confinement has been far less than six months, his detention
4 remains presumptively reasonable under *Zadvydas*.² *See* 533 U.S. at 701. By the time
5 of the February 12, 2026 hearing on the petition, Petitioner’s detention will still be
6 within the period that *Zadvydas* found to be presumptively reasonable. *See Zadvydas*,
7 533 U.S. at 700–01. Instructive here, the Supreme Court established this six-month
8 period of post-final order detention to be presumptively reasonable “for the sake of
9 uniform administration in the federal courts” and “to limit the occasions when courts
10 will need to make” difficult judgments involving foreign policy matters. *See id.* at 700–
11 01. Thus, Petitioner’s claim is not ripe for review, and it would be premature to conclude
12 that there is no significant likelihood of removal in the reasonably foreseeable future
13 before permitting ICE an opportunity to complete its diligent efforts to effect
14 Petitioner’s removal. *See Khalilova v. Smith*, No. 25-cv-2140 JLS-DDL, 2025 WL
15 3089522, at *4 (S.D. Cal. Nov. 5, 2025) (“[B]ecause the six-month period of
16 presumptive reasonableness has not passed, Petitioner’s claim is not ripe for
17 review[.]”); *Ao v. Noem et al.*, No. 25-cv-03256-BAS-VET, 2025 WL 3535207, at *1
18 (S.D. Cal. Dec. 9, 2025) (same).

19 Should the Court decline to dismiss the petition at this time, the initial burden is
20 on Petitioner to show a “good reason to believe that there is no significant likelihood of
21

22 ² Because *Zadvydas* focused on detention and answered the question of what length of
23 detention pending removal efforts would run afoul the Constitution, the Court should
24 reject Petitioner’s position that the presumptively reasonable period of detention under
25 *Zadvydas* could run during a time that Petitioner was not actually in detention. *See* 533
26 U.S. at 701 (noting that “Congress previously doubted the constitutionality of *detention*
27 for more than six months” and thereafter recognizing that period of detention to be
28 ‘presumptively reasonable’ (emphasis added); accord *Kim Ho Ma v. Ashcroft*, 257 F.3d
1095, 1102 n.5 (9th Cir. 2001). (“Supreme Court read the statute to permit a
‘presumptively reasonable’ *detention* period of six months after a final order of removal.
..”) (emphasis added).

1 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Given the
2 short period of detention thus far, Petitioner’s initial burden is heavier than it would be
3 if his detention was well beyond the reasonable six-month period. *See id.* (“[F]or
4 detention to remain reasonable, as the period of prior postremoval confinement grows,
5 what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.”);
6 *Alexander v. Attorney General U.S.*, 495 F. App’x 274, 276–77 (3d Cir. 2012) (“[A]n
7 inversely proportional relationship is at play: the longer an alien is detained, the less he
8 must put forward to obtain relief.”). As explained below, he cannot meet his burden,
9 and even if he did, the government has rebutted the showing.

10 First, Petitioner contends that ICE has a very small percentage chance of success
11 removing individuals granted withholding of removal. *See* ECF No. 1 at 19. But the
12 evidence he cites covers only 2020 through mid-2025. Because the bulk of that time
13 was during a different Administration, they carry little to no weight in showing the
14 likelihood of third country removals during the present Administration.

15 Second, Petitioner asserts that ICE has not made any progress in removing him.
16 On the contrary, within a month of Petitioner’s detention, the San Diego ERO submitted
17 a request to RIO for assistance identifying a third country where Petitioner may be
18 removed. *See id.* at ¶ 14. Although RIO has not yet identified a country for third country
19 removal, the request has been pending for only about a week. *See id.* at ¶¶ 14–15. And
20 RIO is actively working with the Department of State and DHS on avenues for third
21 country removal. *See id.* at ¶ 15. Petitioner’s case is also being concurrently tracked by
22 the RIO-Africa unit, and the San Diego ERO will be notified once a third country has
23 been identified. *See id.*

24 Third, Petitioner suggests that once a third country is identified, effectuating that
25 removal would entail a potentially difficult and lengthy process. The claim is
26 speculative. The Court should reject or defer addressing it until the record bears it out.

27 As such, Petitioner has not carried his initial burden, and even if he did, the
28 government has rebutted it. Given Petitioner’s seven-week detention falling well within

1 the presumptively reasonable post-order confinement period, the Executive’s active
2 (and successful) negotiations with various countries for third country resettlement, and
3 ERO’s pending request for such resettlement for Petitioner, the record does not support
4 a finding that there is no significant likelihood of removal in the reasonably foreseeable
5 future at this juncture. *See Zadvydas*, 533 U.S. at 701. Thus, Petitioner is not entitled to
6 immediate release, and the Court should deny the petition.

7 Petitioner also suggests that once a third country is identified, ICE will
8 immediately deport him there without adequate notice and an opportunity to be heard.³
9 ICE attests, however, that once a third country is identified, it “will provide Petitioner
10 with written notice, and if Petitioner claims a fear of removal to the identified country,
11 he will be referred to an asylum officer for processing of the fear-based claims.” Barroga
12 Decl. at ¶ 17. The evidence further shows that ICE will wait at least 24 hours following
13 the notice of third country removal before executing it, and under no circumstances
14 would removal be executed in less time than that without the noncitizen being provided
15 “reasonable means and opportunity to speak with an attorney prior to removal.” *Id.* at
16 ¶ 16. Thus, Petitioner’s concern that he will not receive adequate notice and an
17 opportunity to be heard prior to his third country removal is not borne out by the
18 evidence in this case.

19 Lastly, to the extent Petitioner is challenging ICE’s decision to detain him for the
20 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
21 (“Except as provided in this section and *notwithstanding any other provision of law*
22 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*
23 *corpus provision*, and sections 1361 and 1651 of such title, no court shall have
24

25 ³ Respondents note that Petitioner’s challenge to the July 9, 2025 ICE memo is subject
26 to ongoing litigation, with the Supreme Court staying an injunction imposed by a district
27 court ordering the government to provide notice and an opportunity to be heard like that
28 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.

1 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
2 decision or action by the Attorney General to commence proceedings, adjudicate cases,
3 or *execute removal orders* against any alien under this chapter.”) (emphasis added); *see*
4 *also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There
5 was good reason for Congress to focus special attention upon, and make special
6 provision for, judicial review of the Attorney General’s discrete acts of “commenc[ing]
7 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent
8 the initiation or prosecution of various stages in the deportation process.”); *Limpin v.*
9 *United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly
10 dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to
11 arrest and detain an alien at the commencement of removal proceedings are not within
12 any court’s jurisdiction”).

13 **IV. CONCLUSION**

14 For the reasons stated herein, Respondents respectfully request the Court to deny
15 the habeas petition.

16 DATED: February 6, 2026

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