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

10
11 YSMEL SANTOS-DIAZ,
12
13 Petitioner,
14 v.
15 KRISTI NOEM, Secretary of the
Department of Homeland Security; et al.,
16 Respondents.
17

Case No.: 26-cv-00582-BAS-DEB
**RESPONSE IN OPPOSITION TO
PETITIONER’S HABEAS PETITION
AND APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

18 **I. INTRODUCTION**

19 Petitioner has filed a habeas petition and a motion for temporary restraining
20 order. As the petition and motion assert the same claims and relief, Respondents herein
21 respond to both for the sake of judicial efficiency. For the reasons below, Respondents
22 ask the Court to deny Petitioner’s habeas petition and request for interim relief.

23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

24 Petitioner is a citizen and national of Cuba with a final, executable order of
25 removal as of March 1, 2010. *See* Declaration of Luis Crespo III (“Crespo III Decl.”) at
26 ¶¶ 3, 5; Exh. 1 at 2.¹ On May 7, 2010, Immigration and Customs Enforcement (ICE)
27

28 ¹ The attached exhibits are copies of true documents obtained from ICE counsel.

1 released Petitioner on an order of supervision because it was unable to remove him to
2 Cuba. *See* Crespo III Decl. at ¶ 6. On January 12, 2026, ICE’s Tampa, Florida
3 Enforcement and Removal Operations (ERO) Field Office re-detained Petitioner to
4 execute his removal order and provided him “with written notice of the Revocation of
5 Release and an opportunity to respond to the revocation during an informal interview.”
6 *Id.* at ¶ 7; *accord* Declaration of Timothy Stein (“Stein Decl.”) at ¶ 7; Exh. 1 at 4.

7 The Notice stated that his release was being revoked because: (1) the purpose of
8 his release had been served; (2) it is appropriate to enforce his outstanding removal
9 order; and (3) his conduct or other circumstances indicates that release would no longer
10 be appropriate. *See* Exh. 1 at 4. ICE also provided Petitioner with a separate written
11 notice, informing him of his potential removal to Mexico. *See* Stein Decl. at ¶ 7; Exh.
12 1 at 6. ICE conducted an informal interview to allow Petitioner to respond to the reasons
13 for revoking his release, but he offered no responses or documents. *See* Stein Decl. at
14 ¶ 8; Exh. 1 at 7.

15 After repatriation efforts to Cuba proved unsuccessful on January 16, 2026, ICE
16 pursued third county removal to Mexico. *See* Crespo III Decl. at ¶ 9. On January 27,
17 2026, Petitioner was transferred to the Otay Mesa Detention Center in San Diego,
18 California, to effectuate his removal to Mexico. *See id.* at ¶ 10. The removal was set to
19 occur on January 28, 2026, “but the Mexican government denied repatriation.” *Id.* at
20 ¶ 11. On January 30, 2026, Petitioner was transferred to Krome North Processing Center
21 in Miami, Florida, and “Miami ERO will attempt to identify a third country that may
22 be willing to accept Petitioner for removal.” *Id.* at ¶¶ 11–12.

23 III. ARGUMENT

24 “Section 241(a) of the Immigration and Nationality Act (INA), codified at 8
25 U.S.C. § 1231(a), authorizes the detention of noncitizens who have been ordered
26 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
27 (2022). The INA provides that an alien ordered removed must be detained for 90 days
28 pending the government’s efforts to secure the alien’s removal through negotiations

1 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
2 detain” the alien during the 90-day removal period under subsection (a)(1)).

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

11 **A. Likelihood of Petitioner’s Third Country Removal.**

12 As illustrated in Petitioner’s brief, recent developments in international relations
13 between the United States and several other countries have made probable ICE’s
14 removal of immigrants, like Petitioner, that it previously was unable to remove to third
15 countries. *See* ECF No. 1 at 4 (“The Trump administration reportedly has negotiated
16 with at least 58 countries to accept deportees from other nations.”). Against this
17 backdrop, ICE re-detained Petitioner to enforce his removal order and has worked
18 diligently to execute his removal first to Cuba, then to Mexico. *See* Crespo Decl. at
19 ¶¶ 7–11; Exh. 1 at 4, 6.

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

- 24 (i) The country from which the alien was admitted to the United States.
25 (ii) The country in which is located the foreign port from which the alien
26 left for the United States or for a foreign territory contiguous to the United
27 States.
28 (iii) A country in which the alien resided before the alien entered the
country from which the alien entered the United States.
(iv) The country in which the alien was born.

1 (v) The country that had sovereignty over the alien’s birthplace when the
2 alien was born.

3 (vi) The country in which the alien’s birthplace is located when the alien
4 is ordered removed.

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

9 The Cuban government has not accepted Petitioner for removal. *See Crespo III*
10 *Decl.* at ¶ 9. Petitioner has not designated any other country for removal. Apart from
11 Cuba, there appears to be no other country that would meet the definitions under
12 subsections (i) through (vi), and Petitioner has made no showing to the contrary. *See*
13 *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal.
14 Sept. 15, 2025) (“A prisoner bears the burden of demonstrating that ‘he is in custody in
15 violation of the Constitution or laws or treaties of the United States.’”) (quoting 28
16 U.S.C. § 2241(c)(3), brackets omitted). Because removal to the above enumerated
17 countries is “impracticable, inadvisable, or impossible,” ICE may remove Petitioner to
18 a third country that will accept Petitioner’s removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

19 Once repatriation efforts to Cuba proved unsuccessful, ICE diligently pursued
20 Petitioner’s third country resettlement. *See Crespo Decl.* at ¶¶ 9–11. To that end, ICE
21 identified Mexico as a third country that would accept Petitioner for resettlement and
22 had provided Petitioner with written notice of the intended removal on January 12,
23 2026. *See Exh. 1* at 6. There is no indication that Petitioner raised any fear of removal
24 to Mexico. He was scheduled for removal on January 28, 2026, “but the Mexican
25 government denied repatriation.” *Crespo Decl.* at ¶ 11. At this time, Miami ERO, which
26 has primary control over Petitioner’s case, “will attempt to identify a third country that
27 may be willing to accept Petitioner for removal.” *Id.* at ¶ 12.
28

1 **B. Petitioner’s Regulatory Violation Claim Fails.**

2 As to Petitioner’s regulatory violation claim, the record establishes that ICE
3 provided Petitioner with a written Notice of Revocation of Release and an informal
4 interview. *See* Exh. 1 at 3, 6; Stein Decl. at ¶ 7 (“At [the time of detention], I provided
5 the Petitioner with written notice of the Revocation of Release and an opportunity to
6 respond to the revocation during an informal interview.”). Tellingly, Petitioner presents
7 no personal declaration or other evidence to show otherwise.

8 To the extent Petitioner challenges the sufficiency of the Notice and interview
9 provided, the Notice informed Petitioner that his release was being revoked because (1)
10 the purpose of his release had been served; (2) it is appropriate to enforce his
11 outstanding removal order; and (3) his conduct or other circumstances indicates that
12 release would no longer be appropriate. *See* Exh. 1 at 4. The regulations confer broad
13 discretion on ICE to revoke release for these reasons. *See* 8 C.F.R. § 241.4(l)(2)(i), (iii),
14 and (iv). As the Ninth Circuit explained:

15 While the regulation provides the detainee some opportunity to respond to
16 the reasons for revocation, it provides no other procedural and no
17 meaningful substantive limit on this exercise of discretion as it allows
18 revocation ‘when, in the opinion of the revoking official . . . the purposes
19 of release have been served . . . or the conduct of the alien, *or any other*
20 *circumstance*, indicates that release would no longer be appropriate.

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

25 **C. Petitioner’s Due Process Third Country Removal Claim Is Not Borne Out
26 by the Evidence in This Case.**

27 Petitioner also suggests that once ICE identifies a third country for removal, he
28 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

1 Petitioner written notice informing him of his anticipated removal to Mexico. *See* Stein
2 Decl. at ¶¶ 7–8; Exh. 1 at 6. Because Petitioner was afforded written notice of his
3 potential third country removal and over two weeks before his removal to raise any
4 fear-based claim, ICE provided him meaningful notice and an opportunity to be heard
5 concerning his third country removal.

6 ICE’s declaration also shows that should another third country be identified in
7 this case, it “will provide Petitioner with written notice, and if Petitioner claims a fear
8 of removal to the identified country, he will be referred to an asylum officer for
9 processing of the fear-based claims.” Crespo Decl. at ¶ 14. The declaration further
10 reflects that under no circumstances would third country removal be executed less than
11 24 hours following the notice of third country removal, unless the noncitizen was
12 provided “reasonable means and opportunity to speak with an attorney prior to
13 removal.” *Id.* at ¶ 13. Thus, Petitioner’s concern that he will not receive adequate notice
14 and an opportunity to be heard prior to his third country removal is not borne out by the
15 evidence in this case.²

16 To the extent Petitioner is challenging ICE’s decision to detain him for the
17 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
18 (“Except as provided in this section and *notwithstanding any other provision of law*
19 *(statutory or nonstatutory), including section 2241 of Title 28, or any other habeas*
20 *corpus provision, and sections 1361 and 1651 of such title, no court shall have*
21 *jurisdiction to hear any cause or claim by or on behalf of any alien arising from the*
22 *decision or action by the Attorney General to commence proceedings, adjudicate cases,*
23 *or execute removal orders against any alien under this chapter.”) (emphasis added); *see**

24
25 ² 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 also *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There
2 was good reason for Congress to focus special attention upon, and make special
3 provision for, judicial review of the Attorney General’s discrete acts of “commenc[ing]
4 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent
5 the initiation or prosecution of various stages in the deportation process.”); *Limpin v.*
6 *United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly
7 dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to
8 arrest and detain an alien at the commencement of removal proceedings are not within
9 any court’s jurisdiction”).

10 **IV. CONCLUSION**

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

13 DATED: February 9, 2026

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