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

11 SUREN PINACHYAN,

12 Petitioner,

13 v.

14 WARDEN, OTAY MESA DETENTION
15 CENTER, *et al.*,

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17 Respondents.
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Case No.: 26-cv-01335-JO-JLB

**RESPONSE IN OPPOSITION TO
HABEAS PETITION**

1 **I. INTRODUCTION**

2 Petitioner has filed a petition for a writ of habeas corpus. For the reasons set forth
3 below, Respondents ask the Court to deny the habeas petition.

4 **II. BACKGROUND¹**

5 Petitioner is a native and citizen of Russia. On January 19, 2025, he was
6 apprehended by United States Border Patrol agents at the San Ysidro, California Port
7 of Entry when he attempted to enter the United States in an automobile. Exhibit A (Form
8 I-213); Solares Decl. at ¶ 3. Petitioner was processed as an expedited removal under
9 Section 235(b)(1) of the Immigration and Nationality Act and booked into ICE custody
10 on January 26, 2025, 2025. Exhibit B (Form I-860); Solares Decl. at ¶ 3.

11 Petitioner was referred to U.S. Citizenship and Immigration Services (USCIS)
12 for a credible fear interview. USCIS conducted the credible fear interview on March 24,
13 2025. Solares Decl. at ¶ 4.

14 On March 27, 2025, a Notice to Appear was served on the Petitioner and filed
15 with Immigration Court, placing Petitioner in removal proceedings. Exhibit C (NTA);
16 *Id.* at ¶ 5.

17 On November 13, 2025, Petitioner was denied asylum and ordered removed to
18 Russia or Armenia in the alternative, but was granted withholding of removal from
19 Russia and Armenia under Section 241(b)(3) of the Immigration and Nationality Act.
20 Exhibit D (Immigration Judge order); Solares Decl. at ¶ 6.

21 On January 14, 2026 and February 20, 2026, ERO contacted ERO Removal and
22 International Operations (RIO) to seek a third country for removal. Solares Decl. at ¶ 7.

23 At this time, ERO, with the support of RIO, continues to diligently seek to
24 identify a third country for Petitioner's removal and believes there is a significant
25 likelihood of removal in the reasonably foreseeable future. *Id.* at ¶ 8.

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28 ¹ The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 When a third country is identified for resettlement, standard ICE guidance and
 2 procedures provide that an ICE ERO officer will provide written notice to the removable
 3 alien of the intended third country removal. Solares Decl. at ¶ 9. The written notice
 4 identifies which country ICE intends to remove the alien to. ICE will generally wait at
 5 least 24 hours following service of the Notice of Removal before executing removal.
 6 *Id.* In exigent circumstances, ERO may execute a removal order six or more hours after
 7 service of the Notice of Removal as long as the alien is provided reasonable means and
 8 opportunity to speak with an attorney prior to removal. *Id.*

9 In Petitioner's case, once ERO identifies a third country for removal, he will be
 10 notified in writing of the third country at least 24 hours prior to removal. Solares Decl.
 11 at ¶ 10. If Petitioner claims a fear of removal to the identified country, he will be referred
 12 to an asylum officer for processing of the fear-based claim. *Id.*

13 Petitioner is detained at the ICE detention facility in Pine Prairie, Louisiana.
 14 Solares Decl. at ¶ 2.

15 III. ARGUMENT

16 A. Petitioner's Claims are Barred by 8 U.S.C. § 1252

17 To the extent Petitioner is challenging ICE's decision to detain him for the
 18 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
 19 ("Except as provided in this section and *notwithstanding any other provision of law*
 20 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*
 21 *corpus provision*, and sections 1361 and 1651 of such title, no court shall have
 22 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
 23 decision or action by the Attorney General to commence proceedings, adjudicate cases,
 24 or *execute removal orders* against any alien under this chapter.") (emphasis added); *see*
 25 *also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There
 26 was good reason for Congress to focus special attention upon, and make special
 27 provision for, judicial review of the Attorney General's discrete acts of "commenc[ing]
 28 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent

1 the initiation or prosecution of various stages in the deportation process.”); *Limpin v.*
2 *United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly
3 dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to
4 arrest and detain an alien at the commencement of removal proceedings are not within
5 any court’s jurisdiction”).

6 **B. The Nature and Duration of Petitioner’s Custody Do Not Violate the Due**
7 **Process Clause**

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 Detention authority under this statute, however, is limited to “a period reasonably
18 necessary to bring about the alien’s removal from the United States” and “does not
19 permit indefinite detention.” *Id.* at 689. The Supreme Court has held that a six-month
20 period of post-removal detention constitutes a “presumptively reasonable period of
21 detention.” *Id.* at 701. Release is not mandated after the expiration of the six-month
22 period unless “there is no significant likelihood of removal in the reasonably foreseeable
23 future.” *Id.*

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

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

- (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.
- (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.
- (v) The country that had sovereignty over the alien's birthplace when the alien was born.
- (vi) The country in which the alien's birthplace is located when the alien is ordered removed.

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

Here, Petitioner was granted a withholding of removal to Russia—his country of birth and citizenship—as well as to Armenia. Petitioner has not designated any other country for removal. Apart from Russia and Armenia, there appears to be no other country that would meet the definitions under subsections (i) through (vi), and Petitioner has made no showing to the contrary. *See Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165, at *2 (S.D. Cal. Sept. 15, 2025) (“A prisoner bears the burden of demonstrating that ‘he is in custody in violation of the Constitution or laws or treaties of the United States.’”) (quoting 28 U.S.C. § 2241(c)(3), brackets omitted). Because removal to the above enumerated countries is “impracticable, inadvisable, or impossible,” ICE may remove Petitioner to a third country that will accept Petitioner’s removal. 8 U.S.C. § 1231(b)(2)(E)(vii). In invoking its authority under 8 U.S.C. § 1231(b)(2)(E), ICE continues to detain Petitioner for purposes of executing his removal order to a third country.

Since Petitioner’s re-detention, ICE has worked expeditiously to effectuate his resettlement in a third country. ICE ERO contacted its headquarters’ Removal and International Operations (RIO) unit to seek a third country for removal in this case. Solares Decl. at ¶¶ 7-8. RIO is in the process of identifying countries that may be willing

1 to accept Petitioner for removal, and these efforts are ongoing. *See also Zadvydas*, 533
2 U.S. at 700 (instructing district courts “to listen with care when the Government’s
3 foreign policy judgments, including, for example, the status of repatriation negotiations,
4 are at issue, and to grant the Government appropriate leeway when its judgments rest
5 upon foreign policy expertise.”).

6 As it stands, it would be premature to conclude that there is no significant
7 likelihood of removal in the reasonably foreseeable future before permitting ICE an
8 opportunity to complete the diligent efforts it has taken to effect Petitioner’s removal.
9 ICE has taken the exact steps it needs to take to ensure their removal efforts bear fruit.
10 Evidence of progress, even slow progress, in negotiating a petitioner’s repatriation will
11 satisfy *Zadvydas* until the petitioner’s detention grows unreasonably lengthy. *See, e.g.,*
12 *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5 (S.D. Cal. Aug. 15,
13 2019) (“The record at this stage in the litigation does not support a finding that there is
14 no significant likelihood of Petitioner’s removal in the reasonably foreseeable future.”);
15 *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at *3 (S.D.
16 Cal. Oct. 13, 2020) (denying petition because “Respondents have set forth evidence that
17 demonstrates progress and the reasons for the delay in Petitioner’s removal”).

18 IV. CONCLUSION

19 For the reasons stated herein, Respondents respectfully request that the Court
20 dismiss the petition. Because the record shows that Petitioner is not entitled to habeas
21 relief, there is no need for an evidentiary hearing in this matter. *See Schriro v.*
22 *Landrigan*, 550 U.S. 465, 474 (2007) (“[I]f the record refutes the applicant’s factual
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1 allegations or otherwise precludes habeas relief, a district court is not required to hold
2 an evidentiary hearing.”).

3 Respondents will comply with orders issued by the Court regardless of
4 Petitioner’s location.

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6 DATED: March 25, 2026

Respectfully submitted,

7 ADAM GORDON
8 United States Attorney

9 s/ Tom Merritt
10 TOM MERRITT
11 Assistant United States Attorney
12 Attorneys for Respondents
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