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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KUY SY,

Petitioner,

v.

MARKWAYNE MULLIN, et al.,

Respondents.

Case No.: 26-cv-2538-TWR-SBC

SUPPLEMENTAL BRIEFING

I. INTRODUCTION

On April 27, 2026, this Court ordered supplemental briefing on "why Petitioner should not be granted an individualized bond hearing before an Immigration Judge pursuant to 8 U.S.C. §1226(a). For the reasons set forth below, Respondents ask the Court to deny the habeas petition and injunctive relief.

II. ADDITIONAL FACTS[1]

Petitioner is subject to a final order of removal to Cambodia. Declaration of Deportation Officer Jason Cole (Cole Decl.) at ¶ 7. After his release on March 19, 2026, due to a mistaken belief by Immigration and Customs Enforcement (ICE) that Petitioner was a *Chhouen* class member, ICE re-detained Petitioner on March 31. 2026. *Id.* at ¶ 11. ICE provided Petitioner with a second Notice of Revocation of Release informing him that his release was being revoked as a result of his violations of the conditions of his release when he failed to report as instructed on June 26, 2025, to respond to telephone calls, and a failure to update his residential address. *Id.* at ¶¶ 9, 11; Exhibit 1 (Notice of Revocation of Release). Petitioner was also provided an opportunity to respond to the revocation of his release, for a second time, during an informal interview the same day. *Id.* ICE has requested a travel document and had Petitioner complete an application for the travel document. Cole Decl. at ¶¶ 16-17. Once they received a travel document, they will be able to remove Petitioner expeditiously to Cambodia. *See Id.* at ¶¶ 13-15.

III. 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

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

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). Detention authority under this 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. The Supreme Court held in *Zadvydas* that when removal is not accomplished during the 90-day removal period, the statute "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689. Courts have repeatedly declined to grant habeas relief where the presumptively reasonable six-month period has not yet elapsed. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) detention poses a constitutional issue."); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) ("The Court finds that the Petition is premature because Petitioner has not been detained for more than six months. Petitioner has been in detention since May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas.*") (citations omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes the release based on changed circumstances, "the revocation would merely restart the 90-day removal period, not necessarily the presumptively reasonable six-month detention period under *Zadvydas*"). Even after the period of presumptive reasonableness has run, release is not required under *Zadvydas* unless "there is *no* significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701 (emphasis added). As the

Supreme Court instructed, "the habeas court must ask whether the detention in question exceeds a period reasonably necessary to secure removal. It should measure reasonableness primarily in terms of the statute's basic purpose, namely, *assuring the alien's presence at the moment of removal*." *Id.* at 699 (emphasis added). In so holding, the Supreme Court recognized that detention is presumptively reasonable pending efforts to obtain travel documents, because the noncitizen's assistance is often needed to obtain the travel documents, and because a noncitizen who is subject to an imminent, executable warrant of removal becomes a significant flight risk, especially if he or she is aware that it is imminent.

Petitioner suggests that *Zadvydas* stands for the proposition that any period of non-detention after the issuance of a final removal order applies to the 6 month presumptively reasonable period to execute the removal order. *See* ECF No. 1 at page 7. *Zadvydas'* presumptively reasonable period is "triggered by detention" and "runs only while the noncitizen is actually detained." *Jian v. Bondi,* 2025 WL 3281819 (D. N.M. Nov. 25, 2025), *citing Callender v. Shanahan,* 281 F. Supp. 3d 428, 435 (S.D.N.Y. 2017); *Ke Chen v. Holder,* 783 F. Supp. 2d 1183, 1192 (N.D. Ala. 2011).

The Supreme Court also instructed that detention could exceed six months: "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* The Ninth Circuit has emphasized, "*Zadvydas* places the burden on the alien to show, after a detention period of six months, that there is 'good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Pelich v. INS,* 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas,* 533 U.S. at 701); *see also Xi v. INS,* 298 F.3d 832, 840 (9th Cir. 2003).

Here, Petitioner contends that his current detention runs afoul of *Zadvydas*. Here Petitioner's actual detention totals less than five months. He was detained from January 14, 2020 to April 24, 2020, from March 17, 2026, to March 19, 2026, and from March 31, 2026 until today. But even if this Court finds the presumptively reasonable removal period has expired, his claim still fails at the next step because he cannot meet his burden to establish "that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. ICE has completed the application for, and requested, a travel document. Cole Decl. at ¶ 17. They have removed numerous individuals to Cambodia in 2025 and 2026. *Id.* As a result, once the travel document is received, they will be able to expeditiously remove Petitioner. *Id.* at ¶¶ 18-19. Petitioner has provided no reason that ICE cannot obtain a travel document to remove Petitioner in the reasonably foreseeable future.

Thus, Petitioner not only fails to meet his burden, but Respondents have affirmatively shown that there is a significant likelihood of Petitioner's removal to Cambodia in the reasonably foreseeable future.

Courts properly deny *Zadvydas* claims under such circumstances. *See Malkandi v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1 (W.D. Wash. April 2, 2008) (denying *Zadvydas* petition where petitioner had been detained more than 14 months post-final order); *Nicia v. ICE Field Office Dir.*, No. C13–0092–RSM, 2013 WL 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner "failed to satisfy his burden of showing that there is no significant likelihood of his removal in the reasonably foreseeable future" where he had been detained more than seven months post-final order).

Here, Petitioner has been detained less than five months and only one month since his re-detention. ICE has acted previously to prevent unreasonably prolonged detention when they determined that they could no longer remove Petitioner in the reasonably foreseeable future and released him. *See also Zadvydas*, 533 U.S. at 700 (instructing district courts "to listen with care when the Government's foreign policy judgments,

including, for example, the status of repatriation negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.").

As it stands, it would be premature to conclude that there is no significant likelihood of removal in the reasonably foreseeable future before permitting ICE an opportunity to complete the diligent efforts it has made to affect Petitioner's removal. ICE has taken the exact steps it needs to take to ensure their removal efforts bear fruit. Evidence of progress, even slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy. *See, e.g.*, *Sereke v. DHS*, Case No. 19-cv-1250-WQH-AGS, ECF No. 5 at 5 (S.D. Cal. Aug. 15, 2019) ("The record at this stage in the litigation does not support a finding that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future."); *Marquez v. Wolf*, Case No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at *3 (S.D. Cal. Oct. 13, 2020) (denying petition because "Respondents have set forth evidence that demonstrates progress and the reasons for the delay in Petitioner's removal"). If Petitioner had not taken these actions, he would have been removed back in February 2020 with the travel document obtained by ICE.

As to the regulatory violation claims, Petitioner received two notifications of revocation of release and two opportunities to respond to the revocations. Respondents have met the requirements of the agency regulations. As to the regulatory violation claims, a noncitizen who is not removed within the removal period may be released from ICE custody "pending removal . . . subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8 U.S.C. § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and the order may be revoked under 8 C.F.R. § 241.4(*l*)(2)(iii) where "appropriate to enforce a removal order." *See also* 8 C.F.R. § 241.5 (conditions of release after removal period). ICE may also revoke the order of supervision where, "on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may

be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). The regulations further provide:

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

8 C.F.R. § 241.4(*l*)(1) (emphasis added).

Petitioner was provided with two written Notices of Revocation of Release and informal interviews. *See* Ex 1; Ex. 1 to Respondent's Response to Petition at ECF N. 3. The agency has complied with its regulations. Even if the agency's compliance with the regulations fell short, 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) ("Compliance 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). As Petitioner cannot show prejudice under these circumstances, the alleged violation of agency regulations does not warrant the relief he seeks. *See, e.g.*, *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) ("While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation 'when, in the opinion of the revoking official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate.'") (emphasis in original) (citing 8 C.F.R. §§ 241.4(*l*)(2)(i), (iv)); *Carnation*

Co. v. Sec'y of Labor, 641 F.2d 801, 804 n.4 (9th Cir. 1981) ("violations of procedural regulations should be upheld if there is no significant possibility that the violation affected the ultimate outcome of the agency's action" (citation omitted)); *United States v. Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS' failure to follow regulations requiring that an arrested alien be advised of his right to speak to his consul was not prejudicial and thus not a ground for challenging the conviction); *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).

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").

Because the record shows that Petitioner is not entitled to habeas relief, there is

no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("[I]f the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing.").

IV. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Court deny the requests for relief and deny the petition.

DATED: April 30, 2026

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