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

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11 RENE HERRERA WILSON,
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Petitioner,
v.
Respondents.

Case No.: 26-cv-02729-DMS-DEB
**RETURN TO PETITION FOR WRIT
OF HABEAS CORPUS**

1 **I. INTRODUCTION**

2 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. For the reasons
3 below, Respondents ask the Court to deny Petitioner’s habeas petition.

4 **II. BACKGROUND**

5 Petitioner is a native and citizen of Cuba, who was first admitted to the United
6 States in 1994 as a refugee. *See* Declaration of Jason Cole (“Cole Decl.”) at ¶ 3. On
7 February 10, 2020, an Immigration Judge (IJ) ordered Petitioner removed to Cuba but
8 granted withholding of removal under INA § 241(b)(3). *See id.* at ¶ 18; *see also* Exhibit
9 1 (IJ Order) Both Petitioner and DHS waived appeal, and the decision became final on
10 February 10, 2020. *See* Cole Decl. at ¶ 18; *see also* Exhibit 1. On February 11, 2020,
11 Petitioner was released from ICE custody on an Order of Supervision. *See* Cole Decl.
12 at ¶ 19. On October 26, 2023, Petitioner was issued a new Order of Supervision. *See id.*
13 On November 24, 2025, Petitioner was arrested and subsequently convicted of carrying
14 a concealed weapon, for which he was sentenced to 121 days of incarceration. *See id.*
15 at ¶ 20. On April 16, 2026, ICE re-detained Petitioner and provided written notice of
16 revocation of release and an informal interview. *See id.* at ¶ 21; *see also* Exhibit 2
17 (Notice of Revocation of Release and Informal Interview).

18 On April 29, 2026, ICE contacted ERO Removal and International Operations
19 (RIO) headquarters to seek a third country for removal. *See* Cole Decl. at ¶ 22. ICE is
20 pending a response from RIO on identifying a third country for removal. *See id.* When
21 a third country is identified for resettlement, standard ICE guidance and procedures
22 provide that an ICE officer will provide written notice to the removable alien of the
23 intended third country removal. *See id.* at ¶ 23. The written notice identifies the country
24 to which ICE intends to remove the alien. *See id.* ICE will generally wait at least 24
25 hours following service of the Notice of Removal before effectuating removal. *See id.*
26 In exigent circumstances, ICE may execute a removal order six or more hours after
27 service of the Notice of Removal as long as the alien is provided reasonable means and
28 opportunity to speak with an attorney prior to removal. *See id.* Once a third country is

1 identified, ICE will provide Petitioner with written notice, and if Petitioner claims a fear
2 of removal to the identified country, he will be referred to an asylum officer for
3 processing of the fear-based claims. *See id.* at ¶ 24. ICE continues to diligently seek to
4 identify a third country for Petitioner’s removal and believes there is a significant
5 likelihood of removal to a third country in the reasonably foreseeable future. *See id.* at
6 ¶ 25.

7 III. ARGUMENT

8 A. Petitioner’s First Claim Fails Because ICE Provided Petitioner with the 9 Notice of Revocation of Release and Informal Interview Under the 10 Regulations.

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

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

27 8 C.F.R. § 214.4(l).

28 Here, despite being provided with a written Notice of Revocation of Release and
an informal interview, Petitioner nonetheless argues that ICE failed to follow its

1 regulations. The claim is unavailing. As an initial matter, the notice explains that
2 Petitioner was “convicted on 09/10/2022, for the following offense: Count 1A: PC
3 290.018(b) Failure to register as a felony sex offender. On 04/29/2021 you were
4 convicted for the following: Count 1B: PC 314(1)/PC 314(1) Indecent exposure,” which
5 was a violation of the conditions of his release on supervision. *See* Exh. 2 at 2. The
6 regulations confer broad discretion to revoke release under these circumstances. *See* 8
7 C.F.R. § 241.4(I)(2). As the Ninth Circuit explained:

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

14 *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (quoting § 241.4(I)(2)(i), (iv),
15 brackets omitted, emphasis in original). As the regulation provides “no other procedural
16 and no meaningful substantive limit” on ICE’s discretion to revoke release in this case,
17 Petitioner’s challenge to the notice and the reasoning provided fails. Petitioner does not
18 claim that he did not receive this notice or that he was unable to read or understand that
19 ICE is now exercising its discretion to execute his outstanding order of removal. *See*
20 ECF No. 1.

21 Respondents complied with the regulations in this case because ICE provided
22 Petitioner with a Notice of Revocation of Release and informal interview, and the record
23 reflects that Petitioner understood the reasons that ICE revoked his release in this case.
24 *See* Exh. 2

25 **B. Petitioner’s Second Claim Fails Because the Government Has Rebutted**
26 **Any Showing that There is No Significant Likelihood of Removal to a**
27 **Third Country in the Reasonably Foreseeable Future.**

28 “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

1 removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575
2 (2022). The INA provides that an alien ordered removed must be detained for 90 days
3 pending the government’s efforts to secure the alien’s removal through negotiations
4 with foreign governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General “shall
5 detain” the alien during the 90-day removal period under subsection (a)(1)).

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

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

18 The enumerated countries are:

- 19 (i) The country from which the alien was admitted to the United States
20 (ii) The country in which is located the foreign port from which the alien
21 left for the United States or for a foreign territory contiguous to the United
22 States.
22 (iii) A country in which the alien resided before the alien entered the
23 country from which the alien entered the United States.
23 (iv) The country in which the alien was born.
24 (v) The country that had sovereignty over the alien's birthplace when the
25 alien was born.
25 (vi) The country in which the alien’s birthplace is located when the alien
26 is ordered removed.

27 *Id.* (quoting § 1231(b)(2)(E)(i)–(vi)). “If removal to any of these countries is
28 ‘impracticable, inadvisable, or impossible,’ the individual shall be removed to ‘another

1 country whose government will accept the alien into that country.” *Id.* (quoting
2 § 1231(b)(2)(E)(vii)).

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

14 Since Petitioner’s removal order became final on August 16, 2026, ICE has
15 worked as expeditiously as possible to effectuate his resettlement in a third country. *See*
16 *Cole Decl.* at ¶¶ 21–26. As explained above, on April 29, 2026, ICE contacted ERO
17 RIO headquarters to seek a third country for removal. *See id.* at ¶ 22. ICE is pending a
18 response from RIO on identifying a third country for removal. *See id.* Under these
19 circumstances, ICE believes there is a significant likelihood of removal to a third
20 country in the reasonably foreseeable future.

21 **C. Petitioner’s Third Claim Fails Because Once a Third Country is Identified,**
22 **ICE Will Provide Petitioner Adequate Notice and an Opportunity to be**
23 **Heard.**

24 Petitioner also suggests that once a third country is identified, ICE will
25 immediately deport him there without being given adequate notice and an opportunity
26 to be heard. *See ECF No. 1* at 4. ICE attests, however, that when a third country is
27 identified for resettlement, standard ICE guidance and procedures provide that an ICE
28 officer will provide written notice to the removable alien of the intended third country

1 removal. *See* Cole Decl. at ¶ 23. The written notice will identify the country to which
2 ICE intends to remove the alien. *See id.* ICE will generally wait at least 24 hours
3 following service of the Notice of Removal before effectuating removal. *See id.* In
4 exigent circumstances, ICE may execute a removal order six or more hours after service
5 of the Notice of Removal as long as the alien is provided reasonable means and
6 opportunity to speak with an attorney prior to removal. *See id.* Once a third country is
7 identified, ICE 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. *See id.* at ¶ 24. Thus, Petitioner’s concern that he
10 will not receive adequate notice and an opportunity to be heard prior to his third country
11 removal is not borne out by the evidence in this case.

12 Moreover, Petitioner’s challenge to the July 9, 2025 ICE memo is subject to
13 ongoing litigation, with the Supreme Court staying an injunction imposed by a district
14 court ordering the government to provide notice and an opportunity to be heard like that
15 requested here. *See Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Given
16 the Supreme Court’s reversal of that injunction, Respondents’ position is that
17 imposition of a similar injunction would be reversed here.

18 **IV. CONCLUSION**

19 For the reasons stated herein, Respondents respectfully request that the Court
20 deny the habeas petition.

21 DATED: May 7, 2026

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