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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

TEMIDAYO OLUWAMUYIWA AROWOSEGBE, Petitioner, v. MARKWAYNE MULLIN, et al., Respondents.	Case No. 26-cv-3104-JAO-JLB **RETURN IN OPPOSITION TO PETITIONER'S HABEAS PETITION**

I. INTRODUCTION

Petitioner Temidayo Arowosegbe has filed a habeas petition. ECF No. 1. For the reasons set forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen and national of Nigeria who was admitted to the United States on a student visa. Exhibit (Ex.) 1 (I-213); Declaration of Deportation Officer Santiago Prieto (Decl.) at ¶ 4. Petitioner abandoned his educational studies and his student visa was terminated on March 4, 2015. Decl. at ¶ 4. ICE service Petitioner with

a Notice to Appear initiating removal proceedings pursuant to 8 U.S.C. § 1229a. On November 13, 2017, an immigration judge ordered Petitioner removed from the United States but granting withholding of removal to Nigeria. *Id.* at ¶ 7. Both Parties waived appeal and the removal order became final that day. *Id.* ICE did not detain Petitioner after the order became final until May 15, 2026, when Ghana had been identified as a third country for the removal of the Petitioner subsequent to Ghana's credible diplomatic assurance that Petitioner would not be persecuted or tortured by the Government of Ghana. *Id.* at ¶¶ 8-9. Although unnecessary as Petitioner had not been previously detained post-final order, ICE provided Petitioner with a notice of Revocation of Release and an informal interview. *Id.;* Ex. 2 (IJ Order, Notice of Revocation/Informal Interview) ICE had scheduled Petitioner for a removal flight to Ghana but has removed Petitioner from the manifest for the flight as a result of this habeas petition. Petitioner remains mandatorily detained pursuant to 8 U.S.C. § 1231(a).

III. ARGUMENT

A. Petitioner's detention is lawful, and he has not established that there is no significant likelihood of removal in the reasonably foreseeable future.

ICE's authority to detain noncitizens who are subject to a final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found to be unlawfully present in the United States and a final order of removal has been entered, the government ordinarily secures the alien's removal during a subsequent 90-day statutory "removal period." 8 U.S.C. § 1231(a)(1). The statute provides that the Attorney General "shall detain" the alien during this removal period. 8 U.S.C. § 1231(a)(2).

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 v. Davis*, 533 U.S. 678, 689 (2001) (emphasis added). The Supreme Court has held that six months constitutes a "presumptively reasonable period of detention." *Id.* at 701. 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.

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).

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. This interpretation of *Zadvydas* runs counter to the entire analysis and basis for the Supreme Court's opinion. The Supreme Court's entire opinion discusses reasonable periods of detention, what constitutes appropriate reasons for the detention, the prohibition of indefinite detention, and creates a presumptively reasonable, but rebuttable, period of detention. *See Zadvydas, generally,* 533 U.S. 678. *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). In this case, the six month presumptively reasonable period of detention following the final removal order has not expired. Petitioner has been detained just 14 days at the time of this filing.

Here, Petitioner's case is premature as the six-month presumptively reasonable removal period will not end until November 15, 2026. *See, e.g.*, *Khalilova v. Smith*, No. 25-cv-2140 JLS (DDL), 2025 WL 3089522 (S.D. Cal. Nov. 5, 2025) (finding habeas petition was unripe for review where *Zadvydas* six-month period had not expired; dismissing petition without prejudice); *Muradyan v. Warden*, No. 26-cv-63-CAB-

AHG, 2026 WL 184206 (S.D. Cal. Jan. 23, 2026) (same); *Ali v. Barlow*, 446 F. Supp. 2d 604, 609-610 (E.D. Va. 2006) (same); *Gonzales v. Naranjo*, No. EDCV 12-1392 DSF (FFM), 2012 WL 6111358 (C.D. Cal. 2012) (same); *Waraich v. Ashcroft*, No. CVF051036, 2005 WL 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same). *But see Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period.").

Here, Petitioner's claim fails because Petitioner cannot meet Petitioner's burden to establish "that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Petitioner was detained on May 15, 2026, only after ICE had identified Ghana as a third country for removal. Decl. at ¶¶ 8-9. ICE then scheduled a charter flight for removal which it had to postpone only as result of the stay on removal issued by the Court. *Id.* at ¶ 10 Thus, Petitioner not only fails to meet Petitioner's burden, but Respondents have affirmatively shown that there is a significant likelihood of Petitioner's removal to Ghana in the reasonably foreseeable future. Once the Court lifts its stay of Petitioner's removal, Respondents will promptly effectuate Petitioner's removal.

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).

B. Petitioner's complaints about procedural defects in his re-detention do not establish a basis for habeas relief.

Petitioner's argument that ICE failed to comply with its regulations in detaining the Petitioner is also deficient. 8 C.F.R. § 241 applies only to re-detention after release, pursuant to 8 C.F.R. § 241.4, during the post removal period not a release upon initial entry into the United States.

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).

Here, Petitioner claims that Petitioner's detention is unlawful because the agency failed to comply with its regulations while re-detaining Petitioner. ECF No. 1 at p. 4. For 8 C.F.R. § 241 to apply, Petitioner would have had to be detained at the time or after the removal order issued, released, and then re-detained. Those facts are not present here. No notice or opportunity to be heard is required where, as here, an individual has a final order of removal and ICE detains the individual for the first time, post-removal order, to effectuate the final removal order. *See Lin v. Francis,* No. 25

Civ. 10001 (PAE), 2025 WL 3751855, at *3 (S.D.N.Y. Dec. 2025). (reasoning that petitioner fails to "offer case law supporting the improbable proposition that—with his not having appeared at his removal hearing or evidently had any contact in the ensuing 12 years with ICE—ICE was required either (1) to give him advance notice ... before detaining him, or (2) to release him on supervisory conditions after it encountered him"). Once DHS had a final order of removal ordering that Petitioner be removed, it was no longer required to allow Petitioner any form of release form of release. ICE never detained or released Petitioner from detention after the removal order issued until May 15, 2026. At this point, it was not a violation of due process, either substantive or procedural, for Respondents to detain Petitioner without notice so that the removal order could be carried out. *See Lin v. Francis*, No. 25 Civ. 10001 (PAE), 2025 WL 3751855, at *3 (S.D.N.Y. Dec. 29, 2025) (reasoning that petitioner fails to "offer case law supporting the improbable proposition that—with his not having appeared at his removal hearing or evidently had any contact in the ensuing 12 years with ICE—ICE was required either (1) to give him advance notice ... before detaining him, or (2) to release him on supervisory conditions after it encountered him").

Even if Petitioner's alleged regulatory failures actually amount to a regulatory violation, Petitioner cannot establish any prejudice resulted from those omissions nor that a constitutional-level violation has occurred. *See Brown v. Holder*, 763 F.3d 1141, 1148–50 (9th Cir. 2014) ("[T]he 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) (holding that "[c]ompliance with . . . internal [customs] agency regulations is not mandated by the Constitution") (simplified); *Bd. of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* "enunciate[s] principles of federal administrative law rather than of constitutional law").

Here, Petitioner knew of final order of removal from the United States and had waived appeal of the order. *See* ECF No. 1. Because Respondents also may detain Petitioner without a right to a bond hearing pursuant to 8 U.S.C. § 1231(a), any

challenge that Petitioner would have raised prior to the re-detention would have failed. Because Petitioner cannot show prejudice under these circumstances, the alleged violation of agency regulations does not warrant release here. *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 Lab.*, 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).

In short, 8 C.F.R. § 241 does not apply to the facts of Petitioner's detention post-removal order. ICE has obtained authority and the necessary assurances from Ghana for the removal of Petitioner to their country and had scheduled a removal flight. Therefore, there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petitioner's petition.

DATED: May 29, 2026

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