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

10
11 YASMANY CASTRO-NAPOLES

Case No. 26-cv-3212-RFL-AHG

12 Petitioner,

**RETURN IN OPPOSITION TO
PETITIONER'S HABEAS
PETITION**

13
14 v.

15 KRISTI NOEM, et al.,

16 Respondents.
17

18
19 **I. INTRODUCTION**

20 Petitioner Yasmany Castro-Napoles has filed a habeas petition. ECF No. 1. For
21 the reasons set forth below, the Court should deny Petitioner's requests for relief and
22 dismiss the petition.

23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

24 Petitioner is a citizen and national of Cuba who illegally entered the United States
25 without inspection on or about April 17, 2019, 18 miles west of the Paso Del Norte,
26 Texas, Bridge Point of Entry. Exhibit (Ex.) 1 (I-213); Declaration of Deportation
27 Officer Christopher Lowry (Decl.) at ¶¶ 4-5. ICE apprehended Petitioner and served
28 him with a Notice to Appear initiating removal proceedings pursuant to 8 U.S.C. §

1 1229a. On July 21, 2022, an immigration judge ordered Petitioner removed from the
2 United States. Ex. 2 (IJ Removal Order); *Id.* at ¶ 8. No appeals were filed and the
3 removal order became final that day. *Id.* ICE did not detain Petitioner after the order
4 became final until May 8, 2026. Ex. 1; *Id.* at ¶ 10. On May 25, 2026, Petitioner refused
5 removal to Mexico. *Id.* at ¶ 11. ICE Enforcement and Removal Operations (ERO) has
6 obtained all documents necessary to effectuate Petitioner’s removal to Cuba once Cuba
7 authorizes repatriation. *Id.* at ¶¶ 12-13. Petitioner remains mandatorily detained
8 pursuant to 8 U.S.C. § 1231(a).

9 III. ARGUMENT

10 A. Petitioner’s detention is lawful, and he has not established that there is no 11 significant likelihood of removal in the reasonably foreseeable future.

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

18 The Supreme Court held in *Zadvydas* that when removal is not accomplished
19 during the 90-day removal period, the statute “limits an alien’s post-removal-period
20 **detention** to a period reasonably necessary to bring about the alien’s removal from the
21 United States” and does not permit “indefinite **detention.**” *Zadvydas v. Davis*, 533 U.S.
22 678, 689 (2001) (emphasis added). The Supreme Court has held that six months
23 constitutes a “presumptively reasonable period of detention.” *Id.* at 701. Courts have
24 repeatedly declined to grant habeas relief where the presumptively reasonable six-
25 month period has not yet elapsed. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025
26 WL 2049981, at *4 (D. Md. July 22, 2025) (“The government is entitled to its six-month
27 presumptive period before Petitioner’s continued § 1231(a)(6) detention poses a
28 constitutional issue.”); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025

1 WL 1984300, at *4 (S.D. Fla. July 17, 2025) (“The Court finds that the Petition is
2 premature because Petitioner has not been detained for more than six months. Petitioner
3 has been in detention since May 29, 2025; therefore, his two-month detention is lawful
4 under *Zadvydas*.”) (citations omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003
5 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases
6 a noncitizen and then revokes the release based on changed circumstances, “the
7 revocation would merely restart the 90-day removal period, not necessarily the
8 presumptively reasonable six-month detention period under *Zadvydas*”).

9 Even after the period of presumptive reasonableness has run, release is not
10 required under *Zadvydas* unless “there is *no* significant likelihood of removal in the
11 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701 (emphasis added). As the
12 Supreme Court instructed, “the habeas court must ask whether the detention in question
13 exceeds a period reasonably necessary to secure removal. It should measure
14 reasonableness primarily in terms of the statute’s basic purpose, namely, *assuring the*
15 *alien’s presence at the moment of removal*.” *Id.* at 699 (emphasis added). In so holding,
16 the Supreme Court recognized that detention is presumptively reasonable pending
17 efforts to obtain travel documents, because the noncitizen’s assistance is often needed
18 to obtain the travel documents, and because a noncitizen who is subject to an imminent,
19 executable warrant of removal becomes a significant flight risk, especially if he or she
20 is aware that it is imminent.

21 The Supreme Court also instructed that detention could exceed six months: “This
22 6-month presumption, of course, does not mean that every alien not removed must be
23 released after six months. To the contrary, an alien may be held in confinement until it
24 has been determined that there is no significant likelihood of removal in the reasonably
25 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
26 reason to believe that there is no significant likelihood of removal in the reasonably
27 foreseeable future, the Government must respond with evidence sufficient to rebut that
28 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the

1 alien to show, after a detention period of six months, that there is ‘good reason to believe
2 that there is no significant likelihood of removal in the reasonably foreseeable future.’”
3 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
4 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

5 Petitioner suggests that *Zadvydas* stands for the proposition that any period of
6 non-detention after the issuance of a final removal order applies to the 6 month
7 presumptively reasonable period to execute the removal order. *See* ECF No. 1. This
8 interpretation of *Zadvydas* runs counter to the entire analysis and basis for the Supreme
9 Court’s opinion. The Supreme Court’s entire opinion discusses reasonable periods of
10 detention, what constitutes appropriate reasons for the detention, the prohibition of
11 indefinite detention, and creates a presumptively reasonable, but rebuttable, period of
12 detention. *See Zadvydas, generally*, 533 U.S. 678. *Zadvydas*’ presumptively reasonable
13 period is “triggered by detention” and “runs only while the noncitizen is actually
14 detained.” *Jian v. Bondi*, 2025 WL 3281819 (D. N.M. Nov. 25, 2025), *citing Callender*
15 *v. Shanahan*, 281 F. Supp. 3d 428, 435 (S.D.N.Y. 2017); *Ke Chen v. Holder*, 783 F.
16 Supp. 2d 1183, 1192 (N.D. Ala. 2011). In this case, the six month presumptively
17 reasonable period of detention following the final removal order has not expired.
18 Petitioner has been detained just 25 days at the time of this filing.

19 Petitioner’s case is premature as the six-month presumptively reasonable removal
20 period will not end until November 8, 2026. *See, e.g., Khalilova v. Smith*, No. 25-cv-
21 2140 JLS (DDL), 2025 WL 3089522 (S.D. Cal. Nov. 5, 2025) (finding habeas petition
22 was unripe for review where *Zadvydas* six-month period had not expired; dismissing
23 petition without prejudice); *Muradyan v. Warden*, No. 26-cv-63-CAB-AHG, 2026 WL
24 184206 (S.D. Cal. Jan. 23, 2026) (same); *Ali v. Barlow*, 446 F. Supp. 2d 604, 609-610
25 (E.D. Va. 2006) (same); *Gonzales v. Naranjo*, No. EDCV 12-1392 DSF (FFM), 2012
26 WL 6111358 (C.D. Cal. 2012) (same); *Waraich v. Ashcroft*, No. CVF051036, 2005 WL
27 2671406, at *1 (E.D. Cal. Oct. 19, 2005) (same). *But see Trinh v. Homan*, 466 F. Supp.
28 3d 1077, 1093 (C.D. Cal. 2020) (“At no point did the *Zadvydas* Court preclude a

1 noncitizen from challenging their detention before the end of the presumptively
2 reasonable six-month period.”).

3 Petitioner’s claim fails because Petitioner cannot meet Petitioner’s burden to
4 establish “that there is no significant likelihood of removal in the reasonably foreseeable
5 future.” *Zadvydas*, 533 U.S. at 701. Petitioner was detained for the first time post-
6 removal order on May 8, 2026, after being encountered at Camp Pendelton. Ex. 1, Decl.
7 at ¶ 10. As noted, ICE ERO has obtained the documents necessary to effectuate his
8 removal to Cuba and, once they receive authorization from Cuba, can repatriate
9 Petitioner promptly. *Id.* at ¶¶ 12-14. Thus, Petitioner not only fails to meet his burden,
10 but Respondents have affirmatively shown that there is a significant likelihood of
11 Petitioner’s removal to Cuba in the reasonably foreseeable future.

12 Courts properly deny *Zadvydas* claims under such circumstances. *See Malkandi*
13 *v. Mukasey*, No. C07-1858RSM, 2008 WL 916974, at *1 (W.D. Wash. April 2, 2008)
14 (denying *Zadvydas* petition where petitioner had been detained more than 14 months
15 post-final order); *Nicia v. ICE Field Office Dir.*, No. C13-0092-RSM, 2013 WL
16 2319402, at *3 (W.D. Wash. May 28, 2013) (holding petitioner “failed to satisfy his
17 burden of showing that there is no significant likelihood of his removal in the reasonably
18 foreseeable future” where he had been detained more than seven months post-final
19 order).

20 **Petitioner’s complaints about procedural defects in his re-detention do not**
21 **establish a basis for habeas relief.**

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

26 A noncitizen, who is not removed within the removal period, may be released
27 from ICE custody “pending removal . . . subject to supervision under regulations
28 prescribed by the Attorney General.” 8 U.S.C. §§ 1231(a)(1)(A), 1231(a)(3); *see also* 8

1 U.S.C. § 1231(a)(6). An order of supervision may be issued under 8 C.F.R. § 241.4, and
2 the order may be revoked under 8 C.F.R. § 241.4(l)(2)(iii) where “appropriate to enforce
3 a removal order.” *See also* 8 C.F.R. § 241.5 (conditions of release after removal period).
4 ICE may also revoke the order of supervision where, “on account of changed
5 circumstances, [ICE] determines that there is a significant likelihood that the alien may
6 be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). The
7 regulations further provide:

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

12 8 C.F.R. § 241.4(l)(1) (emphasis added).

13 Here, Petitioner claims that Petitioner’s detention is unlawful because the agency
14 failed to comply with its regulations while re-detaining Petitioner. ECF No. 1 at p. 13.
15 For 8 C.F.R. § 241 to apply, Petitioner would have had to be detained at the time or
16 after the removal order issued, released, and then re-detained. Those facts are not
17 present here. No notice or opportunity to be heard is required where, as here, an
18 individual has a final order of removal and ICE detains the individual for the first time,
19 post-removal order, to effectuate the final removal order. *See Lin v. Francis*, No. 25
20 Civ. 10001 (PAE), 2025 WL 3751855, at *3 (S.D.N.Y. Dec. 2025). (reasoning that
21 petitioner fails to “offer case law supporting the improbable proposition that—with his
22 not having appeared at his removal hearing or evidently had any contact in the ensuing
23 12 years with ICE—ICE was required either (1) to give him advance notice ... before
24 detaining him, or (2) to release him on supervisory conditions after it encountered
25 him”). Once DHS had a final order of removal ordering that Petitioner be removed, it
26 was no longer required to allow Petitioner any form of release. ICE never detained or
27 released Petitioner from detention after the removal order issued until May 8, 2026. At
28 this point, it was not a violation of due process, either substantive or procedural, for

1 Respondents to detain Petitioner without notice so that the removal order could be
2 carried out. *See Lin v. Francis*, No. 25 Civ. 10001 (PAE), 2025 WL 3751855, at *3
3 (S.D.N.Y. Dec. 29, 2025) (reasoning that petitioner fails to “offer case law supporting
4 the improbable proposition that—with his not having appeared at his removal hearing
5 or evidently had any contact in the ensuing 12 years with ICE—ICE was required either
6 (1) to give him advance notice ... before detaining him, or (2) to release him on
7 supervisory conditions after it encountered him”).

8 Even if Petitioner’s alleged regulatory failures actually amount to a regulatory
9 violation, Petitioner cannot establish any prejudice resulted from those omissions nor
10 that a constitutional-level violation has occurred. *See Brown v. Holder*, 763 F.3d 1141,
11 1148–50 (9th Cir. 2014) (“[T]he mere failure of an agency to follow its regulations is
12 not a violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174, 1178 (9th
13 Cir. 2007) (holding that “[c]ompliance with . . . internal [customs] agency regulations
14 is not mandated by the Constitution”) (simplified); *Bd. of Curators of Univ. of Mo. v.*
15 *Horowitz*, 435 U.S. 78, 92 n.8 (1978) (holding that *Accardi* “enunciate[s] principles of
16 federal administrative law rather than of constitutional law”).

17 Because Respondents may detain Petitioner without a right to a bond hearing
18 pursuant to 8 U.S.C. § 1231(a), any challenge that Petitioner would have raised prior to
19 the re-detention would have failed. Because Petitioner cannot show prejudice under
20 these circumstances, the alleged violation of agency regulations does not warrant
21 release here. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion*
22 *amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) (“While the
23 regulation provides the detainee some opportunity to respond to the reasons for
24 revocation, it provides no other procedural and no meaningful substantive limit on this
25 exercise of discretion as it allows revocation ‘when, in the opinion of the revoking
26 official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien,
27 or any other circumstance, indicates that release would no longer be appropriate.’”)
28 (emphasis in original) (citing 8 C.F.R. §§ 241.4(l)(2)(i), (iv)); *Carnation Co. v. Sec’y of*

1 *Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“violations of procedural regulations should
2 be upheld if there is no significant possibility that the violation affected the ultimate
3 outcome of the agency’s action” (citation omitted)); *United States v. Hernandez-Rojas*,
4 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow regulations requiring that an
5 arrested alien be advised of his right to speak to his consul was not prejudicial and thus
6 not a ground for challenging the conviction); *United States v. Barraza-Leon*, 575 F.2d
7 218, 221–22 (9th Cir. 1978) (holding that even assuming that the judge had violated the
8 rule by failing to inquire into the alien’s background, any error was harmless because
9 there was no showing that the petitioner was qualified for relief from deportation). In
10 short, 8 C.F.R. § 241 does not apply to the facts of Petitioner’s detention post-removal
11 order.

12 ICE ERO intends on removing Petitioner to Cuba so Petitioner’s claims for relief
13 regarding third country removal fail to raise a cognizable claim and should be denied.
14 In addition, Petitioner raises a concern with repatriation of Cuban nationals who had
15 entered the United States illegally prior to 2017. ECF No. 1 at p. 4. This does not apply
16 to Petitioner as he entered the United States in 2019, well after the signing of the 2017
17 Joint Statement. Ex. 1.

18 IV. CONCLUSION

19 For the foregoing reasons, Respondents respectfully request that the Court deny
20 the Petitioner’s petition.

21 DATED: June 2, 2026

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