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

11 UDON KATEPHAN,
12 Petitioner,

13 v.

14 MARKWAYNE MULLIN et al.,
15 Respondents.
16
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Case No.: 26-cv-3240-LL-MMP
RETURN TO PETITION

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19 **(I) Factual and Procedural Background**

20 On April 13, 2004, an immigration judge issued a final order directing
21 Petitioner's removal to Laos or, in the alternative, Thailand. Declaration of Jason Cole
22 ("Cole Decl.") ¶ 7. Petitioner, who has been arrested for (and convicted of) numerous
23 crimes over the years, was not subsequently removed to either Laos or Thailand. *See*
24 *generally id.* ¶¶ 8–20. Since 2011, Petitioner has been released from the custody of
25 Immigration and Customs Enforcement ("ICE") on an order of supervision. *Id.* ¶ 18;
26 Ex. A.¹
27

28 ¹ All attached documents are true copies of documents obtained from ICE counsel.

1 On May 4, 2026, the San Diego County Sherriff arrested Petitioner. Cole Decl. ¶
 2 21 On May 7, 2026, ICE revoked Petitioner's supervised release by written notice for
 3 failure to comply with the conditions of his supervision and because ICE was attempting
 4 to obtain a travel document ("TD") to effect Petitioner's removal to either Laos or
 5 Thailand. Cole Decl. ¶ 23; Ex. B. That same day, ICE provided Petitioner an informal
 6 interview where he could respond to and contest the reasons for revoking his supervised
 7 release. *See* Ex. B. Petitioner filed this action just 19 days later. Dkt. 1.

8 **(II) Argument – Petitioner is Lawfully Detained**

9 The only issue in this habeas corpus proceeding is whether Petitioner is lawfully
 10 detained. Petitioner raises two arguments purportedly justifying his release from
 11 custody: (A) ICE failed to abide by its own regulations when it revoked his supervise
 12 release; and (B) there is no significant likelihood of removal in the reasonably
 13 foreseeable future ("SLRRFF"). Petitioner has not proven either claim.

14 **(A) Petitioner Has Not Shown ICE Failed to Follow the Regulatory**
 15 **Procedures for Revoking Supervised Release**

16 As Petitioner acknowledges, because he is subject to a final order of removal,
 17 ICE may revoke his supervised release and detain him if he violated any of the
 18 conditions of his release or if there is a significant likelihood he may be removed in the
 19 reasonably foreseeable future. *See* Dkt. 1 at 2 (citing 8 C.F.R. §§ 241.13(i)(1)–(2),
 20 241.4(l)(1). Petitioner also correctly notes he is entitled to notice of why his supervised
 21 release has been revoked and an informal interview where he can respond to the
 22 revocation. *See id.* at 3-4 (citing *Phan v. Noem*, No. 3:25-cv-2422-RBM-MSB, 2025
 23 WL 2898977 (S.D. Cal. Oct. 10, 2025). Were Petitioner able to show he did not
 24 promptly receive notice of revocation and an informal interview, then he might be
 25 entitled to release. *See Phan*, 2025 WL 2898977. But, since that is not the case here,
 26 ICE may detain him pending removal.

27 To begin with, Petitioner has no competent evidence showing he failed to receive
 28 the informal interview or adequate notice of revocation. Declarations based on what a

witness believes, rather than on the witness's personal knowledge, are not admissible. *Columbia Pictures Indus., Inc. v. Pro. Real Estate Inv., Inc.*, 944 F.2d 1525, 1529 (9th Cir. 1991); *see also Hoffman v. PennyMac Holdings, LLC*, No. C17-1062 JLR, 2018 WL 6448779, at *3 (W.D. Wash. Dec. 10, 2018) (collecting Ninth Circuit authority). Here, Petitioner declares he does not "believe" he received the statutory process for revocation of his supervised release. *See* Dkt. 1-2 ¶ 4. But that is not evidence that he did not receive it. In contrast, the notice of revocation of supervised release, signed by Petitioner the same day ICE took him into custody, informed petitioner of the reasons for revoking his supervision and gave him notice that he would receive the regulatory interview that day. *See* Ex. B at 2-3. He received the interview but chose not to submit evidence. *Id.* at 3. Thus, Petitioner received the process he was due under ICE regulations.

(B) Petitioner Is Lawfully Detained Because the *Zadvydas* Period Has Not Run and There is SLRRFF

Because Petitioner's removal was not accomplished during the mandatory, 90-day removal period following his final order of removal, ICE may detain him for a period "reasonably necessary to bring about [his] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). A six-month period is presumptively reasonable. *Id.* at 701. For a petitioner who has been detained and released multiple times, the Court should consider the aggregate time spent in detention to determine if the *Zadvydas* period has run. *See, e.g., Sayaseng v. Scott*, No. 2:26-cv-476-RAJ, 2026 WL 575126, at *1 (W.D. Wash. Mar. 2, 2026). Petitioner's current detention period began on May 7, 2026, a total of 28 days. *See* Cole Decl. ¶ 22. Prior to that, Petitioner was most recently detained between November 19, 2010, and February 16, 2011, a period of 92 days. *Id.* ¶¶ 13–18. Prior to that date, although Petitioner served time in state prison and thereafter encountered ICE, he was released on his prior order of supervision. *See, e.g.,* Ex. A at 2.

Petitioner's argument that his *Zadvydas* period has run is based entirely on the

1 premise that it expired six months after his final order of removal. *See* Dkt. 1 at 8.
2 However, when the Court considers the reasonableness of Petitioner’s detention in the
3 aggregate, the Court should conclude Petitioner has not yet been detained an
4 unreasonable time because, despite having the removal order in place for several
5 decades, Petitioner has only been detained a handful of times—and sometimes not at
6 all—despite his eligibility for removal.

7 Even if the Court finds Petitioner’s detention is not presumptively reasonable, he
8 can still be detained unless there is “no [SLRRF].” *Zadvydas*, 533 U.S. at 701.
9 Respondents can meet their burden here by showing they have made progress towards
10 effectuating his removal. *See Marquez v. Wolf*, 20-cv-1769-WQH-BLM, 2020 WL
11 604080, at *3 (S.D. Cal. Oct. 13, 2020); *Sereke v. DHS*, no. 19-cv-1250-WQH-AGS,
12 Dkt. 5 at 5 (S.D. Cal. Aug. 15, 2019). Petitioner’s argument that he will not be removed
13 is based on his “own experience,” i.e. he was previously not removed to Laos or
14 Thailand, ergo he will not be removed this time. Dkt. 1 at 8:23-25. But the last time
15 anyone tried to remove Petitioner from the United States was almost sixteen years ago.
16 Cole Decl. ¶ 14. At that time, travel documents were only requested from Thailand. *Id.*
17 ¶ 16. Since then, diplomatic relations with both Laos and Thailand have changed, and
18 ICE requested travel documents for Petitioner’s removal on May 12, 2026. *Id.* ¶ 25. In
19 the last five years, ICE has successfully removed aliens to Laos *and* Thailand. *See* U.S.
20 Immigrations and Customs Enforcement, *Annual Report* 100, 102 (December 19,
21 2024), <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>. Thus, based on
22 the record before this Court, there has been sufficient progress made towards removing
23 Petitioner to Laos or Thailand, ergo there is SLRRFF and the Court should deny the
24 petition.

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1 **(III) Conclusion**

2 Petitioner has not met his burden to show he did not receive the process accorded
3 him under ICE regulations or that his detention is unreasonable under *Zadvydas*. Rather,
4 ICE complied with the regulations that control revocation of supervised release, and
5 there is a significant likelihood Petitioner will be removed to either Laos or Thailand in
6 the reasonably foreseeable future. The Court should deny the Petition.

7
8 DATED: June 4, 2026

Respectfully submitted,

9
10 ADAM GORDON
United States Attorney

11 s/ Ian Pike
12 Ian Pike
13 Assistant United States Attorney