

ADAM GORDON
United States Attorney
Hunter V. Norton
Assistant U.S. Attorney
Washington D.C. Bar No. 1780736
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Tel: (619) 546-8592
Fax: (619) 546-7751
Email: Hunter.Norton2@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SERGIO HILDEBRANDO MARTINEZ, Case No.: 26-cv-03799-CAB-JLB

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security;
et al.,

Respondents.

**RETURN TO PETITION FOR
WRIT OF HABEAS CORPUS**

I. INTRODUCTION

On June 29, 2026, Petitioner Sergio Hildebrando Martinez filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. ECF No. 1. For the reasons set forth below, the Court should deny the petition.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of El Salvador and self-admitted former member of the MS-13 criminal terrorist organization. *See* Exhibit 1 (Form I-213). He first unlawfully entered the United States of America at an unknown time and location. Declaration of Kerryn A. Irving (“Irving Decl.”) ¶¶ 5-6. On June 22, 1994, Petitioner was arrested by the Los Angeles Police Department for Burglary. Exhibit 1 at 4. He was convicted and sentenced on September 21, 1994, to 36 months’ probation. *Id.* On

1 November 21, 1994, Petitioner was served with a Notice to Appear (NTA) charging
2 him with inadmissibility for having an aggravated felony conviction. *Id.* at 2. He was
3 ordered removed by an Immigration Judge (IJ) on December 2, 1994, and physically
4 removed from the United States to El Salvador on December 10, 1994. *See* Exhibit 2
5 (IJ Order); Irving Decl. at ¶¶ 7-8.

6 Petitioner unlawfully reentered the United States again at an unknown time and
7 location. Petitioner was convicted for lewd or lascivious acts with a child under 14,
8 sentenced to 6 years in prison on June 26, 1996, and required to register as a sex-
9 offender. Exhibit 1 at 4. He was removed from the United States to El Salvador on
10 October 3, 2001. Irving Decl. at ¶¶ 9-10. Petitioner then unlawfully reentered the United
11 States for the third time, again at an unknown time and location, and was removed to
12 Mexico on October 11, 2001. *Id.* at ¶ 11.

13 After Petitioner unlawfully entered the United States for the fourth time, he was
14 charged and convicted under 8 U.S.C. § 1326 and sentenced to 36 months' custody on
15 June 11, 2010. *Id.* at ¶¶ 12-13. On January 8, 2013, Petitioner was transferred to
16 immigration custody where he claimed to have a fear of returning to his home country
17 of El Salvador. *Id.* at ¶¶ 14-15. On April 17, 2013, United States Citizenship and
18 Immigration Services (USCIS) referred Petitioner's case to an IJ for withholding-only
19 proceedings. *Id.* at ¶ 16. On August 5, 2013, the IJ granted Petitioner Deferral of
20 Removal under the Convention Against Torture (CAT) from El Salvador. Petitioner
21 was released thereafter. *Id.* at ¶ 17.

22 On April 14, 2026, Petitioner was processed as a re-instatement and detained
23 pending execution of removal order. *Id.* at ¶ 18. On April 21, 2026, ERO requested a
24 seat for Petitioner via ICE-AIR and submitted a removal packet for review. *Id.* at ¶ 19.
25 On April 30, 2026, a transfer flight was allocated for May 3, 2026 but a removal flight
26 was not allocated at that time. *Id.* at ¶ 20. Petitioner was then allocated a transfer flight
27 on May 4, 2026. *Id.* at ¶ 21. On May 13, 2026, ERO requested third country removal to
28 Mexico. *Id.* at ¶ 22. On May 21, 2026, a seat was allocated for May 22, 2026, pending
third country removal to Mexico. *Id.* at ¶ 23. Petitioner was scheduled to be transferred

1 to Florence, AZ Staging Facility ahead of removal plans. *Id.* at ¶ 24.

2 On June 1, 2026, ERO attempted to remove Petitioner through the Nogales, AZ
3 Port of Entry. Petitioner was verbally combative and actively resisted getting off the
4 transport van. The Government of Mexico refused to take Petitioner due to his actions.
5 *Id.* at ¶ 25.

6 On June 8, 2026, Petitioner was referred for third country removal once again
7 and Petitioner was scheduled to be removed to Mexico on June 12, 2026 via El Paso,
8 Texas. *Id.* at ¶¶ 26-27. However, on June 12, 2026, Petitioner refused to depart the pod
9 and comply with his removal. He was served with Form I-229A, which he refused to
10 sign resulting in a failure to comply. *Id.* at ¶ 28. ERO still believes there is a significant
11 likelihood of removal in the reasonably foreseeable future. *Id.* at ¶ 30.

12 III. ARGUMENT

13 An alien ordered removed must be detained for ninety (90) days pending the
14 government's efforts to secure the alien's removal through negotiations with foreign
15 governments. *See* 8 U.S.C. § 1231(a)(2) (the Attorney General "shall detain" the alien
16 during the 90-day removal period). The statute "limits an alien's post-removal detention
17 to a period reasonably necessary to bring about the alien's removal from the United
18 States" and does not permit "indefinite detention." *Zadvydas v. Davis*, 533 U.S. 678,
19 689 (2001). The Supreme Court has held that a six-month period of post-removal
20 detention constitutes a "presumptively reasonable period of detention." *Id.* at 683.
21 Release is not mandated after the expiration of the six-month period unless "there is no
22 significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

23 In *Zadvydas*, the Supreme Court held: "[T]he habeas court must ask whether the
24 detention in question exceeds a period reasonably necessary to secure removal. It should
25 measure reasonableness primarily in terms of the statute's basic purpose, namely,
26 *assuring the alien's presence at the moment of removal.*" *Id.* at 699 (emphasis added).
27 In so holding, the Court recognized that detention is presumptively reasonable pending
28 efforts to obtain travel documents, because the noncitizen's assistance is needed to

1 obtain the travel documents, and a noncitizen who is subject to an imminent, executable
2 warrant of removal becomes a significant flight risk, especially if he or she is made
3 aware that removal is imminent.

4 The Supreme Court also held that the detention could exceed six months: “This
5 6-month presumption, of course, does not mean that every alien not removed must be
6 released after six months. To the contrary, an alien may be held in confinement until it
7 has been determined that there is no significant likelihood of removal in the reasonably
8 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
9 reason to believe that there is no significant likelihood of removal in the reasonably
10 foreseeable future, the Government must respond with evidence sufficient to rebut that
11 showing and that the noncitizen has the initial burden of proving that removal is not
12 significantly likely.” *Id.*

13 Petitioner is subject to a final, executable order of removal, which means that he
14 has no right to remain in the United States. He has a temporary right not to be repatriated
15 to Armenia, but he has no right to indefinitely avoid resettlement to a third country. ICE
16 has long-standing authority to remove noncitizens and resettle them in third countries
17 where removal to the country designated in the final order is “impracticable,
18 inadvisable, or impossible.” 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 U.S.C. § 1231(b)
19 (outlining framework for designation). Accordingly, noncitizens who have received
20 protection against removal to the designated country (either withholding of removal
21 under 8 U.S.C. § 1231(b)(3) or CAT protection), may be removed and resettled in third
22 countries.

23 Section 1231(b)(2)(E) provides that the Secretary of Homeland Security shall
24 remove the noncitizen to any of the following countries:

- 25 (i) The country from which the alien was admitted to the United States.
- 26 (ii) The country in which is located the foreign port from which the alien
27 left for the United States or for a foreign territory contiguous to the
United States.
- 28 (iii) A country in which the alien resided before the alien entered the
country from which the alien entered the United States.

- 1 (iv) The country in which the alien was born.
- 2 (v) The country that had sovereignty over the alien's birthplace when
- 3 the alien was born.
- 4 (vi) The country in which the alien's birthplace is located when the alien
- 5 is ordered removed.
- 6 (vii) If impracticable, inadvisable, or impossible to remove the alien to
- 7 each country described in a previous clause of this subparagraph,
- 8 another country whose government will accept the alien into that
- 9 country.

10 *Id.* Accordingly, if the Secretary of Homeland Security is unable to remove a noncitizen
 11 to a country of designation or an alternative country per Section 1231(b)(2)(D), the
 12 Secretary may, in her discretion, remove the noncitizen to any country listed in
 13 subparagraphs (E)(i) through (E)(vi).

14 Petitioner's claim that ICE has failed to make efforts to remove him to a third
 15 country is not supported by the evidence before the Court. ECF No. 1 at 3. ERO has
 16 recently attempted to effectuate Petitioner's removal to a third country on June 1, 2026,
 17 and June 12, 2026. Petitioner was not removed on those dates due to his own failure to
 18 comply with removal efforts. Irving Decl. at ¶¶ 25-28. "*Zadvydas* places the burden on
 19 the alien to show, after a detention period of six months, that there is '*good reason* to
 20 believe that there is no significant likelihood of removal in the reasonably foreseeable
 21 future.'" *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533
 22 U.S. at 701) (emphasis added); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).
 23 Respondents contend that Petitioner's obstruction of his own removal is not a good
 24 reason for the Court to find that there is no significant likelihood of removal in the
 25 reasonably foreseeable future. *Pelich v. INS*, 329 F.3d 1057, 1060 ("[A non-citizen]
 26 cannot simultaneously take steps to prevent his removal while seeking a writ of habeas
 27 corpus on the basis that he has not yet been removed.").

28 As to the regulatory violation claims, Petitioner was served with an
 administrative arrest warrant at the time of arrest, Exhibit 4, and interviewed at the time
 of arrest during which he admitted to being a citizen of El Salvador with no documents

1 that would allow him to legally remain in the United States. Exhibit 1 at 2. He was also
2 provided written notice of ERO's intent to remove him to Mexico. *See* Exhibit 3.
3 However, even if the agency's compliance with the regulations fell short here, Petitioner
4 has not established prejudice nor a constitutional violation. *See Brown v. Holder*, 763
5 F.3d 1141, 1148–50 (9th Cir. 2014) (“The mere failure of an agency to follow its
6 regulations is not a violation of due process.”); *United States v. Tatoyan*, 474 F.3d 1174,
7 1178 (9th Cir.2007) (“Compliance with . . . internal [customs] agency regulations is not
8 mandated by the Constitution”) (internal quotation marks omitted); *United States v.*
9 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that
10 the judge had violated the rule by failing to inquire into the alien's background, any
11 error was harmless because there was no showing that the petitioner was qualified for
12 relief from deportation). As Petitioner cannot show prejudice under these
13 circumstances, the alleged violation of agency regulations does not warrant the relief he
14 seeks. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion*
15 *amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) (“While the
16 regulation provides the detainee some opportunity to respond to the reasons for
17 revocation, it provides no other procedural and no meaningful substantive limit on this
18 exercise of discretion as it allows revocation ‘when, in the opinion of the revoking
19 official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien,
20 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*
21 *Labor*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“violations of procedural regulations
22 should be upheld if there is no significant possibility that the violation affected the
23 ultimate outcome of the agency's action” (citation omitted)); *United States v.*
24 *Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS' failure to follow regulations
25 requiring that an arrested alien be advised of his right to speak to his consul was not
26 prejudicial and thus not a ground for challenging the conviction); *United States v.*
27 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that
28

1 the judge had violated the rule by failing to inquire into the alien's background, any
2 error was harmless because there was no showing that the petitioner was qualified for
3 relief from deportation). Because

4 Petitioner also suggests that once a third country is identified, ICE will
5 immediately deport him there without notice or an opportunity to be heard regarding
6 fear of removal to that country. *See* ECF No. 1 at 17-19. ICE attests, however, that once
7 a third country is identified, "Petitioner will be notified in writing of the third country
8 at least 24 hours prior to removal" and "[if] Petitioner claims fear of removal to the
9 identified country, he will be referred to an asylum officer for processing of the fear-
10 based claim." Irving Decl. ¶¶ 28-29. The evidence further shows that ICE will generally
11 wait at least 24 hours following the notice of third country removal before executing it,
12 and under no circumstances would removal be executed in less time than that without
13 the noncitizen being provided "reasonable means and opportunity to speak with an
14 attorney prior to removal." *Id.* at ¶ 28. Thus, Petitioner's concern that he will not receive
15 adequate notice and an opportunity to be heard prior to his third country removal is not
16 borne out by the evidence in this case.

17 To the extent Petitioner is challenging ICE's decision to detain him for the
18 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
19 ("Except as provided in this section and *notwithstanding any other provision of law*
20 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*
21 *corpus provision*, and sections 1361 and 1651 of such title, no court shall have
22 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
23 decision or action by the Attorney General to commence proceedings, adjudicate cases,
24 or *execute removal orders* against any alien under this chapter.") (emphasis added); *see*
25 *also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There
26 was good reason for Congress to focus special attention upon, and make special
27 provision for, judicial review of the Attorney General's discrete acts of "commenc[ing]
28 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent

1 the initiation or prosecution of various stages in the deportation process.”); *Limpin v.*
2 *United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly
3 dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to
4 arrest and detain an alien at the commencement of removal proceedings are not within
5 any court’s jurisdiction”).

6 **IV. CONCLUSION**

7 For the foregoing reasons, the Court should deny the Petition.

8 DATED: July 10, 2026

ADAM GORDON
United States Attorney

10 s/ Hunter V. Norton
11 HUNTER V. NORTON
Assistant United States Attorney

12 Attorneys for Defendants
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28