

1 ADAM GORDON
United States Attorney
2 ALLIE E. MALONE
Assistant U.S. Attorney
MO. State Bar No. 70688
3 Office of the U.S. Attorney
880 Front Street, Room 6293
4 San Diego, CA 92101-8893
Telephone: (619) 546-9397
5 Facsimile: (619) 546-7751
Email: allie.malone.subke@usdoj.gov

6 Attorneys for Respondents

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

9 ASIM PASHOLLI,

10 Petitioner,

11 v.

12 PATRICK DIVVER, et al.,

13 Respondents.
14

Case No.: 26-cv-1296 CAB MSB

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

I. INTRODUCTION

Petitioner Asim Pasholli has filed a habeas petition seeking an order requiring his immediate release from Immigration and Customs Enforcement (ICE) custody. For the reasons set forth below, the Court should deny Petitioner's requested relief and dismiss the petition.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Albania who unlawfully entered the United States on or about May 1, 2002. *See* Declaration of Edgar Olvera, attached as *Exhibit 1*, ¶¶ 5-6. He was **ordered removed to Albania on November 17, 2007**. *Id.* at ¶ 9. The Board of Immigration Appeals dismissed his appeal on July 24, 2009, and his order of removal became final. *Id.* at ¶ 10. On September 5, 2025, ICE detained Petitioner to execute his order of removal to Albania. *Id.* at ¶ 11. ICE has been diligently working to effectuate Petitioner's removal to Albania since then. *Exhibit 1*, ¶ 13.

ICE submitted a travel document request to the Consular Office of the Republic of Albania on December 10, 2025 and **received the travel document on December 24, 2025** such that Petitioner's removal can be effectuated promptly. *Id.* at ¶¶ 14-16. In fact, Petitioner has been scheduled for removal flights on at least three occasions since January 2026. *Id.* at ¶¶ 17-19. However, through no fault of the government, Petitioner's removal did not ultimately occur. The first flight, scheduled for January 27, 2026, was unsuccessful due to the airline cancelling Petitioner's ticket because the flight was over capacity. *Id.* at ¶ 17. The second flight, scheduled for February 15, 2026, was unsuccessful because Petitioner failed to comply with the removal order and refused to leave the detention facility. *Id.* at ¶ 18. And the third flight, scheduled for March 8, 2026, was unsuccessful because Petitioner filed the present Petition. *Id.* at ¶ 19. ICE, however, will identify and book a removal flight for Petitioner once this petition is resolved. *Id.* at ¶ 20. ICE is not aware of any reason that would prevent or delay Petitioner's removal to Albania and **there is a significant likelihood of his removal in the reasonably foreseeable future**. *Id.* at ¶¶ 21-22.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. ARGUMENT

A. There is a significant likelihood of removal in the reasonably foreseeable future

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

Section 1231(a)(6) “authorizes further detention if the Government fails to remove the alien during those 90 days” provided that the detention is for “a period reasonably necessary to bring about the alien’s removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 682; 689 (2001). The Supreme Court has held that a six-month period of post-removal detention constitutes a “presumptively reasonable period of detention.” *Id.* at 701. However, **release is not mandated after the expiration of the six-month period** unless “there is no significant likelihood of removal in the reasonably foreseeable future,” which Petitioner cannot establish here. *Id.*

In this case, there is a significant likelihood of removal in the reasonably foreseeable future because **ICE has secured a valid travel document** and assuming Petitioner’s compliance with his removal order, there is no reason that would prevent or delay his removal to Albania. *Exhibit 1*, ¶¶ 15, 20-22. Under these circumstances, removal is no longer speculative and the only obstacle to Petitioner’s removal is the Court’s Order which prohibits ICE from transferring Petitioner outside of this District pending the outcome of this case and Petitioner’s own noncompliance with his removal order. As such, Petitioner cannot establish that his release is warranted on this basis.

B. Respondents’ alleged regulatory violations do not warrant granting the relief Petitioner requests

Petitioner is presently in lawful custody for the purpose of executing his removal which can occur shortly after this petition is resolved. Specifically, ICE has obtained Petitioner’s travel document and will identify and book a removal flight once this petition is resolved. *Exhibit 1*, ¶¶ 15, 20. Given that ICE has all it needs to carry out Petitioner’s removal to Albania, the Court cannot order immediate release because such an order would impinge on DHS’s discretionary authority over when to execute a removal order—a discrete action over which this Court lacks jurisdiction. *See* 8 U.S.C. § 1252(g) (“Except as provided in this section and *notwithstanding any other provision of law* (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas corpus provision*, . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this chapter.”) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General’s discrete acts of commencing proceedings, adjudicating cases, and executing removal orders—which represent the initiation or prosecution of various stages in the deportation process.”) (simplified).

In *Rauda v. Jennings*, for example, the Ninth Circuit rejected the petitioner’s attempt at escaping “§ 1252(g)’s bar by arguing that his challenge pertains not to the Attorney General’s discretionary authority, but rather to the Attorney General’s allegedly unlawful decision to ‘remove him now’” because “the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it. Both are covered by the statute,” 55 F.4th 773, 777 (9th Cir. 2022) (citation omitted, emphasis in original). More recently, in *Ibarra-Perez v. United States*, the Ninth Circuit noted with approval *Rauda*’s holding that § 1252(g) bars challenges to ICE’s discretionary

1 authority about “when” and “whether” to execute removal and explained that the statute
2 would bar a claim, “for example, that ICE should have delayed his removal”—the very
3 effect that granting immediate release would have here. 154 F.4th 989, 997 (9th Cir.
4 2025).

5 The Court would not be alone in denying habeas relief under these circumstances.
6 In *Omdara v. Noem*, Chief Judge Bashant considered a petition analogous to this one:
7 the petitioner challenged the agency’s compliance with regulations, but ICE had
8 obtained the petitioner’s travel document and scheduled their flight. *See* No. 25-cv-
9 2834-BAS-MMP, ECF No. 12 (S.D. Cal. Nov. 14, 2025). Balancing the equities, the
10 Chief Judge declined to order immediate release and allowed ICE’s removal efforts to
11 proceed. *See id.* at ECF Nos. 12–15.

12 Also analogous, in *Nejad v. LaRose*, Judge Schopler denied a habeas petition
13 raising the same regulatory violation claims, because after the petition was filed, the
14 petitioner’s removal proceedings were reopened—thereby subjecting him to mandatory
15 detention under 8 U.S.C. § 1226(c). *See* No. 25-cv-02425-AGS-JLB, ECF No. 13 (S.D.
16 Cal. Jan. 15, 2026).¹ In denying the petition, the district court explained that even if it
17 agreed with petitioner’s regulatory violation claim, it could not grant release on those
18 grounds because the present posture of the case required the government to detain him
19 under § 1226(c). *See id.* Like the reopened proceedings in *Nejad*, ICE’s receipt of
20 Petitioner’s travel document and scheduling of his flight are intervening events that
21 prevent the Court from granting release on the regulatory violation grounds because
22 doing so would contravene the INA. There can be no dispute that Petitioner is subject
23 to imminent removal, and the INA entitles the government to promptly carry out that
24 removal and precludes judicial review over that decision. *See* 8 U.S.C. § 1252(g); *Reno*,
25 525 U.S. at 483; *Rauda*, 55 F.4th at 777; *Ibarra-Perez*, 154 F.4th at 997.

26 Additionally instructive, in *Ahmad v. Whitaker*, the government revoked the

27
28 ¹ The district court explained its ruling on the record at the January 15, 2026 hearing on the petition.

1 petitioner's release but did not provide an informal interview. *See* No. C18-27-JLR-
2 BAT, 2018 WL 6928540, at *6 (W.D. Wash. Dec. 4, 2018), *report and recommendation*
3 *adopted*, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019). The court rejected the petitioner's
4 regulatory claim because although the regulations called for an informal interview,
5 petitioner could not establish "any actionable injury from this violation of the
6 regulations given that ICE had procured a travel document and scheduled [petitioner's]
7 removal." *Id.* The same is true in this case. Because ICE has procured Petitioner's travel
8 document and scheduled his removal, there is no actionable injury stemming from the
9 alleged regulatory violations. *See id.*; *see also Doe v. Smith*, No. 18-11363-FDS, 2018
10 WL 4696748, at *9 (D. Mass. Oct. 1, 2018) (finding "no apparent reason why a
11 violation of the regulation, even assuming it occurred, should result in release,"
12 explaining that "it is difficult to see an actionable injury stemming from such a violation.
13 Doe is not challenging the underlying justification for the removal order. . . . Nor is this
14 a situation where a prompt interview might have led to her immediate release—for
15 example, a case of mistaken identity.").

16 Because the Court cannot grant effective relief based on the regulatory violation
17 claims without encroaching on § 1252(g), Respondents respectfully ask the Court to
18 dismiss the claim as moot. *See Am. Rivers*, 126 F.3d at 1123; *Burnett*, 432 F.3d at 999.
19 Should the Court decline to dismiss the claim as moot, it should be denied because
20 Petitioner cannot show that the outcome of his case would have been different had ICE
21 provided him with a written notice and interview concerning his revocation, and the
22 government's interest in promptly executing his long-outstanding order of removal is
23 significant in this case.

24 Thus, any challenge Petitioner would have made during an informal interview
25 after his re-detention would have failed. Because Petitioner cannot show prejudice
26 under these circumstances, the alleged violation of agency regulations does not warrant
27 release here. *See, e.g., Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion*
28 *amended and superseded on other grounds*, 591 F.3d 1105 (9th Cir. 2010) ("While the

1 regulation provides the detainee some opportunity to respond to the reasons for
 2 revocation, it provides no other procedural and no meaningful substantive limit on this
 3 exercise of discretion as it allows revocation ‘when, in the opinion of the revoking
 4 official . . . [t]he purposes of release have been served . . . [or] [t]he conduct of the alien,
 5 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*
 6 *Lab.*, 641 F.2d 801, 804 n.4 (9th Cir. 1981) (“[V]iolations of procedural regulations
 7 should be upheld if there is no significant possibility that the violation affected the
 8 ultimate outcome of the agency’s action.” (citation omitted)); *United States v.*
 9 *Hernandez-Rojas*, 617 F.2d 533, 535 (9th Cir. 1980) (INS’ failure to follow regulations
 10 requiring that an arrested alien be advised of his right to speak to his consul was not
 11 prejudicial and thus not a ground for challenging the conviction); *United States v.*
 12 *Barraza-Leon*, 575 F.2d 218, 221–22 (9th Cir. 1978) (holding that even assuming that
 13 the judge had violated the rule by failing to inquire into the alien’s background, any
 14 error was harmless because there was no showing that the petitioner was qualified for
 15 relief from deportation).

16
 17 With removal imminent and the government’s interest in promptly executing a
 18 long-outstanding removal order at its zenith, an order granting immediate release at this
 19 juncture would only frustrate “the statute’s basic purpose, namely, assuring the alien’s
 20 presence at the moment of removal.”² *Zadvydas*, 533 U.S. at 699; *see Rodriguez Diaz*
 21 *v. Garland*, 53 F.4th 1189, 1208–09 (9th Cir. 2022) (“The risk of a detainee absconding
 22 . . . inevitably escalates as the time for removal becomes more imminent.”);
 23 *Rojas-Espinoza v. Bondi*, 160 F.4th 991, 999 (9th Cir. 2025) (“‘There is *always* a public
 24 interest in prompt execution of removal orders: The continued presence of an alien

25
 26 ² For example, in a similar case before Judge Bencivengo, the petitioner was ordered
 27 released and thereafter provided written notice of his removal and ordered to report to
 28 ICE on a certain date for execution of his removal, but the petitioner did not show up.
See Cabrera-Trillo v. Noem et al., No. 25-cv-02865-CAB-MSB, ECF Nos. 18, 19.
 (Dec. 12, 2025).

1 lawfully deemed removable undermines the streamlined removal proceedings . . . and
2 permits and prolongs a continuing violation of United States law.”) (emphasis in
3 original, brackets omitted, quoting *Nken v. Holder*, 556 U.S. 418, 436 (2009)). This is
4 especially true where, as here, releasing Petitioner poses a significant risk that he may
5 abscond and thwart ICE’s prompt removal efforts.³ Because the balance of equities
6 weighs against granting immediate release, the Court should deny ordering relief on the
7 regulatory violation claim.

8 IV. CONCLUSION

9 For the foregoing reasons, Respondents respectfully request that the Court
10 dismiss the petition.

11 DATED: March 13, 2026

Respectfully submitted,

12 ADAM GORDON
13 United States Attorney

14 s/ Allie E. Malone
15 ALLIE E. MALONE
16
17
18
19
20
21
22
23
24
25

26 _____
27 ³ Should the Court be inclined to order immediate release notwithstanding Petitioner’s
28 imminent removal, Respondents ask that ICE be permitted to place Petitioner on GPS
monitoring to minimize the risk of absconding.