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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EDUARDO BATISTA,

Petitioner,

v.

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

Respondents.

Case No.: 26-cv-04052-JO-JAC

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner Eduardo Batista has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. Dkt. 1. For the reasons set forth below, the Court should deny Petitioner's requests for relief and dismiss the petition.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Cuba. Declaration of Jason Cole ("Cole Decl.") at ¶ 3. On March 19, 1994, Petitioner was admitted to the United States as a parolee. On November 3, 1995, Petitioner's status was adjusted to that of Lawful Permanent Resident, retroactively to March 19, 1994. *Id.* at ¶ 4.

On April 5, 2001, Petitioner was convicted of burglary of a structure and grand theft in violation of Florida Statute §§ 810.02(4) and 812.014, for which he was sentenced to two years of probation. *Id.* at ¶ 5. On April 7, 2010, Petitioner was convicted of conspiracy against the United States by entering a bonded warehouse and committing theft from interstate shipment, in violation of 18 U.S.C. § 371, for which he was sentenced to three years of probation. *Id.* at ¶ 6.

On November 2, 2011, Petitioner was issued a Notice to Appear charging him with removability under Immigration and Nationality Act § 237(a)(2)(A)(ii), for having been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. *Id.* at ¶ 7. On May 30, 2012, Petitioner was not present for his immigration hearing and an Immigration Judge (IJ) issued an in-absentia order removing Petitioner to Cuba. *Id.* at ¶ 8.

On or about April 26, 2013, ERO learned that Petitioner was denied repatriation to Cuba. ERO then sent notice to Petitioner informing him that he was going to be placed on an order of supervision and he was directed to report to the local ICE office upon his release from jail. *Id.* at ¶ 9. On or about July 16, 2018, ERO sent a notice to Petitioner while he was in jail in Florida instructing him to report to the local ICE office within 72 hours of his release from jail. *Id.* at ¶ 10. On August 10, 2018, Petitioner reported to the local ICE office and was released on an Order of Supervision. Petitioner

was ordered to report in person on September 10, 2018, at the local ICE office in Florida. *Id.* at ¶ 11. Petitioner did not report as scheduled on September 10, 2018, or thereafter. On February 18, 2021, ERO determined that Petitioner had absconded in violation of his Order of Supervision. *Id.* at ¶ 12. On November 28, 2025, Petitioner was arrested for money laundering and ICE put an immigration detainer in place based on the fugitive arrest warrant. *See* Exhibit 4 (Fugitive Arrest Warrant confirming "HOLD FOR IMMIGRATION") at 3. On December 1, 2025, Petitioner was remanded into ICE custody. Cole Decl. at ¶ 13.

ERO immediately began efforts to remove Petitioner to Cuba. *Id.* On December 16, 2025, the government of Cuba denied acceptance of Petitioner for repatriation. ERO then began removal efforts to a safe third country. *Id.* at ¶ 14. On January 20, 2026, ERO received approval from its headquarters to remove Petitioner to Mexico on January 28, 2026. *Id.* at ¶ 15. On January 28, 2026, Petitioner was transferred from Miami, Florida to the Otay Mesa Detention Center (OMDC) in San Diego, California for removal to Mexico at the San Ysidro port of entry. However, Mexico would not accept Petitioner for repatriation at that time. Petitioner was returned to Miami on February 4, 2026. *Id.* at ¶ 16.

On March 27, 2026, ERO submitted another request to its headquarters to remove Petitioner to Mexico. On April 22, 2026, ERO received confirmation that it could proceed with Petitioner's removal to Mexico. *Id.* at ¶ 17. On May 27, 2026, ERO conducted routine records checks and determined that there were no impediments to removal of Petitioner at that time. *Id.* at ¶ 18. On July 12, 2026, Petitioner was transferred from Miami to San Diego. On July 13, 2026, Petitioner was booked into the Otay Mesa Detention Center for removal to Mexico. However, before ERO could remove Petitioner to Mexico, he filed a habeas petition with the Court on July 14, 2026. *Id.* at ¶ 19.

ERO believes it can promptly effectuate Petitioner's removal to Mexico once there is no longer a stay of removal in effect. *Id.* at ¶ 20.

III. ARGUMENT

An alien ordered removed must be detained for ninety (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). The statute "limits an alien's post-removal 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). The Supreme Court has held that a six-month period of post-removal detention constitutes a "presumptively reasonable period of detention." *Id.* at 683. 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." *Id.* at 701.

In *Zadvydas*, the Supreme Court held: "[T]he 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 Court recognized that detention is presumptively reasonable pending efforts to obtain travel documents, because the noncitizen's assistance is needed to obtain the travel documents, and a noncitizen who is subject to an imminent, executable warrant of removal becomes a significant flight risk, especially if he or she is made aware that removal is imminent.

The Supreme Court also held that the 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 and that the noncitizen has the initial burden of proving that removal is not

significantly likely." *Id.*

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

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

> (i) The country from which the alien was admitted to the United States.
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
> (iv) The country in which the alien was born.
> (v) The country that had sovereignty over the alien's birthplace when the alien was born.
> (vi) The country in which the alien's birthplace is located when the alien is ordered removed.
> (vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

Id. Accordingly, if the Secretary of Homeland Security is unable to remove a noncitizen to a country of designation or an alternative country per Section 1231(b)(2)(D), the Secretary may, in her discretion, remove the noncitizen to any country listed in subparagraphs (E)(i) through (E)(vi). To effectuate Petitioner's removal to a third

country, ERO has twice received approval to remove Petitioner to Mexico.

Here, the Petition should be denied as Petitioner cannot meet his initial burden under *Zadvydas*. "*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) (emphasis added); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003). ERO already attempted to remove Petitioner to Mexico and has been approved to attempt to remove him again. Cole Decl. at ¶¶ 19-20. Furthermore, Petitioner's refusal to be removed to Mexico, Dkt. 3 at 2 ("I stayed in the van"), is not a *good reason* to believe that removal in the reasonably foreseeable future is unlikely. *See Bora v. Warden*, No. 26-cv-3115-JES-DEB, ECF No. 15 at 4 (S.D. Cal. July 21, 2026) ("Regardless of [Petitioner's] motivation underlying the refusal to get on the flight however, the Court finds that under *Diouf*, this event qualifies as a refusal to cooperate under § 1231(a)(1)(C) and has the effect to reset the 90-day window from that date."). The fact that Petitioner was removed in-absentia 14 years ago should not affect the Court's analysis here. Petitioner's failure to appear at his immigration hearing, subsequent fugitive status after ICE released him on an order of supervision, and re-detention after he was arrested on an out of state warrant, shows that Petitioner's removal was only unforeseeable in the last 14 years due to Petitioner's own conduct. Since being remanded into immigration custody on December 1, 2025, this trend has continued and ERO has only failed to remove him to Mexico because of Petitioner's own actions. Dkt. 3 at 2. Respondent's request that the Court decline to find a *Zadvydas* claim where the only obstacle to removal is the Petitioner's desire to not be removed. *See Bora v. Warden*, No. 26-cv-3115-JES-DEB, ECF No. 15 at 4 (S.D. Cal. July 21, 2026).

Petitioner also suggests that once a third country is identified, ICE will immediately deport him there without notice. *See* ECF No. 1 at 11-14. However, this claim is not only speculative as to future agency action, but Petitioner cannot show

prejudice as ERO is currently trying to remove him to Mexico, a country where they have already attempted to remove him this year. As Petitioner cannot show prejudice under these circumstances, the alleged future violation of agency regulations does not warrant the relief he seeks. *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 Labor*, 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).

To the extent Petitioner is challenging ICE's decision to detain him for the purpose of removal, such a challenge is precluded by statute. *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*, and sections 1361 and 1651 of such title, 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); *see also 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 "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

IV. CONCLUSION

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

DATED: July 22, 2026

Respectfully submitted,

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s/ Hunter V. Norton
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