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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 RENATA NIGIEMATULINA,
12
13 Plaintiff,

14 v.

15 WARDEN OF OTAY MESA
16 DETENTION CENTER, et al.,
17
18 Defendant.

Case No.: 25-cv-2933-BAS-BJW

**Traverse in support of immigration
habeas petition**

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1 **I. Introduction**

2 This Court should grant Renata Nigiematulina’s habeas petition and order
3 her release. At this stage in her case, there is only a rebuttable “presumption” that
4 her detention is reasonable. *Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL
5 2592543, *3–*8 (D. Md. Sept. 8, 2025). Ms. Nigiematulina can rebut, and has
6 rebutted, that presumption. There is not a significant likelihood of her removal.
7 Nor is there one in the foreseeable future.

8 Ms. Nigiematulina cannot be deported to the only country she has ever
9 lived, and the only country of which she is a citizen, Russia. On June 20, 2025,
10 she received withholding of removal to Russia in light of the persecution she
11 faces there for her anti-war political activism. In the five months since, the
12 government has not identified any countries that will realistically, timely, or
13 safely accept her. It has reached out to four countries: Norway, Spain, Brazil, and
14 Turkey. None have agreements to accept three-country removals from the U.S. for
15 non-nationals. And Ms. Nigiematulina has never even been to Norway, Spain, or
16 Brazil. She traveled through Turkey as a tourist, but she has no connections there:
17 She is not a Turkish citizen, she has no family or friends there, and she does not
18 know the language. *See Exhibit A, Declaration of Renata Nigiematulina*, ¶¶ 2–8.
19 The government requested travel documents from Turkey and Brazil over three
20 months ago and has not heard back. Norway and Spain have already said no. ECF
21 No. 7, Declaration of Officer David Townsend, ¶ 7.

22 “[A]lternative-country removal is rare.” *Johnson v. Guzman-Chavez*, 594
23 U.S. 523, 537 (2021). Between 2020 and 2023, data apparently show that “ICE
24 removed . . . only *five* non-citizens granted withholding or CAT relief to
25 alternative countries.” *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398
26 (D.N.J. 2025) (emphasis in original). In fiscal year 2017, there were at most 21
27 people of the thousands with withholding of removal deported to *any* country; that
28 number includes dual citizens who only received withholding from one of their

1 two other countries of origin. *See* American Immigration Council & National
2 Immigrant Justice Center, *The Difference Between Asylum and Withholding of*
3 *Removal*, 7 (Oct. 2020)¹ (cited in *Guzman-Chavez*, 594 U.S. at 537). “The reason
4 so few people are deported to third countries is because,” while “customary
5 international law holds that a country has a duty to accept the return of its
6 nationals,” usually, “countries have no incentive to accept non-citizens.” *Id.*

7 Because (1) Ms. Nigiematulina cannot be removed to the only country to
8 which she has a claim of citizenship or legal immigration status, (2) she has
9 “identified facts that substantially decrease the likelihood” she can be removed to
10 Turkey and Brazil, and (3) she would be entitled to further legal proceedings
11 seeking relief from removal to either Turkey or Brazil based on a real fear of
12 removal to these two countries, which are Russian allies and would likely deport
13 her back to Russia, she has demonstrated “that there is no significant likelihood
14 that [s]he will be removed in the reasonably foreseeable future.” *Zavvar*, 2025
15 WL 2592543 at *7–*8.

16 That the government is making good faith efforts does not change that
17 calculus. “[U]nder *Zadvydass*, the reasonableness of Petitioner’s detention does not
18 turn on the degree of the government’s good faith efforts. Indeed, the *Zadvydass*
19 court explicitly rejected such a standard. Rather, the reasonableness of Petitioner’s
20 detention turns on whether and to what extent the government’s efforts are likely
21 to bear fruit.” *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5
22 (W.D.N.Y. Jan. 2, 2019). Because Ms. Nigiematulina has demonstrated that the
23 government’s efforts are not likely to bear fruit, her detention is not authorized by
24 statute or due process. This Court should order her released.

25 **II. This Court has jurisdiction to resolve Ms. Nigiematulina’s indefinite**
26

27 ¹Available at [https://www.americanimmigrationcouncil.org/wp-](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf)
28 [content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf)

1 **detention claims, which, upon her release, moot her remaining claims**
2 **regarding conditions in custody.**

3 The government briefly suggests this Court lacks jurisdiction under 8
4 U.S.C. § 1252(g). See ECF No. 7 at 5–6. This Court has jurisdiction.

5 Courts “have jurisdiction to decide a purely legal question that does not
6 challenge the Attorney General's discretionary authority.” *Ibarra-Perez v. United*
7 *States*, __ F.4th __, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (cleaned
8 up). In *Ibarra-Perez*, the Ninth Circuit held that “§ 1252(g) does not prohibit
9 challenges to unlawful practices merely because they are in some fashion
10 connected to removal orders.” *Id.* Instead, § 1252(g) is “limited . . . to actions
11 challenging the Attorney General’s discretionary decisions to initiate proceedings,
12 adjudicate cases, and execute removal orders.” *Arce v. United States*, 899 F.3d
13 796, 800 (9th Cir. 2018). The statute does not apply to arguments that the
14 government “entirely lacked the authority, and therefore the discretion,” to carry
15 out a particular action. *Id.* at 800. Instead, § 1252(g) applies to “discretionary
16 decisions that [the Secretary] actually has the power to make, as compared to the
17 violation of his mandatory duties.” *Ibarra-Perez*, 2025 WL 2461663, at *9.

18 The same logic applies to Ms. Nigiematulina’s indefinite detention claims.
19 She challenges violations of ICE’s mandatory duties under statutes and the
20 Constitution. “Though 8 U.S.C § 1252(g) precludes this Court from exercising
21 jurisdiction over the executive’s decision to ‘commence proceedings, adjudicate
22 cases, or execute removal orders against any alien,’ this Court has habeas
23 jurisdiction over the issues here, namely the lawfulness of [Ms. Nigiematulina’s]
24 continued detention” *Y.T.D. v. Andrews*, No. 25-cv-01100-JLT, 2025 WL
25 2675760, *5 (E.D. Cal. Sept. 18, 2025); *accord, e.g., Ho v. Noem*, No. 25-cv-
26 2453-BAS, ECF No. 11, 4–5 (Oct. 20, 2025) (collecting cases on this point from
27 this district).

28 As to Ms. Nigiematulina’s claims regarding medical care in custody, should

1 this Court grant the petition on grounds of indefinite detention, those claims
2 would become moot, and any jurisdictional issues would also be moot.

3 **III. There is no significant likelihood that Ms. Nigiematulina will be**
4 **removed in the reasonably foreseeable future under *Zadvydas*.**

5 The removal statute requires the government to detain noncitizens ordered
6 removed for 90 days after, as relevant here, their order becomes administratively
7 final. 8 U.S.C. § 1231(b)(1)(A), (B)(i). After those 90 days, detention becomes
8 discretionary. During that discretionary period, “if removal is not reasonably
9 foreseeable, the court should hold continued detention unreasonable and no longer
10 authorized by statute.” *Zadvydas*, 533 U.S. at 699–700.

11 Because (1) Ms. Nigiematulina has been detained for more than 90 days
12 after her order became final, and (2) there is no significant likelihood of her
13 removal (3) in the reasonably foreseeable future, this Court should grant her
14 petition and order her release.

15 The following subsections takes each of these three points in turn.

16 **A. It has been four months since Ms. Nigiematulina’s removal order**
17 **became administratively final, allowing her to challenge and**
18 **rebut the presumption that her continued detention is**
constitutional.

19 Ms. Nigiematulina was ordered removed to Russia, and granted
20 withholding of removal from Russia, on June 20, 2025. ECF No. 1, Exhibit 2 at
21 1–4 (removal order). Both parties reserved appeal, and neither party appealed. *Id.*
22 The order became administratively final on July 21, 2025. *Id.*; see 8 C.F.R.
23 § 1241.1(c). Ms. Nigiematulina’s statutory removal period, during which the
24 “Attorney General shall detain” her, thus expired 90 days later on October 19,
25 2025. See 8 U.S.C. § 1231(a)(2)(A), (b)(1)(A), (B)(i).

26 Ms. Nigiematulina is thus in the subsequent discretionary detention period,
27 during which she can rebut the presumption that her detention is authorized. In
28 *Zadvydas*, the Supreme Court “recognized a ‘presumptively’—not categorically—
reasonable period of detention” following a final removal order of six months.

1 *Puertas-Mendoza v. Bondi*, No. SA-25-CA-890-XR, 2025 WL 3142089, *2
2 (W.D. Tex. Oct. 22, 2025) (quoting *Zadvydas*, 533 U.S. at 699). “But a
3 presumption ‘is just that—a presumption.’” *Zavvar*, 2025 WL 2592543 at *5
4 (quoting *Clark v. Martinez*, 543 U.S. 371, 387 (2005) (O’Connor, J., concurring)).

5 “Notably, the Court specifically analogized the six-month presumption to
6 the presumption established in *County of Riverside v. McLaughlin*, 500 U.S. 44
7 (1991), which was rebuttable.” *Id.* “To hold otherwise would condone detention
8 in cases where removal is not reasonably foreseeable or even functionally
9 impossible, so long as it did not exceed six months.” *Munoz-Saucedo*, 789 F.
10 Supp. 3d at 397. And “the Supreme Court could not have intended to allow [such]
11 unconstitutional detentions.” *Id.* As a result, “multiple courts have reached the
12 same conclusion that the six-month presumption is rebuttable.” *Zavvar*, 2025 WL
13 2592543 at *5 (collecting cases); accord *Villanueva v. Tate*, ___ F. Supp. 3d ___,
14 2025 WL 2774610, *9 (S.D. Tex. Sept. 26, 2025) (same); *Trinh v. Homan*, 466 F.
15 Supp. 3d 1077, 1092 (C.D. Cal. 2020) (same).

16 In arguing Ms. Nigiematulina’s case is “premature,” the government cites
17 several cases, none of which address whether the presumption is rebuttable. ECF
18 No. 7 at 4. As *Zavvar* notes, the issue “may not have been presented to them.”
19 2025 WL 2592543 at *6. Here, in this case, in which Ms. Nigiematulina does
20 argue that she can rebut the presumption, this Court should consider the merits—
21 whether there is a significant likelihood of her removal in the reasonably
22 foreseeable future.

23 **B. Ms. Nigiematulina has demonstrated that there is no “significant**
24 **likelihood of removal,” including to Turkey and Brazil.**

25 There are two pieces to a *Zadvydas* showing that a noncitizen’s post-
26 removal-order detention is unreasonable: (1) “no significant likelihood of
27 removal,” (2) “in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701.

28 The first piece focuses on *whether* Ms. Nigiematulina will likely be

1 removed. Her detention is not permissible if it is not “significant[ly] like[ly]” that
2 ICE will be able to remove her.” *Id.* This inquiry targets “not only the *existence* of
3 untapped possibilities, but also [the] probability of success in such possibilities.”
4 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (emphasis in original).
5 In other words, even if “there remains *some* possibility of removal,” a petitioner
6 can still meet her burden if a successful removal is not significantly likely.
7 *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, *4 (E.D. Pa. Nov.
8 8, 2002) (emphasis added).

9 Ms. Nigiematulina has shown it is not significantly likely that she will be
10 removed from the United States.

11 First, because she received withholding of removal, Ms. Nigiematulina
12 cannot be removed to the sole country in which she has citizenship and lawful
13 immigration status, Russia. *See* ECF No. 1 at Exhibit 2 (removal and withholding
14 of removal order); Exhibit A (Declaration of Ms. Nigiematulina) ¶ 3.

15 “This substantially increases the difficulty of removing [her].” *Munoz-*
16 *Saucedo*, 789 F. Supp. 3d at 398. “Very few people subject to withholding of
17 removal or CAT relief are removed from the United States.” *Puertas-Mendoza*,
18 2025 WL 3142089 at *3. As noted earlier, in fiscal year 2017, “less than two
19 percent of those granted withholding of removal were deported to a third
20 country.” *Id.* (citing American Immigration Council, *supra* at page 1, note 1).
21 “[T]hat is not simply a matter of United States policy—foreign governments
22 ‘routinely deny’ requests to receive people who lack a connection to the would-be
23 receiving country.” *Id.*

24 Second, it is not likely the four countries the government has requested
25 travel documents from will provide them. Of the four countries the government
26 has sought to remove Ms. Nigiematulina to, two have already declined. The other
27 two have not responded after receiving a request three months ago. ECF No. 7,
28 Declaration of Officer David Townsend, ¶ 7.

1 It makes sense the last two countries, Turkey and Brazil, have not
2 responded. Ms. Nigiematulina lacks real connections to them. As she declares,

3 I do not have any family in Turkey. I do not have any friends in
4 Turkey. I do not have any job opportunities or any way to stay there
5 long-term. I have only been there as a tourist. I went for the first
6 time in 2020, and the second time in 2022. I also spend two days in
7 Turkey when I was traveling from Russia to the United States in
8 2023, and one day when traveling to the United States [in] 2024.

9 I'm worried that if I got deported to Turkey, Turkey would then just
10 deport me back to Russia. I would be persecuted in Russian because
11 of my political activity against the war. That's why I was granted
12 withholding.

13 I do not have any family in Brazil. I do not have any friends in
14 Brazil. I do not speak Portugese. I have never been to Brazil. I do
15 not have any job opportunities or any way to stay there long-term, as
16 far as I know.

17 Exhibit A, ¶¶ 4–6.

18 Ms. Nigiematulina's lack of connections to Turkey and Brazil are
19 particularly salient because neither have agreements with the United States to
20 accept third-country deportees who are not their nationals. *See* Jacqueline
21 Metzler, *What Are Third-Country Deportations, and Why Is Trump Using Them?*,
22 Council on Foreign Relations (Sept. 3, 2025) (identifying Mexico, Costa Rica,
23 Panama, South Sudan, Uganda, Rwanda, and Eswatini as the countries that
24 currently have such agreements).² It is very unlikely she will be deported to
25 either.

26 Third, that the government is optimistic and actively trying to identify third
27 countries does not demonstrate that Ms. Nigiematulina's continued detention is
28 reasonable. The petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that]

² Available at <https://www.cfr.org/article/what-are-third-country-deportations-and-why-trump-using-them>.

1 [the petitioner’s] continued detention [was] lawful as long as good faith efforts to
2 effectuate deportation continue and [the petitioner] failed to show that deportation
3 will prove impossible.” 533 U.S. at 702 (cleaned up). The Supreme Court
4 reversed, finding that the Fifth Circuit’s good-faith-efforts standard “demand[ed]
5 more than our reading of the statute can bear.” *Id.*

6 “[M]ere good-faith efforts [are] insufficient under *Zadvydas*.” No. 25-cv-
7 2740, 2025 WL 3171738, *5 (citing *Nadarajah v. Gonzales*, 443 F.3d 1069,
8 1081–82 (9th Cir. 2006)). Instead, “the reasonableness of Petitioner’s detention
9 turns on whether and to what extent the government’s efforts are likely to bear
10 fruit.” *Hassoun*, 2019 WL 78984 at *5.

11 Ms. Nigiematulina’s case is thus much like in *Munoz-Saucedo*. There, the
12 habeas petition was granted withholding of removal to his country of origin,
13 Mexico. He overcame the presumption that his detention was reasonable by
14 showing “he cannot be removed to his country of origin, that removing similarly
15 situated individuals has been historically rare, that ICE tried and failed to find a
16 third country willing to accept him during the initial 90-day detention period, and
17 that there is presently no country in the world willing to accept him.” *Munoz-*
18 *Saucedo*, 789 F. Supp. 3d at 399. So too here: Ms. Nigiematulina cannot be
19 removed to her country of origin, Russia; removals to third countries has been
20 historically rare; ICE tried and failed to remove her to her 90-day detention
21 period; and the only two countries ICE has identified, Turkey and Brazil, are not
22 likely to accept her. For the same reasons as in *Munoz-Saucedo*,
23 Ms. Nigiematulina’s removal is not significantly likely to occur.

24 **C. Any third-country removal will not occur “in the reasonably**
25 **foreseeable future.”**

26 Even if ICE could eventually remove Ms. Nigiematulina, it will not happen
27 “in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. There are two
28 reasons why.

1 First, ICE sent requests for travel documents to Brazil and Turkey over
2 three months ago, on August 7, 2025, and has yet to hear back. ECF No. 7,
3 Declaration of Officer Townsend, ¶ 7. It is not clear if it has ever followed up. *Id.*
4 “The lack of any sign that [the two countries] [are] actively considering accepting
5 [the petitioner] further demonstrates that removal is not likely in the foreseeable
6 future.” *Zavvar*, 2025 WL 2592543 at *7.

7 Second, even if Brazil or Turkey *did* issue travel documents to
8 Ms. Nigiematulina, “any efforts to remove [her] to a third country would likely be
9 delayed by proceedings contesting [her] removal to the third country.” *Villanueva*,
10 __ F. Supp. 3d __, 2025 WL 2774610 at *10. Neither Brazil nor Turkey were
11 identified as countries to which the government could remove her in her removal
12 order. ECF No. 1, Exhibit 2 at 3. As a result, Ms. Nigiematulina would be entitled
13 to, at a minimum, move to reopen her proceedings to raise a fear-based challenge
14 her removal to either country. *See, e.g., Nguyen v. Scott*, __ F. Supp. 3d __, 2025
15 WL 2419288, *18–*23 (W.D. Wash. Aug. 21, 2025) (explaining this entitlement
16 and developing law on this point).

17 And Ms. Nigiematulina would certainly seek raise a claim of fear of
18 persecution upon her removal to Brazil or Turkey. Brazil is a close ally of Russia;
19 the two are member states of the BRICS group. *See* Mariel Ferragamo, *What is*
20 *the BRICS Group and Why Is It Expanding?*, Council on Foreign Relations (June
21 26, 2025).³ Turkey is also increasingly allied with Russia. *See* Alper Boskun et
22 al., *Understanding Turkiye’s Entanglement with Russia*, Carnegie Endowment
23 for International Peace (Oct. 15, 2024).⁴ If she were deported to either place, she
24 would justly fear that the countries “would then just deport [her] back to Russia,”
25

26 _____
27 ³ Available at <https://www.cfr.org/backgrounder/what-brics-group-and-why-it-expanding>.

28 ⁴ Available at <https://carnegieendowment.org/research/2024/10/understanding-turkiyes-entanglement-with-russia?lang=en>.

1 where she would be persecuted. Exhibit A ¶ 5. And she would be entitled to raise
2 those fears in potentially “additional, lengthy proceedings.” *Munoz-Saucedo*,
3 2025 WL 1750346 at *7.

4 Ms. Nigiematulina’s “detention may not be justified on the basis that
5 removal to a particular country is likely *at some point* in the future; *Zadvydas*
6 permits continued detention only insofar as removal is likely in the *reasonably*
7 *foreseeable* future.” *Hassoun*, 2019 WL 78984 at *6. Because Ms. Nigiematulina
8 has demonstrated that her removal is not only unlikely on the merits, but that it is
9 also unlikely as a matter of time in the reasonably foreseeable future, this Court
10 should grant her petition and order her released.

11 **IV. Conclusion**

12 This Court should grant Ms. Nigiematulina’s habeas petition and order her
13 released.

14
15 Respectfully submitted,

16 Dated: November 14, 2025

s/ Jessie Agatstein

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