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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Artur Sarkisov,

Petitioner,

v.

Pamela Bondi, *et al.*,

Respondents.

Case No. 2:25-cv-02321-JAD-DJA

Reply in Support of § 2241 Petition

INTRODUCTION

Petitioner Artur Sarkisov, who is now 45 years old, was originally a citizen of the U.S.S.R. from the area that is now Azerbaijan. He came to the United States as a refugee in 1991 when he was eleven years old. He was ordered removed on December 8, 2003, and the order of removal became final on January 7, 2004.[1] At the same time, Sarkisov was granted withholding from removal to Azerbaijan under the Convention Against Torture.[2] According to the Government, Sarkisov was held for the 90-day removal period at that time, but he was then released on an order of supervision (OSUP) because he could not be removed. For the following 20 years, the Government did not deport him.

Sarkisov was taken back into ICE custody on May 3, 2025,[3] after being convicted of a drug crime in Utah. ECF No. 16-2. On June 11, 2025, a motion to reopen the immigration judge's jurisdiction was granted.[4] On information and belief, it was the Government who moved to reopen the immigration proceedings in order to terminate Sarkisov's grant of withholding of removal and to add an alternate country of removal. On August 21, 2025, the immigration judge ordered Sarkisov removed to Azerbaijan and, in the alternative, Armenia.[5] Critically, the judge granted Sarkisov deferral of removal under the Convention Against Torture, consistent with the prior removal order.[6] The only difference between the two orders is that Armenia is added as an alternative country, and that Sarkisov was

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[1] ECF No. 16-1.

[2] ECF No. 16-1.

[3] Sarkisov believes he was actually taken into ICE custody on April 30, 2025. Because these four days will not matter in the legal analysis, Sarkisov will use the Government's date.

[4] Petitioner Exhibit ("P. Ex.") 1.

[5] ECF No. 16-3.

[6] ECF No. 16-3.

awarded deferral of removal under the CAT instead of withholding of removal, presumably because he had been convicted of a particularly serious crime. Sarkisov has now been in custody for over eight months, in addition to the original 90-day removal period.

Sarkisov's continuing indefinite detention is unreasonable and violates due process under *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001), because his removal is not reasonably foreseeable. There is good reason to find this. Sarkisov cannot be removed to his original country of citizenship, the U.S.S.R., because it no longer exists. He cannot be removed to Azerbaijan because he was granted relief under the Convention Against Torture. And there is absolutely no evidence he can be removed to Armenia. He is not a citizen of Armenia, and there is no evidence that Armenia is willing to take him or produce travel documents for him. Moreover, Respondents do not meet their burden to establish that removal is reasonably foreseeable. To the contrary, they provide absolutely no evidence to demonstrate that removal is even a remote possibility. Their vague claim that they are acting diligently to get travel documents from either Azerbaijan or Armenia is not only absurd (as they should not even be trying to get travel documents from Azerbaijan), but also woefully insufficient to establish that his removal is reasonably foreseeable. After all, the central question under *Zadvydas* is not whether the government has made any efforts in furtherance of removal, it is whether those efforts are likely to result in removal in the reasonably foreseeable future. Here, there is no reason to believe the government's actions will lead to removal.

Further, Respondents' argument that this petition is premature is wrong for the same reason—the constitutional violation has been established because it is now twenty years since the removal order became final and removal is still not reasonably foreseeable. The Government's motion to reopen solely to add an alternative country of removal (especially when there is no evidence that the

alternative country will even take the immigrant) did not disturb the removal order that was entered in 2003 and did not restart the time that the Government is allowed to detain an immigrant. A motion to reopen is a collateral proceeding that does not impact the finality of a removal order, especially where, as here, the removal order was not rescinded upon reopening and removability was not challenged in the subsequent proceedings. Further, to allow the Government to restart the detention period in this way is simply a recipe for indefinite detention as the Government could repeatedly reopen the immigration proceedings simply to add any third alternative country, regardless of whether that country is even a possibility for removal.

Finally, Respondents' jurisdictional argument should be summarily denied as the Ninth Circuit has already rejected it. Immigrants are allowed to challenge their custody in a § 2241 petition, so long as they do not challenge the validity of the removal order. That is exactly what is occurring here.

Accordingly, the petition should be granted, and this Court should order Sarkisov's immediate release.

STATEMENT OF FACTS[7]

Petitioner Artur Sarkisov, who was originally a citizen of the U.S.S.R. from the area that is now Azerbaijan, was ordered removed from the United States on December 8, 2003, and the order of removal became final on January 7, 2004.[8] Sarkisov was also granted withholding of removal to Azerbaijan under the

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[7] The Statement of Facts is based predominantly on public documents and information that is within Respondents' possession, a lot of which was not provided to this Court. Indeed, Respondents failed to mention critical facts in their Response that were contained in the three documents they submitted (such as the notation indicating that Sarkisov was granted withholding from removal in 2003).

[8] ECF No. 16-1.

Convention Against Torture in those proceedings.[9] Sarkisov was held for the 90-day removal period at that time, but he was then released under an OSUP because he could not be removed.[10] For the following 20 years, Sarkisov lived in Utah and the Government did not deport him.

Sarkisov was taken back into ICE custody on May 3, 2025, after being convicted of a drug crime in Utah.[11] The sentence for the drug crime was suspended, but he was sentenced to a year in custody on a separate misdemeanor.[12] On information and belief, ICE picked him up from the jail in Salt Lake City once he had completed the misdemeanor sentence.

On June 11, 2025, a motion to reopen the immigration judge's jurisdiction was granted. On information and belief, it was the Government who moved to reopen the immigration proceedings. At the reopened immigration proceedings, the ICE Official only asked questions about the possibility of listing Armenia as an alternative country for removal. Sarkisov's family was a part of Armenian ethnic minority in Azerbaijan; however, he is not a citizen of Armenia and has no connection to Armenia. He has never been there and does not speak the language.

On August 21, 2025, the immigration judge ordered Sarkisov removed to Azerbaijan and, in the alternative, Armenia.[13] Critically, the judge granted him deferral of removal under the Convention Against Torture, consistent with the prior removal order.[14] The only difference between the two orders is that Armenia is added as an alternative country for removal and that Sarkisov was awarded

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[9] ECF No. 16-1.

[10] ECF No. 16 at 12.

[11] ECF No. 16-2.

[12] ECF No. 16-2.

[13] ECF No. 16-3.

[14] ECF No. 16-3.

deferral of removal instead of withholding of removal under the CAT, presumably due to a conviction for a particularly serious crime.[15] The Government reserved its right to appeal but did not bring an appeal.

Sarkisov has now been in custody for over eight months, in addition to the original 90-day removal period. During his current time in detention, ICE officials have not given him any reason to believe he will actually be deported, let alone that it will happen in the reasonably foreseeable future. He was told towards the beginning of his detention that ICE was trying to remove him to Armenia. However, ICE officials have not told him whether Armenia is willing to take him or whether they will be issuing any travel documents for him. In response to his most recent requests for information from ICE, he has not been provided any further information.

For their part, Respondents state in their Response that they are "working diligently in obtaining travel documents for this Petitioner's removal to either Azerbaijan or Armenia."[16] Respondents further state, "Enforcement and Removal Operations office has contacted the State Department for third country removal assistance and is waiting for the State Department to provide further guidance on the removal of this petitioner to either Azerbaijan or Armenia. Petitioner is held in immigration detention while DHS attempts to obtain his removal documents to either Azerbaijan or Armenia."[17] This is the full extent of the evidence Respondents provide about the possibility of deportation, and it is insufficient.

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[15] *Compare* ECF No. 16-1 *with* ECF No. 16-3.

[16] ECF No. 16 at 2.

[17] ECF No. 16 at 3.

ARGUMENT

I. This Court has jurisdiction over this § 2241 petition.

Respondents argue that this Court does not have jurisdiction over this § 2241 petition. They claim that the INA and Real ID Act deprived this Court of jurisdiction over reviewing any claim that "arises from a decision or action to 'execute' a final order of removal."[18] This argument has no merit.

Here, Sarkisov is not challenging the removal order or the Attorney General's discretion in executing the removal order. In every single claim in his petition, he is challenging the basis of his detention. The Ninth Circuit has made clear that, after the Real ID Act, immigrants "may continue to bring collateral challenges to the Attorney General's detention authority . . . through a petition for habeas corpus." *Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011). So long as the petition makes challenges to the custody that are "sufficiently independent from the merits of the removal order," the claims are cognizable in a § 2241 petition. *See Lopez Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*). All of the claims in the petition are sufficiently independent from the merits of the removal order and, instead, solely challenge the authority of ICE officials to detain Sarkisov. Thus, the Government's jurisdictional argument should be rejected.

II. Sarkisov's continuing detention violates due process.

The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. Sarkisov has a liberty interest in remaining free from physical confinement where removal is not reasonably foreseeable. Respondents have violated the Due Process Clause of the Fifth Amendment because Sarkisov's

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[18] ECF No. 16 at 7-8 (citing *Reno v. American Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999)).

removal is not reasonably foreseeable. *Zadvydas* requires that Sarkisov be immediately released. *See* 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of supervision").

A. Sarkisov must be released immediately because his removal is not reasonably foreseeable.

Sarkisov's continued detention is unreasonable and his removal is not reasonably foreseeable. Sarkisov has now been in immigration detention for the original 90 days after the December 2003 removal order and an additional **eight months** since he was re-detained on May 3, 2025. Sarkisov cannot be removed to his original country, the U.S.S.R., because it no longer exists. He cannot be removed to Azerbaijan (the part of the U.S.S.R. where he is from) because both in 2003 and in 2025 he was granted relief under the Convention Against Torture. There is no evidence he can be removed to Armenia as he is not a citizen of that country and there is no evidence that Armenia is willing to accept him. At bottom, he is not a citizen of *any* other country. Throughout his prolonged detention, he has not been given any indication that preparations have been made to deport him. Crucially, the Government does not provide any evidence to show that his deportation to any country is a remote possibility, let alone a reasonably foreseeable one. Thus, Sarkisov has shown good reason to find that his current custody is unreasonable as there is no reasonable foreseeability of deportation.

In their Response, Respondents provide woefully insufficient information to establish that deportation is reasonably foreseeable. In fact, they have not provided any evidence. Respondents only make vague claims that they have reached out to the State Department for third country removal assistance and they are waiting for the State Department to provide further guidance on removal to either Azerbaijan or Armenia. That is the full extent of the information they provide. These vague

statements are completely inadequate to establish that removal is reasonably foreseeable. They are mere assertions without any evidentiary support. And, even if true, they do not establish that deportation is even a remote possibility, much less that it is reasonably foreseeable. Moreover, there is no indication when this request was made to the State Department or what the current status actually is. They do not allege that Armenia has shown any willingness to take Sarkisov or that they have any interest in issuing him travel documents. Further, their unspecified allegations about Azerbaijan are absurd as Sarkisov cannot be removed to that country. Courts in this district and within the circuit have regularly refused to find the Government has established reasonable foreseeability where, as here, the Government has offered little more than generalizations regarding the likelihood that removal will occur. *See*, e.g., *Gomez v. Mattos*, No. 2:25-cv-00975-GMN-BNW, 2025 WL 3101994 at *6 (D. Nev. Nov. 6, 2025); *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025). In sum, there is no reliable or specific evidence that deportation is reasonably foreseeable. The Government's vague claims utterly fail.

Otherwise, Respondents argue that it is Sarkisov's fault that he has not been deported. They claim he has not shown that, over the past 20 years, he has been compliant or that he has provided the Government with the necessary documents to facilitate a deportation.[19] They also claim that since he has been re-detained he also has made no effort to assist in his removal.[20] These claims are patently absurd. In the first instance, Respondents do not cite to any authority to establish that Sarkisov has met the standard for non-compliance. In fact, they have not come

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[19] ECF No. 16 at 13.

[20] ECF No. 16 at 14.

anywhere near meeting that standard. *See Lema v. INS,* 341 F.3d 853, 856 (9th Cir.2003) ("We have previously held that an alien engages in such behavior when he willfully refuses to cooperate with the government in processing his deportation papers."; noncitizen was non-compliant when he refused to "cooperate fully and honestly with officials to secure travel documents"); *Pelich v. INS,* 329 F.3d 1057, 1059 (9th Cir.2003) (noncitizen refused to fill out passport application).

Moreover, Sarkisov was not in a position to help the Government facilitate his deportation. There was literally no documents or assistance that Sarkisov could have provided. His original country no longer exists. He cannot be removed to Azerbaijan, where he is originally from, because he faces danger if removed there. He is not obligated, in any way, to assist the Government in placing his life at risk. And he cannot help the Government deport him to any other country as he has no connection to any other country.

The Government has failed to meet its burden to show that deportation is reasonably foreseeable. Sarkisov should be immediately released.

B. Sarkisov's petition is not premature.

Respondents contend that Sarkisov's petition should be dismissed because his petition is premature. They claim that he has only been in custody for a little over three months since the removal order became final on September 22, 2025.[21] This is incorrect for three reasons. First, the *Zadvydas* six months of presumptive reasonableness passed many months ago. Second, the motion to reopen the immigration proceedings did not affect the finality of the 2003 removal order. Third, even if the August 2025 removal order restarted the removal period, Sarkisov can still establish a due process violation as there is no reasonable possibility that he will be deported at any time in the future.

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[21] ECF No. 16 at 12.

1. The *Zadvydas* six-month period of presumptive reasonableness has long since passed.

Respondents are simply wrong about how to calculate the *Zadvydas* six-month period of presumptive reasonableness. That time period has long since passed. That time period started during the 90-day removal period after the 2003 order of removal became final, 8 U.S.C. §1231(a)(1)(B), and comprised that period and the following three months. *See Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001) (the period of presumptive reasonableness is "six months after a final order of removal—that is, three months after the statutory removal period has ended.").

Here, Sarkisov's order of removal was entered in December 2003. The Government acknowledges that he was detained for the 90-day removal period after that order became final.[22] Accordingly, his 90-day removal period began and ended then. 8 U.S.C. § 1231(a)(1)(B). The presumptively reasonable period thus expired six months after the entry of his removal order, which is three months after the end of his 90-day removal period, both of which occurred in 2004—over 20 years ago. But even if the time period is the original 90 days plus an additional three months of additional detention at a later time, the six-month period would have expired at the beginning of August 2025. Thus, Respondents' argument fails because the window of presumptive reasonableness has long since passed.

2. The August 2025 removal order did not restart the six-month period of presumptive reasonableness.

It is also clear that the August 2025 removal order did not restart the six-month period of presumptively reasonableness. The original order of removal became final in January 2004. The Government does not contest the finality of that order. The law is clear that the six-month period runs from that date. The August

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[22] *Id.*

2025 order was entered solely as the result of a motion to reopen, and critically, the 2003 removal order was never rescinded as a result of the reopening nor was removability challenged. The Ninth Circuit has stated that a motion to reopen immigration proceedings is a "collateral" remedy. *Diouf v. Napolitano*, 634 F.3d 1081, 1085 (9th Cir. 2011). A collateral challenge to reopen a removal proceeding does not render a prior removal order non-final. *Viengkhone S. v. Albarran*, No. 1:25-cv-01505-KES-HBK, 2025 WL 3521302 at *6 (E.D. Cal. Dec. 8, 2025). Because the original removal order always remained final, the six-month period of presumptive reasonableness expired six months after it became final.

To find otherwise would be a recipe for indefinite detention, particularly under the circumstances here. It is clear that the Government only moved to reopen the proceedings to add Armenia as an alternative removal country.[23] The only questions the Government official asked at the hearing were related to Armenia as an alternative country. And the only difference between the original order of removal and the August 2025 order of removal is that Armenia was added as an alternative country for removal. However, the Government took this step to reopen to add Armenia as an alternative removal country without first determining whether deportation to Armenia was even a possibility. The response here proves that: Respondents have indicated that they have only reached out to the State Department to determine if removal to Armenia is possible.

Filing a motion to reopen to add an alternative country makes indefinite detention a real likelihood if the Government is allowed a new six months after each time it reopens the proceedings. The Government could simply move to reopen as

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[23] It appears that Sarisov's grant of withholding of removal under the CAT was also revoked and replaced with deferral of removal under the CAT but this change did not alter the status quo in terms of the government's ability to remove Sarkisov to Azerbaijan; the government has been prohibited from removing Sarkisov to Azerbaijan since 2003 because he will likely be tortured there.

the six month period nears an end. Adding the new country to the removal order, even when there is no evidence that removal to that country is possible, would then give them the power to detain the individual for another six months. It would be one thing if the Government confirmed prior to reopening the proceedings that the third country was willing to issue travel documents for the individual. A new 90-day removal period might in some instances make sense to then effectuate that type of removal. But under the circumstances here, there is simply no limit on the Government restarting the six-month period of presumptively reasonable detention. That would lead to indefinite detention, contrary to the constitutional principles set forth in *Zadvydas*. *See generally Nguyen v. Scott*, 796 F. Supp. 3d 703, 721-22 (W.D. Wash. Aug. 21, 2025) (series of releases and re-detentions by government does not restart presumptively reasonable six-month period as it would lead to indefinite detention).

Accordingly, the petition is not premature as the motion to reopen did not restart the six-month clock.

3. Even if this Court accepts Respondents' argument that the six-month period restarted after the August 2025 removal order, Sarkisov must still be released because he can rebut the presumption of reasonableness.

Finally, even if the six months have not yet expired, Sarkisov should still prevail on his petition because he has shown that his removal is not reasonably foreseeable. Importantly, the *Zadvydas* Court did not say the six-month presumption is irrebuttable, and a variety of courts across the country that have considered the issue have found the presumption of reasonableness during the first six months of post-removal order detention can be rebutted. *See Munoz-Saucedo v. Pittman,* No. CV 25-2258 (CPO), 2025 WL 1750346, at *5 (D.N.J. June 24, 2025) (analyzing the issue and collecting case). "Both during the six-month period and after, a district court has an ongoing **obligation to determine whether**

detention remains authorized." *Douglas v. Baker*, No. 25-CV-2243-ABA, 2025 WL 2997585, at *2 (D. Md. Oct. 24, 2025) (internal quotations omitted; emphasis in original). "Within the six-month window," the noncitizen bears the burden of "prov[ing] the unreasonableness of detention." *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). After six months, there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," and the burden shifts to the government to justify continued detention. *Zadvydas*, 533 U.S. at 701. "Whether detention is 'reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority. . . . The basic federal habeas corpus statute grants the federal courts authority to answer that question.'" *Medina v. Noem, et al., Respondents*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *6 (D. Md. Aug. 11, 2025) (citing *Zadvydas*, 533 U.S. at 699).

Here, as argued above, Respondents provide essentially no evidence to support the idea that Sarkisov's removal is reasonably foreseeable. Respondents do not provide an affidavit from an ICE official concerning what steps have been taken in furtherance of removal to Armenia. In fact, all that they appear to have done so far is to ask the State Department whether it is a possibility. At this point, deportation is not even a remote possibility. This, in combination with the fact that Sarkisov cannot be removed be removed to his original country as it no longer exists (the U.S.S.R.), or the place where he lived because he faces danger of torture (Azerbaijan) or the alternative country because he is not a citizen and has absolutely no connection to the country (Armenia). These factors easily sustain Sarkisov's burden of showing that removal is not reasonably foreseeable. Other courts have granted habeas relief in similar cases where ICE cannot provide documentation of their efforts to facilitate removal. *See Douglas*, 2025 WL 2997585, at *4.

CONCLUSION

Sarkisov's continuing detention violates due process. He is entitled to relief on the grounds raised in his petition. He must be released immediately. Respondents should be estopped from re-detaining unless there is a change in circumstances supported by credible evidence. This Court should also order that, if Respondents seek to remove him to a third country apart from Azerbaijan or Armenia, he must be given adequate notice and an opportunity to contest any future attempt to remove him to that third country.

Dated January 6, 2026.

Respectfully submitted,

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