

1 **Jessie Agatstein**  
2 Cal. Bar No. 319817  
3 **Federal Defenders of San Diego, Inc.**  
4 225 Broadway, Suite 900  
5 San Diego, California 92101-5030  
6 Telephone: (619) 234-8467  
7 Facsimile: (619) 687-2666  
8 jessie\_agatstein@fd.org  
9 Attorneys for Mr. Sakoyan

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **HRACHYA SAKOYAN,**

13 **Petitioner,**

14 **v.**

15 **KRISTI NOEM, Secretary of the**  
16 **Department of Homeland Security,**  
17 **PAMELA JO BONDI, Attorney General,**  
18 **TODD M. LYONS, Acting Director,**  
19 **Immigration and Customs Enforcement,**  
20 **JESUS ROCHA, Acting Field Office**  
21 **Director, San Diego Field Office,**  
22 **CHRISTOPHER LAROSE, Warden at**  
23 **Otay Mesa Detention Center,**

24 **Respondents.**

No.: 25-cv-03406-BAS-MSB

**Traverse in support of  
petition for writ of  
habeas corpus**

**[Civil Immigration Habeas,  
28 U.S.C. § 2241]**

25  
26  
27  
28

1 **I. Introduction**

2 In their return, the Respondents do not dispute that Hrachya Sakoyan  
3 should be released if he shows that his “removal is not reasonably foreseeable.”  
4 *Puertas-Mendoza v. Bondi*, No. SA-25-CA-890-XR, 2025 WL 3142089, \*4  
5 (W.D. Tex. Oct. 22, 2025) (citing *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001)).  
6 They do not dispute that Mr. Sakoyan was ordered removed and granted relief  
7 from removal on July 28, 2025, and that “[t]he six-month [*Zadvydas*] period is  
8 merely a ‘guide’ to lower courts’ determinations whether removal is reasonably  
9 foreseeable.” *Gomez-Simeon*, No. SA-25-cv-1460-JKP, 2025 WL 3470872, \*3  
10 (W.D. Tex. Nov. 24, 2025).

11 Instead, Respondents submit a declaration that states:

- 12 • A local ICE division first contacted a central ICE division about
- 13 Mr. Sakoyan “for possible third country removal” on August 19, 2025;
- 14 • The central division told the local division it “was actively working with
- 15 the Department of State on avenues to remove [Mr. Sakoyan] to a third
- 16 country” on September 28, 2025;
- 17 • On November 28, 2025, the central division told the local division
- 18 “there were no updates on third country removal”;
- 19 • The local division has not heard more since; and
- 20 • When ICE identifies a third country, it will follow its “standard ICE
- 21 guidance and procedures,” which as summarized in the declaration
- 22 match several details in the more fulsome third-country removal policy
- 23 Mr. Sakoyan submitted to this Court as Exhibit C.

24 ECF No. 10, Declaration of Jesus Blanco, ¶¶ 7–17; *see* ECF No. 1, Exhibit C.

25 Respondents also point to evidence Mr. Sakoyan submitted regarding  
26 several noncitizens who have been removed to, and held indefinitely in, foreign  
27 prisons in third countries. ECF No. 10 at 2–3 (citing ECF No. 1 at 5).

28

1 This information does not rebut Mr. Sakoyan’s showing—based on his  
2 months in detention after being ordered removed, his receipt of withholding of  
3 removal, the extremely small number of people who received such relief who  
4 have been removed in the last decade, the lack of ICE’s progress in his case, and  
5 the process to which he is entitled if ICE ever does identify a third country—that  
6 there is no significant likelihood of his removal in the reasonably foreseeable  
7 future. *See* ECF No. 1 at 8–12.

8 Further, Respondents have no response to Mr. Sakoyan’s argument that  
9 ICE’s current third-country removal policy—to which they intend to subject  
10 Mr. Sakoyan, and the contents of which they agree with Mr. Sakoyan on—does  
11 not provide him “with adequate notice and an opportunity to be heard before  
12 removing him to a third country.” *Azzo v. Noem*, No. 25-cv-3122-RBM-BJW,  
13 2025 WL 353208, \*8 (S.D. Cal. Dec. 10, 2025) (granting habeas petition and  
14 enjoining the respondents from removing the petitioner absent the process  
15 outlined in *DVD v. U.S. Dep’t of Homeland Sec.*, No. 25-10676-BEM, 2025 WL  
16 1453640 (D. Mass. May 21, 2025)). Respondents have no response to  
17 Mr. Sakoyan’s argument that it is proper for this Court to prohibit Respondents  
18 from removing him to a third country without first providing him notice of his  
19 statutory rights to apply for asylum and withholding from those third countries  
20 and a meaningful opportunity to be heard on those claims. *See* ECF No. 1 at 3–5,  
21 12–17.

22 For both these reasons, this Court should grant the petition.

23 **II. Respondents have not disproven Mr. Sakoyan’s showing that there is**  
24 **no significant likelihood of his removal in the reasonably foreseeable**  
25 **future.**

26 Taking the government’s declaration into account, Mr. Sakoyan has still  
27 proven that his removal is not likely in the reasonably foreseeable future.

28 In Mr. Sakoyan’s case, ICE began the process of his third-country removal  
in August. ECF No. 10, Declaration of Deportation Officer Blanco, ¶ 7. It has not

1 gotten far. One part of ICE asked for help from another part of ICE, who asked  
2 for help from the Department of State. Since September, ICE has not heard back.  
3 In late November, one part of ICE told another that “there were no updates.” It  
4 has no timetable for when there will be. *Id.* ¶¶ 8–14.

5 This evidence does not alter Mr. Sakoyan’s showing that his removal to an  
6 unidentified third country is not “significant[ly] like[ly].” *Zadvydas*, 533 U.S. at  
7 701. Nor does it alter his showing that his removal to an unidentified third country  
8 will not happen “in the reasonably foreseeable future.” *Id.*

9 As Mr. Sakoyan explained in his petition, and as the government does not  
10 dispute, his receipt of “withholding of removal ‘substantially increases the  
11 difficulty of removing him.’” *Marquez-Amaya v. Thompson*, No. 5:25-cv-1501-  
12 JKP, 2025 WL 3654327, \*6 (W.D. Tex. Dec. 15, 2025) (quoting *Munoz-Saucedo*  
13 *v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025)); see ECF No. 1 at 9–10.

14 As Mr. Sakoyan noted from other case law, and again as the government  
15 does not dispute, historical data back up how unlikely his removal is. Of the  
16 thousands of noncitizens who receive withholding of removal every year, in  
17 recent years, only a handful have been removed. ECF No. 1 at 9 (citing data cited  
18 in *Munoz-Saucedo*, 789 F. Supp. 3d at 398).

19 Mr. Sakoyan now submits that underlying evidence upon which recent  
20 cases have granted relief, which showcases how rare third-country removal is. See  
21 Exhibits D, E.<sup>1</sup> Between September 2023 and June 2025, ICE successfully  
22 removed only eight people total who had received withholding or CAT relief to  
23 third countries. Exhibit D.<sup>2</sup> Between 2020 and 2023, it removed five. *Id.*

24 \_\_\_\_\_  
25 <sup>1</sup> Mr. Sakoyan has no objection to the Respondents submitting supplemental  
briefing in response to this underlying evidence.

26 <sup>2</sup> The data in Exhibit D are collected from the Deportation Data Project, which  
27 “collects and posts public, anonymized U.S. government immigration  
28 enforcement datasets,” “primarily [obtained] through Freedom of Information Act  
requests.” For the complete raw data, one can visit  
<https://deportationdata.org/data/ice>, select “Removals,” and filter for each

1 Compare those 13 people against the number of people who received relief last  
2 year alone. In fiscal year 2024 alone, about 2,500 people won withholding or  
3 CAT relief. *See* Exhibit E at 2 (Congressional Research Service, *FY2024*  
4 *Immigration Court Data: Case Outcomes* (Feb. 3, 2025)).

5 Mr. Sakoyan’s individual circumstances strongly confirm he will not be  
6 among the handful of people granted withholding of removal the U.S. removes to  
7 a third country. He is an Armenian citizen, who was born in Armenia, and who  
8 has only ever had immigration status in Armenia. Exhibit A ¶ 5. He has no  
9 connections to any other country. *Id.*

10 As a result, ICE has yet to identify a country to try to remove Mr. Sakoyan  
11 to. ECF No. 10, Declaration of Deportation Officer Blanco, ¶¶ 7–14. “Even when  
12 ICE has ‘identified a third country,’ noncitizens like Petitioner ‘would be entitled  
13 to seek fear-based relief from removal to that country, which would require  
14 additional, lengthy proceedings.” *Marquez-Amaya*, 2025 WL 3654327 at \*6  
15 (quoting *Munoz-Saucedo*, 789 F. Supp. 3d at 399)); *see Jama v. ICE*, 543 U.S.  
16 335, 348 (2005) (“If [non-citizens] would face persecution or other mistreatment  
17 in the country designated under § 1231(b)(2), they have a number of available  
18 remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and]  
19 relief under an international agreement prohibiting torture.”); *Andriasian v. INS*,  
20 180 F.3d 1033, 1041 (9th Cir. 1999) (holding that “last minute” designation of  
21 alternative country without meaningful opportunity to apply for protection  
22 “violate[s] a basic tenet of constitutional due process”).

23  
24 \_\_\_\_\_  
25 removal classified as “[5C] Relief Granted – Withholding of Deportation /  
26 Removal” or “[5D] Final Order of Deportation / Removal – Deferred Action  
27 Granted.” The chart attached as Exhibit F highlights all such cases in which the  
28 noncitizen was removed to a country other than their country of origin. The  
remaining unhighlighted noncitizens either won withholding or CAT relief with  
respect to a third country that was not their country of origin, including dual  
citizens; had withholding or CAT relief terminated; or agreed to return to their  
country of origin despite a grant of withholding or CAT relief.

1 And Mr. Sakoyan would have ample reason to seek fear-based relief from  
2 many countries, based on the same protected ground for which he fled Armenia  
3 and received fear-based relief. *See* ECF No. 1, Exhibit A, ¶ 3.

4 Like in *Munoz-Saucedo*, here, “Petitioner has alleged that he cannot be  
5 removed to his country of origin, that removing similarly situated individuals has  
6 been historically rare, that ICE tried and failed to find a third country willing to  
7 accept him during the initial 90-day detention period, and that there is presently  
8 no country in the world willing to accept him.” 789 F. Sup. 3d at 399. Like in  
9 *Munoz-Saucedo*, then, Mr. Sakoyan’s showing has “more than suffice[d] to  
10 demonstrate that Petitioner’s removal is not reasonably foreseeable, and therefore  
11 overcome the presumption that his detention is reasonable.” *Id.* This Court should  
12 grant his petition and order his release.

13 **III. Respondents have no legal argument for how ICE’s third-country**  
14 **removal process complies with existing Ninth Circuit law regarding the**  
15 **process due to noncitizens in third-country removal proceedings.**

16 This Court should also prohibit ICE from removing Mr. Sakoyan to a third  
17 country without adequate notice and a meaningful opportunity to be heard  
18 regarding his statutory and related rights to seek asylum, withholding of removal,  
19 and Convention Against Torture relief as to that third country.

20 The government identifies certain components of the third-country removal  
21 policy challenged in his habeas petition. Compare ECF No. 10 at 4 with ECF No.  
22 1 at 3–5, 12–17, Exhibit C. But the government does not explain how this policy  
23 complies with due process or Ninth Circuit law.

24 As Mr. Sakoyan explained in his habeas petition, “This policy contravenes  
25 Ninth Circuit law.” *Nguyen*, \_\_ F. Supp. 3d \_\_, 2025 WL 2419288 at \*19. “It  
26 would be impossible to comply both with Ninth Circuit precedent and the policy.”  
27 *Id.* “Failing to notify individuals who are subject to deportation that they have the  
28 right to apply . . . for withholding of deportation to the country to which they will  
deported violates both INS regulations and the constitutional right to due

1 process.”” *Id.* at \*18 (quoting *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.  
2 1999). Yet that is exactly what existing ICE policy allows for. *See* ECF No. 1 at  
3 6–5, 12–17, Exhibit C. The government has no response on this point.

4 Nor does the government articulate any reason why this Court cannot order  
5 it to provide Mr. Sakoyan with notice and a meaningful opportunity to be heard  
6 before deporting him to an as-yet unidentified third country. *See* ECF No. 9 at 6.  
7 “This relief has been granted in similar matters.” *Azzo*, 2025 WL 3535208 at \*8  
8 n.6. Indeed, just this summer, the Supreme Court confirmed that habeas  
9 petitioners may raise claims regarding the process due to them in removal  
10 proceedings, and that district courts should use those habeas petitions to articulate  
11 “in the first instance the precise process necessary to satisfy the Constitution.”  
12 *AARP v. Trump*, 605 U.S. 91, 95 (2025).

13 **IV. Conclusion**

14 This Court should order Mr. Sakoyan’s immediate release. It should also  
15 order the Respondents to provide the process identified in the habeas petition  
16 before removing Mr. Sakoyan to an unidentified third country.

17  
18 Respectfully submitted,

19  
20 Dated: December 19, 2025

*s/ Jessie Agatstein*

Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Sakoyan  
Email: [jessie\\_agatstein@fd.org](mailto:jessie_agatstein@fd.org)