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

13 **VIKTOR GRISHCHENKO,**

No.: 25-cv-3514-JES-JLB

14 Petitioner,

15 v.

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

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

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

25 Respondents.
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1 **I. Introduction**

2 In its return, the government does not dispute that it bears the burden to
3 prove that there is a “significant likelihood” of Viktor Grishchenko’s removal “in
4 the reasonably foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).
5 It does not dispute that it must do so with “evidence.” *Guarin v. LaRose*, No. 25-
6 cv-3085-DMS, 2025 WL 3440589, *3 (S.D. Cal. Dec. 1, 2025).

7 The sole evidence the government submits is a declaration from
8 Deportation Officer Wilson, which states:

- 9
- 10 • A local San Diego ICE division first contacted a central division within
11 ICE about “seek[ing] a third country for removal” on September 8,
12 2025, about three months after Mr. Grischenko was ordered removed
13 and granted withholding of removal on June 10, 2025;
 - 14 • The local San Diego ICE unit “requested updates” from the central ICE
15 division five times between September and December, but has not yet
16 received a response;
 - 17 • ICE “believes there is a significant likelihood of removal to a third
18 country in the reasonably foreseeable future”; and
 - 19 • When ICE identifies a third country, it will follow its “standard ICE
20 guidance and procedures,” which as summarized in the declaration
21 match several details in the more fulsome third-country removal policy
22 Mr. Grischenko submitted to this Court as Exhibit G.

22 ECF No. 9, Declaration of La’Shaniece Wilson, ¶¶ 8–14; ECF No. 1, Exhibit G.

23 This information does not rebut Mr. Grischenko’s showing—based on his
24 more than six months in detention after being ordered removed, his withholding
25 relief, the evidence he submitted regarding the extremely low number of people
26 who received similar relief who have been removed to third countries, and the
27 lack of ICE’s progress in his case—that there is no significant likelihood of his
28 removal in the reasonably foreseeable future. *See* ECF No. 1 at 1–6, 8–13.

1 Further, the government has no response to Mr. Grischenko’s argument that
2 ICE’s current third-country removal policy—to which it agrees it intends to
3 subject Mr. Grischenko, and the contents of which it agrees with Mr. Grischenko
4 on—does not provide him “with adequate notice and an opportunity to be heard
5 before removing him to a third country.” *Azzo v. Noem*, No. 25-cv-3122-RBM-
6 BJW, 2025 WL 353208, *8 (S.D. Cal. Dec. 10, 2025) (granting habeas petition
7 and enjoining the respondents from removing the petitioner absent the process
8 outlined in *DVD v. U.S. Dep’t of Homeland Sec.*, No. 25-10676-BEM, 2025 WL
9 1453640 (D. Mass. May 21, 2025)). The government has no response to
10 Mr. Grischenko’s argument that it is proper for this Court to prohibit Respondents
11 from removing him to a third country without first providing him notice of his
12 statutory rights to apply for asylum and withholding from those third countries
13 and a meaningful opportunity to be heard on those claims. *See* ECF No. 1 at 6–7,
14 13–18, Exhibit G.

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

16 **II. The government has not rebutted Mr. Grischenko’s showing that there**
17 **is good reason to believe there is no significant likelihood of his**
18 **removal in the reasonably foreseeable future.**

19 “[M]ere generalizations, divorced from any documentary support,” do not
20 “suffice for *Zadvydas* purposes.” *Azzo*, 2025 WL 3535208 at *4 n.3. The
21 government has offered no more than mere generalizations in this case.

22 *Azzo* is instructive. There, the district court received a similar declaration
23 for a habeas petitioner who had received relief from removal to his only country
24 of citizenship under the Convention Against Torture. *Id.* at *1. Upon surveying
25 relevant case law, the court noted that the declaration resulted in an “even weaker
26 evidentiary showing” than in other cases that had still granted *Zadvydas* petitions
27 and ordered immediate relief. *Id.* *4 (discussing, among other cases, *Kamyab v.*
28 *Bondi*, No. C-25-389RSL, 2025 WL 2917522 (W.D. Wash. Oct. 14, 2025), and
Phan v. Warden of Otay Mesa Detention Facility, No. 25-cv-2369-AJB-BLM,

1 2025 WL 3141205 (S.D. Cal. Nov. 10, 2025)). There, as here, “Respondents ha[d]
2 not even identified a third country to which they plan to remove Petitioner, much
3 less submitted a travel document or provided an estimate for how long it would
4 take this unidentified third country to respond.” *Azzo*, 2025 WL 3535208 at *4.
5 With “little more than generalizations regarding the likelihood that removal will
6 occur,” there, as here, the Respondents “have not met their burden to ‘respond
7 with evidence sufficient to rebut’ Petitioner’s showing.” *Id.*

8 In Mr. Grischenko’s case, ICE only began the process of his third-country
9 removal three months after his removal order became final. ECF No. 9,
10 Declaration of Deportation Officer Wilson, ¶¶ 8–9. It has not gotten far. One part
11 of ICE has asked for help from another part of ICE six times over the last three
12 months. It has not heard back. It has no timetable for when it will. *Id.* ¶¶ 9–11.

13 This evidence does not show that Mr. Grischenko’s removal to an
14 unidentified third country is “significant[ly] like[ly].” *Zadvydas*, 533 U.S. at 701.
15 Nor does it show that his removal to an unidentified third country will happen “in
16 the reasonably foreseeable future.” *Id.* Mr. Grischenko thus succeeds on his
17 *Zadvydas* petition, and this Court should order his immediate release.

18 **III. The government has no legal argument for how ICE’s third-country
19 removal process complies with existing Ninth Circuit law regarding the
20 process due to noncitizens in third-country removal proceedings.**

21 This Court should also prohibit ICE from removing Mr. Grischenko to a
22 third country without adequate notice and a meaningful opportunity to be heard
23 regarding his statutory and related rights to seek asylum, withholding of removal,
24 and Convention Against Torture relief as to that third country.

25 The government identifies certain components of the third-country removal
26 policy challenged in his habeas petition. Compare ECF No. 9 at 6 with ECF No. 1
27 at 6–7, 13–18, Exhibit G. But the government does not explain how this policy
28 complies with due process or Ninth Circuit law.

1 As Mr. Grischenko explained in his habeas petition, “This policy
2 contravenes Ninth Circuit law.” *Nguyen*, __ F. Supp. 3d __, 2025 WL 2419288 at
3 *19. “It would be impossible to comply both with Ninth Circuit precedent and the
4 policy.” *Id.* “Failing to notify individuals who are subject to deportation that they
5 have the right to apply . . . for withholding of deportation to the country to which
6 they will deported violates both INS regulations and the constitutional right to due
7 process.”” *Id.* at *18 (quoting *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
8 1999). Yet that is exactly what existing ICE policy allows for. *See* ECF No. 1 at
9 6–7, 13–18, Exhibit G. The government has no response on this point.

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

19 **IV. Conclusion**

20 This Court should order Mr. Grischenko’s immediate release. It should also
21 order the Respondents to provide the process identified in the habeas petition
22 before removing Mr. Grischenko to an unidentified third country.

23
24 Respectfully submitted,

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26 Dated: December 17, 2025

s/ Jessie Agatstein
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