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FELIX ENI

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FELIX ENI,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Case No.: 25-cv-03524-JLS-DEB

Traverse in support of petition for writ of habeas corpus and reply in support of motion for temporary restraining order

Introduction

The government's response in opposition includes the following evidence:

- A declaration from a San Diego deportation officer explaining that:
  - More than 17 years ago, Mr. Eni was ordered removed to Nigeria, but granted withholding of removal, on September 18, 2008;
  - Mr. Eni was released from ICE custody on an Order of Supervision on October 28, 2008;
  - Mr. Eni was re-detained on November 1, 2025, and provided a notice of revocation of release and an informal interview that same day;
  - Since Mr. Eni's re-detention, "ERO has worked diligently to execute" Mr. Eni's removal, by contacting the "ERO Removal and International Operations (RIO) to seek a third country for removal" on November 12, 2025, and requesting "an update on finding a third country" on December 12, 2025; and,
  - The ERO is still "pending further response from RIO on identifying a third country for removal." ECF No. 9, Declaration of Marcus Vera ("Vera Decl.") at ¶¶ 8–13.
- A written notice of revocation of release provided to Mr. Eni after he was arrested at Camp Pendleton on November 1, 2025, alleging "changed circumstances" in his case "based on a review of [his] official alien file," ECF No. 9, Exhibit 1;
- A record of an informal interview conducted that same day, noting Mr. Eni indicated he "would like to speak to his

attorney first" and did not provide a written statement or any documents, ECF No. 9, Exhibit 2;

- Warrants for Mr. Eni's immigration arrest and removal/deportation from that same day, both alleging he is removable from the United States, ECF No. 9, Exhibits 3 & 6;
- A record of deportable/inadmissible alien from that same day, indicating Mr. Eni was an "alien present without admission or parole," ECF No. 9, Exhibit 4; and,
- Mr. Eni's order of removal from September 18, 2008, ECF No. 9, Exhibit 5.

This evidence does not rebut Mr. Eni's claim that he was re-detained in violation of his regulatory and due process rights to be notified of "the reasons for revocation." § 241.13(i)(2)(iii), 241.13(*l*)(1). "[A] reason is what makes an action intelligible, accounted for, or explained"—"the specific facts supporting ICE's decision." *Sarail A. v. Bondi*, __ F. Supp. __, 2025 WL 2533673, *5–*6 (D. Minn. 2025). Those are absent here. Nor does the government's evidence rebut Mr. Eni's claim that ICE never made a determination before his re-detention that "there is a significant likelihood that [he] may be removed in the reasonably foreseeable future," § 241.13(i)(2), or his claim that he was not "afford[ed] . . . an opportunity to respond to the reasons for revocation," *id.* §§ 241.4(*l*)(1), 241.13(i)(3)—reasons he was never given.

Nor does the government rebut Mr. Eni's claim that there is not an individualized, significant likelihood of his removal in the foreseeable future. ICE tried and failed—or never tried at all—to obtain a travel document for Mr. Eni during the past 17 years. The only evidence ICE presents now is that it is "working diligently" to

execute his removal to a third country. This is not a "changed circumstance."

Finally, the government does not defend its third-country removal policy on the merits. Instead, it argues only that, once a third country is identified, Mr. Eni "will be notified in writing of the third country at least twenty-four (24) hours prior to removal." Vera Decl. at ¶ 13.

In light of the evidence Mr. Eni presented in his habeas petition, the government's arguments fail to persuade. This Court should grant Mr. Eni's petition, or, in the alternative, grant his motion for temporary relief in full.

Background

This Court should grant Mr. Eni's habeas petition and order him released. At this stage in his case, there is only a rebuttable "presumption" that his detention is reasonable. *Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL 2592543, *3–*8 (D. Md. Sept. 8, 2025). Mr. Eni can rebut, and has rebutted, that presumption. There is not a significant likelihood of his removal. Nor is there one in the foreseeable future.

Mr. Eni cannot be deported to the only country to which he is a citizen, Nigeria. ECF No. 9 at pp. 2 & 4;[1] *see also* Vera Decl. at ¶ 8. On September 18, 2008, he was granted withholding of removal to Nigeria. Vera Decl. at ¶ 8.[2] He was released on an Order of Supervision about

[1] Mr. Eni cites the CM/ECF pagination unless otherwise noted.

[2] Mr. Eni was granted withholding of removal, and not deferral of removal, as incorrectly indicated in the government's responsive brief. *See, e.g.*, ECF No. 9 at p. 4. According to the Immigration Legal Resource Center (IRLC), "[d]eferral of removal offers protection under the Convention Against Torture (CAT) for those individuals who are

one month later, on October 28, 2008. *Id.* at ¶ 9.

In the more than 17 years since, the government has not identified *any* countries that will realistically, timely, or safely accept Mr. Eni. ECF No. 9 at pp. 1–2, 4–5, 7; *see also* Vera Decl. at ¶¶ 9–13. The government has not contacted any third countries to request Mr. Eni's resettlement. Vera Decl. at ¶¶ 11–12. It simply asserts it has "worked diligently" to execute his removal, demonstrated only by ICE's contact with "ERO Removal and International Operations" on November 12, 2025, and December 12, 2025. *Id.* at ¶ 11. Indeed, no third countries have been identified since Mr. Eni's re-detention on November 1, 2025, either. *See id.*

"[A]lternative-country removal is rare." *Johnson v. Guzman-Chavez*, 594 U.S. 523, 537 (2021). Between 2020 and 2023, data apparently show that "ICE removed . . . only *five* non-citizens granted withholding or CAT relief to alternative countries." *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025) (emphasis in original). In fiscal year 2017, there were at most 21 people of the thousands with withholding of removal deported to *any* country; that number includes dual citizens who only received withholding from one of their two other countries of origin. *See* American Immigration Council & National Immigrant Justice Center, *The Difference Between Asylum and*

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ineligible for withholding due to one or more grounds for mandatory denial. The only difference in the benefits conferred by withholding under the CAT is that the procedures for terminating deferral of removal benefits are easier for the government than terminating withholding under the CAT." *See* Immigration Legal Resource Center, by Aruna Sury, *Qualifying for Protection Under the Convention Against Torture,* at p. 3, *available at* https://www.ilrc.org/sites/default/files/2023-11/Qualifying%20for%20Protection%20Under%20the%20Convention%20Against%20Torture.pdf (Nov. 2023).

Withholding of Removal, 7 (Oct. 2020) (cited in *Guzman-Chavez*, 594 U.S. at 537).[3] "The reason so few people are deported to third countries is because," while "customary international law holds that a country has a duty to accept the return of its nationals," usually, "countries have no incentive to accept non-citizens." *Id.*

Because (1) Mr. Eni cannot be removed to the only country to which he has a claim of citizenship or legal immigration status, (2) he has "identified facts that substantially decrease the likelihood" he can be removed to another country, and (3) he would be entitled to further legal proceedings seeking relief from removal to another country based on a credible fear of torture or persecution, he has demonstrated "that there is no significant likelihood that he will be removed in the reasonably foreseeable future." *Zavvar*, 2025 WL 2592543 at *7–*8.

That the government is working "diligently" to identify a third country for Mr. Eni's removal does not change that calculus. "[U]nder *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Because Mr. Eni has demonstrated that the government's efforts are not likely to bear fruit, his detention is not authorized by statute or due process. This Court should order him released.

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[3] Available at https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the_difference_between_asylum_and_withholding_of_removal.pdf

Argument

I. Claim One: ICE did not adhere to key regulations implementing the due process rights to notice and a meaningful opportunity to be heard, warranting release.

A. Mr. Eni did not receive notice of the reasons for his revocation or have an opportunity to contest those reasons.

The government does not claim to have fully complied with 8 C.F.R. §§ 241.4 and 241.13. *See* ECF No. 9 at pp. 5–7. For Mr. Eni, those regulations permit his re-detention only if ICE: (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," § 241.13(i)(2); (2) makes that finding "on account of changed circumstances," *id.*; (3) "upon revocation," "notifie[s]" the noncitizen "of the reasons for revocation of his or her release," § 241.13(i)(2), 241.4(*l*)(1); and (4) "affords the [person] an opportunity to respond to the reasons for revocation," *id.*

As Mr. Eni explained in his petition and motion, ICE did not comply with these requirements.

First, the evidence before this Court indicates ICE did not determine that there were "changed circumstances" such that there is now "a significant likelihood that [Mr. Eni] may be removed in the reasonably foreseeable future." § 241.13(i)(2). And the warrant for his arrest on the day of his re-detention find only that "there is probable cause to believe that ENI, FELIX is removable from the United States." ECF No. 9, Exhibit 3; *accord* ECF No. 9, Exhibit 6 (noting Mr. Eni is "subject to removal/deportation"). Indeed, ICE did not even begin its *internal* process of seeking a third country for Mr. Eni's removal until almost two weeks after it re-detained him on November 1, 2025, and it has yet to identify a third country for his removal. ECF No. 9, Vera Decl. at ¶¶ 11–12.

Next, upon Mr. Eni's revocation, ICE did not notify him of "the reasons for revocation of his . . . release." § 241.13(i)(2)(iii); § 241.4(*l*)(1). As he explained in his declaration, "No one has told me what changed to make my removal more likely." ECF No. 1, Exhibit A, Declaration of Felix Eni ("Eni Decl."), at ¶ 24. When he was arrested, he only remembered ICE saying "they knew they could not deport [him] to Nigeria, but that they were going to look for another country." *Id.* at ¶ 19. His declaration is consistent with the written notification he received that day. It informed him only that "your order of supervision has been revoked . . . based on a review of your official alien file and a determination that there are changed circumstances in your case." ECF No. 9, Exhibit 1. "ICE has determined that you can be expeditiously removed from the United States pursuant to the outstanding order of removal against you. On September 18, 2008, you were ordered removed to Nigeria by an authorized U.S. DHS/DOJ official and you were granted a withholding of removal (if applicable) to Nigeria ran [*sic*]. Your case is under review for removal to an alternate country." *Id.*

As Judge Montenegro recently explained as to an identically worded written revocation notification, "ICE's conclusory explanations for revoking Petitioner's release 'did not offer him adequate notice of the basis for the revocation decision such that he could meaningfully respond at the post-detention informal interview.'" *Raskhamdee v. Noem*, No.25-cv-2816-RBM-DEB, 2025 WL 3102037, *4 (S.D. Cal. Nov. 6, 2025) (quoting *Diaz v. Wofford*, No. 25-cv-1079-JLT-EPG, 2025 WL 2581575, *8 (E.D. Cal. Sept. 5, 2025)); *accord Quoc Anh Nguyen v. Noem*, No. 25-cv-2792-LL-VET, 2025 WL 3101979, *2 (S.D. Cal. Nov. 6, 2025) (holding that a similarly "bare-bones explanation does not

contain reasons for the revocation of Petitioner's release"); *Nikolayev v. Noem,* 25-cv-3208-LL-BJW, ECF No. 8, at p. 5 (S.D. Cal. Dec. 10, 2025) (finding such conclusory language "does not satisfy due process.). "Simply to say that circumstances had changed . . . is not enough. Petitioner must be told *what* circumstances had changed or *why* there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3)." *Sarail A.*, __ F. Supp. 3d __, 2025 WL 2533673 at *10 (emphasis in original).

Finally, ICE did not "afford[] [Mr. Eni] an opportunity to respond to the reasons for revocation." 8 C.F.R. §§ 241.13(i)(3); 241.4(*l*)(1). "[W]hile an informal interview apparently occurred, Petitioner could not have responded to the reasons for revocation, because they were not given." *Sarail A.*, __ F. Supp. 3d __, 2025 WL 2533673 at *10. Mr. Eni was not provided any reasons for why ICE thought his removal was now likely in the foreseeable future during the informational interview. Indeed, he requested to speak with his attorney before proceeding with an informal interview, and did not provide ICE a written statement or any documents, ECF No. 9, Exhibit 2.

In the last two and a half months, multiple judges from this district have ordered release for failure to follow these regulations for similar reasons. *See, e.g., Soryadvongsa,* 2025 WL 3125821; *Ghafouri v. Noem*, No. 25-cv-2675-RBM, ECF No. 11 (S.D. Cal. Nov. 4, 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025); *Constantinovici v. Bondi*, __ F. Supp. 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10,

2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Eniv. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025). This Court should do the same.

B. Mr. Eni need not show prejudice, although he can, because the regulations implement the core due process guarantees of notice and an opportunity to be heard while being detained.

The government's two remaining arguments on Mr. Eni's regulatory claims—that Mr. Eni must show prejudice, and that the regulations do not implement due process and protected liberty interests—also fail.

First, Mr. Eni need not show prejudice from these regulatory claims. "[T]he 'norm' when ICE fails to conduct an 'informal interview promptly' is that 'courts across the country have ordered the release of individuals stemming from ICE's illegal detention." *Soryadvongsa*, 2025 WL 3125821 at *3 (quoting *KEO v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, *6–*7 (W.D. Ky. Sept. 4, 2025)). As Judge Schopler recently reasoned, "Especially in the context of civil detentions—when constitutional safeguards are at their zenith—this Court is unwilling to import such a prejudice analysis into regulations or binding caselaw that don't mention it." *Id.*

To flesh this point out, "[t]here are two types of regulations: (1) those that protect fundamental due process rights, and (2) and those that do not." *Martinez v. Barr*, 941 F.3d 907, 924 n.11 (9th Cir. 2019) (cleaned up). "A violation of the first type of regulation . . . implicates due process concerns even without a prejudice inquiry." *Id.* (cleaned

up). Here, "[t]here can be little argument that ICE's requirement that noncitizens be afforded an informal interview—arguably the most bare-bones form of an opportunity to be heard—derives from the fundamental constitutional guarantee of due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 n.26 (W.D.N.Y. May 2, 2025). No showing of prejudice is required.

Regardless, a violation of a regulation is prejudicial where, as here, "the merits" of an immigrant's case for relief "were never considered by the agency at all." *Arizmendi-Medina v. Garland*, 69 F.4th 1043, 1052 (9th Cir. 2023). Faced with that total deprivation, a petitioner need not point to the specific "evidence [he] would have presented to support [his] assertions" or make "any allegations as to what the petitioner or his witnesses might have said." *Id.* (cleaned up).

And Mr. Eni could "present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (cleaned up). He would have had a very strong argument against re-detention had ICE given him notice and an opportunity to respond. Importantly, ICE is fully capable of trying to get a travel document while Mr. Eni remained at liberty. Mr. Eni has complied with ICE's requests that he attend biannual and annual check-in appointments while he remained at liberty for the last 17 years. Eni Decl. at ¶¶ 13–14; *see also* ECF No. 1, Exhibit B (check-in appointment receipts). Detaining him is therefore unnecessary. Mr. Eni deserved a chance to make that case upon his re-detention. Because ICE did not make any of the proper findings, let alone give Mr. Eni timely notice and a chance to contest them, he must be released.

Second, of course § 241.13(i) and § 241.4(l)(1) implement the basic due process protections of notice and an opportunity to be heard before being detained indefinitely. Their violation is an enforceable violation of a protected interest in being free from indefinite detention. "When someone's most basic right of freedom is taken away, that person is entitled to at least some minimal process; otherwise, we all are at risk to be detained—and perhaps deported—because someone in the government thinks we are not supposed to be here." *Ceesay*, 781 F. Supp. 3d at 165.

In arguing otherwise, the government "confuses [Mr. Eni's] right to an order of supervision, which ICE indeed has discretion to grant or deny, with his right not to be detained without adequate—in fact, without *any*—process. The right to be free from detention can never be dismissed as discretionary." *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)).

"When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(1) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*). "The procedures in § 241.4" and § 241.13 therefore "are not meant merely to facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees."

Jimenez, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R. §§ 241.4, 241.13 are "intended to provide due process to individuals in [Mr. Eni's] position," *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable.

Because the government failed to comply with core requirements of § 241.4 and § 241.13 when revoking Mr. Eni's release, it should, "[l]ike many other district courts within this circuit," "find[] that these failures constitute a violation of Petitioner's due process rights and justif[y] his release." *Bui v. Warden of Otay Mesa Detention Facility*, No. 25-cv-2111-JES, 2025 WL 2988356, *5 (S.D. Cal. Oct. 23, 2025).

II. Claim Two: There is no significant likelihood that Mr. Eni will be removed in the reasonably foreseeable future under *Zadvydas*.

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

Because (1) Mr. Eni has been detained for more than 90 days after his order became final, and (2) there is no significant likelihood of his removal (3) in the reasonably foreseeable future, this Court should grant his petition and order him released.

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

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A. It has been more than 17 years since Mr. Eni's removal order became administratively final, allowing him to challenge and rebut the presumption that his continued detention is constitutional.

Mr. Eni was ordered removed to Nigeria on September 18, 2008, and granted withholding of removal that same day. Vera Decl. at ¶ 8. He was released from immigration custody on an Order of Supervision about a month later, on October 28, 2008. *Id.* at ¶ 9.

Neither party appealed the immigration judge's decision.[4] As such, the withholding of removal order became administratively final thirty days later, on October 18, 2008. *Id.*; *see* 8 C.F.R. § 1241.1(c). Mr. Eni's statutory removal period, during which the "Attorney General shall detain" him, thus expired 90 days after that on January 16, 2009. *See* 8 U.S.C. § 1231(a)(2)(A), (b)(1)(A), (B)(i).

Mr. Eni is thus in the subsequent discretionary detention period, during which he can rebut the presumption that his detention is authorized. In *Zadvydas*, the Supreme Court "recognized a 'presumptively'—not categorically—reasonable period of detention" following a final removal order of six months. *Puertas-Mendoza v. Bondi*, No. SA-25-CA-890-XR, 2025 WL 3142089, *2 (W.D. Tex. Oct. 22, 2025) (quoting *Zadvydas*, 533 U.S. at 699). "But a presumption 'is just that—a presumption.'" *Zavvar*, 2025 WL 2592543 at *5 (quoting *Clark v. Martinez*, 543 U.S. 371, 387 (2005) (O'Connor, J., concurring)).

"Notably, the Court specifically analogized the six-month presumption to the presumption established in *County of Riverside v.*

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[4] *See* EOIR Automated Case Information for Feliz Da Da Eni, A-Number 026-649-480, *available at* https://acis.eoir.justice.gov/en/ ("BIA Case Information: No appeal was received for this case."). Deportation Officer Vera alleges Mr. Eni's order of removal became final even sooner—on September 18, 2008. Vera Decl. at ¶ 9.

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

In arguing Mr. Eni's case is "premature," the government cites several cases, none of which address whether the presumption is rebuttable. ECF No. 9 at p. 5. As *Zavvar* notes, the issue "may not have been presented to them." 2025 WL 2592543 at *6. Here, in this case, in which Mr. Eni does argue that he can rebut the presumption, this Court should consider the merits—whether there is a significant likelihood of his removal in the reasonably foreseeable future.

B. Mr. Eni has demonstrated there is no "significant likelihood of removal."

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

The first piece focuses on *whether* Mr. Eni will likely be removed. His detention is not permissible if it is not "significant[ly] like[ly]" that ICE will be able to remove him. *Id.* This inquiry targets "not only the *existence* of untapped possibilities, but also [the] probability of success

in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (emphasis in original). In other words, even if "there remains *some* possibility of removal," a petitioner can still meet his burden if a successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

Mr. Eni has shown it is not significantly likely that he will be removed from the United States.

First, because he received withholding of removal to Nigeria, Mr. Eni cannot be removed to the sole country in which he has citizenship and lawful immigration status. ECF No. 9 at pp. 2 & 4; *see also* Vera Decl. at ¶ 8.

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

Second, the government has not identified *any* third countries that it contacted to request Mr. Eni's resettlement. Vera Decl. at ¶ 11. The government simply asserts the "ERO has worked diligently to execute his removal," because it "contacted ERO Removal and International Operations" on November 12, 2025 and December 12, 2025. *Id.* at ¶ 11. Indeed, ICE has not identified any third countries

during the six weeks since Mr. Eni was re-detained on November 1, 2025. *Id.* at ¶¶ 10–13.

Critically, the government routinely attempts to remove petitioners like Mr. Eni to countries who have agreements with the United States to accept third-country deportees who are not their nationals. *See* Jacqueline Metzler, *What Are Third-Country Deportations, and Why Is Trump Using Them?*, Council on Foreign Relations (Sept. 3, 2025) (identifying Mexico, Costa Rica, Panama, South Sudan, Uganda, Rwanda, and Eswatini as the countries that currently have such agreements).[5] Mr. Eni has asserted his fear of being removed to another African country. Eni Decl. at ¶ 23. And, given his elderly age and physical health conditions, it is very unlikely he will be deported to any of the other countries with whom the United States has an agreement.

Third, that the government is optimistic and "diligently" trying to identify third countries does not demonstrate that Mr. Eni's continued detention is reasonable. ECF No. 9 at p. 5; Vera Decl. at ¶ 11. The petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

"[M]ere good-faith efforts [are] insufficient under *Zadvydas*." No. 25-cv-2740, 2025 WL 3171738, *5 (citing *Nadarajah v. Gonzales*, 443

[5] Available at https://www.cfr.org/article/what-are-third-country-deportations-and-why-trump-using-them.

F.3d 1069, 1081–82 (9th Cir. 2006)). Instead, "the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun*, 2019 WL 78984 at *5.

Mr. Eni's case is thus much like *Munoz-Saucedo*. There, the petitioner was granted withholding of removal to his country of origin, Mexico. He overcame the presumption that his detention was reasonable by showing "he cannot be removed to his country of origin, that removing similarly situated individuals has been historically rare, that ICE tried and failed to find a third country willing to accept him during the initial 90-day detention period, and that there is presently no country in the world willing to accept him." *Munoz-Saucedo*, 789 F. Supp. 3d at 399. So too here: Mr. Eni cannot be removed to his country of origin, Nigeria; removals to third countries has been historically rare; and ICE either tried and failed—or didn't try at all—to remove him during the 90-day detention period, which is further evidenced by his release on an Order of Supervision more than 17 years ago.

For the same reasons as in *Munoz-Saucedo*, Mr. Eni's removal is not significantly likely to occur.

C. Any third-country removal will not occur "in the reasonably foreseeable future."

Even if ICE could eventually remove Mr. Eni, it will not happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. There are two reasons why.

First, the government has not submitted *any* requests for Mr. Eni to be resettled in a third country in the last 17 years. Vera Decl. at ¶¶ 11–13. It has now been more than six weeks since his re-detention on November 1, 2025, and no third countries have been identified, let

alone contacted, regarding his resettlement. *Id.* at ¶¶ 10–13. "The lack of any sign that [the two countries] [are] actively considering accepting [the petitioner] further demonstrates that removal is not likely in the foreseeable future." *Zavvar*, 2025 WL 2592543 at *7.

Second, even if a third country *does* issue travel documents to Mr. Eni, "any efforts to remove him to a third country would likely be delayed by proceedings contesting his removal to the third country." *Villanueva*, __ F. Supp. 3d __, 2025 WL 2774610 at *10. No third countries have been identified as countries to which the government could remove Mr. Eni in his removal order. ECF No. 9 at p. 4; Vera Decl. at ¶¶ 11–13. As a result, Mr. Eni would be entitled to, at a minimum, move to reopen his proceedings to raise a fear-based challenge to his removal to any country other than Nigeria. *See, e.g.*, *Nguyen v. Scott*, __ F. Supp. 3d __, 2025 WL 2419288, *18–*23 (W.D. Wash. Aug. 21, 2025) (explaining this entitlement and developing law on this point).

Mr. Eni would certainly seek to raise a claim of fear of persecution upon his removal to any African country. Eni Decl. at ¶ 23. And he would be entitled to raise those fears in potentially "additional, lengthy proceedings." *Munoz-Saucedo*, 2025 WL 1750346 at *7.

Mr. Eni's "detention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future." *Hassoun*, 2019 WL 78984 at *6. "The government's active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents

will actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). "[I]f DHS has no idea of when it might reasonably expect [Mr. Eni] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it *might* occur—in the reasonably foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

Because Mr. Eni has demonstrated that his removal is not only unlikely on the merits, but that it is also unlikely as a matter of time in the reasonably foreseeable future, this Court should grant his petition and order him released.

Conclusion

For all these reasons, this Court should grant the petition or enter a temporary restraining order and injunction. In either case, the Court should (1) order Mr. Eni's immediate release; (2) prohibit Respondents from re-detaining Mr. Eni unless and until Respondents obtain a travel document; (3) prohibit Respondents from re-detaining Mr. Eni without first following all regulatory procedures; and (4) prohibit Respondents from removing Mr. Eni to a third country without following the process laid out in his prayer for relief.

Respectfully submitted,

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s/ Armilla Staley-Ngomo

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