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10 AVETIK ARUTYUNOVICH MOSKOVYAN

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 AVETIK ARUTYUNOVICH  
14 MOSKOVYAN,

15 Petitioner,

16 v.

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

27 Respondents.

Civil Case No.: '25CV3537 RBMAHG

**Petition for Writ  
of  
Habeas Corpus**

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

26 <sup>1</sup> Federal Defenders of San Diego, Inc., is filing the instant petition and  
27 associated motion for temporary restraining order with provisional  
28 appointment under Chief Judge Order No. 134. Mr. Moskovyan's  
financial eligibility for representation is included in a sworn statement  
attached to this petition.

1 INTRODUCTION

2 Petitioner Avetik Arutyunovich Moskovyan was born in the  
3 Union of Soviet Socialist Republics (also known as the Soviet Union or  
4 U.S.S.R.) in early-1967.<sup>2</sup> He is 58 years old. He first came to the United  
5 States on July 19, 1988, as a refugee sponsored by a family in North  
6 Hollywood, California. He entered the United States with thirteen of  
7 his family members, including his father; step-mother; two brothers,  
8 along with their wives and children; and three sisters (one full sister,  
9 one half-sister, and one step-sister). They were all Armenian refugees  
10 from the Soviet Union.

11 Mr. Moskovyan applied for his legal permanent residency in or  
12 around 1989 and obtained his green card in or around 1990. On August  
13 19, 2013, he was sentenced to 76 months in prison, followed by three  
14 years of supervised release, for a money laundering conspiracy offense  
15 in the Southern District of Georgia.

16 Mr. Moskovyan was released from prison on April 8, 2019, and  
17 transferred to the Mesa Verde ICE Processing Facility in Bakersfield,  
18 California. On May 31, 2019, he was ordered removed by an  
19 immigration judge, and granted withholding of removal that same day.  
20 However, he was held in immigration custody for an additional nine  
21 and a half months, until he filed and won a pro se habeas petition.

22 Mr. Moskovyan was eventually released on an Order of  
23 Supervision on January 23, 2020. A week or two later, he went to the  
24 Los Angeles ICE office and was told by an officer that he needed to  
25 check-in every three months. He checked in twice before being told not  
26 to report in person anymore due to the COVID-19 global pandemic.

27  
28 <sup>2</sup> The Soviet Union officially dissolved on December 26, 1991, and was replaced by 15 independent countries.

1 During his second visit, an ICE officer said he was going to send  
2 Mr. Moskovyan an email about his next appointment, which he never  
3 received. For the next several years, Mr. Moskovyan continued being  
4 supervised by the U.S. Probation Office, even checking in with them  
5 over Facetime during the COVID-19 global pandemic.

6 Mr. Moskovyan was re-detained by ICE the early morning of  
7 Wednesday, October 15, 2025. He was driving Lyft and taking a  
8 passenger from the Los Angeles International Airport (LAX) to Camp  
9 Pendleton at around midnight. When he arrived to Camp Pendleton at  
10 about 1:20 a.m., military personnel asked him and his passenger for  
11 identification. They both complied, and the personnel told  
12 Mr. Moskovyan to pull over. The personnel scanned Mr. Moskovyan's  
13 identification, had him wait outside for about an hour, placed  
14 something near my tire, and told him he would get a flat tire if he  
15 moved his car.

16 Thereafter, the personnel asked Mr. Moskovyan if he had a green  
17 card or passport, to which he responded "no." They then said he was  
18 being detained because he was there illegally. About an hour later,  
19 Mr. Moskovyan was handcuffed and placed under arrest. The  
20 personnel took him inside of Camp Pendleton before two ICE officers  
21 came to transfer him to the ICE office in downtown San Diego.

22 Mr. Moskovyan told the ICE officers he had won a habeas  
23 petition back in 2019. The officers simply responded that was during  
24 the Biden administration, and that they were now under the Trump  
25 administration. When Mr. Moskovyan explained he was from the  
26 U.S.S.R., the officers responded he was going to be deported to Russia.  
27 Mr. Moskovyan was held at the San Diego ICE office for about two  
28 days before being transferred to the Otay Mesa Detention Center.

1 Contrary to regulation, Mr. Moskovyan did not receive notice  
2 from ICE about why he was being re-detained. Nor did ICE notify him  
3 of any changed circumstances that made his removal more likely. He  
4 was not given an informal interview. He has not had an opportunity to  
5 contest his re-detention. He has not spoken to an immigration judge.  
6 He has not been given any paperwork. And no one has told him  
7 whether he violated the conditions of his release. Mr. Moskovyan has  
8 now been detained almost two months, with no information about  
9 whether ICE has obtained travel documents.

10 Worse yet, on July 9, 2025, ICE adopted a new policy permitting  
11 removals to third countries with no notice, six hours' notice, or 24  
12 hours' notice depending on the circumstances, providing no meaningful  
13 opportunity to make a fear-based claim against removal.

14 Mr. Moskovyan remains fearful he will be removed to Russia or  
15 Armenia, which would still result in persecution or torture for the  
16 same reasons he was granted withholding of removal back in 2019.

17 Mr. Moskovyan's detention violates his statutory and regulatory  
18 rights, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the Fifth  
19 Amendment. Courts in this district have agreed in similar  
20 circumstances as to each of Mr. Moskovyan's claims. Specifically:

21 (1) *Regulatory and due process violations*: Mr. Moskovyan must  
22 be released because ICE's failure to follow its own regulations about  
23 notice and an opportunity to be heard violate due process. *See, e.g.*,  
24 *Constantinovici v. Bondi*, \_\_ F. Supp. 3d \_\_, 2025 WL 2898985, No. 25-  
25 cv-2405-RBM (S.D. Cal. Oct. 10, 2025); *Phan v. Noem*, 2025 WL  
26 2898977, No. 25-cv-2422-RBM-MSB, \*3-\*5 (S.D. Cal. Oct. 10, 2025);  
27 *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10,  
28 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No.

1 12 (S.D. Cal. Oct. 9, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-  
2 2433-CAB (S.D. Cal. Sept. 30, 2025); *Van Tran v. Noem*, 2025 WL  
3 2770623, No. 25-cv-2334-JES, \*3 (S.D. Cal. Sept. 29, 2025); *Rokhfirooz*  
4 *v. Larose*, 2025 WL 2646165, No. 25-cv-2053-RSH (S.D. Cal. Sept. 15,  
5 2025) (all either granting temporary restraining orders releasing  
6 noncitizens, or granting habeas petitions outright, due to ICE  
7 regulatory violations during recent re-detentions of released  
8 noncitizens previously ordered removed).

9 (2) *Zadvydas* violations: Mr. Moskovyan must also be released  
10 under *Zadvydas* because—having proved unable to remove him for the  
11 past eleven years—the government cannot show that there is a  
12 “significant likelihood of removal in the reasonably foreseeable future.”  
13 533 U.S. at 701. *See, e.g., Conchas-Valdez v. Casey, et al.*, 2025 WL  
14 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v.*  
15 *Noem*, No. 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025)  
16 (granting habeas petitions releasing noncitizens due to *Zadvydas*  
17 violations).

18 (3) *Third-country removal statutory and due process violations*:  
19 This Court should enjoin ICE from removing Mr. Moskovyan to a third  
20 country without providing an opportunity to assert fear of persecution  
21 or torture before an immigration judge. *See, e.g., Louangmilith v.*  
22 *Noem*, 2025 WL 2881578, No. 25-cv-2502-JES, \*4 (S.D. Cal. Oct. 9,  
23 2025); *Rebenok*, No. 25-cv-2171-TWR, ECF No. 13; *Van Tran v. Noem*,  
24 2025 WL 2770623 at \*3; *Nguyen Tran v. Noem*, No. 25-cv-2391-BTM,  
25 ECF No. 6 (S.D. Cal. Sept. 18, 2025) (all either granting temporary  
26 restraining orders or habeas petitions ordering the government to not  
27 remove petitioners to third countries pending litigation or reopening of  
28 their immigration cases).

1 This Court should grant this habeas petition and issue  
2 appropriate injunctive relief on all three grounds.

3 STATEMENT OF FACTS

4 **I. Mr. Moskovyan is ordered removed, granted withholding**  
5 **of removal under the Convention Against Torture, and**  
6 **then released by ICE for almost six years, until he is**  
7 **arrested while dropping off a Lyft rider at Camp**  
8 **Pendleton.**

9 Mr. Moskovyan was ordered removed from the United States and  
10 granted withholding of removal to the Soviet Union on May 31, 2019.  
11 Declaration of Avetik Arutyunovich Moskovyan, Exhibit A (“Exh. A”)  
12 at ¶ 8.<sup>3</sup> He was held in immigration detention for about nine and a half  
13 months before filing a pro se habeas petition. *Id.* at ¶¶ 7–8. On  
14 January 23, 2020, he was released on an Order of Supervision. *Id.* at  
15 ¶ 9.

16 About a week or two later, Mr. Moskovyan went to the Los  
17 Angeles ICE office and was told he needed to check-in every three  
18 months. *Id.* at ¶ 9. He went to two check-in appointments before being  
19 told he did not have to report in person anymore due to the COVID-19  
20 global pandemic. *Id.* During his second check-in, an ICE officer told  
21 him he would receive an email about his next appointment, which he  
22 never received. *Id.* However, Mr. Moskovyan was still on supervised  
23 release during that time, and continued to check-in with the U.S.  
24 Probation Office over Facetime during the pandemic. *Id.* at ¶ 10. He  
25 believes his supervised release term ended on or around April 8, 2022.  
26 *Id.*

27 During the early morning hours of October 15, 2025,  
28 Mr. Moskovyan was hired as a Lyft driver for a passenger traveling

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<sup>3</sup> EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

1 from the Los Angeles International Airport (LAX) to Camp Pendleton.  
2 *Id.* at ¶ 11. He picked up the passenger from LAX at around midnight,  
3 and arrived to Camp Pendleton at around 1:20 a.m. *Id.* When he  
4 arrived to Camp Pendleton, the military personnel asked Mr.  
5 Moskovyan and his passenger for identification. *Id.* They both  
6 complied, and the personnel told Mr. Moskovyan to pull over. *Id.* The  
7 personnel scanned Mr. Moskovyan's identification, had him wait  
8 outside for an hour, placed something near his tire, and told him he  
9 would get a flat tire if he moved the car. *Id.*

10 The personnel asked Mr. Moskovyan if he had a green card or  
11 passport, to which he responded "no." *Id.* at ¶ 13. They then said he  
12 was being detained because he was there illegally. *Id.*

13 About an hour later, the personnel told Mr. Moskovyan he was  
14 under arrest, and placed handcuffs on him. *Id.* at ¶ 14. They took him  
15 inside of Camp Pendleton for about an hour before two ICE officers  
16 came to transport him to the ICE office in downtown San Diego. *Id.*

17 Mr. Moskovyan told the ICE officers he had won a habeas  
18 petition back in 2019. *Id.* at ¶ 15. The officers simply responded that  
19 was during the Biden administration, and that they were now under  
20 the Trump administration. *Id.* When Mr. Moskovyan explained he  
21 came from U.S.S.R., he was told he was going to be deported to Russia.  
22 *Id.* at ¶ 16.

23 The ICE officers never told Mr. Moskovyan why he was being re-  
24 detained. *Id.* at ¶ 16. Nor did he ever receive notice of why he was  
25 being re-detained. *Id.* He was not given an informal interview. *Id.* He  
26 has not been able to contest his detention. *Id.* He has not spoken to an  
27 immigration judge since his re-detention. *Id.* He has not been given  
28 any paperwork. *Id.* No one has told him what changed to make his

1 removal more likely. *Id.* And no one has told him that he violated the  
2 conditions of his release. *Id.*

3 Mr. Moskovyan is scared to go to Russia, or any former U.S.S.R.  
4 country, for the same reasons he was granted withholding of removal  
5 back in 2019. *Id.* at ¶ 21. He is also scared to go to those countries  
6 because of the ongoing war in those areas. *Id.*

7 In addition, all of Mr. Moskovyan's immediate family members  
8 reside in the United States. *Id.* He does not have any family in Russia,  
9 or any other former U.S.S.R. country. *Id.*

10 **II. The government is carrying out deportations to third**  
11 **countries without providing sufficient notice and**  
12 **opportunity to be heard.**

13 When immigrants cannot be removed to their home country, ICE  
14 has begun deporting those individuals to third countries without  
15 adequate notice or a hearing. *See* Edward Wong et al., *Inside the*  
16 *Global Deal-Making Behind Trump's Mass Deportations*, N.Y. TIMES  
17 (June 25, 2025).<sup>4</sup> The Administration reportedly has negotiated with at  
18 least 58 countries to accept deportees from other nations. *Id.* On June  
19 25, 2025, the New York Times reported that seven countries—Costa  
20 Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and  
21 Rwanda—had agreed to accept deportees who are not their own  
22 citizens. *Id.*

23 This summer and fall, ICE has carried out highly publicized third  
24 country deportations to prisons in South Sudan, Eswatini, Ghana, and  
25 Rwanda. Nokukhanya Musi & Gerald Imray, *10 more deportees from*  
26 *the US arrive in the African nation of Eswatini*, Associated Press (Oct.  
27

28 <sup>4</sup> Available at <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html> (updated June 26, 2025).

1 6, 2025).<sup>5</sup> At least four men deported to Eswatini have remained in a  
2 maximum-security prison there for nearly three months without  
3 charge and without access to counsel; another six are detained  
4 incommunicado in South Sudan, and another seven are being held in  
5 an undisclosed facility in Rwanda. *Id.*

6 The Administration has reportedly negotiated with countries to  
7 have many of these deportees imprisoned in prisons, camps, or other  
8 facilities. The government paid El Salvador about \$5 million to  
9 imprison more than 200 deported Venezuelans in a maximum-security  
10 prison notorious for gross human rights abuses, known as CECOT. *See*  
11 *id.* In February, Panama and Costa Rica took in hundreds of deportees  
12 from countries in Africa and Central Asia and imprisoned them in  
13 hotels, a jungle camp, and a detention center. *Id.*; Vanessa  
14 Buschschluter, *Costa Rican court orders release of migrants deported*  
15 *from U.S.*, BBC (Jun. 25, 2025).<sup>6</sup> On July 4, 2025, ICE deported eight  
16 men to South Sudan. *See Wong, supra.* On July 15, ICE deported five  
17 men to the tiny African nation of Eswatini where they are reportedly  
18 being held in solitary confinement. Gerald Imray, *3 Deported by US*  
19 *held in African Prison Despite Completing Sentences, Lawyers Say*,  
20 PBS (Sept. 2, 2025).<sup>7</sup> Many of these countries are known for human  
21 rights abuses or instability. For instance, conditions in South Sudan  
22 are so extreme that the U.S. State Department website warns  
23 Americans not to travel there, and if they do, to prepare their will,  
24

25 \_\_\_\_\_  
26 <sup>5</sup> Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

27 <sup>6</sup> Available at <https://www.bbc.com/news/articles/cwyrn42kp7no>.

28 <sup>7</sup> Available at <https://www.pbs.org/newshour/nation/3-deported-by-u-s-held-in-african-prison-despite-completing-sentences-lawyers-say>.

1 make funeral arrangements, and appoint a hostage-taker negotiator  
2 first. *See Wong, supra.*

3 On June 23 and July 3, 2025, the Supreme Court issued a stay of  
4 a national class-wide preliminary injunction issued in *D.V.D. v. U.S.*  
5 *Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL  
6 1142968, at \*1, 3 (D. Mass. Apr. 18, 2025), which required ICE to  
7 follow statutory and constitutional requirements before removing an  
8 individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*,  
9 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186  
10 (U.S. July 3, 2025).<sup>8</sup> On July 9, 2025, ICE rescinded previous guidance  
11 meant to give immigrants a “meaningful opportunity’ to assert claims  
12 for protection under the Convention Against Torture (CAT) before  
13 initiating removal to a third country” like the ones just described.  
14 Third Country Removal Policy, Exhibit B (“Exh. B”).

15 Under the new guidance, ICE may remove any immigrant to a  
16 third country “without the need for further procedures,” as long as—in  
17 the view of the State Department—the United States has received  
18 “credible” “assurances” from that country that deportees will not be  
19 persecuted or tortured. *Id.* at 1. If a country fails to credibly promise  
20 not to persecute or torture releasees, ICE may still remove immigrants  
21

22  
23 <sup>8</sup> Though the Supreme Court’s order was unreasoned, the dissent noted  
24 that the government had sought a stay based on procedural arguments  
25 applicable only to class actions. *Dep’t of Homeland Sec. v. D.V.D.*, 145  
26 S. Ct. 2153, 2160 (2025) (Sotomayor, J., dissenting). Thus, “even if the  
27 Government [was] correct that classwide relief was impermissible” in  
28 *D.V.D.*, Respondents still “remain[] obligated to comply with orders  
enjoining [their] conduct with respect to individual plaintiffs” like  
Mr. Moskovyan. *Id.* In short, the Supreme Court’s decision does not  
override this Court’s authority to grant individual injunctive relief. *See*  
*Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at \*20–23  
(W.D. Wash. Aug. 21, 2025).

1 there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours'  
2 notice. But “[i]n exigent circumstances,” a removal may take place in  
3 as little as six hours, “as long as the alien is provided reasonably  
4 means and opportunity to speak with an attorney prior to the  
5 removal.” *Id.*

6       Upon serving notice, ICE “will not affirmatively ask whether the  
7 alien is afraid of being removed to the country of removal.” *Id.*  
8 (emphasis original). If the noncitizen “does not affirmatively state a  
9 fear of persecution or torture if removed to the country of removal  
10 listed on the Notice of Removal within 24 hours, [ICE] may proceed  
11 with removal to the country identified on the notice.” *Id.* at 2. If the  
12 noncitizen “does affirmatively state a fear if removed to the country of  
13 removal” then ICE will refer the case to U.S. Citizenship and  
14 Immigration Services (“USCIS”) for a screening for eligibility for  
15 withholding of removal and protection under the Convention Against  
16 Torture (“CAT”). *Id.* at 2. “USCIS will generally screen within 24  
17 hours.” *Id.* If USCIS determines that the noncitizen does not meet the  
18 standard, the individual will be removed. *Id.* If USCIS determines that  
19 the noncitizen has met the standard, then the policy directs ICE to  
20 either move to reopen removal proceedings “for the sole purpose of  
21 determining eligibility for [withholding of removal protection] and  
22 CAT” or designate another country for removal. *Id.*

23       Under this policy, the United States has deported noncitizens to  
24 prisons and military camps in Rwanda, Eswatini, South Sudan, and  
25 Ghana. Many are still detained to this day, in countries to which they  
26 have never been, without charge. *See Musi & Gerald Imray, supra.*

27       Based on the facts of Mr. Moskovyan’s individual case, it is  
28 evident that ICE has not obtained travel documents from any third

1 country. This is evident because ICE has had more than six years to  
2 obtain travel documents and has not done so. Indeed, Mr. Moskovyan  
3 has now been in ICE custody for about two months, and there is no  
4 indication that ICE anticipates receiving travel documents any time in  
5 the reasonably foreseeable future.

6 **CLAIMS FOR RELIEF**

7 This Court should grant this petition and order two forms of  
8 relief.

9 First, it should order Mr. Moskovyan's immediate release. ICE  
10 failed to follow its own regulations requiring changed circumstances  
11 before re-detention, as well as a chance to promptly contest a re-  
12 detention decision. And *Zadvydas v. Davis* holds that immigration  
13 statutes do not authorize the government to detain immigrants like  
14 Mr. Moskovyan, for whom there is "no significant likelihood of removal  
15 in the reasonably foreseeable future." 533 U.S. 678, 701 (2001).

16 Second, it should enjoin the Respondents from removing  
17 Mr. Moskovyan to a third country without first providing notice and a  
18 sufficient opportunity to be heard before an immigration judge.

19 **III. Claim 1: ICE failed to comply with its own regulations**  
20 **before re-detaining Mr. Moskovyan, violating his rights**  
21 **under applicable regulations and due process.**

22 Two regulations establish the process due to someone who is re-  
23 detained in immigration custody following a period of release. 8 C.F.R.  
24 § 241.4(l) applies to all re-detentions, generally. 8 C.F.R. § 241.13(i)  
25 applies as an added, overlapping framework to persons released upon  
26 good reason to believe that they will not be removed in the reasonably  
27 foreseeable future, as Mr. Moskovyan was. *See Phan v. Noem*, 2025 WL  
28 2898977, No. 25-CV-2422-RBM-MSB, \*3-\*5 (S.D. Cal. Oct. 10, 2025)  
(explaining this regulatory framework and granting a habeas petition

1 for ICE's failure to follow these regulations for a refugee of Vietnam  
2 who entered the United States before 1995); *Rokhfirooz*, No. 25-CV-  
3 2053-RSH-VET, 2025 WL 2646165 at \*2 (same as to an Iranian  
4 national).

5 These regulations permit an official to "return [the person] to  
6 custody" only when the person "violate[d] any of the conditions of  
7 release," 8 C.F.R. §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an  
8 appropriate official "determines that there is a significant likelihood  
9 that the alien may be removed in the reasonably foreseeable future,"  
10 and makes that finding "on account of changed circumstances,"  
11 § 241.13(i)(2).

12 No matter the reason for re-detention, the re-detained person is  
13 entitled to certain procedural protections. For one, "[u]pon revocation,"  
14 the noncitizen 'will be notified of the reasons for revocation of his or  
15 her release or parole.'" *Phan*, 2025 WL 2898977 at \*3, \*4 (quoting  
16 §§ 241.4(l)(1), 241.13(i)(3)). Further, the person "'will be afforded an  
17 initial informal interview promptly after his or her return' to be given  
18 'an opportunity to respond to the reasons for revocation stated in the  
19 notification.'" *Id.*

20 In the case of someone released under § 241.13(i), the regulations  
21 also explicitly require the interviewer to allow the re-detained person  
22 to "submit any evidence or information that he or she believes shows  
23 there is no significant likelihood he or she be removed in the  
24 reasonably foreseeable future, or that he or she has not violated the  
25 order of supervision." § 241.13(i)(3).

26 ICE is required to follow its own regulations. *United States ex rel.*  
27 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); see *Alcaraz v. INS*,  
28 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that

1 agencies may be required to abide by certain internal policies is well-  
2 established.”). A court may review a re-detention decision for  
3 compliance with the regulations, and “where ICE fails to follow its own  
4 regulations in revoking release, the detention is unlawful and the  
5 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at  
6 \*4 (collecting cases); *accord Phan*, 2025 WL 2898977 at \*5.

7 ICE followed none of its regulatory prerequisites to re-detention  
8 here.

9 First, ICE did not identify a proper reason under the regulations  
10 to re-detain Mr. Moskovyan. Mr. Moskovyan was not returned to  
11 custody because of a conditions violation, and there was apparently no  
12 determination before or at his re-detention that there are “changed  
13 circumstances” such that there is “a significant likelihood that  
14 [Mr. Moskovyan] may be removed in the reasonably foreseeable  
15 future.” § 241.13(i)(2).

16 Second, ICE did not notify Mr. Moskovyan of the reasons for his  
17 re-detention upon revocation of release. *See* §§ 241.4(l)(1), 241.13(i)(3).  
18 He was re-detained on October 15, 2025. Exh. A at ¶¶ 11–16. As he  
19 explained on November 6, 2025, “[t]he ICE officers did not tell me why  
20 I was being re-detained.” *Id.* at ¶ 16.

21 Third, Mr. Moskovyan has yet to receive the informal interview  
22 required by regulation. *Id.* Nor has he been afforded a meaningful  
23 opportunity to respond to the reasons for revocation or submit evidence  
24 rebutting his re-detention. *Id.* No one from ICE has ever invited him to  
25 contest his detention. *Id.*

26 Numerous courts have released re-detained immigrants after  
27 finding that ICE failed to comply with applicable regulations this  
28 summer and fall. *See, e.g., Phan*, 2025 WL 2898977 at \*5; *Rokhfirooz*,

1 2025 WL 2646165; *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*,  
2 2025 WL 2683988; *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166  
3 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y.  
4 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017); *Zhu*  
5 *v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at \*7–9  
6 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA,  
7 2025 WL 2430267, at \*10–12 (D. Or. Aug. 21, 2025); *Escalante v.*  
8 *Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2491782, at \*2–3 (E.D. Tex.  
9 July 18, 2025); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL  
10 1993771, at \*4 (E.D. Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at \*2;  
11 *M.Q. v. United States*, 2025 WL 965810, at \*3, \*5 n.1 (S.D.N.Y. Mar.  
12 31, 2025).

13 “[B]ecause officials did not properly revoke petitioner’s release  
14 pursuant to the applicable regulations, that revocation has no effect,  
15 and [Mr. Moskovyan] is entitled to his release (subject to the same  
16 Order of Supervision that governed his most recent release).” *Liu*, 2025  
17 WL 1696526, at \*3.

18 **IV. Claim 2: Mr. Moskovyan’s detention violates *Zadvydas* and**  
19 **8 U.S.C. § 1231.**

20 **A. Legal background**

21 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court  
22 considered a problem affecting people like Mr. Moskovyan: Federal law  
23 requires ICE to detain an immigrant during the “removal period,”  
24 which typically spans the first 90 days after the immigrant is ordered  
25 removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period  
26 expires, detention becomes discretionary—ICE may detain the migrant  
27 while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,  
28 this scheme would not lead to excessive detention, as removal happens

1 within days or weeks. But some detainees cannot be removed quickly.  
2 Perhaps their removal “simply require[s] more time for processing,” or  
3 they are “ordered removed to countries with whom the United States  
4 does not have a repatriation agreement,” or their countries “refuse to  
5 take them,” or they are “effectively ‘stateless’ because of their race  
6 and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th  
7 Cir. 2001). In these and other circumstances, detained immigrants can  
8 find themselves trapped in detention for months, years, decades, or  
9 even the rest of their lives. If federal law were understood to allow for  
10 “indefinite, perhaps permanent, detention,” it would pose “a serious  
11 constitutional threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the  
12 Supreme Court avoided the constitutional concern by interpreting  
13 § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

14 *Zadvydas* held that § 1231(a)(6) presumptively permits the  
15 government to detain an immigrant for 180 days after his or her  
16 removal order becomes final. After those 180 days have passed, the  
17 immigrant must be released unless his or her removal is reasonably  
18 foreseeable. *Zadvydas*, 533 U.S. at 701. After six months have passed,  
19 the petitioner must only make a prima facie case for relief— there is  
20 “good reason to believe that there is no significant likelihood of  
21 removal in the reasonably foreseeable future.” *Id.* Then the burden  
22 shifts to “the Government [to] respond with evidence sufficient to rebut  
23 that showing.” *Id.*<sup>9</sup>

24  
25 <sup>9</sup> Further, even before the 180 days have passed, the immigrant must  
26 still be released if he *rebut*s the presumption that his detention is  
27 reasonable. *See, e.g., Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D.  
28 Cal. 2020) (collecting cases on rebutting the *Zadvydas* presumption  
before six months have passed); *Zavvar*, 2025 WL 2592543 at \*6  
(finding the presumption rebutted for a person who was released and,  
years later, re-detained for less than six months).

1 Mr. Moskovyan can make all the threshold showings needed to  
2 shift the burden to the government.

3 **B. The six-month grace period expired in November**  
4 **2019.**

5 The six-month grace period has long since ended. The *Zadvydas*  
6 grace period is linked to the date the final order of removal is issued. It  
7 lasts for “*six months* after a final order of removal—that is, *three*  
8 *months* after the statutory removal period has ended.” *Kim Ho Ma v.*  
9 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Indeed, the statute  
10 defining the beginning of the removal period is linked to the latest of  
11 three dates, all of which relevant here are tied to when the removal  
12 order is issued. 8 U.S.C. § 1231(a)(1)(B).<sup>10</sup>

13 Here, Mr. Moskovyan’s order of removal was entered on May 31,  
14 2019. Exh. A at ¶ 8.<sup>11</sup> Accordingly, his 90-day removal period began  
15 then. 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period thus expired  
16 in November 2019, three months after the removal period ended. *See,*  
17 *e.g., Tadros v. Noem*, 2025 WL 1678501, No. 25-cv-4108(EP), \*2–\*3.

18 The government sometimes claims that the immigrant must  
19 actually be *detained* for a cumulative six months—if the immigrant is  
20 released, the clock pauses, resuming only when the immigrant is re-  
21 detained. *See, e.g., Nhean v. Brott*, No. CV 17-28 (PAM/FLN), 2017 WL  
22 2437268, at \*2 (D. Minn. May 2, 2017), *report and recommendation*  
23 *adopted*, 2017 WL 2437246 (D. Minn. June 5, 2017) (adopting this

24 \_\_\_\_\_  
25 <sup>10</sup> Those dates are, specifically, (1) “[t]he date the order of removal  
26 becomes administratively final;” (2) “[i]f the removal order is judicially  
27 reviewed and if a court orders a stay of the removal of the alien, the  
28 date of the court’s final order;” or (3) “[i]f the alien is detained or  
confined (except under an immigration process), the date the alien is  
released from detention or confinement.” *Id.*

<sup>11</sup> EOIR, *Automated Case Information*, <https://acis.eoir.justice.gov/en/>.

1 view). That misconstrues *Zadvydas*. As the Ninth Circuit has  
2 recognized, the six-month grace period is pegged to the start of the  
3 removal period. *See Ma*, 257 F.3d at 1102 n.5 (“[I]n *Zadvydas*, the  
4 Supreme Court read the statute to permit a ‘presumptively reasonable’  
5 detention period of *six months* after a final order of removal—that is,  
6 *three months* after the statutory removal period has ended.”);  
7 *Rodriguez v. Hayes*, 591 F.3d 1105, 1115 (9th Cir. 2010), *overruled in*  
8 *other part by Jennings v. Rodriguez*, 583 U.S. 281 (2018) (“The  
9 [*Zadvydas*] Court determined that for six months following the  
10 beginning of the removal period an alien’s detention was  
11 presumptively authorized.”). It is not calculated based on the length of  
12 detention. *See Bailey*, 2016 WL 5791407, at \*2 (adopting the correct  
13 view).

14 The government’s contrary view runs afoul of *Zadvydas*’s  
15 reasoning. *Zadvydas* established the six-month grace period to give  
16 ICE a fair chance to effectuate the removal before a court gets  
17 involved. 533 U.S. at 700–01. That was why the Court chose to expand  
18 the grace period beyond the 90-day statutory removal period: because  
19 Congress likely did not “believe[] that all reasonably foreseeable  
20 removals could be accomplished in that time.” *Id.* at 701. But in  
21 Mr. Moskovyan’s case, ICE has already had more than six years to  
22 effectuate the removal. They have had a final removal order in hand  
23 since May 31, 2019. *See Exh. A* at ¶ 8. That Mr. Moskovyan’s removal  
24 was withheld under CAT makes no difference. ICE could just as  
25 effectively take steps to arrange his removal whether he was in a cell  
26 or on the street.

27 Indeed, even while on supervision, Mr. Moskovyan returned to  
28 the ICE office twice for his check-ins. *Id.* at ¶ 9. He was told he did not

1 have to report in person during the COVID-19 global pandemic, and  
2 that he would receive a removal regarding his next appointment. *Id.*  
3 Although he never received the email, he continued to report to the  
4 U.S. Probation office for the next several years—including over  
5 Facetime—while on supervised release. *Id.* at ¶ 10. During the past six  
6 years, ICE could have obtained any necessary information or  
7 assistance to remove Mr. Moskovyan. Yet, they never succeeded.  
8 Having already been given much more than six months to try to  
9 remove him, there is no principled reason to give ICE an additional  
10 grace period.

11 Finally, even if the grace period had not passed, Mr. Moskovyan  
12 could still file this petition. That’s because the six-month grace period  
13 is only “*presumptively* reasonable.” *Zadvydas*, 533 U.S. at 701  
14 (emphasis added). Several courts have concluded that an immigrant  
15 may rebut that presumption with sufficiently compelling evidence that  
16 his removal is not foreseeable. *See Trinh v. Homan*, 466 F. Supp. 3d  
17 1077, 1092 (C.D. Cal. 2020) (collecting cases). Such evidence exists  
18 here. ICE almost certainly released Mr. Moskovyan back in 2008  
19 because it recognized that it could not remove him. Exh. A at ¶¶ 11–12;  
20 *see also* Exh. B. ICE has indeed made no progress in removing him,  
21 despite having a final removal order for more than six years. *See*  
22 *generally* Exh. B. ICE re-detained Mr. Moskovyan only to implement  
23 an across-the-board policy—not because of any movement in his  
24 particular removal case. Exh. B.

25 Regardless, Mr. Moskovyan has now been re-detained for almost  
26 two months, since October 15, 2025. Exh. A at ¶ 11. And ICE, of  
27 course, has had more than six years to remove him since his removal  
28 order was issued on May 31, 2025. *Id.* at ¶ 8.

1 Mr. Moskovyan's personal experience provides good reason to  
2 believe he will not likely be removed in the reasonably foreseeable  
3 future. *See generally*, Exh A. While on supervision, he worked the  
4 night shift at a bakery (from about 10 p.m. to 6 a.m.) for about six to  
5 eight months, before working as a driver for Lyft and Uber. *Id.* at ¶ 20.  
6 He made about \$45,000 annually, supporting himself, his ex-wife, and  
7 his three adult daughters with that salary. With that money, he paid  
8 the car insurance for four vehicles, totaling about \$1,000 per month;  
9 \$700 monthly his car; and \$500 monthly rent to his sister whenever  
10 possible. *Id.* He also had miscellaneous expenses related to his cell  
11 phone bill, gas, food, clothes, car washes, and credit card payments. *Id.*

12 This Court uses a burden-shifting framework to evaluate  
13 Mr. Moskovyan's *Zadvydas* claim. At the first stage of the framework,  
14 Mr. Moskovyan must "provide[] good reason to believe that there is no  
15 significant likelihood of removal in the reasonably foreseeable future."  
16 *Zadvydas*, 533 U.S. at 701. This standard can be broken down into  
17 three parts.

18 "Good reason to believe." The "good reason to believe"  
19 standard is a relatively forgiving one. "A petitioner need not establish  
20 that there exists no possibility of removal." *Freeman v. Watkins*, No.  
21 CV B:09-160, 2009 WL 10714999, at \*3 (S.D. Tex. Dec. 22, 2009). Nor  
22 does "[g]ood reason to believe' . . . place a burden upon the detainee to  
23 demonstrate no reasonably foreseeable, significant likelihood of  
24 removal or show that his detention is indefinite; it is something less  
25 than that." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319,  
26 at \*3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401 F. Supp. 3d  
27 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:  
28

1 Petitioners need only give a “good reason”—not prove anything to a  
2 certainty.

3       **“Significant likelihood of removal.”** This component focuses  
4 on whether Mr. Moskovyan will likely be removed: Continued  
5 detention is permissible only if it is “significant[ly] like[ly]” that ICE  
6 will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry  
7 targets “not only the *existence* of untapped possibilities, but also [the]  
8 probability of *success* in such possibilities.” *Elashi v. Sabol*, 714 F.  
9 Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other  
10 words, even if “there remains *some* possibility of removal,” a petitioner  
11 can still meet its burden if there is good reason to believe that  
12 successful removal is not significantly likely. *Kacanic v. Elwood*, No.  
13 CIV.A. 02-8019, 2002 WL 31520362, at \*4 (E.D. Pa. Nov. 8, 2002)  
14 (emphasis added).

15       **“In the reasonably foreseeable future.”** This component of  
16 the test focuses on when Mr. Moskovyan will likely be removed:  
17 Continued detention is permissible only if removal is likely to happen  
18 “in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. This  
19 inquiry places a time limit on ICE’s removal efforts. If the Court has  
20 “no idea of when it might reasonably expect [Petitioner] to be  
21 repatriated, this Court certainly cannot conclude that his removal is  
22 likely to occur—or even that it might occur—in the reasonably  
23 foreseeable future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020  
24 WL 4880158, at \*3 (S.D. Miss. July 7, 2020), *report and*  
25 *recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020)  
26 (quoting *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)).  
27 Thus, even if this Court concludes that Mr. Moskovyan “would  
28 *eventually* receive” a travel document, he can still meet his burden by

1 giving good reason to anticipate sufficiently lengthy delays. *Younes v.*  
2 *Lynch*, 2016 WL 6679830, at \*2 (E.D. Mich. Nov. 14, 2016).

3 Mr. Moskovyan satisfies this standard. ICE has now had more  
4 than six years to deport him—since May 2019. Exh. A at ¶ 8. In 2019,  
5 he was in immigration custody for nine and a half months, and in  
6 2025, he has been held in immigration for almost two months. *Id.* at ¶¶  
7 8, 11. He cooperated with ICE by attending his check-in appointments  
8 back in 2019. *Id.* at ¶ 9. And he continued to report to the federal  
9 probation office for several years thereafter. *Id.* at ¶ 10. Once again,  
10 ICE has proved unable to remove him during the two months since he  
11 was re-detained on October 15, 2025. *Id.* at ¶ 11. ICE has not informed  
12 him of any likelihood of obtaining travel documents from any country  
13 during that time. *Id.* at ¶ 16.

14 Thus, Mr. Moskovyan has met his initial burden, and the burden  
15 shifts to the government. Unless the government can prove a  
16 “significant likelihood of removal in the reasonably foreseeable future,”  
17 Mr. Moskovyan must be released. *Zadvydas*, 533 U.S. at 701.

18 **C. *Zadvydas* unambiguously prohibits this Court from**  
19 **denying Mr. Moskovyan’s petition because of his**  
20 **criminal history.**

21 If released on supervision, Mr. Moskovyan poses no risk of  
22 danger or flight. He has remained in the United States since he was  
23 ordered removed and released from immigration custody in January  
24 2020. Exh. A at ¶ 9. And all of his immediate family members reside in  
25 the United States. *Id.* at ¶ 21.

26 When not in custody, he attended two ICE check-ins and reported  
27 to federal probation for several years, further supporting he poses no  
28 risk of danger or flight. *Id.* at ¶¶ 9–10. While on supervision, he was  
gainfully employed, and did not have any traffic tickets, arrests, or

1 convictions since his release from immigration custody in January  
2 2020. *Id.* at ¶¶ 19–20.

3       Regardless, *Zadvydas* squarely holds that danger or flight are not  
4 grounds for detaining an immigrant when there is no reasonable  
5 likelihood of removal in the reasonably foreseeable future. 533 U.S. at  
6 684–91.

7       The two petitioners in *Zadvydas* both had significant criminal  
8 history. Mr. Zadvydas himself had “a long criminal record, involving  
9 drug crimes, attempted robbery, attempted burglary, and theft,” as  
10 well as “a history of flight, from both criminal and deportation  
11 proceedings.” *Id.* at 684. The other petitioner, Kim Ho Ma, was  
12 “involved in a gang-related shooting [and] convicted of manslaughter.”  
13 *Id.* at 685. The government argued that both men could be detained  
14 regardless of their likelihood of removal, because they posed too great a  
15 risk of danger or flight. *Id.* at 690–91.

16       The Supreme Court rejected that argument. The Court  
17 appreciated the seriousness of the government’s concerns. *Id.* at 691.  
18 But the Court found that the immigrant’s liberty interests were  
19 weightier. *Id.* The Court had never countenanced “potentially  
20 permanent” “civil confinement,” based only on the government’s belief  
21 that the person would misbehave in the future. *Id.*

22       The Court also noted that the government was free to use the  
23 many tools at its disposal to mitigate risk: “[O]f course, the alien’s  
24 release may and should be conditioned on any of the various forms of  
25 supervised release that are appropriate in the circumstances, and the  
26 alien may no doubt be returned to custody upon a violation of those  
27 conditions.” *Id.* at 700. The Ninth Circuit later elaborated, “All aliens  
28 ordered released must comply with the stringent supervision

1 requirements set out in 8 U.S.C. § 1231(a)(3). [They] will have to  
2 appear before an immigration officer periodically, answer certain  
3 questions, submit to medical or psychiatric testing as necessary, and  
4 accept reasonable restrictions on [their] conduct and activities,  
5 including severe travel limitations. More important, if [they] engage [ ]  
6 in any criminal activity during this time, including violation of [their]  
7 supervisory release conditions, [they] can be detained and incarcerated  
8 as part of the normal criminal process.” *Ma*, 257 F.3d at 1115.

9 These conditions have proved sufficient to protect the public over  
10 the past eleven years. They will continue to do so while ICE keeps  
11 trying to deport Mr. Moskovyan.

12 **V. Claim 3: ICE may not remove Mr. Moskovyan to a third**  
13 **country without adequate notice and an opportunity to be**  
14 **heard.**

15 In addition to unlawfully detaining him, ICE’s policies threaten  
16 his removal to a third country without adequate notice and an  
17 opportunity to be heard. These policies violate the Fifth Amendment,  
18 the Convention Against Torture, and implementing regulations.

19 **A. Legal background: The Convention Against Torture,**  
20 **statutory withholding of removal, and due process**  
21 **prohibit deportation to third countries without**  
22 **meaningful notice and an opportunity to be heard.**

23 U.S. law enshrines protections against dangerous and life-  
24 threatening removal decisions. By statute, the government is  
25 prohibited from removing an immigrant to any third country where  
26 they may be persecuted or tortured, a form of protection known as  
27 withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government  
28 “may not remove [a noncitizen] to a country if the Attorney General  
decides that the [noncitizen’s] life or freedom would be threatened in  
that country because of the [noncitizen’s] race, religion, nationality,

1 membership in a particular social group, or political opinion.” *Id.*; see  
2 also 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a  
3 mandatory protection.

4 Similarly, Congress codified protections enshrined in the CAT  
5 prohibiting the government from removing a person to a country where  
6 they would be tortured. See FARRA 2681-822 (codified as 8 U.S.C.  
7 § 1231 note) (“It shall be the policy of the United States not to expel,  
8 extradite, or otherwise effect the involuntary return of any person to a  
9 country in which there are substantial grounds for believing the person  
10 would be in danger of being subjected to torture, regardless of whether  
11 the person is physically present in the United States.”); 28 C.F.R.  
12 § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also  
13 mandatory.

14 To comport with the requirements of due process, the government  
15 must provide notice of the third country removal and an opportunity to  
16 respond. Due process requires “written notice of the country being  
17 designated” and “the statutory basis for the designation, i.e., the  
18 applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409 F. Supp. 3d  
19 998, 1019 (W.D. Wash. 2019); *accord D.V.D. v. U.S. Dep’t of Homeland*  
20 *Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at \*1 (D. Mass. May 21,  
21 2025); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

22 The government must also “ask the noncitizen whether he or she  
23 fears persecution or harm upon removal to the designated country and  
24 memorialize in writing the noncitizen’s response. This requirement  
25 ensures DHS will obtain the necessary information from the noncitizen  
26 to comply with section 1231(b)(3) and avoids [a dispute about what the  
27 officer and noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019. “Failing to  
28 notify individuals who are subject to deportation that they have the

1 right to apply for asylum in the United States and for withholding of  
2 deportation to the country to which they will be deported violates both  
3 INS regulations and the constitutional right to due process.”

4 *Andriasian*, 180 F.3d at 1041.

5 If the noncitizen claims fear, measures must be taken to ensure  
6 that the noncitizen can seek asylum, withholding, and relief under  
7 CAT before an immigration judge in reopened removal proceedings.  
8 The amount and type of notice must be “sufficient” to ensure that  
9 “given [a noncitizen’s] capacities and circumstances, he would have a  
10 reasonable opportunity to raise and pursue his claim for withholding of  
11 deportation.” *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v.*  
12 *Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132 F.3d 405,  
13 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at \*1 (requiring the  
14 government to move to reopen the noncitizen’s immigration  
15 proceedings if the individual demonstrates “reasonable fear” and to  
16 provide “a meaningful opportunity, and a minimum of fifteen days, for  
17 the non-citizen to seek reopening of their immigration proceedings” if  
18 the noncitizen is found to not have demonstrated “reasonable fear”);  
19 *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a  
20 respondent to file a motion to reopen and seek relief).

21 “[L]ast minute” notice of the country of removal will not suffice,  
22 *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x  
23 724 (9th Cir. 2016), and for good reason: To have a meaningful  
24 opportunity to apply for fear-based protection from removal,  
25 immigrants must have time to prepare and present relevant  
26 arguments and evidence. Merely telling a person where they may be  
27 sent, without giving them a chance to look into country conditions,  
28 does not give them a meaningful chance to determine whether and why

1 they have a credible fear.

2 **B. The June 6, 2025 memo’s removal policies violate the**  
3 **Fifth Amendment, 8 U.S.C. § 1231, the Conviction**  
4 **Against Torture, and Implementing Regulations.**

5 The policies in the June 6, 2025 memo do not adhere to these  
6 requirements. The memo “contravenes Ninth Circuit law.” *Nguyen v.*  
7 *Scott*, No. 25-CV-1398, 2025 WL 2419288, \*19 (W.D. Wash. Aug. 21,  
8 2025) (explaining how the July 9, 2025 ICE memo contravenes Ninth  
9 Circuit law on the process due to noncitizens in detail); *see also Van*  
10 *Tran v. Noem*, 2025 WL 2770623, No 25-cv-2334-JES-MSB (S.D. Cal.  
11 Sept. 29, 2025) (granting temporary restraining order preventing a  
12 noncitizen’s deportation to a third country pending litigation in light of  
13 due process problems); *Nguyen Tran*, No. 25-cv-2391-BTM-BLM, ECF  
14 No. 6 (S.D. Cal. Sept. 18, 2025) (same).

15 First, under the policy, ICE need not give immigrants *any* notice  
16 or *any* opportunity to be heard before removing them to a country  
17 that—in the State Department’s estimation—has provided “credible”  
18 “assurances” against persecution and torture. Exh. B. By depriving  
19 immigrants of any chance to challenge the State Department’s view,  
20 this policy violates “[t]he essence of due process,” “the requirement  
21 that a person in jeopardy of serious loss be given notice of the case  
22 against him and opportunity to meet it.” *Mathews v. Eldridge*, 424 U.S.  
23 319, 348 (1976) (cleaned up).

24 Second, even when the government has obtained no credible  
25 assurances against persecution and torture, the government can still  
26 remove the person with between six and 24 hours’ notice, depending on  
27 the circumstances. Exh. B. Practically speaking, there is not nearly  
28 enough time for a detained person to assess their risk in the third  
country and marshal evidence to support any credible fear—let alone a

1 chance to file a motion to reopen with an immigration judge. An  
2 immigrant may know nothing about a third country, like Eswatini or  
3 South Sudan, when they are scheduled for removal there.

4 Yet if given the opportunity to investigate conditions, immigrants  
5 would find credible reasons to fear persecution or torture—like  
6 patterns of keeping deportees indefinitely and without charge in  
7 solitary confinement or extreme instability raising a high likelihood of  
8 death—in many of the third countries that have agreed to removal  
9 thus far.

10 Due process requires an adequate chance to identify and raise  
11 these threats to health and life. This Court must prohibit the  
12 government from removing Mr. Moskovyan without these due process  
13 safeguards.

14 **VI. This Court must hold an evidentiary hearing on any**  
15 **disputed facts.**

16 Resolution of a prolonged-detention habeas petition may require  
17 an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th  
18 Cir. 2009). Mr. Moskovyan hereby requests such a hearing on any  
19 material, disputed facts.

20 **VII. Prayer for relief**

21 For the foregoing reasons, Petitioner respectfully requests that  
22 this Court:

- 23 1. Order and enjoin Respondents to immediately release  
24 Petitioner from custody;
- 25 2. Enjoin Respondents from re-detaining Petitioner under  
26 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a  
27 travel document for his removal;

28

1 3. Enjoin Respondents from re-detaining Petitioner without first  
2 following all procedures set forth in 8 C.F.R. §§ 241.4(l),  
3 241.13(i), and any other applicable statutory and regulatory  
4 procedures;

5 4. Enjoin Respondents from removing Petitioner to any country,  
6 unless they provide the following process, *see D.V.D. v. U.S.*  
7 *Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL  
8 1453640, at \*1 (D. Mass. May 21, 2025):

9 a. written notice to both Petitioner and Petitioner's counsel  
10 in a language Petitioner can understand;

11 b. a meaningful opportunity, and a minimum of ten days, to  
12 raise a fear-based claim for CAT protection prior to  
13 removal;

14 c. if Petitioner is found to have demonstrated "reasonable  
15 fear" of removal to the country, Respondents must move  
16 to reopen Petitioner's immigration proceedings;

17 d. if Petitioner is not found to have demonstrated a  
18 "reasonable fear" of removal to the country, a meaningful  
19 opportunity, and a minimum of fifteen days, for the  
20 Petitioner to seek reopening of his immigration  
21 proceedings.

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5. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: December 11, 2025

s/ Armilla Staley-Ngomo  
Armilla Staley-Ngomo  
Federal Defenders of San Diego, Inc.

Attorneys for Petitioner  
AVETIK ARUTYUNOVICH  
MOSKOVYAN

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**PROOF OF SERVICE**

I, the undersigned, caused to be served the within Petition for Writ of Habeas Corpus by email, at the request of Janet Cabral, Chief of the Civil Division, to:

U.S. Attorney's Office, Southern District of California  
Civil Division  
USACAS.Habeas2241@usdoj.gov

Date: December 11, 2025

*/s/ Armilla Staley-Ngomo*  
Armilla Staley-Ngomo

# Exhibit A

1 **Armilla Staley-Ngomo**  
2 California State Bar No. 259686  
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 Armilla\_Staley-Ngomo@fd.org

9 Attorneys for Petitioner<sup>1</sup>  
10 AVETIK ARUTYUNOVICH MOSKOVYAN

11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 AVETIK ARUTYUNOVICH  
14 MOSKOVYAN,

15 Petitioner,

16 v.

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

27 Respondents.

Civil Case No.:

**First Declaration  
of  
Avetik Arutyunovich  
Moskovyan**

28 <sup>1</sup> Federal Defenders of San Diego, Inc., is filing this declaration and associated documents with provisional appointment under Chief Judge Order No. 134. Mr. Moskovyan's financial eligibility for representation is included in this sworn statement.

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I, Avetik Moskovyan, declare:

1. My name is Avetik Arutyunovich Moskovyan. I was born in the Soviet Union (USSR) on [REDACTED] 1967. I am 58 years old.

2. I am currently detained at the Otay Mesa Detention Center.

3. I first came to the United States on July 19, 1988, as a refugee. I was sponsored by a family in North Hollywood, California. I entered with thirteen of my family members, including my father; step-mother; two brothers, along with their wives and children; and three sisters, one full sister, one half-sister, and one step-sister. We were all Armenian refugees from the Soviet Union.

4. I applied for my legal permanent residency in 1989 and obtained my green card in 1990.

5. I was arrested for money laundering charges on December 12, 2012, but bailed out three days later. I was convicted of the offense in the Southern District of Georgia (Savannah, GA). I was sentenced to 76 months in prison on August 19, 2013, and started my sentence that same day.

6. I spent fourteen to sixteen months at the Reeves County Detention Center in Pecos, Texas before being transferred to Taft Correctional Center in Taft, California for four years, four months, and four days. [REDACTED]

[REDACTED]

//

1  
2 7. I was released from prison on April 8, 2019, and transferred  
3 to the Mesa Verde ICE Processing Facility in Bakersfield, California.

4 8. I was ordered removed by an immigration judge on May 31,  
5 2019, and was granted withholding of removal that same day.  
6 However, I was held in immigration custody for an additional nine and  
7 a half months, until I filed a pro se habeas petition.

8  
9 9. I was released on an order of supervision on January 23,  
10 2020. A week or two later, I went to the Los Angeles ICE office and  
11 was told by an officer that I needed to check-in every three months. I  
12 checked in twice before being told not to check-in anymore due to the  
13 COVID-19 global pandemic. During my second visit, the officer said he  
14 was going to send me an email about my next appointment, which I  
15 never received.

16  
17 10. However, during that time, I was being supervised by the  
18 U.S. Probation Office and checked in with them, even over Facetime  
19 during the COVID-19 global pandemic. I believe my supervised  
20 released ended on April 8, 2022.

21 11. I was arrested the early morning of Wednesday, October 15,  
22 2025. I was driving Lyft and taking a passenger from LAX to Camp  
23 Pendleton at around midnight. When I arrived to Camp Pendleton at  
24 about 1:20 a.m., military personnel asked for me and my passenger for  
25 identification. We both complied, and they told me to pull over. They  
26 scanned my identification, had me wait outside for about an hour,  
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1 placed something near my tire, and told me that if I moved I would get  
2 a flat tire.  
3

4 12. The passenger left the car after they checked his  
5 identification, but was told he could not enter between 8 a.m. and 5  
6 a.m., so he got out of the car and called a friend to come pick him up.

7 13. They asked if I had a green card or passport, and I said  
8 "no." They then said I was being detained because I was there illegally.  
9

10 14. About an hour later, they told me I was under arrest, and  
11 placed handcuffs on me. They took me inside of Camp Pendleton for  
12 about an hour before two ICE officers came to transfer me to the ICE  
13 office in downtown San Diego.

14 15. I told the ICE officers I had won a habeas petition back in  
15 2019. The officers responded that was during the Biden  
16 administration, and that we are now under the Trump administration.  
17

18 16. The ICE officers did not tell me why I was being re-  
19 detained. I never received notice of why I was being re-detained. I was  
20 not given an informal interview. I have not been able to contest my  
21 detention. I have not spoken to an immigration judge since my re-  
22 detention. I have not been given any paperwork. No one has told my  
23 what changed to make my removal more likely. And no one has told me  
24 that I violated the conditions of my release. I explained I came from  
25 the USSR. I was told I was going to be deported to Russia, a third  
26 country.  
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17. I was held for two days at the San Diego ICE office before being transferred to the Otay Mesa Detention Center.

18. About a week after I was detained, I gave my alien number to a deportation officer who comes to the detention center every week to answer general questions. She told me she was surprised I had been re-detained after winning a habeas petition back in 2020, and said I needed to apply for habeas again so that I could be released. She said I would be released within two or three weeks after filing a petition.

19. I have not had any traffic tickets, arrests, or convictions since I was released from immigration custody back in January 2020.

20. While on supervision, I worked the night shift at a bakery (from about 10 p.m. to 6 a.m.) for about six to eight months, before working as a driver for Lyft and Uber. I was making about \$45,000 annually, and supported myself, my ex-wife, and three adult daughters with that salary. I paid the car insurance for four vehicles, which totaled about \$1,000 per month. I also paid \$700 monthly for my car and \$500 rent to my sister whenever possible, as well cell phone bill, gas, food, clothes, car washes, and credit card payments. I do not have any savings and cannot afford an attorney.

21. All of my immediate family members are here in the United States. I do not have any family in Russia, or any other former USSR country. I am scared to go to Russia or any other former USSR country because of the ongoing war in those areas.

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22. I know nothing about immigration law. I also do not have unrestricted access to the internet to look up the latest information about ICE's policies toward people like me. English is my third language. My first two languages are Armenian and Russian.

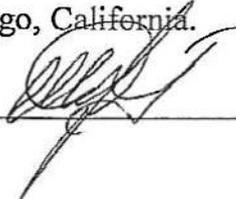
23. I have been suffering from prostate issues for the past three or four years, which causes problems with my urination. I treat it with exercise and do not take any medication for it because it only seems to make the problem worse. I also have an injury on my right arm from when I worked as a baker, and take ongoing pain medication for that injury, including Tylenol and Icy/Hot cream.

24. I have been at Otay Mesa for over six weeks, and have had cold symptoms the entire time, including a headache, cough, congestion, and pain in my kidneys and heart. I have only been given Tylenol for the pain, and have not been able to exercise due to my constant illnesses.

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I declare under penalty of perjury that the foregoing is true and correct,  
executed on 11/06/2025, in San Diego, California.

  
\_\_\_\_\_

Declarant

# Exhibit B

PLAINTIFFS' EXHIBIT NO. 2

CASE NO. 

IDENTIFICATION: JUL 10 2025

ADMITTED: JUL 10 2025

To All ICE Employees  
July 9, 2025

**Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)**

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the district court's nationwide preliminary injunction in *D.V.D. v. Department of Homeland Security*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required certain procedures related to providing a "meaningful opportunity" to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country. Accordingly, all previous guidance implementing the district court's preliminary injunction related the third country removals issued in *D.V.D.* is hereby rescinded. Absent additional action by the Supreme Court, the stay will remain in place until any writ of certiorari is denied or a judgment following any decision issues.

Effective immediately, when seeking to remove an alien with a final order of removal—other than an expedited removal order under section 235(b) of the Immigration and Nationality Act (INA)—to an alternative country as identified in section 241(b)(1)(C) of the INA, ICE must adhere to Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, *Guidance Regarding Third Country Removals*, as detailed below. A "third country" or "alternative country" refers to a country other than that specifically referenced in the order of removal.

If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures. ICE will seek written confirmation from the Department of State that such diplomatic assurances were received and determined to be credible. HSI and ERO will be made aware of any such assurances. In all other cases, ICE must comply with the following procedures:

- An ERO officer will serve on the alien the attached Notice of Removal. The notice includes the intended country of removal and will be read to the alien in a language he or she understands.
- ERO will not affirmatively ask whether the alien is afraid of being removed to the country of removal.
- ERO will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. In exigent circumstances, ERO may execute a removal order six (6) or more hours after service of the Notice of Removal as long as the alien is provided reasonable means and opportunity to speak with an attorney prior to removal.
  - Any determination to execute a removal order under exigent circumstances less than 24 hours following service of the Notice of Removal must be approved by the DHS General Counsel, or the Principal Legal Advisor where the DHS General Counsel is not available.

- If the alien does not affirmatively state a fear of persecution or torture if removed to the country of removal listed on the Notice of Removal within 24 hours, ERO may proceed with removal to the country identified on the notice. ERO should check all systems for motions as close in time as possible to removal.
- If the alien does affirmatively state a fear if removed to the country of removal listed on the Notice of Removal, ERO will refer the case to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under section 241(b)(3) of the INA and the Convention Against Torture (CAT). USCIS will generally screen the alien within 24 hours of referral.
  - USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal.
  - If USCIS determines that the alien has not met this standard, the alien will be removed.
  - If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the immigration court, USCIS will refer the matter to the immigration court for further proceedings. In cases where the alien was previously in proceedings before the immigration court, USCIS will notify the referring immigration officer of its finding, and the immigration officer will inform ICE. In such cases, ERO will alert their local Office of the Principal Legal Advisor (OPLA) Field Location to file a motion to reopen with the immigration court or the Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under section 241(b)(3) of the INA and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal.

Notably, the Supreme Court's stay of removal does not alter any decisions issued by any other courts as to individual aliens regarding the process that must be provided before removing that alien to a third country.

Please direct any questions about this guidance to your OPLA field location.

Thank you for all you continue to do for the agency.

Todd M. Lyons  
Acting Director  
U.S. Immigration and Customs Enforcement

Attachments:

- U.S. Supreme Court Order
- Secretary Noem's Memorandum
- Notice of Removal