

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
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
22 Customs Enforcement, JESUS
23 ROCHA, Acting Field Office
24 Director, San Diego Field Office,
25 CHRISTOPHER LAROSE,
26 Warden at Otay Mesa Detention
27 Center,

28 Respondents.

Case No.: 25-cv-03537-RBM-AHG

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

1 INTRODUCTION

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

- 4 • A copy of Mr. Moskovyan's removal order, dated May 31,
5 2019, ECF No. 5, Exhibit 1;
- 6 • A written notice of revocation of release allegedly provided
7 to Mr. Moskovyan after he was re-detained at Camp
8 Pendleton on October 15, 2025, alleging "changed
9 circumstances" in his case "based on a review of [his] official
10 alien file," dated October 16, 2025, ECF No. 5, Exhibit 2;¹
- 11 • A copy of Mr. Moskovyan's release notification, dated
12 January 23, 2020, ECF No. 5, Exhibit 2;
- 13 • A copy of Mr. Moskovyan's pro se petition for writ of habeas
14 corpus filed in the Central District of California on
15 December 5, 2019, ECF No. 5, Exhibit 3; and,
- 16 • A declaration from a San Diego deportation officer, dated
17 December 18, 2025, explaining that:
- 18 ○ More than six and a half years ago, Mr. Moskovyan
19 was ordered removed to Armenia on May 31, 2019;
- 20

21

22 ¹ The government concedes Mr. Moskovyan was not provided an
23 accurate notice of revocation of release, nor an informal interview
24 regarding the reason for the revocation of his release. ECF No. 5 at p.
25 4; *see also* Exhibit 2, Notice of Revocation of Release. Nor was he
26 provided with an opportunity to submit any evidence or information to
27 be reviewed in support of his release. *See e.g.*, ECF No. 5, Exhibit 2. In
28 its responsive brief, the government also incorrectly states Mr.
Moskovyan was convicted of a federal money laundering conspiracy
offense on August 19, 2013, "seven years" after his lawful entry into
the United States on July 19, 1988. ECF No. 5 at p. 1. Indeed, Mr.
Moskovyan sustained the conviction 25 years after his lawful entry and
continued residence in the United States.

- 1 ○ Mr. Moskovyan was released from ICE custody on an
2 Order of Supervision on January 23, 2020, after ICE
3 was unable to obtain travel documents from the
4 Armenian government;
- 5 ○ Mr. Moskovyan was re-detained on October 15, 2025,
6 while driving a passenger as an Uber driver and
7 attempting to enter a military base in San Diego,
8 California;
- 9 ○ Mr. Moskovyan was provided a “notice of OSUP
10 revocation” the following day, on October 16, 2025,
11 which erroneously states Mr. Moskovyan was granted
12 withholding of removal;
- 13 ○ Since Mr. Moskovyan’s re-detention, the “ERO has
14 worked expeditiously to effectuate” Mr. Moskovyan’s
15 removal to Armenia, and on October 28, 2025,
16 requested “guidance from ERO Removal and
17 International Operations (RIO) to obtain a travel
18 [document] from the Armenian government for former
19 USSR citizens;”
- 20 ○ On December 17, 2025, the “ERO submitted a request
21 for a travel document to the Armenian government,”
22 which remains pending; and,
- 23 ○ The ERO does not currently have any valid travel
24 documents for Mr. Moskovyan’s removal, but
25 “[r]emoval efforts remain ongoing.” ECF No. 5-4,
26 Declaration of Jason Cole (“Cole Decl.”), at pp. 2–3,
27 ¶¶ 10–16.

1 This evidence does not rebut Mr. Moskovyan’s claim that he was
2 re-detained in violation of his regulatory and due process rights to be
3 notified of “the reasons for revocation.” § 241.13(i)(2)(iii), 241.13(l)(1).
4 “[A] reason is what makes an action intelligible, accounted for, or
5 explained”—“the specific facts supporting ICE’s decision.” *Sarail A. v.*
6 *Bondi*, __ F. Supp. __, 2025 WL 2533673, *5–*6 (D. Minn. 2025). Those
7 are absent here.

8 Nor does the government’s evidence rebut Mr. Moskovyan’s claim
9 that ICE never made a determination before his re-detention that
10 “there is a significant likelihood that [he] may be removed in the
11 reasonably foreseeable future,” § 241.13(i)(2), or his claim that he was
12 not “afford[ed] . . . an opportunity to respond to the reasons for
13 revocation,” *id.* §§ 241.4(l)(1), 241.13(i)(3)—reasons he was never given.

14 Nor does the government rebut Mr. Moskovyan’s claim that there
15 is not an individualized, significant likelihood of his removal in the
16 foreseeable future. ICE tried and failed—or never tried at all—to
17 obtain a travel document from the Armenian government during the
18 past six years. The only evidence ICE presents now is that it “was
19 unable to obtain a travel documents [*sic*] from the Armenian
20 government” back in late-2019 or early-2020, and that it “has worked
21 expeditiously” to execute his removal to Armenia since his re-detention
22 on October 15, 2025. Cole Decl. at ¶¶ 11, 14–16. This is not a “changed
23 circumstance.”

24 Finally, the government does not defend its third-country
25 removal policy on the merits. Instead, it argues only that, if the “ERO
26 is unable to obtain a travel document from the Armenian government,”
27 it will then “seek to identify a third country” where Mr. Moskovyan
28 may be removed. *Id.* at ¶ 17. It also states that, “[w]hen a third country

1 is identified for resettlement,” “ICE will generally wait at least 24
2 hours following service of the Notice of Removal before effectuating
3 removal.” *Id.* at ¶ 18.

4 In light of the evidence Mr. Moskovyan presented in his habeas
5 petition, the government’s arguments fail to persuade. This Court
6 should grant Mr. Moskovyan’s petition, or, in the alternative, grant his
7 motion for temporary relief in full.

8 **BACKGROUND**

9 This Court should grant Mr. Moskovyan’s habeas petition and
10 order him released. At this stage in his case, there is only a rebuttable
11 “presumption” that his detention is reasonable. *Zavvar v. Scott*, No. 25-
12 2104-TDC, 2025 WL 2592543, *3–*8 (D. Md. Sept. 8, 2025).

13 Mr. Moskovyan can rebut, and has rebutted, that presumption. There
14 is not a significant likelihood of his removal. Nor is there one in the
15 foreseeable future.

16 Sometime between May 2019 and January 2020, the government
17 was unable to obtain travel documents from the only country to which
18 Mr. Moskovyan was ordered removed, Armenia. Cole Decl. at ¶¶ 10–
19 11. After filing a pro se habeas petition in the Central District of
20 California on December 5, 2019, Mr. Moskovyan was released on an
21 Order of Supervision about a month and a half later, on January 23,
22 2020. ECF No. 5, Exhibits 2 & 3; *see also* Cole Decl. at ¶ 11. In other
23 words, Mr. Moskovyan was held in immigration custody for almost
24 eight months after being ordered removed.

25 In the almost six years since, the government still has not
26 obtained travel documents from Armenia, nor has it identified *any*
27 other third countries that will realistically, timely, or safely accept
28 Mr. Moskovyan. Cole Decl. at ¶¶ 14–19. The government only recently

1 submitted a travel document request to the Armenian government on
2 December 17, 2025, which remains pending. *Id.* at ¶ 16. This occurred
3 two months after his re-detention on October 15, 2025, and about a
4 week after he filed the instant habeas petition on December 11, 2025.
5 Cole Decl. at ¶¶ 12, 16; *see also* ECF No 1.

6 Nor has the government contacted any third countries to request
7 Mr. Moskovyan’s resettlement. Cole Decl. at ¶¶ 17–19. It simply
8 asserts it has “worked expeditiously” to execute his removal,
9 demonstrated only by ICE’s contact with the “ERO Removal and
10 International Operations” to request guidance to obtain travel
11 documents from the Armenian government for former USSR citizens
12 on October 28, 2025, followed by a request for a travel document to the
13 Armenian government on December 17, 2025. *Id.* at ¶¶ 15–16. Indeed,
14 no third countries have been identified since Mr. Moskovyan’s re-
15 detention on October 15, 2025, either. *See id.* at ¶¶ 17–19.

16 Mr. Moskovyan cannot be removed to the only country to which
17 he has a claim of citizenship, USSR, because the Soviet Union officially
18 dissolved on December 26, 1991. *See* ECF No. 1, p. 2, n.2. As a result,
19 the immigration judge ordered him removed to Armenia, which has not
20 issued a travel document for Mr. Moskovyan’s removal in almost six
21 years. Cole Decl. at ¶¶ 11, 16. The likelihood that Mr. Moskovyan will
22 be resettled in a third country is even more rare.

23 “[A]lternative-country removal is rare.” *Johnson v. Guzman-*
24 *Chavez*, 594 U.S. 523, 537 (2021). “The reason so few people are
25 deported to third countries is because,” while “customary international
26 law holds that a country has a duty to accept the return of its
27 nationals,” usually, “countries have no incentive to accept non-
28 citizens.” *See* American Immigration Council & National Immigrant

1 Justice Center, *The Difference Between Asylum and Withholding of*
2 *Removal*, 7 (Oct. 2020) (cited in *Guzman-Chavez*, 594 U.S. at 537).

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

12 That the government is working “expeditiously” to effectuate
13 Mr. Moskovyan’s removal to Armenia does not change that calculus.
14 “[U]nder *Zadvydas*, the reasonableness of Petitioner’s detention does
15 not turn on the degree of the government’s good faith efforts. Indeed,
16 the *Zadvydas* court explicitly rejected such a standard. Rather, the
17 reasonableness of Petitioner’s detention turns on whether and to what
18 extent the government’s efforts are likely to bear fruit.” *Hassoun v.*
19 *Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, *5 (W.D.N.Y. Jan. 2,
20 2019). Because Mr. Moskovyan has demonstrated that the
21 government’s efforts are not likely to bear fruit, his detention is not
22 authorized by statute or due process. This Court should order him
23 released.

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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.

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. Moskovyan, 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. Moskovyan 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. Moskovyan] may be removed in the reasonably foreseeable future.” § 241.13(i)(2). Indeed, ICE did not even begin its *internal* process of seeking Mr. Moskovyan’s removal to Armenia until two months after it re-detained him on October 15, 2025, and it has yet to identify a third country for his removal. Cole Decl. at ¶¶ 14–19.

Next, upon Mr. Moskovyan’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 my [*sic*] what changed to make my removal more likely.” ECF No. 1,

1 Exhibit A, Declaration of Avetik Arutyunovich Moskovyan
2 (“Moskovyan Decl.”), at ¶ 16. When he was arrested, he told the ICE
3 officers he had won a habeas petition back in 2019. *Id.* at ¶ 15. They
4 simply responded that was during the Biden Administration, and that
5 they were now under the Trump Administration. *Id.*

6 Mr. Moskovyan’s declaration is consistent with the written
7 notification he allegedly received that day. ECF No. 5, Exhibit 2.² It
8 informed him only that “your order of supervision has been revoked . . .
9 based on a review of your official alien file and a determination that
10 there are changed circumstances in your case.” *Id.* “ICE has
11 determined that you can be expeditiously removed from the United
12 States pursuant to the outstanding order of removal against you. On
13 May 31, 2019, you were ordered removed to USSR/Armenia by an
14 authorized U.S. DHS/DOJ official and you were granted a withholding
15 of removal to USSE/Armenia. Your case is under current review for
16 removal to an alternate country.” *Id.*

17 As this Court recently explained as to an identically worded
18 written revocation notification, “ICE’s conclusory explanations for
19 revoking Petitioner’s release ‘did not offer him adequate notice of the
20 basis for the revocation decision such that he could meaningfully
21 respond at the post-detention informal interview.’” *Raskhamdee v.*
22 *Noem*, No.25-cv-2816-RBM-DEB, 2025 WL 3102037, *4 (S.D. Cal. Nov.
23

24 ² Mr. Moskovyan denies having been shown or provided a copy of the
25 notice, or that his signature appears on page two of the notice. *See* ECF
26 No. 5, Exhibit 2. However, the notice is not dispositive given the
27 government’s admission that the information contained in the notice is
28 inaccurate, and that it failed to provide Mr. Moskovyan with an
informal interview or an opportunity to respond to the revocation of
release, thereby violating its own regulations. ECF No. 5, at pp. 1, 3;
Cole Decl. at ¶ 13.

1 6, 2025) (quoting *Diaz v. Wofford*, No. 25-cv-1079-JLT-EPG, 2025 WL
2 2581575, *8 (E.D. Cal. Sept. 5, 2025)); accord *Eni v. Noem, et al.*, No.
3 25-cv-03524-JLS-DEB, ECF No. 11, at p. 5 (S.D. Cal. Dec. 23, 2025)
4 (finding the “only notice Petitioner received regarding the reasons for
5 his re-detention was a form revocation letter” containing “plain
6 statements” that were “insufficient to provide notice” and did not
7 “demonstrate what circumstances had changed in Petitioner’s case to
8 justify re-detention”); *Quoc Anh Nguyen v. Noem*, No. 25-cv-2792-LL-
9 VET, 2025 WL 3101979, *2 (S.D. Cal. Nov. 6, 2025) (holding that a
10 similarly “bare-bones explanation does not contain reasons for the
11 revocation of Petitioner’s release”); *Nikolayev v. Noem*, 25-cv-3208-LL-
12 BJW, ECF No. 8, at p. 5 (S.D. Cal. Dec. 10, 2025) (finding such
13 conclusory language “does not satisfy due process.” “Simply to say that
14 circumstances had changed . . . is not enough. Petitioner must be told
15 *what* circumstances had changed or *why* there was now a significant
16 likelihood of removal in order to meaningfully respond to the reasons
17 and submit evidence in opposition, as allowed under § 241.13(i)(3).”
18 *Sarail A.*, __ F. Supp. 3d __, 2025 WL 2533673 at *10 (emphasis in
19 original).

20 Finally, ICE did not “afford[] [Mr. Moskovyan] an opportunity to
21 respond to the reasons for revocation.” 8 C.F.R. §§ 241.13(i)(3);
22 241.4(l)(1). “[W]hile an informal interview apparently occurred,
23 Petitioner could not have responded to the reasons for revocation,
24 because they were not given.” *Sarail A.*, __ F. Supp. 3d __, 2025 WL
25 2533673 at *10. The government concedes Mr. Moskovyan was not
26 provided an informal interview nor given an opportunity to respond to
27 the revocation of release. ECF No. 5, at pp. 1, 3; Cole Decl. at ¶ 13.
28 Thus, it follows that Mr. Moskovyan has not been provided any reasons

1 for why ICE believes his removal is now likely in the reasonably
2 foreseeable future.

3 Over the past several months, multiple judges from this district
4 have ordered release for failure to follow these regulations for similar
5 reasons. *See, e.g., Eni*, No. 25-cv-03524-JLS-DEB, ECF No. 11;
6 *Ghafouri v. Noem*, No. 25-cv-2675-RBM, ECF No. 11 (S.D. Cal. Nov. 4,
7 2025); *Phan v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB,
8 *3-*5 (S.D. Cal. Oct. 10, 2025); *Constantinovici v. Bondi*, __ F. Supp.
9 3d __, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10,
10 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal.
11 Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC,
12 ECF No. 12 (S.D. Cal. Oct. 9, 2025); *Rokhfirooz v. Larose*, No. 25-cv-
13 2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Sun v. Noem*,
14 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van*
15 *Eniv. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept.
16 29, 2025). This Court should do the same.

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

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

27 Because (1) Mr. Moskovyan has been detained for more than 90
28 days after his order became final, and (2) there is no significant

1 likelihood of his removal (3) in the reasonably foreseeable future, this
2 Court should grant his petition and order him released.

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

5 **A. It has been more than six years since**
6 **Mr. Moskovyan’s removal order became**
7 **administratively final, allowing him to challenge and**
8 **rebut the presumption that his continued detention**
9 **is constitutional.**

10 Mr. Moskovyan was ordered removed to Armenia on May 31,
11 2019. Cole Decl. at ¶ 10. He waived appeal of the immigration judge’s
12 decision. *Id.* He was released from immigration custody on an Order of
13 Supervision more than eight months later, on January 23, 2020, after
14 ICE was unable to obtain a travel document from the Armenian
15 government. *Id.* at ¶ 11.

16 Neither party appealed the immigration judge’s decision. *Id.* at
17 ¶ 10. As such, the removal order became administratively final thirty
18 days later, on June 30, 2019. *See* 8 C.F.R. § 1241.1(c). Mr. Moskovyan’s
19 statutory removal period, during which the “Attorney General shall
20 detain” him, thus expired 90 days after that on September 28, 2019.
21 *See* 8 U.S.C. § 1231(a)(2)(A), (b)(1)(A), (B)(i).

22 Mr. Moskovyan is thus in the subsequent discretionary detention
23 period, during which he can rebut the presumption that his detention
24 is authorized. In *Zadvydas*, the Supreme Court “recognized a
25 ‘presumptively’—not categorically—reasonable period of detention”
26 following a final removal order of six months. *Puertas-Mendoza v.*
27 *Bondi*, No. SA-25-CA-890-XR, 2025 WL 3142089, *2 (W.D. Tex. Oct.
28 22, 2025) (quoting *Zadvydas*, 533 U.S. at 699). “But a presumption ‘is
just that—a presumption.’” *Zavvar*, 2025 WL 2592543 at *5 (quoting

1 *Clark v. Martinez*, 543 U.S. 371, 387 (2005) (O'Connor, J., concurring)).

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

15 On this record, Mr. Moskovyan has rebutted the presumption
16 that his detention is authorized. This Court should thus consider the
17 merits—whether there is a significant likelihood of his removal in the
18 reasonably foreseeable future.

19 **B. Mr. Moskovyan has demonstrated there is no**
20 **“significant likelihood of removal.”**

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

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

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

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

9 First, because the Soviet Union dissolved in 1991,
10 Mr. Moskovyan cannot be removed to the sole country in which he has
11 citizenship and lawful immigration status. And the government has
12 tried and failed to obtain travel documents from Armenia, the only
13 country where Mr. Moskovyan has been ordered removed by an
14 immigration judge. Cole Decl. at ¶¶ 10–16. “This substantially
15 increases the difficulty of removing him.” *Munoz-Saucedo*, 789 F. Supp.
16 3d at 398. The government simply asserts the “ERO has worked
17 expeditiously to effectuate [Mr. Moskovyan’s] removal to Armenia,”
18 because it requested “guidance” from the ERO’s Removal and
19 International Operations on October 28, 2025, and submitted a request
20 for travel documents to the Armenian government on December 17,
21 2025. *Id.* at ¶¶ 14–16. Yet the government confirms it “does not
22 currently have valid travel document[s].” *Id.* at ¶ 14.

23 Second, the government has not identified or contacted *any* third
24 countries to request Mr. Moskovyan’s resettlement. Cole Decl. at
25 ¶¶ 17–19. Critically, the government routinely attempts to remove
26 petitioners like Mr. Moskovyan to countries who have agreements with
27 the United States to accept third-country deportees who are not their
28 nationals. See Jacqueline Metzler, *What Are Third-Country*

1 *Deportations, and Why Is Trump Using Them?*, Council on Foreign
2 Relations (Sept. 3, 2025) (identifying Mexico, Costa Rica, Panama,
3 South Sudan, Uganda, Rwanda, and Eswatini as the countries that
4 currently have such agreements).³ Given Mr. Moskovyan’s lack of
5 connection to any of these countries, it is very unlikely he will be
6 removed to any of the countries with whom the United States has an
7 agreement.

8 Third, that the government is optimistic and “expeditiously”
9 trying to effectuate Mr. Moskovyan’s removal to Armenia (or a third
10 country) does not demonstrate that his continued detention is
11 reasonable. ECF No. 5 at pp. 1, 3; Cole Decl. at ¶ 14. The petitioner in
12 *Zadvydas* appealed a “Fifth Circuit h[olding] [that] [the petitioner’s]
13 continued detention [was] lawful as long as good faith efforts to
14 effectuate deportation continue and [the petitioner] failed to show that
15 deportation will prove impossible.” 533 U.S. at 702 (cleaned up). The
16 Supreme Court reversed, finding that the Fifth Circuit’s good-faith-
17 efforts standard “demand[ed] more than our reading of the statute can
18 bear.” *Id.*

19 “[M]ere good-faith efforts [are] insufficient under *Zadvydas*.” No.
20 25-cv-2740, 2025 WL 3171738, *5 (citing *Nadarajah v. Gonzales*, 443
21 F.3d 1069, 1081–82 (9th Cir. 2006)). Instead, “the reasonableness of
22 Petitioner’s detention turns on whether and to what extent the
23 government’s efforts are likely to bear fruit.” *Hassoun*, 2019 WL 78984
24 at *5.

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28 ³ Available at <https://www.cfr.org/article/what-are-third-country-deportations-and-why-trump-using-them>.

1 Mr. Moskovyan’s case is thus much like *Munoz-Saucedo*. There,
2 the petitioner was granted withholding of removal to his country of
3 origin, Mexico. He overcame the presumption that his detention was
4 reasonable by showing “he cannot be removed to his country of origin,
5 that removing similarly situated individuals has been historically rare,
6 that ICE tried and failed to find a third country willing to accept him
7 during the initial 90-day detention period, and that there is presently
8 no country in the world willing to accept him.” *Munoz-Saucedo*, 789 F.
9 Supp. 3d at 399. So too here: Mr. Moskovyan cannot be removed to his
10 country of origin, USSR; removals to third countries has been
11 historically rare; and ICE either tried and failed to remove him to
12 Armenia during the 90-day detention period, which is further
13 evidenced by his release on an Order of Supervision more than six
14 years ago.

15 For the same reasons as in *Munoz-Saucedo*, Mr. Moskovyan’s
16 removal is not significantly likely to occur.

17 **C. Any third-country removal will not occur “in the**
18 **reasonably foreseeable future.”**

19 Even if ICE could eventually remove Mr. Moskovyan, it will not
20 happen “in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at
21 701. There are two reasons why.

22 First, the government’s travel document request to Armenia is
23 still pending, and it has not submitted *any* requests for Mr. Moskovyan
24 to be resettled in a third country in the last six years. Cole Decl. at
25 ¶¶ 10–19. It has now been more than two months since his re-
26 detention on October 15, 2025, and no third countries have been
27 identified, let alone contacted, regarding his resettlement. *Id.* at
28 ¶¶ 17–19. “The lack of any sign that [the two countries] [are] actively

1 considering accepting [the petitioner] further demonstrates that
2 removal is not likely in the foreseeable future.” *Zavvar*, 2025 WL
3 2592543 at *7.

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

16 Mr. Moskovyan would certainly seek to raise a claim of fear of
17 persecution upon his removal to any former USSR country. And he
18 would be entitled to raise those fears in potentially “additional, lengthy
19 proceedings.” *Munoz-Saucedo*, 2025 WL 1750346 at *7.

20 Mr. Moskovyan’s “detention may not be justified on the basis that
21 removal to a particular country is likely *at some point* in the future;
22 *Zadvydas* permits continued detention only insofar as removal is likely
23 in the *reasonably foreseeable* future.” *Hassoun*, 2019 WL 78984 at *6.
24 “The government’s active efforts to obtain travel documents from the
25 Embassy are not enough to demonstrate a likelihood of removal in the
26 reasonably foreseeable future where the record before the Court
27 contains no information to suggest a timeline on which such documents
28 will actually be issued.” *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020

1 WL 3972319, *4 (W.D.N.Y. July 14, 2020). “[I]f DHS has no idea of
2 when it might reasonably expect [Mr. Moskovyan] to be repatriated,
3 this Court certainly cannot conclude that his removal is likely to
4 occur—or even that it *might* occur—in the reasonably foreseeable
5 future.” *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

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

10 CONCLUSION

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

20 Respectfully submitted,

21
22 Dated: January 5, 2026

s/ Armilla Staley-Ngomo
Armilla Staley-Ngomo
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Moskovyan
Email: armilla_staley-ngomo@fd.org