**Katie Hurrelbrink**
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
katie_hurrelbrink@fd.org

Attorneys for Mr. Nikogosyan
[redacted]

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

GRANT NIKOGOSYAN,

Petitioner,

v.

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

Respondents.

CIVIL CASE NO.: '25CV3716 AGS BLM

**Petition for Writ of Habeas Corpus**

**[28 U.S.C. § 2241]**

## INTRODUCTION

Grant Nikogosyan is a Russian asylum-seeker, who came to the United States fleeing political persecution. An immigration judge ("IJ") ordered him removed on July 24, 2025 but granted him withholding of removal to Russia. In the five months since then, Mr. Nikogosyan has heard almost nothing from ICE. ICE agents have had no formal meetings with him about his removal—he does not even know who his deportation officer is. And whenever he flags down ICE agents who visit his pod, they just say that they're working on his removal. Mr. Nikogosyan has seen no indications that ICE has even tried to remove him to a third country, let alone made any concrete progress in that direction. That is no surprise. Statistics show that over 98% of persons granted Convention Against Torture ("CAT") relief and withholding are never removed. *Johnson v. Guzman Chavez*, 594 U.S. 523, 537 (2021). And there is no reasonable prospect that ICE will succeed in removing Mr. Nikogosyan where they have so often failed before. Neither he nor his family has any connection to any country other than Russia.

Because "there is no significant likelihood of removal in the reasonably foreseeable future," Mr. Nikogosyan must be released. *Zadvydas v. Davis*, 533 U.S. 678 (2001). That holds true even though Mr. Nikogosyan has been detained for less than six months. **Many courts have held that *Zadvydas*'s six-month presumptively reasonable removal period is "just that—a presumption," which can be rebutted with sufficiently compelling evidence.** *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018); *see also Cruz Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *7 n.5 (D. Md. Aug. 11, 2025); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D.N.J. 2025); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025); *Sweid v. Cantu*, No. CV-25-03590-PHX-DWL (CDB), 2025 WL 3033655, at *3 (D. Ariz. Oct. 30, 2025); *Puertas Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *2 (W.D. Tex. Oct. 22, 2025); *Jimenez v. Cronen*, 317 F.

Supp. 3d 626, 641 n.6 (D. Mass. 2018); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020); *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025); *Douglas v. Baker*, No. 25-CV-2243-ABA, 2025 WL 2687354, at *3 (D. Md. Sept. 19, 2025); *Jamal v. Sessions*, No. 5:18-06015-CV-RK, 2018 WL 1440609, at *2 (W.D. Mo. Mar. 22, 2018); *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008). Because Mr. Nikogosyan can prove that he will not be removed in the reasonably foreseeable future, he must be released.

## STATEMENT OF FACTS

### I. Mr. Nikogosyan came to the United States fleeing political persecution, and an immigration judge granted him withholding of removal.

Mr. Nikogosyan fled to the United States from Russia, where he was persecuted for his opposition to the Russia-Ukraine war. Exh. A at ¶ 1. He arrived in the U.S. on January 17, 2025. *Id.* Border patrol immediately arrested and detained him. *Id.* at ¶ 2.

He was placed in removal proceedings, where he made fear-based claims. *Id.* at ¶ 3. The immigration judge ordered him removed on July 24, 2025, but he was granted withholding of removal to Russia. *Id.* Nevertheless, ICE continued detaining him. *Id.*

Since then, Mr. Nikogosyan has seen no indication that ICE is trying to remove him anywhere. His deportation officer has never formally met with him about his removal—he does not even know who is deportation officer is. *Id.* at ¶ 4. No one has ever asked him to fill out paperwork to be removed to a third country. *Id.* He has never had an interview or a phone call with the consulate of any third country. *Id.* No ICE agent has ever identified a third country that might take him. *Id.* He has heard of no efforts even to ask a third country to accept him for removal. *Id.* Though he does not read English, he believes based on translations from other detainees that the only paperwork he received had to do

with his custody status—he has not received any paperwork about third-country removal. Id. at ¶ 6. And when he tries to flag down ICE agents who happen to enter his pod, they cannot answer his questions. *Id.* at ¶ 5. They just say that they're looking for a third country that can take him. *Id.*

He also has strong reasons to doubt that third-country removal is possible. He is not a citizen of any country other than Russia. *Id.* at ¶ 7. His parents are both Russian citizens. *Id.* He has no permission to enter any country other than Russia. *Id.* And he knows of no other reason why a third country would accept him. *Id.*

## II. The government is carrying out deportations to third countries without providing sufficient notice and opportunity to be heard.

The evidence therefore shows that ICE cannot remove Mr. Nikogosyan to a third country in the reasonably foreseeable future. But should something unexpectedly change, and ICE does succeed in removing Mr. Nikogosyan to a third country, he is in grave danger of removal without due process.

The Trump administration reportedly has negotiated with at least 58 countries to accept deportees from other nations. Edward Wong et al, *Inside the Global Deal-Making Behind Trump's Mass Deportations*, N.Y. Times, June 25, 2025. On June 25, 2025, the New York Times reported that seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are not their own citizens. *Id.* Since then, ICE has carried out highly publicized third country deportations to South Sudan and Eswatini.

The Administration has reportedly negotiated with countries to have many of these deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about $5 million to imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. *See id.* In February, Panama and Costa Rica

took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. *Id.*; Vanessa Buschschluter, *Costa Rican court orders release of migrants deported from U.S.*, BBC (Jun. 25, 2025). On July 4, 2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to South Sudan. *See* Wong, *supra*. On July 15, ICE deported five men to the tiny African nation of Eswatini, including one man from Vietnam, where they are reportedly being held in solitary confinement. Gerald Imray, *3 Deported by US held in African Prison Despite Completing Sentences, Lawyers Say*, PBS (Sept. 2, 2025). Many of these countries are known for human rights abuses or instability. For instance, conditions in South Sudan are so extreme that the U.S. State Department website warns Americans not to travel there, and if they do, to prepare their will, make funeral arrangements, and appoint a hostage-taker negotiator first. *See* Wong, *supra*.

On June 23 and July 3, 2025, the Supreme Court issued a stay of a national class-wide preliminary injunction issued in *D.V.D. v. U.S. Department of Homeland Security*, No. CV 25-10676-BEM, 2025 WL 1142968, at *1, 3 (D. Mass. Apr. 18, 2025), which required ICE to follow statutory and constitutional requirements before removing an individual to a third country. *U.S. Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (mem.); *id.*, No. 24A1153, 2025 WL 1832186 (U.S. July 3, 2025).[1] On July 9, 2025, ICE rescinded previous

[1] Though the Supreme Court's order was unreasoned, the dissent noted that the government had sought a stay based on procedural arguments applicable only to class actions. *Dep't of Homeland Sec. v. D.V.D.,* 145 S. Ct. 2153, 2160 (2025) (Sotomayor, J., dissenting). Thus, "even if the Government [was] correct that classwide relief was impermissible" in *D.V.D.*, Respondents still "remain[] obligated to comply with orders enjoining [their] conduct with respect to individual plaintiffs" like Mr. Nikogosyan. *Id.* Thus, the Supreme Court's decision does not override courts' 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).

guidance meant to give immigrants a "'meaningful opportunity' to assert claims for protection under the Convention Against Torture (CAT) before initiating removal to a third country" like the ones just described. Exh. B.

Under the new guidance, ICE may remove any immigrant to a third country "without the need for further procedures," as long as—in the view of the State Department—the United States has received "credible" "assurances" from that country that deportees will not be persecuted or tortured. *Id.* at 1. If a country fails to credibly promise not to persecute or torture releasees, ICE may still remove immigrants there with minimal notice. *Id.* Ordinarily, ICE must provide 24 hours' notice. But "[i]n exigent circumstances," a removal may take place in as little as six hours, "as long as the alien is provided reasonably means and opportunity to speak with an attorney prior to the removal." *Id.*

Upon serving notice, ICE "will not affirmatively ask whether the alien is afraid of being removed to the country of removal." *Id.* (emphasis original). If the noncitizen "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, [ICE] may proceed with removal to the country identified on the notice." *Id.* at 2. If the noncitizen "does affirmatively state a fear if removed to the country of removal" then ICE will refer the case to U.S. Citizenship and Immigration Services ("USCIS") for a screening for eligibility for withholding of removal and protection under the Convention Against Torture ("CAT"). *Id.* at 2. "USCIS will generally screen within 24 hours." *Id.* If USCIS determines that the noncitizen does not meet the standard, the individual will be removed. *Id.* If USCIS determines that the noncitizen has met the standard, then the policy directs ICE to either move to reopen removal proceedings "for the sole purpose of determining eligibility for [withholding of removal protection] and CAT" or designate another country for removal. *Id.*

## CLAIMS FOR RELIEF

*Zadvydas v. Davis* holds that immigration statutes do not authorize the government to detain immigrants like Mr. Nikogosyan, for whom there is "no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. 678, 701 (2001). Though *Zadvydas* recognized that detention pending removal is "presumptively reasonable" for six months after a removal order becomes final, *id.*, many courts have concluded that that presumption is rebuttable.

Mr. Nikogosyan has rebutted the presumption here, proving that he will not be removed in the reasonably foreseeable future. Regardless, ICE may not remove him to a third country without notice and an adequate opportunity to make a fear-based claim. This Court should therefore grant the petition on both counts.

### I. Count 1: Mr. Nikogosyan's detention violates *Zadvydas* and 8 U.S.C. § 1231.

#### A. Legal background

Mr. Nikogosyan's indefinite detention violates the statute authorizing detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Nikogosyan. Federal law requires ICE to detain an immigrant during the "removal period," which typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes discretionary—ICE may detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation agreement," or their countries "refuse to take them," or they are "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir.

2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months, years, decades, or even the rest of their lives.

If federal law were understood to allow for "indefinite, perhaps permanent, detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

As an initial matter, *Zadvydas* held that detention is "presumptively reasonable" for at least six months. *Id.* at 701. This acts as a kind of grace period for effectuating removals.

Following the six-month grace period, courts must use a burden-shifting framework to decide whether detention remains authorized. First, the petitioner must make a prima facie case for relief: He must prove that there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

If he does so, the burden shifts to "the Government [to] respond with evidence sufficient to rebut that showing." *Id.* Ultimately, then, the burden of proof rests with the government: The government must prove that there is a "significant likelihood of removal in the reasonably foreseeable future," or the immigrant must be released. *Id.*

### B. Courts across the country agree that the six-month presumption is rebuttable.

Mr. Nikogosyan is different from many *Zadvydas* petitioners in that he has not been detained for six months after his removal order became final. But as *Zadvydas* makes clear, detention is only "*presumptively* reasonable" for six months. 533 U.S. at 701 (emphasis added). Numerous courts have concluded that the six-month presumption is "just that, a presumption, one that can be rebutted upon a showing that removal is *not* reasonably foreseeable." *Cruz Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2306274, at *7 n.5 (D. Md. Aug. 11, 2025); *accord*

*Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D.N.J. 2025); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020); *Sweid v. Cantu*, No. CV-25-03590-PHX-DWL (CDB), 2025 WL 3033655, at *3 (D. Ariz. Oct. 30, 2025); *Puertas Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *2 (W.D. Tex. Oct. 22, 2025); *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 n.6 (D. Mass. 2018); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020); *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *9 (S.D. Tex. Sept. 26, 2025); *Douglas v. Baker*, No. 25-CV-2243-ABA, 2025 WL 2687354, at *3 (D. Md. Sept. 19, 2025); *Jamal v. Sessions*, No. 5:18-06015-CV-RK, 2018 WL 1440609, at *2 (W.D. Mo. Mar. 22, 2018). "A close reading of *Zadvydas*" refutes any attempt to turn that presumption into a bright-line rule. *Cesar*, 542 F. Supp. 2d at 902.

Prohibiting all detention challenges before the six-month mark would go against *Zadvydas*'s most fundamental holding: that "if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Zadvydas*, 533 U.S. at 699–700. "The fundamental principle in *Zadvydas* . . . is that where removal is not reasonably foreseeable, detention is unconstitutional." *Cesar*, 542 F. Supp. 2d at 902. "*Zadvydas* unequivocally held that 'once removal is no longer reasonably foreseeable, continued detention is no longer authorized.'" *Puerta Mendoza*, 2025 WL 3142089, at *2. It follows that "[i]f there comes a point during the six-month period at which it is 'no longer reasonably foreseeable' that a person will actually be removed, then detention 'is no longer authorized,'" and the petitioner must be released. *Cruz Medina*, 2025 WL 2306274, at *6 (quoting *Zadvydas*, 533 U.S. at 699–700). To hold otherwise would be to render *Zadvydas* "internally inconsistent." *Zavvar*, 2025 WL 2592543, at *5.

*Zadvydas* did not back away from that fundamental principle when describing the six-month presumption. "At no point did the *Zadvydas* Court

preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period." *Trinh*, 466 F. Supp. 3d at 1092. To the contrary, the Court said that it was "adopting a *presumption* of reasonableness before the six-month period expires. A presumption is just that: a default, a starting point." *Cruz Medina*, 2025 WL 2306274, at *5. "The *Zadvydas* Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable." *Cesar*, 542 F. Supp. 2d at 903; *accord Sweid*, 2025 WL 3033655, at *3 ("*Zadvydas* did not hold that this presumption is conclusive in all cases and under all sets of facts.").

Furthermore, when introducing the six-month presumption, the Court "noted that such presumptions are intended to 'guide lower court determinations.'" *Zavvar*, 2025 WL 2592543, at *5. A "guide" is "not a categorical prohibition on claims challenging detention less than six months." *Trinh*, 466 F. Supp. 3d at 1093.

Finally, *Zadvydas* analogized to the "similar" rule in *County of Riverside v. McLaughlin,* 500 U.S. 44, 56–58 (1991), in which the Court "adopt[ed] [a] presumption, based on lower court estimate of time needed to process arrestee, that 48–hour delay in probable-cause hearing after arrest is reasonable, hence constitutionally permissible." *Zadvydas*, 533 U.S. at 701 (describing *Riverside*). *Riverside*'s 48-hour rule "is a rebuttable presumption." *Cesar*, 542 F. Supp. 2d at 904. It stands to reason that "the *Zadvydas* presumption, like the *Riverside* presumption, is rebuttable." *Munoz-Saucedo*, 789 F. Supp. 3d at 397.

In short, then, "[t]he presumption of reasonableness is the default, but if a person 'can prove' that his removal is not reasonably foreseeable, then he can overcome that presumption." *Munoz-Saucedo*, 789 F. Supp. 3d at 397 (quoting *Riverside*, 500 U.S. at 56).

**C. Several courts have found that petitioners rebutted the presumption where, as here, their removal order prohibited their deportation to their home country and the was no apparent prospect of third-country removal.**

Because Mr. Nikogosyan must rebut the six-month presumption, he bears the burden to show that "there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Multiple courts have found that petitioners met that burden when (1) they received withholding or CAT relief and (2) their individual circumstances otherwise suggested a low likelihood of third-country removal. *Villanueva*, 2025 WL 2774610, at *10; *Puertas Mendoza*, 2025 WL 3142089, at *2; *Munoz-Saucedo*, 789 F. Supp. 3d at 399–400. Mr. Nikogosyan's case has both features.

*First*, the IJ's order prohibits Mr. Nikogosyan's removal to his home country of Russia, "which is the only country to which he has a claim to citizenship or legal immigration status." *Villanueva*, 2025 WL 2774610, at *10. "This substantially increases the difficulty of removing him." *Munoz-Saucedo*, 789 F. Supp. 3d at 398.

That's because "alternative-country removal is rare." *Johnson v. Guzman-Chavez*, 594 U.S. 523, 537 (2021). Between 2020 and 2023, data apparently show that "ICE removed . . . only *five* non-citizens granted withholding or CAT relief to alternative countries." *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025) (emphasis original). In fiscal year 2017, there were at most 21 people of the thousands with withholding of removal deported to *any* country; that number includes dual citizens who only received withholding from one of their two other countries of origin. *See* American Immigration Council & National Immigrant Justice Center, *The Difference Between Asylum and Withholding of Removal*, 7 (Oct. 2020)[2] (cited in *Guzman-Chavez*, 594 U.S. at 537). That means that "less than

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

two percent of those granted withholding of removal were deported to a third country." *Puertas-Mendoza*, 2025 WL 3142089 at *3 (citing American Immigration Council & National Immigrant Justice Center, *supra*).

"[T]hat is not simply a matter of United States policy—foreign governments 'routinely deny' requests to receive people who lack a connection to the would-be receiving country." *Puertas-Mendoza*, 2025 WL 3142089 at *3. "The reason so few people are deported to third countries is because," while "customary international law holds that a country has a duty to accept the return of its nationals," usually, "countries have no incentive to accept non-citizens." American Immigration Council & National Immigrant Justice Center, *supra*, at 7.

Here, Mr. Nikogosyan's individual circumstances strongly suggest that he will not be among the handful of people removed to a third country. Mr. Nikogosyan is a Russian citizen, and he does not have citizenship in any other country. Exh. A at ¶ 7. His parents are Russian citizens, too. *Id.* He has no legal status in or permission to enter any other country. *Id.* He knows of no reason why any other country would be incentivized to accept him for removal. *Id.*

*Second*, ICE does not appear to have made any progress in removing Mr. Nikogosyan to a third country in the five months since he was ordered removed—indeed, it is not clear that ICE has made any effort to do so. The governing statute provides that ICE "shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). Yet in the five months since he was ordered removed, ICE has never met with Mr. Nikogosyan about his removal—he does not even know who his deportation officer is. Exh. A at ¶ 4. When he flags down random ICE agents, they just tell him that they are looking for a country to accept him. *Id.* at ¶ 5. They have not identified even one country that is a plausible candidate for his removal or claimed that they have even asked another country to take him. *Id.* All told, he has not been informed of any efforts that ICE is making to remove him anywhere. *Id.* at ¶ 7.

"[I]f [a] plaintiff c[an] show . . . that the government [is] not taking steps to effectuate his removal, then . . . removal likely would not be reasonably foreseeable, and detention would therefore be unconstitutional." *Cesar v. Achim*, 542 F. Supp. 2d 897, 905 (E.D. Wis. 2008). Given that third country removal is already exceedingly unlikely, ICE's "lack of effort only reinforces the conclusion that the Petitioner's removal is not likely to occur in the reasonably foreseeable future." *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002); *see also Conchas-Valdez v. Casey*, 25-cv-2469-DMS, Dkt. 9, at 6 (S.D. Cal. Oct. 6, 2025) (granting a petition in part because "the Government's minimal work on [the] case . . . [did] not instill confidence that it will be able to secure [CAT] Petitioner's removal in the reasonably foreseeable future").

Even if ICE were making efforts behind the scenes, so far, none have borne fruit. The third-country removal process has not progressed even to the point that ICE has needed Mr. Nikogosyan to fill out any paperwork. *Id.* at ¶ 4. Nor has he been asked to call or interview with any consulate. *Id.* And ICE has never identified a third country that might take Mr. Nikogosyan, let alone told him why that other country would agree to take him. *Id.*

That matters, because even when Mr. Nikogosyan bears the burden, the *Zadvydas* standard remains the same: He must show that removal is not significantly likely in the reasonably foreseeable future. *See Cesar*, 542 F. Supp. 2d at 903. And *Zadvydas* itself made clear that good faith efforts do not themselves show that removal is significantly likely. The petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Here, then, it is possible that ICE is making "travel document requests," *Gilali v. Warden of McHenry Cnty. Jail*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019)—though no evidence of that has filtered through to Mr. Nikogosyan. But mere efforts would be "insufficient" to defeat Mr. Nikogosyan's showing that removal is not likely. *Id.* That would be "merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Id.*; *see also Zavvar*, 2025 WL 2592543, at *7 (finding the presumption rebutted, despite outstanding third-country requests to Australia and Romania, because of "[t]he lack of any sign that Australia or Romania is actively considering accepting [the petitioner]").

*Third*, even if ICE could eventually remove Mr. Nikogosyan to a third country, there is no reason to think that that will happen in the reasonably foreseeable future. The difficulty of third-country removal suggests that ICE will not quickly prove successful. And even if ICE received travel documents for a third country, Mr. Nikogosyan "would be entitled to seek fear-based relief from removal to that country, which would require additional, lengthy proceedings." *Munoz-Saucedo*, 789 F. Supp. 3d at 399; *accord Villanueva*, 2025 WL 2774610, at *10 ("[A]ny efforts to remove Villanueva to a third country would likely be delayed by proceedings contesting his removal to the third country finally identified.").

For all of these reasons, Mr. Nikogosyan has rebutted the presumption, and he must be released.

## II. Count 2: ICE may not remove Mr. Nikogosyan to a third country without adequate notice and an opportunity to be heard.

There is therefore no current likelihood that Mr. Nikogosyan will be removed to a third country. But ICE has told Mr. Nikogosyan that they would do so if they could, Exh. A at ¶ 5, and in this rapidly evolving removal landscape, something unforeseen could suddenly change to make that feasible. ICE's "credible threat of enforcement" of this third-country removal plan is sufficient to make this claim justiciable, even ICE does not have any current feasible plan to remove Mr. Nikogosyan to a third country. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 156–57, 161 (2014) (finding standing, even though the politician seeking enforcement of an unconstitutional law was no longer running for office). And if ICE did suddenly prove able to remove Mr. Nikogosyan to a third country, it would do so under a policy that violates the Fifth Amendment, the Convention Against Torture, and implementing regulations.

### A. Legal background

U.S. law enshrines protections against dangerous and life-threatening removal decisions. By statute, the government is prohibited from removing an immigrant to any third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "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, membership in a particular social group, or political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a mandatory protection.

Similarly, Congress codified protections enshrined in the CAT prohibiting the government from removing a person to a country where they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) ("It shall be the policy of

the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); 28 C.F.R. § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

The government must also "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with section 1231(b)(3) and avoids [a dispute about what was said]." *Aden*, 409 F. Supp. 3d at 1019. "Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process." *Andriasian*, 180 F.3d at 1041.

If the noncitizen claims fear, measures must be taken to ensure that the noncitizen can seek asylum, withholding, and relief under CAT before an immigration judge in reopened removal proceedings. The amount and type of notice must be "sufficient" to ensure that "given [a noncitizen's] capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation." *Aden*, 409 F. Supp. 3d at 1009 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132

F.3d 405, 408 (7th Cir. 1998)); *cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring the government to move to reopen the noncitizen's immigration proceedings if the individual demonstrates "reasonable fear" and to provide "a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings" if the noncitizen is found to not have demonstrated "reasonable fear"); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice and time for a respondent to file a motion to reopen and seek relief).

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

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

The policies in the June 6, 2025 memo do not adhere to these requirements. First, under the policy, ICE need not give immigrants *any* notice or hearing before removing them to a country that—in the State Department's estimation—has provided "credible" "assurances" against persecution and torture. Exh. B. By depriving immigrants of any chance to challenge the State Department's view, this policy violates "[t]he essence of due process," "the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

Second, even when the government has obtained no credible assurances against persecution and torture, the government can still remove the person with between 6 and 24 hours' notice, depending on the circumstances. Exh. B.

Practically speaking, there is not nearly enough time for a detained person to assess their risk in the third country and martial evidence to support any credible fear—let alone a chance to file a motion to reopen with an IJ. An immigrant may know nothing about a third country, like Eswatini or South Sudan, when they are scheduled for removal there. Yet if given the opportunity to investigate conditions, immigrants would find credible reasons to fear persecution or torture—like patterns of keeping deportees indefinitely and without charge in solitary confinement or extreme instability raising a high likelihood of death—in many of the third countries that have agreed to removal thus far. Due process requires an adequate chance to identify and raise these threats to health and life. This Court must prohibit the government from removing Mr. Nikogosyan without these due process safeguards.

## III. This Court must hold an evidentiary hearing on any disputed facts.

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

## IV. Prayer for relief

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

1. Order Respondents to immediately release Petitioner from custody;
2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from removing Petitioner unless they provide the following process, *see D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025):
    a. written notice to both Petitioner and Petitioner's counsel in a language Petitioner can understand;

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

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

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

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

Respectfully submitted,

Dated: December 22, 2025

*s/ Katie Hurrelbrink*

**KATIE HURRELBRINK**
Federal Defenders of San Diego, Inc.
Email: Katie_Hurrelbrink@fd.org

**PROOF OF SERVICE**

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney's Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Date: 12/22/2025

/s/ *Katie Hurrelbrink*
Katie Hurrelbrink

# Exhibit A

**Katie Hurrelbrink**
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
katie_hurrelbrink@fd.org

Attorneys for Mr. Nikogosyan
A#221-350-550

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

GRANT NIKOGOSYAN,

Petitioner,

v.

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

Respondents.

CIVIL CASE NO.:

**First Declaration of Grant Nikogosyan**

I, Grant Nikogosyan, declare:

1. My name is Grant Nikogosyan. I was born in Russia on [redacted] 2000. In Russia, I was persecuted because I opposed the war with Ukraine. I fled my persecutors and came to the United States on January 17, 2025.

2. I was arrested by border patrol on the same day that I entered the United States. I have been detained since then.

3. I was placed in removal proceedings. I was ordered removed on July 24, 2025, but I received withholding of removal to Russia. I have been detained for almost five months since then. I am at Otay Mesa Detention Center.

4. Since I was ordered removed, ICE has never asked me to fill out any paperwork to be removed to a third country. I have never had an interview or a phone call with the consulate of any third country. ICE has never identified a third country that might take me or told me that they are making any efforts to remove me to any particular third country. In fact, since I was ordered removed, my deportation officer has not had a single formal meeting with me about my deportation. I do not even know who my deportation officer is.

5. When ICE officers come into my pod, I try to ask them about my status and what will happen to me. They tell me that they are looking for a third country that will accept me for deportation. But they have never identified a third country that might take me. They just say that they're looking. They can't answer any other questions.

6. I've gotten one set of papers from ICE since I was ordered removed. I can't read English, so I couldn't see for myself what it said. But another detainee said that ICE was reviewing my custody status. As I understand it, that paperwork had nothing to do with ICE's efforts to remove me to a third country.

7. I am not a citizen of any country other than Russia. I have no legal status in or permission to enter any country other than Russia. My parents are both Russian citizens, and they do not have citizenship in any other country. I do not know of any reason why a country other than Russia would accept me for removal.

8. I have never been convicted of a crime in Russia or the United States.

9. I have no savings and no bank account. I am not making any money while in custody. I have no house, no car, and no other assets. I do not believe that I can afford an attorney.

10. A Russian interpreter reviewed every line of this declaration with me, and I confirmed that it was true and correct.

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

DATE: 11.28.2025

**GRANT NIKOGOSYAN**
Declarant

# Exhibit B

PLAINTIFFS' EXHIBIT NO. 2
CASE NO. PX 25-951
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)**

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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