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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALPEREN TEZCAN,

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.

No.: 26-cv-77-JLS-VET

Traverse in support of petition for writ of habeas corpus

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

I. Introduction

In their return, the Respondents do not dispute that Alperen Tezcan should be released if he shows that his "removal is not reasonably foreseeable." *Puertas-Mendoza v. Bondi*, No. SA-25-CA-890-XR, 2025 WL 3142089, *4 (W.D. Tex. Oct. 22, 2025) (citing *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001)). Respondents do not dispute that Mr. Tezcan was ordered removed and granted relief from removal on July 25, 2025, and that "[t]he six-month [*Zadvydas*] period is merely a 'guide' to lower courts' determinations whether removal is reasonably foreseeable." *Gomez-Simeon*, No. SA-25-cv-1460-JKP, 2025 WL 3470872, *3 (W.D. Tex. Nov. 24, 2025).

Instead, Respondents submit a declaration that states:

- A local San Diego ICE division first contacted a central division within ICE about Mr. Tezcan "to seek a third country for removal" on September 10, 2025;
- The local division requested updates from the central division six times between September and December;
- "At this time, ICE is still in the process of identifying third countries"
- When ICE identifies a third country, it will follow its "standard ICE guidance and procedures," which as summarized in the declaration match several details in the standard third-country removal policy Mr. Tezcan submitted to this Court as Exhibit G.

ECF No. 10, Declaration of Ramon Meraz, ¶¶ 8–13; *see* ECF No. 1, Exhibit G.

This information does not rebut Mr. Tezcan's showing—based on his five months and three weeks in detention after being ordered removed, his receipt of withholding of removal, the extremely small number of people who received such relief who have been removed in the last decade, the lack of ICE's progress in his case, and the process to which he is entitled if ICE ever does identify a third

country—that there is no significant likelihood of his removal in the reasonably foreseeable future. *See* ECF No. 1 at 8–15.

Further, Respondents have no legal response to Mr. Tezcan's argument that ICE's current third-country removal policy—to which they agree they intend to subject Mr. Tezcan, and the contents of which they agree with Mr. Tezcan on—does not provide him "with adequate notice and an opportunity to be heard before removing him to a third country." *Azzo v. Noem*, No. 25-cv-3122-RBM-BJW, 2025 WL 353208, *8 (S.D. Cal. Dec. 10, 2025) (granting habeas petition and enjoining the respondents from removing the petitioner absent the process outlined in *DVD v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 WL 1453640 (D. Mass. May 21, 2025)). Respondents have no response to Mr. Tezcan's argument that it is proper for this Court to prohibit Respondents from removing him to a third country without first providing him notice of his statutory rights to apply for asylum and withholding from those third countries and a meaningful opportunity to be heard on those claims. *See* ECF No. 1 at 4–7, 15–19.

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

II. Mr. Tezcan's case is not "premature" at five months and three weeks because the *Zadvydas* six-month presumption is rebuttable, as the majority of courts to consider the issue have held.

In a paragraph, Respondents argue that Mr. Tezcan's "case is premature as the six-month presumptively reasonable removal period has not lapsed." ECF No. 10 at 4. In so doing, Respondents cites several cases which fail to address whether the *Zadvydas* presumption is rebuttable. *Id.* As other courts have noted when surveying these cases, the rebuttable-presumption issue "may not have been presented" in them. *Zavvar v. Scott*, No. 25-2104-TDC, 2025 WL 2592543, *6 (D. Md. Sept. 8, 2025). Respondents also cite one case in which the petitioner was still in his initial 90-day period of mandatory detention, which is not the issue here. ECF No. 10 at 4 (citing *Tumasov v. Doe 1*, No. 25-cv-2704-AGS-JLB, 2025

WL 3171897).

Indeed, Respondents themselves acknowledge that other cases that *have* addressed the issue have held that "[a]t no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period." ECF No. 10 at 4 (citing *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020)).

Here, in this case, Mr. Tezcan argued extensively exactly how and why he can rebut the presumption. ECF No. 1 at 8–15. This Court should thus consider the merits—whether he has rebutted the presumption and shown that there is not a significant likelihood of his removal in the reasonably foreseeable future.

III. Respondents have not disproven Mr. Tezcan's showing that there is no significant likelihood of his removal in the reasonably foreseeable future.

Taking the government's declaration into account, Mr. Tezcan has still proven that his removal is not likely in the reasonably foreseeable future.

In Mr. Tezcan's case, ICE began the process of his third-country removal in September. ECF No. 10, Declaration of Deportation Officer Meraz, ¶ 8. It has not gotten far. One part of ICE asked for help from another part of ICE seven times. It has not heard back. It has no timetable for when it will. *Id.* ¶¶ 8–10.

This evidence does not alter Mr. Tezcan's showing that his removal to an unidentified third country is not "significant[ly] like[ly]." *Zadvydas*, 533 U.S. at 701. Nor does it alter his showing that his removal to an unidentified third country will not happen "in the reasonably foreseeable future." *Id.*

As Mr. Tezcan explained in his habeas petition, and as the government does not dispute, his receipt of "withholding of removal 'substantially increases the difficulty of removing him.'" *Marquez-Amaya v. Thompson*, No. 5:25-cv-1501-JKP, 2025 WL 3654327, *6 (W.D. Tex. Dec. 15, 2025) (quoting *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025)); *see* ECF No. 1 at 11–12.

As Mr. Tezcan noted, and again as the government does not dispute,

historical data back this difficulty of removal up. Of the thousands of noncitizens who receive withholding of removal every year, in many recent years, only a few have been removed. ECF No. 1 at 4–5, 12; Exhibits D, E, F.

And Mr. Tezcan's individual circumstances strongly confirm he will not be among the handful of people granted withholding of removal the U.S. removes to a third country. He is an Turkish citizen, who was born in Turkey, and who has only ever had immigration status in Turkey. Exhibit A ¶ 4. He has no connections to any other country. *Id.*

As a result, ICE has yet to even identify a country to try to remove Mr. Tezcan to. ECF No. 10, Declaration of Deportation Officer Meraz, ¶¶ 7–10. "Even when ICE has 'identified a third country,' noncitizens like Petitioner 'would be entitled to seek fear-based relief from removal to that country, which would require additional, lengthy proceedings." *Marquez-Amaya*, 2025 WL 3654327 at *6 (quoting *Munoz-Saucedo*, 789 F. Supp. 3d at 399)). And Mr. Tezcan would have ample reason to seek fear-based relief from many countries. *See* ECF No. 1 at 14.

Like in *Munoz-Saucedo*, here, "Petitioner has alleged that he cannot be removed to his country of origin, that removing similarly situated individuals has been historically rare, that ICE tried and failed to find a third country willing to accept him during the initial 90-day detention period, and that there is presently no country in the world willing to accept him." 789 F. Sup. 3d at 399. Like in *Munoz-Saucedo*, then, Mr. Tezcan's showing has "more than suffice[d] to demonstrate that Petitioner's removal is not reasonably foreseeable, and therefore overcome the presumption that his detention is reasonable." *Id.* This Court should grant his petition and order his release.

IV. Respondents have no legal argument for how ICE's third-country removal process complies with existing Ninth Circuit law regarding the process due to noncitizens in third-country removal proceedings.

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

The government identifies certain components of the third-country removal policy challenged in Mr. Tezcan's habeas petition. Compare ECF No. 10 at 4–5 with ECF No. 1 at 6–7, 17–18, Exhibit G. But the government does not explain how this policy complies with due process or Ninth Circuit law.

As Mr. Tezcan explained in his habeas petition, "This policy contravenes Ninth Circuit law." *Nguyen v. Scott*, 796 F. Supp. 3d 703, 728 (W.D. Wash. 2025). "It would be impossible to comply both with Ninth Circuit precedent and the policy." *Id.* "'Failing to notify individuals who are subject to deportation that they have the right to apply . . . for withholding of deportation to the country to which they will deported violates both INS regulations and the constitutional right to due process.'" *Id.* at *18 (quoting *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). Yet that is exactly what existing ICE policy allows for. *See* ECF No. 1 at 6–7, 17–18, Exhibit G. The government has no response on this point.

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

V. Conclusion

This Court should order Mr. Tezcan's immediate release. It should also order the Respondents to provide the process identified in the habeas petition before removing Mr. Tezcan to an unidentified third country.

Respectfully submitted,

Dated: January 14, 2026

s/ Jessie Agatstein

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