

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Ercan KOCA,

Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

TODD LYONS, in his official capacity as
Acting Director and Senior Official
Performing the Duties of the Director of
U.S. Immigration and Customs
Enforcement;

Robert HAGAN, Field Office Director, Denver
Field Office, Immigration and Customs
Enforcement, in his official capacity; and

Juan BALTAZAR, in his official capacity
as Warden of the Denver Contract
Detention Facility.

Respondents.

**VERIFIED PETITION FOR A
WRIT OF HABEAS CORPUS**
[Expedited Handling Requested]

Case No. _____

INTRODUCTION

1. This is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging Petitioner's continued civil immigration detention following a final order of removal where the Immigration Judge ("IJ") granted withholding of removal under INA § 241(b)(3), 8 U.S.C. § 1231(b)(3).

2. Petitioner has been continuously detained by Immigration and Customs Enforcement (ICE) since December 7, 2024.

3. Petitioner was granted Withholding of Removal under INA § 241(b)(3) by an Immigration Judge ("IJ") on July 7, 2025, after the Court found a high probability that he would face persecution in Turkey. *See* Exh. A.

4. Despite this grant of relief more than six months ago, Immigration and Customs Enforcement (ICE) has held Petitioner in prolonged, arbitrary detention. ICE has failed to provide no evidence that removal to a third country is 'significantly likely in the reasonably foreseeable future' under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

5. Petitioner's prolonged detention therefore violates the Due Process Clause of the Fifth Amendment and exceeds the statutory authority conferred by 8 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

6. Petitioner requests that this Court grant his Writ of Habeas Corpus and order his immediate release. In the alternative, Petitioner respectfully requests that this Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

JURISDICTION AND VENUE

7. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody within this judicial district in violation of the Constitution and laws of the United States. See 28 U.S.C. § 2241(c)(3). The Suspension Clause guarantees that the writ of habeas corpus is available to every individual detained within the United States. U.S. Const. art. I, § 9, cl. 2; *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004).

8. District courts retain habeas jurisdiction to review challenges to immigration detention, including post-removal-order detention under 8 U.S.C. § 1231. *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *Demore v. Kim*, 538 U.S. 510, 517 (2003). Jurisdiction is not stripped by 8 U.S.C. § 1252(g) because Petitioner does not seek review of his removal order, but rather challenges the legality and duration of his detention. See *Zadvydas*, 533 U.S. at 688; *Roe v. Oddo*, No. 25-cv-128J, 2025 WL 1892445, at *4 (W.D. Pa. July 9, 2025).

9. Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, and the Court has supplemental remedial authority under the All-Writs Act, 28 U.S.C. § 1651, to issue such writs as may be necessary to preserve its jurisdiction and protect Petitioner's rights. The government has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

10. Venue is proper in this district because Petitioner is detained here and Respondents exercise custody over him within this district pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1).

PARTIES

11. Petitioner Ercan Koca is a citizen of Turkey who was granted withholding of removal under INA by an IJ on July 7, 2025. He has been continuously detained in the custody of

Respondents since December 7, 2024. He is currently incarcerated at the Denver Contract Detention Facility in Aurora, Colorado.

12. Respondent, Kristi Noem, is named in her official capacity as the Secretary, U.S. Department of Homeland Security. In this capacity, she is responsible for overseeing ICE's day-to-day operations, leading approximately 20,000 ICE employees, including Respondent Lyons. Secretary Noem is the ultimate legal custodian of Petitioner.

13. Respondent Todd Lyons is sued in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement, and as such is the legal custodian of Petitioner.

14. Robert Hagan is the Director of the Denver Field Office of ICE's Enforcement and Removal Operations division. As such, Robert Guadian is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

15. Respondent Juan Baltazar is the Warden of the Denver Contract Detention Facility. He is sued in his official capacity. In that capacity, he is the custodian of detained non-citizens, including Petitioner, housed at the Denver Contract Detention Facility.

FACTUAL BACKGROUND

16. Petitioner entered the United States on or about December 7, 2024, and was immediately taken into ICE custody and has remained detained since that time.

17. On July 7, 2025, the Immigration Court issued a decision establishing that Petitioner faced a probability of future persecution in Turkey. *See Ex. A.*

18. Since the Immigration Judge's decision in July 2025, ICE has refused to release Petitioner, stating only that they are "looking for another country" for removal. No alternative country has been identified so far.

19. Petitioner has been detained for more than thirteen months and more than six months since his grant of relief, surpassing the six-month period deemed presumptively reasonable by the Supreme Court in *Zadvydas*.

LEGAL FRAMEWORK

20. Noncitizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and protection under the CAT. Noncitizens may be ineligible for asylum for several reasons, including having firmly resettled in another country prior to arriving in the United States, see 8 U.S.C. § 1158(b)(2)(A)(vi); 8 C.F.R. § 208.15.

21. When an IJ grants a noncitizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds execution of that order with respect to the country or countries for which the noncitizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 531–32 (2021).

22. Once Withholding of Removal relief is granted, either party has the right to appeal that decision to the BIA within 30 days. *See* 8 C.F.R. § 1003.38(b). If both parties waive appeal or neither party appeals within the 30-day period, the relief grant and the accompanying removal order become administratively final. *See id.* § 1241.1.

Detention Of Noncitizens Granted Relief

23. 8 U.S.C. § 1231 governs the detention of noncitizens “during” and “beyond” the “removal period.” 8 U.S.C. §§ 1231(a)(2)-(6). The “removal period” begins once a noncitizen’s removal order “becomes administratively final.” 8 U.S.C. § 1231(a)(1)(B). The removal period lasts for 90 days, during which ICE “shall remove the [noncitizen] from the United States” and “shall detain the [noncitizen]” as it carries out the removal. 8 U.S.C. §§ 1231(a)(1)-(2). If ICE does

not remove the noncitizen within the 90-day removal period, the noncitizen “*may* be detained beyond the removal period” if they meet certain criteria, such as being inadmissible or deportable under specified statutory categories. 8 U.S.C. § 1231(a)(6) (emphasis added).

24. To avoid “indefinite detention” that would raise “serious constitutional concerns,” the Supreme Court in *Zadvydas* construed § 1231 to contain an implicit reasonableness limitation. 533 U.S. at 682. *Zadvydas* dealt with two noncitizens who could not be removed to their home country or country of citizenship due to bureaucratic and diplomatic barriers. The Court held that § 1231 authorizes detention only for “a period reasonably necessary to bring about the [noncitizen]’s removal from the United States.” *Id.* at 689. Six months of post-removal order detention is considered “presumptively reasonable.” *Id.* at 701.

25. The Court underscored that civil detention is thus only constitutionally permissible in “special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (citations omitted) (internal quotations omitted). The Court thus concluded that, because “[a] statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem,” a noncitizen should only be detained when removal is significantly likely in the reasonably foreseeable future. *Id.*; *see id.* at 701 (“We do have reason to believe, however, that Congress previously doubted the constitutionality of detention for more than six months.”).

26. DHS regulations provide that, by the end of the 90-day removal period, the local ICE field office with jurisdiction over the noncitizen’s detention must conduct a custody review to determine whether the noncitizen should remain detained. *See* 8 C.F.R. §§ 241.4(c)(1), (k)(1)(i) (“Prior to the expiration of the removal period, the district director . . . shall conduct a custody review . . .”). The Field Office Director, or their delegate, makes the final custody decision based

on recommendations offered by lower-level officers. In making this custody determination, ICE considers several factors, including the availability of travel documents for removal. *Id.* §§ 241.4(e)-(f). If there is a decision to release, ICE must release the noncitizen under conditions of supervision as it considers appropriate. *Id.* § 241.4(j).

The Government Must Show “Legitimate Progress” Toward Removal, Not Merely “Good Faith” Efforts

27. The government’s “good faith efforts” to remove an individual are not sufficient to meet this standard. *Zadvydas*, 533 U.S. at 702. As the length of detention grows, the period of time that would be considered the “reasonably foreseeable future” conversely shrinks. *Id.* at 701. “Petitioner’s removal need not necessarily be imminent, but it cannot be speculative.” *Balza*, 2020 WL 7223258, at *4 (quoting *Hassoun*, 2019 WL 78984, at *6). Once the burden shifts to the government, an “unsubstantiated belief” that “ICE can request a travel document and effectuate [a petitioner’s] removal from the United States to that country” is insufficient to meet that burden. *McKenzie v. Gillis*, Civil Action No. 5:19-cv-139-KS-MTP, 2020 WL 5536510, at *2-*3 (S.D. Miss. July 30, 2020), (report and recommendation adopted as modified by *McKenzie v. Gillis*, Civil Action No. 5:19-cv-139-KS-MTP, 2020 WL 5535367 (S.D. Miss., Sep. 15, 2020)).

28. This is a burden of production, not of absolute proof. *Aguilar v. Noem*, 2025 WL 3514282, at *4; *see also Cruz Medina v. Noem*, 794 F. Supp. 3d 365, 379 (D. Md. 2025). The Supreme Court explicitly “rejected the proposition that continued detention is permissible ‘as long as good faith efforts to effectuate... deportation continue.’” *Ahrach v. Baltazar*, 2025 WL 3227529, at *4 (quoting *Zadvydas*, 533 U.S. at 702). Instead, the Government must demonstrate “legitimate progress.” *Id.*(emphasis added).

29. Bare assertions that ICE is "pursuing third country removal options" are legally insufficient to rebut Petitioner's showing. *Aguilar*, 2025 WL 3514282, at *6. To satisfy the *Zadvydas* standard, the Government must produce evidence of concrete steps, such as demonstrating 'legitimate progress' by identifying a specific country of removal, detailing the concrete steps taken to secure travel documents, and providing a non-speculative timeframe for departure. *Id.*; *see also Ahrach*, 2025 WL 3227529, at *5.

30. Petitioner's grant of Withholding of Removal under INA § 241(b)(3) is a "particular individual barrier" to his removal. *Gomez v. Mattos*, No. 2:25-CV-00975-GMN-BNW, 2025 WL 3101994, at *5 (D. Nev. Nov. 6, 2025). This legal protection creates a permanent impediment to removal to his home country.

31. This grant shifts the burden to the Government to prove a non-speculative alternative. *See Trejo v. Warden*, 2025 WL 2992187 (W.D. Tex. 2025) (finding the burden met where a petitioner was granted CAT/Withholding and the Government identified no alternative country); *Misirbekov v. Venegas*, 2025 WL 2450991 (S.D. Tex. 2025) (finding "good reason" where the noncitizen faces persecution in his home country and has "no citizenship nor any ties to any other country"); *Roe v. Oddo*, 2025 WL 3030692 (W.D. Pa. 2025) (finding that "Petitioner has carried his burden... due to [the country of origin's] denial of his travel document application).

32. Petitioner is not a citizen of any other nation. While the Government may theoretically seek removal to a third country, "mere intent to find a third country is too speculative to permit indefinite detention." *Momennia v. Bondi*, 2025 WL 3011896 (W.D. Okla. 2025). In this case, the absence of an identified country, the lack of travel documents, and the absence of any diplomatic agreement render removal a "remote possibility" rather than a significant likelihood.

**Petitioner's Prolonged Post-Order Detention Violates the Fifth Amendment and 8 U.S.C. §
1231(a)(6)**

33. Once a noncitizen is ordered removed, DHS must attempt removal within a 90-day removal period. 8 U.S.C. § 1231(a)(1)(A). During that period, detention is mandatory. § 1231(a)(2). After the removal period expires, DHS may continue detention only as authorized by § 1231(a)(6).

34. Once a noncitizen is ordered removed, DHS must attempt removal within a 90-day removal period. 8 U.S.C. § 1231(a)(1)(A). During that period, detention is mandatory. § 1231(a)(2). After the removal period expires, DHS may continue detention only as authorized by § 1231(a)(6).

35. In *Zadvydas*, the Supreme Court held that § 1231(a)(6) does not authorize indefinite detention. 533 U.S. at 689. Instead, post-removal-order detention is limited to a period reasonably necessary to effectuate removal. *Id.* The Court established a six-month period of presumptive reasonableness. *Id.* at 701.

36. After six months, once the detainee provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the burden shifts to the government to rebut that showing with evidence. *Id.* Continued detention becomes unlawful when removal is no longer reasonably foreseeable. *Id.* at 699.

**A Grant of Withholding of Removal Under INA § 241(b)(3) Is a Concrete Legal Barrier to
Removal**

37. Withholding of removal under INA § 241(b)(3) prohibits the government from removing a noncitizen to the country where his life or freedom would be threatened. 8 U.S.C. §

1231(b)(3)(A). When withholding is granted with respect to the noncitizen's sole country of nationality, it constitutes a substantial, legally enforceable barrier to removal.

38. Courts consistently recognize that such a grant weighs heavily in the *Zadvydas* foreseeability analysis. See *Gomez v. Mattos*, No. 2:25-CV-00975-GMN-BNW, 2025 WL 3101994, at 5–6 (*D. Nev. Nov. 6, 2025*); *Trejo v. Warden of ERO El Paso East Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187, at 5 (*W.D. Tex. Oct. 24, 2025*).

39. Where a petitioner cannot be removed to his country of citizenship and DHS has not identified a willing third country, courts routinely find that the petitioner has met his initial burden under *Zadvydas*. See *Gomez*, 2025 WL 3101994, at 5; *Escalante v. Noem*, No. 25-cv-182, 2025 WL 2206113, at 4 (*W.D. Pa. Aug. 2025*).

Speculative or Undeveloped Third-Country Removal Does Not Satisfy the Government's Burden

40. The government cannot meet its burden under *Zadvydas* through conjecture or generalized assertions that removal efforts are ongoing. *Zadvydas*, 533 U.S. at 702. A “remote possibility” of removal is insufficient. *Escalante*, 2025 WL 2206113, at *4.

41. Courts regularly reject DHS assertions based solely on unaccepted requests, preliminary inquiries, or the mere possibility that a third country might agree to accept the petitioner at some indeterminate future date. See *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (*W.D. Wash. 2006*); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (*E.D. Cal. July 16, 2025*).

42. Absent evidence that a specific third country has affirmatively agreed to accept the petitioner and that travel documents are forthcoming, continued detention violates due process. *Gomez*, 2025 WL 3101994, at *6.

**Petitioner Is Entitled to Notice and an Opportunity to Seek Fear-Based Protection Before
Any Third-Country Removal**

43. Due process requires that noncitizens receive meaningful notice and an opportunity to present fear-based claims prior to removal. *Vilchez v. Holder*, 682 F.3d 1195, 1199 (9th Cir. 2012). This protection extends to third-country removals. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999).

44. Even if the government were to identify a third country, Petitioner's removal would still not be foreseeable.

45. Petitioner has a "due process right to receive meaningful notice and opportunity to present a fear-based claim... before DHS deports him to a third country. *Gomez*, 2025 WL 3101994, at *6.

46. Courts have held that removal to a third country without notice or an opportunity to raise fear-based protection claims violates due process and constitutes arbitrary agency action. *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash. 2019); *Gomez*, 2025 WL 3101994, at *6-7.

47. Because Petitioner has a well-founded fear of persecution, any attempt to remove him to a surprise third country would be stayed by litigation to reopen his proceedings to seek fear-based relief. *Villanueva v. Tate*, 2025 WL 2774610, at *10 (S.D. Tex. Sept. 26, 2025).

Respondents have Failed to Follow Mandatory Custody Review Regulations

48. It is a foundational principle of administrative law that an agency must follow its own regulations. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954). This is known as the *Accardi* Doctrine.

49. DHS regulations at 8 C.F.R. § 241.4 mandate that the Field Office Director "shall conduct a custody review" by the end of the 90-day removal period. This review must include a rigorous evaluation of the "likelihood of removal."

50. Furthermore, 8 C.F.R. § 241.13 creates a mandatory "Special Review Procedure" for cases where removal is not significantly likely.

51. In Petitioner's case, Respondents have failed to provide a meaningful custody review that accounts for the legal barrier created by the grant of Withholding of Removal. By failing to perform these reviews, or by performing "pro forma" reviews that ignore the institutional barriers to Petitioner's removal, Respondents have violated their own regulations, rendering Petitioner's continued detention *per se* unlawful under the APA and the Due Process Clause.

The Constitutional Avoidance Doctrine Requires Release

52. The Tenth Circuit has long recognized that statutes must be construed to avoid constitutional doubt. *Morales-Fernandez v. INS*, 418 F.3d 1116, 1122–23 (10th Cir. 2005); *see also Zadvydas*, 533 U.S. at 689.

53. If 8 U.S.C. § 1231(a)(6) were interpreted to allow the detention of an individual granted Withholding of Removal for nearly a year without a clear third-country plan, the statute would become a vehicle for the very "indefinite detention" the Supreme Court prohibited.

54. Consequently, the only lawful interpretation of § 1231(a)(6) as applied to Petitioner is one that requires her release under supervision, as the government's interest in detention has been eclipsed by Petitioner's fundamental right to liberty.

CAUSES OF ACTION

**COUNT I: VIOLATION OF SUBSTANTIVE DUE PROCESS UNDER 5TH
AMENDMENT**

55. Petitioner realleges and incorporates by reference the paragraphs above.

56. Petitioner has a fundamental liberty interest in freedom from physical restraint. *Zadvydas*, 533 U.S. at 690.

57. Because Petitioner's removal is not significantly likely in the reasonably foreseeable future, his continued detention is not reasonably related to a legitimate, non-punitive government interest.

58. Petitioner's prolonged detention violates the Substantive Due Process Clause of the Fifth Amendment.

COUNT II: VIOLATION OF 8 U.S.C. § 1231(a)(6) AND THE ZADVYDAS LIMITATION

59. Petitioner realleges and incorporates by reference the paragraphs above

60. Under *Zadvydas*, the government's authority to detain under § 1231(a)(6) is limited to the period "reasonably necessary" to effectuate removal.

61. Petitioner's cumulative detention exceeds the six-month presumptively reasonable period.

62. Because Respondents cannot demonstrate "legitimate progress" toward removal, the statutory authority for Petitioner's detention has expired.

COUNT III: VIOLATION OF PROCEDURAL DUE PROCESS UNDER 5TH AMENDMENT

63. Petitioner realleges and incorporates by reference the paragraphs above.

64. Procedural Due Process requires a meaningful and individualized determination of whether detention remains justified. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

65. Respondents have failed to provide Petitioner with a constitutionally adequate custody review and have further failed to provide notice and an opportunity to seek protection from third-country removal, violating the rule in *Gomez v. Mattos*, 2025 WL 3101994.

COUNT IV: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT (APA), 5 U.S.C. § 706

66. Petitioner realleges and incorporates by reference the paragraphs above

67. Respondents' failure to follow the mandatory custody review procedures set forth in 8 C.F.R. § 241.4 and § 241.13 is arbitrary, capricious, and an abuse of discretion.

68. Respondents' failure to either remove Petitioner or release him constitutes "agency action unlawfully withheld or unreasonably delayed" under 5 U.S.C. § 706(1).

69. Respondents' policy of "surprise" third-country removal lacks reasoned decision-making and must be set aside under 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Grant the petition for a writ of habeas corpus;
3. Issue an order directing Respondents to show cause within three (3) days why the Writ should not be granted, pursuant to 28 U.S.C. § 2243;
4. Issue an order prohibiting Respondents from transferring Petitioner outside of this judicial district during the adjudication of this Petition without the fear-based protections required by law;

5. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. § 153;
6. Declare that Respondents' actions or omissions violate the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6), the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
7. Grant a writ of habeas corpus directing Respondents to immediately release Petitioner from their custody;
8. Permanently enjoin Respondents from removing Petitioner to any third country without providing at least thirty (30) days' advance written notice and a meaningful opportunity to seek fear-based protection (Withholding of Removal or CAT) before an Immigration Judge, consistent with the requirements of Procedural Due Process;
9. Award Petitioner reasonable attorney's fees and costs of this action under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, and any other applicable law; and
10. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: February 5, 2026

/s/ Mehmet Y. Turkoglu

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Verification by Petitioner's Legal Counsel

Pursuant to 28 U.S.C. § 2242

I am submitting this verification because I am the Attorney for the Petitioner. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's detention status are true and correct to the best of my knowledge.

/s/ Mehmet Y. Turkoglu

Date: February 5, 2026

Mehmet Y. Turkoglu,