FILED
Mar 9 2026
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY s/ BDC DEPUTY

Artur Ashotovich Simonyan
Alien No. [redacted]
Otay Mesa Detention Center
7488 Calzada de la Fuente
San Diego, CA 92154

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ARTUR ASHOTOVICH SIMONYAN, -Petitioner, *Pro Se*, v. THE UNITED STATES OF AMERICA, Kristi NOEM, in her Official Capacity, Secretary of the Department of Homeland Security Pamela J. BONDI, in her Official Capacity, Attorney General, Department of Justice, Daniel A. BRIGHTMAN, in his Official Capacity, Field Office Director, Salt Lake City Field Office, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Christopher J. LAROSE, in his Official Capacity, Warden of Immigration Detention Facility, Otay Mesa Detention Center; -Respondents.	No. **'26CV1564 DMS MMP** INS No. [redacted] Custody Status: **DETAINED** **Motion For Temporary Restraining Order ("TRO") ("TRO") and Immediate Release From Custody**

MOTION FOR TEMPORARY RESTRAINING ORDER ("TRO") AND IMMEDIATE RELEASE FROM CUSTODY

Comes now Petitioner Mr. Artur Ashotovich Simonyan, appearing *pro se*, respectfully moves this Honorable Court for Temporary Restraining Order (TRO) directing his immediate release from ICE custody.

This urgent relief is necessary because Petitioner is being detained indefinitely, unlawfully, and without any foreseeable prospect of removal, in violation of binding Supreme Court precedent, the INA, and the Fifth Amendment's Due Process Clause.

Petitioner incorporates by reference all facts stated in the previously filed Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner respectfully requests this Court to grant this instant motion and issue an order for his immediate release from ICE custody.

This instant motion for temporary restraining order and immediate release is made in good-faith. For good cause showing, Mr. Artur Ashotovich Simonyan respectfully asserts:

I. INTRODUCTION

1. Petitioner, Mr. Artur Ashotovich Simonyan is a native and citizen of Azerbaijan, who is currently detained at Otay Mesa Detention Center. Since 2012, DHS has been unable to remove Petitioner to Azerbaijan or to any other country.

2. The Azerbaijan Embassy has formally notified ICE that: Azerbaijan will not accept Petitioner; Azerbaijan will not issue travel documents; and that Azerbaijan has no intention of cooperating with ICE regarding removal.

3. There is no indication—nor even a theoretical possibility—that DHS will ever be able to deport him. Respondents has not obtained travel documents, made diplomatic progress, or identified an alternative receiving country.

4. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), detention is unconstitutional if removal is not "reasonably foreseeable." When a noncitizen is removable but not actually removable, the Constitution forbids continued detention. *Id.*

5. Petitioner has now entered a prolonged and potentially indefinite period of detention, rendering his confinement unlawful, punitive, and arbitrary. This Court should conclude that immediate release is required.

II. FACTUAL BACKGROUND

6. Petitioner was born in Azerbaijan. DHS has attempted to remove Petitioner to Azerbaijan since 2012, without success. The Azerbaijan Embassy formally informed ICE that it will not accept him and will not issue travel documents. Respondents have been unable to identify any other country willing to accept Petitioner. Petitioner has now been detained far beyond the presumptively reasonable six-month period established in *Zadvydas*. Respondents have no removal plan, no viable alternative country, and no path toward removal. Respondents continues to detain Petitioner despite the legal impossibility of effectuating removal. Under the Trump Administration, it has been recognized that DHS is cherry-picking arrests and detention, without any rational relationship to legitimate removal objectives.

7. Because removal is not possible, detention is not lawful and warrants TRO relief.

III. PETITIONER SATISFIES THE TRO STANDARD

A. Petitioner Is Likely to Succeed on the Merits

1. *Zadvydas* Controls Where Removal Is Not Reasonably Foreseeable.

8. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that immigration detention is lawful only if removal is reasonably foreseeable. Where removal is not reasonably foreseeable, "the statute… does not permit indefinite detention." *Id.* at 699.

9. This case squarely falls within the "removable-but-not-removable" category

identified by the Supreme Court. Azerbaijan has affirmatively stated that it will not accept Petitioner and will not issue travel documents, and ICE has admitted it cannot remove him. Respondents have provided no evidence whatsoever—no documentation, no correspondence, and not even a suggestion—that removal to a third country is possible. Respondents cannot produce any evidence—nor even the slightest indication—that any other country is willing to accept Petitioner.

10. This Court should grant this request for TRO and order Respondents to immediately release Mr. Artur Ashotovich Simonyan grounded on the fact that Respondents have provided no removal plan, produced any pending or active travel document request, no diplomatic communications with any third country, no progress since 2012 and no country has been identified for possible removal.

11. Respondents has utterly failed to provide any concrete basis for believing removal will ever occur, now or in the future. Absent such evidence, Petitioner's continued detention violates due process. The Ninth Circuit has repeatedly held that where removal is not reasonably foreseeable, detention becomes unconstitutional. *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1080 (9th Cir. 2006) ("The government cannot detain a noncitizen indefinitely simply because it wishes to do so."); *Tijani v. Willis*, 430 F.3d 1241, 1242 (9th Cir. 2005) (prolonged detention without a likelihood of removal is unconstitutional); *Diouf v. Napolitano*, 634 F.3d 1081, 1092 (9th Cir. 2011) (detention must be meaningfully connected to its purpose).

12. Here, there is no meaningful connection between Petitioner's detention and the statutory purpose of detention (facilitating removal). DHS cannot remove Petitioner, and DHS has known this for years. When removal is not possible, detention becomes arbitrary, punitive, unconstitutional or contrary to the purpose of civil immigration detention. *See Zadvydas*, 533 U.S. at 690 (detention must be "reasonably related" to its purpose); *Judulang v. Holder*, 565

U.S. 42, 53 (2011) (agency action must rest on reasoned explanation and not be arbitrary).

13. Petitioner's detention is precisely the unconstitutional, purposeless detention that *Zadvydas*, *Nadarajah*, and *Tijani* forbid. Respondents are unable to carry out the removal order. Petitioner's assigned Consulate has not issued travel documents and there is no certainty as to when, if ever, such travel documents will be issues. This Court should conclude that Petitioner's case meets the standard for preliminary injunctive relief and should issue a TRO ordering his immediate release from ICE custody.

14. It is critical to emphasize that in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that detention after a removal period is constitutional *only* if removal is "reasonably foreseeable." When no country will accept the noncitizen, detention becomes indefinite and unlawful. *Zadvydas* explicitly addressed the situation "*when no country will take the noncitizen*." *Id.* at 684–86. This is exactly the posture here, as Azerbaijan has unequivocally refused to accept Petitioner and Respondents have been unable to secure travel documents or identify any alternate country willing to admit him.

15. Even more, Respondents have been unable to remove Petitioner since 2012, and they cannot meaningfully articulate—much less produce—any viable removal plan. Because removal is legally and practically impossible, continued detention violates substantive due process. The Ninth Circuit has repeatedly affirmed that where removal is not reasonably foreseeable, the noncitizen must be released. *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1080–81 (9th Cir. 2006) (ordering immediate release where removal was not foreseeable); *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011) (prolonged detention requires heightened procedural protections and cannot be justified absent a foreseeable removal).

16. Petitioner is far past the *Zadvydas* threshold and squarely within the category of individuals whom the Constitution prohibits from being detained indefinitely. Accordingly, this

Court should grant the TRO and order Mr. Artur Ashotovich Simonyan's immediate release, as due process does not permit detention where removal is impossible.

2. This Court Should Grant TRO Relief and Issue an Order Releasing Mr. Artur Ashotovich Simonyan on the Grounds that His Detention is Arbitrary, Capricious, Unnecessary and Punitive.

17. Under the Fifth Amendment, immigration detention must be civil, nonpunitive and rationally tied to a removal purpose. But Respondents' actions here are not tied to any legitimate purpose, punitive, given indefinite duration, arbitrary, due to selective "cherry-picking" enforcement and legally baseless, given Azerbaijan's refusal and history of not accepting deportees.

18. In *Judulang v. Holder*, 565 U.S. 42, 53 (2011), the Supreme Court held that agency actions must have a "reasoned explanation" and cannot rest on arbitrary decision-making. Respondents' conduct, here fails that test.

3. Respondents' Cherry-Picked Enforcement for Indefinite Detention Is Constitutionally Defective and Serves No Legitimate Governmental Purpose.

19. Detention must relate to securing attendance at proceedings, or protecting the public. *See Zadvydas*, 533 U.S. at 690. Respondents' continued detention of Petitioner—amid clear knowledge that removal is impossible—reflect: no rational connection to deportation, no legitimate governmental purpose and arbitrary selection of individuals for enforcement despite known non-removability. Such conduct is constitutionally impermissible. As such, this Court should grant this TRO and issue an order to immediately release Petitioner.

4. Petitioner Warrants TRO and Immediate Release from Custody Under a Clear *Zadvydas* Violation as DHS Has Failed to Remove Petitioner Since 2012.

20. Since February 1, 2012, well-over fourteen-years of failed removal attempts demonstrate that Petitioner is in "removable-but-not-removable" status—the exact category

Zadvydas prohibits. As such, and because there is no indication that Respondents will remove Petitioner to Azerbaijan, or a third country, in the foreseeable future, this Court should grant this TRO and order Respondents to immediately release Mr. Artur Ashotovich Simonyan.

21. Given the total absence of any indication that Respondents will be able to remove Petitioner to Azerbaijan —or to any third country—in the reasonably foreseeable future, this Court should grant the requested Temporary Restraining Order and order Petitioner's immediate release.

22. Under *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001), detention is permissible only when removal is reasonably foreseeable; where, as here, removal is impossible, continued detention violates the Due Process Clause. The Ninth Circuit has consistently held that when DHS cannot effectuate removal and offers no concrete evidence of future removability, the noncitizen must be released. *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1080–81 (9th Cir. 2006) (ordering immediate release where removal was not practicable); *Diouf v. Napolitano*, 634 F.3d 1081, 1091–92 (9th Cir. 2011) (prolonged detention without a foreseeable removal violates due process).

23. Again, Federal courts in California have applied these principles to grant habeas relief when ICE cannot establish a realistic prospect of removal. *See, e.g.*, *See Ndandu v. Noem*, No. 3:25-cv-02939-RBM-MSB, 2026 WL 25848 at *3-4 (S.D. Cal. Jan. 5, 2026). At this point, deportation to a third country is simply not reasonably foreseeable. *See generally*, *Ndandu*, 2026 WL 25848 at *5 (explaining reasons why third-country removal is not reasonably foreseeable, particularly before a third country has been identified).

24. In the absence of any evidence suggesting that Respondents will ever secure travel documents—especially given Azerbaijan's explicit refusal to accept Petitioner—continued detention is arbitrary, lacks any rational connection to the purpose of immigration

custody, and is unconstitutional. The upshot, this Court should conclude that the governing precedent compels the conclusion that Petitioner's detention is unlawful, and this Court should grant the TRO and order his immediate release.

B. Petitioner Faces Immediate, Irreparable Harm

25. Ongoing detention is per se irreparable harm where the detention is unconstitutional, removal is impossible and freedom is unlawfully restrained. Courts in the Ninth Circuit repeatedly hold that unlawful detention itself constitutes irreparable harm. *See Nadarajah*, 443 F.3d at 1081, *see also*, *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011). Petitioner suffers severe psychological harm, physical confinement in a remote facility, loss of liberty, inability to plan for his future or reunite with his family, and daily constitutional injury.

26. This reveals that Petitioner suffers severe and ongoing harm each day he remains unlawfully detained—including significant psychological distress, physical confinement in a remote facility, loss of liberty, inability to meaningfully plan for his future, and prolonged separation from his family. These injuries constitute the very definition of irreparable harm.

27. Courts have long held that ongoing unconstitutional detention inflicts per se irreparable injury, as every additional day unlawfully spent in custody is a harm that cannot be undone. *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006) (unlawful immigration detention itself establishes irreparable harm); *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) ("Loss of liberty unquestionably constitutes irreparable harm.").

28. Federal courts have echoed this principle, recognizing that detention without a viable path to removal inflicts continuous and irreparable injury warranting immediate judicial intervention. *See Alvarez v. ICE*, 2018 WL 2741040, at 4 (D. Nev. June 6, 2018)* (granting habeas release where ICE's detention violated Zadvydas). Thus, this factor weighs heavily—

and decisively—in favor of granting TRO relief and immediate release.

C. The Balance of Equities Favors Petitioner

29. This is a case where the Respondents will suffer no prejudice by releasing Petitioner is a man whom Respondents cannot remove to Azerbaijan.

30. Even more, Respondents have not identified any third country to which Petitioner would be removed nor could it. Petitioner, however, suffers indefinite detention, constitutional violation, loss of time, liberty, and dignity. The equities, in this case, weigh heavily in Petitioner's favor.

31. Immediate release is warranted where the government suffers no cognizable prejudice by releasing an individual it is legally and practically incapable of removing. By contrast, Petitioner endures ongoing and indefinite detention in violation of due process, along with the profound loss of time, liberty, family integrity, and human dignity that accompanies unlawful confinement.

32. Courts consistently recognize that when detention is unconstitutional or serves no legitimate governmental purpose, the balance of equities overwhelmingly favors the detainee. *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1080–81 (9th Cir. 2006) (ordering release where detention lacked any lawful basis); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (civil detention must bear a reasonable relation to its purpose and cannot be punitive or arbitrary).

33. It is critical to emphasize that Federal courts similarly hold that when removal is not reasonably foreseeable, the government suffers no harm from release, while the petitioner suffers continuous constitutional injury. *See Alvarez v. ICE*, 2018 WL 2741040 (D. Nev. June 6, 2018) (granting release where ICE could not demonstrate a realistic prospect of removal).

34. This Court should conclude that the equities in this case weigh decisively in Petitioner's favor and support the issuance of a TRO ordering his immediate release.

D. The Public Interest Favors Granting the TRO

35. Public interest is always served by preventing constitutional violations, ensuring lawful, non-arbitrary enforcement and preventing indefinite detention of a person the government cannot deport. *See Nadarajah*, 443 F.3d at 1080–81. The Supreme Court has held that a noncitizen cannot be detained indefinitely in a removable but-not-removable status; the most common situation occurs when no country can be found to accept the noncitizen. *Zadvydas*, 533 U.S. 678.

III. BECAUSE REMOVAL IS NOT LIKELY TO OCCUR IN THE FORESEEABLE FUTURE AND THIRD COUNTRY REMOVAL IS NOT POSSIBLE, PETITIONER WARRANTS TRO RELIEF AND IMMEDIATE RELEASE

36. 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).

37. Due process also requires the following: "[A]sk[ing] 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.

38. 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 a minimum of 15 days' notice).

39. "[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.

40. Faced with similar arguments, several courts have recently granted individual TROs against removal to third countries. *See Rodriguez-Gutierrez*, No. 25-cv-02726-BAS-SBC (S.D. Cal. Nov. 7, 2025) *J.R.*, 2025 WL 1810210; *Vaskanyan*, 2025 WL 2014208; *Ortega*, 2025 WL 1771438; *Hoac*, 2025 WL 1993771, at *7; *Phan*, 2025 WL 1993735, at *7.

41. Because ICE's new policies for third country removal fail to comply with existing law, they also violate the Administrative Procedures Act. Furthermore, given the blatant unlawfulness and unconstitutionality of ICE's policies, Petitioner's detention under the color of those policies is unlawful.

42. Petitioner re-alleges and incorporates by reference all paragraphs above and all

facts stated in the previously filed Petition for Writ of Habeas Corpus.

43. For all the reasons stated above, this Court should issue a Temporary Restraining Order immediately releasing Mr. Artur Ashotovich Simonyan from Respondents custody, as his detention is unlawful, unconstitutional, and unsupported by any legitimate governmental purpose.

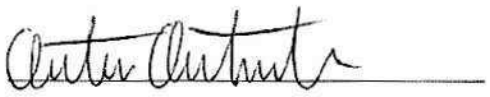
IV. PRAYER FOR RELIEF

Petitioner respectfully prays that this Honorable Court:

1. **GRANT** the Temporary Restraining Order ("TRO");
2. **ORDER** Petitioner's immediate release from ICE custody;
3. **ENJOIN** Respondents from re-detaining Petitioner absent new, lawful grounds;
4. Set an expedited hearing on a Preliminary Injunction if needed;
5. Grant all other and further relief this Court deems just and proper.

I, Artur Ashotovich Simonyan, hereby affirm under penalty of perjury and under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 5th day of March, 2026.



Artur Ashotovich Simonyan

Alien No. [redacted]

Otay Mesa Detention Center

7488 Calzada de la Fuente

San Diego, CA 92154

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ACKNOWLEDGEMENT AND VERIFICATION

Under penalty of perjury, the undersigned declares that he is the named Petitioner in the foregoing petition. I have read the foregoing petition and its contents. The statements in the petition are true and correct to the best of my knowledge, except as to any statements alleged on information and belief, and as to those statements, I believe them to be true.

DATED this 5th day of March, 2026.

EXECUTED in San Diego, California.



Artur Ashotovich Simonyan

Alien No. [redacted]

Otay Mesa Detention Center

7488 Calzada de la Fuente

San Diego, CA 92154

CERTIFICATE OF SERVICE

I, Artur Ashotovich Simonyan, hereby certify that on the date indicated below I served the Clerk of the Court for the United States District Court for the Southern District of California and Respondents a true and complete copy of the foregoing documents by placing it in a pre-paid envelope and mailing it to the following address:

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Respectfully submitted and executed on this 5th day of March, 2026.

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MOTION FOR TEMPORARY RESTRAINING ORDER AND IMMEDIATE RELEASE FROM CUSTODY

ARTUR ASHOTOVICH SIMONYAN
ALIEN No. [redacted]
PETITIONER, PRO SE
CUSTODY STATUS: DETAINED