

1 Fernanda Ezquerro
2 430 Nutmeg Street, Suite 100
3 San Diego, California 92103
4 Telephone: (619) 485-8150
5 Facsimile: (619) 485-8160

6 Attorneys for Andrei Bikmasov
7 

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

10 ANDREI BIKMASOV,
11
12 Petitioner,

13 v.

14 OTAY MESA DETENTION CENTER,
15 WARDEN et al,

16 Respondents.

CIVIL CASE NO.: 26-cv-02517-JLS-
DEB

**Amended Petition for Writ
of
Habeas Corpus**

[28 U.S.C. § 2241]

INTRODUCTION

Mr. Bikmasov is a native and citizen of Russia who has remained in immigration custody since June of 2025. Although an Immigration Judge entered an in-absentia removal order on April 10, 2025, and Mr. Bikmasov's subsequent motion to re-open was denied, Mr. Bikmasov has now spent approximately 11 months in immigration detention without removal. During that period, the government has failed to effectuate Mr. Bikmasov's removal. Mr. Bikmasov has no criminal history, previously resided in the United States for approximately two years, has a stable residence available through a family member in Los Angeles, and suffers from a respiratory illness that has been aggravated by prolonged detention.

Under *Zadvydas*, detention beyond six months is presumptively unreasonable once removal is no longer significantly likely in the reasonably foreseeable future. Thus, because Mr. Bikmasov's detention has continued far beyond that presumptively reasonable period and because there is no meaningful indication that his removal will occur in the reasonably foreseeable future, Mr. Bikmasov's detention is no longer statutorily authorized, and this Court must order his immediate release. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

STATEMENT OF FACTS

Mr. Bikmasov, a native and citizen of Russia, first entered the United States in October of 2022. He sought protection from his native country through the United States asylum process. (Exhibit A at 1). Mr. Bikmasov remained in the United States for approximately two years while pursuing relief and establishing ties with the community.

In October of 2024, Mr. Bikmasov departed the United States due to a family emergency. (Exhibit A at 2). While he remained outside of the country, asylum proceedings continued in his absence. On April 10, 2025, an Immigration Judge entered an in absentia order of removal. Mr. Bikmasov subsequently filed a

1 motion to reopen those proceedings, which the Immigration Judge denied.

2 Petitioner timely appealed that denial to the Board of Immigration Appeals, where
3 the matter remains pending. (Exhibit A at 3-5).

4 Mr. Bikmasov returned to the United States in approximately June of 2025.
5 Following his apprehension by federal authorities, the government initiated a
6 criminal prosecution for illegal reentry under 8 U.S.C. § 1326. The criminal case
7 was subsequently dismissed, Mr. Bikmasov has been in immigration custody
8 since then. (Exhibit A at 7). Mr. Bikmasov has now spent approximately eleven
9 months in immigration detention. To Mr. Bikmasov's knowledge, no removal
10 date has been scheduled, and there is no indication that removal is imminent.

11 Mr. Bikmasov has no criminal history. Prior to his detention, he spent
12 approximately two years in the United States. If released, he has a stable residence
13 available with his aunt in Los Angeles. Mr. Bikmasov also suffers from asthma, a
14 condition that has worsened during his prolonged incarceration. Despite his
15 lengthy detention, ICE has not removed him from the United States. As of the
16 filing of this petition, Mr. Bikmasov has been in custody for approximately eleven
17 months, double the sixth month presumptively reasonable period recognized in
18 *Zadvydas*.

19 LEGAL STANDARD

20 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court
21 construed § 1231(a)(6) to contain an implicit limitation on the duration of
22 detention. The Court held that detention beyond six months is presumptively
23 unreasonable where there is no significant likelihood of removal in the reasonably
24 foreseeable future. *Id.* at 701.

25 The Supreme Court established a burden-shifting framework. After six
26 months of detention, a petitioner need only provide "good reason to believe that
27 there is no significant likelihood of removal in the reasonably foreseeable future."
28 *Id.* Once that showing is made, the burden shifts to the government to rebut the

1 petitioner's evidence with sufficient proof that removal remains reasonably
2 foreseeable. *Id.*

3 Although detention may initially be justified to facilitate removal, civil
4 detention cannot continue indefinitely where removal is no longer reasonably
5 foreseeable. Continued detention under such circumstances raises serious
6 constitutional concerns under the Due Process Clause of the Fifth Amendment.

7 ARGUMENT

8 I. Mr. Bikmasov's detention violates *Zadvydas* and 8 U.S.C. § 1231

9 Mr. Bikmasov's indefinite detention violates the statute authorizing
10 detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the
11 Supreme Court considered a problem affecting people like Mr. Bikmasov. Federal
12 law requires ICE to detain an immigrant during the "removal period," which
13 typically spans the first 90 days after the immigrant is ordered removed. 8 U.S.C.
14 § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes
15 discretionary—ICE may detain the migrant while continuing to try to remove
16 them. *Id.* § 1231(a)(6).

17 Ordinarily, this scheme would not lead to excessive detention, as removal
18 happens within days or weeks. But some detainees cannot be removed quickly.
19 Perhaps their removal "simply require[s] more time for processing," or they are
20 "ordered removed to countries with whom the United States does not have a
21 repatriation agreement," or their countries "refuse to take them," or they are
22 "effectively 'stateless' because of their race and/or place of birth." *Kim Ho Ma v.*
23 *Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances,
24 detained immigrants can find themselves trapped in detention for months, years,
25 decades, or even the rest of their lives.

26 If federal law were understood to allow for "indefinite, perhaps permanent,
27 detention," it would pose "a serious constitutional threat." *Zadvydas*, 533 U.S. at
28 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by

1 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

2 As an initial matter, *Zadvydas* held that detention is “presumptively
3 reasonable” for at least six months. *Id.* at 701. This acts as a kind of grace period
4 for effectuating removals. Following the six-month grace period, courts must use a
5 burden-shifting framework to decide whether detention remains authorized. First,
6 the petitioner must make a prima facie case for relief: He must prove that there is
7 “good reason to believe that there is no significant likelihood of removal in the
8 reasonably foreseeable future.” *Id.*

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

14 **A. The six-month grace period has expired.**

15 As an initial matter, the six-month grace period has ended. The *Zadvydas*
16 grace period lasts for “*six months* after a final order of removal—that is, *three*
17 *months* after the statutory removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257
18 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Mr. Bikmasov was ordered removed
19 on April 10, 2025. (Exhibit B). Accordingly, his 90-day removal period began
20 then 8 U.S.C. § 1231(a)(1)(B). The *Zadvydas* grace period will have expired. The
21 threshold requirement has been met by the time this Court decides the case.
22

23 **B. There is good reason to believe that there is no significant**
24 **likelihood of Mr. Bikmasov’s removal in the reasonably**
25 **foreseeable future.**

26 Because the six-month grace period has passed, this Court must evaluate
27 Mr. Bikmasov’s *Zadvydas* claim using the burden-shifting framework. At the first
28 stage of the framework, there must be “good reason to believe that there is no

1 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
2 533 U.S. at 701. This standard can be broken down into three parts.

3 **“Good reason to believe.”** The “good reason to believe” standard is a
4 relatively forgiving one. “A petitioner need not establish that there exists no
5 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL
6 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to
7 believe’ . . . place a burden upon the detainee to demonstrate no reasonably
8 foreseeable, significant likelihood of removal or show that his detention is
9 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,
10 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401
11 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:
12 Petitioners need only give a “good reason”—not prove anything to a certainty.

13 **“No significant likelihood of removal.”** This component focuses on
14 whether Mr. Bikmasov will likely be removed: Continued detention is permissible
15 only if it is “significant[ly] like[ly]” that ICE will be able to remove him.
16 *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of
17 untapped possibilities, but also [the] probability of *success* in such possibilities.”
18 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis
19 added). In other words, even if “there remains *some* possibility of removal,” a
20 petitioner can still meet its burden if there is good reason to believe that
21 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-
22 8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

23 **“In the reasonably foreseeable future.”** This component of the test
24 focuses on when Mr. Bikmasov will likely be removed: Continued detention is
25 permissible only if removal is likely to happen “in the reasonably foreseeable
26 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s
27 removal efforts. If the Court has “no idea of when it might reasonably expect [
28 Petitioner] to be repatriated, this Court certainly cannot conclude that his removal

1 is likely to occur—or even that it might occur—in the reasonably foreseeable
2 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at *3
3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL
4 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d
5 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Bikmasov
6 “would *eventually* receive” a travel document, he can still meet his burden by
7 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,
8 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016).

9
10 Mr. Bikmasov has good reason to doubt his likelihood of removal in the
11 reasonably foreseeable future. ICE appears to have made no progress in removing
12 him in nearly eleven months. Exh. A at ¶ 8. Additionally, Mr. Bikmasov’s only
13 travel document, his passport, is no longer valid. *Id.* at 9.

14 Thus, Mr. Bikmasov has met his initial burden. Unless the government can
15 prove a “significant likelihood of removal in the reasonably foreseeable future,”
16 Mr. Bikmasov must be released. *Zadvydas*, 533 U.S. at 701.

17 **II. Count 2: ICE may not remove Mr. Bikmasov to a third country without**
18 **adequate notice and an opportunity to be heard.**

19 If ICE does not succeed in removing Mr. Bikmasov to Russia, ICE may
20 attempt to remove him to a third country. It would do so under a policy that violates
21 the Fifth Amendment, the Convention Against Torture, and implementing
22 regulations.

23 **A. Legal background**

24 U.S. law enshrines protections against dangerous and life-threatening
25 removal decisions. By statute, the government is prohibited from removing an
26 immigrant to any third country where they may be persecuted or tortured, a form
27 of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The
28 government “may not remove [a noncitizen] to a country if the Attorney General

1 decides that the [noncitizen's] life or freedom would be threatened in that country
2 because of the [noncitizen's] race, religion, nationality, membership in a particular
3 social group, or political opinion.” *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16.
4 Withholding of removal is a mandatory protection.

5 Similarly, Congress codified protections enshrined in the CAT prohibiting
6 the government from removing a person to a country where they would be tortured.
7 *See* FARRA 2681-822 (codified as 8 U.S.C. § 1231 note) (“It shall be the policy of
8 the United States not to expel, extradite, or otherwise effect the involuntary return
9 of any person to a country in which there are substantial grounds for believing the
10 person would be in danger of being subjected to torture, regardless of whether the
11 person is physically present in the United States.”); 28 C.F.R. § 200.1; *id.*
12 §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also mandatory.

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

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

1 If the noncitizen claims fear, measures must be taken to ensure that the
2 noncitizen can seek asylum, withholding, and relief under CAT before an
3 immigration judge in reopened removal proceedings. The amount and type of
4 notice must be “sufficient” to ensure that “given [a noncitizen’s] capacities and
5 circumstances, he would have a reasonable opportunity to raise and pursue his
6 claim for withholding of deportation.” *Aden*, 409 F. Supp. 3d at 1009
7 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976) and *Kossov v. I.N.S.*, 132
8 F.3d 405, 408 (7th Cir. 1998)); cf. *D.V.D.*, 2025 WL 1453640, at *1 (requiring the
9 government to move to reopen the noncitizen’s immigration proceedings if the
10 individual demonstrates “reasonable fear” and to provide “a meaningful
11 opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening
12 of their immigration proceedings” if the noncitizen is found to not have
13 demonstrated “reasonable fear”); *Aden*, 409 F. Supp. 3d at 1019 (requiring notice
14 and time for a respondent to file a motion to reopen and seek relief).

15 “[L]ast minute” notice of the country of removal will not suffice, *Andriasian*,
16 180 F.3d at 1041; accord *Najjar v. Lunch*, 630 Fed. App’x 724 (9th Cir. 2016), and
17 for good reason: To have a meaningful opportunity to apply for fear-based
18 protection from removal, immigrants must have time to prepare and present
19 relevant arguments and evidence. Merely telling a person where they may be sent,
20 without giving them a chance to look into country conditions, does not give them a
21 meaningful chance to determine whether and why they have a credible fear.

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

25 The policies in the June 6, 2025 memo do not adhere to these requirements.
26 First, under the policy, ICE need not give immigrants *any* notice or hearing before
27 removing them to a country that—in the State Department’s estimation—has
28 provided “credible” “assurances” against persecution and torture. (Exhibit B). By

1 depriving immigrants of any chance to challenge the State Department’s view, this
2 policy violates “[t]he essence of due process,” “the requirement that a person in
3 jeopardy of serious loss be given notice of the case against him and opportunity to
4 meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up).

5 Second, even when the government has obtained no credible assurances
6 against persecution and torture, the government can still remove the person with
7 between 6 and 24 hours’ notice, depending on the circumstances. (Exhibit B).
8 Practically speaking, there is not nearly enough time for a detained person to assess
9 their risk in the third country and marshal evidence to support any credible fear—let
10 alone a chance to file a motion to reopen with an IJ. An immigrant may know
11 nothing about a third country, when they are scheduled for removal there. Yet if
12 given the opportunity to investigate conditions, immigrants would find credible
13 reasons to fear persecution or torture—like patterns of keeping deportees
14 indefinitely and without charge in solitary confinement or extreme instability
15 raising a high likelihood of death—in many of the third countries that have agreed
16 to removal thus far. Due process requires an adequate chance to identify and raise
17 these threats to health and life. This Court must prohibit the government from
18 removing Mr. Bikmasov without these due process safeguards.

19
20 **III. This Court must hold an evidentiary hearing on any disputed facts.**

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

24 **IV. Prayer for relief**

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

- 26 1. Order Respondents to immediately release Petitioner from custody;
27
28

PETITION FOR WRIT OF HABEAS CORPUS

EXHIBIT A

Fernanda Ezquerro
430 Nutmeg Street, Suite 100
San Diego, California 92103
Telephone: (619) 485-8150
Facsimile: (619) 485-8160
fernanda@ezquerrolawgroup.com

Attorneys for Andrei Bikmasov

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

ANDREI BIKMASOV,
Petitioner,

v.

WARDEN, OTAY MESA DETENTION
CENTER et al.,
Respondents.

CIVIL CASE NO.: 26-cv-02517-JLS-
DEB

**Declaration
of
Andrei Bikmasov**

I, Andrei Bikmasov, declare:

1. I was born in Russia [REDACTED] I came to the United States seeking asylum in October of 2022. I immediately applied for asylum.
2. In October of 2024, I departed the United States due to a family emergency. The ICE was aware of my departure because I conveyed my plans to the officer in charge of my case.
3. On April 10, 2025, an Immigration Judge entered an in-absentia removal order.
4. I filed a motion to re-open my case. The motion was denied on July 31, 2025.
5. I filed an appeal with the BIA, the appeal remains pending.
6. On June 17, 2025, I entered the United States through the hills near Tecate. I was arrested by CBP, transferred to federal custody and charged for

1 violating 18 U.S.C § 1326.

2 7. I was granted bail and released from federal custody. Instead of being
3 released to the street, ICE detained me approximately in June of 2025. My
4 federal case was dismissed shortly after.

5 8. I have been in ICE custody since then. In September of 2025, ICE attempted
6 to remove me, however, I refused because if I am removed to Russia, I will
7 either be detained for my outspoken opposition of the current government or
8 I will be drafted to fight in the current war.

9 9. Since then, ICE has met with me only once to talk about my removal to
10 Russia. I believe my passport is no longer valid because it is missing two
11 pages.

12
13 I, Fernanda Ezquerro, reviewed every line of this declaration with Andrei Bikmasov
14 in the English language and he confirmed that it was true and correct.

15
16 Date: 6/4/2026

Signed: /s/ *Fernanda Ezquerro*

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 Antonio.Estrada@usdoj.gov

Date: 6/4/26

/s/ Fernanda Ezquerro
Fernanda Ezquerro