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ANDREY BERNIK

**United States District Court  
Central District of California  
Eastern Division**

Andrey Bernik

Petitioner,

v.

Kristi Noem, Secretary of  
Homeland  
Security;

Pamela J. Bondi, Attorney General  
of the United States;

Thomas Giles, Los Angeles Field  
Office Director, Bureau of  
Immigration and Customs  
Enforcement;

James Pilkington, Assistant Field  
Office Director, Adelanto Detention  
Facility,

Warden, Geo Group Inc, Adelanto  
Detention Facility

Respondents.

No.

DHS No. A



**Petition For a Writ of Habeas  
Corpus By a Person in Federal  
Custody Under 28 U.S.C. § 2241**

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## Memorandum of Points and Authorities

### I. Introduction & Background

Andrey Bernik was born on [REDACTED] in the region of the former USSR that now belongs to Ukraine. In 1990, he entered the United States as a Jewish refugee and later obtained Lawful Permanent Resident Status. Bernik suffered a criminal conviction for which he was incarcerated in After serving time in state prison for a criminal conviction, Bernik's sentence was commuted by Governor Gavin Newsom and Bernik was released on parole. ICE arrested Bernik then and there on September 25, 2024. He was then transferred to the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington.

After being detained for more than six months, Bernik challenged his indefinite detention in the matter of *Bernik v. Bondi*, No. 2:25-cv-00957-RSM-SKV, 2025 WL 2638625 (W.D. Wash. 2025). In those proceedings, ICE represented that they could not deport Bernik to Ukraine because removals to Ukraine were not happening at that time. *Id.* at \*2. They also attested that they had petitioned the United Kingdom, Germany, Spain, El Salvador, Mexico and Canada to accept Bernik, but all but El Salvador declined, and El Salvador had yet to respond. *Id.* The magistrate judge specifically noted that ICE "[made] no mention of having submitted a travel document request to Ukrainian authorities on behalf of Petitioner, nor [did] they otherwise address the suggestion that Ukraine does not recognize Petitioner as a citizen because he was born in the Soviet Union." *Id.* at \*3. The magistrate judge found that ICE had not shown a significant likelihood that Bernik would be removed in the reasonably foreseeable future and recommended

1 habeas relief. *Id.* The Court adopted and approved the report in full and  
2 granted Bernik habeas relief and immediate release on supervision on  
3 September 12, 2025. *Bernik v. Bondi*, No. 2:25-cv-00957-RSM-SKV, 2025  
4 WL 2637678 (W.D. Wash. 2025); *see also* Ex. 1, Report and  
5 Recommendation; Ex. 2, Order Granting Habeas.

6 But less than two months later, an ICE officer came to Bernik's  
7 residence while he was out, leaving only a message for Bernik to call  
8 them back, with no explanation for the visit. When Bernik called as  
9 instructed, he was told to report to the ICE office in person on October 21,  
10 2025. When he did so, he was given a notice of revocation stating that  
11 "[t]he government of Ukraine has granted you permission to enter  
12 Ukraine utilizing our DHS travel document," Ex. 3, Oct. 18, 2025 Notice  
13 of Removal, and was arrested immediately. He was not afforded, and as  
14 of today has not been afforded, an informal interview or any other  
15 opportunity to challenge his revocation of release.

16 Bernik also spoke with the Ukrainian Consulate in San Francisco  
17 on October 28, 2025 and was told that they do not have any record of him  
18 as a Ukrainian citizen, nor do they have any record of having granted  
19 permission for his removal to Ukraine. On information and belief, it is  
20 also Bernik's understanding that ICE plans to effectuate any Ukrainian  
21 removals by flying the subject detainees to Poland and then bussing them  
22 to the Ukrainian border, but also that Poland has stated that they will  
23 not let anyone with a criminal history participate in this process.

24 As such, there remains no significant likelihood of Bernik's removal  
25 in the reasonably foreseeable future. The Government's catch-and-release  
26 tactic violates Bernik's constitutional rights not to be indefinitely

1 detained and to due process regarding the revocation of his release and  
2 represents a bad faith effort to skirt those requirements.

## 3 II. Habeas Allegations

4 Petitioner provides the following information related to his habeas  
5 petition:

- 6 • **Place of Detention:** Adelanto Detention Facility in Adelanto,  
7 California.
- 8 • **Name and Location of Court Which Imposed Removal Order:**  
9 Tacoma Immigration Court, 1623 East J Street, Suite 3, Tacoma,  
10 WA 98421.
- 11 • **The Immigration Case Number:** A 
- 12 • **The Date Upon Which Removal Order Was Imposed:**  
13 November 7, 2024.
- 14 • **Did You Appeal from the Removal Order?** No.
- 15 • **If You Did Appeal, Provide Information Related to that**  
16 **Appeal:** N/A
- 17 • **Previous petitions:**
  - 18 ○ *Bernik v. Bondi*, No. 2:25-cv-00957, [2025 WL 2638625](#) (W.D.  
19 Wash 2025)
    - 20 ▪ Claim raised: indefinite detention in violation of
    - 21 *Zadvydas v. Davis*, [533 U.S. 678, 689](#) (2001).
    - 22 ▪ Result: The Report and Recommendation recommended
    - 23 granting habeas relief. *Bernik v. Bondi*, No. 2:25-cv-
    - 24 00957, [2025 WL 2638625](#) (W.D. Wash 2025), ECF No.
    - 25 15. The Court adopted and approved the report, granted
    - 26 habeas, and ordered Bernik's immediate release on

September 12, 2025. *Bernik v. Bondi*, No. 2:25-cv-00957-RSM-SKV, [2025 WL 2637678](#) (W.D. Wash. 2025), ECF No. 16.

- **Do you have any petition, appeal or parole matter pending in any court, either state or federal, as to the removal order under attack?** No.

### III. Claims & Arguments

#### A. **Bernik Must Be Released Because There is No Good Reason to Believe He Will Be Deported to Ukraine in the Reasonably Foreseeable Future.**

The Due Process Clause limits a “[noncitizen’s] post-removal-period detention to a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” *Zadvydas v. Davis*, [533 U.S. 678, 689](#) (2001). Because of this constitutional limitation, the immigration detention statute “does not permit indefinite detention.” *Id.*; *see* [8 U.S.C. § 1231](#).

The reasonableness of detention following a removal order is presumptively limited to six months. “After this 6-month period, once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Zadvydas*, [533 U.S. at 701](#). And release and rearrest does not restart the six-month period. *See Sied v. Nielsen*, No. 17-CV-06785-LB, [2018 WL 1876907](#), at \*6 (N.D. Cal. Apr. 19, 2018) (“Several courts have held that the six-month period does not reset when the government detains an alien . . . , releases him from detention, and then re-detains

1 him again.”); *see also S.F. v. Bostock*, No. 3:25-CV-01084-MTK, 2025 WL  
2 2841022, at \*4 (D. Or. Oct. 7, 2025) (collecting cases where presumption  
3 of reasonableness did not apply when cumulative detention exceeded  
4 sixth months); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at  
5 \*13 (W.D. Wash. Aug. 21, 2025) (same); *Diaz-Ortega v. Lund*, No. 1:19-  
6 CV-670-P, 2019 WL 6003485, at \*7 n.6 (W.D. La. Oct. 15, 2019), *report*  
7 *and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13,  
8 2019). Indeed, to hold otherwise would create an obvious end run around  
9 *Zadvydas*, because ICE could detain an immigrant indefinitely by  
10 releasing and quickly rearresting them every six months. Thus, once ICE  
11 has detained a person for six months in total without effectuating  
12 removal, a noncitizen must be released unless ICE can demonstrate a  
13 significant likelihood of removal in the reasonably foreseeable future.

14 Bernik was already in ICE custody from November 7, 2024 through  
15 and including September 12, 2025, more than 10 months, without ICE  
16 being able to effectuate removal, putting the burden on ICE to show that  
17 removal is now reasonably foreseeable. The Notice of Removal they gave  
18 Bernik at the time of his arrest states that “the government of Ukraine  
19 has granted you permission to enter Ukraine utilizing our DHS travel  
20 document,” but this representation conflicts with the information Bernik  
21 received when he contacted the Ukrainian consulate on October 28, 2025.  
22 The consulate told Bernik they have no record of his citizenship, no  
23 paperwork in his name, and no record of anyone having given permission  
24 for him to be removed there. The consulate’s representations are also in  
25 accord with Ukrainian nationality laws, which indicate that he is not a  
26

1 citizen of Ukraine and is stateless.<sup>1</sup> See Refworld, *Nationality Laws of the*  
2 *Former Soviet Republics*, § 14 et. seq. (1993).

3 Moreover, as recently as last month, ICE has been unsuccessful in  
4 attempts to remove another citizen of the former USSR to Ukraine. In the  
5 matter of *Surovtsev v. Noem et al.*, No. 1:25-cv-00160-H (N.D. Tex.), while  
6 the parties' briefs are not readily available on Pacer, the Court's most  
7 recent order states that "[t]he parties dispute whether Surovtsev is a  
8 Ukrainian citizen or a stateless person," and that ICE declared that they  
9 "will likely pursue the possibility of third-country removal" if Ukraine  
10 declines to issue travel documents to Surovtsev." Ex. 7, Order, (ECF No.  
11 20). This further suggests that ICE has yet to reach some blanket  
12 agreement or procedure that allows them to bypass getting travel  
13 documents from Ukraine and instead use some bespoke DHS travel  
14 document to effectuate removal.

15 Nor is there any indication that other longstanding barriers to  
16 removal to Ukraine have been resolved. For example, commercial flights  
17 largely cannot enter Ukraine due to the war. See *Removal of the*  
18 *Prohibition Against Certain Flights in Specified Areas of the Dnipro*  
19 *Flight Information Region*, 88 Fed. Reg. 73529 (Oct. 26, 2023) (explaining  
20

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21  
22 <sup>1</sup> Though the background section of the Report from the Western District of  
23 Washington states that Bernik "is a native and citizen of Ukraine," *Bernik*, 2025 WL  
24 2638625, at \*1, the Report cites only (1) ICE's declaration and (2) forms prepared by  
25 ICE in support of that finding. See Ex. 4, Burns Decl. (declaring without support that  
26 "Petitioner is a native and citizen of Ukraine"); Ex. 5, Record of  
Deportable/Inadmissible Alien (listing Country of Citizenship as Ukraine, but with no  
passport number); Ex. 6, Department of Homeland Security Notice to Appear  
(describing Bernik as "a native of UKRAINE and a citizen of UKRAINE" with no  
support). At the same time, as noted above, the Report acknowledges that ICE never  
addressed Bernik's assertion that he was stateless or provided any documentary  
evidence from Ukraine to the contrary. *Bernik*, 2025 WL 2638625, at \*3. It thus stands  
to reason that Bernik's legal citizenship has never been established.

1 that the restriction issued on February 24, 2022, remains in effect). And,  
2 if it is true that ICE has instead fashioned some other route that requires  
3 travel documents from another country like Poland, then they must  
4 explain how they intend to get such documents if Bernik's understanding  
5 that Poland will not let noncitizens with a criminal history participate in  
6 this process is correct.

7 All told, there is no reasonable likelihood that Bernik could be  
8 removed in the foreseeable future, given that: (1) he's not a citizen of  
9 Ukraine; (2) flights couldn't go to Ukraine if ICE wanted to, and (3)  
10 Poland does not appear willing to facilitate the transfer of those with  
11 criminal records. Therefore, this Court should grant the Writ.

12 **B. The Government violated both due process and INA**  
13 **regulations by reimprisoning Bernik without proper notice**  
14 **and an opportunity to be heard.**

15 Bernik should also be released because his detention without proper  
16 notice and a hearing violated his due process rights. Due process rights  
17 extend to noncitizens present in the United States, including those  
18 subject to final removal orders. *Zadvydas*, 533 U.S. at 693–94; *Trump v.*  
19 *J.G.G.*, 604 U.S. 670, 673 (2025). The fundamental requirements of  
20 procedural due process are that a person be afforded notice and  
21 opportunity to be heard “at a meaningful time and in a meaningful  
22 manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

23 If a noncitizen has been previously released, before reimprisonment,  
24 the regulations require the noncitizen “will be notified of the reasons for  
25 revocation of his or her release,” and will be given “an initial informal  
26 interview promptly after his or her return to Service custody to afford the

1 [noncitizen] an opportunity to respond to the reasons for revocation  
2 stated in the notification.” 8 C.F.R. § 241.4(l)(1); § 241.13(i)(3).

3 Courts have consistently interpreted these provisions to require  
4 findings prior to re-detention, as well as an opportunity to promptly be  
5 heard to contest re-detention. *See, e.g., Constantinovici v. Bondi*, No.  
6 3:25-CV-02405-RBM-AHG, 2025 WL 2898985 (S.D. Cal. Oct. 10, 2025);  
7 *Rokhfirooz v. Larose*, No. 25-CV-2053-RSH-VET, 2025 WL 2646165 (S.D.  
8 Cal. Sept. 15, 2025); *Phan v. Noem*, No. 3:25-CV-02422-RBM-MSB, 2025  
9 WL 2898977, at \*3–\*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, No. 3:25-  
10 CV-a2433-CAB-MMP, 2025 WL 2800037 (S.D. Cal. Sept. 30, 2025); *Van*  
11 *Tran v. Noem*, No. 25-CV-2334-JES-MSB, 2025 WL 2770623, at \*3 (S.D.  
12 Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10  
13 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-  
14 SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025). But, as explained above, Bernik  
15 only received his notice of revocation of removal at the time of his arrest,  
16 and had not been given any sort of interview or hearing since his arrest.  
17 He also has not been provided with any evidence of the permission from  
18 Ukraine or the travel documents that ICE purports to have and therefore  
19 could not meaningfully respond to them even if he wanted to. Because his  
20 detention fails to comport with due process, Bernik must be released.

1     **C. To the extent ICE intends to remove Bernik to a third**  
2     **country, ICE’s failure to provide notice of the third country**  
3     **and the chance to seek protection via withholding of**  
4     **removal or the Convention Against Torture violates the**  
5     **Due Process Clause, rendering Bernik’s detention**  
6     **unlawful.**

7     The right of noncitizens to due process in removal proceedings also  
8     extends to removal to a third country. This means that noncitizens are  
9     entitled to notice that they are to be removed to a third country “within a  
10    reasonable time and in such a manner as will allow them to actually seek  
11    habeas relief in the proper venue before such removal occurs.” *J.G.G.*, 604  
12    U.S. at 673.

13    Bernik has not been formally ordered removed to any country other  
14    than Ukraine. As such, he has never had an opportunity to contest  
15    removal to any third country on the grounds that he may face persecution  
16    or torture if he is removed to that country.

17    Therefore, to the extent that Bernik’s detention is meant to  
18    facilitate his removal to a third country, *see generally Zadvydas*, 533 U.S.  
19    at 690 (suggesting that detention following a removal order is intended to  
20    facilitate removal), if such a removal is accomplished in violation of his  
21    due-process rights, then his detention is illegal. This due-process claim  
22    “necessarily impl[ies] the invalidity of [his] confinement and removal” to  
23    a third country not yet named in any removal order. *J.G.G.*, 145 S. Ct. at  
24    1005. Thus, his due-process claim is properly brought in a habeas  
25    petition, and a court order that he be released from detention is a proper  
26    remedy for such a violation.

1     **D. To the extent ICE intends to remove Bernik to a third**  
2     **country, the due process Bernik is entitled to regarding**  
3     **that decision only makes it less likely removal is**  
4     **reasonably foreseeable.**

5     In addition, the time required for Bernik to assert his rights to  
6     notice and an opportunity to be heard and to seek protection regarding  
7     any third-country removal would make it even less likely he could be  
8     removed in the near future. *See Villanueva v. Tate*, No. CV H-25-3364,  
9     [2025 WL 2774610](#), at \*10 (S.D. Tex. Sept. 26, 2025) (“[A]ny efforts to  
10    remove Villanueva to a third country would likely be delayed by  
11    proceedings contesting his removal to the third country finally  
12    identified.”); *Zavvar v. Scott*, No. CV 25-2104-TDC, [2025 WL 2592543](#), at  
13    \*8 (D. Md. Sept. 8, 2025) (“The fact that Zavvar likely will have the  
14    opportunity to seek further relief from the Immigration Court, and then  
15    potentially file appeals from any adverse rulings, further demonstrates  
16    that removal is not likely in the reasonably foreseeable future.”); *Munoz-*  
17    *Saucedo v. Pittman*, [789 F. Supp. 3d 387, 399](#) (D.N.J. 2025) (finding  
18    relevant to the reasonably foreseeable analysis the fact that “even if ICE  
19    identified a third country, Petitioner . . . would be entitled ‘to seek fear-  
20    based relief from removal to that country,’ which would require  
21    ‘additional, lengthy proceedings.’”). So, to the extent ICE should purport  
22    that Bernik’s current detention is meant to effectuate removal to a third  
23    country, he should be released pending determination and notice of that  
24    country and any litigation that decision requires, per Bernik’s right not to  
25    be indefinitely detained.

**E. Removal to third countries where Bernik might face imprisonment violates the constitutional prohibition on “punitive” removal practices.**

The U.S. Supreme Court long ago held that the government may not inflict upon individuals an “infamous punishment” atop deportation as a penalty for an immigration violation, absent criminal charges, a judicial trial, and related constitutional protections. *Wong Wing v. United States*, 163 U.S. 228, 236–38 (1896). More than a century later the Court reaffirmed the point, holding that while it is within the constitutional power of Congress to remove those unlawfully present in the United States, “punitive measures c[annot] be imposed upon [noncitizens]” merely by dint of their removal,” as “all persons within the territory of the United States are entitled to the protection’ of the Constitution.” *Zadvydas*, 533 U.S. at 694 (quoting *Wong Wing*, 163 U.S. at 238).

Yet the purpose of the government’s third-country removal program is substantially punitive. As one district court recently held, government officials have made public statements, judicially noticeable, that “offer evidence that third country deportation is occurring as a punishment.” *Nguyen*, 2025 WL 2419288, at \*24 (W.D. Wash. Aug. 21, 2025). These include an official video of President Donald J. Trump stating, “[I]f illegal aliens choose to remain in America, they’re remaining illegally and they will face severe consequences,” with “punishments . . . including . . . sudden deportation in a place and manner solely of our discretion.” *Id.* “Other courts across the country have [also] recognized that the government is intentionally removing individuals to countries where they will be imprisoned” in facilities where

1 “torture is pervasive” and “human rights violations” “widespread,”  
2 under “horrific prison conditions [engineered] for the specific purpose of  
3 inflicting suffering.” *Id.* (quoting cases).

4 Removal to such countries under the Government’s current policy  
5 would thus violate the constitutional prohibition on punitive removal  
6 practices as well.

1 **IV. Conclusion**

2 For the foregoing reasons, this Court should:

- 3 • Order the government to answer this petition,  
4 • Expedite any briefing and relief, as Petitioner's current  
5 custody is illegal;  
6 • Allow him to conduct discovery to support his claim for relief;  
7 • Convene an evidentiary hearing, if needed to resolve disputed  
8 facts;  
9 • Order Respondents to release him from their custody; and  
10 • Grant any other relief that is just and practicable.  
11

12 Respectfully submitted,

13 Cuauhtemoc Ortega  
14 Federal Public Defender

15 Dated: October 30, 2025

16 By: /s/ Devon L. Hein  
17 DEVON L. HEIN  
18 Deputy Federal Public Defender

19 *Proposed Attorneys for Petitioner*  
20 ANDREY BERNIK  
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V. Index of Exhibits

| Ex. | Description                                                                                                                                           | Date      |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 1.  | Report and Recommendation, <i>Bernik v. Bondi</i> , No. 2:25-cv-00957-RSM-SKV (W.D. Wash.), ECF No. 15                                                | 8/15/2025 |
| 2.  | Order Granting Habeas, <i>Bernik v. Bondi</i> , No. 2:25-cv-00957-RSM-SKV (W.D. Wash.), ECF No. 16                                                    | 9/12/2025 |
| 3.  | October 18, 2025 Notice of Revocation of Removal                                                                                                      | 10/8/2025 |
| 4.  | Declaration of Supervisory Detention and Deportation Officer Jamie Burns, <i>Bernik v. Bondi</i> , No. 2:25-cv-00957-RSM-SKV (W.D. Wash.), ECF No. 11 | 6/27/2025 |
| 5.  | Record of Deportable/Inadmissible Alien, <i>Bernik v. Bondi</i> , No. 2:25-cv-00957-RSM-SKV (W.D. Wash.), ECF No. 12-1                                | 9/24/2024 |
| 6.  | Department of Homeland Security Notice to Appear, , <i>Bernik v. Bondi</i> , No. 2:25-cv-00957-RSM-SKV (W.D. Wash.), ECF No. 12-4                     | 10/8/2024 |
| 7.  | Order, <i>Surovtsev v. Noem et al.</i> , No. 1:25-cv-00160-H (N.D. Tex.), ECF No. 20                                                                  | 9/26/2025 |