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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 ALEKSANDR SOSNOVSKII,

12 Petitioner,

13 v.

14 MARKWAYNE MULLIN, Secretary
15 of the Department of Homeland
Security, TODD BLANCHE, Acting
16 Attorney General, TODD M. LYONS,
Acting Director, Immigration and
17 Customs Enforcement, JESUS
18 ROCHA, Acting Field Office
Director, San Diego Field Office,
19 JEREMY CASEY, Warden at
Imperial Regional Detention Center,
20

21 Respondents.
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Civil Case No.: 26-CV-3454 JLS
(AHG)

**Amended Petition for Writ
of
Habeas Corpus**

[28 U.S.C. § 2241]

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I. Introduction

An immigration judge granted Petitioner Aleksandr Sosnovskii withholding of removal to Russia and listed Belarus – the country where Mr. Sosnovskii was born but left when he was a baby – as an alternative country. For over a year, Respondents have known that Belarus will not issue travel documents for Mr. Sosnovskii. Respondents, instead, challenged the grant of withholding of removal to Russia. After years of appeals, the grant of withholding of removal to Russia stands and there is no indication that Belarus will issue travel documents.

This civil immigration habeas petition seeks two grounds of relief. First, it seeks to prevent Petitioner’s indefinite detention pending deportation to Belarus absent the basic statutory and due process guarantees outlined in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Second, it seeks to prevent Petitioner’s deportation to a third country without Petitioner first receiving basic due process guarantees of notice and opportunity to be heard as to Petitioner’s statutory rights to seek withholding of removal and Convention Against Torture relief.

II. Statement of Facts

A. There is no evidence of any progress in removing Petitioner.

Mr. Sosnovskii is 25 years old and has now been detained in immigration custody for two years. He was born in Belarus but left for Russia when he was a baby. Exhibit A, Declaration of Sonsovkii, ¶ 1-2. His parents were born in the former Soviet Union. *Id.*

On August 8, 2024, after waiting in Mexico for approximately eight months, Mr. Sosnovskii, his mother and younger brother entered using the CBP One App. *Id.* at ¶ 2. His mother and brother were eventually released and now live in New York. *Id.*

Four months after entering the United States, on December 9, 2024, an immigration judge granted him withholding of removal to Russia. *Id.* at ¶ 4. The IJ listed Belarus as the alternative country. *Id.* Rather than attempting to removal Mr. Sosnovskii to Belarus, Respondents appealed the grant of withholding of removal to Russia. *Id.* at ¶5.

In July of 2025, the case went back to the same judge who affirmed the withholding of removal and listed Belarus as the alternative country. *Id.* at ¶ 6. Mr. Sosnovskii appealed that decision because he wanted a grant of asylum rather than withholding. *Id.* On April 8, 2026, the appeal was dismissed. *Id.*

Over a year ago, Mr. Sosnovskii received a document from the Belarus government stating that he was not a citizen of Belarus. *Id.* at ¶ 9. For a year, he has been repeatedly telling ICE about this and the fact that Belarus does not consider him to be a citizen. *Id.*

On June 23, 2026, an ICE agent spoke to Mr. Sosnovskii. *Id.* at ¶ 10. The agent told him that Belarus will not issue travel documents for him. To date, Mr. Sosnovskii has not been told where or when he will be removed. *Id.*

B. Third-country removals for noncitizens granted withholding of removal are rare, but as of July 2025, third-country removals can happen with no or little notice and result in noncitizens' return to their countries of origin.

There are three main forms of relief available to noncitizens who will be persecuted if they are returned to their home country: asylum, withholding of removal, and Convention Against Torture ("CAT") relief.

There are more restrictions on asylum. *See* 8 U.S.C. § 1158(a)(2); *see also, e.g.,* US. Citizenship and Immigration Services, *Asylum, Court*

1 *Order on Circumvention of Lawful Pathways Final Rule* (updated Nov.
2 7, 2025) (noting limitations on asylum to those who entered outside a
3 port of entry between May 2023 and May 2025, among other
4 limitations).¹ There are fewer restrictions on eligibility for withholding
5 of removal. *See* 8 U.S.C. § 1231(b)(3)(B)(iii). However, an applicant for
6 withholding of removal must show a higher likelihood of persecution
7 than what an asylum applicant must demonstrate—specifically, that it
8 is “more likely than not that he or she would be persecuted on account
9 of race, religion, nationality, membership in a particular social group,
10 or political opinion upon removal to that country.” 8 C.F.R.
11 § 1208.16(b)(2); *see INS v. Stevic*, 467 U.S. 407, 429–30 (1984).

12 About 1,000 people won withholding of removal each year
13 between 2010 and 2018. *See* Exhibit B at 6 (American Immigration
14 Council & National Immigrant Justice Center, *The Difference Between*
15 *Asylum and Withholding of Removal* (Oct. 2020)). In fiscal year 2024,
16 about 2,500 people won withholding or deferral of removal. *See* Exhibit
17 C at 2 (Congressional Research Service, *FY2024 Immigration Court*
18 *Data: Case Outcomes* (Feb. 3, 2025)).

19 When an immigration judge grants withholding relief, she issues
20 a removal order and simultaneously issues an order withholding
21 removal with respect to the country the person demonstrated a risk of
22 persecution. *See Guzman-Chavez*, 594 U.S. at 535–38. While ICE is
23 authorized to remove that person granted withholding to a alternative
24 countries, the removal statute specifies restrictive criteria for
25 identifying appropriate countries. *See* 8 U.S.C. § 1231(b); 8 C.F.R.
26 § 1208.16(f). Further, “foreign governments ‘routinely deny’ requests to
27

28 ¹ Available at <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum>.

1 receive people who lack a connection to the would-be receiving
2 country.” *Puertas-Mendoza*, 2025 WL 3142089 at *3. “The reason so
3 few people are deported to third countries is because,” while
4 “customary international law holds that a country has a duty to accept
5 the return of its nationals,” usually, “countries have no incentive to
6 accept non-citizens.” Exhibit B at 7.

7 If ICE identifies an appropriate third country of removal, the
8 noncitizen must then have notice and an opportunity to seek relief
9 from removal to that new country. *See Jama v. ICE*, 543 U.S. 335, 348
10 (2005) (“If [non-citizens] would face persecution or other mistreatment
11 in the country designated under § 1231(b)(2), they have a number of
12 available remedies: asylum, § 1158(b)(1); withholding of removal,
13 § 1231(b)(3)(A); [and] relief under an international agreement
14 prohibiting torture.”); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
15 1999) (holding that “last minute” designation of alternative country
16 without meaningful opportunity to apply for protection “violate[s] a
17 basic tenet of constitutional due process”).

18 As a result of these restrictions and procedures, very few people
19 who receive withholding of removal are deported to a third country.
20 Between September 2023 and June 2025, ICE removed a total of eight
21 people granted withholding or other CAT relief to alternative
22 countries. Exhibit D (ICE removal data).² Between fiscal years 2020

23
24 ² The data in Exhibit D are collected from the Deportation Data
25 Project, which “collects and posts public, anonymized U.S. government
26 immigration enforcement datasets,” “primarily [obtained] through
27 Freedom of Information Act requests.” For the complete raw data, one
28 can visit <https://deportationdata.org/data/ice>, select “Removals,” and
filter for each removal classified as “[5C] Relief Granted – Withholding
of Deportation / Removal” or “[5D] Final Order of Deportation /
Removal – Deferred Action Granted.” The chart attached as Exhibit D
highlights all such cases in which the noncitizen was removed to a

1 and 2023, a total of five people granted withholding or other CAT relief
2 were removed to alternative countries. *Id.*

3 That said, in the summer of 2025, ICE began removing more
4 immigrants it could not previously remove to third countries, which
5 have often removed those people back to their countries of origin. ICE
6 implemented new policies to do so. On July 9, 2025, ICE rescinded
7 previous guidance meant to give immigrants a “‘meaningful
8 opportunity’ to assert claims for protection under the Convention
9 Against Torture before initiating removal to a third country.” Exhibit E
10 (July 9, 2025, ICE third-country removal guidance).

11 Now, ICE may remove an immigrant to a third country without
12 any notice. It may do so if, in the sole view of the State Department,
13 the United States has received “credible” “assurances” from that
14 country that deportees will not be persecuted or tortured. *Id.* at 1.

15 If a country fails to credibly promise not to persecute or torture
16 releasees, ICE may remove immigrants with only 24 hours’ notice. “In
17 exigent circumstances,” a removal may take place in six hours, “as long
18 as the alien is provided reasonably means and opportunity to speak
19 with an attorney prior to the removal.” *Id.*

20 Under this policy, ICE “will not affirmatively ask whether the
21 alien is afraid of being removed to the country of removal.” *Id.*
22 (emphasis original). If the noncitizen “does not affirmatively state a
23 fear of persecution or torture if removed to the country of removal
24

25 _____
26 country other than their country of origin. The remaining
27 unhighlighted noncitizens either won withholding or CAT relief with
28 respect to a third country that was not their country of origin,
including dual citizens; had withholding or CAT relief terminated; or
agreed to return to their country of origin despite a grant of
withholding or CAT relief.

1 listed on the Notice of Removal within 24 hours, [ICE] may proceed
2 with removal to the country identified on the notice.” *Id.* at 2.

3 Under this policy, the United States has deported several dozen
4 noncitizens to prisons and military camps in Rwanda, Eswatini, South
5 Sudan, and Ghana. Those who have not been returned to their home
6 countries are still detained, in countries to which they have never
7 been, without charge. Nokukhanya Musi & Gerald Imray, 10 more
8 deportees from the US arrive in the African nation of Eswatini,
9 Associated Press (Oct. 6, 2025)³; see also Gerald Imray, A Cuban man
10 deported by the US to Africa is on a hunger strike in prison, his lawyer
11 says, Associated Press (Oct. 23, 2025)⁴; Frank Chothia, Eswatini
12 confirms receiving \$5.1m from the US for accepting deportees, BBC
13 (Nov. 18, 2025)⁵; Nick Alexandra, The Toll of Trump’s African
14 Deportation Agreements, New Lines Magazine (Dec. 10, 2025).

15 **III. Claims for Relief**

16 *Zadvydas v. Davis* holds that immigration statutes do not
17 authorize the government to detain immigrants like Mr. Sosnovskii,
18 for whom there is “no significant likelihood of removal in the
19 reasonably foreseeable future.” 533 U.S. 678, 701 (2001). Though
20 *Zadvydas* recognized that detention pending removal is “presumptively
21 reasonable” for six months after a removal order becomes final, *id.*,
22 many courts have concluded that that presumption is rebuttable.
23 Mr. Sosnovskii has rebutted the presumption here, proving that he will
24 not be removed in the reasonably foreseeable future.

25
26 ³ Available at <https://apnews.com/article/eswatini-deportees-us-trump-immigration-74b2f942003a80a21b33084a4109a0d2>.

27 ⁴ Available at <https://apnews.com/article/deported-immigration-migrants-trump-eswatini-8d8aad6dd01bf0e72de06480f3c70859>.

28 ⁵ Available at <https://www.bbc.com/news/articles/cq50vjdx368o>.

1 **A. Claim 1: Mr. Sosnovskii's detention violates *Zadvydas***
2 **and 8 U.S.C. § 1231.**

3 Mr. Sosnovskii's indefinite detention violates the statute
4 authorizing detention, 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533
5 U.S. 678 (2001), the Supreme Court considered a problem affecting
6 people like Mr. Sosnovskii. Federal law requires ICE to detain an
7 immigrant during the "removal period," which typically spans the first
8 90 days after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-
9 (2). After that 90-day removal period expires, detention becomes
10 discretionary—ICE may detain the migrant while continuing to try to
11 remove them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead
12 to excessive detention, as removal happens within days or weeks. But
13 some detainees cannot be removed quickly. Perhaps their removal
14 "simply require[s] more time for processing," or they are "ordered
15 removed to countries with whom the United States does not have a
16 repatriation agreement," or their countries "refuse to take them," or
17 they are "effectively 'stateless' because of their race and/or place of
18 birth." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In
19 these and other circumstances, detained immigrants can find
20 themselves trapped in detention for months, years, decades, or even
21 the rest of their lives.

22 If federal law were understood to allow for "indefinite, perhaps
23 permanent, detention," it would pose "a serious constitutional threat."
24 *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided
25 the constitutional concern by interpreting § 1231(a)(6) to incorporate
26 implicit limits. *Id.* at 689.
27
28

1 As an initial matter, *Zadvydas* held that detention is
2 “presumptively reasonable” for at least six months. *Id.* at 701. This
3 acts as a kind of grace period for effectuating removals.

4 Following the six-month grace period, courts must use a burden-
5 shifting framework to decide whether detention remains authorized.
6 First, the petitioner must make a prima facie case for relief: He must
7 prove that there is “good reason to believe that there is no significant
8 likelihood of removal in the reasonably foreseeable future.” *Id.*

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

14 **1. Courts across the country agree that the six-**
15 **month presumption is rebuttable.**

16 *Zadvydas* makes clear, detention is only “presumptively
17 reasonable” for six months. 533 U.S. at 701 (emphasis added).
18 Numerous courts have concluded that the six-month presumption is
19 “just that, a presumption, one that can be rebutted upon a showing
20 that removal is *not* reasonably foreseeable.” *Cruz Medina v. Noem*, No.
21 25-CV-1768-ABA, 2025 WL 2306274, at *7 n.5 (D. Md. Aug. 11, 2025);
22 accord *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 397 (D.N.J.
23 2025); *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5
24 (D. Md. Sept. 8, 2025); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093
25 (C.D. Cal. 2020); *Sweid v. Cantu*, No. CV-25-03590-PHX-DWL (CDB),
26 2025 WL 3033655, at *3 (D. Ariz. Oct. 30, 2025); *Puertas Mendoza v.*
27 *Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *2 (W.D. Tex.
28 Oct. 22, 2025); *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 n.6 (D.

1 Mass. 2018); *Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 707
2 (S.D. Tex. 2020); *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL
3 2774610, at *9 (S.D. Tex. Sept. 26, 2025); *Douglas v. Baker*, No. 25-CV-
4 2243-ABA, 2025 WL 2687354, at *3 (D. Md. Sept. 19, 2025); *Jamal v.*
5 *Sessions*, No. 5:18-06015-CV-RK, 2018 WL 1440609, at *2 (W.D. Mo.
6 Mar. 22, 2018). “A close reading of *Zadvydas*” refutes any attempt to
7 turn that presumption into a bright-line rule. *Cesar*, 542 F. Supp. 2d at
8 902.

9 Prohibiting all detention challenges before the six-month mark
10 would go against *Zadvydas*’s most fundamental holding: that “if
11 removal is not reasonably foreseeable, the court should hold continued
12 detention unreasonable and no longer authorized by statute.”
13 *Zadvydas*, 533 U.S. at 699–700. “The fundamental principle in
14 *Zadvydas* . . . is that where removal is not reasonably foreseeable,
15 detention is unconstitutional.” *Cesar*, 542 F. Supp. 2d at 902.
16 “*Zadvydas* unequivocally held that ‘once removal is no longer
17 reasonably foreseeable, continued detention is no longer authorized.’”
18 *Puerta Mendoza*, 2025 WL 3142089, at *2. It follows that “[i]f there
19 comes a point during the six-month period at which it is ‘no longer
20 reasonably foreseeable’ that a person will actually be removed, then
21 detention ‘is no longer authorized,’” and the petitioner must be
22 released. *Cruz Medina*, 2025 WL 2306274, at *6 (quoting *Zadvydas*,
23 533 U.S. at 699–700). To hold otherwise would be to render *Zadvydas*
24 “internally inconsistent.” *Zavvar*, 2025 WL 2592543, at *5.

25 *Zadvydas* did not back away from that fundamental principle
26 when describing the six-month presumption. “At no point did the
27 *Zadvydas* Court preclude a noncitizen from challenging their detention
28 before the end of the presumptively reasonable six-month period.”

1 *Trinh*, 466 F. Supp. 3d at 1092. To the contrary, the Court said that it
2 was “adopting a *presumption* of reasonableness before the six-month
3 period expires. A presumption is just that: a default, a starting point.”
4 *Cruz Medina*, 2025 WL 2306274, at *5. “The *Zadvydas* Court did not
5 say that the presumption is irrebuttable, and there is nothing inherent
6 in the operation of the presumption itself that requires it to be
7 irrebuttable.” *Cesar*, 542 F. Supp. 2d at 903; *accord Sweid*, 2025 WL
8 3033655, at *3 (“*Zadvydas* did not hold that this presumption is
9 conclusive in all cases and under all sets of facts.”).

10 Furthermore, when introducing the six-month presumption, the
11 Court “noted that such presumptions are intended to ‘guide lower court
12 determinations.’” *Zavvar*, 2025 WL 2592543, at *5. A “guide” is “not a
13 categorical prohibition on claims challenging detention less than six
14 months.” *Trinh*, 466 F. Supp. 3d at 1093.

15 Finally, *Zadvydas* analogized to the “similar” rule in *County of*
16 *Riverside v. McLaughlin*, 500 U.S. 44, 56–58 (1991), in which the Court
17 “adopt[ed] [a] presumption, based on lower court estimate of time
18 needed to process arrestee, that 48-hour delay in probable-cause
19 hearing after arrest is reasonable, hence constitutionally permissible.”
20 *Zadvydas*, 533 U.S. at 701 (describing *Riverside*). *Riverside*’s 48-hour
21 rule “is a rebuttable presumption.” *Cesar*, 542 F. Supp. 2d at 904. It
22 stands to reason that “the *Zadvydas* presumption, like the *Riverside*
23 presumption, is rebuttable.” *Munoz-Saucedo*, 789 F. Supp. 3d at 397.

24 In short, then, “[t]he presumption of reasonableness is the
25 default, but if a person ‘can prove’ that his removal is not reasonably
26 foreseeable, then he can overcome that presumption.” *Munoz-Saucedo*,
27 789 F. Supp. 3d at 397 (quoting *Riverside*, 500 U.S. at 56).

1 **2. There is no significant likelihood of removal in**
2 **the reasonably foreseeable future to a third**
3 **country.**

4 Even if Mr. Sosnovskii must rebut the six-month presumption, he
5 can show that “there is no significant likelihood of removal in the
6 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701.

7 First, ICE has made no progress whatsoever in removing
8 Petitioner, despite having more three months to do so. And there is an
9 obvious explanation for ICE’s inability to remove Mr. Sosnovskii: He
10 has a withholding of removal to his native country and he has no
11 nationality in any other country.

12 What’s more, removal to a third country is unlikely. That’s
13 because “alternative-country removal is rare.” *Johnson v. Guzman-*
14 *Chavez*, 594 U.S. 523, 537 (2021). Between 2020 and 2023, data
15 apparently show that “ICE removed . . . only *five* non-citizens granted
16 withholding or CAT relief to alternative countries.” *Munoz-Saucedo v.*
17 *Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025) (emphasis original). In
18 fiscal year 2017, there were at most 21 people of the thousands with
19 withholding of removal deported to *any* country; that number includes
20 dual citizens who only received withholding from one of their two other
21 countries of origin. See American Immigration Council & National
22 Immigrant Justice Center, *The Difference Between Asylum and*
23 *Withholding of Removal*, 7 (Oct. 2020)⁶ (cited in *Guzman-Chavez*, 594
24 U.S. at 537). That means that “less than two percent of those granted
25 withholding of removal were deported to a third country.” *Puertas-*
26 *Mendoza*, 2025 WL 3142089 at *3 (citing American Immigration

27 ⁶ Available at [https://www.americanimmigrationcouncil.org/wp-](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the-difference-between-asylum-and-withholding-of-removal.pdf)
28 [content/uploads/2025/01/the-difference-between-asylum-and-withhol-](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the-difference-between-asylum-and-withholding-of-removal.pdf)
 [ding-of-removal.pdf](https://www.americanimmigrationcouncil.org/wp-content/uploads/2025/01/the-difference-between-asylum-and-withholding-of-removal.pdf).

1 Council & National Immigrant Justice Center, *supra*).

2 “[T]hat is not simply a matter of United States policy—foreign
3 governments ‘routinely deny’ requests to receive people who lack a
4 connection to the would-be receiving country.” *Puertas-Mendoza*, 2025
5 WL 3142089 at *3. “The reason so few people are deported to third
6 countries is because,” while “customary international law holds that a
7 country has a duty to accept the return of its nationals,” usually,
8 “countries have no incentive to accept non-citizens.” American
9 Immigration Council & National Immigrant Justice Center, *supra*, at
10 7.

11 Mr. Sosnovskii’s individual circumstances strongly suggest that
12 he will not be among the handful of people granted withholding of
13 removal the U.S. removes to a third country.

14 First, Respondents were given the option to remove
15 Mr. Sosnovskii to Belarus over a year ago. Perhaps knowing that
16 removal to Belarus was unlikely, Respondents chose instead, to appeal
17 the withholding of removal to Russia. Exh. A at ¶ 5. For over a year,
18 Respondents have been aware of the fact that Belarus does not
19 consider Mr. Sosnovskii to be a citizen. *Id.* at ¶ 9. Moreover,
20 Mr. Sosnovskii does not have immigration status in any other country.
21 *Id.* at ¶ 1.

22 *Second*, in light of Mr. Sosnovskii’s statutory and international
23 right to seek protection from persecution and chain refoulement, there
24 is no reason to think his removal could happen in the reasonably
25 foreseeable future. Even if ICE identified a third country, he “would be
26 entitled to seek fear-based relief from removal to that country, which
27 would require additional, lengthy proceedings.” *Munoz-Saucedo*, 789 F.
28 Supp. 3d at 399; *accord Villanueva*, 2025 WL 2774610, at *10 (“[A]ny

1 efforts to remove Villanueva to a third country would likely be delayed
2 by proceedings contesting his removal to the third country finally
3 identified.”).

4 Mr. Sosnovskii would be particularly entitled to seek protection
5 from removal because many noncitizens removed to third countries in
6 the past year have then been returned to their home countries. *See,*
7 *e.g.,* Nick Alexandra, *supra* at page 7 n.7. For Petitioner, a third-
8 country removal could very well result in “chain refoulement,” in which
9 Petitioner is deported to a third country that would proceed to deport
10 Petitioner to their home country of persecution. *See* Inter-American
11 Commission on Human Rights, *IACHR and United Nations Experts:*
12 *States Must Protect the Rights of Persons in Human Mobility* (Sept. 18,
13 2025);⁷ *see also* United Nations Committee Against Torture, *General*
14 *comment No. 4 on the implementation of article 3 of the Convention in*
15 *the context of article 22*, at section II (12) (Sept. 4, 2028) (“the person at
16 risk [of torture] should never be deported to another State from which
17 the person may subsequently face deportation to a third State in which
18 there are substantial grounds for believing that the person would be in
19 danger of being subjected to torture”).⁸

20 *Third,* ICE has not made any progress in removing
21 Mr. Sosnovskii. At three months post final order of removal, ICE has
22 yet to identify any third country or the likelihood of removal to any
23 third country.

25 ⁷ Available at
26 [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/190.asp&utm_term=class-dc)
27 [preleases/2025/190.asp&utm_term=class-dc](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/190.asp&utm_term=class-dc).

28 ⁸ Available at
[https://www.ohchr.org/sites/default/files/Documents/HRBodies/](https://www.ohchr.org/sites/default/files/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf)
[CAT/CAT-C-GC-4_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf).

1 Given that third country removal is already exceedingly unlikely,
2 a “lack of effort only reinforces the conclusion that the Petitioner's
3 removal is not likely to occur in the reasonably foreseeable future.”
4 *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *5 (E.D.
5 Pa. Nov. 8, 2002); *see also Conchas-Valdez v. Casey*, 25-cv-2469-DMS,
6 Dkt. 9, at 6 (S.D. Cal. Oct. 6, 2025) (granting a petition in part because
7 “the Government’s minimal work on [the] case . . . [did] not instill
8 confidence that it will be able to secure [CAT] Petitioner’s removal in
9 the reasonably foreseeable future”); *Zavvar*, 2025 WL 2592543, at *7
10 (finding the presumption rebutted, despite outstanding third-country
11 requests to Australia and Romania, because of “[t]he lack of any sign
12 that Australia or Romania is actively considering accepting [the
13 petitioner]”).

14 Even if ICE were making efforts behind the scenes, so far, none
15 have borne fruit. The third-country removal process has not progressed
16 even to the point that ICE has identified a country to which
17 Mr. Sosnovskii can apply or be removed to. Exh. A ¶ 10. That matters,
18 because *Zadvydas* itself made clear that good faith efforts do not
19 themselves show that removal is significantly likely. The petitioner in
20 *Zadvydas* appealed a “Fifth Circuit h[olding] [that] [the petitioner’s]
21 continued detention [was] lawful as long as good faith efforts to
22 effectuate deportation continue and [the petitioner] failed to show that
23 deportation will prove impossible.” 533 U.S. at 702 (cleaned up). The
24 Supreme Court reversed, finding that the Fifth Circuit’s good-faith-
25 efforts standard “demand[ed] more than our reading of the statute can
26 bear.” *Id.* Thus, “under *Zadvydas*, the reasonableness of Petitioner's
27 detention does not turn on the degree of the government's good faith
28 efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard.

1 Rather, the reasonableness of his detention turns on whether and to
2 what extent the government's efforts are likely to bear fruit.” *Hassoun*
3 *v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan.
4 2, 2019).

5 Because of all the above, Mr. Sosnovskii has met his initial
6 burden. Thus, unless the government can prove a “significant
7 likelihood of removal in the reasonably foreseeable future,”
8 Mr. Sosnovskii must be released. *Zadvydas*, 533 U.S. at 701.

9 **B. Claim 2: ICE may not remove Petitioner to a third**
10 **country without adequate notice and an opportunity**
11 **to be heard.**

12 If ICE did suddenly prove able to remove Mr. Sosnovskii to a
13 third country, it would do so under a policy that violates the Fifth
14 Amendment, the Convention Against Torture, and implementing
15 regulations.

16 **1. Legal background**

17 U.S. law enshrines protections against dangerous and life-
18 threatening removal decisions. By statute, the government is
19 prohibited from removing an immigrant to any third country where
20 they may be persecuted or tortured, a form of protection known as
21 withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government
22 “may not remove [a noncitizen] to a country if the Attorney General
23 decides that the [noncitizen’s] life or freedom would be threatened in
24 that country because of the [noncitizen’s] race, religion, nationality,
25 membership in a particular social group, or political opinion.” *Id.*; *see*
26 *also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is a
27 mandatory protection.

28 Similarly, Congress codified protections enshrined in the CAT
prohibiting the government from removing a person to a country where

1 they would be tortured. *See* FARRA 2681-822 (codified as 8 U.S.C.
2 § 1231 note) (“It shall be the policy of the United States not to expel,
3 extradite, or otherwise effect the involuntary return of any person to a
4 country in which there are substantial grounds for believing the person
5 would be in danger of being subjected to torture, regardless of whether
6 the person is physically present in the United States.”); 28 C.F.R.
7 § 200.1; *id.* §§ 208.16-208.18, 1208.16-1208.18. CAT protection is also
8 mandatory.

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

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

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

17 “[L]ast minute” notice of the country of removal will not suffice,
18 *Andriasian*, 180 F.3d at 1041; *accord Najjar v. Lunch*, 630 Fed. App’x
19 724 (9th Cir. 2016), and for good reason: To have a meaningful
20 opportunity to apply for fear-based protection from removal,
21 immigrants must have time to prepare and present relevant
22 arguments and evidence. Merely telling a person where they may be
23 sent, without giving them a chance to look into country conditions,
24 does not give them a meaningful chance to determine whether and why
25 they have a credible fear.
26
27
28

1 **2. The June 6, 2025 memo's removal policies**
2 **violate the Fifth Amendment, 8 U.S.C. § 1231, the**
3 **Conviction Against Torture, and Implementing**
4 **Regulations.**

5 The policies in the June 6, 2025 memo do not adhere to these
6 requirements. First, under the policy, ICE need not give immigrants
7 *any* notice or hearing before removing them to a country that—in the
8 State Department's estimation—has provided “credible” “assurances”
9 against persecution and torture. Exh. B. By depriving immigrants of
10 any chance to challenge the State Department's view, this policy
11 violates “[t]he essence of due process,” “the requirement that a person
12 in jeopardy of serious loss be given notice of the case against him and
13 opportunity to meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)
(cleaned up).

14 Second, even when the government has obtained no credible
15 assurances against persecution and torture, the government can still
16 remove the person with between 6 and 24 hours' notice, depending on
17 the circumstances. Exh. B. Practically speaking, there is not nearly
18 enough time for a detained person to assess their risk in the third
19 country and marshal evidence to support any credible fear—let alone a
20 chance to file a motion to reopen with an IJ. An immigrant may know
21 nothing about a third country, like Eswatini or South Sudan, when
22 they are scheduled for removal there. Yet if given the opportunity to
23 investigate conditions, immigrants would find credible reasons to fear
24 persecution or torture—like patterns of keeping deportees indefinitely
25 and without charge in solitary confinement or extreme instability
26 raising a high likelihood of death—in many of the third countries that
27 have agreed to removal thus far. Due process requires an adequate
28 chance to identify and raise these threats to health and life. This Court

1 must prohibit the government from removing Petitioner without these
2 due process safeguards.

3 **IV. This Court must hold an evidentiary hearing on any**
4 **disputed facts.**

5 Resolution of a prolonged-detention habeas petition may require
6 an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th
7 Cir. 2009). Petitioner hereby requests such a hearing on any material,
8 disputed facts.

9 **V. Prayer for relief**

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

- 12 1. Order Respondents to immediately release Petitioner from
13 custody;
- 14 2. Enjoin Respondents from re-detaining Petitioner under
15 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a
16 travel document for Petitioner's removal;
- 17 3. Enjoin Respondents from removing Petitioner unless they
18 provide the following process, *see D.V.D. v. U.S. Dep't of*
19 *Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1453640,
20 at *1 (D. Mass. May 21, 2025):
 - 21 a. written notice to both Petitioner and Petitioner's
22 counsel in a language Petitioner can understand;
 - 23 b. a meaningful opportunity, and a minimum of ten
24 days, to raise a fear-based claim for CAT protection
25 prior to removal;
 - 26 c. if Petitioner is found to have demonstrated
27 "reasonable fear" of removal to the country,
28

1 Respondents must move to reopen Petitioner's
2 immigration proceedings;

3 d. if Petitioner is not found to have demonstrated a
4 "reasonable fear" of removal to the country, a
5 meaningful opportunity, and a minimum of fifteen
6 days, for the Petitioner to seek reopening of
7 Petitioner's immigration proceedings.

8 4. Order all other relief that the Court deems just and proper.
9

10 Respectfully submitted,

11 Dated: July 10, 2026

s/ Zandra L. Lopez

Zandra L. Lopez

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