

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Vishal v. Christopher Chestnut, et al.

Vishal v. Christopher Chestnut, No. 1:25-cv-01469-SAB-HC (E.D. Cal. Dec. 5, 2025) · No. 1:25-cv-01469-SAB-HC · Decided December 8, 2025

SUMMARY

The United States District Court for the Eastern District of California granted Vishal’s petition for a writ of habeas corpus under 28 U.S.C. § 2241, finding that his prolonged detention under 8 U.S.C. § 1231(a)(6) was unreasonable under Zadvydas v. Davis. The court ordered his immediate release subject to supervision and held that the government’s third-country removal procedures violated due process and Ninth Circuit precedent. The court permanently enjoined removal to a third country unless specified notice and opportunities to assert fear-based protection claims were provided.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 8, 2025
DOCKET	1:25-cv-01469-SAB-HC
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought habeas relief under 28 U.S.C. § 2241 from continued immigration detention and challenged the respondents' third-country removal procedures. The court granted the habeas petition, denied the preliminary-injunction motion as moot, ordered immediate release subject to supervision, and enjoined third-country removal unless specified procedures were followed.
STANDARD OF REVIEW	The court applied the statutory and constitutional standards governing post-removal-order detention under 8 U.S.C. § 1231(a)(6) and Zadvydas v. Davis, including the six-month presumptively reasonable period and the burden-shifting requirement concerning the likelihood of removal in the reasonably foreseeable future. It reviewed the due-process adequacy of the third-country removal procedures.
PRECEDENTIAL VALUE	unknown

PARTIES

Vishal v. Christopher Chestnut, et al.

TOPICS

federal habeas corpus

immigration detention

removal proceedings

procedural due process

due process

PRACTICE AREAS

immigration

habeas corpus

constitutional law

administrative law

QUESTIONS PRESENTED

1. Whether petitioner's continued detention under 8 U.S.C. § 1231(a)(6) became unreasonable and unauthorized after he provided good reason to believe that removal was not significantly likely in the reasonably foreseeable future and the government failed to rebut that showing.
2. Whether petitioner's two custodial altercations justified continued detention despite the lack of a reasonably foreseeable removal.
3. Whether the government's March 30 and July 9, 2025 third-country removal procedures violated due process by failing to provide meaningful notice and an opportunity to assert a fear-based claim before removal.
4. What relief was appropriate for the statutory detention violation and the due-process violation.

HOLDINGS

1. Petitioner's continued detention was unreasonable and no longer authorized by 8 U.S.C. § 1231(a)(6) because he had been detained beyond the presumptively reasonable six-month period, showed good reason to believe that removal was not significantly likely in the reasonably foreseeable future, and the government failed to provide sufficient rebuttal evidence.
2. Petitioner's two altercations while in immigration custody did not justify continued detention under § 1231(a)(6).
3. The March 30 and July 9, 2025 third-country removal policies violated the Fifth Amendment Due Process Clause and Ninth Circuit precedent because they did not guarantee meaningful notice and an opportunity to assert a fear-based claim before removal to a third country.

KEY QUOTATIONS

“This 6-month presumption, of course, does not mean that every alien not removed must be released after six months.” (at 5)

“If a need to protect the community did not justify the detention of Ma—a killer—under § 1231(a)(6), it similarly does not justify the detention of Thai.” (at 8)

“Accordingly, Petitioner cannot be removed to a third country without meaningful notice and an opportunity to assert a fear-based claim.” (at 9-10)

FACTUAL BACKGROUND

Petitioner, a native and citizen of India, entered the United States on June 10, 2024, and was detained upon entry. An immigration judge found him inadmissible, ordered removal to India, and granted withholding of removal to India because he was likely to face persecution there based on protected political expression and Sikh identity. His removal order became final on April 17, 2025, but he remained detained for more than six months while ICE searched for a third country; the government did not identify a country or provide meaningful evidence of progress. Respondents also relied on third-country removal policies that provided notice and fear-based screening only under limited circumstances.

PROCEDURAL HISTORY

Vishal was ordered removed to India but was granted withholding of removal to India. After the removal order became final, he remained detained under 8 U.S.C. § 1231(a)(6) while the government allegedly searched for a third country willing to accept him. He filed this § 2241 petition and a motion for preliminary injunction on October 31, 2025. The parties briefed the matter, and the court advanced consideration of the merits under Federal Rule of Civil Procedure 65(a)(2).

DISPOSITION

other

CASES CITED

- Prieto-Romero v. Clark, 534 F.3d 1053, 1057, 1063 (9th Cir. 2008)
- Avilez v. Garland, 69 F.4th 525, 529-531 (9th Cir. 2023)
- Zadvydas v. Davis, 533 U.S. 678, 683, 685, 689, 699-702 (2001)
- Nguyen v. Scott, No. 2:25-CV-01398, 2025 WL 2419288, at *16, *19 (W.D. Wash. Aug. 21, 2025)
- Singh v. Gonzales, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006)
- Chun Yat Ma v. Asher, No. C11-1797 MJP, 2012 WL 1432229, at *4-*5 (W.D. Wash. Apr. 25, 2012)
- Hoac v. Becerra, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025)
- Huang v. Albarran, No. 1:25-cv-01308-JLT-EPG, 2025 WL 2986885, at *4 (E.D. Cal. Oct. 23, 2025)
- Alva, 2025 WL 2419262, at *3
- Ceesay v. Kurzdorfer, 781 F. Supp. 3d 137, 154 (W.D.N.Y. 2025)
- Thai v. Ashcroft, 366 F.3d 790, 792, 794, 797-799 (9th Cir. 2004)
- Reno v. Flores, 507 U.S. 292, 306 (1993)
- Andriasian v. I.N.S., 180 F.3d 1033, 1041 (9th Cir. 1999)
- Ibarra-Perez v. United States, 154 F.4th 989, 995 (9th Cir. 2025)
- D.V.D. v. U.S. Department of Homeland Security, 778 F. Supp. 3d 355, 394 (D. Mass. 2025)
- D.V.D. v. U.S. Department of Homeland Security, No. CV 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025)
- Department of Homeland Security v. D.V.D., 145 S. Ct. 2153 (2025)

- Kumar v. Wamsley, No. C25-2055-KKE, 2025 WL 3204724, at *2-*3, *6 (W.D. Wash. Nov. 17, 2025)
- Vu v. Noem, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341, at *9 (E.D. Cal. Nov. 6, 2025)

OPINION

1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 EASTERN DISTRICT OF CALIFORNIA 8
9 VISHAL, Case No. 1:25-cv-01469-SAB-HC 10 Petitioner, ORDER GRANTING PETITION
FOR WRIT OF HABEAS CORPUS, DENYING 11 v. MOTION FOR PRELIMINARY
INJUNCTION AS MOOT, DIRECTING 12 CHRISTOPHER CHESTNUT, et al.,1
RESPONDENTS TO IMMEDIATELY RELEASE PETITIONER ON ORDER OF 13
Respondents. SUPERVISION, DIRECTING RESPONDENTS TO FILE STATUS 14 REPORT,
AND VACATING DECEMBER 10, 2025 HEARING 15 (ECF Nos. 1, 2, 12) 16 17 Petitioner,
represented by counsel, is an immigration detainee proceeding with a petition 18 for writ of habeas
corpus pursuant to 28 U.S.C. § 2241.

The parties have consented to the 19 jurisdiction of a United States magistrate judge. (ECF Nos.
10, 17, 18.) 20 I. 21 BACKGROUND 22 Petitioner is a native and citizen of India. (ECF No. 1 at
21; ECF No. 1-2 at 14, 33; ECF 23 No. 15 at 2.2) Petitioner fled India in September 2022 and
entered the United States on June 10, 24 2024. (ECF No. 1 at 22; ECF No. 1-2 at 14, 34; ECF No.
15 at 2.)

Promptly upon entry into the 25 1 Respondents move to strike and to dismiss all named
Respondents with the exception of Petitioner's immediate custodian, Christopher Chestnut, the
facility administrator at the California City ICE Processing Center. (ECF No. 26 14 at 1 n.1.)

The California City ICE Processing Center is a privately owned and operated facility. Given, as set
forth below, that the Court is enjoining Respondents from removing Petitioner to a third country
unless certain 27 procedures are followed, it appears that at least some of the named government
Respondents should not be dismissed.

Accordingly, the Court denies Respondents' motion to strike and dismiss all improperly named
officials. 1 United States, Respondents brought Petitioner into custody where he has lived in
detention since. 2 (ECF No. 1 at 21; ECF No. 1-1 at 3; ECF No. 15 at 2.)

On or about June 26, 2024, Petitioner was 3 transferred from Otay Mesa Detention Center in San
Diego, California, to the Golden State 4 Annex in McFarland, California. (ECF No. 15 at 2.) An
asylum officer found Petitioner 5 demonstrated a reasonable fear of persecution or torture, and on
July 29, 2024, the Department of 6 Homeland security ("DHS") served Petitioner with a Notice to
Appear ("NTA"), charging him as 7 removable under two provisions of section 212(a) of the
Immigration and Nationality Act 8 ("INA") for being present in the United States without being
admitted or paroled and without 9 certain documents.

(ECF No. 1 at 21; ECF No. 1-2 at 8–10.) 10 On March 17, 2025, an immigration judge (“IJ”) found Petitioner inadmissible, ordered 11 him removed to India, but granted Petitioner withholding of removal to India under section 12 241(b)(3) of the INA because Petitioner would likely be persecuted if removed there on the basis 13 of a protected status related to political expression and his Sikh identity.

(ECF No. 1 at 23; ECF 14 No. 1-2 36–39.) On April 17, 2025, Petitioner’s removal order became final when the appeal 15 period expired. (ECF No. 1 at 23; ECF No. 14 at 2; ECF No. 15 at 2.) On or about September 4, 16 2025, Petitioner was transferred to the California City ICE Processing Center. (ECF No. 15 at 2.) 17 On October 31, 2025, Petitioner filed the instant petition for writ of habeas corpus and a 18 motion for preliminary injunction, arguing that: (1) his continued detention violates the INA, 8 19 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 20 (2001); (2) Respondents’ third country removal procedures generally and as applied to Petitioner 21 violate the INA, 8 U.S.C. § 1231(a)(6), and its statutory and regulatory protections for asserting a 22 fear-based claim in connection with removal; and (3) Petitioner’s continued detention and 23 Respondents’ third country removal procedures violate the Due Process Clause of the Fifth 24 Amendment.

(ECF No. 1 at 25–36; ECF No. 2.) 25 On November 5, 2025, the assigned district judge referred the motion for preliminary 26 injunction to the undersigned. (ECF No. 11.) That same day, the Court issued a briefing 27 schedule. (ECF No. 13.) Therein, the Court indicated that it would advance the merits 1 Federal Rule of Civil Procedure 65(a)(2), which provides that “[b]efore or after beginning the 2 hearing on a motion for a preliminary injunction, the court may advance the trial on the merits 3 and consolidate it with the hearing.” Fed.

R. Civ. P. 65(a)(2). On November 11, 2025, 4 Respondents filed an opposition to the motion for preliminary injunction and response to the 5 petition. (ECF No. 14.) On December 3, 2025, Petitioner filed a reply. (ECF No. 16.) 6 II. 7 DISCUSSION 8 A. *Zadvydas* 9 An intricate statutory scheme governs the detention of noncitizens during removal 10 proceedings and after a final removal order is issued. “Where an alien falls within this statutory 11 scheme can affect whether his detention is mandatory or discretionary, as well as the kind of 12 review process available to him if he wishes to contest the necessity of his detention.” *Prieto- 13 Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir.

2008). 14 “Four statutes grant the Government authority to detain noncitizens who have been 15 placed in removal proceedings: 8 U.S.C. §§ 1225(b) (‘Section 1225(b)’), 1226(a) (‘Subsection 16 A’), 1226(c) (‘Subsection C’), and 1231(a) (‘Section 1231(a)’).” *Avilez v. Garland*, 69 F.4th 17 525, 529 (9th Cir. 2023). “Section 1231(a) applies to detention after the entry of a final order of 18 removal” and “governs detention during a ninety-day ‘removal period’ after the conclusion of 19 removal proceedings.” *Id.* at 530–31. “After entry of a final removal order and during the 90–day

20 removal period... aliens must be held in custody.” *Zadvydas v. Davis*, 533 U.S. 678, 683 21 (2001) (citing 8 U.S.C. § 1231(a)(2)).

22 A special statute authorizes further detention if the Government fails to remove the alien during those 90 days. It says: 23 “An alien ordered removed [1] who is inadmissible... [2] [or] removable 24 [as a result of violations of status requirements or entry conditions, violations of criminal law, or reasons of security or foreign policy] or [3] 25 who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be 26 detained beyond the removal period and, if released, shall be subject to [certain] terms of supervision....” 27 1 In *Zadvydas v. Davis*, two noncitizens, who had been ordered removed but whose 2 removal could not be effectuated due to lack of a repatriation treaty or because their designated 3 countries refused to accept them, challenged their prolonged detention under § 1231(a)(6).

4 Applying the canon of constitutional avoidance because a “statute permitting indefinite detention 5 of an alien would raise a serious constitutional problem,” the Supreme Court “read an implicit 6 limitation into” § 1231(a)(6) and held that the statute “limits an alien’s post-removal-period 7 detention to a period reasonably necessary to bring about that alien’s removal from the United 8 States.” *Zadvydas*, 533 U.S. at 689.

Thus, after a presumptively reasonable “6–month period, 9 once the alien provides good reason to believe that there is no significant likelihood of removal 10 in the reasonably foreseeable future, the Government must respond with evidence sufficient to 11 rebut that showing.” *Id.* at 701. “And for detention to remain reasonable, as the period of prior 12 postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely 13 would have to shrink.” *Id.* “This 6–month presumption, of course, does not mean that every alien 14 not removed must be released after six months.

To the contrary, an alien may be held in 15 confinement until it has been determined that there is no significant likelihood of removal in the 16 reasonably foreseeable future.” *Id.* 17 Here, Petitioner is detained pursuant to § 1231(a)(6). (ECF No. 14 at 6; ECF No. 15 at 3.) 18 Respondents concede that Petitioner’s detention has exceeded *Zadvydas*’s presumptively 19 reasonable six-month period.

(ECF No. 14 at 5.) The petition alleges: 20 Since his Withholding of Removal Order became final, neither Vishal nor his immigration counsel have received any written or otherwise formal notice or 21 evidence of ICE’s plans or efforts to remove him to a third country. Vishal has diligently followed up with ICE at nearly every available opportunity since 22 winning withholding of removal relief about their plans to either release him or remove him to a third country.

Almost every time, ICE simply said they were working on finding a third country without identifying any country. (ECF No. 1 at 23 (internal citations omitted).) On one occasion in July 2025, an Immigration and Customs Enforcement (“ICE”) officer, who Petitioner believes may have mistaken him for another noncitizen, told Petitioner that DHS was waiting on Bangladesh to provide travel documents for Petitioner.

(ECF No. 1 at 23; ECF No. 1-1 at 4.) When Petitioner informed the system listed Bangladesh. In subsequent encounters, officers simply stated that they were working on finding a third country without identifying any country. (ECF No. 1 at 23; ECF No. 3 1-1 at 4.) Petitioner argues that “Respondents have failed to provide notice of any progress that has been made over the past seven months to effectuate Vishal’s removal following his award of withholding of removal relief.

Without any evidence of progress, Vishal’s continued detention has become indefinite, with no reasonably foreseeable plan for his removal.” (ECF No. 2 at 7.) Respondents contend that “Petitioner has not shown he is stuck in ‘removable-but- unremovable limbo’” because “Petitioner has not alleged that no third country will ever accept him. Nor has he cited to any United States law that bars his removal.” (ECF No. 14 at 6 (quoting *Prieto-Romero*, 534 F.3d. at 1063).)

However, *Zadvydas* rejected the argument that the noncitizen must “show that deportation will prove ‘impossible’” or “show the absence of any prospect of removal—no matter how unlikely or unforeseeable.” *Zadvydas*, 533 U.S. at 702. Here, Petitioner has been detained pursuant to § 1231(a) for seven months.

The petition alleges that in that time, ICE has failed to identify a third country willing to accept Petitioner. Petitioner declares that he has never been asked to apply for any travel documents and that ICE has paper copies of his passport and identification card. (ECF No. 16-1 at 2.)

Accordingly, the Court finds that Petitioner “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Now, “the Government must respond with evidence sufficient to rebut [Petitioner’s] showing.” *Zadvydas*, 533 U.S. at 701.

The only evidence submitted by Respondents is the declaration of a deportation officer that states: On or about May 9, 2025, ERO began the process of trying to obtain confirmation from an alternative third country that would accept Petitioner when he is removed. Those efforts are ongoing. Once ICE has identified a country for removal, Petitioner will receive notice of the country to which ICE intends to remove Petitioner and an opportunity to seek any fear-based relief to which Petitioner believes he is entitled.

25 26 (ECF No. 15 at 2.) Respondents do not provide any details whatsoever regarding what actions 27 have been and are being taken in pursuing Petitioner's removal to a third country. "Courts in this 1 little more than generalizations regarding the likelihood that removal will occur." *Nguyen v. 2 Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *16 (W.D. Wash. Aug.

21, 2025) (citing *Singh 3 v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006); *Chun Yat Ma v. Asher*, No. C11– 4 1797 MJP, 2012 WL 1432229, at *4–5 (W.D. Wash. Apr. 25, 2012); *Hoac v. Becerra*, No. 2:25- 5 cv-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025)).

Thus, the Court finds 6 that Respondents have not responded with evidence sufficient to rebut Petitioner's showing. 7 "[I]f removal is not reasonably foreseeable, the court should hold continued detention 8 unreasonable and no longer authorized by statute.

In that case, of course, the alien's release may 9 and should be conditioned on any of the various forms of supervised release that are appropriate 10 in the circumstances, and the alien may no doubt be returned to custody upon a violation of those 11 conditions." *Zadvydas*, 533 U.S. at 699–700. See *Huang v. Albarran*, No. 1:25-cv-01308 JLT 12 EPG, 2025 WL 2986885, at *4 (E.D.

Cal. Oct. 23, 2025) ("When, as here, a noncitizen does not 13 leave or is not removed within the 90-day removal period, the individual, 'pending removal, 14 shall be subject to supervision.' 8 U.S.C. § 1231(a)(3). 'As mandated by Congress, the default 15 status after the 90-day removal period is therefore release on conditions, not detention.' *Alva*, 16 2025 WL 2419262, at *3.

Noncitizens subject to a removal order may be released pursuant to 8 17 C.F.R. § 241.4 or 8 C.F.R. § 241.13. See *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 154 18 (W.D.N.Y. 2025). Once released, those same regulations also govern revocation of release."). 19 To the extent Respondents contend that despite Petitioner providing good reason to 20 believe there is no significant likelihood of removal in the reasonably foreseeable future and 21 despite Respondents having failed to respond with evidence sufficient to rebut Petitioner's 22 showing, release is nonetheless inappropriate because Petitioner has been involved in two 23 altercations while in custody, (ECF No. 14 at 6), the Court finds Respondents' argument 24 unpersuasive in light of *Thai v. Ashcroft*, 366 F.3d 790 (9th Cir.

2004). 25 In *Thai*, the petitioner challenged his prolonged detention under *Zadvydas*. The 26 government argued "that *Zadvydas* 'contains an exception to the presumptive six-month rule for 27 particularly dangerous individuals where there are circumstances, such as mental illness, that 1 provide for the detention of aliens deemed 'specially dangerous'—were specifically promulgated 2 in light of this alleged exception and, thus, that *Thai*'s continued and potentially indefinite 3 detention is authorized." *Thai*, 366 F.3d at 794.

The Ninth Circuit rejected the government's 4 argument, stating: 5 The Government's current attempts to justify *Thai*'s detention are indistinguishable from its unsuccessful arguments in

Zadvydas. The Government 6 claims that Thai must be detained because he poses a threat to the community due to his propensity for violence. Just as that argument failed before the Supreme 7 Court regarding Ma, it must fail now.

Like Ma, Thai is an ordinary violent criminal. If a need to protect the community did not justify the detention of Ma— 8 a killer—under § 1231(a)(6), it similarly does not justify the detention of Thai. 9 Thai, 366 F.3d at 797. Ma “was involved in a gang-related shooting, convicted of manslaughter, 10 and sentenced to 38 months’ imprisonment.” Zadvydas, 533 U.S. at 685. “Thai ha[d] established 11 a record as a violent criminal, accumulating convictions for assault, harassment, and third-degree 12 rape.” Thai, 366 F.3d at 792.

The Ninth Circuit further held that “[b]ecause the Government may 13 not detain Thai under § 1231(a)(6), the § 241.14(f) regulations, which were enacted under the 14 authority of that statute, cannot authorize Thai’s continued and potentially indefinite detention.” 15 Id. at 799. 16 Here, Petitioner’s two altercations while in immigration custody are nowhere near as 17 serious as Ma’s manslaughter conviction or Thai’s convictions for assault, harassment, and third- 18 degree rape.

If a need to protect the community did not justify the detention of either Ma or Thai 19 under 8 U.S.C. § 1231(a)(6), it similarly does not justify the detention of Petitioner. The 20 government’s concern about the safety of the community can be addressed through the 21 conditions of supervision imposed on Petitioner upon his release.

Accordingly, the Court finds 22 that Petitioner’s continued detention is unreasonable and no longer authorized by 8 U.S.C. 23 § 1231(a)(6) and that Petitioner should be released on appropriate conditions.³ See 8 U.S.C. 24 § 1231(a)(3) (“If the alien does not leave or is not removed within the removal period, the alien, 25 pending removal, shall be subject to supervision under regulations prescribed by the Attorney 26 General.”); 8 C.F.R. § 241.5 (conditions for release after removal period).

27 3 In light of the conclusion that Petitioner’s continued detention is not authorized by statute, the Court declines to 1 B. Third Country Removal 2 Petitioner also asserts that Respondents’ third country removal procedures, as set forth in 3 the March 30, 2025, and July 9, 2025 policy memorandums, violate the INA and the Due Process 4 Clause of the Fifth Amendment.

(ECF No. 1 at 32, 36.) Respondents do not address this issue at 5 all in their response. However, the declaration of the deportation officer states: “Once ICE has 6 identified a country for removal, Petitioner will receive notice of the country to which ICE 7 intends to remove Petitioner and an opportunity to seek any fear-based relief to which Petitioner 8 believes he is entitled.” (ECF No. 15 at 2.)

9 “It is well established that the Fifth Amendment entitles aliens to due process of law in 10 [removal] proceedings,” *Reno v. Flores*, 507 U.S. 292, 306 (1993), and “a basic tenet of 11

constitutional due process” is “that individuals whose rights are being determined are entitled to 12 notice of the issues to be adjudicated, so that they will have the opportunity to prepare and 13 present relevant arguments and evidence,” *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir.

14 1999). The Ninth Circuit has held that “[f]ailing to notify individuals who are subject to 15 deportation that they have the right to apply for asylum in the United States and for withholding 16 of deportation to the country to which they will be deported violates both INS regulations and the 17 constitutional right to due process.” *Andriasian*, 180 F.3d at 1041.

Accord *Ibarra-Perez v. United States*, 154 F.4th 989, 995 (9th Cir. 2025) (“DHS must also ‘notify individuals who are subject to 19 deportation that they have the right to apply for asylum in the United States and for withholding 20 of deportation to the country to which they will be deported’; otherwise, DHS violates their 21 constitutional right to due process.” (quoting *Andriasian*, 180 F.3d at 1041)).

22 In March 2025, the District of Massachusetts entered a temporary restraining order enjoining ICE from “[r]emoving any individual subject to a final order of 23 removal from the United States to a third country, i.e., a country other than the country designated for removal in immigration proceedings” unless certain 24 conditions were met. D.V.D., 2025 WL 942948, at *1.

25 On March 30, 2025, the Department of Homeland Security (“DHS”) issued updated guidance on third country removals. Dkt. No. 4-1. The guidance states 26 that noncitizens may be removed to a third country without notice or other “further procedures” if the country has given diplomatic assurances that 27 individuals “removed from the United States will not be persecuted or tortured” and the Department of State deems those assurances credible.

Id. at 2–3. If the 1 DHS will notify the noncitizen of its intent to remove them to the third country but “will not affirmatively ask whether the [noncitizen] is afraid of being 2 removed” there. *Id.* Only if the noncitizen affirmatively expresses a fear of removal will the officer refer them to United States Citizenship and Immigration 3 Services (“USCIS”) for a screening interview to assess eligibility for withholding of removal or CAT protection.

Id. at 3. If USCIS determines the noncitizen likely 4 qualifies for protection, it will refer the matter to the immigration court or to ICE, depending on the circumstance. *Id.* And if the referral is to ICE, rather than to the 5 immigration court, ICE may either move to reopen the noncitizen’s removal proceedings “for the sole purpose of determining eligibility for protection” or it 6 may designate a different country of removal.

Id. 7 Weeks after this guidance was issued, the district court in D.V.D. certified a plaintiff class and issued a class-wide preliminary injunction establishing 8 procedures DHS and ICE had to follow before removing noncitizens to a third country. *D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778

F. Supp. 3d 355, 394 (D. 9 Mass. 2025); see also *D.V.D. v. U.S. Dep't of Homeland Sec.*, CV 25-10676- BEM, 2025 WL 1453640, at *1 (D.

Mass. May 21, 2025) (memorandum offering 10 more guidance on compliance with the preliminary injunction). The United States Supreme Court stayed the preliminary injunction without explanation pending 11 appeal in the First Circuit. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). 12 On July 9, 2025, following the Supreme Court's stay, ICE issued guidance to its 13 agents reinstating the March 30 DHS memorandum.

Dkt. No. 4-2. The policy set out in the July 9 guidance largely mirrors the March 30 memorandum, but adds 14 that, in cases where no diplomatic assurances exist, ICE will serve a "Notice of Removal" identifying the country of removal, translate the notice for the 15 noncitizen, and "generally wait at least 24 hours following service ... before effectuating removal." *Id.* at 2. "In exigent circumstances[,]” however, ICE may, 16 with proper approval, execute removal in as little as six hours after service.

Id. 17 *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *2–3 (W.D. Wash. Nov. 17, 18 2025). 19 Multiple courts have found the government's third country removal policy violates due 20 process and is contrary to Ninth Circuit precedent. See, e.g., *Kumar*, 2025 WL 3204724, at *6 21 (noting "overwhelming authority against" the policy); *Vu v. Noem*, No. 1:25-cv-01366-KES- 22 SKO (HC), 2025 WL 3114341, at *9 (E.D.

Cal. Nov. 6, 2025) ("ICE's policy is contrary to 23 Ninth Circuit precedent.... Other courts in this circuit have recognized that this policy is 24 unconstitutional, and this Court agrees with those well-reasoned decisions."); *Nguyen*, 2025 WL 25 2419288, at *19 ("This policy contravenes Ninth Circuit law, as laid out above. It would be 26 impossible to comply both with Ninth Circuit precedent and the policy.").

In light of *Andriasian*, 27 the Court finds that Respondents' third country removal policy, as set forth in the March 30, 2025, and July 9, 2025 policy memorandums, violates due process and is contrary to Ninth 1 | Circuit precedent.

Accordingly, Petitioner cannot be removed to a third country without 2 | meaningful notice and an opportunity to assert a fear-based claim. 3 Il. 4 ORDER 5 Based on the foregoing, the Court HEREBY ORDERS that: 6 1. The petition for writ of habeas corpus (ECF No. 1) is GRANTED; 7 2. Petitioner's motion for preliminary injunction (ECF Nos. 2, 12) is DENIED as moot; 8 3.

Respondents are DIRECTED to IMMEDIATELY RELEASE Petitioner subject to an 9 order of supervision in accordance with 8 U.S.C. § 1231(a)(3) and 8 C.E.R. § 241.5; 10 4. Respondents are PERMANENTLY ENJOINED AND RESTRAINED from removing 11 Petitioner to a third country unless Respondents adhere to the following procedures: 12 a. provide Petitioner and his counsel a minimum of ten (10) days to raise a fear- 13 based claim for protection prior to removal;

14 b. if Petitioner demonstrates reasonable fear of removal to the third country, 15 Respondents must move to reopen Petitioner's removal proceedings; 16 c. if Petitioner is not found to have demonstrated a reasonable fear of removal to the 17 third country, Respondents must provide a meaningful opportunity, and a 18 minimum of fifteen (15) days for Petitioner to seek reopening of his immigration 19 proceedings.

20 5. Within five (5) days of the date of service of this order, Respondents shall file a status 21 report with the Court confirming that Petitioner has been released. 22 6. The December 10, 2025 hearing currently set for this matter is VACATED. 23 24 IT IS SO ORDERED. F- 2 Se 25 | Dated: _ December 5, 2025 " STANLEY A. BOONE 26 United States Magistrate Judge 27 28