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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Vladislav Ishmuratov, Petitioner, vs. David R. Rivas, Warden, et al., Respondents.	No. 2:25-cv-1366-PHX-MTL (ESW) **Reply in Support of the Amended Petition for a Writ of Habeas Corpus and the Motion for a Preliminary Injunction**

Background

Petitioner Vladislav Ishmuratov was born in 1988 in Sverdlovsk, in the Russian Soviet Socialist Republic. (DHS-18 to DHS-19)[1] His parents are ethnic Tatars (DHS-21), a discrete "nationality that continues to live within the boundaries of the Russian Federation." John M. Romero, *Socialist in Form, National in Content: Soviet Culture in the Tatar Autonomous Republic, 1934–1968*, at 7 (Dec. 2019) (Ph. D. dissertation, Arizona State University). That fact makes him an ethnic Tatar as well. On April 28, 1995, a passport was issued to him under the seal of the Union of Soviet Socialist Republics. (DHS-16) On June 14, 1995, the U.S. Embassy in Moscow issued a tourist visa to a seven-year-old Vladislav Ishmuratov. (DHS-18) Two and a half weeks

[1] Along with this document, Mr. Ishmuratov is filing for the record the documents he received from the Department of Homeland Security pursuant to the Court's discovery order. This filing, consisting of a single pdf document of 158 pages, will be submitted separately under seal, and what is effectively a table of contents will be available for the public docket. The documents will be referenced as "DHS-xxx," where xxx is the pdf page of the filing.

later, on July 1, 1995, he entered the United States with his family (DHS-2; Dkt. #25-1 at 4 ¶ 10) and settled in southern California. On September 7, 1995, his mother applied for asylum on behalf of herself, her husband (Mr. Ishmuratov's father), and her two children (Mr. Ishmuratov and his brother). (DHS-4 to DHS-13) The application was denied on October 30, 1995. (DHS-2) There is no indication that either the Board of Immigration Appeals or the Ninth Circuit reviewed this decision. Despite the denial of their asylum claim, the Ishmuratovs did not leave the United States when their tourist visa expired at the end of 1995.

On November 1, 2017, when Mr. Ishmuratov was 29 years old, the Department of Homeland Security served him with a notice to appear,[2] alleging that he was deportable on the ground that he had failed to depart on or before December 29, 1995, when his tourist visa expired. (DHS-25) *See* 8 U.S.C. § 1227(a)(1)(B) (nonimmigrants present in the United States in violation of law are deportable). He was taken into custody and held at the Adelanto Detention Center in Adelanto, California. (DHS-140) On December 6, 2017, an immigration judge ordered him removed to Russia. (DHS-45) He remained in immigration detention pending removal to Russia.

On December 21, 2017, a deportation officer at the Adelanto Detention Center applied to the Embassy of the Russian Federation on Mr. Ishmuratov's behalf for a "passport or other suitable travel document" so that Mr. Ishmuratov could return to Russia. (DHS-33) The officer attached the following documents to a cover letter:

- a Russian-language application for a passport (DHS-35);
- the passport issued under the seal of the U.S.S.R. to Mr. Ishmuratov in 1995, when he was seven years old (DHS-38);
- a copy of Mr. Ishmuratov's Russian birth certificate and an English translation thereof (DHS-40 to DHS-41);
- two fingerprint cards (DHS-42 to DHS-43);
- a DHS form entitled "Information for Travel Document or Passport" (DHS-44);

[2] A notice to appear is a charging document that initiates removal proceedings in immigration court. *See Aguilar-Fermin v. Barr*, 958 F.3d 887, 891 (9th Cir. 2020) (citing 8 C.F.R. § 1003.13).

- the amended removal order issued December 13, 2017 (DHS-45);
- the notice to appear dated November 1, 2017 (DHS-47);
- a warrant of removal dated December 19, 2017 (DHS-49); and
- a sheet of biometric information (DHS-51).

The Embassy did not respond to this request. (Response to RFP at 2) Mr. Ishmuratov remained detained at Adelanto.

On June 19, 2018, after Mr. Ishmuratov had been in immigration detention for nearly eight months, he filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241 in the United States District Court for the Central District of California. Petition, *Ishmuratov v. Nielsen*, No. 5:18-cv-1312-JLS (C.D. Cal.) (Dkt. #5-1). In his petition he alleged that his continued detention by immigration officials violated his due process rights as articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because there was no significant likelihood of his removal to Russia in the reasonably foreseeable future. ICE made an internal determination that there was no significant likelihood of removal in the reasonably foreseeable future on June 25, 2018. (DHS-141) On August 20, 2018, ICE released Mr. Ishmuratov from detention on an order of supervision. (DHS-95; DHS-131) The U.S. Attorney in the Central District then notified the court that Mr. Ishmuratov's petition was moot. Answer, *Ishmuratov v. Nielsen*, No. 5:18-cv-1312-JLS (C.D. Cal.) (Dkt. #10). Two days later, based on Mr. Ishmuratov's release from detention, his counsel voluntarily dismissed the habeas petition. Notice, *Ishmuratov v. Nielsen*, No. 5:18-cv-1312-JLS (C.D. Cal.) (Dkt. #11).

After Mr. Ishmuratov was released from ICE detention in 2018, he was arrested a handful of times. He was arrested on November 13, 2018, for illegally using a controlled substance, in violation of Cal. Health & Safety Code § 11350(a). (DHS-133) And he was arrested the next day for tampering with a vehicle, in violation of Cal. Veh. Code § 10852. (DHS-133) ICE took no action relating to his supervised release based on these two arrets.

On October 31, 2019, he was arrested by the Orange County (California) Sheriff's Department for presenting a false identification to a peace officer, in violation of Cal. Penal Code

§ 148.9(A). (DHS-105) He was released from police custody two days later and taken into ICE custody (DHS-105), whereupon his supervised release was revoked (DHS-133). On November 7, 2019, another deportation officer at Adelanto applied to the Embassy of the Russian Federation for a "passport or other suitable travel document" so that Mr. Ishmuratov could return to Russia. (DHS-52) The officer attached the following documents to a cover letter:

- a Russian-language application for a passport (DHS-54) on which the handwriting appears to be different than the application included with the 2017 request for travel documents, along with an English-language translation (DHS-56);
- the passport issued under the seal of the U.S.S.R. to Mr. Ishmuratov in 1995, when he was seven years old (DHS-58);
- a copy of Mr. Ishmuratov's Russian birth certificate and an English translation thereof (DHS-60 to DHS-61) (the copy of the original birth certificate appears darker in the 2019 application);
- a DHS form entitled "Information for Travel Document or Passport" (DHS-62) on which the handwriting appears to be different than the form included with the 2017 request for travel documents;
- the notice to appear dated November 1, 2017 (DHS-63);
- the original removal order issued December 6, 2017 (DHS-65), which appears to be materially identical to the amended order issued December 13, 2017 (save the question whether appeal was reserved);
- a warrant of removal dated September 6, 2019 (DHS-67), that appears to be materially identical to the warrant issued in December 2017;
- a fingerprint card (DHS-69);
- a sheet of biometric information (DHS-70); and
- what appears to be a DHS form entitled "Notification to Consular Officer of Arrest or Detention" dated November 4, 2019 (DHS-71).

The Embassy did not respond to this request. (Response to RFP at 3) The government nevertheless says that the information Mr. Ishmuratov provided in 2019 in order to obtain the travel documents was "misspelled and incorrect." (Dkt. #25 at 2) In any event, ICE concluded

that there was no significant likelihood of removal in the reasonably foreseeable future (DHS-105) and released Mr. Ishmuratov on an order of supervision the next day (DHS-108).

Mr. Ishmuratov mostly remained at liberty for the next four and a half years. Supervision orders were reinstated on January 29, 2020 (DHS-110 to DHS-116); December 14, 2020 (DHS-117 to DHS-122); August 16, 2021 (DHS-123 to DHS-128); and April 11, 2024 (Dkt. #25-1 at 6 ¶ 21f)

In approximately March 2025, Mr. Ishmuratov was arrested again, for possession of a "hard drug" after two prior convictions for drug possession, in violation of Cal. Health & Safety Code § 11395(b)(1), and for possession of drug paraphernalia, in violation of Cal. Health & Safety Code § 11364(a). (Dkt. #25-1 at 6 ¶ 24) After he was released from police custody, on March 26, 2025, ICE detained him again. (Dkt. #25-1 at 6 ¶ 24) He remains in immigration detention to this day.

On April 24, 2025, with the assistance of appointed counsel, Mr. Ishmuratov filed in this Court another petition for a writ of habeas corpus under 28 U.S.C. § 2241. (Dkt. #1) In an amended petition,[3] he alleged that the Russian Federation does not recognize him as a citizen, and as a result there is no significant likelihood of removing him in the reasonably foreseeable future. (Dkt. #11 at 3 ¶ 11) Accordingly, he alleges that his detention violates his due-process rights as articulated in *Zadvydas*. (Dkt. #1 at 4–5 ¶¶ 14–18) He also filed a motion for a preliminary injunction, asking the Court to order his release while it adjudicates his petition. (Dkt. #2)

On May 2, 2025, a deportation officer at the San Diego ICE Field Office applied to the Embassy of the Russian Federation for a "passport or other suitable travel document" so that

[3] The reason for the amendment was simply to add as a respondent the warden of the facility to which Mr. Ishmuratov was transferred after the original petition was filed. It did not meaningfully alter the factual assertions or legal claims in the original petition. Inasmuch as "an amended pleading supersedes the original," *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989), Mr. Ishmuratov is citing the amended petition in this document.

Mr. Ishmuratov could be returned to Russia. (DHS-75) The officer attached the following documents to a cover letter:

- a DHS form entitled "Warning for Failure to Depart" dated May 2, 2025 (DHS-73)
- the amended removal order dated December 13, 2017 (DHS-77);
- the notice to appear dated November 1, 2017 (DHS-79);
- a DHS form entitled "Information for Travel Document or Passport" (DHS-81) on which the handwriting appears to be different from that on the form included with the 2019 request for travel documents;
- a copy of Mr. Ishmuratov's Russian birth certificate and an English translation thereof (DHS-84 to DHS-85);
- two fingerprint cards (DHS-86);
- the passport issued under the seal of the U.S.S.R. to Mr. Ishmuratov in 1995, when he was seven years old (DHS-88);
- a Russian-language application for a passport (DHS-90) on which the handwriting appears to be identical to that on the application included with the 2019 request for travel documents;
- a Russian-language application for a passport (DHS-92) on which the handwriting appears to be identical to that on the application included with the 2017 request for travel documents; and
- a sheet containing biometric information for Mr. Ishmuratov (DHS-94).

The Embassy did not respond to this request. (Response to Discovery Motion at 3)

Two weeks after the request for travel documents was sent to the Russian Embassy, the government told this Court that "ICE is actively working to obtain a travel document for [Mr. Ishmuratov] from the Russian Embassy." (Dkt. #25 at 2–3 (citing Dkt. #25-1 at 7 ¶ 26) The government has since admitted that this effort was unsuccessful. (Response to RFP at 3) There is no evidence that, in connection with either the 2017, 2019, or 2025 requests for travel documents, ICE did anything beyond submit essentially the same documentation to the Russian

Embassy. There is no indication that ICE followed up on the radio silence the government says ICE was met with from the Russian Embassy.

When Mr. Ishmuratov filed his petition, he was detained at the San Luis Regional Detention Center in San Luis, Arizona. (Dkt. #1 at 1–2 ¶¶ 3–5) He was later transferred to the Otay Mesa Detention Center in San Diego, California (Dkt. #11 at 2 ¶ 5), and on or about July 19, 2025, was returned to the San Luis Detention Center.

Legal Backdrop

Under section 241 of the Immigration and Nationality Act,[4] "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This 90-day period is known as the "removal period." *Id.* The removal period began for Mr. Ishmuratov on December 13, 2017, when his removal order became administratively final. 8 U.S.C. § 1231(a)(1)(B)(i). The purpose of the removal period "is to afford the government a reasonable amount of time within which to make the travel, consular, and various other administrative arrangements that are necessary to secure removal." *Diouf v. Mukasey*, 542 F.3d 1222, 1231 (9th Cir. 2008) (citing *Khotesouvan v. Morones*, 386 F.3d 1298, 1300 (9th Cir. 2004)).

Under section 241, an alien must be detained during the removal period. 8 U.S.C. § 1231(a)(2)(A). But if "the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3). After the removal period expires, any inadmissible alien (as defined in 8 U.S.C. § 1182) and certain categories of deportable aliens (described in 8

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[4] The Immigration and Nationality Act is not codified as positive law. 1 U.S.C. § 204(a); *Angco v. Haig*, 514 F. Supp. 1328, 1331 n.6 (E.D. Pa. 1981). The version of the Act included in Title 8 of the United States Code, then, "is only prima facie evidence of the law," and the corresponding section of the Act as set forth in the *Statutes at Large* will prevail over Title 8. *Id.* While the sections of the Act are well known to practitioners in immigration court, they are less well known to those who practice largely in federal district court—even to federal public defenders, whose caseload entails a significant number of immigration crimes. This document will make an effort to cite the parallel provisions of the Act and Title 8. *See, e.g.*, *Diouf*, 542 F.3d at 1228 (using parallel citations to the INA and Title 8). A useful conversion chart is available here.

U.S.C. § 1227(a)(1)(C), (a)(2), or (a)(4)) may either be detained or released on supervision. 8 U.S.C. § 1231(a)(6).

But the Supreme Court has held that the detention during and after the removal period authorized by section 241 is not unlimited. On its face, section 241 authorizes detention that "is not limited, but potentially permanent." *Zadvydas v. Davis*, 533 U.S. 678, 691 (2001). But a "statute permitting indefinite detention of an alien would raise a serious constitutional problem," because the "Fifth Amendment's Due Process Clause forbids the Government to deprive any person of liberty without due process of law." *Id.* at 690 (quoting U.S. Const. amend. V) (cleaned up). Because the detention authorized by section 241 is civil in nature, detention is authorized only if there exist "certain special and narrow nonpunitive circumstances where a special justification… outweighs the individual's constitutionally protected liberty interest in avoiding physical restraint." *Id.* (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992), and then *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)) (first cleaned up and then ellipsis added).

In *Zadvydas* the Supreme Court held that no such special justifications exist to support indefinite detention under the auspices of section 241. The Court considered two such potential justifications, and found both of them wanting. First, ensuring the appearance of aliens at future immigration proceedings, the Court reasoned, is a "weak or nonexistent" justification "where removal seems a remote possibility at best." *Id.* Second, the Court acknowledged that the other justification, "protecting the community," "does not necessarily diminish over time." *Id.* But under the Due Process Clause, and outside of the criminal context, "preventive detention based on dangerousness" is allowed "only when limited to specially dangerous individuals and subject to strong procedural protections." *Id.* at 691. And when "preventive detention is of potentially *indefinite* duration, we have also demanded that the dangerousness rationale be accompanied by some other special circumstance, such as mental illness, that helps to create the danger." *Id.* But if flight risk is not an adequate justification for indefinite detention, the only other feature of the detention authorized by section 241 is involves "the alien's removable status." *Id.* at 692. The Court said that this status "bears no relation to the detainee's dangerousness." *Id.*

Then the Court considered the procedural protections that are available with respect to detention authorized by section 241. Those protections exist only in administrative proceedings, "where the alien bears the burden of proving he is not dangerous, without (in the Government's view) significant later judicial review." *Id.* This lack of judicial review doomed indefinite detention under section 241. The Constitution, the Court said, "may well preclude granting an administrative body the unreviewable authority to make determinations implicating fundamental rights." *Id.* (quoting *Superintendent v. Hill*, 472 U.S. 445, 450 (1985)). People who have "effected an entry" into the United States enjoy the full protections of the Due Process Clause, whether their presence in the United States is "lawful, unlawful, temporary, or permanent." *Id.* (citations omitted).

The upshot is that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized" by section 241. *Id.* at 699. In this habeas proceeding, this Court's task is to determine "whether the detention in question exceeds a period reasonably necessary to secure removal" of the alien. *Id.* If "removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699–700. "And if removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period." *Id.* at 700. Because, the Court said, whether to order release of an alien subject to detention under section 241 "will often call for difficult judgments," *id.*, it articulated a "presumptively reasonable period of detention" in order to minimize the "occasions when courts will need to make" those difficult judgments," *id.* at 701. It then decreed that six months is a presumptively reasonable period of detention under section 241. "After this 6-month period, once the alien 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." *Id.* "And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the reasonably foreseeable future conversely would have to shrink. This 6-month presumption, of course, does not mean

that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

The first step for a court entertaining a habeas petition challenging immigration detention is to "identify the statutory provision that purports" to authorize the alien's detention. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). Here, Mr. Ishmuratov's detention is authorized by 8 U.S.C. § 1231(a)(6) because he has been ordered removed and he is removable under 8 U.S.C. § 1227(a)(1)(C) as an alien who was admitted as a nonimmigrant and failed to maintain that status. *See* 8 U.S.C. § 1101(a)(15)(B) (including tourists in the definition of "nonimmigrant"). This is the same provision under which the aliens in *Zadvydas* had been ordered detained. 533 U.S. at 682; *see also Prieto-Romero*, 534 F.3d at 1062. Thus the due-process requirements set forth in *Zadvydas* govern the merits of Mr. Ishmuratov's habeas claim.

Argument

Mr. Ishmuratov must prevail on his *Zadvydas* claim if he can establish that "there is no significant likelihood of removal in the reasonably foreseeable future" and the government "fail[s] to respond with evidence sufficient to rebut that showing." *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006). The government is wrong that there is any likelihood that Mr. Ishmuratov can be removed in the foreseeable future, and in any event it has no evidence with which it can rebut that showing. This Court should grant the amended petition and order Mr. Ishmuratov released on an order of supervision.

1. Mr. Ishmuratov's *Zadvydas* claim is ripe now, even if his present stay in immigration detention has not yet lasted six months.

"The central holding of *Zadvydas* is that section 1231(a)(6) does not permit detention beyond the initial 90-day removal period when removal is not reasonably foreseeable." *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (citing *Zadvydas*, 533 U.S. at 699–700). Nothing in *Zadvydas* prevents Mr. Ishmuratov from challenging his present stay in immigration detention now, when the 90-day removal period ended in 2018. *See id.* (citing *Cesar v. Achim*, 542

F. Supp. 2d 897, 903 (E.D. Wis. 2008)). *Zadvydas* held that "detention for less than six months was *presumptively* reasonable but left the lower courts to determine whether detention has exceed[ed] a period reasonably necessary to secure removal in individual cases." *Id.* at 1093 (citing *Zadvydas*, 533 U.S. at 699) (italics and brackets in original). Essentially, "*Zadvydas* established a 'guide' for approaching detention challenges, not a categorical prohibition on claims challenging detention less than six months." *Id.* (citing *Zadvydas*, 533 U.S. at 700–01).

The government says that Mr. Ishmuratov's present period of immigration detention—which has lasted 120 days as of July 24, 2025—"is not prolonged" within the meaning of *Zadvydas*. (Dkt. #25 at 6) But the government does not dispute that the removal period described in 8 U.S.C. § 1231(a)(1) ended in 2018, nor could it. Mr. Ishmuratov's removal order became administratively final on December 13, 2017, when he notified the immigration court that he did not want to appeal the removal order to the Board of Immigration Appeals. 8 U.S.C. § 1101(a)(47)(B)(ii). The removal period under section 241 of the INA thus ended 90 days later, on March 13, 2018. At present, the statutory authority to detain Mr. Ishmuratov comes from § 1231(a)(6), just as in *Zadvydas*. And in any event, the government agrees that Mr. Ishmuratov must establish that any significant likelihood of removal in the reasonably foreseeable future must be measured as of *now*. (Dkt. #25 at 6 (citing *Zadvydas*, 533 U.S. at 701)) Mr. Ishmuratov's *Zadvydas* claim is properly before the Court now.

2. There is presently no likelihood that Mr. Ishmuratov will be removed to Russia, because he does not have, and cannot obtain, travel documents or a valid passport issued by the Russian Federation.

The immigration judge ordered Mr. Ishmuratov removed to Russia. But Mr. Ishmuratov does not have a valid passport issued by the Russian Federation. The only passport he ever had was issued under the seal of the Union of Soviet Socialist Republics, and it expired in 2000. (DHS-16) On his behalf ICE has asked the Russian Embassy to issue a passport to him three times. Each time—including as recently as May 2025—the Russian Embassy has simply ignored ICE's request. Indeed, ICE has elsewhere admitted that Russia is "uncooperative" with what ICE calls Russia's "obligat[ion] to accept the return of its citizens and nationals who are

ineligible to remain in the United States" by "tak[ing] appropriate steps to confirm the citizenship of noncitizens suspected to be their nationals," to include "conducting interviews, issuing travel documents in a timely manner, and accepting the physical return of their nationals."[5] Indeed, ICE has considered Russia to be a "recalcitrant country" since at least June 3, 2020. Jill H. Wilson, Cong. Research Serv., IF11025, *Immigration: "Recalcitrant" Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals*, at 1 (Jul. 10, 2020).[6] Whether or not Mr. Ishmuratov is indeed stateless, as he has alleged (Dkt. #11 at 3 ¶ 11), the fact remains that the Russian Federation has not cooperated—and apparently will not cooperate—with ICE's efforts to obtain a passport for him.

Nevertheless, the government said in its answer to the petition that "there is no reason to believe that Russia will not issue a travel document" for Mr. Ishmuratov, apparently believing that the third time asking for it will be the charm. (Dkt. #25 at 7) But the government has since acknowledged that it struck out swinging. Nothing in the government's answer or the discovery it provided suggests that a *fourth* attempt to obtain travel documents for Mr. Ishmuratov will be any more successful than the last three. The evidence leads to only one conclusion—there is no significant likelihood that Mr. Ishmuratov will be removed in the reasonably foreseeable future.

To be sure, evidence of an alien's failure to cooperate with ICE's effort to obtain travel documents can count against the alien in assessing whether he has carried his burden of showing that there is no significant likelihood of removal. But there is no evidence that Mr. Ishmuratov has failed to cooperate with ICE's efforts to obtain travel documents for him. *Cf. Lema v. INS*, 341 F.3d 853, 856 (9th Cir. 2003) (holding that "when an alien refuses to cooperate fully and honestly with officials to secure travel documents from a foreign government, the alien cannot meet his or her burden to show there is no significant likelihood of removal in the reasonably

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[5] These quotations come from page 7 of a November 2024 document issued by ICE Enforcement and Removal Operations in which ICE counts the total number of noncitizens on ICE's non-detained docket with final orders of removal. This document is attached as an exhibit to this filing.

[6] This document is attached as an exhibit to this filing.

foreseeable future"); *Pelich v. INS*, 329 F.3d 1057, 1059–60 (9th Cir. 2003). The fact that Mr. Ishmuratov does not have a valid passport issued by the Russian Federation is the direct result of the Russian Embassy's radio silence over the past seven and a half years in response to ICE's efforts to procure a passport for him.

3. Mr. Ishmuratov's criminal record is not an obstacle to granting his *Zadvydas* claim.

The government nevertheless defends the lawfulness of Mr. Ishmuratov's present detention, which follows on the decision to revoke his supervised release, because, it says, under *Zadvydas* "there simply can be no doubt that [Mr. Ishmuratov] may be re-detained for violating the conditions of his supervised release." (Dkt. #25 at 5) As the government points out and Mr. Ishmuratov does not dispute, those violations stem from the "multiple arrests and convictions" that he "accrued" "while he was released on the Order of Supervision." (Dkt. #25 at 5) The government misunderstands the impact on the *Zadvydas* analysis that a detained alien's criminal record has. Under Ninth Circuit law, the government cannot rely on Mr. Ishmuratov's criminal record to argue against his *Zadvydas* claim.

The government is correct to note (Dkt. #25 at 5) that an "alien's release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of these conditions." *Zadvydas*, 533 U.S. at 700. But the gravamen of Mr. Ishmuratov's due-process claim is that his *continued* detention in immigration custody is illegal because there is no significant likelihood of his being removed to Russia in the reasonably foreseeable future. Whether his detention may have been authorized when it began, by virtue of his violating his supervised-release conditions, is ultimately beside the point.

The Ninth Circuit has explained how an alien's criminal record may play into the lawfulness of continued, potentially indefinite detention in immigration custody where there is no significant likelihood of removing an alien in the reasonably foreseeable future. That court has specifically rejected the notion that "*Zadvydas* contains an exception to the presumptive six-month rule for particularly dangerous individuals where there are circumstances, such as mental

illness, that help to create the danger." *Thai v. Ashcroft*, 366 F.3d 790, 794 (9th Cir. 2004). The "Government's ability to detain individuals is generally subject to the limitations imposed by the Due Process Clause. The statement in *Zadvydas* that noncriminal detention by the Government is permissible only in narrow nonpunitive circumstances was intended to illustrate what the Government is generally *prohibited* from doing, and what it may in some circumstances be permitted to do. It did not state what the Government is authorized to do under § 1231(a)(6)." *Thai*, 366 F.3d at 795. The Court in *Zadvydas* explained that, in the civil (that is, nonpunitive) context, "preventive detention based on dangerousness only when limited to specially dangerous individuals and subject to strong procedural protections." 533 U.S. at 691 (distinguishing *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997), and *United States v. Salerno*, 481 U.S. 739, 747, 750–52 (1987)). But the Court also concluded that there is "no sufficiently strong special justification here for indefinite civil detention" based on danger—"at least as administered under" § 1231(a)(6). *Id.* at 690.

In particular, the Ninth Circuit has said that an alien as to whom there is no significant likelihood of removal in the reasonably foreseeable future may not "be detained because he poses a threat to the community due to his propensity for violence." *Thai*, 366 F.3d at 797. The government does not assert that Mr. Ishmuratov poses a threat to national security, or suffers from any mental illnesses that might render him especially dangerous, or has a particularly violent criminal history. And a criminal record—even one that includes serious violent activity, such as homicide (which Mr. Ishmuratov's does not)—does not *ipso facto* transform any alien into a national-security threat that might justify detention even when there is no significant likelihood of removal in the reasonably foreseeable future. *See id.* (quoting *Zadvydas*, 533 U.S. at 699). Rather, the Ninth Circuit has read *Zadvydas* to "permit consideration of nothing more than the reasonable foreseeability of removal." *Id.* (quoting *Zadvydas*, 533 U.S. at 714 (Kennedy, J., dissenting)). In sum, Mr. Ishmuratov's criminal record is no obstacle to granting his *Zadvydas* claim, because there is no significant likelihood of his being removed to Russia in the reasonably foreseeable future.

4. The Court should issue a preliminary injunction now, even if the magistrate judge merely recommends granting relief, because the government has not shown that such relief is unwarranted.

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). "Likelihood of success on the merits is the most important factor; if a movant fails to meet this threshold inquiry, we need not consider the other factors." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (quoting *Disney Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017)). And when the "government is a party," the factors relating to the balance of equities and the public interest "merge." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

As Mr. Ishmuratov has shown, and the government has tacitly admitted, there is no significant likelihood of his being removed to Russian in the reasonably foreseeable future. The Russian Embassy has demonstrated, over the course of the last seven and a half years, that it will not respond to any request for travel documents that ICE may make on Mr. Ishmuratov's behalf. And his passport, issued under the seal of the U.S.S.R., expired over 25 years ago. Mr. Ishmuratov thus is exceedingly likely to succeed on his *Zadvydas* claim. Illegal detention is quintessential irreparable harm, because "the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And the risk of harm to Mr. Ishmuratov far outweighs the government's interest in illegally detaining him, for it is "always in the public interest to prevent the violation of a party's constitutional rights." *Id.* at 1002.

The government does not seriously contest that a preliminary injunction is warranted. Much of its argument (Dkt. #25 at 8–9) rests on its belief that it will be able to remove Mr. Ishmuratov soon. But the government has admitted that it has met with radio silence at each of the three previous attempts to obtain a passport for Mr. Ishmuratov—including as recently as

May 2025. This fact simply confirms Mr. Ishmuratov's contention that he is likely to succeed on the merits of his *Zadvydas* claim. In sum, the government has not shown that a preliminary injunction is unwarranted. The Court should issue one even if the magistrate judge, evaluating the filings so far, merely recommends granting his petition.

5. Rule 65 does not authorize imposing a bond, because the government will suffer no harm from a preliminary injunction that requires it to release Mr. Ishmuratov.

Finally, the government has asked the Court, if it should issue a preliminary injunction, to require Mr. Ishmuratov to post a bond. Its argument equates the bond described in Fed. R. Civ. P. 65(c) to an appearance bond. But the two kinds of bond serve very different purposes. An appearance bond in this context is meant to "ensur[e] appearance in immigration proceedings." *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024). But it is unclear that there will be any future immigration proceedings. And it is equally unclear that there will be any future proceedings before this Court that require Mr. Ishmuratov's personal presence. The government has not asserted that it will be harmed by the injunction, and so Rule 65 does not authorize the bond. *See Gorbach v. Reno*, 219 F.3d 1087, 1092 (9th Cir. 2000) (no bond required where no evidence that defendants would suffer damages from a preliminary injunction). Accordingly, this Court has no authority to issue a "bond [that is] akin to an appearance bond." (Dkt. #25 at 9)

Conclusion

Mr. Ishmuratov cannot be removed to Russia as an immigration judge has ordered. Yet he remains detained by immigration officials. Because this detention is essentially indefinite, it violates Mr. Ishmuratov's due-process rights. This Court should grant the petition and order that respondents immediately release Mr. Ishmuratov from their custody on an order of supervision.

Respectfully submitted:

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