James D. Jenkins
P.O. Box 6373
Richmond, VA 23230
(804) 873-8528

Laura Belous, 028132
Florence Immigrant & Refugee Rights Project
P.O. Box 86299
Tucson, AZ 85754
(520) 934-7257

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Khikmatdzhon Iakubov,

Petitioner,

v.

Fred Figueroa, *et al.*,

Respondents.

Case No. 2:25-cv-03187-KML-JZB

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Respondents concede that since they contacted three consulates on April 14 – nearly five months ago – they have made no progress toward Mr. Iakubov's removal, and yet, despite receiving no response from those countries, they still argue that "his removal is significantly likely" and "not unconstitutionally prolonged." Resp. at 11. They also concede that they have failed to follow their own custody-review regulations, conducting his 90-day custody review late and not performing the 180-day review at all. Nonetheless, they deploy an array of jurisdictional and procedural red herrings to argue that this Court

cannot grant Mr. Iakubov relief. Numerous other courts have rejected these same arguments; for the reasons that follow, this Court should do the same.

ARGUMENT

I. This Court's jurisdiction is not affected by either 8 U.S.C. § 1252(g) or the Foreign Affairs Reform and Restructuring Act.

A. Section 1252(g) does not bar review of Petitioner's due process claims.

Respondents begin by arguing that "Petitioner's claim seeking a stay of removal … is barred by 8 U.S.C. § 1252(g)." Resp. at 4. However, Mr. Iakubov is not asking for a stay of removal. Instead he is seeking: (1) "an order requiring Respondents to immediately release him from custody" under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and (2) an order "enjoining Respondents from removing him to a third country without" due process. ECF No. 2 at 19. Section § 1252(g) does not bar either of these forms of relief.

The argument that § 1252(g) bars Mr. Iakubov's *Zadvydas* claim is a nonstarter. The Supreme Court made clear in that case that the jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not preclude challenges to unconstitutionally prolonged detention. *Zadvydas*, 533 U.S. at 687-88 (holding that § 1252(a)(1), § 1252(a)(2)(C) and § 1252(g) do not bar "statutory and constitutional challenges to post-removal-period detention").

Similarly, with respect to Mr. Iakubov's claims regarding third-country removal without due process, courts, including the Ninth Circuit, have held that § 1252(g) presents no barrier to granting such relief. *Ibarra-Perez v. United States*, -- F.4th --, 2025 WL 2461663 (9th Cir. Aug. 27, 2025), at *7 ("The government's broad reading of § 1252(g) would lead to a result that is not contemplated in the statute and that has been disavowed

by the Supreme Court. [This] reading of § 1252(g) would entirely insulate from judicial review any post-hearing decision by ICE to remove noncitizens to third countries where they would be in danger of persecution, torture, and even death.").

A sister court discussed this issue in depth in a recent case, *Arostegui-Maldonado v. Baltazar*, -- F. Supp. 3d --, 2025 WL 2280357 (D. Colo. Aug. 8, 2025), ultimately concluding that the INA's jurisdiction-stripping provisions did not "preclude [the court] from fashioning the narrow relief that [Petitioner] seeks here: an injunction requiring Respondents to adhere to their non-discretionary obligation to provide [Petitioner] with notice and an opportunity to seek withholding of removal before he is deported to any third country." *Id.* at *13. In fact, the court found its authority went even further: "To the Court's mind, there is little question that it has authority under the All Writs Act to enjoin [Petitioner's] unlawful removal from the United States while these habeas proceedings remain pending … Indeed, invoking its authority under the All Writs Act, the Supreme Court recently did just that." *Id.* at *12 (citing *A.A.R.P. v. Trump*, 145 S.Ct. 1364, 1369 (2025) ("We had the power to issue injunctive relief to prevent irreparable harm to the applicants and to preserve our jurisdiction over the matter.")).

The cases relied upon by Respondents involve petitioners who sued in district court seeking an injunction to stay their removal from the United States. *See, e.g., Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022) (denying a noncitizen's request for a TRO to prevent his removal while the BIA adjudicated his motion to reopen). But Mr. Iakubov has not asked this Court to enjoin his removal from the United States; he has only asked that such

removal be conducted in a manner that comports with due process. Pet. (ECF No. 1) at 30-31. And courts have not hesitated to grant such relief, or indeed, in some cases even broader relief. *See, e.g., Arostegui-Maldonado*, 2025 WL 2280357, at *16 (enjoining removal or transfer pending resolution of habeas petition); *Misirbekov v. Venegas*, 2025 WL 2201470 (S.D. Tex. Aug. 1, 2025) (enjoining removal without court's permission); *Nguyen v. Scott*, 2025 WL 2165995 (W.D. Wash. July 30, 2025) (enjoining removal to any country besides Vietnam); *Vaskanyan v. Janecka*, 2025 WL 2014208 (C.D. Cal. June 25, 2025), at *9 (enjoining third-country removal without 10 days' written notice and a meaningful opportunity to raise a fear-based claim); *see also D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 376-77 (D. Mass. 2025) (court "will not construe section 1252(g) to immunize an unlawful practice from judicial review").

B. FARRA presents no jurisdictional bar in this case.

Next Respondents argue that Mr. Iakubov's claims "run[] afoul of" the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"). Resp. at 6. The court in *Ortega v. Kaiser*, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025), recently rejected the very same argument: "Ortega does not seek review of 'the regulations adopted to implement' CAT or 'claims considered under' CAT. Instead, he asks not to be detained or removed without first receiving due process as to any CAT claim he might have for a third country to which the Government seeks his removal. FARRA, by its plain language, does not bar this Court's review of such claims." *Id.* at *4. *See also D.V.D. v. U.S. Dep't of Homeland Sec.*, -- F. Supp. 3d --, 2025 WL 1487238, at *5 (also rejecting FARRA argument); *J.G.G. v.*

Trump, 772 F. Supp. 3d 18, 40-41 (D.D.C. 2025) (the "jurisdiction-stripping mandate pertains only to the review of the *substance* of CAT claims," not claims that the government is "denying [] any opportunity to *raise* CAT claims before [] deportation") (emphasis in original). In short, FARRA has no application to this case.

II. The non-opt-out class provisions of *D.V.D.* do not prevent the Court from granting injunctive relief in this case.

Respondents argue that "Petitioner's claims seeking to delay or otherwise prohibit his removal to a third country … substantially overlap with the nationwide class action, *D.V.D.*", and should therefore be dismissed. Resp. at 8-9. A sister court in this circuit recently addressed these same arguments in *Nguyen v. Scott*, -- F. Supp. 3d --, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025). The court relied upon the Ninth Circuit's decision in *Pride v. Correa*, 719 F.3d 1130 (9th Cir. 2013) to find that the petitioner's claims were not barred. *Id.* at *20. The *Nguyen* court held that the petitioner "may bring his independent claim for injunctive relief because it is not duplicative of the [*D.V.D.*] litigation" and because "without that opportunity, Petitioner would be left 'powerless to petition the courts for redress' until the *D.V.D.* class action has been 'fully resolved.'" *Id.* at *21 (citing *Pride*, 719 F.3d at 1137-38). The court also pointed out that:

> Respondents' position contradicts the position they have taken in *D.V.D.* itself … [O]ne of the government's primary arguments against the injunction in *D.V.D.* is that there is a jurisdictional bar to classwide injunctive relief in that case. […] In other words, the government is arguing in *D.V.D.* that injunctive relief cannot be granted to the class, and may only be pursued (if at all) through individual cases, while arguing here that Petitioner's individual claim should be barred because his injunctive claims should be adjudicated as part of the *D.V.D.* class. The contradiction in these arguments further undermines Respondents' position here. The class certification order

> in *D.V.D.* does not prevent this Court from adjudicating Petitioner's claims regarding third-country removal.

Id. at *21. This Court should follow the detailed and thorough reasoning of the court in *Nguyen* and conclude that Mr. Iakubov's inclusion in the non-opt-out class in *D.V.D.* does not preclude this Court from adjudicating his individual claims in this case.

III. All four *Winter* factors for injunctive relief weigh in Mr. Iakubov's favor.

A. Mr. Iakubov has shown a likelihood of success on the merits, since his removal is not significantly likely to occur in the reasonably foreseeable future.

Respondents argue that Mr. Iakubov cannot demonstrate a likelihood of success on the merits of his *Zadvydas* claim because "[t]he Government has been actively seeking a third country to accept Petitioner and has requests pending with Uzbekistan, Hungary, and Kyrgyzstan" and therefore "his removal is significantly likely." Resp. at 11. However, Respondents' own evidence contradicts this. The Declaration of Gerardo Martinez (ECF No. 10-1) indicates that nearly six months ago, on March 20, 2025, Respondents asked Jordan, China, and Türkiye to accept Mr. Iakubov; Jordan and Türkiye declined, and China did not respond. Decl. at ¶¶ 16-17, 20. Then, on April 14, 2025, Respondents sent requests to Uzbekistan, Kyrgyzstan, and Hungary. *Id.* at ¶ 18. However, as of September 5, 2025, ICE had received no response from any of those three countries. *Id.* at ¶ 26.

Resolution of this case is governed by two words from *Zadvydas*: "significant" and "reasonably." Once a noncitizen shows that "there is no *significant* likelihood of removal in the *reasonably* foreseeable future," the Government must produce evidence to rebut that showing. *Zadvydas*, 533 U.S. at 701 (emphasis added). Moreover, "as the period of

prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.*

"A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future." *Kane v. Mukasey*, 2008 WL 11393137, at *5 (S.D. Tex. Aug. 21, 2008) (superseded on mootness grounds, 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008)). Instead, Respondents must show "evidence of progress ... in negotiating [Mr. Iakubov's] repatriation." *Gebrelibanos v. Wolf*, 2020 WL 5909487 (S.D. Cal. Oct. 6, 2020), at *3. But "the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts ... Rather, the reasonableness of Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit. Diligent efforts alone will not support continued detention." *Hassoun v. Sessions*, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019) (internal citation omitted). "[I]f [ICE] has no idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Palma v. Gillis*, 2020 WL 4880158 (S.D. Miss. July 7, 2020), at *3.

Here, Respondents have pointed to no evidence of progress whatsoever in Mr. Iakubov's removal; they were turned down by two countries and ignored by four others and have done absolutely nothing since April 14, a period of 144 days during which he has remained detained to no apparent purpose. As such, Mr. Iakubov has shown a likelihood of success on the merits of his *Zadvydas* claim.

Next, Respondents argue that "an APA claim is not properly sought through a habeas petition." Resp. at 12. This assertion is difficult to square with the text of the APA itself, which explicitly authorizes APA claims to be brought via "writs of prohibitory or mandatory injunction or habeas corpus." 5 U.S.C. § 703. Respondents argue that Mr. Iakubov's APA claim "fall[s] outside the scope of relief provided for in a habeas petition particularly where it fails to challenge the legality or duration of Petitioner's confinement." Resp. at 12. But that is exactly what Mr. Iakubov is challenging. In ¶ 68 of his Petition, he asserts that "[t]he [custody-review] regulations provide noncitizens with a discrete opportunity to obtain freedom from detention, and that opportunity has thus far been withheld from Mr. Iakubov." In other words, had Respondents actually given him a 180-day custody review that comported with the regulations, he would have been entitled to release. *See* Pet. at ¶¶ 66-70. Therefore, Respondents' failure to comply with their own regulations has resulted in his continuing detention in violation of his due process rights. *See, e.g., Misirbekov v. Venegas*, -- F. Supp. 3d --, 2025 WL 2451030 (S.D. Tex. Aug. 25, 2025), at *2 (conditionally granting habeas relief based on DHS's failure to follow custody review regulations); *Bonitto v. Bureau of Immig. & Customs Enforcement*, 547 F. Supp. 2d 747, 756 (S.D. Tex. 2008) (same). Because Mr. Iakubov alleges that he would have been eligible for release if Respondents had followed the regulations, his challenge to the "legality or duration" of his confinement is appropriate via habeas.

B. Mr. Iakubov has made a clear showing of irreparable harm.

"The irreparable harm factor likewise weighs in [Mr. Iakubov's] favor. Here, the

threatened harm is clear and simple: persecution, torture and death. It is hard to imagine harm more irreparable." *D.V.D.*, 778 F. Supp. 3d at 391. Respondents "contend that they may remove aliens to third countries with no possibility for review. It is undoubtedly 'irreparable injury to reduce to a shell game the basic lifeline of due process before an unprecedented and potentially irreversible removal occurs.'" *Id.* (citing *J.G.G. v. Trump*, 2025 WL 914682, at *30 (D.C. Cir. March 26, 2025) (Millett, J., concurring)) (internal citation omitted). *See also Misirbekov*, 2025 WL 2201470, at *2 ("Petitioner would lose the opportunity for his petition to be heard and, considering the procedures outlined in DHS' March Guidance, likely face extradition to Kyrgyzstan, political persecution, torture, and death"); *Vaskanyan*, 2025 WL 2014208, at *6 ("[T]he Court is persuaded by Petitioner's argument that Respondents may try to remove him to a third country without affording him adequate notice and an opportunity to be heard. This is irreparable harm, plain and simple.")

Mr. Iakubov's unconstitutionally prolonged detention also constitutes irreparable harm. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Mr. Iakubov's "confinement inflicts immense stress and fear, which on its own, constitutes irreparable harm." *Ercelik v. Hyde*, 2025 WL 1361543 (D. Mass. May 8, 2025), at *11 (citing *Melendres*, 695 F.3d at 1002).

In short, the harms Mr. Iakubov alleges here are not "speculative" or "remote," but actual, demonstrable, and concrete.

C. The balance of equities and public interest favor Mr. Iakubov.

Respondents argue an interest in "the orderly and efficient administration of this country's immigration laws." Resp. at 13. They neglect to mention the public interest in *lawful* administration of those laws. Here, Mr. Iakubov has convincingly demonstrated both that he is being subject to unconstitutionally prolonged detention and that he is at risk of removal without constitutionally adequate due process. "DHS has no 'interest in the perpetuation of unlawful agency action.'" *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022) (quoting *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)). "To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *Id.* (internal quote marks omitted). Furthermore, "neither equity nor the public's interest are furthered by allowing violations of federal law to continue." *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022); *see also E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 678-79 (9th Cir. 2021) (public interest weighs "sharply" against unlawful agency or executive action). Notably, other than vague generalities, Respondents point to no actual harm they would suffer by a grant of injunctive relief. If this Court ordered Mr. Iakubov's immediate release under *Zadvydas*, Respondents could always seek to re-detain him if they someday identify a third country to which to send him. Nor would Respondents be injured by being required to give Mr. Iakubov constitutionally adequate notice before removing him to a third country; at worst, it might slow his removal by a few days, an insignificant delay when weighed against the substantial duration of his confinement to date, 606 days and counting.

D. If this Court grants injunctive relief, no bond should be required.

The Ninth Circuit has held that, "Despite the seemingly mandatory language, Rule 65(c) invests the district court with discretion as to the amount of security required, *if any*." *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (quote marks omitted); *see also Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999). "The district court has discretion to dispense with the security requirement, or to request merely nominal security, where requiring security would effectively deny access to judicial review." *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2013). Here, where Mr. Iakubov has been jailed for 600 days with little or no ability to earn money and is being represented pro bono, requiring more than a nominal bond "would effectively deny access to judicial review." *See Nguyen v. Scott*, 2025 WL 2447364 (W.D. Wash. Aug. 25, 2025) (discussing the bond issue at length in an analogous case and concluding bond should be waived).

CONCLUSION

Respondents have failed to overcome Mr. Iakubov's showing that he is entitled to injunctive relief and furthermore have not shown they will suffer any harm if an injunction is granted. For the foregoing reasons, the Court should grant injunctive relief.

Dated: September 8, 2025

Respectfully submitted,

/s/ James D. Jenkins
James D. Jenkins (WA #63234)
P.O. Box 6373
Richmond, VA 23230
Tel.: (804) 873-8528
jjenkins@valancourtbooks.com

Counsel for Petitioner

Certificate of Service

I hereby certify that the foregoing was filed via the Court's CM/ECF system this 8th day of September, 2025, which sent notice of such filing to all parties receiving electronic notice.

/s/ James D. Jenkins
Attorney for Petitioner