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**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 SUPPLEMENTAL
BRIEF IN SUPPORT OF MOTION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

INTRODUCTION

Mr. Iakubov submits this Supplemental Brief in response to the Court's September 15, 2025 order (Dkt. 12), which requested additional briefing on (1) the likelihood of Mr. Iakubov's removal to a third country; (2) whether his release would render his other claims moot; and (3) the authority establishing that twenty-one days' notice is the minimum necessary to satisfy due process. With regard to the first point, Mr. Iakubov has received no new information and therefore will reserve his response for the Supplemental Reply due Monday, September 22. The other two points are addressed below.

ARGUMENT

I. Neither Mr. Iakubov's release via a preliminary injunction nor via a favorable ruling on the merits of his habeas petition would moot his third-country claim, but if the Court grants habeas relief, it could decline to consider that claim.

As an initial matter, if the Court grants Mr. Iakubov's motion for a preliminary injunction and orders his release pending the final resolution of his habeas petition, that would obviously not moot his claims, since it does not constitute a final ruling on the merits. *See, e.g., Lackey v. Stinnie*, 604 U.S. 192, 207 (2025); *S. Or. Barter Fair v. Jackson Cty.*, 372 F.3d 1128, 1136 (9th Cir. 2004) (preliminary injunction does not decide "whether the plaintiff has actually succeeded on the merits").

However, if the Court rules in his favor on the merits and grants his release under Count I or II of his petition (arguing for immediate release under *Zadvydas v. Davis*, 533 U.S. 678 (2001) or the Fifth Amendment, respectively), his claim under the Administrative Procedure Act (Count III) would clearly become moot, since there would be no point in ordering DHS to conduct a custody review if he were no longer in custody.

Mr. Iakubov does not believe that a grant of relief on Count I or II would moot his claim under Count IV, since even if he is released Respondents could still seek to remove him "to any third country without adequate notice and an opportunity to apply for relief under the Convention Against Torture." Pet. ¶ 94. And even if his release did somehow render that claim moot, the Court could still consider it under the "capable of repetition while evading review" exception to the mootness doctrine. *See, e.g., Idaho Conservation League v. Bonneville Power Admin.*, 142 F.4th 636, 640 (9th Cir. 2025). Under that

1 exception, a court may decide a moot issue if “(1) the challenged action [is] in its duration
2 too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a
3 reasonable expectation that the same complaining party [will] be subjected to the same
4 action again.” *Id.* Here, where Respondents have shown the ability to quickly whisk
5 noncitizens out of the country on short notice, it is possible they could detain Mr. Iakubov
6 again and that any future attempt to stop third-country removal could not be “fully litigated
7 prior to its” being carried out. *See, e.g., D.A. v. Noem*, -- F. Supp. 3d --, 2025 WL 2646888
8 (D.D.C. Sept. 15, 2025), at *2 (citing cases of “several detainees ... told that they would
9 be removed tonight or tomorrow” and of 76 Guatemalan children taken from bed at 4:00
10 a.m. and put on planes bound for Guatemala). Even if the Court were to grant Mr.
11 Iakubov’s release on his *Zadvydas* claim, it does not fundamentally alter his legal status:
12 he still remains subject to a final removal order and thus could be at risk of third-country
13 removal again at any time. In short, whether moot or not, Mr. Iakubov respectfully
14 suggests that this Court could retain jurisdiction to consider his claim.

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19 Nonetheless, the Court might find it appropriate to dismiss his third-country
20 removal claim without prejudice if it grants his release. As Respondents point out, Mr.
21 Iakubov is included in the non-opt-out class in *D.V.D. v. Dep’t of Homeland Sec.*, No. 25-
22 cv-10676 (D. Mass. 2025). Notwithstanding his inclusion in the class, Mr. Iakubov has
23 argued that this Court can still award him injunctive relief, citing *Nguyen v. Scott*, -- F.
24 Supp. 3d --, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025). However, *Nguyen* turned in
25 part on its “emergency” nature, where the detained petitioner presented evidence of
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1 possible imminent removal, with the court noting that if it declined to consider his claims,
2 the “[p]etitioner would be left ‘powerless to petition the courts for redress’ until the *D.V.D.*
3 class action has been ‘fully resolved.’” *Id.* at *1, 8, 20 (citing *Pride v. Correa*, 719 F.3d
4 1130, 1137 (9th Cir. 2013)). Here, if Mr. Iakubov is released and is not facing a truly
5 immediate risk of third-country removal, the Court could choose to dismiss his third-
6 country claim without prejudice and allow it to be adjudicated in the *D.V.D.* litigation. *See*
7 *Pride*, 719 F.3d at 1133 (noting that a “district court *may* dismiss” portions of a complaint
8 that duplicate the class action’s allegations) (emphasis added); *Manago v. Carter*, 2025
9 WL 2576755 (D. Kan. Sept. 5, 2025), at *2 (declining to “issu[e] any injunction that could
10 ultimately conflict with the outcome of [*D.V.D.*]”).

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14 **II. Twenty-one days’ notice is an appropriate timeframe to comport with due**
15 **process and allow Mr. Iakubov to seek relief from an immigration court.**

16 Mr. Iakubov’s habeas petition requests 21 days’ notice before he is removed to a
17 third country, to allow him the necessary time to file a motion to reopen his immigration
18 case and request withholding of removal to that country. *See D.V.D.*, No. 25-cv-10676, Tr.
19 of Mot. Hrg., April 10, 2025, at 56 (“I would request [] 21 days ... filing a motion to
20 reopen is an intense process ... four business days is simply not enough”). Declarations
21 filed by immigration lawyers in *D.V.D.* detail the complex and time-intensive process of
22 trying to reopen an immigration case, which is often further complicated by the remote
23 location of the detention centers, the difficulty in finding counsel able and willing to take
24 the case, the advance notice required for counsel to access clients in detention, the time
25 needed to gather evidence, and the logistics of filing the motion to reopen. *See generally*
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1 Exh. A filed herewith (Austin, Mayer-Salins, Morales Declarations). Whether this Court
2 chooses a 21-day period or some other period, what is crucial is that Mr. Iakubov “must
3 receive notice ... in such a manner as will allow [him] to actually seek [] relief in the
4 proper venue before [] removal occurs.” *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025).
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6 Petitioner is unaware of a court that has granted 21 days’ notice; however, in *D.V.D.*
7 *v. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355, 392-93 (D. Mass. 2025), the court ordered
8 Respondents to “provide meaningful opportunity, and a minimum of 15 days, for [a
9 noncitizen] to seek to move to reopen immigration proceedings to challenge the potential
10 third-country removal.”¹ Similarly, the court in *Vaskanyan v. Janecka*, 2025 WL 2014208
11 (C.D. Cal. June 25, 2025), at *9 enjoined third-country removal without “a meaningful
12 opportunity, and a minimum of fifteen (15) days, for the non-citizen to seek reopening of
13 his immigration proceedings.”
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16 CONCLUSION

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18 The Court should enjoin Respondents from removing Mr. Iakubov without due
19 process and should require his immediate release pending disposition of his habeas case.
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21 Dated: September 18, 2025

Respectfully submitted,

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28 ¹ The Supreme Court stayed the injunction, but without saying whether it disagreed with its relief or its nationwide scope. *See Nguyen*, 2025 WL 2419288, at *22-23.

Certificate of Service

I hereby certify that the foregoing was filed via the Court's CM/ECF system this 18th day of September, 2025, which sent notice of such filing to all parties receiving electronic notice.

/s/ James D. Jenkins
Attorney for Petitioner