

THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SERGEY SINYAYEV,

Petitioner,

v.

PAMELA BONDI, Attorney General of
the United States, *et al.*,

Respondents.

No. CV25-2746-JNW

REPLY TO RESPONSE TO PETITION
FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

On November 17, 2025, Border Protection Agents from “BORTAC Bravo Team”¹ went to the assisted living home where Mr. Sinyayev was residing, lured him outside to their car by asking him to sign some papers, and then (according to the officers) forcibly handcuffed him. Mr. Sinyayev, age 67, lives in a care home because he is partially paralyzed across half of his body, speaks with a significant stutter,

¹ Border Patrol Tactical Unit (“BORTAC”) agents are an elite, full-time, and non-full-time tactical team within the U.S. Border Patrol, specializing in high-risk, immediate-response operations, such as counterterrorism, hostage rescue, and specialized operations. Based in El Paso, TX, they deploy nationally and internationally to support law enforcement with specialized skills like rappelling and breaching. BORTAC has been active in “surges” by Border Patrol in Minneapolis, Charlotte, and Portland. *See generally* <https://www.cbp.gov/sites/default/files/documents/Border%20Patrol%20Tactical%20Unit.pdf> [<https://perma.cc/V9SE-MZZJ>]; https://www.kvoa.com/news/top-stories/a-federal-judge-hears-arguments-on-minnesotas-immigration-crackdown-after-fatal-shootings/article_9fad7e42-118e-592d-bc73-b9a447d5f84e.html [<https://perma.cc/4BJ2-MLLS>].

1 struggles with balance, has suffered some cognitive and memory decline, and does not
2 understand English well. Exs. 1–2. The officers allege that, in the course of resisting
3 being handcuffed, Mr. Sinyayev “attacked” the officers, Dkt. 6 at 9, such that his one
4 still-functioning arm “graz[ed]” one of the agents. Dkt. 8-3 at 3. The BORTAC team
5 responded with such force that Mr. Sinyayev needed to be taken for immediate (albeit
6 not “life-threatening”) medical care. *Id.* Agents then brought Mr. Sinyayev to the
7 NWIPC. No body-worn or vehicle camera captured his alleged attack.

8 Rather than charge Mr. Sinyayev with assault, which would have permitted a
9 judge or jury to assess the claim that he assaulted the BORTAC agents before they
10 battered him into submission, Respondents chose to detain Mr. Sinyayev indefinitely
11 without notice or process. That is: without any review of the evidence by any objective
12 party, Respondents decided that Mr. Sinyayev would remain in custody until he could
13 be removed to Russia. Dkt. 6 at 9. Respondents made that decision knowing that
14 Mr. Sinyayev’s removal to Russia was not significantly likely in the reasonably
15 foreseeable future. Indeed, months after his arrest, Respondents have not submitted a
16 travel document to Russia, Dkt. 7 at ¶ 8–9, which, in any case, has been designated an
17 uncooperative country because it does not timely process requests for travel documents,
18 *see* Ex. 3, and which previously denied Respondents’ request to accept Mr. Sinyayev.
19 Dkt. 7 at ¶ 5.

20 By taking Mr. Sinyayev’s liberty without any process or end date, Respondents
21 violated his right to Due Process under the law. By continuing to hold Mr. Sinyayev
22 when his removal is not “significantly likely” to occur in the reasonably foreseeable
23 future, Respondents exceed their statutory authority to detain him. Mr. Sinyayev
24 respectfully asks the Court to enter orders requiring his immediate release and
25 protecting him from re-arrest or punitive third-country removal.
26

1 **II. DISCUSSION**

2 **A. Because Mr. Sinyayev has shown that his removal is not**
3 **“significantly likely” in the reasonably foreseeable future, and**
4 **because Respondents make no effort to rebut that showing,**
5 **Respondents have no statutory authority to detain him.**

6 Because the six-month grace period has passed, this Court must evaluate
7 Mr. Sinyayev’s claim using the burden-shifting framework set forth in *Zadvydas*. At the
8 first stage of the framework, Mr. Sinyayev must “provide[] good reason to believe that
9 there is no significant likelihood of removal in the reasonably foreseeable future.”
10 *Zadvydas*, 533 U.S. at 701.

11 This standard can be broken down into three parts:

12 **“Good reason to believe.”** The “good reason to believe” standard is a relatively
13 forgiving one. “A petitioner need not establish that there exists no possibility of
14 removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL 10714999, at *3 (S.D.
15 Tex. Dec. 22, 2009). Nor does “[g]ood reason to believe” . . . place a burden upon the
16 detainee to demonstrate no reasonably foreseeable, significant likelihood of removal or
17 show that his detention is indefinite; it is something less than that.” *Rual v. Barr*, No.
18 CV20-06215 EAW, 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (quoting *Senor*
19 *v. Barr*, 401 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what
20 it says: petitioners need only give a “good reason.”

21 **“Significant likelihood of removal.”** This component focuses on whether
22 Mr. Sinyayev will likely be removed: Continued detention is permissible only if it is
23 “significant[ly] like[ly]” that ICE will be able to remove him. *Zadvydas*, 533 U.S. at
24 701. This inquiry targets “not only the existence of untapped possibilities, but also [the]
25 probability of success in such possibilities.” *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506
26 (M.D. Pa. 2010) (second emphasis added). In other words, even if “there remains some
possibility of removal,” a petitioner still meets his preliminary burden by providing a
good reason to believe that successful removal is not “significantly likely.” *Kacanic v.*

1 *Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002)
2 (emphasis added).

3 **“In the reasonably foreseeable future.”** This component of the test focuses on
4 *when* Mr. Sinyayev will likely be removed: Continued detention is permissible only if
5 removal is likely to happen “in the reasonably foreseeable future.” *Zadvydas*, 533 U.S.
6 at 701. This inquiry places a time limit on ICE’s removal efforts. If the Court has “no
7 idea of when it might reasonably expect [Petitioner] to be repatriated, this Court
8 certainly cannot conclude that his removal is likely to occur—or even that it might
9 occur—in the reasonably foreseeable future.” *Palma v. Gillis*, No. CV19-112-DCB-
10 MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and recommendation*
11 *adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*,
12 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that
13 Mr. Sinyayev “would eventually receive” a travel document, he meets his burden by
14 giving good reason to anticipate lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at
15 *2 (E.D. Mich. Nov. 14, 2016). Mr. Sinyayev’s burden under this factor diminishes as
16 the length of his detention increases.

17 Respondents do not appear to dispute that Mr. Sinyayev satisfies his burden. It
18 appears undisputed that Russia denied his request for a travel document before, does
19 not timely process applications now, and, indeed, has not yet even received a travel
20 document request. There is no basis on which to conclude—and certainly no good
21 reason to believe—that Mr. Sinyayev will be removed in the reasonably foreseeable
22 future. Respondents’ return makes no contrary argument.

23 Because Mr. Sinyayev has met his initial burden, the burden shifts to the
24 government. *See Khim v. Bondi, et al.*, No. CV25-02383-RSL, 2025 WL 3653724, at *3
25 (W.D. Wash. Dec. 17, 2025) (“Mr. Khim’s burden is to ‘offer a valid reason why
26 removal is unforeseeable, which the *government* must then *disprove*.’”) (quoting *Cesar*

1 *v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008) (emphasis in original)). But
 2 Respondents' filing makes no effort to show that Mr. Sinyayev's removal is
 3 "significantly likely" in the reasonably foreseeable future. Respondents therefore have
 4 exceeded their detention authority under 8 U.S.C. § 1231. *Zadvydas*, 533 U.S. at
 5 701. Mr. Sinyayev must be released on appropriate conditions.

6 **B. Respondents violated Mr. Sinyayev's procedural and substantive due**
 7 **process rights by detaining him without notice.**

8 Respondents argue that they are entitled to rearrest and detain Mr. Sinyayev
 9 because he violated the conditions of his supervision by "attacking" the BORTAC
 10 agents. But the general authority to re-arrest for OSUP violations does not authorize
 11 Respondents to arrest without process and does not come with the authority to detain
 12 indefinitely. Here, the "process" the government has offered Mr. Sinyayev is laughably
 13 inadequate: after placing him in a detention facility, Respondents gave him an
 14 "informal interview" at which he denied the allegations. Dkt. 8-2 at 3. Then the same
 15 agency that alleged the violations sustained the allegations and determined that
 16 Mr. Sinyayev would never again be let out of custody. *See* Dkt 8-3 at 5 ("A Revocation
 17 of Order of Supervision (OSUP) was approved by AFOD W. Baez Santiago on
 18 11/18/2025 due to SINYAYEV violating the conditions of OSUP by assaulting U.S.
 19 Border Patrol Agents by striking them during the encounter. *SINYAYEV will remain in*
 20 *DHS custody pending removal*. ERO will attempt to obtain a travel document from the
 21 Russian Consulate for removal or a third country removal.") (emphasis added).

22 Respondents acknowledge that courts in this district have found that the Due
 23 Process Clause requires a pre-deprivation hearing before revocation of an OSUP,
 24 particularly where, as here, the petitioner has lived in the community for 17 years. *See*
 25 *Thach Wana v. Bondi, et al.*, No. CV25-02321-RSL, 2025 WL 3628634, at *5 (W.D. Wash.
 26 Dec. 15, 2025); *Sieng Kim Khim v. Bondi, et al.*, No. CV25-02383-RSL, 2025 WL 3653724, at

*4 (W.D. Wash. Dec. 17, 2025). *See also DeJesus v. Bostock*, CV25-01427-JHC-TLF, 2025 WL 3268002, at *3, (W.D. Wash. Nov. 24, 2025) (“That the Government allowed Lopez to remain in the community for more than three years after releasing him only strengthened [his liberty] interest. *See Bd. of Pardons v. Allen*, 482 U.S. 369, 377–81 (1987) (Government action can create a liberty interest protected by the Due Process Clause)”). In a pre-detention hearing, the government would bear the burden of demonstrating that the detention is not impermissibly punitive. Because immigration detention is civil and only permitted to prevent flight and protect against danger to the community, *Zadvydas*, 533 U.S. at 678, 690, 697, the government would have to provide clear and convincing evidence that Mr. Sinyayev is a flight risk or a danger. *See Sanchez-Rivera v. Matuszewski*, No. CV22-1357-MMA-JLB, 2023 WL 139801, at *7 n.9 (S.D. Cal. Jan. 9, 2023) (noting that “an overwhelming majority of courts” have so held); *Singh v. Andrews*, 2025 WL 1918670, at *7 (E.D. Cal. July 11, 2025) (noting high risk of erroneous deprivation where no evidence of flight risk or danger justifying re-detention).

Respondents resist this obligation by insisting that “pre-deprivation hearings are not mandated by the due process clause where the rationale for the detention is to effectuate the order of removal.” Dkt. 6 at 11. But even if the Fifth Amendment could be so easily evaded—and the above cases make clear it cannot—the Respondents’ proposed rule would be inapposite. Respondents have *not* detained Mr. Sinyayev “to effectuate the order of removal.” Indeed, they disclaim that it was BORTAC’s original plan to arrest Mr. Sinyayev, make no argument that he is a flight risk, and have not yet even requested permission to deport him to Russia or any other country. Rather, Respondents’ explicit reason for re-detaining Mr. Sinyayev is to punish him for allegedly grazing one of the members of the BORTAC team with his hand when they attempted to handcuff him. *See* Dkt. 8-3 at 5. The highly dubious nature of that

1 justification underscores the importance of a pre-deprivation hearing before an
2 objective factfinder.

3 **C. *D.V.D.* does not preclude injunctive relief here.**

4 *D.V.D. v. DHS*, 778 F.Supp.3d 355 (D. Mass. 2025) does not prevent this Court
5 from ordering protection against unconstitutional removal for at least three reasons.
6 First, as Judge Cartwright explained in *Nguyen v. Scott*, 796 F.Supp.3d 703, 731 (W. D.
7 Wash. August 21, 2025), the Supreme Court in *D.V.D.* provided no reasoning for its
8 entry of the stay and did not indicate whether it came to that determination based on the
9 merits or the procedural posture of the case. *Id.* (citing *Merrill v. Milligan*, -- U.S. __,
10 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring)) (“The Court’s stay order is not
11 a decision on the merits.”)); *see also Cruz-Medina v. Noem*, -- F.Supp.3d --, 2025 WL
12 2841488 (D. Md. Oct. 7, 2025) (rejecting government’s argument that the stay order in
13 *D.V.D.* means that petitioner cannot prevail, stating “[a]ll this Court can do is apply
14 existing precedent and due process standards, and, under those standards, the Court can
15 discern no rational basis for stripping Mr. Cruz Medina of the opportunity to appear
16 before an immigration judge. . . .”); *Santamaria Orellana v. Maker*, No. 25-1788-TDC,
17 2025 WL 2841886 (D. Md. Oct. 7, 2025) (citing to *Nguyen*, 796 F.Supp.3d at 703)
18 (“This Court agrees that based on the presently available guidance from the Supreme
19 Court, there is an insufficient basis upon which to reach a conclusion on which aspects
20 of *D.V.D.* the Supreme Court has rejected, whether they relate to the class certification,
21 the due process claim, or otherwise.”).

22 Second, the *D.V.D.* litigation concerned an earlier version of the ICE guidance,
23 and a primary argument made by the government to the Supreme Court was an
24 objection based on the nationwide scale of the injunction rather than its merits. *See*
25
26

Gov't Application for a Stay, *D.H.S. v. D.V.D.*, No. 24A1153 (May 27, 2025), at 19² (“First, under 8 U.S.C. 1252(f)(1), lower federal courts lack jurisdiction to issue *classwide injunctions* that restrain the operation of third-country removals pursuant to 8 U.S.C. 1231(b)”) (emphasis added). In other words, it is likely that the unreasoned Supreme Court order was not forbidding injunctive relief to Mr. Sinyayev because he is one of many people who has no right to relief, but rather forbidding *mass* relief because Mr. Sinyayev and others should have proceeded individually in cases just like this one. *See Nguyen*, 2025 WL 2419288, at *21. *See also Sagastizado v. Noem*, No. 5:25-CV-00104, – F.3d –, 2025 WL 2957002, *13 (S.D. Tex. Oct. 2, 2025) (“Notably, the class-wide nature of the *D.V.D.* injunction alone could have justified the stay, and that justification would not undermine the merits of an individual claim for relief.”).

Finally, the *Nguyen* court made clear that ICE’s current policy “contravenes Ninth Circuit law,” rendering it “impossible to comply both with Ninth Circuit precedent and the policy.” 796 F.Supp.3d at 729. The court explained that under Ninth Circuit precedent, “[f]ailing to notify individuals who are subject to deportation that they have the right to apply . . . for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process.” *Id.* at *728 (citing to *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (in turn citing *Kossov v. I.N.S.*, 132 F.3d 405, 408 (7th Cir. 1998))). Applying this binding precedent, the court concluded that “Petitioner is likely to succeed on his claim that removal to a third country under ICE’s current policy, without meaningful notice and reopening of his removal proceedings for a hearing, would violate due process.” *Nguyen*, 796 F.Supp.3d at 729–30. And in *Baltodano*, this Court citing to the court’s reasoning in *Nguyen*, concluded that “petitioner is likely to succeed on the merits of his

² https://www.supremecourt.gov/DocketPDF/24/24A1153/359703/20250527153743499_DHS_v._DVD_et_al-app_stay.pdf [<https://perma.cc/8NTN-TQ5D>]

1 claim that he is entitled to ‘legally required multistep procedures set out in 8 U.S.C.
2 § 1231(b) and required by due process’ before ICE can remove him to a third country.”
3 2025 WL 2987766, at *3.

4 **III. MR. SINYAYEV HAS DEMONSTRATED RESPONDENTS’ THIRD-**
5 **COUNTRY REMOVAL POLICY IS UNCONSTITUTIONAL.**

6 Respondents have said that they will try to remove Mr. Sinyayev to a third
7 country, *see* Dkt. 8-3 at 5, though they have not yet submitted any request to any
8 country. They assure the Court that ICE policies already provide constitutionally
9 adequate “notice and an opportunity to respond” before third-country removal. Dkt. 6 at
10 12.

11 That is incorrect. Existing policies provide for only six hours’ notice and place
12 an extra-statutorily high burden on the petitioner to produce evidence that he would be
13 harmed in the target country. *See* Ex. 4 (Todd Lyons, Acting Director, U.S.
14 Immigration and Customs Enforcement, “Third Country Removals Following the
15 Supreme Court’s Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153
16 (U.S. June 23, 2025), (July 9, 2025)). Mr. Lyons’ memorandum provides that a detainee
17 who expresses fear of removal to a third country will not receive a hearing before an
18 immigration judge unless he first proves they would “more likely than not be
19 persecuted on a statutorily protected ground or tortured in the country of removal.” *Id.*
20 at 2. The detained person is expected to meet that standard on a shortened time frame,
21 without either guaranteed access to counsel or a meaningful opportunity to provide
22 corroborating evidence. *Id.* The equivalent regulations impose a much lower burden. 8
23 C.F.R. § 208.31, for example, provides that a person with a final removal order who
24 expresses fear of return need only show a “reasonable possibility” of persecution or
25 torture. *See also Kiakombua v. Wolf*, 498 F. Supp. 3d 1, 11 (D.D.C. 2020) (Jackson, J.)
26

1 (“credible fear” is a low standard that does not require the applicant to produce
2 evidence at all, and does not require testimony on every element of the potential claim).

3 In part for these reasons, courts in this district have found that Respondents’
4 practice and policy of third-country removal are both intended to be punitive and are in
5 fact punitive, thus violating due process. *See Abubaka v. Bondi, et al.*, No. CV25-
6 01889-RSL, 2025 WL 3204369, at *7–8 (W.D. Wash. Nov. 17, 2025); *Nguyen*, 796
7 F.3d at 732-35. See also *Nguyen*, 796 F.Supp.3d 703, 722 (W.D. Wash. Aug. 21, 2025)
8 (finding petitioner was “likely to succeed on his claim that removal to a third country
9 under ICE’s current policy, without meaningful notice and reopening of his removal
10 proceedings for a hearing, would violate due process”); *J.R. v. Bostock*, 796 F.Supp.3d
11 684, 686 (W.D. Wash. June 30, 2025) (finding the first *Winter* factor met where
12 petitioner raised serious questions as to whether his due process rights were violated by
13 the Government’s attempt at third-country removal without adequate notice as to which
14 country petitioner might be removed to); *Phetsadakone v. Scott*, No. CV25-01678-
15 JNW, 2025 WL 2579569, at *4 (W.D. Wash. Sep. 5, 2025); *Phaymany v. Northwest*
16 *Immigration and Customs Enforcement Processing Center*, CV25-00854-RAJ-MLP
17 (W.D. Wash. Sep. 25, 2025); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D. Wash.
18 2019) (“[A] noncitizen must be given sufficient notice of a country of deportation that,
19 given his capacities and circumstances, he would have a reasonable opportunity to raise
20 and pursue his claim for withholding of deportation.”). Most recently, Judge Lasnik
21 held that “giving petitioner an opportunity to file a motion to reopen [his removal
22 proceedings] . . . is not an adequate substitute for the process that is due process in these
23 circumstances. Rather, a petitioner must be able to pursue his claim for withholding of
24 deportation in reopened removal proceedings before an immigration judge.” *Baltodano*
25 *v. Bondi*, No. CV25-1958-RSL, 2025 WL 3484769, at *6 (W.D. Wash. Dec. 4, 2025)
26 (internal quotations omitted).

1 Mr. Sinyayev respectfully requests the Court grant him the same protection.

2 **IV. THE COURT SHOULD ENJOIN RESPONDENTS FROM**
3 **REARRESTING MR. SINYAYEV BEFORE RESPONDENTS HAVE A**
4 **TRAVEL DOCUMENT.**

5 ICE regulations provide that “[t]he Service may revoke an alien’s release under
6 this section and return the alien to custody if, on account of changed circumstances, the
7 Service determines that there is a significant likelihood that the alien may be removed
8 in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). Mr. Sinyayev
9 respectfully asks the Court to enforce this rule by requiring Respondents to show
10 “changed circumstances” in the form of a travel document reflecting an actual ability to
11 remove Mr. Sinyayev. Without such protection, Mr. Sinyayev remains vulnerable to the
12 same abusive rearrest and prolonged detention that has already occurred here, forcing
13 him to spend months in prison before a request for a travel document is even submitted
14 to any foreign country.

15 **V. CONCLUSION**

16 Mr. Sinyayev respectfully requests the Court order the relief specified in his
17 petition. *See* Dkt. 1 at 29–30.

18 DATED this 27th day of January 2026.

19 Respectfully submitted,

20 *s/ Gregory Murphy*
21 Assistant Federal Public Defender
22 Attorney for Sergey Sinyayev
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