

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YURY NIKOLAY KOROTKIKH,) No.

Petitioner,)

vs.)

**PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241
AND REQUEST FOR INJUNCTIVE
RELIEF**

PAMELA BONDI, Attorney General of
the United States; KRISTI NOEM,
Secretary, United States Department of
Homeland Security; LAURA
HERMOSILLO, Acting Seattle Field
Office Director, United States
Citizenship and Immigration Services;
BRUCE SCOTT, Warden of Immigration
Detention Facility; and the United States
Immigration and Customs Enforcement,

Respondents.

RECITATIONS TO SUBSTANTIALLY CONFORM TO AO 242

Personal Information

1. (a) Full name: Yury Nikolay Korotkikh

(b) Other names used: None

2. Place of confinement:

(a) Northwest Immigration Processing Center (NWIPC)

(b) 1623 East J Street, Tacoma, Washington 98241-1615, pursuant to a
contractual arrangement with my custodian, the Immigration and Customs Enforcement
Field Office Director at Seattle, Washington.

(c) Case number or numbers [ICE file number, if known]: My A# has been
provided to the government along with the filing of this petition.

1 3. I am currently being held on orders by federal authorities: United States
2 Immigration and Customs Enforcement.

3 4. I am currently being held on an immigration charge.

4 **Decision or Action You Are Challenging**

5 5. What are you challenging in this petition: immigration detention.

6 6. Provide more information about the decision or action you are challenging:

7 (a) Name and location of the agency or court: United States Immigration and
8 Customs Enforcement

9 (b) Docket number, case number, or opinion number: My A# has been
10 provided to the government along with the filing of this petition.

11 (c) Decision or action you are challenging: Mr. Korotkikh was placed in
12 removal proceedings on August 13, 1998. On December 9, 1998, he filed an application
13 for asylum and withholding of removal as a refugee based on religious persecution. On
14 February 3, 1999, an immigration judge denied the application for asylum and
15 withholding of removal and ordered his removal to Kazakhstan. A motion to reopen
16 immigration court jurisdiction was granted on August 21, 2001. An immigration judge
17 denied all forms of relief but granted voluntary departure on March 14, 2002.
18 Mr. Korotkikh appealed the decision denying his application for asylum and
19 withholding of removal in or about March 2002. According to the EOIR's Automated
20 Case Information, the appeal was dismissed by the Board of Immigration Appeals on
21 October 10, 2003. Respondents re-detained Mr. Korotkikh on October 27, 2025.

22 **Your Earlier Challenges of the Decision or Action**

23 7-9. First, second, and third appeals: According to the EOIR's Automated Case
24 Information, the case appeal was dismissed on October 10, 2003.

25 10. Motion under 28 U.S.C. § 2255: N/A

26 11. Appeals of immigration proceedings:

Does this case concern immigration proceedings? Yes

(a) Date you were re-taken into immigration custody: 10/27/2025

(b) Date of the removal or reinstatement order: 2/3/1999

(c) Did you file an appeal with the Board of Immigration Appeals? Yes.

(1) Date of filing: on or about March or April 2002.

(2) Case number: A# has been provided to the government at the filing of this petition.

(3) Result: The case appeal was dismissed on October 10, 2003.

(4) Issues raised: Unknown

(d) Did you appeal the decision to the United States Court of Appeals? Yes.

Date of filing: 10/31/2003

Case number: 03-73981

Result: On April 26, 2004, the Ninth Circuit granted Respondent's motion to dismiss Mr. Korotkikh's petition for review for lack of jurisdiction. In the same order, it granted Petitioner's request to treat his petition for review of the immigration court's order denying asylum and withholding of removal as a petition for writ of habeas corpus under 28 U.S.C. § 2241 along with the accompanying motion for stay of removal and ordered the matter transferred to the district court. On information and belief, the matter was withdrawn after the withdrawal of Petitioner's immigration lawyer. The Ninth Circuit issued its mandate on 6/18/2004.

12. Other than the appeals listed above, have you filed any other petition, application, or motion about the issues raised in this petition? No.

Grounds for Your Challenge in This Petition

I. Introduction

Mr. Korotkikh was initially detained in 1998 after he was denied entry to Canada for vacation based on his 1994 convictions for attempted first-degree assault and

1 unlawful use of a weapon in Oregon state court for which he was sentenced to 45 days
2 in jail and a 36-month probationary sentence. On August 13, 1998, Mr. Korotkikh was
3 served with a Notice to Appear before an immigration judge for removal proceedings.
4 An arrest warrant was issued on that same date, and Mr. Korotkikh was placed in
5 custody for an unknown period before he was released on a \$10,000 bond.

6 A removal hearing scheduled for December 9, 1998, was continued to February
7 1999 after Mr. Korotkikh filed an Application for Asylum and Withholding of
8 Removal. On February 2, 1999, the immigration court denied Mr. Korotkikh's asylum
9 application and ordered his removal but found that he qualified for voluntary departure,
10 designating Kazakhstan as the country of removal despite Mr. Korotkikh stating he was
11 not a citizen of Kazakhstan. No alternative country was designated. Mr. Korotkikh's
12 appeal of that order was dismissed on October 10, 2003.

13 Mr. Korotkikh was unable to secure a travel document from the Kazakhstan
14 Embassy nor was the government able to secure a travel document to remove
15 Mr. Korotkikh to Kazakhstan. On information and belief, he was released but was not
16 placed under a formal order of supervision until 2006 and/or 2009. In 2014, 2017, and
17 2018, Mr. Korotkikh applied for and was granted employment authorization. Mr.
18 Korotkikh has diligently reported each year to ICE until he was re-detained on October
19 27, 2025, with no determination by the government that he was a flight risk or a danger
20 to the community.

21 **II. Jurisdiction and Venue**

22 This case arises under the Constitution of the United States the Immigration and
23 Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedures
24 Act ("APA"), 5 U.S.C. §§ 500–596, 701–706.

25 This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.*
26 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States

as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment; and the Court's inherent equitable powers.

Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because Respondents are agencies or officers of agencies of the United States; Respondents Hermosillo and Scott reside in this district; and Petitioner is detained in this district. Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district.

Because Mr. Korotkikh is seeking relief related only to his custody status, which is not inconsistent with an order of removal, exhaustion of administrative remedies, if any, is not required.

III. Requirements of 28 U.S.C. §§ 2241, 2243

Mr. Korotkikh is "in custody" for the purpose of § 2241 because he has been re-detained by Respondent ICE in Tacoma, Washington, since October 27, 2025.

IV. Parties

Mr. Korotkikh is a stateless citizen. He has a final order of removal to Kazakhstan as the country designated for removal. He is detained in the control and custody of Respondents at NWIPC. As such, Mr. Korotkikh is a resident of Tacoma, Washington.

Respondent Pamela Bondi is the Attorney General of the United States. In this capacity, Respondent Bondi is the legal custodian of Petitioner. Respondent Bondi is sued in her official capacity.

1 Respondent Kristi Noem is the Secretary of the Department of Homeland
2 Security (“DHS”). In this capacity, Respondent Noem is the legal custodian of
3 Mr. Korotkikh. Respondent Noem is sued in her official capacity.

4 Respondent Laura Hermosillo is the Field Office Director for ICE Enforcement
5 and Removal Operations (“ERO”) in Seattle, Washington. As the ERO Seattle Field
6 Office Director, she is Mr. Korotkikh’s immediate custodian, responsible for his
7 detention at NWIPC and is the person with the authority to authorize detention or
8 release. Respondent Hermosillo is sued in her official capacity.

9 Respondent Bruce Scott is the Warden of the NWIPC, oversees the day-to-day
10 functioning of the NWIPC, and has immediate physical custody of Petitioner pursuant
11 to a contract with ICE to detain noncitizens. Respondent Scott is sued in his official
12 capacity as the Warden of a federal detention facility. *See Juarez v. Asher*, No. CV20-
13 700, 2021 WL 1946222, at *3–5 (W.D. Wash. May 14, 2021).

14 Respondent United States Immigration and Customs Enforcement (hereinafter
15 ICE) is the federal executive agency responsible for the enforcement of immigration
16 laws, including the arrest, detention, and removal of noncitizens. Respondent ICE is a
17 legal custodian of Petitioner.

18 **V. Background**

19 Mr. Korotkikh was born in 1970 in Kazakhstan, a Muslim-majority country,
20 which was then a part of the former Soviet Union. He and his family, including his
21 parents are practicing Christians. He left Kazakhstan with his parents as refugees on
22 November 7, 1989. He was granted lawful permanent resident status on December 21,
23 1990.

24 Mr. Korotkikh was initially detained by ICE in 1998 after he was denied entry to
25 Canada and returned to the Port of Entry at Blaine, Washington because of his 1994
26 Oregon state convictions for attempted first-degree assault and unlawful use of a

1 weapon for which he was sentenced to 45 days in jail and a 36-month probationary
2 sentence. On August 13, 1998, Mr. Korotkikh was served with a Notice to Appear
3 before an immigration judge for removal proceedings. Ex. 1. An arrest warrant was
4 issued on that same date and Mr. Korotkikh was placed in custody for approximately a
5 week before he was released on a \$10,000 bond. Ex. 2. According to ICE's form 1-213,
6 Mr. Korotkikh's 1994 convictions were "not a ground for deportation" but that "[w]ith
7 the IN&S 1996 law it has become a charge for deportation and made retroactive." *Id.* A
8 removal hearing was then scheduled for December 9, 1998. Mr. Korotkikh thereafter
9 filed an Application for Asylum based on religious persecution and Withholding of
10 Removal and the matter was continued. Ex. 3. On February 2, 1999, the immigration
11 court denied Mr. Korotkikh asylum and withholding of removal but found that he
12 qualified for voluntary departure. Ex. 4. (immigration court's 2/2/1999 order). Although
13 Mr. Korotkikh stated he was not a citizen of Kazakhstan, the government requested that
14 the court designate Kazakhstan as the country of removal. *Id.* A motion to reopen the
15 immigration judge's jurisdiction was completed on August 21, 2001, and granted. On
16 information and belief, relief was denied but Mr. Korotkikh was again granted
17 voluntary departure on March 14, 2002. Mr. Korotkikh's appeal of that order was
18 dismissed on October 10, 2003.

19 Mr. Korotkikh was unable to secure a travel document from Kazakhstan nor was
20 the government able to obtain a travel document to remove him to Kazakhstan. On
21 information and belief, he was released. The records in counsel's possession reflect he
22 was placed under formal orders of supervision in 2006 and 2009. Ex. 5. In 2014, 2017,
23 and 2018, Mr. Korotkikh applied for and was granted employment authorization. *See*
24 Ex. 6. Mr. Korotkikh has diligently reported each year to ICE until ICE re-detained him
25 two weeks after he last reported on October 27, 2025, with no determination by the
26

1 government that he was a flight risk or a danger to the community. *See* Ex. 7 (DHS
2 personal report records from May 2009 to October 2025).

3 After Mr. Korotkikh was re-detained in October 2025, his wife sent a letter to
4 the Kazakhstan consulate in San Francisco. She received a letter dated December 4,
5 2025, confirming that Mr. Korotkikh is not a citizen of Kazakhstan. Ex. 8.

6 **VI. Particularized Facts Pertaining to Petitioner's Continued Detention**

7 Mr. Korotkikh cannot be removed to Kazakhstan because he is not a citizen of
8 that country, which the Kazakhstan Embassy has confirmed at least twice. Thus,
9 removal to Kazakhstan is not reasonably foreseeable. ICE has not obtained a travel
10 document from Kazakhstan nor has Kazakhstan agreed to accept Mr. Korotkikh. Nor
11 can he be removed to Russia since he is not a Russian citizen.

12 **VII. The Legal Framework Regarding Indefinite Detention Pending Removal**

13 **A. Detention is unconstitutional when there is not a significant likelihood** 14 **of removal in the reasonably foreseeable future.**

15 Under 8 U.S.C. § 1231, detention of noncitizens who have been ordered
16 removed is mandatory during the so-called 90-day “removal period.” 8 U.S.C.
17 § 1231(a)(1)(A). This period begins on the “date the order of removal becomes
18 administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i). But the Supreme Court determined
19 that a “serious constitutional threat” under the Fifth Amendment’s Due Process Clause
20 was posed by the indefinite detention of noncitizens. *Zadvydas v. Davis*, 533 U.S. 678,
21 699 (2001). The Court therefore interpreted 8 U.S.C. 1231(a)(6) to permit only
22 detention related to the statute’s “basic purpose [of] effectuating [a noncitizen]’s
23 removal[.]” *Id.* at 696–99.

24 The Court further held that the presumptive period during which the detention is
25 reasonably necessary to effectuate a noncitizen’s removal is six months. After that, the
26 noncitizen is eligible for conditional release if there is “no significant likelihood of

1 removal in the reasonably foreseeable future[.]” *Id.* at 701. After the “presumptively
 2 reasonable” period of six months, when the noncitizen can “provide[] good reason to
 3 believe that there is no significant likelihood of removal in the reasonably foreseeable
 4 future,” then “the Government must respond with evidence sufficient to rebut that
 5 showing.” *Id.*

6 The issue is not whether Respondents have been able to remove *some*
 7 individuals to a given country. Rather, the court must make an individualized analysis
 8 as to a particular detainee. *See Nguyen v. Scott*, -- F.Supp.3d --, 2025 WL 2419288, *17
 9 (W.D. Wash. Aug. 21, 2025) (stating increase in total number of removals to Vietnam,
 10 including those who entered pre-1995, fails to rebut the evidence presented by
 11 Petitioner that “his individual circumstances make removal unlikely.”). Facts that are
 12 part of the analysis include whether Respondent can provide evidence that the request
 13 was submitted to the designated country of removal, Kazakhstan, and whether
 14 Kazakhstan has acknowledged receipt of the request or otherwise responded to the
 15 Respondents’ request, and the anticipated wait time for a response from Kazakhstan.

16 **B. The six-month presumptively reasonable period runs from the final**
 17 **removal order, regardless of whether Petitioner was detained during**
 18 **that period.**

19 The six-month presumptively reasonable period runs unabated once Petitioner’s
 20 removal order becomes final and does not run solely during any period when Petitioner
 21 was detained. Here, the six-month period expired decades ago. In *Tran v. Bondi*,
 22 No. C25-01897-JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025), the Hon. James
 23 L. Robart held that petitioner’s “*Zadvydas* grace period ended six months following the
 24 entry of the order of his removal[.]” *Id.* at *3. The court reached that conclusion even
 25 though the petitioner was not detained until two years later, and Respondents argued
 26 that only five months of the *Zadvydas* six-month period had expired, based on the times
 when petitioner was detained. *See* Federal Respondents’ Return Memorandum and

1 Motion to Dismiss, dkt. 13 at 1, 7 (Oct. 27, 2025). *See also, e.g., Tadros v. Noem*,
2 No. 25-4108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (finding that the “six-
3 month detention period under *Zadvydas*” period began upon affirmance of removal
4 order, rejecting argument that petitioner could not obtain habeas relief because he had
5 not yet been in detention for six months); *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d
6 488, 500 (S.D.N.Y. 2009) (concluding that, where government was aware of
7 noncitizen’s address but failed to pursue her removal until more than 15 months after
8 removal order was entered, “the removal period, as well as any presumptively
9 reasonabl[e] six-month period of removal to which the Government may have been
10 entitled” had expired six months after the entry of the removal order); *Bailey v. Lynch*,
11 No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (where order of
12 removal became effective upon petitioner’s release from underlying conviction to ICE
13 authorities, after which he was held only “briefly” before being released on an order of
14 supervision, the *Zadvydas* presumptively reasonable period ended “long before he was
15 taken back into custody[.]”).

16 A contrary view would run afoul of *Zadvydas*’s reasoning. *Zadvydas* established
17 the six-month grace period to give ICE a fair chance to effectuate the removal before a
18 court gets involved. 533 U.S. at 700–01. That was why the Court chose to expand the
19 grace period beyond the 90-day statutory removal period: because Congress likely did
20 not “believe[] that all reasonably foreseeable removals could be accomplished in that
21 time.” *Id.* at 701. Giving the government time to remove a noncitizen does not require
22 that the individual be detained for all of that period. ICE can just as effectively try to
23 arrange an individual’s removal whether he is in a cell or on the street.

VIII. The Law Pertaining to a Noncitizen’s Procedural Due Process Right Not to Be Re-detained Absent a Hearing Establishing that the Individual Is Either a Flight Risk or a Danger to the Community

Procedural due process requires notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural due process rights, a petitioner must establish (1) a protected property or liberty interest, and (2) a denial of adequate procedural protections. *ASSE Int’l, Inc. v. Kerry*, 803 F.3d 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335).

Petitioner’s interest in not being detained is “the most elemental of liberty interests[.]” *E.A. T.-B. v. Wamsley*, No. CV25-1192-KKE, 2025 WL 2402130, at *3, *9 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)) (granting petition and ordering immediate release with no re-detention absent “an immigration court hearing . . . held (with adequate notice) to determine whether detention is appropriate.”). *See also, e.g., Ledesma Gonzalez v. Bostock*, No. CV25-1404-JNW-GJL, 2025 WL 2841574, *8 (W.D. Wash. Oct. 7, 2025) (finding detainee has liberty interest).

Where there is a liberty interest, determining what procedures are due generally requires examining the factors set forth in *Mathews*:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

E.A. T.-B., 2025 WL 2402130, at *3 (quoting *Mathews*, 424 U.S. at 335).

Given that the liberty interest here is “the most elemental,” numerous courts have found that this first factor weighs heavily in a petitioner’s favor. *See Ledesma*

1 *Gonzalez*, 2025 WL 2841574, at *7 (this factor “must be accorded significant weight”).
 2 Petitioner’s status as a noncitizen does not negate that interest. “While the temporary
 3 detention of non-citizens may sometimes be justified by concerns about public safety or
 4 flight risk, the government’s discretion to incarcerate non-citizens is always constrained
 5 by the requirements of due process[.]” *E.A. T.-B.*, 2025 WL 2402130, at *3 (quoting
 6 *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017)).

7 In fact, as an individual who was released by ICE, a petitioner has a higher
 8 liberty interest than that of the normal ICE detainee. *See Guillermo M.R. v. Kaiser*,
 9 No. CV25-5436-RFL, 2025 WL 1810076, at *1 (N.D. Cal. June 30, 2025) (by alleging
 10 that he had previously been released by ICE and was about to be re-detained,
 11 “Petitioner has asserted liberty interests that differ from the liberty interests of a
 12 detained person in *Rodriguez Diaz*”) (referencing *Rodriguez Diaz*, 53 F.4th 1189)).¹
 13 Similarly, in *Carballo v. Andrews*, No. CV25-978-KES-EPG (HC), 2025 WL 2381464,
 14 *4 (E.D. Cal. Aug. 15, 2025), the court indicated that an individual who has been
 15 released has had—in contrast to a detainee with no period of release—“an opportunity
 16 ‘to form the [] enduring attachments of normal life’” (quoting *Morrissey v. Brewer*,
 17 408 U.S. 471, 482 (1972)), and thus has a heightened liberty interest, such as that which
 18 led the Supreme Court in *Morrissey* to impose due process requirements on parolees
 19 where the state seeks to revoke parole.

20 The second factor, risk of an erroneous deprivation of liberty, also weighs in the
 21 petitioner’s favor. A detainee’s release to the community on an OREC reflected ICE’s
 22 determination that Petitioner was neither a flight risk nor a danger to the community.
 23 *See, e.g., Ledesma Gonzalez*, 2025 WL 2841574, at *8 (when ICE released Petitioner,

24
 25 ¹ *Rodriguez* held that a person who had been detained pursuant to an individualized
 26 bond hearing where he was found to be a danger or flight risk was not categorically
 entitled to a second bond hearing and that, under the facts of that case, the detainee
 could not succeed in an as-applied challenge to his detention.

1 “it did so after determining—as required by regulation—that ‘such release would not
2 pose a danger to property or persons, and that the [noncitizen] is likely to appear for any
3 future proceeding.’ . . . By issuing the OREC, ICE necessarily found that [Petitioner]
4 was neither a flight risk nor a danger to the community.”) (quoting 8 C.F.R.
5 § 236.1(c)(8)); *Barrenechea v. Albarran*, No. CV25-7883-VC, 2025 WL 2717279, at
6 *1 (N.D. Cal. Sept. 22, 2025) (“ICE’s release of Barrenechea on his own recognizance
7 in 2020 can only be understood as reflecting a determination that he did not pose a
8 flight risk or danger to the community”).

9 The final factor, the government’s interest in detaining a petitioner without
10 providing a pre-deprivation hearing, also weighs in the petitioner’s favor. “[T]he
11 government’s interest in detaining petitioner without a hearing is low.” *Carballo*, 2025
12 WL 2381464, *8 (cleaned up). “In immigration court, custody hearings are routine and
13 impose a minimal cost.” *Id.* (cleaned up).

14 As stated in *E.A. T.-B.*, 2025 WL 2402130, at *5, “although it would have
15 required the expenditure of finite resources (money and time) to provide Petitioner
16 notice and hearing on ATD violations before arresting and re-detaining him, those costs
17 are far outweighed by the risk of erroneous deprivation of the liberty interest at issue.”

18 The holding that a released detainee was entitled to a pre-deprivation hearing
19 comes not from *Ledesma Gonzalez* and *E.A. T.-B.* alone; dozens of other courts have
20 reached this conclusion as well. And while those two cases did not involve petitioners
21 within final removal orders, many courts have found a liberty interest in not being re-
22 detained, applied the *Mathews* factors as discussed above, and have granted immediate
23 release. In this district, Judge Ricardo S. Martinez held, “Based on this review of the
24 *Mathews* factors, the Court finds that Petitioner has a protected liberty interest in his
25 continuing release from custody, and that due process requires that Petitioner receive
26 proper notice and an opportunity to respond before he can be re-detained.” *Jimenez v.*

1 *Bondi*, No. C25-2167RSM, 2025 WL 3466925, at *2 (W.D. Wash. Dec. 3, 2025)
 2 (granting petition, ordering immediate release, and barring re-detention “without
 3 providing adequate notice of the reasons for his re-detention and a meaningful
 4 opportunity to respond.” *Id.* at *3). *See also, e.g., Perez v. Mordant*, No. 2:25-CV-
 5 00947-SPC-DNF, 2025 WL 3466956, at *5 (M.D. Fla. Dec. 3, 2025); *S-M-J v. Bostock*,
 6 No. 6:25-CV-01425-MTK, 2025 WL 3137296, at *5 (D. Or. Nov. 10, 2025). *Cf. Lopez*
 7 *Dejesus, v. Bostock*, No. 25-CV-01427-JHC-TLF, 2025 WL 3268002 (W.D. Wash.
 8 Nov. 24, 2025) (applying *Mathews* factors to conclude that petitioner was entitled to
 9 pre-re-detention due process, even though his detention was pursuant to the mandatory
 10 detention provisions of 8 U.S.C. § 1226(c)).²

11 In any hearing held by the government to justify re-detention, the government
 12 bears the burden of establishing flight risk or danger by clear and convincing evidence.
 13 *See Sanchez-Rivera v. Matuszewski*, No. CV22-1357-MMA-JLB, 2023 WL 139801, at
 14 *7 n.9 (S.D. Cal. Jan. 9, 2023) (noting that “an overwhelming majority of courts” have
 15 so held). For cases in this district, *see Odimara v. Bostock*, No. CV24-1412-MJP-TLF,
 16 2025 WL 1490395, at *10 (W.D. Wash. Mar. 27, 2025), *report and recommendation*
 17 *adopted*, No. CV24-1412 MJP, 2025 WL 1489705 (W.D. Wash. May 23, 2025) (citing
 18 cases).

19 In addition, the government should be required to meet its burden based on
 20 changed circumstances subsequent to the petitioner’s previous release by ICE. *See*
 21 *Duong v. Kaiser*, No. CV25-7598-JST, 2025 WL 2689266, at *10 (N.D. Cal. Sept. 19,
 22 2025) (holding that any re-detention first required a hearing “whether a material change
 23 of circumstances justifies [petitioner’s] re-detention”).

24
 25
 26 ² The *Lopez Dejesus* opinion does not mention that detention was pursuant to § 1226(c);
 that fact is shown in Respondents’ Return Memorandum, dkt. 16 at 1, 25-CV-01427-
 JHC-TLF (W.D. Wash. Oct. 6, 2025).

1 **IX. The Law Pertaining to a Noncitizen's Regulatory Right Not to Be Re-detained**
2 **Absent Notice, an Opportunity to Be Heard, and Findings that the Regulatory**
3 **Standards for Re-detention Have Been Met.**

4 The revocation of a noncitizen's release is governed by 8 C.F.R. § 241.13(i),
5 which authorizes ICE to revoke a noncitizen's release under § 1231 for purposes of
6 removal or for violation of conditions of release. The government may revoke a
7 noncitizen's release and return them to ICE custody due to failure to comply with the
8 conditions of release, 8 C.F.R. § 241.13(i)(1), or if, "on account of changed
9 circumstances, the [Immigration] Service determines that there is a significant
10 likelihood that the [noncitizen] may be removed in the reasonably foreseeable future,"
11 *id.* § 241.13(i)(2).

12 Such revocation of release, even if justified by one of the reasons recognized by
13 regulation, requires notice and an opportunity for the noncitizen to be heard. Upon a
14 determination by the government (namely ICE) to re-detain a person previously
15 released following a removal order:

16 the alien will be notified of the reasons for revocation of his or her
17 release. [ICE] will conduct an initial informal interview promptly after
18 his or her return to [ICE] custody to afford the alien an opportunity to
19 respond to the reasons for revocation stated in the notification. The
20 [noncitizen] may submit any evidence or information that he or she
21 believes shows there is no significant likelihood he or she be removed
22 in the reasonably foreseeable future, or that he or she has not violated
23 the order of supervision. The revocation custody review will include
24 an evaluation of any contested facts relevant to the revocation and a
25 determination whether the facts as determined warrant revocation and
26 further denial of release.

27 *Id.* § 241.13(i)(3).

28 ICE's decision to re-detain also cannot be arbitrary, but instead is governed by
29 the factors laid out in 8 C.F.R. § 241.13(f), including:

30 the history of the [noncitizen's] efforts to comply with the order of
31 removal, the history of [ICE's] efforts to remove [noncitizens] to the
32 country in question or to third countries, including the ongoing nature

of [ICE's] efforts to remove [the noncitizen] and the [noncitizen's] assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department of State regarding the prospects for removal of [noncitizens] to the country or countries in question.

Id. See also Phan v. Beccerra, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025). While courts do not make these determinations in the first instance, they may review them for compliance with the regulation. *See id.*; *Nguyen v. Hyde*, No. 25-cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United States*, 62 F.4th 608, 620 (1st Cir. 2023)).

Thus, if a re-arrest and detention is punitive or exceeds the justifications permitted by regulation, it violates the individual's substantive right to due process.

X. The Legal Framework for Third-Country Removals

The immigration laws delineate the proper procedures by which a country may be designated for removal. *See* 8 U.S.C. § 1231(b). These procedures move in incremental steps.

First, an individual with a removal order may designate the country to which they want to be removed, and the government *shall* remove the individual to that country. 8 U.S.C. § 1231(b)(2)(A). The government may disregard that designation if (1) the individual fails to designate a country promptly; (2) the government of that country does not inform the U.S. government finally, within 30 days after the date the U.S. government first inquires, whether the government will accept the individual into that country; (3) the government of the country is not willing to accept the individual into the country; or (4) the government decides that removing the individual to that country is prejudicial to the United States. 8 U.S.C. § 1231(b)(2)(C).

Second, if the individual is not removed to the country they designated under § 1231(b)(2)(A), the government shall remove the individual to the country of which the individual is a "subject, national, or citizen" unless the government of that country

1 does not inform the U.S. government or the individual within 30 days after first inquiry
 2 or within another reasonable period of time whether the government will accept the
 3 individual into the country or the country is not willing to accept the individual into the
 4 country. 8 U.S.C. § 1231(b)(2)(D).

5 Third, if the individual is not removed to either the country of their designation
 6 or the country of which they are a subject, national, or citizen, then the government
 7 shall remove them to any of the following options: (1) the country from which the
 8 individual was admitted to the United States; (2) the country in which is located the
 9 foreign port from which the individual left for the United States or for a foreign
 10 territory contiguous to the United States; (3) the country in which the individual resided
 11 before the individual entered the United States and from which the individual entered
 12 the United States; (4) the country in which the individual was born; or (5) the country in
 13 which the individual's birthplace is located when the individual was ordered removed.
 14 8 U.S.C. § 1231(b)(2)(E). *Only* "[i]f impracticable, inadvisable, or impossible" to
 15 remove the individual to any of these countries may the government remove the
 16 individual to "another country whose government will accept [them] into that country."
 17 8 U.S.C. § 1231(b)(2)(E)(vii).

18 Notwithstanding any of these procedures, the statute prohibits removal to a third
 19 country where a person may be persecuted or tortured, a form of protection known as
 20 withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A). The government "may not
 21 remove [a noncitizen] to a country if the Attorney General decides that the
 22 [noncitizen's] life or freedom would be threatened in that country because of the
 23 [noncitizen's] race, religion, nationality, membership in a particular social group, or
 24 political opinion." *Id.*; *see also* 8 C.F.R. §§ 208.16, 1208.16. Withholding of removal is
 25 a mandatory protection.
 26

1 Similarly, Congress codified protections enshrined in the Convention Against
 2 Torture (CAT) prohibiting the government from removing a person to a country where
 3 they would be tortured. *See* Foreign Affairs Reform and Restructuring Act of 1998
 4 (“FARRA”), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822
 5 (8 U.S.C. § 1231 note) (“It shall be the policy of the United States not to expel,
 6 extradite, or otherwise effect the involuntary return of any person to a country in which
 7 there are substantial grounds for believing the person would be in danger of being
 8 subjected to torture, regardless of whether the person is physically present in the United
 9 States.”); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16–1208.18. CAT protection is also
 10 mandatory.

11 To comport with the requirements of due process, the government must provide
 12 notice of the third-country removal and an opportunity to respond. Due process requires
 13 “written notice of the country being designated” and “the statutory basis for the
 14 designation, i.e., the applicable subsection of § 1231(b)(2).” *Aden v. Nielsen*, 409
 15 F.Supp.3d 998, 1019 (W.D. Wash. 2019); *see also D.V.D. v. U.S. Dep’t of Homeland*
 16 *Sec.*, No. CV25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All
 17 removals to third countries, i.e., removal to a country other than the country or
 18 countries designated during immigration proceedings as the country of removal on the
 19 non-citizen’s order of removal, must be preceded by written notice to both the non-
 20 citizen and the non-citizen’s counsel in a language the non-citizen can understand.”
 21 (citation omitted)); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (due process
 22 requires notice to the noncitizen of the right to apply for asylum and withholding to the
 23 country where they will be removed). The government must be able to show evidence
 24 that the third country will accept the individual into that country. *See Himri v. Ashcroft*,
 25 378 F.3d 932, 939 (9th Cir. 2004), *amended sub nom. El Himri v. Ashcroft*, No. 03-
 26 71152, 2004 WL 1879255 (9th Cir. Aug. 24, 2004) (“at the time the government

1 proposes a country of removal pursuant to § 1231(b)(2)(E)(vii), the government must
2 be able to show that the proposed country *will* accept the [individual]”).

3 Due process also demands that the government “ask the noncitizen whether he or
4 she fears persecution or harm upon removal to the designated country and memorialize
5 in writing the noncitizen’s response. This requirement ensures DHS will obtain the
6 necessary information from the noncitizen to comply with § (b)(3) and avoids [a dispute
7 about what the officer and noncitizen said].” *Aden*, 409 F.Supp.3d at 1019; *cf. D.V.D.*,
8 2025 WL 1453640, at *1 (“Following notice, the individual must be given a meaningful
9 opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection
10 prior to removal.”) (emphasis omitted).

11 If the noncitizen claims fear, measures must be taken to ensure that the
12 noncitizen can seek asylum, withholding, and relief under CAT before an immigration
13 judge in reopened removal proceedings. *Cf. D.V.D.*, 2025 WL 1453640, at *1 (requiring
14 the government to move to reopen the noncitizen’s immigration proceedings if the
15 individual demonstrates “reasonable fear” and to provide “a meaningful opportunity,
16 and a minimum of fifteen days, for the non-citizen to seek reopening of their
17 immigration proceedings” if the noncitizen is found to not have demonstrated
18 “reasonable fear”); *Aden*, 409 F.Supp.3d at 1019 (requiring notice and time for a
19 respondent to file a motion to reopen and seek relief).

20 Finally, notice of the country to which the noncitizen will be removed must not
21 be “last minute” because that would deprive an individual of a meaningful opportunity
22 to apply for fear-based protection from removal. *Andriasian*, 180 F.3d at 1041. They
23 must have time to prepare and present relevant arguments and evidence and to seek
24 reopening of their removal case.

XI. Facts Pertaining to Punitive Banishment to Third Countries

Since January 2025, Respondents have developed and implemented a policy and practice of removing individuals to third countries, without first following the procedures in the INA for designation and removal to a third country and without providing fair notice and an opportunity to contest the removal in immigration court.

Respondents reportedly have negotiated with at least 58 countries to accept deportees from other nations. On June 25, 2025, the *New York Times* reported that seven countries—Costa Rica, El Salvador, Guatemala, Kosovo, Mexico, Panama, and Rwanda—had agreed to accept deportees who are not their own citizens.³ Since then, ICE has carried out highly publicized third-country deportations to South Sudan and Eswatini. It also attempted—and completed—an “end-run” around the protections of the Convention Against Torture by deporting a group of migrants to Ghana, which sent them on to their countries of citizenship despite fears of persecution.

Punishment and deterrence appear to be the point of the Administration’s third-country removal scheme. The Administration has reportedly negotiated with countries to have deportees imprisoned in prisons, camps, or other facilities. The government paid El Salvador about \$5 million to arbitrarily and indefinitely imprison more than 200 deported Venezuelans in a maximum-security prison notorious for gross human rights abuses, known as CECOT. In February, Panama and Costa Rica took in hundreds of deportees from countries in Africa and Central Asia and imprisoned them in hotels, a jungle camp, and a detention center. On July 4, 2025, ICE deported eight men, including one pre-1995 Vietnamese refugee, to South Sudan. The men have been detained incommunicado ever since. On July 15, 2025, ICE deported five men to the

³ Edward Wong, et al., *Inside the Global Deal-Making Behind Trump’s Mass Deportations*, N.Y. Times (June 25, 2025), <https://www.nytimes.com/2025/06/25/us/politics/trump-immigrants-deportations.html> [<https://perma.cc/64G9-XYGB>].

1 tiny African nation of Eswatini, including one man from Vietnam, where they are
2 reportedly being held in solitary confinement.

3 The Administration has hand-selected countries known for human rights abuses
4 and instability for these third-country deportation agreements to frighten people in the
5 United States into self-deporting or to accept removal to their home countries. Indeed,
6 conditions in South Sudan are so extreme that the U.S. State Department website warns
7 Americans not to travel there, and, if they do, to prepare their will, make funeral
8 arrangements, and appoint a hostage-taker negotiator first.

9 On July 9, 2025, ICE issued a new memo stating that, when seeking to remove
10 an individual to a country not designated on the removal order, ICE may deport that
11 person without any procedures for notice or an opportunity to be heard if the State
12 Department confirms it has received diplomatic assurances that individuals will not be
13 persecuted or tortured. *See* Ex. 9. If no diplomatic assurances are received, the ICE
14 memorandum instructs officers to serve on the individual a Notice of Removal that
15 includes the intended country of removal. It instructs officers not to ask whether the
16 individual is afraid of removal to that country. It states that officers should “generally
17 wait at least 24 hours following service of the Notice of Removal before effectuating
18 removal” but that “[i]n exigent circumstances, [ICE] may execute a removal order six
19 (6) or more hours after service of the Notice of Removal as long as the [noncitizen] is
20 provided reasonable means and opportunity to speak with an attorney prior to removal.”

21 The memorandum further instructs that if the noncitizen “does not affirmatively
22 state a fear of persecution or torture if removed to the country of removal listed on the
23 Notice of Removal within 24 hours, [ICE] may proceed with removal to the country
24 identified on the notice.” If the noncitizen “does affirmatively state a fear if removed to
25 the country of removal,” then ICE will refer the case to U.S. Citizenship and
26 Immigration Services (“USCIS”) for a screening for eligibility for withholding of

1 removal and protection under the Convention Against Torture. “USCIS will generally
2 screen within 24 hours.” If USCIS determines that the noncitizen does not prove to the
3 screener’s satisfaction that it is more likely than not that the noncitizen will be tortured,
4 the individual will be removed. This imposes on the noncitizen a higher standard than
5 the “reasonable fear” and “credible fear” standards found in the INA. If USCIS
6 determines that the noncitizen has met the standard, then the policy directs ICE to either
7 move to reopen removal proceedings “for the sole purpose of determining eligibility for
8 [withholding of removal protection] and CAT” or designate another country for
9 removal.

10 The eight men who were ultimately deported to South Sudan all claimed fear of
11 removal to South Sudan. None of those men were provided a fear screening by a
12 USCIS officer or otherwise, although they were held by ICE for six weeks on a U.S.
13 military base in Djibouti before their final removal to South Sudan.

14 Further support that Mr. Korotkikh faces a risk of punitive third-country removal
15 comes from two declarations submitted in *Nguyen*. They detail removals to third
16 countries with little or no notice, as described in *Nguyen*. See 796 F.Supp.3d at 736–37.

17 **XII. The Law Governing Punitive Removal Practices**

18 It is bedrock law that the U.S. government may not impose or inflict an infamous
19 punishment for violations of civil immigration law. In 1896, the U.S. Supreme Court
20 ruled that while deportation itself was not a punishment, the government could not
21 attach punitive conditions to deportation—in that case, imprisonment at hard labor—
22 absent a criminal charge, trial in a court of law, and the protections of the Fifth, Sixth,
23 and Eighth Amendments. *Wong Wing v. United States*, 163 U.S. 228, 237 (1896).

24 Importantly, the Court distinguished deportation, which the Court reasoned is
25 “not a ‘banishment,’ in the sense in which that word is often applied to the expulsion of
26 a citizen from his country by way of punishment,” from government actions aimed at

1 punishment, such as imprisonment at hard labor in addition to deportation. *Id.* at 236.
 2 The Court explained that deportation “is but a method of enforcing the return to his own
 3 country of [a noncitizen] who has not complied with the conditions upon the
 4 performance of which the government of the nation, acting within its constitutional
 5 authority and through the proper departments, has determined that his continuing to
 6 reside here shall depend.” *Id.* (quoting *Fong Yue Ting v. United States*, 149 U.S. 730
 7 (1893)). But the Court admonished that the government may not “declare unlawful
 8 residence within the country to be an infamous crime, punishable by deprivation of
 9 liberty and property . . . unless provision were made that the fact of guilt should first be
 10 established by a judicial trial.” *Id.* at 237.

11 Deportation of individuals to third countries to be imprisoned or harmed is
 12 unquestionably punishment.

13 **XIII. The Law Governing Injunctive Relief**

14 “An injunction is appropriate when the party seeking relief demonstrates that: (1)
 15 it is likely to suffer irreparable injury that cannot be redressed by an award of damages;
 16 (2) that “considering the balance of hardships between the plaintiff and defendant, a
 17 remedy in equity is warranted”; and (3) “that the public interest would not be disserved
 18 by a permanent injunction.” *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225,
 19 1243 (9th Cir. 2018).

20 **Grounds for Relief**

21 **Ground One: Petitioner’s Continued Detention in Immigration Custody** 22 **Violates the Due Process Clause of the Fifth Amendment to the U.S.** 23 **Constitution Because There Is No Significant Likelihood that Petitioner** 24 **Will Be Removed in the Reasonably Foreseeable Future.**

25 The allegations in the above paragraphs are realleged and incorporated herein.

26 The immigration court issued its order of removal on February 2, 1999,
 designating Kazakhstan as the country of removal. Mr. Korotkikh’s appeal was

1 dismissed in 2003. Respondents thus have had more than two decades to remove
2 Mr. Korotkikh without success. And, because the removal period has long since
3 expired, detention is no longer required under 8 U.S.C. § 1231. In addition, the
4 presumptively reasonable period of six months has passed. *See Tran*, 2025 WL
5 3140462, at *3 (holding that “*Zadvydas*’s grace period ended six months following the
6 entry of the order of his removal[.]”).

7 There is “good reason to believe that there is no significant likelihood of removal
8 in the reasonably foreseeable future[.]” *Zadvydas*, 533 U.S. at 701. Kazakhstan has
9 confirmed that Mr. Korotkikh is not a citizen of that country nor is Mr. Korotkikh a
10 citizen of Russia given that he has no passport or birth certificate from that country.

11 Therefore, the burden shifts to the government to rebut that showing. The
12 government cannot meet that burden under the facts of this case. *See Nguyen v. Scott*,
13 No. CV25-1398, 2025 WL 2419288, at *28–29 (W.D. Wash. Aug. 21, 2025) (granting
14 preliminary injunction requiring release under *Zadvydas*); *Tang*, 2025 WL 2637750, at
15 *6 (same).

16 **Ground Two: Procedural Due Process**

17 The allegations in the above paragraphs are realleged and incorporated herein.

18 Petitioner has a liberty interest in not being re-detained. Applying the three-
19 factor test of *Mathews*, that interest is high. The risk of any erroneous deprivation is
20 also high, because ICE’s previous release of him necessarily reflected a conclusion that
21 he was not a flight risk or a danger to the community. Here, as in *Ledesma Gonzalez*,
22 “ICE revoked that release without any reassessment of those factors.” 2025 WL
23 2841574, at *8.

24 Finally, the cost to the government of providing a hearing is low, and
25 significantly outweighed by the other factors. His re-detention violated his due process
26 rights and was therefore unlawful.

1 As to Mr. Korotkikh's pray for injunctive relief barring a new re-detention
2 absent due process, the requirements for injunctive relief are met. His prospective
3 unlawful re-detention would constitute an irreparable injury that could not be redressed
4 by an award of damages. Second, the balance of hardships is completely in
5 Mr. Korotkikh's favor: he risks unlawful re-detention, while Respondents suffer no
6 hardships by being prevented from following their unlawful re-detention practices.
7 Finally, the public interest would affirmatively be served by barring Respondents'
8 unlawful practice.

9 **Ground Three: Failure to Comply with Regulations**

10 The allegations in the above paragraphs are realleged and incorporated herein.

11 Respondents have not complied with their obligations under 8 C.F.R. § 241.13
12 and therefore Petitioner is entitled to release. On information and belief,

13 a) Respondents has made no determination either that, on account of changed
14 circumstances, there was a significant likelihood that Petitioner would be removed in
15 the reasonably foreseeable future or that Petitioner violated the conditions of release;

16 b) to the extent that Respondents made such a determination, they lacked an
17 adequate basis to do so and did not properly consider the factors specified in the
18 regulations;

19 c) Respondents did not timely notify Petitioner in writing of the reasons for
20 revocation in a manner that he could reasonably respond to;

21 d) Respondents did not conduct the required initial informal interview;

22 e) Respondents did not afford Petitioner an opportunity to respond; and

23 f) Respondents did not advise Petitioner of the right to request a review of the
24 detention and did not comply with the requirements for such review. His re-detention
25 was therefore contrary to Respondents' regulations and unlawful.
26

Ground Four: Violation of the Fifth Amendment, 8 U.S.C. § 1231, Convention Against Torture, Implementing Regulations, and the Administrative Procedure Act

The allegations in the above paragraphs are realleged and incorporated herein.

The Fifth Amendment, the INA, the CAT, and implementing regulations mandate meaningful notice and opportunity to respond to any attempt to remove Petitioner to a third country in reopened removal proceedings. They also require an opportunity for Petitioner to make a fear-based claim against removal to a third country in reopened removal proceedings. Respondents' policy for third-country removals violates all of these laws because it directs ICE agents to remove individuals to third countries without any notice or process *at all* where diplomatic assurances are received and, where no diplomatic assurances are received, to provide flagrantly insufficient notice (6–24 hours) and opportunity to respond, in violation of the statute, regulations, and Fifth Amendment.

Prior to any third-country removal, Petitioner must be provided with constitutionally and statutorily compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country in reopened removal proceedings. *See Nguyen*, 2025 WL 2419288, at *29 (granting preliminary injunction against “removing Petitioner to a country other than [home country] without notice and a meaningful opportunity to be heard in reopened removal proceedings with a hearing before an immigration judge”).

Further, the requirements for injunctive relief are met. Mr. Korotkikh's prospective unlawful re-detention would constitute an irreparable injury that could not be redressed by an award of damages. Second, the balance of hardships is completely in his favor: he risks unlawful removal to a third country, while Respondents suffer no hardship by being prevented from following their unlawful re-detention practices.

1 Finally, the public interest would affirmatively be served by barring Respondents'
2 unlawful practice.

3 **Ground Five: Punitive Third-Country Banishment; Violation of Fifth and**
4 **Eighth Amendments**

5 The allegations in the above paragraphs are realleged and incorporated herein.

6 Under the Fifth Amendment to the U.S. Constitution, no person shall “be held to
7 answer for a capital, or otherwise infamous crime, unless on a presentment or
8 indictment of a Grand Jury;” “be subject for the same offence to be twice put in
9 jeopardy of life or limb;” or “be deprived of life, liberty, or property, without due
10 process of law.”

11 The Eighth Amendment provides that no “cruel and unusual punishments” may
12 be inflicted.

13 The U.S. Supreme Court long ago held that the government may not inflict upon
14 individuals an “infamous punishment” in addition to deportation as a penalty for an
15 immigration violation, absent criminal charges, a judicial trial, and attendant
16 constitutional protections. *Wong Wing*, 163 U.S. at 236–38.

17 Mr. Korotkikh was convicted and completed his 45-day and 36-month
18 probationary sentences for his criminal convictions over three decades ago. His
19 convictions arguably made him removable from the United States, but the convictions
20 do not authorize the government to inflict, as a matter of executive policy and
21 discretion, additional punishment on him. Respondents’ third-country removal program
22 is punitive in both its nature and its execution.

23 The government has arranged for third countries to receive deportees and
24 imprison them on arrival, possibly indefinitely, and often in abhorrent conditions. It has
25 selected countries notorious for human rights abuses and instability for third-country
26 removal arrangements. It has targeted individuals with criminal convictions for third-

1 country removals, where they will be imprisoned and harmed, and has publicly
2 broadcast those removals to demonize and dehumanize the individuals subjected to
3 these practices and strike fear in the immigrant community to send a message of
4 retribution and deterrence.

5 Respondents' third-country removal program is more than a publicity stunt. The
6 hundreds of individuals who have already been subjected to it have been banished in
7 foreign prisons upon arrival without charge and often without communication with the
8 outside world, including their families and lawyers. Respondents may not subject
9 Petitioner to their third-country removal program which is designed to impose a severe
10 punishment on their subjects. Such conduct "shocks the conscience" under Fifth
11 Amendment substantive due process, is cruel and unusual punishment, and may not be
12 imposed without charge and a judicial trial.

13 Respondents may not seek to remove Petitioner to a third country under their
14 punitive banishment policy and practices. *See Nguyen*, 2025 WL 2419288, at *29
15 (granting preliminary injunction against "removing Petitioner to any country where he
16 is likely to face imprisonment upon arrival").

17 The criteria for an injunction in this case are met. First, unlawful removal to a
18 third country risks irreparable injury that could not be redressed by an award of
19 damages. Second, the balance of hardships is completely in petitioner's favor:
20 Petitioner risks removal to a third country where unwarranted punishment may result,
21 and Respondents suffer no hardship by being prevented from following their unlawful
22 removal policies. Finally, the public interest would affirmatively be served by barring
23 Respondents' unlawful policies. Given the potential for Respondents to attempt a rapid
24 and unlawful removal, petitioner would have no opportunity to seek injunctive relief at
25 that time.

Prayer for Relief

Petitioner respectfully requests that this Court:

- (a) Assume jurisdiction over this action;
- (b) Order Respondents to immediately release Petitioner from custody;
- (c) Order Respondents to, within 24 hours of his release, provide the Court

with a declaration confirming that Petitioner has been released from custody;

(d) Order that Respondents may not re-detain Petitioner without first holding a hearing before a neutral decisionmaker at which the government bears the burden of establishing flight risk or danger to the community by clear and convincing evidence based on changed circumstances since Petitioner was previously released;

(e) Order that the government may not otherwise re-detain Mr. Korotkikh unless the government:

- (1) obtains a valid travel document to Kazakhstan for him,
- (2) provides the valid travel document to him and his counsel,
- (3) offers Petitioner the opportunity to leave on his own within two months, and
- (4) Petitioner does not leave. Under such circumstances, the government may be permitted to re-detain Petitioner provided it has already made concrete arrangements for him to be put on a flight to Kazakhstan in the reasonably foreseeable future.

See Do v. Scott, No. C25-2187RSL, 2025 WL 3496909, at *6 (W.D. Wash. Dec. 5, 2025); *Tang*, 2025 WL 3551381, at *3.

(f) Order that Respondents may not remove or seek to remove Petitioner to a third country without notice and meaningful opportunity to respond in compliance with the statute and due process in reopened removal proceedings;

1 (g) Order that Respondents may not remove Petitioner to any third country
2 because Respondents' third-country removal program seeks to impose unconstitutional
3 punishment on its subjects, including imprisonment and other forms of harm; and

4 (h) Order all other relief that the Court deems just and proper.

5 **Verification Pursuant to LCR 100(e)**

6 Counsel verifies that this petition is authorized by Petitioner. It does not
7 personally bear Petitioner's signature because of the significant difficulty for counsel in
8 meeting with Petitioner in person and because mailing the petition to Petitioner and
9 having it mailed back would cause delay that would only extend the period of his
10 unlawful detention. Counsel knows the facts asserted above or alleges them on
11 information and belief, based on information obtained from the government and/or
12 Petitioner.

13 DATED this 31st day of December 2025.

14 Respectfully submitted,

15 s/Vicki W.W. Lai
16 Assistant Federal Public Defender
17 Attorney for Yury Korotkikh
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