

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YURY NIKOLAY KOROTKIKH,	)	No. 2:25-cv-02750-TSZ
Petitioner,	)	
v.	)	YURY KOROTKIKH'S REPLY TO
PAMELA BONDI, <i>et al.</i> ,	)	RESPONDENTS' RETURN
Respondents.	)	MEMORANDUM

I. BACKGROUND FACTS

Mr. Korotkikh was born in 1970 in Kazakhstan, a Muslim-majority country, which was then part of the former Soviet Union. He and his family, including his parents, are practicing Christians. He left Kazakhstan with his parents as refugees on November 7, 1989, when he was 19 years old, and he was granted lawful permanent resident status on December 21, 1990. On August 13, 1998, Mr. Korotkikh was served with a Notice to Appear for removal proceedings based on his 1994 Oregon state convictions for attempted first-degree assault and unlawful use of a weapon, for which he was sentenced to 45 days in jail and a 36-month probationary sentence. *See* Dkt.1-1, Ex. 1. After unsuccessfully applying for asylum and withholding of removal based on religious persecution; the immigration court ordered his removal but found he qualified for voluntary departure. The court designated Kazakhstan as the country of removal. Dkt. 1-4, Ex. 4. After various appeals, a final order of removal was issued on October 10, 2003. But because “[a] travel document necessary for removal to Kazakhstan could

1 not be obtained at that time,” Mr. Korotkikh was placed on an Order of Supervision
2 (OSUP) on August 10, 2006. Dkt. 8, ¶ 7.

3 Mr. Korotkikh has lived in Portland, Oregon with his wife and three children
4 since then, regularly checking in with ICE. Dkt. 1-7 (reporting records). He was
5 “arrested during an operation in Portland, Oregon on 10/27/2025 by Customs and
6 Border Protection[.]” Dkt. 9-3. ICE conducted a “query” and discovered that he was
7 convicted of a DUI in 2019. *See id.* (“Additionally, records show KOROTKIKH was
8 convicted of ORS 813.010 driving under the influence on June 7, 2019”). ICE served
9 Mr. Korotkikh a notice of revocation of release that same day. That document states
10 that his OSUP was revoked because “there are changed circumstances.” Dkt. 9-8. It
11 also references his DUI arrest in 2018 and his 2019 DUI conviction. *Id.*

12 **II. ARGUMENT**

13 **A. The government has waived or forfeited any argument that the** 14 **presumptive six-month period has expired or that Mr. Korotkikh has** 15 **failed to meet his burden under *Zadydas*.**

16 Although Mr. Korotkikh’s petition asserts a claim under *Zadvydas v. Davis*, 533
17 U.S. 678 (2001), arguing that his continued detention violates the Due Process Clause,
18 the government’s return remarkably cites *Zadvydas* only once in its recitation of the law
19 section, and offers no response to Mr. Korotkikh’s assertion that the presumptive
20 reasonable six-month period under *Zadvydas* has expired; nor does it engage in
21 *Zadvydas*’s burden-shifting framework. The government has thus either waived or
22 forfeited these arguments. *See, e.g., Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1023
23 (9th Cir. 2023) (internal quotation marks omitted) (a party must “specifically and
24 distinctly raise an argument and support it with citations to the record” to avoid
25 forfeiture) (internal quotation marks omitted); *Tibble v. Edison Int’l*, 843 F.3d 1187,
26 1193 (9th Cir. 2016) (citation omitted) (“[A]n issue will generally be deemed

1 waived . . . if the argument was not raised sufficiently for the trial court to rule on it.”)
 2 (citation omitted).

3 Mr. Korotkikh’s final order of removal was entered over two decades ago on
 4 October 10, 2003. Dkt. 8, ¶ 6. As Judge Robart and other courts have concluded, the
 5 “*Zadvydas* grace period end[s] six months following the entry of the order of
 6 [petitioner’s] removal.” *Tran v. Bondi*,¹ No. CV25-1897-JLR, 2025 WL 3140462, at *3
 7 (W.D. Wash. Nov. 10, 2025). *See also Tadros v. Noem*, No. CV25-4108-EP, 2025 WL
 8 1678501, at *3 (D.N.J. June 13, 2025) (finding that “six-month detention period under
 9 *Zadvydas*” began upon affirmance of removal order, rejecting argument that petitioner
 10 could not obtain habeas relief because he had not yet been in detention for six
 11 months”); *Farez-Espinoza v. Chertoff*, 600 F.Supp.2d 488, 500 (S.D.N.Y. 2009)
 12 (concluding that presumptively reasonable six-month period expired six months after
 13 entry of the removal order, even though petitioner was not in custody for any of that
 14 period).

15 Here, Mr. Korotkikh has met his burden where “more than six months have
 16 elapsed since the entry of the order of removal.” *Tran*, 2025 WL 3140462, at *3. “After
 17 this 6-month period, once the [noncitizen] provides good reason to believe that there is
 18 no significant likelihood of removal in the reasonably foreseeable future, the
 19 Government must respond with evidence sufficient to rebut that showing.” *Id.* at 690.
 20 “If the Government fails to rebut the noncitizen’s showing, the noncitizen is entitled to
 21 habeas relief.” *Nguyen v. Bondi*, No. 2:24-cv-0204-TL, 2025 WL 3534168, at *4 (W.D.
 22 Wash. Dec. 10, 2025).

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 24
 25 ¹ While the government does not cite to *Tran*, it has acknowledged in other cases “that
 26 Courts in this district have found that the presumptively reasonable period expires six
 months after a final order, regardless of detention.” *Kuot v. Bondi*, No. 2:25-cv-02313-
 RAJ, Dkt. 14 at 8 (citing to *Tran*).

1 **B. The government has provided no argument or evidence it can meet**
2 **its burden of establishing Mr. Korotkikh is likely to be removed to**
3 **Kazakhstan in the reasonably foreseeable future.**

4 Because Mr. Korotkikh has met his burden, the burden shifts to the government
5 to show that removal is substantially likely in the reasonably foreseeable future. Here,
6 the government waives any argument it might have concerning its burden because it
7 provides no argument or evidence showing it can meet its burden under *Zadvydas*. In
8 addition, the limited evidence it has provided shows that its burden cannot be met here.

9 In support of his *Zadvydas* claim, Mr. Korotkikh provided a letter received by
10 his wife from the Consulate General of the Republic of Kazakhstan in San Francisco,
11 California dated April 2025. The translation of that letter advised Mr. Korotkikh that
12 “according to the data base documenting the population of the Republic of Kazakhstan,
13 you are not a documented citizen” and “we hereby inform you that you are not a citizen
14 of the Republic of Kazakhstan.” Dkt. 1-8, Ex. 8. The government does not address this
15 letter or otherwise mention it.

16 The only evidence the government provides in support of its return is the
17 declaration of Detention Officer Robert Andron, Jr. *See* Dkt. 8. That declaration
18 however “is inadmissible and cannot be considered” because it is “not asserted to be
19 true and correct, nor is it subscribed under penalty of perjury, both of which are
20 required by 28 U.S.C. § 1746.” *Wana v. Bondi*, 2025 WL 3628634, at *4 (W.D. Wash.
21 Dec. 15, 2025). Even if the declaration could be considered, it merely confirms what
22 Mr. Korotkikh has shown: that because he is not a citizen of Kazakhstan, the consulate
23 will not issue him a travel document and his removal is not reasonably foreseeable.
24 Similarly, Officer Andron, Jr. avers that Mr. Korotkikh “completed [an] Information for
25 a Travel Document” on November 6, 2025, and that the request was sent to the same
26 consulate in San Francisco that Mr. Korotkikh or his wife contacted on December 18.
Dkt. 8, ¶¶ 11, 12. According to the officer, ICE was informed by the consulate through

1 an email the next day that “Petitioner does not currently have valid identity documents
 2 confirming his citizenship, therefore, issuance of a travel document is not yet possible.”
 3 *Id.* at ¶ 12. The officer states ICE was also informed that “[s]hould the Petitioner’s
 4 Kazakh citizenship be verified, a travel document will be issued.” *Id.* But there is no
 5 indication that ICE has had any further communications with the consulate or that it
 6 plans to follow up with the consulate.

7 Given this record, the government fails to meet its burden. *See, e.g., Vu v. Noem*,
 8 No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341, at *7 (E.D. Cal. Nov. 6, 2025)
 9 (“The phrase ‘significant likelihood,’ as used in the regulation, requires something more
 10 than a mere possibility.”); *Pena-Gil v. Lyons*, 2025 WL 3268333, at *4 (D. Colo.
 11 Nov. 24, 2025) (“Unsubstantiated assertions that the government will pursue removal
 12 are insufficient to satisfy its burden.”). Because Mr. Korotkikh’s “removal is not
 13 reasonably foreseeable, the court should hold continued detention unreasonable and no
 14 longer authorized by statute.” *Zadvydas*, 533 U.S. at 699–700.

15 **C. Numerous courts in this district have rejected the government’s**
 16 **assertion that due process does not require a pre-deprivation hearing**
 17 **before the revocation of an OSUP.**

18 Citing to *Mathews v. Eldridge*, 424 U.S. 319, 333–34 (1976), Mr. Korotkikh’s
 19 petition contains a separate due process claim, arguing that procedural due process in
 20 the context of an individual released on an OSUP requires notice and an opportunity to
 21 be heard and that therefore Petitioner’s re-detention without that process was unlawful.
 22 *See* Dkt. 1 at 11–14.

23 In response, the government asserts that, because Mr. Korotkikh violated the
 24 conditions of his OSUP by incurring a DUI arrest and a DUI conviction in 2018 and
 25 2019, “ICE is clearly permitted to revoke the OSUP and take the alien into custody;
 26 nothing else is required for revocation under these circumstances.” Dkt. 7 at 12. But as
 stated in *Perera v. Jennings*, No. CV21-4136-BLF, 2021 WL 2400981, at *5 (N.D. Cal.

1 June 11, 2021), “the interest at stake is not whether the Government may detain [a
 2 noncitizen after releasing him], but whether they may do so without providing him an
 3 individualized bond hearing.” *See also Pinchi v. Noem*, 792 F.Supp.3d 1025 (N.D. Cal.
 4 2025) (“[E]ven when ICE has the initial discretion to detain or release a noncitizen
 5 pending removal proceedings, after the individual is released from custody, she has a
 6 protected liberty interest in remaining out of custody”).

7 Moreover, “the Government’s interest in detaining petitioner without a hearing is
 8 ‘low.’” *Carbello v. Andrews*, No. CV25-978-KES-EPG, 2025 WL 2381464, *8 (E.D.
 9 Cal. Aug. 15, 2025) (cleaned up). That is because “in immigration court, custody
 10 hearings are routine and impose a minimal cost.” *Id.* That “Petitioner’s alleged
 11 violations occurred . . . years before they were acted upon, and Petitioner participated in
 12 multiple appointments where any violations could have been addressed but were not,”
 13 undermines any suggestion that the government’s interests are threatened if a pre-
 14 deprivation hearing is required. *P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL
 15 3294988, at *4 (W.D. Wash. Nov. 26, 2025).

16 Courts in this district have repeatedly held, “[b]ased on review of the *Mathews*
 17 factors,” that a “Petitioner has a protected liberty interest in his continuing release from
 18 custody, and that due process requires that Petitioner receive proper notice and an
 19 opportunity to respond before he can be re-detained.” *Jimenez v. Bondi*, No. C25-
 20 2167RSM, 2025 WL 3466925, at *2 (W.D. Wash. Dec. 3, 2025). In *Jimenez*, the court
 21 granted the petition and ordered Mr. Jimenez’s immediate release, barring re-detention
 22 “without providing adequate notice of the reasons for his re-detention and a meaningful
 23 opportunity to respond.” *Id.* at *3. The government does not address *Jimenez* or the
 24 many other cases coming to the same conclusion. *See, e.g., P.T.*, 2025 WL 3294988, at
 25 *3; *Perez v. Mordant*, No. 2:25-CV-00947-SPC-DNF, 2025 WL 3466956, at *5 (M.D.

1 Fla. Dec. 3, 2025); *S-M-J v. Bostock*, No. 6:25-CV-01425-MTK, 2025 WL 3137296, at
 2 *5 (D. Or. Nov. 10, 2025).

3 Regarding *Mathews*' third factor, the government states it "has an interest in
 4 enforcing compliance with its orders of release and returning individuals to custody
 5 who violate their terms." Dkt. 7 at 12–13. Notwithstanding that the government took no
 6 action to revoke Mr. Korotkikh in 2018 or 2019 or during his regular check-ins, and
 7 only did so during a special ICE operation sweep in 2025, that is not the governmental
 8 interest at issue here. As stated by the court in *P.T.*, "[i]n the final *Mathews* factor, the
 9 Court considers the Government's interest in arresting and detaining Petitioner *without*
 10 *a hearing*." 2025 WL 3294988, at *3 (emphasis added).

11 The government's assertion that no hearing was necessary because the post-
 12 detention administrative process described in the regulations provided Mr. Korotkikh
 13 with the safeguards he needs should also be rejected. As the court pointed out in
 14 *Guillermo M.R. v. Kaiser*, 791 F.Supp.3d 1021 (N.D. Cal. 2025), the regulations
 15 provide no opportunity to have a neutral party evaluate ICE's unilateral determination
 16 of contested facts. And that it is this lack of "any neutral review" which "creates a
 17 heightened risk of deprivation for Petitioner." *Id.* at 1034.

18 **D. Numerous courts have also repeatedly rejected the government's**
 19 **argument that Mr. Korotkikh's claims regarding removal to a third**
 20 **country are not yet ripe.**

21 Mr. Korotkikh's petition also asked for an order precluding ICE from removing
 22 him to a third country under its punitive removal policies and an order precluding
 23 removing him to a third country absent notice and a meaningful opportunity to respond.
 24 The government asserts—ignoring that multiple courts in this district have rejected that
 25 same assertion—that this Court should deny Mr. Nguyen's request because it is
 26 speculative and not ripe. Dkt. 7 at 13–14. A similar argument was rejected in *Nguyen v.*
Scott, 769 F.Supp.3d 703, 727 (W.D. Wash. 2025). There, the government also

1 represented that it was seeking only to remove the petitioner to his home country of
2 Vietnam and even stipulated that it would not attempt to move him to any other country
3 unless Vietnam rejected him. The court was unpersuaded, explaining that “the Ninth
4 Circuit has found such voluntary promises insufficient” to eliminate the potential
5 irreparable injury that petitioner could face if the promise were withdrawn, particularly
6 given the underlying allegations that third party removals were being conducted rapidly
7 and without an opportunity for due process. 796 F.Supp.3d at 737.

8 Here, Mr. Korotkikh’s claim is not speculative because the Kazakhstan consulate
9 has advised both him and the government that, because it has no documentation of his
10 citizenship, it cannot issue a travel document for him. And while the government
11 suggest that it does not intend to remove Mr. Korotkikh to any country other than
12 Kazakhstan, that limitation was rejected in *Nguyen*, 2025 WL 3534168, at *7. There,
13 the court found a noncitizen seeking habeas under *Zadvydas* had standing to challenge
14 potential third-country removal even though the government in that case presented an
15 ICE officer’s sworn declaration it was not seeking to remove Petitioner to a third
16 country. The court reasoned that the officer’s language “clearly indicates that the
17 decision could be changed at any moment,” in which case “irreparable harm could
18 easily occur before Petitioner’s counsel could seek relief or obtain a ruling from the
19 Court.” *Id.* (citation modified). *See also Hambarsonpour*, 2025 WL 3251155, at *5
20 (rejecting government’s ripeness argument).

21 Just as other courts in this district have done after rejecting the government’s
22 ripeness contention and turning to the substantive issue, this Court should grant the two
23 forms of relief Mr. Korotkikh requested regarding third-country removal. *See Abubaka*,
24 2025 WL 3204369, at *7–8 (ruling in petitioner’s favor on merits third-country removal
25 and both due process and punitive nature of removal); *Nguyen*, 2025 WL 3534168, at
26 *10 (same); *Baltodano v. Bondi*, No. CV25-1958RSL, 2025 WL 3484769, at *10 (W.D.

1 Wash. Dec. 4, 2025) (quoting *Hambarsonpour*, 2025 WL 321155, at *1, *4–5)
 2 (ordering government “not to remove petitioner to any third country where he is likely
 3 to fact imprisonment or harm”).

4 **E. Multiple courts in this district have also rejected the government’s**
 5 **related argument that Petitioner cannot obtain relief because he is a**
 6 **member of the plaintiff class in *D.V.D. v. Department of Homeland***
***Security*.**

7 Finally, the government asserts that Mr. Korotkikh cannot obtain relief because
 8 he is a member of the plaintiff class in *D.V.D. v. Department of Homeland Security*,
 9 No. C25-10676 (D. Mass). There, the district court certified a class of noncitizen
 10 petitioners and enjoined the government from removing them to third countries unless
 11 specific conditions were met. 778 F.Supp.3d 335, 392–93 (D. Mass. 2025). It found that
 12 petitioners were likely to show that “[d]efendants have a policy or practice of executing
 13 third-country removals without providing notice and a meaningful opportunity to
 14 present fear-based claims.” It thus concluded that the government’s third-country
 15 removal policy or practice likely violates procedural due process. *Id.* at 387. The
 16 government appealed the injunction, and the Supreme Court stayed that injunction in an
 17 unreasoned emergency docket order. *D.V.D.*, 145 S. Ct. 2153 (2025).

18 Here, the government argues that, under Ninth Circuit precedent, a class member
 19 like Mr. Korotkikh cannot request the same relief in a separate individual action.
 20 Multiple courts have rejected this exact same argument and have instead “found that,
 21 under these circumstances, Ninth Circuit precedent permits Petitioner to seek individual
 22 relief[.]” *Elshourbagy v. Bondi*, 2025 WL 3718993, at *7 (W.D. Wash. Dec. 23, 2025)
 23 (collecting cases).

1 **III. CONCLUSION**

2 Based on the foregoing, Petitioner asks that the Court grant his petition in its
3 entirety, including the remedies requested in the Pray for Relief section at page 29 of
4 the petition.

5 DATED this 20th day of January 2026.

6 Respectfully submitted,

7 *s/ Vicki W.W. Lai*

8 Assistant Federal Public Defender

9 Attorney for Yury Nikolay Korotkikh

10 I certify this reply contains 2,711 words in compliance with the Local Civil Rules.
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