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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

TAYFUN KARA,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:26-cv-00105-JHC

**PETITIONER'S TRAVERSE TO
RESPONDENTS' RETURN
MEMORANDUM**

PETITIONER'S TRAVERSE TO RESPONDENTS' RETURN MEMORANDUM

INTRODUCTION

1. Petitioner Tayfun Kara seeks release from his indefinite immigration detention at the Northwest ICE Processing Center ("NWIPC") and to prevent his removal to an unidentified third country without the due process required by law. Respondents make no showing that Petitioner's continued detention remains lawful under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), and they do not identify any concrete, time-bound plan demonstrating that removal is significantly likely in the reasonably foreseeable future. Instead, Respondents offer only generalized assertions that ICE is pursuing removal and that removal will occur, without the individualized, case-specific facts required to rebut Petitioner's showing.

2. Respondents next insist that “Petitioner is responsible for his prolonged detention by failing to cooperate with ICE to effectuate his removal”. But Respondents do not identify what information Petitioner allegedly failed to provide, what documents he allegedly refused to sign, or how any such conduct actually caused delay. Nor do Respondents include the relevant underlying documents or any contemporaneous record of what was requested and what was refused, materials within Respondents’ possession and control.
3. In any event, the record does not show that any inability or refusal to provide information by Petitioner caused the delay. Respondents do not identify any concrete removal plan, any country prepared to accept Petitioner, or any travel document issued or imminent. On this record, Respondents’ own lack of progress, not Petitioner’s alleged noncooperation, is the cause of the continued detention as a matter of law and fact.
4. Finally, Respondents attempt to defeat Petitioner’s third-country due process and punitive-removal claims by asserting that “no third country has been designated” and therefore there is no controversy. Courts routinely reject that kind of “trust us” framing where ICE maintains policies and practices permitting rapid third-country removal without meaningful pre-removal process, and where the government refuses to provide enforceable assurances. Petitioner’s requested relief is tailored to prevent irreparable harm and to ensure constitutionally required process if ICE proceeds with third-country removal. For these reasons, the Court should grant the Petition.

FACTUAL AND PROCEDURAL BACKGROUND

5. On July 3, 2025, the Immigration Judge issued a final order in Petitioner’s immigration proceedings. The Immigration Judge sustained the charges of inadmissibility under INA § 212(a)(6)(A)(i) under, denied his application for asylum, and entered an order of

1 removal. The Immigration Judge nevertheless granted Petitioner withholding of removal
2 to Turkey, thereby barring his removal to Turkey because it is more likely than not
3 that he would face harm there. Both parties waived appeal, and the decision became
4 administratively final on July 3, 2025. Petitioner has been detained at the NWIPC since
5 that date. Petitioner's continued detention became became presumptively unreasonable
6 under *Zadvydas*.

7 6. Respondents claim that on December 10, 2025, Petitioner stated he had no ties to any
8 other country, wanted to stay in the United States, and refused to provide third countries
9 he would accept.

10 7. Respondents claim that on January 13, 2026, they served a "Warning for Failure to
11 Depart," and that Petitioner refused to sign it and "comply with any requests" to
12 accomplish third-country removal.

13 8. The Return also asserts that Petitioner was served with a "Failure to Comply Notice" on
14 December 12, 2025. However, Respondents do not include that notice in the record and
15 it is not described in the Baz declaration.

16 9. Because the removal order became administratively final on July 3, 2025, the
17 presumptively reasonable six-month period has expired, and the burden shifts to
18 Respondents under *Zadvydas*.

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21 **LEGAL STANDARD**

22 10. After the presumptively reasonable six-month period of post-order detention, "once the
23 alien provides good reason to believe that there is no significant likelihood of removal in
24 the reasonably foreseeable future, the Government must respond with evidence sufficient
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1 to rebut that showing.” *Zadvydas*, 533 U.S. at 701; see also *Nadarajah v. Gonzales*, 443
2 F.3d 1069, 1077 (9th Cir. 2006).

- 3 11. *Zadvydas* rejected the notion that courts must accept the government’s prediction about
4 future removal “conducting little or no independent review of the matter.” 533 U.S. at
5 701. District courts must not “abdicat[e] their legal responsibility to review the
6 lawfulness of an alien’s continued detention.” *Id.*

7 **ARGUMENT**

8 **A. Petitioner’s Continued Detention Is Unlawful Under *Zadvydas***

- 9 12. Petitioner has met his burden to show good reason to believe that “there is no significant
10 likelihood of removal in the reasonably foreseeable future.” *Nadarajah*, 443 F.3d at
11 1077; *Zadvydas*, 533 U.S. at 701. His order became administratively final on July 3,
12 2025. Thus, the presumptively reasonable six-month period has expired. See *Tran v.*
13 *Bondi*, No. CV25-01897-JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025) (stating
14 presumptively reasonable period expires six months after a final order, regardless of
15 detention).

- 16
17 13. Because Petitioner has made a preliminary showing of indefinite detention, the burden
18 shifts to Respondents to show that removal is reasonably foreseeable. *Zadvydas*, 533 U.S.
19 at 701. Respondents’ generalized representations that Petitioner’s removal from the
20 United States is “substantially likely” in the “reasonably foreseeable future” are
21 insufficient to meet that burden. *Id.* As this Court recently noted, “Courts in this circuit
22 have regularly refused to find Respondents’ burden met where Respondents have offered
23 little more than generalizations regarding the likelihood that removal will occur.”
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Eshaghpour v. Bondi, No. C25-2322-SKV, 2026 WL 100603, at *4 (W.D. Wash. Jan. 14, 2026) (internal quotation marks and citation omitted).

14. Respondents offer no evidence that removal is significantly likely in the reasonably foreseeable future. They do not identify any destination country prepared to accept Petitioner, any travel document issued or forthcoming, or any concrete, time-bound plan for removal. See Baz Decl. ¶¶ 12–13.

15. Respondents rely on a deportation-officer declaration. Declarations offered in lieu of sworn affidavits must comply with 28 U.S.C. § 1746(2). See *Wana v. Bondi*, No. CV25-02321-RSL, 2025 WL 3628634, at *4 (W.D. Wash. Dec. 15, 2025); *Kuot v. Bondi*, No. CV25-02313-BAT, 2025 WL 3763930, at *3 (W.D. Wash. Dec. 30, 2025). Even if the Court considers the Baz declaration, Respondents still do not meet their burden because the declaration does not provide the basic, concrete facts needed to show removal is substantially likely in the reasonably foreseeable future.

16. *Zadvydas* admonished courts not to accept the government’s belief about foreseeability unquestioningly. 533 U.S. at 701. Courts exercising that “legal responsibility” should consider whether the government has credibly explained the delay. See *Lema v. U.S. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002) (“The continuing failure of a destination country to respond to a request for travel documents may provide the Court with ‘good reason to believe’ that deportation is not [significantly] likely in the reasonably foreseeable future . . . where the destination country’s lack of response is combined with the INS’ inability to explain the silence and the absence of any indication that the situation may change.”). Where DHS has no idea of when it might reasonably

expect repatriation, courts cannot conclude removal is likely to occur in the reasonably foreseeable future. See *Singh v. Whitaker*, 362 F. Supp. 3d 93, 101–02 (W.D.N.Y. 2019).

17. Given these facts, Respondents fail to meet their burden of showing that Petitioner’s removal from the United States is substantially likely in the reasonably foreseeable future. See, e.g., *Gilali v. Warden of McHenry Cnty. Jail*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019) (mere assertions of good-faith efforts to secure removal “does not make removal likely in the reasonably foreseeable future”). This Court should order Petitioner’s immediate release with appropriate conditions.

B. Respondents’ “Noncooperation” Allegation Does Not Defeat Petitioner’s *Zadvydas* Claim

18. Respondents argue Petitioner is responsible for his prolonged detention because he failed to cooperate with ICE. The sole factual support for that argument is the Baz declaration. But the vague and conclusory statements in that declaration lack the probative value to negate Petitioner’s claim, given that it lacks even basic details or corroborating evidence showing what information Petitioner allegedly failed to provide or what documents he declined to sign. See Baz Decl. ¶¶ 12–13. More fundamentally, the declaration does not explain how Petitioner’s alleged noncooperation, even if assumed true, hindered Respondents’ efforts to obtain travel documents or otherwise effectuate removal.

19. Respondents do not tell the Court and do not disclose what information they supposedly want but claim Petitioner is refusing to provide. Baz Decl. ¶¶ 12–13. Neither the document Petitioner allegedly declined to sign nor any other documentation related to the December 10, 2025, interview or the January 13, 2026, warning is part of the record—documents within Respondents’ possession and control. See Baz Decl. ¶¶ 12–13.

Respondents' bare allegation therefore lacks the probative value needed for this Court to find that Petitioner failed to cooperate, much less to defeat his *Zadvydas* claim. See, e.g., *Kebe v. Gurule*, No. CV-16-1116-PHX-JAT (JFM), 2016 WL 6404170 (D. Ariz. Sept. 29, 2016) (finding no failure to cooperate where "Respondent argues that Petitioner is refusing to produce information, but fail to identify what information has not been provided"); *Lawrikow v. Kollus*, No. CV-08-1403-PHX-GMS (LOA), 2009 WL 2905549, at *8 (D. Ariz. July 27, 2009) (concluding the record "does not contain substantial evidence in support of ICE's finding that Petitioner failed to cooperate" where notice "does not identify the information which Petitioner failed to provide or otherwise describe Petitioner's lack of cooperation").

20. In any case, even if Petitioner's "alleged noncooperation was true, it does not rise to the level of dooming his *Zadvydas* claim." *Ghasedi v. Wamsley*, No. 2:25-cv-01984-RSM-BAT, 2025 WL 3699706, at *6 (W.D. Wash. Dec. 1, 2025). Respondents make no showing that Petitioner's alleged noncooperation affected ICE's ability to prepare or submit a travel document request, obtain acceptance from any country, or otherwise effect removal.

21. Because there is no showing, or even a suggestion, that Petitioner "control[led] the clock" here, Respondents' allegation of noncooperation does not defeat his *Zadvydas* claim. See *Lema v. I.N.S.*, 341 F.3d 853, 856 (9th Cir. 2003) ("[A] detainee cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock.").

22. The gaps in Respondents' record confirm the point. No underlying documents are provided. The Return asserts that Petitioner was served with a "Failure to Comply

1 Notice” on December 12, 2025, yet Respondents do not include the notice, do not identify
2 what it required, and do not provide any contemporaneous documentation showing what
3 was requested or what was refused.

4 23. The claim is also inconsistent with Respondents’ own evidentiary submission. Baz’s
5 declaration describes the December 10, 2025, interview and the January 13, 2026,
6 warning, but it does not mention the alleged December 12 “Failure to Comply Notice,”
7 and it does not attach or describe that notice.

8 24. Respondents also fail to show causation. Even accepting Respondents’ account,
9 Respondents still do not identify any travel document that has been issued or is pending,
10 any country prepared to accept Petitioner, or any concrete, time-bound removal plan.
11 Without such a showing, Respondents cannot establish that removal is significantly
12 likely in the reasonably foreseeable future, and they cannot transform a conclusory
13 accusation of “noncooperation” into proof that continued detention is lawful.
14

15 25. On this record, the Court should find Respondents have not rebutted Petitioner’s
16 *Zadvydas* showing.

17 **C. Due Process Requires a Hearing Prior to Any Future Re-detention Following**
18 **Release**

19 26. Petitioner has not yet been released, but the relief sought includes release from unlawful
20 detention. Petitioner therefore requests a protective order clarifying that any future re -
21 detention following Court ordered release must be preceded by constitutionally required
22 process so that the relief granted is effective.
23

24 27. Courts in this district have recognized that once the Government releases an individual
25 into the community, the individual’s liberty interest is materially greater than that of a
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1 detainee who has never been released, and due process requires a hearing before that
 2 liberty is taken away through re-detention. See *DeJesus v. Bostock*, No. 2:25-cv-01427-
 3 JHC-TLF, 2025 WL 3268002, at *3 (W.D. Wash. Nov. 24, 2025) (citing *Bd. of Pardons*
 4 *v. Allen*, 482 U.S. 369, 377–81 (1987)). That requirement applies regardless of whether
 5 any future release is characterized as occurring under an Order of Supervision.

6 28. Petitioner therefore requests that any order granting release include a requirement that
 7 Respondents provide a hearing before any re-detention.

8 **D. Due Process Bars Removal to an Unknown Third Country Without Notice and**
 9 **an Opportunity to Be Heard.**

10 29. Respondents argue that the Court may not issue the relief sought by Petitioner on his due
 11 process claim because he is a member of the plaintiff class purportedly bound by the
 12 proceedings and stay order in *Dep't of Homeland Sec. v. D.V.D.* This argument has been
 13 rejected by many courts. See, e.g., *Baltodano v. Bondi*, No. CV25-1958-RSL, 2025 WL
 14 2987766, at *2 (W.D. Wash. Oct. 23, 2025) (citing cases).

15 30. As explained in *Nguyen*, the Supreme Court's stay in *D.V.D.* provided no reasoning and
 16 is not a decision on the merits. See *Nguyen v. Scott*, 796 F. Supp. 3d 703, 731 (W.D.
 17 Wash. 2025) (citing *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J.,
 18 concurring) ("The Court's stay order is not a decision on the merits.")); see also *Cruz-*
 19 *Medina v. Noem*, — F. Supp. 3d —, 2025 WL 2841488 (D. Md. Oct. 7, 2025) (rejecting
 20 argument that *D.V.D.* stay forecloses relief); *Santamaria Orellana v. Maker*, No. 25-
 21 1788-TDC, 2025 WL 2841886 (D. Md. Oct. 7, 2025) (citing *Nguyen*, 2025 WL 2419288,
 22 at *22).

31. Further, Ninth Circuit precedent requires meaningful notice and an opportunity to seek protection regarding the country of removal; failing to notify individuals of the right to apply for protection to the country to which they will be deported violates both regulations and due process. *Nguyen*, 796 F. Supp. 3d at 727 (citing *Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (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 728–29. And in *Baltodano*, citing *Nguyen*, the court concluded that the petitioner is likely entitled to the “multistep procedures set out in 8 U.S.C. § 1231(b) and required by due process” before ICE can remove him to a third country. 2025 WL 2987766, at *3.

E. Petitioner’s Punitive Banishment Argument Supports Injunctive Relief

32. Respondents argue that Petitioner’s punitive banishment claim rests on “speculative allegations” because DHS has not identified a specific third country for removal. But the absence of a named destination is not a defense where Respondents maintain and implement a third-country removal practice that permits removal to third countries once one is secured often without meaningful pre-removal process. ICE’s current third country removal policy permits removal to a country other than the designated country of removal when ICE is unable to effectuate removal to the designated country. In practice, ICE’s implementation of that policy has resulted in third country removals in which individuals are transferred into custody or otherwise confined upon arrival in the receiving country, including in restrictive detention settings, raising serious due process concerns.

33. Courts in this district have found that Respondents’ practice and policy of third-country removal are both intended to be punitive and are in fact punitive, thus violating due process. See *Abubaka v. Bondi*, No. CV25-01889-RSL, 2025 WL 3204369, at *7–8 (W.D. Wash. Nov. 17, 2025); *Nguyen v. Scott*, 796 F. Supp. 3d 703, 732–35 (W.D. Wash. 2025). In each of these cases, the district court ordered Respondents not to remove the petitioner to any third country where he was likely to face imprisonment upon arrival. *Abubaka*, 2025 WL 3204369, at *7–8; *Nguyen*, 796 F. Supp. 3d at 732–35.

34. The risk of third-country removal is therefore not speculative simply because Respondents have not yet disclosed a specific country. Respondents have not shown they can remove Petitioner to the designated country of removal, and they have left open the prospect of third-country removal without identifying where, when, or under what procedures they would proceed—precisely the uncertainty that warrants enforceable injunctive relief.

35. A similar argument was rejected in *Nguyen v. Scott*. The court was unpersuaded, explaining that “the Ninth Circuit has found such voluntary promises insufficient” to eliminate the potential irreparable injury a petitioner could face if the promise were withdrawn—particularly given the underlying allegations that third-country removals were being conducted rapidly and without an opportunity for due process. 796 F. Supp. 3d 703, 737 (W.D. Wash. 2025). Courts in this district have likewise rejected ripeness/speculation arguments in this context. See, e.g., *Baltodano*, 2025 WL 2987766, at *2 (citing cases). *Nguyen v. Bondi*, No. 2:25-cv-02024-TL, 2025 WL 3534168, at *7 (W.D. Wash. Dec. 10, 2025).

36. There, the court stated that “considering [Respondents’] qualified assurance in light of current ICE policy, President Trump’s support of and commitment to ‘sudden deportation in a place and manner solely of our discretion,’ and the undisputed actions of Respondents in carrying out such sudden and discretionary removals, the Court find[s] the voluntary promise insufficient.” *Id.* (citations omitted). The court further reasoned that “the fact that this injury is directly traceable to a written policy suggests that there is an implicit likelihood of its repetition in the immediate future.” *Id.* (cleaned up) (finding issues ripe). See also *Hambarsonpour*, 2025 WL 3251155, at *5 (rejecting ripeness and lack-of-likelihood arguments).

37. Just as other courts in this district have done after rejecting the government’s ripeness contention and turning to the substantive issue, this Court should grant the two forms of relief Petitioner requests regarding third-country removal. See *Abubaka*, 2025 WL 3204369, at *7–8; *Nguyen*, 2025 WL 3534168, at *10; *Baltodano v. Bondi*, No. CV25-1958-RSL, 2025 WL 3484769, at *10 (W.D. Wash. Dec. 4, 2025) (quoting *Hambarsonpour*, 2025 WL 321155, at *1, *4–5) (ordering the government “not to remove petitioner to any third country where he is likely to face imprisonment or harm”).

CONCLUSION

For the reasons presented above and in his habeas petition, Petitioner respectfully requests that this Court:

1. Order Respondents to immediately release Petitioner from custody;
2. Order Respondents not to remove, or seek to remove, Petitioner to any third country unless and until they provide advance notice of the intended country and a meaningful

1 opportunity to respond consistent with the statute and due process, including the
2 opportunity to seek protection;

- 3 3. Order Respondents not to remove Petitioner to any third country where Respondents'
4 third-country removal program would operate to impose unconstitutional punishment;
5 and
6 4. Grant such other and further relief as the Court deems just and proper.

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8 DATED this 2nd day of February 2026.

9
10 Respectfully submitted,

11
12 /s/ Adam W. Boyd

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