

THE HONORABLE S. KATE VAUGHAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VIKTOR MOSKALENKO,

Petitioner,

vs.

PAMELA BONDI, Attorney General of the
United States; MARK WAYNE MULLIN,
Acting 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 UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT,

Respondents.

No. 2:26-cv-00998-SKV

**PETITIONER'S TRAVERSE IN
SUPPORT OF PETITION FOR WRIT
OF HABEAS CORPUS UNDER 28
U.S.C. § 2241 AND REQUEST FOR
INJUNCTIVE RELIEF**

I. INTRODUCTION

Viktor Moskalenko's ("Mr. Moskalenko") continued detention is unconstitutional under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Respondents barely dispute this point and concede that the presumptively reasonable six-month period has expired. In support of Mr. Moskalenko's continued detention Respondents conclusively state that ICE is "requesting" travel documents from Russia. Return at 8 (Dkt. 6). However, they make no argument and offer no evidence that removal will occur in the reasonably foreseeable future. Indeed, courts in the Ninth Circuit have consistently held the existence of a pending travel document request alone does not meet the

1 Government's burden under *Zadvydas*. See *Tran v. Noem*, No. 1:25-CV-01523-TLN-CKD, 2025
2 WL 3268491, at *3 (E.D. Cal. Nov. 24, 2025); *Nguyen v. Scott*, 796 F. Supp. 3d 703, 726 (W.D.
3 Wash. 2025). Thus, Mr. Moskalenko's continued detention is unconstitutional, and he must be
4 released.

5 Respondents' remaining arguments ask the Court to disregard the weight of authority and
6 deny Mr. Moskalenko's requests for injunctive relief despite the Court's broad authority to shape
7 injunctive relief in granting habeas petitions. Injunctions requiring a pre-deprivation hearing and
8 imposing specific conditions on re-detention for the purpose of removal are necessary to break
9 the cycle of re-detention, to ensure Mr. Moskalenko is afforded due process, and to effectuate an
10 order releasing Mr. Moskalenko from detention. Injunctions barring removal as punishment and
11 requiring certain process for third-country removals are necessary to protect Mr. Moskalenko
12 from imminent harm. Indeed, Respondents fail to address the overwhelming evidence of
13 constitutional and human rights violations from their punitive third-country removal policies,
14 and the fact that these policies specifically target stateless individuals with criminal records such
15 as Mr. Moskalenko. Courts have consistently held that Respondents' third-country removal
16 policies and practices are unconstitutional, and harm to noncitizens threatened with such removal
17 is not speculative. See *Escobar v. Chestnut*, No. 1:25-CV-01801-DJC-EFB, 2025 WL 3687639,
18 at *4 (E.D. Cal. Dec. 19, 2025) (collecting cases).

19 Accordingly, the Court should grant the petition, order Mr. Moskalenko's immediate
20 release, and grant the injunctive relief to protect Mr. Moskalenko from unconstitutional re-
21 detention and unconstitutional third country removal.

22 II. ARGUMENT

23 A. Mr. Moskalenko's Continued Detention Is Unconstitutional.

24 Federal Respondents do not dispute that Mr. Moskalenko has been detained well beyond
25 the presumptively reasonable six-month period under *Zadvydas*. See Return at 8. Indeed,
26 documents in Mr. Moskalenko's A-file show that Mr. Moskalenko was detained for at least three

1 months in 1999. Lambert Decl., Exhibit D at 4 (Dkt. 8-4) (stating that Mr. Moskalenko was
2 ordered removed on July 14, 1999, and on October 22, 1999 was “given a \$5,000 Order of
3 Supervision bond” and that same day “ICE Post Order Custody Review (90 days)
4 recommend[ed] that SUBJECT is kept in ICE (INS) custody”). In addition to the two additional
5 detentions in the mid-2000s and the more than five months that Mr. Moskalenko has already
6 been in detention since October 27, 2025, the evidence in the record clearly shows that Mr.
7 Moskalenko has been detained by ICE for more than six months since July 14, 1999.

8 In his Petition, Mr. Moskalenko established “that there is no significant likelihood of
9 removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Estonia and Russia
10 declined to issue travel documents for him, and no other country has agreed to accept him or is
11 in the process of issuing travel documents for him. Pet. at 8–9. In almost 27 years, ICE has not
12 been able to obtain travel documents for Mr. Moskalenko, despite multiple requests. *See* Lambert
13 Decl., Exhibit D at 4 (ICE requested travel documents from Estonia, Russia, and Ukraine in 1999
14 and all three declined to issue documents); *id.* Exhibit G at 3 (requiring Mr. Moskalenko to
15 “submit a complete application for a travel document to . . . Estonia” as a condition of his order
16 of supervised release); *id.* Exhibit H at 2 (requiring Mr. Moskalenko to “apply for a valid
17 Estonian passport or Travel Document, on a yearly basis . . . and provide copies to ICE” as a
18 condition of his order of supervised release).

19 The burden thus shifts to the Respondents to rebut Mr. Moskalenko’s showing that there
20 is a significant likelihood of removal in the reasonably foreseeable future. *Jennings v. Rodriguez*,
21 583 U.S. 281, 299 (2018). They have not done so.¹

22 ¹ Respondents have not stated the exact amount of time Mr. Moskalenko has been detained,
23 despite having that information in their records, because “for detention to remain reasonable, as
24 the period of prior post removal confinement grows, what counts as the ‘reasonably
25 foreseeable future’ conversely would have to shrink.” *Zadvydas*, 533 U.S. at 701. Per Mr.
26 Moskalenko’s memory and the records produced by Respondents, Mr. Moskalenko has been
detained for at least nine months. *See* Pet. at 6–7. This extended period of detention reduces the
amount of time that may be considered the “reasonably foreseeable future” in the Court’s
analysis.

1 Respondents offer a single sentence as rebuttal: “ICE is requesting a travel document
2 from Russia.” Return at 8. This bare assertion is legally and factually insufficient. Courts in the
3 Ninth Circuit have consistently held that even active government efforts to secure travel
4 documents, without more, do not establish a reasonably foreseeable removal. *See Tran*, 2025
5 WL 3268491, at *3 (holding that the government’s statement that ERO was “actively working”
6 on obtaining travel documents was insufficient to demonstrate reasonably foreseeable removal);
7 *see also Nguyen*, 796 F. Supp. 3d at 726 (requiring individualized analysis of a particular
8 detainee’s circumstances). Respondents provide no evidence that Russia has acknowledged the
9 request, no indication of an anticipated response timeline, and no material removal plan.

10 Respondents’ already-thin position is further undermined by the specific circumstances
11 of Mr. Moskalenko’s case, none of which Respondents address.

12 First, Russia is officially designated as a “Recalcitrant” and “uncooperative” country for
13 the purpose of immigration removals. *See* Congressional Research Service, *Immigration:*
14 *“Recalcitrant” Countries and the Use of Visa Sanctions to Encourage*
15 *Cooperation with Alien Removal* (July 10, 2020) [https://www.congress.gov/crs_external_produ](https://www.congress.gov/crs_external_products/IF/PDF/IF11025/IF11025.7.pdf)
16 [cts/IF/PDF/IF11025/IF11025.7.pdf](https://www.congress.gov/crs_external_products/IF/PDF/IF11025/IF11025.7.pdf). The government’s own designation of Russia as recalcitrant
17 significantly undermines any claim that Russia will cooperate with and accept a travel document
18 request in the reasonably foreseeable future. Respondents do not address this designation.

19 Second, Russia is currently engaged in a war against Ukraine, a U.S. ally receiving active
20 military support from the U.S. government. *See* U.S. Department of War, *Spotlight: Support for*
21 *Ukraine*, <https://www.war.gov/Spotlights/Support-for-Ukraine/>. The ongoing hostilities and
22 severely degraded diplomatic relations between the U.S. and Russia make it even less likely that
23 Russia will cooperate with U.S. removal requests. Respondents do not address this reality.

24 Third, Russia already declined to accept Mr. Moskalenko in 1999 because he is not a
25 Russian citizen. Lambert Decl., Exhibit D at 4. Respondents do not address what circumstances,
26 if any, may cause Russia to change its position.

1 Fourth, an ICE officer told Mr. Moskalenko that after ICE's most recent request Russia
2 once again declined to accept him. Pet. at 8. Respondents' Return does not address, let alone
3 rebut, this statement by their own officer. If the government had contrary evidence that Russia
4 had agreed or was willing to accept Mr. Moskalenko, one would expect that evidence to appear
5 in the Andron Declaration or the Lambert Declaration. It does not.

6 The Court's analysis under *Zadvydas* must be individualized. See *Nguyen*, 796 F. Supp.
7 3d at 726. Here, Mr. Moskalenko's individual circumstances, statelessness, prior refusals from
8 both Estonia and Russia, ICE's own recalcitrant designation of Russia, degraded U.S.-Russia
9 relations, and the ICE officer's direct statement to him, paint a clear picture: there is no
10 significant likelihood of removal in the reasonably foreseeable future.

11 Finally, the government cannot justify continued detention based on Mr. Moskalenko's
12 criminal history. Criminal history is not a factor in the *Zadvydas* analysis. The two petitioners in
13 *Zadvydas* itself had significant criminal records: Mr. Zadvydas had a long record including drug
14 crimes and attempted robbery; Mr. Ma had been convicted of manslaughter. *Zadvydas*, 533 U.S.
15 at 684–85. The Supreme Court rejected the government's argument that dangerousness could
16 justify indefinite detention. *Id.* at 690–92. The same principle applies here.

17 The Court should grant the petition and order Mr. Moskalenko's immediate release.

18 **B. Due Process Requires a Pre-Deprivation Hearing Before Any Future Re-**
19 **Detention.**

20 Mr. Moskalenko is not raising a due process challenge to the procedural sufficiency of
21 his current re-detention. Pet. at 12 ("Mr. Moskalenko seeks an injunction against future re-
22 detention without pre-deprivation notice and a hearing. Mr. Moskalenko therefore includes the
23 following discussion, even though he does not allege that his current detention was a result of an
24 illegal re-detention, because it is a necessary prerequisite to seeking that injunction."). Rather,
25 he seeks prospective injunctive relief to prevent ICE from repeating the same cycle of unlawful
26 detention by requiring a pre-deprivation hearing.

1 1. Mr. Moskalenko is likely to suffer irreparable injury that cannot be addressed by an
2 award of damages without an injunction.

3 Mr. Moskalenko has established he will suffer irreparable injury that cannot be redressed
4 by an award of damages if he is re-detained without adequate process and a pre-deprivation
5 hearing. Pet. at 13–15; *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1243 (9th Cir.
6 2018) (to obtain a permanent injunctive relief a party must first demonstrate “it is likely to suffer
7 irreparable injury that cannot be redressed by an award of damages”). As Mr. Moskalenko
8 demonstrated in his Petition, his due process rights will be violated if he is re-detained without
9 a pre-deprivation hearing.

10 Procedural due process requires notice and an opportunity to be heard *before* a person is
11 deprived of a protected liberty interest. *Mathews v. Eldridge*, 424 U.S. 319, 333–34 (1976).
12 Courts in this district have consistently recognized this heightened liberty interest for noncitizens
13 in Mr. Moskalenko’s position. See *Van Nguyen v. Bondi*, C25-2674-SKV, 2026 WL 408098, at
14 *4 (W.D. Wash. Feb. 3, 2026) (citing *E.A.T.-B. v. Wamsley*, 795 F. Supp. 3d 1316 (W.D. Wash.
15 2025)); *Huy Van Tran v. Bondi*, No. 2:25-CV-02335-DGE-TLF, 2025 WL 3725677, at *5 (W.D.
16 Wash. Dec. 24, 2025). Further, courts in this district have determined that noncitizens will suffer
17 this irreparable injury to their due process rights even if the noncitizen does not bring a due
18 process challenge to their current detention. See *Chicas v. Bondi*, No. 26-cv-0451-RSM, 2026
19 WL 775635, at *4 (W.D. Wash. Mar. 19, 2026).

20 Respondents argue that the regulatory procedures in 8 C.F.R. § 241.13(i)(l) provide
21 constitutionally adequate process and that no pre-deprivation hearing is required. Return at 13.
22 Courts in this district have repeatedly rejected that argument. See, e.g., *Wana v. Bondi*, No. 2:25-
23 CV-02321-RSL, 2025 WL 3628634, at *5 (W.D. Wash. Dec. 15, 2025); *Kumas v. Bondi*, No.
24 26-cv-0721-RAJ, 2026 WL 847846, at *2 (W.D. Wash. Mar. 26, 2026); *Acosta-Ginori v. Bondi*,
25 No. 2:25-CV-02649-RAJ, 2026 WL 221509, at *4–7 (W.D. Wash. Jan. 28, 2026). Respondents
26 acknowledge this line of authority but “respectfully disagree.” Return at 13. This Court should
 follow the well-reasoned decisions of many courts in this District.

1 An injunction requiring pre-deprivation process is also necessary to give this Court's
2 habeas order any practical meaning. Without it, "the Government could theoretically re-detain
3 [Petitioner] immediately after release, which would render this Court's order meaningless."
4 *Upreti v. Bondi*, No. 2:25-CV-02443-JNW, 2026 WL 194227, at *4 (W.D. Wash. Jan. 26, 2026).
5 Moreover, any future re-detention must be supported by changed circumstances, not simply the
6 passage of time or the resubmission of travel document requests to the same countries that have
7 already refused. *Id.* ("The mere passage of time or resubmission of the same travel document
8 request that was previously rejected does not constitute such changed circumstances.").

9 Given Respondent's policies and practices, it is likely that Respondents will attempt to
10 re-detain Mr. Moskalenko after his release. Indeed, Respondents' changing story about the
11 reason for Mr. Moskalenko's current re-detention shows the arbitrariness with which
12 Respondents approach re-detention, and thus the likelihood that Respondents will attempt to
13 arbitrarily re-detain Mr. Moskalenko without due process: Respondents argue that they re-
14 detained Mr. Moskalenko "because his removal could be effected" and not because of his
15 criminal convictions. Return at 9 n.5. However, the "Notice of Revocation of Release" ICE
16 served on Mr. Moskalenko stated that he was re-detained because of past criminal convictions.
17 Lambert Decl., Exhibit J at 2. Further, when ICE re-detained him, ostensibly for the purposes of
18 removing him, it had not obtained any travel documents for him and instead Respondents have
19 detained Mr. Moskalenko for over five months with no plan in place for his removal.

20 For these reasons, Courts in this district have consistently entered this exact injunctive
21 relief. *See, e.g., Kumas*, 2026 WL 847846, at *2 ("The Court finds that imposing conditions on
22 any future re-detention of Mr. Kumas is necessary to fully effectuate the intent of this order.");
23 *Tessema v. Bondi*, No. C25-2330-JNW-MLP, 2026 WL 84922 (W.D. Wash. Jan. 12, 2026)
24 (prohibiting re-detention without adequate notice and meaningful opportunity to respond);
25 *Yuksek v. Bondi*, No. 2:25-cv-02555-DGE-GJL, 2026 WL 60364, at *5 (W.D. Wash. Jan. 8,
26 2026) (petitioner "shall not be re-detained without notice and an opportunity to be heard unless

1 Respondents have evidence detention is authorized under 8 C.F.R. § 241.13(i)(1)”; *Wana*, 2025
 2 WL 3628634, at *6 (prohibiting re-detention without notice and hearing). Respondents do not
 3 address or distinguish any of these decisions. Upon his release, Mr. Moskalenko will have a
 4 liberty interest in his continued freedom that is protected by due process. *Kumas*, 2026 WL
 5 847846, at *2. That interest must be protected.

6 2. An injunction requiring a pre-deprivation hearing is in the public interest and is
 7 warranted considering the balance of hardships.

8 In the petition Mr. Moskalenko demonstrated that the balance of hardships and public
 9 interest support the issuance of injunctive relief in this case. *See City & Cnty. of San Francisco*,
 10 897 F.3d at 1243; *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (holding
 11 that the balance of hardships and public interest factors merge when the government is the
 12 opposing party). “Preventing the violation of constitutional rights serves the public interest.”
 13 *Valencia Zapata v. Kaiser*, 801 F. Supp. 3d 919, 940 (N.D. Cal. 2025) (citing *Preminger v.*
 14 *Principi*, 422 F.3d 815, 826 (9th Cir. 2005)). Indeed, “the public has a strong interest in
 15 upholding procedural protections against unlawful detention, and the Ninth Circuit has
 16 recognized that the costs to the public of immigration detention are staggering.” *Jorge M. F. v.*
 17 *Wilkinson*, 21-CV-01434-JST, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021) (internal
 18 citations and quotations omitted).

19 In his Petition, Mr. Moskalenko demonstrated his commitment to his family and recovery
 20 from his alcoholism. Pet. at 7. Mr. Moskalenko’s family has expressed their strong support for
 21 him. *See Williams Decl. Ex. A–C*. Further, Mr. Moskalenko is a welder and has a job with the
 22 Boilermaker’s union in Portland upon his release. *Id.* ¶ 3. He takes responsibility for his past
 23 criminal conduct and is committed to change. Pet. at 7. In fact, Respondents argue that they re-
 24 detained Mr. Moskalenko “because his removal could be effected” and not because of his
 25 criminal convictions. Return at 9 n.5. “Given the low risk that [Mr. Moskalenko] would cause
 26 harm to others or flee, in light of his strong family ties, financial responsibilities and work

1 commitments, such government expenditure in this case would not greatly serve the interests of
2 the general public.” *Vargas v. Jennings*, 20-CV-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal.
3 Aug. 23, 2020).

4 Mr. Moskalenko has thus established that he is entitled to injunctive relief requiring
5 respondents to hold a pre-deprivation hearing prior to future re-detention.

6
7 **C. Respondents’ Third-Country Removal Policy and Practices are Unconstitutional
and a Violation of the Law.**

8 Mr. Moskalenko seeks injunctive relief to protect him against Respondents’
9 unconstitutional and illegal third-country removal policies and practices. Pet. at 27. Mr.
10 Moskalenko specifically seeks an order protecting his constitutional and statutory rights to notice
11 and a meaningful opportunity to be heard when Petitioners seek to remove him to a third country.
12 *Id.* (Prayer for Relief (f)). He also asks for an order stopping Respondents from removing him to
13 a country where he would likely face imprisonment or other punishment upon arrival. *Id.* (Prayer
14 for Relief (g)). In his Petition Mr. Moskalenko demonstrated that the requirements for injunctive
15 relief are met. Pet. at 24–25.

16 Respondents appear to raise three arguments regarding Mr. Moskalenko’s third-country
17 removal claims: (1) that he must pursue these claims about the process he is owed prior to a
18 third-country removal as a member of the *D.V.D.* class action; (2) that his third-country removal
19 claims are too speculative; and (3) that the petition has not established that the Respondents’
20 third-country removal procedures are punitive. Return at 10–12, 15, 16. None of these arguments
21 are persuasive.²

22 **1. The D.V.D. Class Action Does Not Preclude Individual Relief.**

23
24
25 ² Mr. Moskalenko is specifically challenging the Respondents’ third country removal policy as
26 applied to his particular circumstance; he does not seek to certify a class or a nationwide
injunction.

Courts in this district have uniformly rejected the argument that class membership in *D.V.D. v. U.S. Dep't of Homeland Sec.*, forecloses individual habeas claims. *See, e.g., Nguyen*, 796 F. Supp. 3d at 730 (“The class certification order in *D.V.D.* does not prevent this Court from adjudicating Petitioner’s claims regarding third-country removal.”); *Emara v. Bondi*, No. 26-cv-116, 2026 WL 266067, at *4 (W.D. Wash. Feb. 2, 2026) (“Petitioner’s membership in the *D.V.D.* class does not deprive the Court of jurisdiction to adjudicate his claims for individual relief in his habeas action.”). The government’s own argument before the Supreme Court in a prior stage of *D.V.D.* was premised primarily on the impropriety of nationwide class-wide injunctions, implying that individuals should proceed in individual cases, precisely as Mr. Moskalenko is doing here. This Court should exercise its habeas jurisdiction to grant individual relief.

2. Third-Country Removal Poses a Concrete, Imminent Risk to Mr. Moskalenko and Injunctive Relief is Warranted.

Respondents argue that Mr. Moskalenko’s punitive third-party banishment claims are speculative because the process for third-country removals afforded under the INA and its regulations “provides a specific process for addressing such concerns.” Return at 15. Respondents also conclusively argue that Mr. Moskalenko’s challenge to Respondents’ third-country removal policy is speculative because he consented to removal to Russia and has not identified other countries to which he fears being removed. Return at 12. These half-baked arguments misunderstand Mr. Moskalenko’s petition, conflate his two distinct challenges to third-country removal, and ignore the specific circumstances that make his request for injunctive relief ripe for adjudication.

First, Mr. Moskalenko’s seeks an injunction protecting him from Respondent’s July 9, 2025 policy and practices of removing noncitizens to third-countries with only six to 24 hours notice, if any, and without sufficient procedure as required by the constitution and laws and regulations governing third-country removals. Pet. at 21, 27. Respondents do not dispute that these policies and practices violate the constitution and various statutes. *See* Return at 10–16.

1 Nor could they, as “[c]ourts across [the Ninth Circuit] have found that ICE’s policy, as described
2 in the March and July Memoranda, is likely unconstitutional and contrary to Ninth Circuit
3 precedent.” *Francisco Lorenzo v. Bondi*, 2:25-CV-02660-LK, 2026 WL 237501, at *9 (W.D.
4 Wash. Jan. 29, 2026) (quoting *Escobar*, 2025 WL 3687639, at *4 (collecting cases)).

5 Respondents have stated that they are actively trying to remove Mr. Moskalenko to a
6 third country. As discussed above, Russia has already stated that it will not accept him. Return
7 at 10. Thus, it is almost certain that Respondents will next try to remove Mr. Moskalenko to
8 another third country.

9 Any third-country removal under Respondents’ current policies and practices is
10 unconstitutional and illegal. Mr. Moskalenko will have no opportunity to challenge the removal
11 when it occurs precisely because the administration’s third-country removals occur rapidly and
12 without advance notice, once a person is designated, there is no realistic opportunity to seek
13 relief before removal is effectuated. *See Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 509 (D.
14 Md. 2025). For Mr. Moskalenko, who has no country to which he can be returned through
15 conventional channels, this threat is present and imminent whenever ICE identifies a receiving
16 country. The injunction he seeks is the only meaningful protection.

17 **Second**, Mr. Moskalenko seeks an injunction protecting him from removal to a country
18 where he would be imprisoned or otherwise punished. Removal to a third country where he
19 would be imprisoned or subjected to inhumane conditions is not speculative. As detailed in Mr.
20 Moskalenko’s Petition, Respondents routinely remove individuals to such countries without any
21 process. Pet. at 19–22. Given the lack of process for third-country removals, the processes in
22 place would not protect Mr. Moskalenko after Respondents decide to remove him to such a
23 country. Injunctive relief is the only way to protect him from such constitutional violations.

24 Further, Mr. Moskalenko’s specific circumstances make him more susceptible to
25 removal to a third country where he would be subjected to imprisonment and inhumane
26 conditions. Mr. Moskalenko is stateless. Stateless individuals with criminal records, precisely

1 Mr. Moskalenko's situation, are among the primary targets of the administration's aggressive
2 third-country removal policy. *See* American Immigration Council, What Are Third-Country
3 Removals? (December 5, 2025) [https://www.americanimmigrationcouncil.org/fact-sheet/what-](https://www.americanimmigrationcouncil.org/fact-sheet/what-are-third-country-removals-factsheet/)
4 [are-third-country-removals-factsheet/](https://www.americanimmigrationcouncil.org/fact-sheet/what-are-third-country-removals-factsheet/). The administration has entered agreements with multiple
5 countries to accept deportees who are not their own citizens, and it specifically targets
6 individuals who cannot otherwise be removed through conventional channels. Because Mr.
7 Moskalenko has no home country to be deported to, he faces a heightened and concrete risk of
8 punitive third-country removal.

9 **3. The Third-Country Removal Program Is Punitive.**

10 Courts in this district have consistently held that Respondents' third-country removal
11 program is punitive in intent and practice, in violation of due process under *Wong Wing v. United*
12 *States*, 163 U.S. 228 (1896), and *Zadvydas*, 533 U.S. at 693–94. *Abubaka v. Bondi*, No. C25-
13 1889RSL, 2025 WL 3204369, at *8 (W.D. Wash. Nov. 17, 2025); *Nguyen*, 796 F. Supp. 3d at
14 734–35; *Hambarsonpour v. Bondi*, No. 25-cv-1802-RSM, 2025 WL 3251155, at *1, *4–5 (W.D.
15 Wash. Nov. 21, 2025); *Baltodano v. Bondi*, C25-1958RSL, 2025 WL 3484769, at *10 (W.D.
16 Wash. Dec. 4, 2025); *Chicas*, 2026 WL 775635, at *4–5.

17 Prior to any third-country removal, Mr. Moskalenko is entitled to written notice of the
18 designated country and the statutory basis for the designation, a meaningful opportunity, not 6
19 to 24 hours, to raise any fear-based claim, and the ability to pursue that claim in reopened
20 removal proceedings before an immigration judge. *See Aden v. Nielsen*, 409 F. Supp. 3d 998,
21 1019 (W.D. Wash. 2019). Even if Respondents follow this process, the process is not sufficient
22 to afford Mr. Moskalenko an opportunity to raise a fear-based claim prior to removal. Thus, an
23 injunction is necessary to protect Mr. Moskalenko's rights.

24 **D. The Court Has the Power to Grant the Requested Injunctive Relief.**

25 Respondents make brief arguments that the Court should deny Mr. Moskalenko's
26 requested injunctive relief because the Court does not have the power to prescribe the requested

1 relief. Return at 13–14. “In habeas cases, federal courts have broad discretion in conditioning a
2 judgment granting relief. Federal courts are authorized, under 28 U.S.C. § 2243, to dispose of
3 habeas corpus matters as law and justice require.” *Yildirim v. Hermosillo*, C25-2696-KKE, 2026
4 WL 111358, at *4 (W.D. Wash. Jan. 15, 2026) (quoting *Lujan v. Garcia*, 734 F.3d 917, 933 (9th
5 Cir. 2013)).

6 Respondents argue that requiring a pre-deprivation hearing after a final order of
7 removal “would inhibit the Executive’s function of immigration enforcement.” Return at 13
8 (citing *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 112 (2020)). Courts in the
9 Ninth Circuit have consistently required pre-deprivation hearings for individuals subject to
10 final orders of removal. *See, e.g., Simmaphilavong v. Noem*, 2:26-CV-00458-JHC, 2026 WL
11 593146, at *6 (W.D. Wash. Mar. 3, 2026); *Huang v. Albarran*, 1:25-CV-01308 JLT EPG, 2026
12 WL 279888, at *8 (E.D. Cal. Feb. 3, 2026). Indeed, in *Padilla v. U.S. Immigration & Customs*
13 *Enf’t*, the Court construed *Thuraissigiam* narrowly as only applying to situations in which a
14 noncitizen is seeking admission to the United States, not those circumstances in which a
15 noncitizen has been admitted and is later ordered removed. 704 F. Supp. 3d 1163, 1172 (W.D.
16 Wash. 2023).

17 Second, Petitioners argue that the Court does not have authority to grant Mr.
18 Moskalenko’s request for injunctive relief at Prayer for Relief (e). Return at 14. However,
19 multiple courts have granted substantially similar injunctive relief as a form of relief from
20 unconstitutional detention under *Zadvydas*. *Do v. Scott*, C25-2187RSL, 2025 WL 3496909, at
21 *6 (W.D. Wash. Dec. 5, 2025); *Tang v. Bondi*, 2:25-CV-01473-RAJ, 2025 WL 3551381, at *3
22 (W.D. Wash. Dec. 11, 2025).

23 Indeed, like the pre-deprivation hearing, this injunctive relief is necessary to ensure that an
24 order granting habeas relief under *Zadvydas* holds any practical meaning. *See Uprety*, 2026
25 WL 194227, at *4. Without such an order, Mr. Moskalenko could be immediately re-detained
26 for another indefinite period based on a hollow argument that removal is imminent. Thus, the

1 Court has power to issue such injunctive relief along with the grant of a habeas petition, and
2 should grant this relief to give teeth to its grant of the petition under *Zadvydas*.

3 **III. CONCLUSION**

4 For the foregoing reasons, Mr. Moskalenko respectfully requests that the Court grant his
5 habeas petition in full.
6

7
8 DATED this 13th day of April 2026.

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10
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