

1 TIMOTHY COURCHaine
2 United States Attorney
3 District of Arizona
4 THEO NICKERSON
5 Assistant United States Attorney
6 Connecticut State Bar No. 429356
7 Two Renaissance Square
8 40 North Central Avenue, Suite 1800
9 Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Facsimile: (602) 514-7760
Email: Theo.Nickerson2@usdoj.gov
Attorneys for Respondents

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Vladislav Ishmurov,

13 Petitioner,

14 v.
15

16 David R. Rivas, Warden, San Luis
17 Regional Detention Center, *et al.*,

18 Respondents.

No. 2:25-cv-01366-JAT-ESW

**RESPONSE TO AMENDED
PETITION FOR WRIT OF HABEAS
CORPUS AND MOTION FOR
PRELIMINARY INJUNCTION**

19 **INTRODUCTION**

20 Respondents David R. Rivas, Warden, San Luis Regional Detention Center,
21 Gregory J. Archambeault, San Diego Field Office Director, U.S. Immigration and Customs
22 Enforcement, Kristi Noem, Secretary of the Department of Homeland Security, and Pamela
23 J. Bondi, Attorney General of the United States, and by and through counsel, respond to
24 the Amended Petition for Writ of Habeas Corpus (Doc. 11) and the Motion for Preliminary
25 Injunction (Doc. 2) and request that the Court deny the requested relief. Petitioner, a
26 convicted criminal who is subject to a final order of removal, has been detained since
27 March 26, 2025, and seeks a Court order directing ICE to immediately release him from
28 immigration detention on an order of supervised release. Because of his numerous criminal

1 convictions and because his removal is likely to occur in the reasonably foreseeable future,
2 the Court should deny his habeas petition and request for preliminary injunction. This
3 Response is supported by the following Memorandum of Points and Authorities.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. BACKGROUND.**

6 Petitioner Vladislav Ishmuratov is not stateless nor is there any impediment to his
7 removal to Russia due to the fact that when he entered the United States, Russia was a part
8 of the former Soviet Union. Petitioner is, in fact, a citizen and native of Russia. Ex. A,
9 Decl. of Osvaldo Flores at ¶ 5. He was born on May 19, 1988 in Sverdlovsk, Russia. *Id.* ¶
10 6. He entered the United States on or about July 1, 1995, on a B-2 visitor visa, and was to
11 depart the United States no later than December 29, 1995. *Id.* at ¶ 10. Petitioner entered on
12 a passport issued to him in his own name and the visa affixed to his passport indicates his
13 nationality is Russian. *Id.* at ¶ 9. Petitioner overstayed his visa, and on November 1, 2017,
14 he was taken into ICE custody and placed in removal proceedings following several
15 criminal convictions in state court. *Id.* at ¶ 12. On December 13, 2017, Petitioner's removal
16 order became administratively final after he waived appeal and requested "expedited
17 removal to Russia." *Id.* at ¶¶ 13-15. That month, ICE requested travel documents from the
18 Embassy of the Russian Federation, but in August 2018, Petitioner was released from ICE
19 custody on an order of supervision. *Id.* at ¶¶ 16-17. In November 2019, ICE submitted
20 additional documents to the Russian Embassy to facilitate the issuance of travel documents,
21 but the information provided by Petitioner at that time was misspelled and incorrect. *Id.* at
22 ¶ 20. Petitioner has been issued superseding orders of supervision since he was first
23 released on an order of supervision in August 2018. *See id.* at ¶ 21.

24 On March 26, 2025, ICE re-detained Petitioner following his arrest by local law
25 enforcement in California for, among other offenses, possession of a controlled substance
26 with two or more prior violations and possession of drug paraphernalia. *Id.* at ¶ 24. On May
27 2, 2025, ICE again requested travel documents from the Russian Embassy. *Id.* at ¶ 25. ICE
28

1 is actively working to obtain a travel document for Petitioner from the Russian Embassy.
2 *Id.* at ¶ 26.

3 **II. ARGUMENT.**

4 **A. Standard Governing Detention of Aliens with Final Removal Orders.**

5 The detention, release, and removal of aliens subject to a final order of removal is
6 governed by § 241 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231.
7 Pursuant to INA § 241(a), the Attorney General has 90 days to remove an alien from the
8 United States after an order of removal becomes final. During this “removal period,”
9 detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been
10 removed and remains in the United States, his detention may be continued, or he may be
11 released under the supervision of the Attorney General. INA § 241, 8 U.S.C. § 1231(a)(3)
12 and (a)(6). ICE may detain an alien for a “reasonable time” necessary to effectuate the
13 alien’s removal. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite detention is not
14 authorized by the statute. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

15 In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable
16 period of detention for aliens, like Petitioner, who are detained under section 1231(a). *See*
17 *Zadvydas*, 533 U.S. at 701-702. *Zadvydas* places the burden on the alien to show, after a
18 detention period of six months, that there is “good reason to believe that there is no
19 significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. If the
20 alien makes that showing, the Government must then introduce evidence to refute that
21 assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40
22 (9th Cir. 2002). The court must “ask whether the detention in question exceeds a period
23 reasonably necessary to secure removal. It should measure reasonableness primarily in
24 terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment
25 of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued
26 detention unreasonable and no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

27 **B. The Attorney General Properly Revoked Petitioner’s Order of** 28 **Supervised Release.**

In the amended habeas petition, Petitioner states that he “is challenging the decision

1 made by U.S. Immigration and Customs Enforcement in Los Angeles, California, that a
2 prior release order issued on August 20, 2018, has been revoked and that he be detained
3 again pending removal from the United States.” Doc. 11 at 1. This challenge must fail.

4 In *Zadvydas*, the Supreme Court specifically held that release after the removal
5 period where removal is not likely in the reasonably foreseeable future “should be
6 conditioned on any of the various forms of supervised release that are appropriate in the
7 circumstances, and the alien may *no doubt* be returned to custody upon a violation of those
8 conditions. *Zadvydas*, 533 U.S. at 700 (emphasis added) (citing 8 U.S.C. § 1231(a)(3)(D);
9 8 C.F.R. § 241.5). And that if an alien is returned to custody, the habeas court should
10 consider the risk of the alien committing further crimes as a factor potentially justifying
11 confinement within the reasonable removal period. *Id.*

12 The plain language of the statute at 8 U.S.C. § 1231(a)(3)(D) allows the Attorney
13 General to set conditions for supervised release from immigration detention such as “to
14 obey reasonable written restrictions on the alien’s conduct or activities that the Attorney
15 prescribes for the alien.” *Id.* In this regard, the statute gives the Attorney General wide
16 discretion to set restrictions on an alien’s behavior once granted supervised release. *See*
17 *Zavala v. Prendes*, No. 3-10-CV-1601-K-BD, 2010 WL 4454055, at *1 (N.D. Tex. Oct. 5,
18 2010), *report and recommendation adopted*, No. 3:10-CV-1601-K, 2010 WL 4627736
19 (N.D. Tex. Nov. 1, 2010) (“[t]he few courts that have considered habeas challenges to post-
20 removal orders of supervision have given administrative authorities wide latitude to impose
21 such orders.”); *see also Kalombo v. Shanahan*, No. 07 CIV. 11350 (PKC), 2009 WL
22 1788589, at *5 (S.D.N.Y. June 23, 2009) (“Since *Zadvydas*, those few courts that have
23 considered habeas challenges to an order of supervision in the post-removal-period context
24 have concluded that *Zadvydas* supports an expansive reading of administrative authority to
25 impose such orders.”); *see also Neuyen v. B.I. Inc.*, 435 F. Supp. 2d 1109, 1115 (D. Or.
26 2006) (“While a statute permitting indefinite detention of an alien would raise a serious
27 constitutional problem, Congress may remove aliens, subject them to supervision with
28 conditions when released from detention and incarcerate them where appropriate for

1 violations of those conditions.” (citing *Zadvydas*, 533 U.S. at 695) (alterations omitted)).

2 Here, the Attorney General’s order of supervision reasonably imposed a condition
3 on Petitioner’s release that “you do not commit any crimes while on this Order of
4 Supervision.” Ex. A at ¶ 19. Petitioner failed to meet this simple condition of his supervised
5 release, a condition that was permitted by section 1231(a)(3)(D). *Id.* at ¶ 18. Indeed, despite
6 the reasonable condition that Petitioner not commit any crimes, he accrued multiple arrests
7 and convictions while he was released on the Order of Supervision. *Id.* ¶ 23. Most recently,
8 on March 26, 2025, he was arrested again for drug-related crimes. *Id.* at ¶ 24. Under
9 *Zadvydas*, there simply can be “no doubt” that Petitioner may be re-detained for violating
10 the conditions of his supervised release. *Zadvydas*, 533 U.S. at 695. The Court should
11 dismiss Petitioner’s challenge to the Attorney General’s decision to revoke the order of
12 supervision.

13 **C. Petitioner’s Detention is Lawful and Constitutionally Permitted.**

14 To be entitled to release from detention, Petitioner has the burden to show that his
15 removal is not likely to occur in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at
16 701. Only then does the burden shift to the Government to show that removal is
17 significantly likely to occur in the reasonably foreseeable future. *Id.* Petitioner has not met
18 his burden to show that his removal is unlikely in the reasonably foreseeable future and,
19 even if he could, the Government can overcome that with evidence showing that his
20 removal is likely.

21 In *Zadvydas*, the Supreme Court designated six months as a presumptively
22 reasonable period of time to allow the Government to remove an alien detained under
23 8 U.S.C. § 1231(a), but an alien is not automatically entitled to release after six months of
24 detention. *Id.* at 701 (“This 6-month presumption, of course, *does not mean that every alien*
25 *not removed must be released after six months.* To the contrary, an alien may be held in
26 confinement until it has been determined that there is no significant likelihood of removal
27 in the reasonably foreseeable future.”) (emphasis added). The passage of time alone is
28 insufficient to establish that no significant likelihood of removal exists in the reasonably

1 foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002). In
2 *Lema*, where the alien had been detained for more than a year, the district court held that
3 the passage of time was only the first step in the analysis, and that the alien must then
4 provide good reason to believe that no significant likelihood of removal exists in the
5 reasonably foreseeable future. *Id.*

6 Petitioner cannot establish that his removal is not likely to occur in the reasonably
7 foreseeable future. As an initial matter, Petitioner's detention is not prolonged. Petitioner
8 has only been detained since March 26, 2025, a period of fifty-one (51) days. Ex. A at ¶
9 24. Although he was previously detained from December 13, 2017, to August 20, 2018, he
10 was released from ICE custody for almost seven years until he was re-detained by ICE on
11 March 26, 2025, for violating his supervised release order. Even if his prior eight-month
12 detention seven years ago counted toward the presumptively reasonable period under
13 *Zadvydas*, it would still be Petitioner's burden to establish that his removal **at this time** is
14 not likely, *Zadvydas*, 533 U.S. at 701, which he cannot do.

15 In *Zadvydas*, the Court emphasized that the "basic purpose" of immigration
16 detention is "assuring the alien's presence at the moment of removal" and concluded this
17 purpose was not served by the continued detention of aliens whose removal was not
18 "reasonably foreseeable." *Id.* at 699. Removal was not reasonably foreseeable in *Zadvydas*
19 because no country would accept the deportees or because the United States lacked an
20 extradition treaty with their home countries. Similarly, in *Clark v. Martinez*, 543 U.S. 371,
21 386 (2005), an alien's removal to Cuba was not reasonably foreseeable when the
22 Government conceded "that it is no longer even involved in repatriation negotiations with
23 Cuba." *Id.* at 386. And in *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006), the Court
24 of Appeals relied on the apparent impossibility of removal in holding that an alien's
25 continued detention was not authorized where the Board of Immigration Appeals had twice
26 awarded the alien asylum, as well as protection under the Convention Against Torture, yet
27 his detention continued for over five years while the Government appealed the decisions.
28 *Id.* at 1081. The Ninth Circuit held that *Nadarajah* had successfully demonstrated that, as a

1 result of the asylum and CAT determinations, there was a “powerful indication of the
2 improbability of his foreseeable removal.” *Id.* This case is distinguishable from *Zadvydas*,
3 *Clark*, and *Nadarajah* because Petitioner is an alien whom the Government lawfully can
4 remove and is in the process of removing.

5 The Government is actively engaged in efforts to secure travel documents and
6 remove Petitioner to Russia. On May 2, 2025, ICE submitted a new request to the Embassy
7 of Russia seeking the issuance of a travel document to remove Petitioner to Russia. Ex. A
8 at ¶ 25. With this request ICE submitted corrected and up to date biographical information
9 for Petitioner. *Id.* ICE is also planning to submit additional information to the Embassy
10 about Petitioner’s parents, including their Russian birth certificates. *Id.* at ¶ 26. With this
11 additional information ICE expects the travel documents to be issued by the Russian
12 Embassy in a timely manner *Id.* at ¶ 28. Petitioner cannot establish that his removal is
13 unlikely to occur in the reasonably foreseeable future given that ICE is actively seeking a
14 travel document, has submitted to the Russian Embassy information not previously
15 provided, Russia has not refused to issue travel documents, and the current status of
16 diplomatic relations between the United States and Russia. Uncertainty as to Petitioner’s
17 exact removal date does not warrant his release. *Prieto-Romero v. Clark*, 534 F.3d 1053,
18 1064 (9th Cir. 2008). Here, there is no reason to believe that Russia will not issue a travel
19 document for Petitioner, and no reason why Petitioner cannot be removed to Russia once
20 the travel document is received. Petitioner’s detention is not prolonged, is not indefinite,
21 and is constitutional—his Amended Petition should be denied.

22 **III. A PRELIMINARY INJUNCTION IS NOT WARRANTED.**

23 A “preliminary injunction is an extraordinary and drastic remedy.” *Munaf v. Geren*,
24 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only
25 “upon a clear showing that the [movant] is entitled to such relief.” *Winter v. Natural*
26 *Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction,
27 the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims;
28 (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that

1 the balance of equities tips in its favor; and (4) that the proposed injunction is in the public
2 interest. *Id.* at 20. These factors are mandatory. As the Supreme Court has articulated, “[a]
3 stay is not a matter of right, even if irreparable injury might otherwise result” but is instead
4 an exercise of judicial discretion that depends on the particular circumstances of the case.
5 *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian R. Co. v. United States*, 272
6 U.S. 658, 672 (1926)).

7 **A. Plaintiff Cannot Establish a Likelihood of Success on the Merits.**

8 As argued above, Petitioner cannot establish a likelihood of success on the merits
9 for two reasons: 1) his order of supervision was properly revoked when he failed to comply
10 with its terms by committing several crimes; and, 2) he cannot meet his burden to
11 demonstrate that his removal is unlikely in the reasonably foreseeable future. In contrast,
12 the Government has established that ICE is diligently pursuing travel documents from the
13 Russian Embassy, has provided them with updated biographical and passport information
14 for both Petitioner and his parents, and reasonably expects travel documents to issue soon.
15 Ex. A. ¶¶ at 25-28. Petitioner is unlikely to succeed on his claim that his continued
16 detention is unlawful.

17 **B. Plaintiff Cannot Establish Irreparable Harm.**

18 The only claim Petitioner makes with respect to irreparable harm is that his “illegal
19 confinement is quintessentially irreparable harm.” Doc. 2 at 2. But as established,
20 Petitioner’s 51-day confinement is neither illegal nor unconstitutional. *Zadvydas*, 533 U.S.
21 at 701. Rather, because his removal is significantly likely to occur in the reasonably
22 foreseeable future, habeas relief should not be granted as he has not established any
23 irreparable harm from his continued detention while the Government executes his removal
24 order.

25 **C. The Public Interest and Balance of the Equities Favors the Government.**

26 Where the Government is the opposing party, the balance of equities and public
27 interest factors merge. *Nken*, 556 U.S. at 435. Where the Government is the opposing party,
28 courts “cannot simply assume that ordinarily, the balance of hardships will weigh heavily

1 in the applicant's favor." *Id.* at 436 (citation and internal quotation marks omitted). Here,
2 the public interest weighs in favor of denying the motion for a preliminary injunction.
3 "Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v.*
4 *Exec. Office of Immigration Review*, 959 F.2d 742, 750 (9th Cir. 1992). The public interest
5 lies in the Executive's ability to enforce U.S. immigration laws and to keep aliens who
6 have violated the conditions of their supervised release detained pending execution of their
7 removal orders.

8 **D. The Court Should Require a Bond.**

9 If the Court decides to grant relief, it should order a bond pursuant to Fed. R. Civ.
10 P. 65(c), which states "The court may issue a preliminary injunction or a temporary
11 restraining order only if the movant gives security in an amount that the court considers
12 proper to pay the costs and damages sustained by any party found to have been wrongfully
13 enjoined or restrained." Fed. R. Civ. P. 65(c) (emphasis added). Here, because Petitioner
14 is subject to removal, the amount of any bond should be akin to an appearance bond.

15 **IV. CONCLUSION.**

16 For the reasons set forth in this Response, the First Amended Petition for Writ of
17 Habeas Corpus should be denied and the Court should deny Petitioner's request for a
18 preliminary injunction.

19 Respectfully submitted on May 16, 2025.

20 TIMOTHY COURCHAINE
21 United States Attorney
22 District of Arizona

23 s/ Theo Nickerson
24 THEO NICKERSON
25 Assistant United States Attorney
26 *Attorneys for Respondents*
27
28

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Keith Hilzendeger
Federal Public Defender
250 N. 7th Ave., Ste. 600
Phoenix, AZ 85007
Keith_Hilzendeger@fd.org

s/Theo Nickerson
Assistant United States Attorney