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

Vadim Serbenyuk,

Petitioner,

vs.

David R. Rivas, Warden, San Luis Regional  
Detention Center;

Gregory J. Archambeault, San Diego Field  
Director, U.S. Immigration and Customs  
Enforcement;

Kristi Noem, Secretary of Homeland  
Security; and


Pamela Jo Bondi, Attorney General of the  
United States,

Respondents.

No.

**Petition for a Writ of Habeas Corpus  
Under 28 U.S.C. § 2241**

**Technical Data**

1. Mr. Serbenyuk is challenging the validity of his detention in immigration custody. His A number is 
2. Mr. Serbenyuk is challenging the decision made by U.S. Customs and Border Protection, together with U.S. Immigration and Customs Enforcement, to detain him pending removal from the United States.
3. Mr. Serbenyuk was taken into custody on November 27, 2024, when he presented himself to U.S. immigration officials at or near Tijuana, Baja California, Mexico, and applied for asylum. He was given a negative credible fear determination on December 26, 2024, and transferred to the Otay Mesa Detention Center in San Diego, California. On March 21,

2025, he was transferred to the San Luis Detention Center in San Luis, Arizona. Upon information and belief, he has not been given an opportunity to have a hearing before an immigration judge and thus has had no opportunity to exhaust his administrative remedies.

### **Parties, Jurisdiction, and Venue**

4. Petitioner Vadim Serbenyuk is a native of the Ukrainian Soviet Socialist Republic. He was ordered removed from the United States and granted voluntary departure in 2010. The removal order and subsequent voluntary departure carried a 10-year ban on reapplying for admission to the United States. He is being detained following a negative credible fear determination made on December 26, 2024, after he applied for entry into the United States at or near Tijuana, Baja California, Mexico.
5. Respondent David R. Rivas is the Warden of San Luis Regional Detention Center, where Mr. Serbenyuk is being detained. He is Mr. Serbenyuk's immediate legal custodian and thus a proper respondent in this matter. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).
6. Respondent Gregory J. Archambeault is the San Diego Field Office Director for U.S. Immigration and Customs Enforcement. He is responsible for Mr. Serbenyuk's detention, and thus a legal custodian of Mr. Serbenyuk.
7. Respondents Kristi Noem and Pamela J. Bondi are, respectively, the Secretary of Homeland Security and the Attorney General of the United States. As such, they are responsible for maintaining the immigration detention system. They are thus legal custodians of Mr. Serbenyuk.
8. This Court has jurisdiction under 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; and the Fifth Amendment to the United States Constitution.
9. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (e)(1)(B) because a substantial part of the events or omissions giving rise to the claims set forth herein occurred in this district.

## Background

10. Mr. Serbenyuk was born in 1988 in the Ukrainian Soviet Socialist Republic. He and his family are Pentecostal Christians. Upon information and belief, in 2002, 11 years after the Soviet Union collapsed, Mr. Serbenyuk and his family were granted asylum in the United States based on a fear of persecution in the Republic of Ukraine on account of their religion. His family settled in the Portland, Oregon, area.
11. Mr. Serbenyuk has suffered a number of criminal convictions that ultimately led to the termination of his refugee status and his voluntary departure from the United States. The following is a partial list based on publicly available court data.
  - a. On May 28, 2008, Mr. Serbenyuk pleaded guilty in the Circuit Court of Multnomah County, Oregon, to one count of second-degree theft, in violation of Or. Rev. Stat. § 164.045, and one count of failure to appear, in violation of failure to appear, in violation of Or. Rev. Stat. § 133.076. He was sentenced to three days in jail.
  - b. On August 15, 2008, Mr. Serbenyuk pleaded guilty in the Circuit Court of Clackamas County, Oregon, to one count of felony possession of heroin, in violation of Or. Rev. Stat. § 475.854(1) and (2)(c); one count of felony possession of cocaine, in violation of Or. Rev. Stat. § 475.884(1) and (2)(c); and one count of second-degree theft, in violation of Or. Rev. Stat. § 164.045, a misdemeanor. He was sentenced to 18 months of probation.
  - c. Also on August 15, 2008, Mr. Serbenyuk pleaded guilty in the Circuit Court of Clackamas County, Oregon, to one count of possession of heroin, in violation of Or. Rev. Stat. § 475.854(1) and (2)(c); and one count of second-degree theft, in violation of Or. Rev. Stat. § 164.045, a misdemeanor. He was sentenced to 7 months in jail followed by 18 months of probation.
  - d. On November 19, 2008, Mr. Serbenyuk was charged in the Circuit Court of Multnomah County, Oregon, with one count of first-degree theft, in violation of

Or. Rev. Stat. § 164.055. At his arraignment two weeks later, the charge was dismissed.

12. It does not appear that any of these convictions amounts to a “particularly serious crime” that would operate to terminate a grant of asylum. *See* 8 U.S.C. § 1158(b)(2)(A)(ii), (c)(2) (explaining that a conviction for a “particularly serious crime” terminates a grant of asylum).

a. Any conviction for an aggravated felony counts as a conviction for a “particularly serious crime.” 8 U.S.C. § 1158(b)(2)(B)(i). But none of Mr. Serbenyuk’s prior convictions qualify as an aggravated felony.

i. The convictions for second-degree theft, in violation of Oregon law, do not qualify. A “theft offense... for which the term of imprisonment [is] at least one year” is an an aggravated felony. 8 U.S.C. § 1101(a)(43)(G). But Mr. Serbenyuk was never sentenced to more than a year’s imprisonment for any of his three convictions for second-degree theft.

ii. Nor do the convictions for possession of heroin or cocaine, in violation of Oregon law, qualify. An aggravated felony includes a conviction for “illicit trafficking in a controlled substance (as defined in section 802 of title 21), including a drug trafficking crime (as defined in section 924(c) of title 18).” 8 U.S.C. § 1101(a)(43)(B). But these convictions, as defined by Oregon law, do not have as an element any requirement of trafficking in either drug.

iii. Both statutes—the one defining possession of heroin, Or. Rev. Stat. § 475.854, and the one defining possession of cocaine, Or. Rev. Stat. § 475.884—define both a misdemeanor and a felony. For felony treatment under these statutes, the possession must involve amount to a “commerical drug offense” as defined in Or. Rev. Stat. § 475.900(1)(b), or

involve a “substantial quantity” as set forth in Or. Rev. Stat.

§ 475.900(3)(b).

- iv. Oregon law defines a “commercial drug offense” as involving at least 3 out of 11 statutory factors. One such factor is the quantity of drugs possessed. Or. Rev. Stat. § 475.900(1)(b)(K). Upon information and belief, Mr. Serbenyuk’s crimes involved possession of the threshold amount listed in this section. Upon further information and belief, given the fact that Mr. Serbenyuk was caught with drugs while shoplifting, he was arrested while “in possession of \$300 or more in cash,” Or. Rev. Stat.

§ 475.900(1)(b)(B), and other stolen property, *id.* § 475.900(1)(b)(F).

Under the modified categorical approach, *see generally United States v.*

*Martinez-Lopez*, 864 F.3d 1034, 1043 (9th Cir. 2017) (en banc), Mr.

Serbenyuk’s convictions did not have trafficking as an element. Thus Mr.

Serbenyuk’s convictions, if obtained under this version of the felony possession statutes, do not amount to aggravated felonies.

- v. The threshold for a “substantial quantity” of heroin is 5 grams, Or. Rev. Stat. § 475.900(3)(b)(A), and of cocaine is 10 grams, *id.* § 475.900(3)(b)(C). No trafficking in these amounts of drugs is an element of the “substantial quantity” requirement under Oregon law. Thus this version of the felony possession statutes does not amount to an aggravated felony.

- b. Nor does it appear that any other regulation or decision of either the Board of Immigration Appeals or the Attorney General classifies mere possession of a threshold amount of heroin or cocaine as a “particularly serious crime.” “Both the courts and the [Board of Immigration Appeals] have long recognized that drug trafficking felonies equate to ‘particularly serious crimes.’” *In re Y-L-*, 23 I. & N. Dec. 270, 274 (AG 2002) (emphasis added). Nearly 40 years ago, the Ninth

Circuit observed that the Board of Immigration Appeals deems “convictions for drug possession *and trafficking* to be particularly serious.” *Mahini v. INS*, 779 F.2d 1419, 1421 (9th Cir. 1986) (emphasis added). But the alien in *Mahini* had been convicted of possession *with intent to distribute*, not mere possession. *See id.* at 1420. Nothing in *Y-L-* supports the notion that mere possession of a controlled substance is a “particularly serious offense” that would nullify a grant of asylum.

13. Nevertheless, upon information and belief, as a result of the August 2008 drug-possession convictions, Mr. Serbenyuk’s refugee status was terminated as provided in 8 U.S.C. § 1158(c)(2)(B). These convictions made Mr. Serbenyuk inadmissible as provided in 8 U.S.C. § 1182(a)(2)(A)(i)(II). He was placed in removal proceedings and subjected to detention. *See* 8 U.S.C. § 1158(c)(3) (aliens whose refugee status is terminated are subject to removal proceedings and attendant detention).
14. Upon information and belief, Mr. Serbenyuk did not contest his removability in those proceedings. He requested and was granted voluntary departure. *See* 8 U.S.C. § 1229c(b)(1). He was not ineligible for voluntary departure by virtue of his prior convictions because none of his prior convictions were for aggravated felonies, 8 U.S.C. § 1227(a)(2)(A)(iii), or involved terrorism or other security-related grounds, *id.* § 1227(a)(4). *See* 8 U.S.C. § 1229c(b)(1)(C). He voluntarily departed the United States on or about January 8, 2010, and returned to Ukraine.
15. By virtue of his voluntary departure, Mr. Serbenyuk was ineligible to apply for readmission to the United States for the following 10 years. *See* 8 U.S.C. § 1182(a)(9)(A)(ii)(II).
16. On February 24, 2022, Russia invaded Ukraine. They have been at war ever since.
17. On account of his Pentecostal faith, Mr. Serbenyuk is a pacifist. He does not want to take up arms and participate in killing Russian soldiers or mercenaries.
18. In the fall of 2024, Mr. Serbenyuk and his fiancée Vlada Kapkaeva fled the war in Ukraine to seek asylum in the United States. They presented themselves for inspection by U.S.

1 immigration officials at or near Tijuana, Baja California, Mexico, on or about November  
2 27, 2024. Ms. Kapkaeva was paroled into the United States, and she is presently staying  
3 with Mr. Serbenyuk's family in the Portland, Oregon, area. Mr. Serbenyuk, however, was  
4 denied admission, placed in expedited removal proceedings, and detained pending  
5 removal from the United States.

- 6 19. Upon information and belief, Mr. Serbenyuk was inadmissible in 2024 because he  
7 presented himself as an applicant for admission without a valid entry document. *See*  
8 8 U.S.C. § 1182(a)(7)(A)(i). He indicated that he feared persecution in Ukraine on  
9 account of his Pentecostal faith and related pacifist political opinion. He was therefore  
10 referred for a credible fear interview in accordance with 8 U.S.C. § 1225(b)(1)(A)(ii).
- 11 20. Upon information and belief, on December 26, 2024, an immigration officer determined  
12 that Mr. Serbenyuk did not have a credible fear of persecution in Ukraine on account of  
13 either his Pentecostal faith or his pacifist political opinion. He was accordingly ordered  
14 removed from the United States. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(I). It is unclear  
15 whether Mr. Serbenyuk requested, or received, or was told that he had a right to request,  
16 a hearing before an immigration judge as provided in 8 U.S.C. § 1225(b)(1)(B)(iii)(III)  
17 and 8 C.F.R. § 235.6(a)(2).
- 18 21. Respondents accordingly have detained Mr. Serbenyuk in accordance with 8 U.S.C.  
19 § 1225(b)(1)(B)(iii)(IV), which requires him to be detained "pending a final  
20 determination of credible fear of persecution and, if found not to have such a fear, until  
21 removed."
- 22 22. In 2020, Ukraine was classified as being "at risk of non-compliance" with its  
23 international obligations to accept its citizens for removal from the United States. *See* Jill  
24 H. Wilson, Congressional Research Service, IF11025, *Immigration: Recalcitrant Countries*  
25 *and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals*, at 1 (2020).  
26 Since then, because of the war between Russia and Ukraine, it appears that removals to  
27 Ukraine are at present impossible to achieve. At least one court has credited the assertion  
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that “ICE is not currently deporting Ukrainians due to the Russian invasion” and that “removal of Petitioner is not reasonably foreseeable in the near future even if he obtains a removal order.” *Raspoutny v. Decker*, 708 F. Supp. 3d 371, 384 (S.D.N.Y. 2023). In *Raspoutny*, the court ordered a new bond hearing in light of the “indefinite suspension of deportations to Ukraine” and the resulting “potential indefiniteness of Raspoutny’s detention even after his removal proceedings are complete.” *Id.* at 385.

23. Thus there is no significant likelihood that Mr. Serbenyuk’s removal to Ukraine is reasonably foreseeable.

### Ground for Relief

**Mr. Serbenyuk’s detention in immigration custody violates the Due Process Clause of the Fifth Amendment because there is no significant likelihood that he will be removed to Ukraine in the reasonably foreseeable future.**

24. Mr. Serbenyuk fled Ukraine, a war-torn country, because he feared persecution there based on his Pentecostal Christian religion and his pacifist political opinion.
25. Mr. Serbenyuk was taken into custody upon arrival at a port of entry at or near Tijuana, Baja California, Mexico, on November 27, 2024. He has been detained by immigration officials ever since. Following a negative credible fear determination by an immigration officer, he is pending removal to Ukraine, a war-torn country to which it is not likely that he can be removed in the foreseeable future.
26. The Due Process Clause of the Fifth Amendment limits an alien’s “detention to a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Because of this constitutional limitation, 8 U.S.C. § 1231 “does not permit indefinite detention.” *Id.*
27. If the alien “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.* at 701.
28. Mr. Serbenyuk has been detained by immigration officials for over six months. It is thus presumed that his detention is indefinite and thus violates the Due Process Clause of the



1 Fifth Amendment. *Zadvydas*, 533 U.S. at 701. Because of the war between Ukraine and  
2 Russia, the government cannot rebut this presumption. This Court accordingly should  
3 order Mr. Serbenyuk released from immigration detention, subject to appropriate  
4 conditions.

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**Prayer for Relief**

29. Mr. Serbenyuk is being illegally detained, in violation of the Due Process Clause of the  
Fifth Amendment. He respectfully asks the Court to:
- a. order the government to answer this petition;
  - b. permit him to file a reply in support;
  - c. allow him to conduct discovery in order to support his claim for relief;
  - d. convene an evidentiary hearing, if needed to resolve disputed facts;
  - e. order Respondents to release him from their custody under supervision; and
  - f. grant any other relief that is just and practicable.

Respectfully submitted:

June 13, 2025.

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