

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DMITRII TROPSKII,	:	
	:	
<i>Petitioner,</i>	:	
	:	
v.	:	CIVIL NO. 25-3226
	:	
PAMELA BONDI, et al	:	
	:	
<i>Respondents.</i>	:	

ORDER

AND NOW, this ___ day of _____, 2025, upon consideration of Respondents' Opposition to Petition for Writ of Habeas Corpus, it is ORDERED that the Petitioner's request for immediate release is Denied. It is FURTHER ORDERED that the Petitioner's request for injunctive relief is also denied.

BY THE COURT:

HONORABLE KAI N. SCOTT
Judge, United States District Court

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RESPONDENTS OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner Dmitrii Tropski (“Tropskii”) demands his release from custody while the Fifth Circuit Court of Appeals considers his Petition for Review (“PFR”). As a threshold matter, the Court has no power to release Tropskii immediately – it may only order an immigration judge to hold a bond hearing if the Court finds further detention unreasonable. Furthermore, there is no reason to order a bond hearing because Tropskii’s detention is reasonable under his particular circumstances. Tropskii fails to provide particular reasons to support this argument, but instead states his case with appeals to vague language about how the Government should not indefinitely detain him. The factors courts examine to determine whether a habeas petition should be granted either favor the government or are neutral. The reasons for the length of Tropskii’s detention do not involve the

Government's lack of diligence and the his detention conditions differ significantly from those of convicted criminals. The Government stands ready to remove, but is prevented from doing so by the Fifth Circuit's order staying removal while it considers Tropskii's PFR. Immigration and Customs Enforcement ("ICE") did provide Tropskii a hearing in January at which Tropskii failed to establish that he was not a flight risk. ICE has not sought to "indefinitely detain" Tropskii, but has instead held him in custody awaiting the circuit court to decide the PFR he filed. Accordingly, Tropskii's continued detention is reasonable under the circumstances and his Petition should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Removal Proceedings and Appeal to the Board of Immigration Appeals

On November 30, 2023, the Department of Homeland Security issued a Notice to Appear ("NTA"). ICE served the NTA on Tropskii on January 8, 2024. *See* Exhibit A. Oral Decision of the Immigration Judge dated May 20, 2024). On January 30, 2024, Tropskii appeared before an immigration judge ("IJ") in Louisiana and admitted the factual allegations found in the Notice to Appear. Consequently, the IJ sustained the charge of removability by clear and convincing evidence. Ex. A.

In order to avoid removal, Tropskii sought asylum, withholding of removal, and protection under the Convention against Torture (CAT), claiming that he would be harmed if removed to Russia. Ex. A at 2. The IJ denied Tropskii's application for asylum, withholding of removal, and protection under CAT. *Id.* at 15. The IJ ordered Tropskii removed from the United States to Armenia. *Id.*

Tropskii appealed the IJ's decision to the Board of Immigration Appeals (BIA). On September 26, 2024, the BIA sustained the IJ's decision. *See* Exhibit B, Decision of Board of Immigration Appeals dated Sept. 26, 2024. The BIA determined that the IJ's factual findings were not clearly erroneous and that Tropskii should be removed. *Id.*

B. Tropskii's Detention

Tropskii has been detained under for approximately 22 months. This comprises the time during which his removal was being adjudicated and during which his BIA appeal was pending. Since the BIA sustained his removal, Tropskii has remained in detention while his PFR is considered by the Fifth Circuit.

On February 6, 2025, the Department of Justice, Bureau of Prisons (BOP) and ICE entered into an interagency agreement under which immigration detainees would be housed at certain BOP facilities across the United States, including the Federal Detention Center in Philadelphia (FDC Philadelphia). Declaration of Brian Cavallaro ¶ 5, attached hereto as Exhibit C.

Tropskii was transferred to FDC Philadelphia from Pike Country Correctional Facility on or about February 13, 2025. *Id.* ¶ 13. FDC Philadelphia currently houses approximately 1,100 individuals. *Id.* ¶ 4. The majority of these are federal criminal pretrial detainees. *See id.* FDC Philadelphia is currently equipped to hold up to 126 immigration detainees. *Id.* . These individuals are all housed in a single unit within FDC Philadelphia: 3 North. *Id.* ¶ 6. None of the immigration detainees are housed with criminal pretrial detainees or inmates and the immigration detainees are entirely segregated from other detainees. *Id.*

The unit that houses immigration detainees has an outdoor space, computer terminals, televisions, exercise equipment, and public phones. *Id.* ¶¶ 7-8. The outdoor

space includes a basketball court. *Id.* ¶ 8. Between 6:30 a.m. and 9:30 p.m., immigration detainees at FDC Philadelphia are generally able to move freely around the unit, including on the outdoor space and basketball court. *Id.* The computer terminals allow detainees to email with family members or counsel. *Id.* In addition to the public phones, detainees also have access to free calls to counsel on unmonitored phone lines as well as a contact line to ICE for purposes of questions, complaints, language assistance, or requests to contact their respective consulates. *Id.* at ¶ 9.

Immigration detainees at FDC Philadelphia are each assigned to two-bunk rooms. *Id.* ¶ 9. Typically, each immigration detainee also has a roommate. *Id.* While at FDC Philadelphia, Tropskii has been housed with another detainee. *Id.* Since immigration detainees have been housed at FDC Philadelphia, BOP staff have endeavored to foster frequent communication with the immigration detainees to ascertain what changes, if any, the facility can make to better accommodate them. *Id.* ¶ 10. One early example of this process in action is BOP's agreement to purchase and supply immigration detainees with rubber slippers (generic brand "Crocs"), which they can use both during the day while walking around the unit and for showering. *Id.* at ¶ 10. This is a privilege not afforded to other FDC Philadelphia detainees. *Id.* ¶ 11.

C. Procedural History

On June 24, 2025, Tropskii filed his Petition for Writ of Habeas Corpus (ECF No. 1) along with a Motion for Order to Show Cause and Preliminary Injunction and Temporary Restraining Order (ECF No. 1). On July 18, the Court extended Defendants' Response date until July 28, 2025.

III. LEGAL STANDARD

The habeas petitioner has the burden to demonstrate that his custody violates the United States Constitution, laws, or treaties. *See, e.g., Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). Where, as here, the Supreme Court has found the statute at issue facially constitutional, *see Demore v. Kim*, 538 U.S. 510, 513-14 (2003), a petitioner must make a strong showing to demonstrate that the law is unconstitutional as applied to him, *see United States v. Five Gambling Devices*, 346 U.S. 441, 449 (1953) (“This Court does and should accord a strong presumption of constitutionality to Acts of Congress. This is not a mere polite gesture. It is a deference due to deliberate judgment by constitutional majorities of the two Houses of Congress that an Act is within their delegated power or is necessary and proper to execution of that power.”); *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 402 F. Supp. 251, 254 (E.D. Pa. 1975) (“[D]efendants here carry a heavy burden, for a strong presumption of validity attaches to an Act of Congress.”).

Tropskii has also moved for a preliminary injunction. “An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). Instead, injunctions “may only be awarded upon a clear showing that the [movant] is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The movant must establish that (1) “he is likely to succeed on the merits” of his claim; (2) “he is likely to suffer irreparable harm in the absence of preliminary relief”; (3) “the balance of equities tips in his favor”; and (4) an injunction is in the public interest. *Id.* at 20. The last two factors “merge when”—like here—“the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Crucially, on a motion for preliminary injunction, “[t]he movant[] must establish entitlement to relief by clear evidence.” *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 526 (3d Cir. 2018) (citing *Winter*, 555 U.S. at 22); see also *Del. State Sportsmen’s Ass’n, Inc. v. Del. Dep’t of Safety & Homeland Sec.*, 108 F.4th 194, 202 (3d Cir. 2024) (“Because ‘a preliminary injunction is an extraordinary and drastic remedy,’ the movant bears the burden of making ‘a clear showing.’” (citation omitted)). “The failure to establish any element renders a preliminary injunction inappropriate.” *Ferring Pharms, Inc. v. Watson Pharms., Inc.*, 765 F.3d 205, 210 (3d Cir. 2014) (cleaned up). If injunctive relief is ultimately awarded, its terms must be “no broader than necessary to provide full relief to the aggrieved [movant].” *Benezet Consulting LLC v. Sec’y Commonwealth of Pennsylvania*, 26 F.4th 580, 584 (3d Cir. 2022).

IV. ARGUMENT

A. Tropiskii Is Not Entitled to a Bond Hearing

The Supreme Court has long recognized that the detention of noncitizens pending their removal is constitutional. See, e.g., *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid.”).¹ In *Demore*, the Supreme Court specifically rejected a facial challenge to 8 U.S.C. § 1226(c)—the statute at issue here—which mandates detaining

¹ See also *Demore*, 538 U.S. at 523 (“this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process”); *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of th[e] deportation procedure.”).

certain criminal noncitizens pending their removal proceedings without an opportunity for release on bond. *See* 538 U.S. at 529-31. There, the Court observed that § 1226(c) is predicated on Congress’s concern that certain “deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers”—which is why Congress mandated their categorical detention without bond. *Id.* at 513. And as the Court explained, that categorical judgment is constitutional. *Id.*; *see also Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 473 (3d Cir. 2015) (“The Supreme Court left no doubt that the Government’s authority under section 1226(c) to detain aliens without an opportunity for bond complies with the Constitution.” (citing *Demore*, 538 U.S. at 531)).

That said, the Third Circuit has held that noncitizens detained under § 1226(c) can still bring as-applied challenges to obtain a bond hearing if their detention has become “unreasonable.” *German Santos*, 965 F.3d at 209-11.² Such a challenge requires assessing the reasonableness of the noncitizen’s detention, which is a “highly fact-specific inquiry.” *German Santos*, 965 F.3d at 210 (cleaned up). There are no “bright-line threshold[s]” for when detention becomes unreasonable, nor is there “a presumption of reasonableness or unreasonableness of any duration.” *Id.* at 211. Instead, reasonableness is determined based on all relevant circumstances, including four “nonexhaustive” factors: (1) the duration of the detention; (2) whether the detention is likely to continue; (3) the reasons for any delay in the underlying removal

² *But see Banyee v. Garland*, 115 F.4th 928, 932-33 & n.3 (8th Cir. 2024) (disagreeing with *German Santos* and holding that a noncitizen may be detained “for as long as deportation proceedings are still ‘pending’”); *Wekesa v. U.S. Att’y*, No. 22-10260, 2022 WL 17175818 (5th Cir. Nov. 22, 2022) (similar), *cert. denied*, 143 S. Ct. 2666 (2023).

proceedings; and (4) whether the conditions of the detention are “meaningfully different” from criminal punishment. *Id.* at 211.

Here, the circumstances and *German Santos* factors establish that Tropkii’s claim fails. As explained below, of the four *German Santos* factors, two favor the Government (conditions of confinement, and reason for delay) and two are currently neutral (length of detention and the likelihood of continued detention). No other circumstances render Tropkii’s detention unreasonable either. Therefore, his continued detention does not violate due process and his Petition should be denied.

1. The Length of Tropkii’s Detention Is Not Unreasonable.

Tropkii has been detained under § 1226(c) since September 2023—approximately 22 months. As the Third Circuit explained in *German Santos*, there is no “bright-line threshold” or “presumption of reasonableness or unreasonableness *of any duration.*” 965 F.3d at 210-11 (emphasis added). Petitioner is incorrect that the Third Circuit has held that detention exceeding a “six-month to one-year timeframe” is unreasonable.. Pet. ¶ 36; *see also id.* ¶ 29.

The *German Santos* analysis requires a fact-specific assessment of whether the length of detention has become unreasonable. *Id.* at 210. However, Tropkii has not articulated any specific reason why the length of his detention has reached that point. He merely cites decisions from other cases and points to the length of detention found unreasonable there. *See, e.g.*, Pet. ¶¶ 29, 36. Given the fact-specific nature of the analysis, however, courts have logically reached different conclusions about what length of detention qualifies as unreasonable. And many courts have held that detention periods similar to, or longer than Tropkii’s detention are reasonable.

For example, several months ago a district court in this Circuit held that a noncitizen's detention of "approximately 18 months" under § 1226(c) did "not weigh in favor of relief." *Appiah v. Lowe*, No. 24-cv-2222, 2025 WL 510974, at *4 (M.D. Pa. Feb. 14, 2025); *see also Hernandez v. Wolf*, 2021 WL 460463 at *3-4 (D.N.J. February 5, 2021 (detention remained reasonable even after twenty (20) months because alien presented risk to the community). Detention of 18 months was likewise deemed reasonable in *Crooks v. Lowe*, No. 18-cv-47, 2018 WL 6649945, at *2 (M.D. Pa. Dec. 19, 2018). Similarly, multiple courts have held 15 months of detention under § 1226(c) to be reasonable. *See, e.g., Fernandez v. Lowe*, No. 17-cv-2301, 2018 WL 3584697, at *4-5 (M.D. Pa. July 26, 2018);³ *Coello-Udiel v. Doll*, No. 17-cv-1414, 2018 WL 2198720, at *3 (M.D. Pa. May 14, 2018). And similar decisions abound involving comparable lengths of detention.⁴

Tropskii has not articulated any specific reason why the length of his detention has become unreasonable. And to the extent that decisions in other cases provide a benchmark, they show that Tropskii's length of detention still falls within the bounds of

³ *But see Tuser v. Rodriguez*, 370 F.supp.3d (D.N.J. 2019) (detention of twenty one months considered unreasonable). It should be noted, however, that in *Tuser* the Government delayed adjudication for months through requests for multiple continuances.

⁴ *See, e.g., White v. Lowe*, No. 23-cv-1045, 2023 WL 6305790, at *2 (M.D. Pa. September 27, 2023) (detention of "approximately 15 months" under § 1226(c) held reasonable), *abrogated by White v. Warden Pike Cnty. Corr. Facility*, No. 23-2872, 2024 WL 4164269 (3d Cir. Sept. 12, 2024) (reversing because length of detention had reached 25 months by time of appeal); *Smith v. Garland*, 600 F. Supp. 3d 273, 278 (W.D.N.Y. 2022) (detention of "over seventeen months" under § 1226(c) held reasonable); *Espinosa-Almonte v. Sabol*, No. 12-cv-2514, 2013 WL 3894861, at *10 (M.D. Pa. July 26, 2013) (detention of 21 months under § 1226(c) was not "unduly prolonged" or "excessive" given noncitizen's multiple requests for continuances in underlying removal proceeding).

reasonableness. The Petitioner has not carried his burden of showing that his continued detention would be unreasonable under the circumstances.

2. Tropkii's Detention Under § 1226(c) May End Soon

Tropkii's continued detention will depend significantly on the actions of the Fifth Circuit, which has decided to review the decisions of the immigration court and Board of Immigration Appeals. Tropkii's removal order may soon become final. At that point, Tropkii's detention would no longer be under § 1226(c) but would instead be governed by 8 U.S.C. § 1231. Section 1231 would provide independent authority for Tropkii's continued detention, and it further specifies a timeline for Tropkii's removal and any potential release from custody.

Under § 1231(a), the Secretary of Homeland Security⁵ is required to remove a noncitizen within the "removal period," which initially lasts for 90 days and begins when the removal order becomes administratively final. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527-29 (2021) (summarizing the removal process under § 1231). Tropkii concedes he is removable. Ex. A at 2. The Fifth Circuit is currently entertaining Tropkii's PFR, which asserts that the IJ decided wrongly in favor of his removal as ineligible for asylum or withholding of removal under CAT. The Fifth Circuit made the decision to review and stay removal in January 2025, nearly six months ago. The IJ previously decided the CAT issue in an oral decision on the day of the hearing. *See Ex. A.*

⁵ The statute reads "Attorney General," but Congress transferred responsibility for enforcing the Immigration and Nationality Act to the Secretary in 2002. *See Nielsen v. Preap*, 586 U.S. 392, 398 n.2 (2019) ("We replace 'Attorney General' with 'Secretary' because Congress has empowered the Secretary to enforce the Immigration and Nationality Act." (citations omitted)).

If the Fifth Circuit does not grant Tropkii the relief he seeks in the PFR, his removal becomes final 30 days later. *See* 8 C.F.R. § 1241(c).

Tropkii's detention would then shift to § 1231, which would be authorized for as long as "reasonably necessary to bring about [his] removal from the United States"—which is "presumptively six months." *Johnson*, 594 U.S. at 529 (citing *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001)). "After that point, if the alien 'provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,' the Government must either rebut that showing or release the alien." *Id.* (quoting *Zadvydas*, 533 U.S. at 701). And once the basis for Tropkii's detention shifts to § 1231, this habeas proceeding would become moot. *See, e.g., Ufele v. Holder*, 473 F. App'x 144, 146 (3d Cir. 2012) (holding that habeas challenge to noncitizen's detention under § 1226(c) was rendered moot when "the BIA's order became administratively final and [his] detention switched from § 1226 to § 1231"); *Rodney v. Mukasey*, 340 F. App'x 761, 764-65 (3d Cir. 2009) (same).⁶ If the Fifth Circuit denies relief Tropkii seeks in his PFR, then the removal period under to § 1231 would commence and ICE could remove Tropkii. Therefore, the likelihood and extent of Tropkii's continued detention under turns significantly on the Fifth Circuit's forthcoming decision decision. The second *German Santos* factor is thus currently unclear.

⁶ *See also, e.g., Maldonado-Velasquez v. Moniz*, No. 17-1918, 2018 WL 11444979, at *1 (1st Cir. Mar. 22, 2018) (same); *De La Teja v. United States*, 321 F.3d 1357, 1363 (11th Cir. 2003) (same); *Byfield v. Ashcroft*, 74 F. App'x 411 (5th Cir. 2003) (same); *Kevin A. M. v. Warden, Essex Cnty. Corr. Facility*, No. 21-cv-11212, 2021 WL 4772130, at *1 (D.N.J. Oct. 12, 2021) (same); *Alex B. K. K. v. Russo*, No. 21-cv-9187, 2021 WL 4704971, at *1 (D.N.J. Oct. 8, 2021) (same); *Bah v. Doll*, No. 20-cv-1374, 2020 WL 7241327, at *2 (M.D. Pa. Dec. 9, 2020) (same).

3. The Reasons for Any Delay in Tropkii's Removal Proceedings Do Not Render His Detention Unreasonable.

The Government has not intentionally delayed or unreasonably prolonged Tropkii's removal proceedings but has acted promptly throughout the process. It secured Tropkii's removal order from the IJ without delay. The Government then timely responded to Tropkii's appeal to the BIA. Ex. B. Both Tropkii's decision to file the PFR and the Fifth Circuit's decision to hear the appeal and stay removal cannot be attributed to the Government as delay. Delays are often inevitable in immigration proceedings—which is why, “[a]bsent carelessness or bad faith,” courts generally do not hold them against the parties. *German Santos*, 965 F.3d at 212. Any delay since the BIA's denial of Tropkii's appeal cannot be fairly attributed to the government, even if the 5th Circuit's timeline is beyond Tropkii's control as well. So the third *German Santos* factor favors the Government and thus does not support the conclusion that Tropkii's detention has become unreasonable.

4. Tropkii's Conditions of Confinement Are Materially Different from Criminal Punishment

The conditions of Tropkii's confinement at FDC Philadelphia are no different than those of most noncitizens detained pending removal. As detailed below, those conditions are materially distinguishable from criminal punishment. The fourth factor thus favors the Government.

As a threshold matter, FDC Philadelphia does not generally house convicted prisoners but rather primarily houses federal pretrial detainees. Ex. C at ¶ 4. Indeed, the immigration detainees at FDC Philadelphia are housed in a separate unit—“3-North”—and are entirely segregated from the criminal detainees at all times. *Id.* at ¶ 6. That strict segregation distinguishes Tropkii's conditions of confinement from the conditions at

issue in *German Santos* (where the noncitizen was “detained in prison alongside convicted criminals,” 965 F.3d at 212-13), and *Chavez-Alvarez* (where the noncitizen was “held in detention at the York County Prison with those serving terms of imprisonment as a penalty for their crimes,” 783 F.3d at 748). See *Yefri A. C. M. v. Tsoukaris*, No. 20-cv-13340, 2021 WL 457892, at *2 (D.N.J. Feb. 9, 2021) (noncitizen’s detention “in a special unit within a county jail separate and apart from convicted prisoners and pre-trial detainees” was “meaningfully different from detention within a state prison such as that which was at issue in *Santos*”).

The conditions of confinement in 3-North are also not punitive. Immigration detainees can move freely around the unit between 6:30 a.m. and 9:30 p.m. Ex. C at ¶ 7. That freedom further distinguishes Tropskii’s detention from the detention of the noncitizen in *German Santos*, who was “confined to his cell for twenty-three hours per day.” 965 F.3d at 213. Immigration detainees also have access to a common area with seating, tables, and televisions for entertainment, as well as an outdoor space with a basketball court. *Id.* at ¶ 8. The unit is further equipped with exercise equipment and computer terminals with email access. *Id.* Immigration detainees further have access to public phones, non-monitored calls to communicate with counsel, and a hotline for ICE-related inquiries. *Id.* These conditions are more accommodating than in criminal detention facilities. See *Sydykov v. ICE*, 2021 WL 2222732, at *4 (M.D. Pa. June 2, 2021) (noncitizen’s detention was “meaningfully different from criminal confinement” because he was “free to move about his unit for the majority of the day, where he is given access to television, books, and recreation activities” and had “largely unfettered access to telephones during the free movement periods”).

In terms of housing, all immigration detainees at FDC Philadelphia are assigned to two bunk rooms and most detainees thus have a roommate. *Id.* at ¶ 9. As noted above, immigration detainees at FDC Philadelphia are free to move about the unit for most of the day. *Id.* ¶ 8. And the rooms are not “one-person cells”; they accommodate two people. *Id.* ¶ 9.

Since ICE began housing immigration detainees at FDC Philadelphia in February 2025, the staff at FDC Philadelphia have also actively solicited feedback from the detainees to improve their day-to-day. *Id.* at ¶ 10. Based on that feedback, FDC Philadelphia now supplies immigration detainees with rubber slippers (a privilege not provided to criminal detainees) that are suitable for daily use as well as while showering. *Id.* ¶ 11. This level of engagement provides yet another distinction between Tropkii’s conditions of confinement at FDC Philadelphia and the conditions typically found in criminal detention settings.

“Loss of freedom of choice and privacy are inherent incidents of confinement.” *Bell v. Wolfish*, 441 U.S. 520, 537 (1979). But “the fact that . . . detention interferes with [a] detainee’s understandable desire to live as comfortably as possible and with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into ‘punishment.’” *Id.* While Tropkii’s detention necessarily restricts his freedom, the conditions of his confinement are materially different from those associated with criminal punishment. This final *German Santos* factor thus favors the Government.⁷

⁷ *But see Grigoryan v. Jamison*, 2025 WL 125793 at *3-4 (E.D.Pa. April 30, 2025) (Judge Pappert) (ordering a bond hearing for alien detained 17 months with significant medical complaints).

5. No Other Circumstances Render Tropskii's Detention Unreasonable

Tropskii's detention involves no other circumstances that render his detention unreasonable. Tropskii does not mention health problems in his Petition, but does complain that his medical care has been inadequate in Exhibit E attached to his Petition. However, his medical records show that during the entire period of his detention, Tropskii has consistently had regular access to medical and mental health treatment, along with access to a variety of medications. Decl. ¶¶ 15-19. Tropskii has received treatment for pneumonia, stomach ulcers, cold sores, headaches and sleep difficulty while in ICE custody. *Id.*; See also Petition Ex. D at pages 61-63. In each case, an advanced medical provider visited Tropskii within a reasonable number of days of his request. *Id.*

The record establishes that Tropskii's s detention under § 1226(c) remains reasonable. Therefore, Tropskii is not entitled to a bond hearing at this time and his habeas petition should be denied with leave to refile.

B. Tropskii's Request for A Preliminary Injunction Directing His Release from Custody Should Be Denied

Tropskii's motion for a preliminary injunction—in which he asks this Court to order his immediate release—should also be denied. As discussed above, Tropskii's claim for relief fails as a matter of law, which means it cannot support a preliminary injunction. Tropskii's motion for injunctive relief falters for independent reasons as explained below.

1. This Court Cannot Order Tropskii's Immediate Release.

Tropskii's request for injunctive relief asks this Court to order his immediate release from custody. *See* ECF No. 1 at 13. But that remedy is not available here. The

Immigration and Nationality Act instructs that “[n]o court may set aside any action or decision by the [Secretary of Homeland Security] under this section regarding the detention of any alien or the revocation or denial of bond or parole.” 8 U.S.C. § 1226(e). Consistent with that unambiguous language, courts in this Circuit have repeatedly held that they lack the authority to order the release of a noncitizen subject to mandatory detention. *See, e.g., Saint Jacques*, 2021 WL 4494623, at *2 (“the Court notes that it cannot grant Saint Jacques’ requested relief of immediate release from custody”); *Nyamekye*, 2023 WL 9271844, at *2 (same). Rather, “[t]he only remedy for an alien challenging their mandatory detention is a bond hearing.” *Davis v. Warden of Pike Cnty. Corr. Facility*, 2022 WL 4391686, at *4 (M.D. Pa. Aug. 18, 2022), *R&R adopted*, 2022 WL 4389543 (M.D. Pa. Sept. 22, 2022).

2. **Tropskii does not establish his case for Injunctive Relief.**

Although Tropskii requests immediate injunctive relief, he does not address why he needs such a drastic remedy. The Third Circuit has recognized that immediate release can be granted in “exceptional circumstances” due to extreme medical emergencies. *See e.g. Landano v. Rafferty*, 970 F.2d 1230 (3d Cir. 1992). But *Landano* involved a prisoner, not immigration detainees—and the logic does not extend to the immigration context given § 1226(e)’s prohibition on judicial review.

Even if *Landano* did apply, Tropskii has not established that exceptional circumstances exist necessitating his immediate release. As the Third Circuit explained in *Landano*, “a preliminary grant of bail is an exceptional form of relief in a habeas proceeding”—which is why “[v]ery few cases have presented [the] extraordinary circumstances” required to warrant that relief. 970 F.2d at 1239. Although medical problems can qualify, *see id.*, they must be of an “immediate and impending

catastrophic” nature, *Singleton v. Piazza*, 2006 WL 2520581, at *2 (E.D. Pa. Aug. 25, 2006). Tropskii’s general complaints about his medical care do not satisfy that demanding standard. As detailed above and found in Tropskii’s own Exhibit D, he has consistently received appropriate medical care during his detention under § 1226(c). FDC Philadelphia has particularly provided him timely care during his detention there. See Ex. C at ¶¶15-19; Petition Ex. E.

Tropskii thus has not established that there are “immediate and impending catastrophic” medical concerns here that warrant immediate relief. *Singleton*, 2006 WL 2520581, at *2. Nor has he explained why they would justify his *immediate release* (as opposed to medical treatment). See *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 333 (3d Cir. 2020) (district court erred by issuing injunction ordering noncitizens’ immediate release without considering whether “anything short of immediate release can[] remedy their plight”); *Singleton*, 2006 WL 2520581, at *3.

3. The Public Interest Weighs Against Injunctive Relief.

Finally, the public interest does not support injunctive relief here. As the Third Circuit has observed, § 1226(c) serves “an important public interest” by ensuring that noncitizens who pose a flight risk or danger to the public are kept off the street pending the outcome of their removal proceedings. *Sylvain v. Att’y Gen. of U.S.*, 714 F.3d 150, 159 (3d Cir. 2013).

Tropskii’s immediate release would be inconsistent with that public interest. Indeed, ICE reviewed Tropskii’s continued detention under § 1226(c) on January 31, 2025, and determined that, based on his lack of ties to the community, that he failed to establish that he did not pose a flight risk. See Decision to Continue Detention attached as Exhibit D. And the fact that Tropskii has conceded that he is removable means that

he is an increased flight risk. As the Supreme Court has observed, “[a]liens who have not been ordered removed are less likely to abscond because they have a chance of being found admissible.” *Johnson*, 594 U.S. at 544. Conversely, a noncitizen “who has already been ordered removed has less to lose by fleeing while released on bond.” *Coello-Udiel*, 2018 WL 2198720, at *4. Because Tropskii’s removability will not be affected by any further proceedings, his incentive to abscond is at its peak.

CONCLUSION

The record establishes that Tropskii’s detention remains reasonable. Therefore, he is not entitled to a bond hearing at this time. Nor has Tropskii established that the extraordinary remedy of his immediate release is available or appropriate here. His habeas petition and motion for preliminary injunction should thus be denied.

Respectfully submitted,

DAVID METCALF
United States Attorney

/s/ Gregory B. David
GREGORY B. DAVID
Assistant United States Attorney
Chief, Civil Division

/s/ Colin M. Cherico
Colin M. Cherico
Assistant United States Attorney
U.S. Attorney’s Office
Eastern District of Pennsylvania
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Philadelphia, PA 19106
Phone: (215) 861-8788
Email: Colin.Cherico@usdoj.gov

Dated: July 28, 2025

CERTIFICATE OF SERVICE

I certify that on this date, I caused a copy of the foregoing Motion for Extension of Time to Respond to Petition for Writ of Habeas Corpus to be filed with the Clerk of Court via electronic court filing (ECF) and to be served on the following *pro se* plaintiff by certified U.S. Postal Service mail:

Dmitrii Tropskii
A# [REDACTED]
Reg [REDACTED]
Federal Detention Center – Philadelphia
700 Arch Street
Philadelphia, PA 19106

Dated: July 28, 2025

/s/ Colin M. Cherico
Colin M. Cherico
Assistant United States Attorney

EXHIBIT

A

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
WINNFIELD, LOUISIANA

File: 

May 20, 2024

In the Matter of

DMITRII TROPSKII
RESPONDENT

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGES: INA § 212(a)(7)(A)(i)(I)

APPLICATIONS: Asylum, Withholding of Removal under the Act, and protection under the Convention Against Torture.

ON BEHALF OF RESPONDENT: KEITH MIKESELL, ESQUIRE

ON BEHALF OF DHS: ISAKA WILBURN, ASSISTANT CHIEF COUNSEL

ORAL DECISION OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

The Respondent is a 47-year-old man, native and citizen of Russia who applied for admission at the San Ysidro, California, Port of Entry on September 7, 2023. The Department of Homeland Security initiated these proceedings when it filed a Notice to Appear on January 11, 2024, which was issued by the Department on November 30, 2023. It was served on the Respondent on January 8, 2024, in person. He signed for it. At a prior hearing, the Court took pleadings on January 30, 2024. Through those

pleadings the Respondent admitted all of the factual allegations, one through four, and based on those concessions to the allegations, the Court then sustained the charge of removability pursuant to INA § 212(a)(7)(A)(i)(I) by clear and convincing evidence.

As relief from removal, the Respondent directed Armenia, and then the Department of Homeland Security then suggested Russia in the alternative. The Court then placed Armenia as the country for removal in the event removal becomes necessary, with an alternate to Russia in the event Armenia does not accept the Respondent. As relief from removal, the Respondent first filed his I-589 Application on February 7, 2024, with two other updated I-589 Applications, with the final I-589 Application being updated and sworn to, the April 22, 2024, 589 Application. See Exhibit 9.

After thoughtful and careful consideration of the Respondent's testimony and evidence of the record, the Court enters this decision denying the Respondent's request for asylum, withholding of removal under the Act, and protection under the Convention Against Torture.

II. EVIDENCE

Pursuant to 8 C.F.R. § 1240.1(b), the Court has familiarized itself with the record of proceedings. The Court has considered all documentary evidence submitted, testimony of the witness, and arguments of the parties, even if not specifically referenced in this decision. The evidentiary record consists of Exhibits 1 through 10. All documents have been marked and admitted into evidence without objection. Additionally, the Court received the testimony of the following witness: Respondent.

III. JUDICIAL COMPETENCY INQUIRY

At the onset, the Department of Homeland Security, as the Court was asking if there were any additional issues prior to testimony, the Department of Homeland



Security stated that they had noticed in the Respondent's credible fear review, which was a part of Exhibit 1, that the Respondent was taking an antidepressant pill daily. The Court notes that this is indicia of a potential mental incompetency, and the Court then went on to question the Respondent regarding competency. As the record will reflect, the Court asked numerous questions, if the Respondent knew what state he was in, what country he was in, if he had family in the United States, when he was diagnosed with depression, the role of the Immigration Judge, the role of his attorney. He understood what the definition of evidence in his own words was. He declined having suicidal ideations. He was never hospitalized for depression. And the Court notes that he stated he was first diagnosed with depression in July 2023, and was currently taking Venlafaxine since July 2023, which is a prescription that he is taking one pill daily. Respondent stated that he was also diagnosed with insomnia and has never been hospitalized for depression. Based on the Respondent's responsiveness to the questions by the Court, the Court found that the Respondent was competent in these proceedings and that the Respondent's responses were rational, the Respondent has a factual understanding of the issues before the Court, and the object of the proceedings, as well as the roles of the individuals participating in the proceedings, and the Court finds that the Respondent is able to meaningfully participate and understands and is cognizant of the role of immigration removal proceedings.

IV. STATEMENT OF LAW

An addendum stating the standards of law and burdens of proof relevant to issues will be served on the parties and a copy placed in the record of proceedings. That addendum is hereby incorporated into this decision by reference.

V. ANALYSIS/CONCLUSIONS OF LAW

1. Credibility and Corroboration



As a threshold matter, the Court must make a determination of the Respondent's credibility and credibility of any and all witnesses. Under the REAL ID Act, the Court finds the Respondent credible. Overall, the Respondent's testimony was largely consistent with his application, supporting documents, and other evidence of the record. The Respondent's testimony was plausible, candid, and responsive. Nothing in his demeanor suggested an attempt to mislead the Court. Although the Court finds the Respondent credible, the Respondent must still establish that he has met his burden of proof to be granted relief.

2. Asylum

After reviewing the Respondent's Application for Asylum and evidence of the record, the Court denies the Respondent's application.

An asylum applicant must show by clear and convincing evidence that the application's been filed within 1 year after his or her arrival in the United States. See INA § 208(a)(2)(B). The Respondent arrived in the United States on September 7, 2023, as an arriving alien. See Exhibit 1, Notice to Appear. The Respondent then filed his I-589 February 7, 2024. This was within the Respondent having arrived in the United States. Thus, it is timely. The Court notes that the Respondent entered the United States between May 11, 2023, and May 11, 2025 [sic]. However, the Court also notes that this presumption of the Circumvention of Lawful Pathway rules does not apply to the Respondent in that he presented at a port of entry with a prescheduled time and place. See Exhibit 5, page 13 of 32, noting that in the email from the CPB One scheduler, it states at the port of entry the Respondent was to present himself at is the San Ysidro Pedestrian West on September 7, 2023, at 0700. Thus, the presumption does not apply to the Respondent and he is not ineligible to seek asylum pursuant to the Circumvention of Lawful Pathways rule. However, the Respondent has failed to



meet his burden regarding the other elements for asylum and the Court must deny the Respondent's request for asylum.

The evidence in this case is cumulatively insufficient to establish harm rising to the level of persecution. The Respondent stated that he's never been physically harmed in Russia. The Court notes in the Respondent's testimony that he had first began to have issues with authorities in 2011, when he went to Moscow to attend an anti-government rally that was organized by an opposition group and it was regarding the falsifications during the elections. It was a very large rally, over 100,00 people had attended. The Respondent was not threatened or harmed on this day, and that the protests were peaceful and they were legal. However, since 2011, the Respondent has since been against the Russian Government and has expressed it in various forms.

Respondent stated that he was a volunteer at the Alexei Navalny headquarters. He volunteered, meaning he distributed leaflets and propaganda stickers throughout the city. He volunteered from October 2017 to March of 2018, and then stopped volunteering. In March 2018, the Navalny headquarters in Sochi were closed after the elections. Respondent stated the Russian authorities did this as Navalny was not registered as a presidential candidate and that Alexei Navalny has since now died and died in a prison in Russia due to the political opposition and activities. The Court notes that Alexei Navalny is a high-profile political opposition leader, or was a high-profile political opposition leader, in Russia.

Respondent stated that he had attended over 10 rallies from 2011 to 2023, and he stated that he was threatened by police officers on March 4, 2022. Respondent was arrested on March 4, 2022, after he was demonstrating in a solitary picket or solitary protest, meaning he was one individual that was protesting and had a sign that said no to war, regarding the Russian invasion in Ukraine. Three police officers approached the



Respondent. Though not in uniform, they showed the Respondent their police identification and then took away the Respondent's poster and his cell phone and arrested him. The Respondent was then taken to the police station where he was detained for 5 days and was subsequently convicted by a court for the illegal activities that he had done, meaning holding a sign against the war in Ukraine and against the aggression of the Russian military against Ukraine, wherein it stated no to war. And the police also wanted access to his cell phone. The police did not gain access to his cell phone, as the Respondent refused to cooperate, but was nonetheless convicted and then released after the 5 days. He was not physically harmed during this period while he was detained by the police, but was threatened, and the authorities, of which the Respondent was convicted, the authorities reported that the Respondent had encouraged people to join him and encouraged various illegal activities, that nothing was said when the Respondent was released 5 days after being detained on March 4, 2022.

After this time, the police officers then visited the Respondent several times and gave the Respondent warnings. They would also call the Respondent's cell phone and then visit the Respondent at his location. They then gave the Respondent a document memorializing the warnings about the police had data that the Respondent had been preparing unauthorized public activities, though the Respondent stated he was not planning anything. The Respondent further stated that he had relatives, his mother and his sister, that the police did visit previously. The Respondent stated the last time he was visited by the authorities or the police was May 11, 2022. Though he does not recall where he was, he stated that the police gave the Respondent another notice that they knew that the Respondent had been preparing an unauthorized public event and that the Respondent was wanted for conducting illegal unauthorized events, and if the



Respondent does conduct an event, he would have an issue with the law or law enforcement.

Respondent stated that in 2019 he was accused of fraud and a trial was conducted, however, he was excluded from the process, meaning the time had expired for them to file charges against the Respondent. And on May 30, 2022, the judge then stopped the criminal case against the Respondent because a case was not brought within time by the prosecutor's office. The Respondent then applied for a passport shortly thereafter and was given a passport by the Government of Russia. He then left Russia on September 27, 2022, and flee to Armenia where he could stay legally for up to 180 days. Respondent stated that Russian and Armenia have an agreement where Russian citizens could enter Armenia for up to 180 days without a visa. Respondent stated that he then returned several times to Russia. *Respondent clarified that he had returned to Russia four to five times and had done so to visit his ailing mother in Sochi.* He stated that he would enter Russia either by airplane or by vehicle and would enter via border inspection and would present his passport. He had no issues during any reentry into Russia. When asked why he would keep returning to Russia, he stated that he wanted to see his mother who was in the hospital twice and in ailing condition. His mother, unfortunately, ended up passing May 19, 2023, at which point he decided to leave Russia and Armenia permanently, and decided to come to the United States.

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When asked if there was any other reason why he would not like to return to Russia or, in the event he did return to Russia what could occur, he stated that he has given money to Ukrainian foundations when he was outside of Russia. The Respondent further stated that giving money to Ukraine or these Ukrainian organizations or humanitarian efforts is criminal under the Russian criminal code, as well as he participated in operations as a volunteer at the Navalny headquarters and



that apparently the Navalny headquarters and group has been labeled as an extremist organization in Russia

And then, finally, the Respondent stated that he received notice of being conscripted or drafted into the Russian military in 2022. Respondent stated that he had served in the military 1 year, from 2000 to 2001. He was a rank and file soldier in a construction unit and did not receive weapons training and had never harmed another person on military orders. The Respondent then opined that Russia targets individuals such as activists or political activists, to apply pressure on them and, thus, send them to the war or enlist them into service. When asked would you fight if enlisted, the Respondent said that he would not participate in the military operations and that could bring and result in criminal charges against him for evasion of military service. The punishment for that, the Respondent stated, was up to 2 years in prison. The Respondent then stated that he was aware and had heard of inmates and other activists that are detained facing harsh conditions in prison and some of which were subject to violence and raped while detained.

In this case the Respondent has not shown the harm in this case was a sustained systemic effort to target him. Indeed, the Fifth Circuit Court of Appeals has found similar, if not much worse, mistreatment not to rise to the level of persecution. Here, the Respondent was never physically persecuted or harmed. In this case, the Respondent received threats from police, and the Court is aware that threats may constitute persecution in some instances, but not here in this case, where they're non-specific and lacking in immediacy. The Respondent had seen police officers prior to 2022, and even in 2022, where the officers did not physically harm the Respondent, but gave the Respondent paperwork and documents. The Court notes that these individuals were in an opportunity to exert punishment, if they so chose. In addition, the



authorities could have punished ment while the Respondent when he was detained in March of 2022. However, the Respondent was never physically harmed while he was detained or in the custody of the police or while speaking to the police. While the Respondent construes that these individuals threatened him while speaking to them about potentially facing criminal charges if he were to continue in his political activities or protests, the Respondent was never physically harmed. And while the Court is sympathetic to receiving these construed threats, they do not rise to the level of persecution as they're nonspecific and lacking in immediacy. Thus, since the Respondent has failed to meet the requisite harm regarding past persecution, the Court notes there are other elements of past persecution such as the harm element, a nexus element, as well as the government being unable or unwilling to control, if it is in fact a private party or if it's the government, and here the dispositive question has been answered, there is no harm that rises to past persecution, either physical or the threats. Therefore, the Respondent has failed to establish past persecution in this case. When the Court looks to a well-founded fear of future persecution, the Court notes that the burden is on the Respondent since he has not established past persecution.

Regarding a well-founded fear of future persecution, the Court finds the Respondent has failed to establish this. Though the Respondent has testified credibly, the Court notes that the Respondent has failed to establish a subjectively genuine fear of future persecution, as well as an objectively reasonable fear of future persecution. First, the Court notes that the Respondent has been back to Russia four to five times while traveling on his Russian-issued passport and did not encounter any issues from the Russian Government when he was inspected and admitted, either when he traveled via plane or via vehicle. This greatly diminishes that the authorities in Russia would



have any interest in continuing to pursue the Respondent after the Respondent left Russia on September 27, 2022. The Court does not have a precise timeline as to each time the Respondent returned to Armenia from Russia. However, it was after September 27, 2022, and he had returned four to five times to see his ailing mother, in Russia, who passed in May of 2023. While the Respondent was there for 1 week at a time each time that he visited Russia, the Respondent was not physically harmed. The Respondent ~~not spoken to her or~~ was also not threatened by the government each time he entered Russia nor the duration of each visit. The Respondent was not persecuted by the government. The Respondent's actions that he had with the government at the border when he was being admitted each time, the four to five times, reflect that the government is not interested in the Respondent, further diminishing the Respondent's objective and reasonable fears after visiting four to five times, while not being harmed or accosted or threatened due to his alleged political activities. The Respondent's family, though, had been previously visited by police, have since not been visited by police since the Respondent first left Russia in September of 2022. There has been no individuals from the government or police officers that had visited the Respondent's family, further finding there is no objective fear in the return of the Respondent entering Russia, as well as a subjective fear. The Court notes that the Respondent entered many times, four to five times, after the alleged fear and his escape from Russia to Armenia, but yet availed himself to Russian authorities each time he returned. Therefore, in this Court's findings, that the Respondent's subjective fear is greatly diminished since he continually availed himself to government officials and the Respondent was never physically harmed or threatened during each encounter.

In addition, the Court notes it's now May 20, 2024, and no one has gone looking for the Respondent to present day. Therefore, there's insufficient evidence that the



Respondent's fear is subjective and is objectively reasonable. The Court denies the Respondent's request for asylum based on the above findings.

The Respondent has also claimed a fear of being conscripted into the Russian military. He received a draft notice in 2022. And the Court notes that the Respondent then stated that he would not participate in the military operations and that could bring criminal charges against him, such as evasion of military service. The Court notes that countries are justified in their sovereign powers to raise and establish militaries. And the Court notes in Matter of A-G-, 19 I&N Dec. at 506, that military service is not sufficient grounds for asylum, nor is objecting to the mandatory conscription, and that conscription is generally not persecution. The Court notes that the Board of Immigration has recognized there are two exceptions to the military conscription rule. One of those exceptions is where the Respondent would face a disproportionately severe punishment that would result on account of one the five protected grounds as enumerated under § 101(a)(42)(A) of the INA. However, when the Respondent was asked what kind of punishment he would receive for evasion of military service, the Respondent stated that he could be sentenced to prison for up to 2 years. The Court finds that being subjected to prison for 2 years does not rise to the disproportionately severe punishment as required in the Board case Matter of A-G-, 19 I&N Dec. 502 (BIA 1987). The Court also notes there's a second exception, ~~however where here there's~~ insufficient evidence. The second exception is where the Respondent would *necessarily be required* to engage in inhumane conduct as a result of military service required by the government. The Court notes to meet the standard the Respondent must show that the activity in which he might be involved would be condemned by the international community as contrary to basic rules of human conduct. However, when the Court considers the evidence of the record, the Court notes that documents were excluded, but the Court



will identify them as Exhibit 11 for identification purposes only. There is insufficient evidence based on the country condition documents, as well as the Respondent's own testimony, that the Respondent would necessarily be required to engage in inhumane conduct as a result of military service required by the government. The Court notes there are many roles in the military and there is insufficient evidence as to what role he might be required to engage in. However, ~~Here he~~ the respondent stated he would not serve, thus taking this exception off the table since the Respondent's stating he wouldn't serve and would be sentenced to prison for 2 years. Respondent never stated in his testimony he would serve in a military capacity against Ukraine and is unequivocally opposed to serving in the military of Russia as he is opposed to the war.

In sum, the Respondent has failed to establish persecution and that the Respondent furthermore failed to establish a well-founded fear of future persecution. He lacks a subjective and objectively reasonable fear of future persecution. Therefore, the Court denies his Asylum Application.

3. Withholding of Removal Under the Act

As the Respondent cannot satisfy the standard for asylum, he cannot meet the more demanding standard for withholding of removal. Accordingly, the Respondent's Application for Withholding of Removal pursuant to INA § 241(b)(3) will be denied.

4. Protection Under the Convention Against Torture

After reviewing the Respondent's application evidence [indiscernible], the Court denies the Respondent's Application for protection under the Convention Against Torture.

The Respondent has failed to establish it's more likely than not he would be tortured upon his return to Russia. The Court notes that the Respondent only received vague threats if he were to continue in the future, vague threats of criminal charges and



cases being levied and lodged against him in a court of law in Russia. The Court notes he was never persecuted or physically harmed in Russia. These threats do not contain persecution as delineated above. While the Court does not condone this mistreatment, as noted earlier, the mistreatment does not rise to the level of persecution. As such, the mistreatment does not constitute past torture as it's insufficient to constitute severe physical or mental pain or suffering.

The Court is aware that the Country Reports for Russia provide examples of human rights violations that are occurring in the country. See Exhibit 10. However, these human rights violations are generalized and do not provide support of specific grounds that the Respondent would personally be at risk if he returned to Russia. As such, this evidence does not aid the Respondent establish it's more likely than not that he would be tortured if returned to Russia. To reiterate, the Respondent has, in fact, returned to Russia after September 2022 when he initially left. He returned four to five times. The Respondent had no issues while encountering government officials at the border, and while he was in Russia visiting his ailing mother in Sochi, for a week each of those four to five visits.

Furthermore, the Court notes that the Respondent believes that he would be arrested if he returned to Russia, due in part to the opposition to being conscripted and drafted into the war against Ukraine and believes at that point he could then be tortured in prison, such as being raped or being harmed. However, the Court notes there is insufficient evidence that the harm the Respondent fears is more likely than not to occur based on the evidence of the Court. The Court notes that there is harm and mistreatment that is occurring, such as physical and sexual abuse by prison guards in detention centers and facilities, as well as widespread reports of inmates being released in order to serve in the war in Ukraine, and that there were reports of political prisoners



placed in particularly harsh conditions and subjected to punitive treatment within the prison system. However, the Court notes that political prisoners were being harmed, as well as others, due to overcrowding, poor ventilation, poor sanitary conditions. But the Court notes that these poor conditions, though troubling, do not show that it's more likely than not that the Respondent would face rape, torture, or harm rising to the level of torture if the Respondent is detained upon his return to Russia, which the Court finds speculative at best since the Respondent has, in fact, returned to Russia since his alleged fears of being involved in politics from 2011, and being in an opposition, supporting opposition, as well, as donating to humanitarian causes in Ukraine, that he would now be tortured. However, the Court notes that the Respondent's donation to humanitarian groups, though commendable, no one in Russia is, on this record, there's insufficient evidence that anyone in Russia, let alone the Government of Russia, knows that the Respondent has donated funds to these humanitarian groups, and the Respondent's testimony is speculative, at best, that these individuals in Russia, such as the FSB or any other law enforcement agency, would then know that the Respondent has since donated to these groups. There is insufficient evidence before this Court that they would know or how they would know, other than the Respondent's own testimony that he has heard of individuals donating and then being arrested or placed in criminal proceedings for donating to these groups. However, there is insufficient evidence before this Court anyone in Russia is aware the Respondent donated funds to these humanitarian groups in support of Ukraine.

In sum, since the Respondent has failed to demonstrate it's more likely than not he would be tortured if returned to Russia, the Court must deny the Respondent's Application for Protection under the Convention Against Torture.

ORDERS



Based upon the above, the following orders will enter:

It is hereby ORDERED the Respondent's Application for Asylum under INA § 208(b)(1) is DENIED.

It is FURTHER ORDERED the Respondent's Application for Withholding of Removal under INA § 241(b)(3) is DENIED.

It is FURTHER ORDERED the Respondent's Application for protection under the Convention Against Torture is DENIED.

It is FURTHER ORDERED the Respondent be REMOVED to Armenia and, in the alternative, Russia, should Armenia decline to accept the Respondent pursuant to the charge contained in the Notice to Appear.

Please see the next page for electronic

signature

Polivka, James F.

United States Immigration Judge



EXHIBIT

B



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

*5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041*



TROPSKII, DMITRII
A 
WINN CORRECTIONAL CENTER
180 CCA BLVD
WINNFIELD CA 71483

DHS/ICE Office of Chief Counsel - OAK
1010 East Whatley Road
Oakdale LA 71463-1128

Name: TROPSKII, DMITRII

A 249-116-908

Date of this Notice: 9/26/2024

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

User team: Docket



U.S. Department of Justice

Executive Office for Immigration Review
Board of Immigration Appeals
Office of the Clerk

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DHS/ICE Office of Chief Counsel - OAK
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Oakdale LA 71463-1128

Name: TROPSKII, DMITRII



Date of this Notice: 9/26/2024

Enclosed is a courtesy copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Dmitrii TROPSKII, A 

Respondent



ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Oakdale, LA

Before: Hunsucker, Appellate Immigration Judge

HUNSUCKER, Appellate Immigration Judge

The respondent,¹ a native and citizen of Russia, appeals from the Immigration Judge's decision dated May 20, 2024, denying his application for asylum and withholding of removal under sections 208(b)(1) and 241(b)(3) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1), 1231(b)(3), and protection under the regulations implementing the Convention Against Torture ("CAT").² The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii). As the respondent is seeking relief from removal, he has the burden of establishing that he meets all applicable eligibility requirements for relief. *See* INA § 240(c)(4), 8 U.S.C. § 1229a(c)(4); 8 C.F.R. § 1240.8(d).

The respondent claims past persecution and a fear of future persecution in Russia on account of his political opinion (Exh. 2, at 5). The Immigration Judge denied asylum, withholding of removal, and protection under the CAT after concluding that the respondent did not carry his burden of proof (IJ at 5-13). More specifically, the Immigration Judge found that the respondent was credible (IJ at 4), but that he did not establish that he suffered harm rising to the level of past

¹ The respondent's counsel's request to withdraw from this case is granted. *See Matter of Rosales*, 19 I&N Dec. 655 (BIA 1988). A courtesy copy of this decision will be provided to former counsel. The respondent will also be provided a copy of this decision at his last known address.

² The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18.



persecution on account of a protected ground, or that he has an objectively reasonable fear of future persecution in Russia (IJ at 5-12). On appeal, the respondent argues that the Immigration Judge erred in denying relief and protection from removal, and that he established past persecution and a well-founded fear of future persecution on account of a protected ground (Respondents' Br. at 16-43).³

We have considered the respondent's appellate arguments and the entirety of the record. We agree with the Immigration Judge's reasoning, and we adopt and affirm the Immigration Judge's decision. *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (recognizing that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision).

The Immigration Judge's findings of fact are not clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). Moreover, the Immigration Judge properly concluded that the respondent did not meet his burden of proof for the requested relief or protection from removal. 8 C.F.R. § 1003.1(d)(3)(ii). The respondent has not raised any argument on appeal that would cause us to disturb the Immigration Judge's decision (Respondents' Br. at 16-43). We write separately to address specific arguments on appeal.

The respondent did not establish that any harm he may have suffered, even in the aggregate, was of such severity as to rise to the level of persecution (IJ at 5-9). INA §§ 101(a)(42), 208(b)(1)(B)(i), 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(B)(i); 8 C.F.R. § 1208.13(a); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007); *Tesfamichael v. Gonzales*, 469 F.3d 109, 114 (5th Cir. 2006); *Majd v. Gonzales*, 446 F.3d 590, 595 (5th Cir. 2006) (persecution does not "encompass all treatment that our society regards as unfair, unjust or even unlawful or unconstitutional"). The Immigration Judge did not clearly err in finding that while the respondent was arrested and detained for 5 days in 2022, and was subsequently visited by the police on several occasions, the respondent was never physically harmed, and the threats he received were non-specific and lacking in immediacy (IJ at 8-9; Respondent's Br. at 16-21). 8 C.F.R. § 1003.1(d)(3)(i). Given the Immigration Judge's findings of fact, we agree that the cumulative harm in this case does not rise to the level of persecution. 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of R-A-F-*, 27 I&N Dec. 778, 779 (A.G. 2020) (the Board reviews de novo the application of law to fact); *Kumar v. Garland*, No. 20-60712, 2024 WL 3493804, at *1 (5th Cir. July 22, 2024) (regarding cumulative harm); *Lin v. Holder*, 478 F. App'x 219, 227 (5th Cir. 2012) (unpublished). Therefore, the respondent is not entitled to the presumption of a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1).

Nor has the respondent carried his burden of establishing an objectively reasonable well-founded fear of persecution upon return to Russia (IJ at 9-12). 8 C.F.R. § 1208.13(b)(2). The Immigration Judge did not clearly err in forecasting the likelihood of the respondent's future mistreatment upon return to Russia. See 8 C.F.R. § 1003.1(d)(3)(i). As noted by the Immigration

³ The respondent's motion to accept late filed brief is granted, and the brief has been considered in its entirety.

A 

Judge, the respondent was able to depart from, and return to, Russia on 4 or 5 occasions without incident subsequent to his arrest and detention in 2022 (IJ at 6, 9; Tr. at 66-68). *See, e.g., Ndulu v. Lynch*, 643 F. App'x 345, 347-48 (5th Cir. 2016) (unpublished) (considering unobstructed departures and returns as evidence against well-founded fear of future persecution); *Loho v. Mukasey*, 531 F.3d 1016, 1017-18 (9th Cir. 2008) (holding that "an alien's history of willingly returning to his or her home country militates against a finding of past persecution or a well-founded fear of future persecution"). The respondent was last visited by the police on May 11, 2022 (Tr. at 59, 61), and there is no indication that anyone has been looking for the respondent since that time (IJ at 10; Tr. at 68-69).⁴ Further, the Immigration Judge properly found that the respondent's fear of conscription is not a valid basis for asylum protection under the circumstances presented here (IJ at 8, 11). *Matter of Vigil*, 19 I&N Dec. 572, 578 (BIA 1988); *Milat v. Holder*, 755 F.3d 354, 361-62 (5th Cir. 2014) (holding that punishment for violation of conscription laws of general applicability does not in itself constitute "persecution" on account of political opinion).

While the respondent argues that the Immigration Judge's factual findings are clearly erroneous and that he should have weighed the country conditions differently, the Immigration Judge's findings were based on a permissible view of the evidence. *Matter of D-R-*, 25 I&N Dec. 445, 454, 55 (BIA 2011) (an Immigration Judge is entitled to make reasonable inferences from direct and circumstantial evidence of the record as a whole), *remanded on other grounds, Radojkovic v. Holder*, 599 F. App'x 646 (9th Cir. 2015). Even if the respondent's interpretation of the facts had some support in the record, that alone does not render the Immigration Judge's factual findings clearly erroneous. *Id.* Where a court is presented with two permissible views of the evidence, its choice between them cannot be clearly erroneous. *Matter of J-C-H-F-*, 27 I&N Dec. 211, 217 (BIA 2018); *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574 (1985).

Based on the foregoing, we agree with the Immigration Judge's determination that the respondent has not met his burden to establish eligibility for asylum. 8 C.F.R. § 1208.13(a). As the respondent has not satisfied the burden of proof required for asylum, it follows that he has not satisfied the higher standard of proof required for withholding of removal (*i.e.*, that it is more likely than not that he will be persecuted on account of a protected ground) (IJ at 12). 8 C.F.R. § 1208.16(b)(2).

⁴ We reject the respondent's appellate argument that the Immigration Judge erred by not finding a pattern or practice of persecution against individuals who donated money to Ukrainian foundations (Respondents' Br. at 36). While the respondent did testify that he feared repercussions for donating to Ukrainian humanitarian foundations while outside Russia (Tr. at 69-71), he did not raise arguments related to pattern or practice before the Immigration Judge. *Matter of J-Y-C-*, 24 I&N Dec. 260, at 261 n.1 (BIA 2007) (a party may not make a legal argument for the first time on appeal). The Immigration Judge did consider the respondent's donations, and did not clearly err in finding that the respondent has not established that the Russian government was aware that he had donated funds (IJ at 14). 8 C.F.R. § 1003.1(d)(3)(i). Thus, even if the issue were not waived, the respondent has not established an objectively reasonable fear of future persecution on this basis.



Finally, we affirm the Immigration Judge's denial of protection under the CAT. Based on the entirety of the record, the respondent has not established that it is more likely than not that he will be tortured "by, or at the instigation of, or with the consent or acquiescence of, a public official acting in an official capacity or other person acting in an official capacity" upon removal to Russia (IJ at 12-13). 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1); *Iruegas-Valdez v. Yates*, 846 F.3d 806, 812-13 (5th Cir. 2017).

The Immigration Judge did not clearly err in forecasting the likelihood that the respondent would be tortured upon return to Russia, even considering general country conditions and his past experiences. *Id.*; 8 C.F.R. §§ 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). Evidence of the general possibility of torture does not meet the respondent burden of establishing that it is more likely than not that *he* will be targeted for such treatment. *See, e.g., Tabora Gutierrez v. Garland*, 12 F.4th 496, 504-06 (5th Cir. 2021). Given the Immigration Judge's findings of fact, which are not clearly erroneous, the respondent did not establish that he would be subjected to treatment that qualifies as "torture" under the governing CAT regulations and the relevant precedents. *Matter of R-A-F-*, 27 I&N Dec. 778, 779-80 (A.G. 2020) (holding that the Board reviews predictive facts for clear error, but whether the predicted outcome constitutes "torture" under the regulations is subject to de novo review); *see also Matter of M-B-A-*, 23 I&N Dec. 474, 479-80 (BIA 2002); *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006) (holding that to establish eligibility for protection under the CAT, evidence must show that any step in the hypothetical chain of events is more likely than not to happen, and that the entire chain will come together to result in the probability of torture of respondent). Therefore, the respondent has not established eligibility for protection under the CAT.

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is dismissed.

EXHIBIT

C

Homeland Security, Immigration and Customs Enforcement, FDC Philadelphia is equipped to house up to 126 ICE detainees.

6. In my role, I am familiar with how ICE detainees are housed at FDC Philadelphia. All ICE detainees who are placed at FDC Philadelphia are housed in a single unit: 3-North. No ICE detainees are held in any other units of the FDC, nor are ICE detainees housed with any criminal detainees.

7. Between the hours of 6:30am and 9:30pm, all ICE detainees are able to freely move around 3-North. Throughout the day, ICE detainees have access to an outside area, basketball court, computer terminals with email access, televisions, and exercise facility, all located within 3-North.

8. All ICE detainees have access to social and lawyer visits during the day. All ICE detainees have access to public phones, as well as non-monitored lines to speak with counsel. They are also provided a hotline to ICE for purposes of questions, complaints or requests to contact their consulate. ICE detainees are not charged for calls to their lawyers or home consulate.

9. All ICE detainees at FDC are assigned to two-bunk rooms. Typically, each ICE detainee also has a roommate. Currently Tropkii is housed with another detainee.

10. Since ICE began housing detainees at FDC in late February 2025, FDC staff have endeavored to foster frequent communication with the ICE detainees, to ascertain what changes, if any, the facility can make in order to better accommodate their needs.

11. One early example of this process in action, is FDC's agreement to

purchase and supply ICE detainees with rubber slippers (generic brand "Crox"), which the detainees can use both during the day while walking in the unit, and for showering.

12. This is a privilege not afforded to the criminal detainees housed at the FDC.

13. Mr. Tropskii came to the FDC on February 13, 2025, and he has received adequate medical care during his time at the FDC.

15. On March 22, 2025, Mr. Tropskii made a sick call request because of stomach ulcers. He was seen by an advanced provider within 2 business days.

16. On March 25, 2025, Mr. Tropskii made a sick call request to receive some medications he had previously taken. This request was addressed within thirteen business days.

17. On April 4, 2025, Mr. Tropskii made a sick call request to receive treatment for an endoscopy for polyps and a gastric ulcer. This request was addressed within six days at a previously scheduled physician visit.

18. On April 26, 2025, Mr. Tropskii made a sick call request to receive some treatments for a cold sore. This request was addressed within three days.

19. On May 2, 2025, Mr. Tropskii made a sick call request to receive treatment for headaches and trouble sleeping. This request was addressed within six days.

Pursuant to 28 U.S.C. 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of July 2025
FDC Philadelphia


Briana Cavallaro, Esquire

EXHIBIT

D

H-1Z

Office of Enforcement and Removal Operations

U.S. Department of Homeland Security
114 N. 8th St
Philadelphia, PA 19107



U.S. Immigration
and Customs
Enforcement

TROPSKII, Dmitri
c/o Immigration and Customs Enforcement
Pike County Correctional Facility
175 Pike County Boulevard
Lords Valley, PA 18428



Decision to Continue Detention - Stay

This letter is to inform you that your custody status has been reviewed and as explained below, ICE has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file and/or your personal interview and consideration of any information you submitted to ICE's reviewing officials.

ICE has determined to maintain your custody because you have not demonstrated that, if released, you will not pose flight risk, as demonstrated by your lack of substantial community and familial ties in the United States. A final order of removal has been in effect in your case since September 26, 2024, when the Board of Immigration Appeals dismissed your appeal. You have a pending petition for review (PFR) with the U.S. Court of Appeals for the Fifth Circuit. The Fifth Circuit also issued a temporary stay of removal. If your PFR is dismissed or if your stay of removal is lifted, ICE is in possession of the necessary travel documents to effectuate your removal, and removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest.

Based on the aforementioned information, you are to remain in ICE custody pending a decision by the Fifth Circuit on your PFR. If your stay has not been lifted within one year, you will be scheduled for a Post-Order Custody Review (POCR) and served with a Notice to Alien of File Custody Review. If your stay is lifted and ICE does not affect your removal prior to the 90th day following the lifting of the stay, a new POCR will be conducted.

David O'Neill, Deputy Field Office Director

1/31/2025

Date

www.ice.gov

Page Totally 40