UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

EGOR RUBANOV, A[redacted] *Petitioner* **v.** DONALD J. TRUMP, et al., *Respondents*	Case No. 1:25-cv-23034-CMA **PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE**

On July 18, 2025, Respondents responded to the Order to Show Cause, arguing that Mr. Rubanov's apprehension and detention were lawful, that the Court lacks jurisdiction to review Mr. Rubanov's detention, and that Mr. Rubanov cannot challenge the conditions of his confinement in this action. However, Respondents fail to acknowledge several allegations raised in the amended petition, provide no reliable evidence or details to support the assertion that Mr. Rubanov's removal is significantly likely in the reasonably foreseeable future, and misconstrue the requests made to make their jurisdictional arguments. Because the Court has jurisdiction and because Mr. Rubanov has shown that his apprehension and detention violate the Immigration and Nationality Act and the constitution, the Court should order Mr. Rubanov's release.

Mr. Rubanov's apprehension and detention were unlawful and DHS's post hoc efforts to remedy its violation of his statutory and constitutional rights are unavailing. Respondents assert that Mr. Rubanov's order of supervision was revoked on June 21, 2025 pursuant to 8 C.F.R. § 241.4(*l*)(2), and the revocation was "necessary to secure his removal." Opp., ECF Doc. 8, at 7. In support of this action, they submit a June 21, 2025 Notice of Revocation of Release. *See* ECF Doc. 8-11. Even if this were the document Mr. Rubanov received at the time of his apprehension (*see* Rubanov Decl., ECF Doc. 5-4, at 3, describing an English-only document that he did not

understand that was pushed upon him), this document contains inaccurate statements and was not signed by the proper authority. Thus it is insufficient to justify Mr. Rubanov's detention on June 21, 2025. Specifically, the document states that Mr. Rubanov was ordered removed on July 13, 2021 to "MOLV/RUSSIA." *See* June 21, 2025 Notice. Presuming that "MOLV/RUSSIA" refers to Moldova and Russia (or the two in the alternative), this statement is incorrect. The immigration judge ordered Mr. Rubanov removed in 2014, not in 2021, and did not issue a removal order to Moldova, but instead only to Russia. *See* IJ Dec'n, ECF Doc. 8-2 at 22. In fact, Mr. Rubanov is not a citizen of Moldova; he was born in the USSR and became a Russian citizen in 1993. *See* Am. Pet., ECF Doc. 5, ¶ 26; *see also* June 1, 2018 Form I-213, ECF Doc. 8-1 ("he is a native and citizen of Russia"). Additionally, the June 2025 Notice of Revocation of Release states that Mr. Rubanov's "case is approved for repatriation by the government of MOLV/RUSSIA." *See* June 21, 2025 Notice. Again assuming this refers to Moldova and Russia, it is unclear which country and government (phrased in the singular) the document is referencing. And perhaps most importantly, the Notice was signed by a deportation officer, whose name has been redacted, not the Executive Associate Commissioner or District Director, as authorized by 8 C.F.R. § 241.4(*l*)(2). The lack of clarity and authority clearly undercuts any presumption of regularity as to this document. *See Ali v. Dist. Dir.*, 209 F. Supp. 3d 1268, 1278 (S.D. Fla. 2016) (noting that the presumption of regularity "only exists 'absent evidence to the contrary.'") (quoting *Sierra Club v. U.S. Army Corps of Engineers*, 295 F.3d 1209, 1223 (11th Cir. 2002) (marks omitted). Accordingly, this Notice could not have served to lawfully return Mr. Rubanov to ICE custody on June 21, 2025.

Notably, Respondents do not explicitly argue that this document would have been sufficient to justify Mr. Rubanov's detention on June 21, 2025. Opp. at 11. In fact, they essentially admit that the June 2025 Notice was insufficient because they had to issue a "new Notice of Revocation of

Release" almost one month after his apprehension (and after the Amended Petition, challenging the notice received at the time of apprehension). *See* Opp. ¶ 24 (citing July 16, 2025 Notice, ECF Doc. 8-15). While this second Notice of Revocation was properly signed by the Acting Field Office Director, the July 2025 Notice is insufficient to justify Mr. Rubanov's apprehension, as it post-dated Mr. Rubanov's detention by nearly one month and it does not explain that revocation of release was necessary, as required by the regulation. 8 C.F.R. § 241.4(*l*)(2)(i)-(iv). Rather, it simply states—without explanation—that "ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in your case." July 16, 2025 Notice. But the Notice does not explain that likelihood or why revocation of release was appropriate on June 21, 2025, and thus cannot serve to justify Mr. Rubanov's apprehension on that day.

Without a valid warrant of arrest, Mr. Rubanov could only have been lawfully detained under 8 U.S.C. § 1357(a), which authorizes ICE to arrest a noncitizen who an officer witnesses "entering or attempting to enter the United States in violation of any law or regulation," or if the officer "has reason to believe" that the noncitizen is "likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2). Mr. Rubanov was not observed entering or attempting to leave the United States; he was appearing for what he was told was a check-in for his completion of the Alternatives to Detention ("ATD") program, and ICE has not alleged that he has failed to comply with the requirements of the ATD program. *See* ATD Notice, ECF Doc. 5-5 ("Failure to comply with the requirements of the ATD program will result in a redetermination of your release conditions or your arrest and detention."). And there were no exigent circumstances indicating a likelihood of escape. Mr. Rubanov complied with all ICE directives when he was under an Order of Supervision and when he was enrolled in the ATD program. *See* Rubanov Decl.

Thus, Respondents cannot justify a warrantless arrest in this case.

Rather than engage with the problematic documents they submitted to the Court, Respondents simply state that Mr. Rubanov "is detained because it is necessary to secure his removal."[1] Opp. at 7. But this statement is not accompanied by any explanation or evidence demonstrating that Mr. Rubanov is a flight risk or that his removal is imminent; thus Respondents' assertion is insufficient to justify the arrest in this case. *INS v. Phinpathya*, 464 U.S. 183, 188 n.6 (1984) (counsel's unsupported assertions in the brief do not establish the requisite facts).

Respondents also allege that this Court lacks jurisdiction to review the apprehension because it was an action taken to effectuate the final order of removal. Opp. at 7 (citing 8 U.S.C. § 1252(g) (precluding jurisdiction to review the agency's decision "to commence proceedings, adjudicate cases, or execute removal orders.")). In support of this assertion, Respondents cite an unpublished order, *Westley v. Harper*, 2025 U.S. Dist. LEXIS 32981 (E.D. La. Feb. 24, 2025). In that case, the District Court for the Eastern District of Louisiana found "the key injunctive relief prayed for in the petition and motion – specifically a stay of Petitioner's removal from the United States in general and an order staying her removal until her T-visa application is fully adjudicated

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[1] Respondents stop short of alleging that Mr. Rubanov has not been complying with DHS directives such that revocation of his release is warranted on that basis. *See generally* Opp.; *see also* Rubanov Decl. ("I have complied with every ICE instruction and met every requirement they have imposed."). While Respondents allege that Mr. Rubanov failed to sign certain documents in order to receive a passport, Opp. at 9, Respondents have not demonstrated that those documents were provided to Mr. Rubanov in a language he understands. *See* Rubanov Decl. Additionally, Respondents fail to acknowledge that Mr. Rubanov provided requested evidence in order to seek a Russian passport prior to his June 2025 check-in. *Id.* at 2. Furthermore, the record is contradictory regarding what occurred on the date of his arrest. *Compare* Rubanov Decl. (describing being pushed out of a room, ignoring his pleas for medication, forcing him onto an overcrowded bus, ignoring his statements about medical conditions and his ability to sit, being screamed at, and being told "That is your problem" when he asked for medical attention), *with* Form I-213, ECF Doc. 8-13 ("Subject was verbally abusive to Officers and BI staff at the time of arrest."). Moreover, there is no evidence that Mr. Rubanov failed to report to ICE on February 12, 2018. *See* Opp. ¶ 10 (citing Warrant of Removal/Deportation, ECF Doc. 8-6 (which makes no reference to a failure to report)).

– falls outside of this Court's jurisdiction." *Id.* at *13. The Court reasoned that § 1252(g) applied because the requested stay of removal would require the court to enjoin execution of the removal order. But here, Mr. Rubanov has not asked this Court for a stay of removal and does not challenge DHS's authority to execute his removal order; he instead argues that his apprehension on June 21, 2025 and his subsequent custody is unlawful. Thus, § 1252(g) does not bar this Court from reviewing the claim. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999) (adopting a "narrow reading" of § 1252(g)). Because Respondents have presented no other defense to the unlawful apprehension on June 21, 2025, the Court need proceed no further in ordering Mr. Rubanov's release.

Not only was Mr. Rubanov's apprehension unlawful, but so is his continued detention by ICE. Critically, Respondents do not contest that Mr. Rubanov is not subject to mandatory detention under 8 U.S.C. § 1231(a)(1) because the 90-day, statutory removal period expired years ago on March 20, 2017. Opp. at 6. Rather, they assert that he can be detained for a new, six-month period, as that is the period of presumptive reasonableness in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Opp. at 6-8. But Respondents misunderstand the detention authority. Once the removal period runs, DHS can only continue to detain a noncitizen in certain circumstances. 8 U.S.C. § 1231(a)(1)(C), (a)(6). That continued detention is subject to the *Zadvydas* presumption of reasonableness, and includes the requirement to show a significant likelihood of removal in the reasonably foreseeable future. *Zadvydas v. Davis*, 285 F.3d 398, 404 (5th Cir. 2002). But nowhere in the statute or case law does DHS have the authority to create new removal periods after release. *Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013) ("The six-month period includes the 90-day removal period and the 90 days thereafter."). Indeed, allowing DHS to create a new six-month period of detention at any point after the statutory removal period and subsequent

release runs counter to the release provisions in 8 U.S.C. § 1231(a)(3) and could lead to an endless cycle of release and re-detention when there may be no actual likelihood of removal in the foreseeable future. Respondents fail to acknowledge this distinction, instead relying on cases involving detention for less than six months from the time of the removal order. Opp. at 7 (citing *Gonzales v. Barr*, 2020 U.S. Dist. LEXIS 232107 (S.D. Fla. Dec. 10, 2020); *Salpagarova v. INS*, 2020 U.S. Dist. LEXIS 266517 (S.D. Fla. Oct. 20, 2020)). But here, the removal period and initial six-month period of presumptive reasonably detention lapsed in 2017, thus requiring a significant likelihood of removal in the reasonably foreseeable future in order for any detention at this point.

Respondents also rely on *Guerra-Castro v. Parra*, 1:25-cv-22487 (S.D. Fla. July 17, 2025), for the proposition that the removal period has not run in this case. Opp. at 8. This decision is incorrect and should not be followed by this Court. Critically, the Court in *Guerra-Castro* recognized that detention beyond the statutory 90-day removal period is "limited to a period reasonably necessary to bring about that alien's removal," but reasoned that the noncitizen had not yet been collectively detained for six months so there were no constitutional concerns to evaluate. *Id.* at 6-7. This reasoning conflates the constitutional analysis with the clear statutory requirements in § 1231(a) and should not be followed. *See* Am. Pet. ¶ 122 (collecting cases with more extensive analysis). *See Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (recognizing "that the six-month period . . . commences at the beginning of the statutory period"); *accord Benitez v. Wallis*, 402 F.3d 1133, 1135 (11th Cir. 2005).

Because it is clear that Mr. Rubanov's detention occurs far beyond the 90-day statutory period, the Court must consider whether his removal is significantly likely to occur in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Even if Mr. Rubanov bears the initial burden to prove there is no significant likelihood, *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th

Cir. 2002), the Court must conclude that no such likelihood exists here. Mr. Rubanov does not have a current Russian passport, and it can take many months to obtain one once requested. Iullia Rubanova Decl., ECF Doc. 5-6 at 2. Moreover, he has filed a motion to reopen his removal proceedings and a request for a stay of removal with the Board of Immigration Appeals on the basis that he has a well-founded fear of returning to Russia based on his open and outspoken opposition to the war with Ukraine. Thus, without a passport and with a pending request to stay in the United States to seek protection from removal to Russia, Mr. Rubanov has met his initial burden.

Respondents have submitted very little evidence in support of their shifted burden to show a substantial likelihood of removal in the reasonably foreseeable future. Notably, Respondents submit an unsigned declaration drafted for Deportation Officer Jean Josil to support their assertion that Mr. Rubanov's apprehension was and his continued detention is lawful. ECF Doc. 8-3. This document should not be considered because it is unsigned. 28 U.S.C. § 1746; Fed. R. Evid. 902(1)(B), 903; *Udoinyion v. Guardian Sec.*, 440 F. App'x 731, 735 (11th Cir. 2011) (recognizing that a declaration must be signed); *Braddy v. Robinson*, 2020 U.S. Dist. LEXIS 9420, *5 (S.D. Fla. Jan. 21, 2020) (recognizing that a declaration is invalid if it is unsigned) (collecting cases). And even if the Court were to consider the unsigned declaration, it does not state that Russia (or Moldova,[2] or some combination of the two governments) has approved Mr. Rubanov's return. Rather, the unsigned declaration only states that "ICE intends to remove Petitioner to Russia upon receipt of travel documents." Decl. ¶ 25.

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[2] The record does not establish that Mr. Rubanov could be removed to Moldova. Mr. Rubanov is a citizen of Russia and he was ordered removed to that country. IJ Dec'n, ECF Doc. 8-2. DHS has not asserted that it cannot remove Mr. Rubanov to Russia. *See* 8 U.S.C. § 1231(b)(1), (2)(C) (setting forth countries "to which aliens may be removed").

The most recent Form I-213 Record of Deportable/Inadmissible Alien suffers from similar reliability problems as other documents submitted in this case. *See* ECF Doc. 8-13 at 2 (asserting that Mr. Rubanov is subject to removal based on a 2005 in absentia removal order). But even if the remainder of that document is taken at face value, it provides no indication that DHS has sought a passport, what steps it has taken to effectuate Mr. Rubanov's removal, or that DHS has any likelihood of obtaining travel documents and travel arrangements in the reasonably foreseeable future. Indeed, the only details that Respondents have submitted to explain any steps they may have taken to effectuate Mr. Rubanov's removal are in the opposition itself, which is not evidence. *Phinpathya*, 464 U.S. at 188 n.6. And those statements do not describe steps the government has taken, but instead claim that Russia "has not denied, nor has it indicated that it intends to deny, the request for Petitioner's travel document." Opp. at 9. However, it is unclear if DHS has even contacted the Russian government about Mr. Rubanov. Similarly, Respondents rely on the fact that they have removed others to Russia for the proposition that it should have no difficulty removing Mr. Rubanov. Opp. at 9-10. But they have provided nothing to explain the steps they have taken to effectuate removal in *this* case. *Cf. Brooks v. Ripa*, 2024 U.S. Dist. LEXIS 87601, *9 (S.D. Fla. May 15, 2024) (discussing the "frequent contact" DHS had with the country of removal about the issuance of a travel document).

Additionally, Respondents assert that Mr. Rubanov has instituted bars to his removal by failing to complete the travel document request. Opp. at 9. But Respondents gave those documents to Mr. Rubanov in a language he did not understand without the aid of an interpreter and thus he did not sign a form he did not understand. Nor have Respondents acknowledged that Mr. Rubanov provided DHS with requested documents to submit a request for a new passport at the time of his check-in in June 2025, *see* Rubanov Decl. Without acknowledging the complete facts in the record

and without presenting any facts to explain how Mr. Rubanov's removal might occur in the reasonably foreseeable future, Respondents have failed to meet their burden and this Court should order his release. *Zadvydas*, 533 U.S. at 701.

Finally, the Court should also order Mr. Rubanov's release because Respondents' continued detention of Mr. Rubanov at Krome violates his constitutional rights. While Respondents claim that challenges to the conditions at Krome may only be brought in a civil rights lawsuit, they do not materially recognize that Mr. Rubanov is not requesting a change in conditions, but rather release as relief because his detention is not mandatory. *Wilson v. Williams*, 961 F.3d 829, 837 (6th Cir. 2020) ("To the extent petitioners argue that the alleged unconstitutional conditions of their confinement can be remedied only by release, 28 U.S.C. § 2241 conferred upon the district court jurisdiction to consider the petition."); *Deng Chol A. v. Barr*, 450 F. Supp. 3d 896, 901 (D. Minn. 2020) ("Although the court may not review discretionary decisions made by immigration authorities, it may review immigration-related detentions to determine if they comport with the demands of the Constitution.").

Respondents do not meaningfully address that Mr. Rubanov is medically vulnerable, having been diagnosed with a heart condition and issues involving his prostate, and he has undergone several surgeries in the last year. They simply state that he was screened upon arrival and has received medical treatment at Krome through eight separate visits. Opp. at ¶ 20, p. 14. But Respondents fail to acknowledge Mr. Rubanov's claim that he has not received necessary medication, despite numerous requests. *See* Rubanov Decl. Moreover, the facts that Respondents took Mr. Rubanov to the hospital when he lost consciousness after spending the night shackled on a hot bus outside Krome and that Mr. Rubanov has seen some medical professionals since he arrived at Krome is insufficient because his medical needs—including medication and a physician-

ordered diet—are not being met. *See* Rubanov Decl.; *see also* C.J. Ciaramella, *Report Alleges Degrading Treatment and Medical Neglect at South Florida ICE Detention Centers*, July 21, 2025, available at: https://reason.com/2025/07/21/report-alleges-degrading-treatment-and-medical-neglect-at-south-florida-ice-detention-centers/ (last visited July 22, 2025); Bri Buckley, *Human Rights Groups Allege "Inhumane" Conditions at South Florida Immigration Facilities*, July 21, 2025, available at: https://www.cbsnews.com/miami/news/human-rights-groups-allege-inhumane-conditions-at-south-florida-immigration-facilities/ (last visited July 22, 2025). And Respondents have been aware of Mr. Rubanov's medical conditions, at least since he faced a medical emergency at a May 2025 check-in. *See* ECF Doc. 5-4 at 1-2; *Estelle v. Gamble*, 429 U.S. 97, 107 (1976). Thus, DHS's continued inability to provide Mr. Rubanov with *all* of the necessary medical care violates his constitutional rights.

For these reasons, Mr. Rubanov requests that the Court grant his petition for a writ of habeas corpus and order his release.

July 22, 2025

Respectfully submitted,

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