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

Pavlo Malitskyi,

Petitioner,

vs.

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

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

Kristi Noem, Secretary of Homeland
Security; and

Pamela Jo Bondi, Attorney General of the
United States,

Respondents.

No.

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

Technical Data

1. Mr. Malitskyi is challenging the validity of his detention in immigration custody. His A-number is .
2. Mr. Malitskyi is challenging the decision that was, upon information and belief, made by U.S. Customs and Border Protection to detain him pending removal to Ukraine, notwithstanding the fact that Mr. Malitskyi had previously been granted humanitarian parole because of the ongoing war between Ukraine and Russia.

Background

10. Mr. Malitskyi was born in 1984 in the Ukrainian Soviet Socialist Republic. As an adult, he worked in the Republic of Ukraine as a furniture maker and a photographer. He was living in Ukraine on February 11, 2022.
11. On February 24, 2022, Russia invaded Ukraine. The two countries have been at war ever since.
12. Effective April 25, 2022, the United States launched the “Uniting for Ukraine” program (U4U). Under the program, the United States would admit “up to 100,000 displaced Ukrainians and others fleeing Russian aggression. Among other legal pathways, the United States will consider, on a case-by-case basis, granting Ukrainians advance authorization to travel to the United States for the purpose of seeking a discretionary grant of parole for urgent humanitarian reasons or significant public benefit.” Implementation of the Uniting for Ukraine Parole Process, 87 Fed. Reg. 25040, 25040 (Apr. 27, 2022) [hereinafter “U4U Program Description”].
 - a. Federal law authorizes the Secretary of Homeland Security to establish programs for “parol[ing] into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).
 - b. This parole “shall not be regarded as an admission of the alien” to the United States. *Id.*
 - c. When “the purposes of such parole shall,” in the opinion of the Secretary, “have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” *Id.*

- d. Alejandro Mayorkas, who was then the Secretary of Homeland Security, initiated the U4U program under the authority of § 1182(d)(5)(A).
 - e. There were five criteria for resettlement under the U4U program. *See* U4U Program Description, 87 Fed. Reg. at 25042. To be eligible, a person must:
 - i. have been physically present in Ukraine on February 11, 2022;
 - ii. have an individual or organizational sponsor in the United States;
 - iii. possess a valid Ukrainian passport;
 - iv. “clear biographic and biometric background checks;” and
 - v. “meet public health requirements, including, as appropriate, proof of required vaccinations,” including vaccines against measles, polio, and COVID-19, and pass a tuberculosis screening.
 - f. Parole granted under the U4U program “will generally be for a term of up to two years.” *Id.* at 25041.
13. Upon information and belief, in August 2024, Mr. Malitskyi was approved for entry into the United States through the U4U program. He then traveled to and arrived at the port of entry at the Los Angeles International Airport and was paroled into the United States under the terms of the U4U program.
 14. Parole under the U4U program makes Ukrainian beneficiaries eligible for authorization to work in the United States. *See id.* at 25040 (citing 8 C.F.R. § 274a.12(c)(11)). Mr. Malitskyi began working as an UberEats delivery driver.
 15. On January 20, 2025, President Trump issued Executive Order 14165, entitled “Securing Our Borders.” 90 Fed. Reg. 8467 (Jan. 30, 2025). Under section 7(b) of EO 14165, the President ordered the Secretary of Homeland Security to terminate “all categorical parole programs that are contrary to the policies of the United States established in my Executive Orders.” *Id.* at 8468.
 16. Also on January 20, 2025, President Trump issued Executive Order 14159, entitled “Protecting the American People Against Invasion.” 90 Fed. Reg. 8443 (Jan. 29, 2025).

Under section 16(a) of EO 14159, the President ordered the Secretaries of State and Homeland Security, as well as the Attorney General, to take action aimed at “ensuring that the parole authority under section 212(d)(5) of the INA [8 U.S.C. § 1182(d)(5)] is exercised on only a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an individual alien demonstrates urgent humanitarian reasons or a significant public benefit derived from their particular continued presence in the United States arising from such parole.” 90 Fed. Reg. at 8446. This directive had the effect—at least—of suspending the U4U program indefinitely.

17. On or about February 24, 2025, while he was making an UberEats delivery in the San Diego area, Mr. Malitskyi got lost. He found himself on a southbound road that had only one exit: Mexico. He does not speak English and consequently cannot read the Roman alphabet. (Both Russian and Ukrainian, Mr. Malitskyi’s primary languages, are written in slightly different versions of the Cyrillic alphabet.)
18. According to a July 27, 2023, report by CBS8, the local CBS affiliate in San Diego, it is common for drivers in San Diego—even for those who are fluent and literate in English—to mistakenly drive into Mexico on this same southbound road.
19. Once he realized his mistake, he immediately attempted to reenter the United States by retracing his route. He thus found himself at the San Ysidro Port of Entry seeking readmission into the United States from Mexico.
20. Unbeknownst to Mr. Malitskyi, departing the United States—even in the inadvertent manner in which he departed the United States, and even for the fleetingly short period of time during which he was in Mexico—automatically terminated the grant of humanitarian parole that he received when he first arrived in the United States six months earlier. *See* 8 C.F.R. § 212.5(e)(1)(i). He thus lacked any status in the United States when he presented himself at the San Ysidro Port of Entry on February 24, 2025.
21. As an arriving alien who had not been admitted or paroled to the United States, *see* 8 U.S.C. § 1225(a)(1), and who has no valid nonimmigrant or immigrant visa, *see* 8 U.S.C.

§ 1182(a)(7)(A)(i)(I), (a)(7)(B)(i)(II), Mr. Malitskyi was subject to expedited removal. *See generally* 8 U.S.C. § 1225(b)(1); 8 C.F.R. § 235.3(b)(1)(i).

- a. Expedited removal does not require the issuance of a notice to appear. *See* 8 C.F.R. § 235.3(b)(2)(ii). So Mr. Malitskyi was not served with one.
- b. Mr. Malitskyi was subject to mandatory detention during expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); 8 C.F.R. § 235.3(b)(2)(iii). But, as explained below, those proceedings have probably concluded.
- c. Mr. Malitskyi was detained under these provisions at the San Ysidro Port of Entry, *see* 8 C.F.R. § 235.3(b)(1)(i), and ultimately transferred to the San Luis Regional Detention Center in San Luis, Arizona. He remains at the San Luis Regional Detention Center to this day.

22. Upon information and belief, Mr. Malitskyi was never referred for a credible fear interview as required by 8 C.F.R. § 235.3(b)(4)(i). He recalls that an ICE officer told him that this interview would take place “once the war was over,” presumably referring to the war between Ukraine and Russia.

- a. “If an alien subject to the expedited removal provisions indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country, the inspecting officer shall not proceed further with removal of the alien until the alien has been referred for an interview by an asylum officer in accordance with 8 C.F.R. § 208.30.” 8 C.F.R. § 235.3(b)(4).
- b. If Mr. Malitskyi were awaiting a credible fear interview, he could be considered for parole into the United States while awaiting that interview because he previously qualified for and was granted humanitarian parole under the U4U program. *See* 8 C.F.R. § 235.3(b)(4)(ii). But because, he says, ICE officers told him they would not refer him for such an interview, he cannot be considered for any form of parole.

23. On or about March 14, 2025, Mr. Malitskyi arrived in an immigration court for what he thought was a bond hearing.
- a. It is unclear which immigration court Mr. Malitskyi appeared at, or whether his appearance there was in-person or virtual. The Otay Mesa Detention Center in San Diego has an immigration court within it. Detainees at the San Luis Regional Detention Center have appeared virtually for immigration-court proceedings held in Imperial, California.
 - b. Ultimately, because Mr. Malitskyi had never been served with a notice to appear, the bond hearing did not take place and he was refused any other kind of audience before an immigration judge. The online Automated Case Information database provided by the Executive Office of Immigration Review indicates that no case against Mr. Malitskyi has ever been filed in immigration court.
 - c. In any event, the applicable regulations do not afford a person detained by immigration officials during expedited removal proceedings an opportunity to be released on bond.
24. Upon information and belief, Mr. Malitskyi's removal order, issued under 8 U.S.C. § 1225(b)(1) and the regulations governing expedited removal, is administratively final. The statutory authority for his present detention thus comes from 8 U.S.C. § 1231. *See* 8 C.F.R. § 235.3(b)(8) ("An alien ordered removed pursuant to section 235(b)(1) of the Act [8 U.S.C. § 1225(b)(1)] shall be removed from the United States in accordance with section 241(c) of the Act [8 U.S.C. § 1231(c)] and 8 C.F.R. part 241.").
- a. When "an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This 90-day period is known as the "removal period." *Id.*; *see also Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). For Mr. Malitskyi, the removal period began on the date the order of removal became administratively final. 8 U.S.C. § 1231(a)(1)(B)(i).

- b. If—as seems plausible—Mr. Malitskyi has been issued a removal order, it is unclear precisely when it became administratively final. Upon information and belief, it became administratively final sometime in March 2025, because Mr. Malitskyi was never referred for a credible fear interview and thus an immigration officer was required to “order [him] removed from the United States without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i).
 - c. Upon information and belief, Mr. Malitskyi has not been given an opportunity to demonstrate to the appropriate ICE official that his release “will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien’s removal from the United States.” 8 C.F.R. § 241.4(d)(1).
 - d. Upon information and belief, no ICE official has conducted the custody review required under 8 C.F.R. § 241.4(h).
 - e. Upon information and belief, no ICE official has conducted the custody review required under 8 C.F.R. § 241.4(i).
 - f. The timing of these required periodic custody reviews is governed by 8 C.F.R. § 241.4(k).
25. In 2020, Ukraine was classified as being “at risk of non-compliance” with its international obligations to accept its citizens for removal from the United States. *See* Jill H. Wilson, Congressional Research Service, IF11025, *Immigration: Recalcitrant Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals*, at 1 (2020).
- a. Since 2020, conditions in Ukraine have deteriorated considerably. It appears that, because of the war, removals to Ukraine are at present impossible to achieve. At least one court has credited the assertion that “ICE is not currently deporting Ukrainians due to the Russian invasion” and that “removal of Petitioner is not reasonably foreseeable in the near future even if he obtains a removal order.” *Raspoutny v. Decker*, 708 F. Supp. 3d 371, 384 (S.D.N.Y. 2023). In *Raspoutny*, the

court ordered a new bond hearing in light of the “indefinite suspension of deportations to Ukraine” and the resulting “potential indefiniteness of Raspoutny’s detention even after his removal proceedings are complete.” *Id.* at 385.

- b. Furthermore, Mr. Malitskyi recalls that ICE officers told him that he would not actually be removed to Ukraine “until the airports reopen.” According to the Federal Aviation Administration, operating commercial aircraft that are under U.S. jurisdiction over the Ukrainian cities of Lviv, Kyiv, Dnipro, Simferopol, and Odesa is restricted and requires advance approval from the administrator of the FAA or authorization from another government agency. This order went into effect on February 24, 2022—the day that Russia invaded Ukraine. This restriction largely remains in effect. *See Removal of the Prohibition Against Certain Flights in Specified Areas of the Dnipro Flight Information Region*, 88 Fed. Reg. 73529 (Oct. 26, 2023) (explaining that the restriction issued on February 24, 2022, remains in effect).
- c. Thus there is no significant likelihood that Mr. Malitskyi’s removal to Ukraine is reasonably foreseeable.

26. The Secretary of Homeland Security or her authorized delegatee have discretion to order Mr. Malitskyi released from custody now that the removal period has ended. *See* 8 U.S.C. § 1231(a)(6).

- a. Upon information and belief, no ICE official has reviewed Mr. Malitskyi’s custody in order to determine whether there is a significant likelihood of removal in the reasonably foreseeable future, whether there have been appropriate “efforts to effect removal,” and whether there are nevertheless “special circumstances justifying continued detention.” 8 C.F.R. § 241.13(g)(1).
- b. Upon information and belief, no ICE official and no immigration judge have reviewed Mr. Malitskyi’s custody for “special circumstances” (or the lack

thereof) that would justify continued detention even in the face of an official determination that there is no significant likelihood of removal in the reasonably foreseeable future. *See generally* 8 C.F.R. § 241.14.

Grounds for Relief

Ground One: Mr. Malitskyi's detention in immigration custody violates the Due Process Clause of the Fifth Amendment because there is no significant likelihood of removal in the reasonably foreseeable future.

27. Mr. Malitskyi cannot presently be returned to Ukraine because of the war with Russia. The war was the reason he was granted humanitarian parole in the first place.
28. Mr. Malitskyi has been in immigration detention since approximately February 24, 2025. There is no end to the war between Ukraine and Russia in sight.
29. The Due Process Clause of the Fifth Amendment limits an alien's "detention to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Because of this constitutional limitation, 8 U.S.C. § 1231 "does not permit indefinite detention." *Id.* After six months of detention, there arises a presumption that the alien can "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," such that "the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701.
30. ICE officers have told Mr. Malitskyi that he will not be removed until the war is over and the airports in Ukraine have reopened. This is essentially an admission that there is no significant likelihood of his removal in the reasonably foreseeable future. Furthermore, ICE admitted to another federal judge in 2023 that it cannot accomplish removals to Ukraine on account of the war. The restrictions on commercial aircraft flying to Ukraine imposed by the Federal Aviation Administration remain in effect.
31. Thus Mr. Malitskyi's continued detention in ICE custody violates the Due Process Clause of the Fifth Amendment as described in *Zadvydas*.

Ground Two: Mr. Malitskyi’s detention in immigration custody pending removal to any third country violates the Due Process Clause of the Fifth Amendment because ICE has not given him sufficient notice of the proposed third country and an opportunity to request deferral or withholding of removal to that country under either statute or the Convention Against Torture.

32. “It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Mr. Malitskyi thus is entitled to “notice and an opportunity to be heard appropriate to the nature of the case.” *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). As relevant here, this means that Mr. Malitskyi is entitled to notice that he is to be removed to a third country “within a reasonable time and in such a manner as will allow [him] to actually seek habeas relief in the proper venue before such removal occurs.” *Id.*
33. Mr. Malitskyi has not been formally ordered removed to any country other than Ukraine. As such, he has never had an opportunity to contest removal to any third country on the ground that he may face persecution or torture if he is removed to that country.
34. To the extent that Mr. Malitskyi’s detention is meant to facilitate his removal to a third country, *see generally Zadvydas*, 533 U.S. at 690 (suggesting that detention following a removal order is intended to facilitate removal), if such a removal is accomplished in violation of his due-process rights, then his detention is illegal. This due-process claim “necessarily impl[ies] the invalidity of [his] confinement and removal” to a third country not yet named in any removal order. *J.G.G.*, 145 S. Ct. at 1005. Thus his due-process claim is properly brought in a habeas petition, and a court order that he be released from detention is a proper remedy for such a violation.

Ground Three: Mr. Malitskyi’s detention in immigration custody is unlawful because ICE has not afforded him the periodic custody reviews that its own regulations require in order to determine whether there is a significant likelihood of removal in the reasonably foreseeable future and whether special circumstances nevertheless require his continued detention.

35. It is “well established that aliens facing deportation from this country are entitled to due process rights under the Fifth Amendment.” *Walters v. Reno*, 145 F.3d 1032, 1037 (9th Cir. 1998). The Supreme Court has “emphasized time and again that the touchstone of due process is protection of the individual against arbitrary action of government, whether the fault lies in a denial of fundamental procedural fairness, or in the exercise of power without any reasonable justification in the service of a legitimate governmental objective.” *County of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998) (citations and quotations omitted). “[T]he Due Process Clause was intended to prevent government officials from abusing their power, or employing it as an instrument of oppression.” *Id.* at 846 (citations and quotations omitted).

36. “When regulations are promulgated to protect a fundamental right derived from the Constitution or a federal statute, such as the Fifth Amendment right to notice and an opportunity to be heard, the Due Process Clause requires federal agencies to follow them, even when those regulations provide greater protection than is constitutionally required.” *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 638 (D. Mass. 2018) (quoting *Nelson v. INS*, 232 F.3d 258, 262 (1st Cir. 2000)). As previously explained, the Due Process Clause forbids indefinite detention by immigration officials under the auspices of 8 U.S.C. § 1231. *See Zadvydas*, 533 U.S. at 689. The periodic custody reviews described in 8 C.F.R. §§ 241.4 and 241.13 are plainly aimed at safeguarding this due-process right against indefinite detention.

37. Because respondents have failed to provide the periodic custody reviews described in 8 C.F.R. §§ 241.4 and 241.13, Mr. Malitskyi’s detention violates the Due Process Clause of the Fifth Amendment.

38. Even if respondents had provided Mr. Malitskyi those periodic custody reviews, they would violate the Due Process Clause.

- a. The Supreme Court has noted that the text of 8 U.S.C. § 1231(a)(6), the statute that authorizes Mr. Malitskyi’s present detention by immigration officials, does not “require[] the Government to provide bond hearings before immigration judges after six months of detention, with the Government bearing the burden of proving by clear and convincing evidence that a detained noncitizen poses a flight risk or a danger to the community.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022). That statute “provides only that a noncitizen ordered removed ‘may be detained beyond the removal period’ and if released, ‘shall be subject to [certain] terms of supervision.’ On its face, the statute says nothing about bond hearings before immigration judges or burdens of proof, nor does it provide any other indication that such procedures are required.” *Id.* (alterations in original) (quoting § 1231(a)(6)).
- b. Under this reading of § 1231(a)(6), the statute conflicts with the fundamental precepts of due process. On its face, the statutory text “sets no limit on the length of time beyond the removal period that an alien who falls within one of the Section 1231(a)(6) categories may be detained,” and the question “whether to continue to detain such an alien and if so, in what circumstances and for how long” is up to the Attorney General (or the Secretary of Homeland Security). *Zadvydas*, 533 U.S. at 689.
- c. But the Supreme Court has never (outside the national security context) authorized prolonged detention without an individualized hearing, before a neutral adjudicator, at which the detainee has a meaningful opportunity to participate. The requirement of an individualized hearing before a neutral adjudicator at which the detainee has a meaningful opportunity to participate applies to pretrial detention in criminal cases, *see United States v. Salerno*, 481 U.S.

739, 750 (1987); civil commitment, *see Kansas v. Hendricks*, 521 U.S. 346, 357 (1997); posttrial commitment of persons acquitted of criminal charges by reason of insanity, *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); and detention pending an adjudication of juvenile delinquency, *see Schall v. Martin*, 467 U.S. 253, 277, 279–81 (1984).

- d. Here, by contrast, the regulations governing periodic custody reviews of immigration detainees provide no mechanism for an independent adjudication of flight risk and danger. They instead leave that determination in the sole and usually unreviewable judgment of agents working for the entity that is holding detainees like Mr. Malitskyi in custody. *See* 8 C.F.R. § 241.4(c) (delegating custody determinations to certain enumerated officers of the Department of Homeland Security); § 241.13(c) (delegating review of likelihood of removal to the Headquarters Post-order Detention Unit). These agents by definition are not neutral adjudicators of anything. *See Coolidge v. New Hampshire*, 403 U.S. 443, 150 (1971). Their judgment is unreviewable except to the extent that continued detention is sought for a person as to whom there is no significant likelihood of removal in the reasonably foreseeable future on account of some “special danger to the public” that the person might pose. *See* 8 C.F.R. § 241.14(a)(2), (f), (g), (h).
- e. In sum, because § 1231(a)(6) allows for indefinite detention of aliens without an individualized determination of flight risk and danger before a neutral decisionmaker, the statute violates the Due Process Clause. Mr. Malitskyi’s continued detention is therefore illegal.

Prayer for Relief

39. Mr. Malitskyi is being illegally detained, in violation of the Due Process Clause of the Fifth Amendment. He respectfully asks the Court to:
 - a. order the government to answer this petition;
 - b. permit him to file a reply in support;

- c. allow him to conduct discovery in order to support his claim for relief;
- d. convene an evidentiary hearing, if needed to resolve disputed facts;
- e. order Respondents to release him from their custody under supervision; and
- f. grant any other relief that is just and practicable.

Respectfully submitted:

August 14, 2025.

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