

JON M. SANDS
Federal Public Defender
KEITH J. HILZENDEGER #023685
Assistant Federal Public Defender
250 North 7th Avenue, Suite 600
Phoenix, Arizona 85007
(602) 382-2700 voice
keith_hilzendeger@fd.org
Attorneys for Petitioner Malitskyi

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

Pavlo Maliyskyi,

Petitioner,

vs.

David R. Rivas, Warden, et al.,

Respondents.

No.

**Motion for Limited Discovery in
Support of Petition for a Writ of Habeas
Corpus and Motion for a Preliminary
Injunction**

In his petition for a writ of habeas corpus, Mr. Malitskyi contends that his prolonged detention by immigration officials pending an attempt to remove him to Ukraine amounts to unconstitutional indefinite detention, in violation of the Due Process Clause of the Fifth Amendment as interpreted in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Under *Zadvydas*, an alien who has been ordered removed from the United States may be detained only “during a period reasonably necessary to bring about that alien’s removal from the United States.” *Id.* at 689. After six months of post-removal-period detention, there arises a presumption that the detention is unlawful; however, even after that six-month period, “an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. Mr. Malitskyi contends that because of the war between Ukraine and Russia there is no likelihood of his removal in the reasonably foreseeable future. Accordingly, his detention in respondents’ custody violates the Fifth Amendment as interpreted in *Zadvydas*.

1 The allegations in the petition come from counsel's interview with Mr. Malitskyi and a
2 review of so-called "recalcitrant countries" and countries that are "at risk of noncompliance"
3 with what the government believes are their obligations under international law to accept their
4 citizens who are removed from the United States. Owing to his current custody status, Mr.
5 Malitskyi does not have access to documents that may substantiate the allegations in the petition;
6 as a result, many crucial facts in the petition are alleged on information and belief. Respondents,
7 however, are certain to have these documents in their possession. Mr. Malitskyi respectfully asks
8 the Court to provide those documents to his counsel so that he may amend his petition as
9 necessary.

10 Where "specific allegations before the court show reason to believe that the petitioner
11 may, if the facts are fully developed, be able to demonstrate that he is entitled to relief, it is the
12 duty of the court to provide the necessary facilities for an adequate inquiry." *Bracy v. Gramley*,
13 520 U.S. 899, 909 (1997) (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)). The facts as they
14 stand now are not fully developed, because the government presumably possesses information
15 that bears on whether Mr. Malitskyi's due process claims are likely to succeed. This information
16 is likely contained in Mr. Malitskyi's A-file, or in other files or databases maintained by the
17 Departments of Justice and Homeland Security, to which neither he nor his counsel have access.
18 The relevant documents include, but are not limited to, the following:

- 19 1. Mr. Malitskyi's entire A-file;
- 20 2. A transcript (or, failing that, a recording) of any and all hearings in Mr.
21 Malitskyi's case before the immigration courts that led to his being ordered
22 removed from the United States;
- 23 3. Records of any expedited removal proceedings involving Mr. Malitskyi that are
24 not otherwise included in his A-file;
- 25 4. Any and all requests from ICE to any diplomatic representative of the Republic of
26 Ukraine pertaining to travel documents that would "facilitate" Mr. Malitskyi's
27 return to Ukraine, and any responsive or related correspondence to or from those
28 diplomatic representatives pertaining to this request for travel documents;
5. Any and all documents relating to the periodic custody reviews described in 8
C.F.R. § 241.4 for all periods of time that Mr. Malitskyi has been in ICE custody;
and

6. Any and all documents relating to any determination under 8 C.F.R. § 241.13 and 8 C.F.R. § 241.14 regarding whether there is a significant likelihood of removing Mr. Malitsky in the reasonably foreseeable future.

Mr. Malitsky respectfully asks the Court to order the government to furnish these documents to his counsel by the close of business on Friday, August 22, 2025. Mr. Malitsky has good cause for the Court to allow discovery. *Cf. Bracy*, 520 U.S. at 909 (guarantee of success on the merits of a habeas claim is not required for allowing discovery). The deportation officers responsible for assisting Mr. Malitsky in obtaining a passport or other travel documents have likely been privy to information about efforts to obtain those documents have been unsuccessful. In light of the ongoing war between Ukraine and Russia, it is doubtful that efforts to obtain those documents will be fruitful.

In sum, the discovery Mr. Malitsky is requesting may help him establish that there is no reasonable likelihood of his removal in the foreseeable future. This Court should grant the motion and order the government to provide the requested documents to Mr. Malitsky and his counsel.

A proposed order is being lodged herewith.

Respectfully submitted:

August 14, 2025.

JON M. SANDS
Federal Public Defender

s/Keith J. Hilzendeger
KEITH J. HILZENDEGER
Assistant Federal Public Defender
Attorney for Petitioner Malitskyi