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

9 Pavlo Malitskyi,

10 Petitioner,

11 vs.

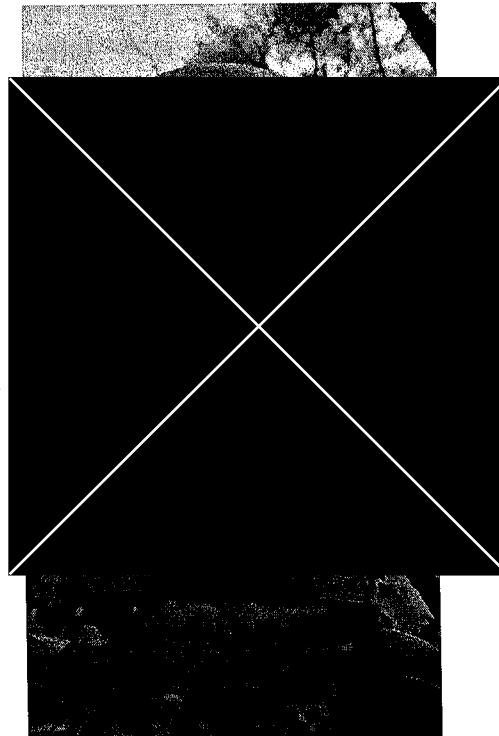
12 David R. Rivas, et al.,

13 Respondents.
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No. 2:25-cv-2929-PHX-MTL

**Motion for Order to Show Cause Why
Respondents Should Not Be Sanctioned
for Their Conduct During the Course of
These Proceedings**

15 Sunday morning, Mr. Malitskyi emailed his counsel a current picture of himself:



1 In his email, Mr. Malitskyi reported that on November 18, 2025, one week *before* this
2 Court granted his habeas petition, he had been removed from the United States. Even though he
3 was ordered removed to Ukraine, and to no other country, he was removed to Poland in
4 contravention of the Immigration and Nationality Act and the Due Process Clause of the Fifth
5 Amendment. He is now serving in the Ukrainian army in his country's fight against Russian
6 aggression. On Mr. Malitskyi's behalf, his counsel respectfully asks the Court to have
7 respondents explain the circumstances of his removal, and how those circumstances led to him
8 first being removed to a country to which he has no ties and then serving in a war from which the
9 previous administration allowed him to seek refuge in this country.

10 **Background**

11 Pavlo Malitskyi, a 41-year-old citizen of Ukraine and resident of Odesa, was once a
12 thriving entrepreneur who organized weddings and did photography and woodworking. (DHS-
13 32) But then Russia invaded Ukraine. In 2023, a missile struck his car where it was parked,
14 completely destroying it. (DHS-32) In 2024, an aerial bomb struck his home, reducing it to ruins.
15 (DHS-32) Mr. Malitskyi survived, but not unscathed; to this day he has ongoing health issues
16 stemming from the destruction of his home. (DHS-32) Remaining in Odesa "poses a significant
17 risk to his safety and well-being. The opportunity to come to the USA would provide Pavlo with
18 the safety he needs to recover fully and rebuild his life." (DHS-32)

19 Effective April 25, 2022, the United States launched the "Uniting for Ukraine" program
20 (U4U). Under the U4U program, the United States would admit "up to 100,000 displaced
21 Ukrainians and others fleeing Russian aggression. Among other legal pathways, the United States
22 will consider, on a case-by-case basis, granting Ukrainians advance authorization to travel to the
23 United States for the purpose of seeking a discretionary grant of parole for urgent humanitarian
24 reasons or significant public benefit." Implementation of the Uniting for Ukraine Parole Process,
25 87 Fed. Reg. 25040, 25040 (Apr. 27, 2022). In 2024, Mr. Malitskyi was screened for resettlement
26 under the U4U program and, on September 1, 2024, arrived at the Los Angeles International
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1 Airport, where he was paroled into the United States. (Dkt. #1 at 4 ¶ 13) He obtained work
2 authorization and began working as an UberEats delivery driver. (Dkt. #1 at 4 ¶ 14)

3 On the first day of the new Trump administration, however, the U4U program was
4 effectively cancelled. (Dkt. #1 at 4–5 ¶¶ 15–16) Then, on February 26, 2025, while he was making
5 an UberEats delivery in the San Diego area, Mr. Malitskyi got lost. He found himself on a road
6 that had only one exit—Tijuana, Baja California, Mexico. Mr. Malitskyi does not speak or read
7 English, yet this is also a mistake commonly made by English-speaking San Diego residents. He
8 was taken into custody at the port of entry in San Ysidro, California, as an applicant for admission
9 without valid entry documents, and given an order of expedited removal to Ukraine. (DHS-1 to
10 DHS-6)

11 On August 14, 2025, with the six-month presumptively valid detention period quickly
12 coming to an end, *see generally Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001), Mr. Malitsky
13 filed, with the assistance of appointed counsel, a petition for a writ of habeas corpus under 28
14 U.S.C. § 2241. (Dkt. #1) Mr. Malitskyi raised three potential violations in his habeas petition.
15 First, he alleged that his detention was illegal under *Zadvydas* because there was no significant
16 likelihood that he would be removed to Ukraine in the reasonably foreseeable future. (Dkt. #1 at
17 10) Second, he alleged that his detention was illegal, in violation of the Due Process Clause of the
18 Fifth Amendment, to the extent that his detention was meant to facilitate his removal to any
19 country other than Ukraine, because he had not (upon information and belief) been given notice
20 of the third country and an opportunity to seek relief from removal to that country. (Dkt. #1 at 11)
21 And third, he alleged that his detention was illegal because he had not been afforded the periodic
22 custody reviews required by regulation to see whether his continued detention was warranted and
23 whether his removal was likely in the reasonably foreseeable future.

24 In support of these claims, he pointed out that in 2020, a Congressional Research Service
25 report classified Ukraine as being “at risk of non-compliance” with its international obligations
26 to accept its citizens for removal from the United States. (Dkt. #1 at 8 ¶ 25) But in 2023, on
27 account of the war, he observed that one judge had credited the assertion that ICE was removing
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1 *no one* to Ukraine. (Dkt. #1 at 8 ¶ 25a (citing *Raspoutny v. Decker*, 708 F. Supp. 3d 371, 384
2 (S.D.N.Y. 2023))) Once the war began, the Federal Aviation Administration prohibited all
3 commercial air traffic to six airports in Ukraine, including the airport in Odesa. (Dkt. #1 at 9
4 ¶ 25b) That prohibition remained in effect when Mr. Malitskyi filed his reply in support of the
5 petition.

6 Alongside his petition, Mr. Malitskyi also filed a motion for discovery. He asked Court to
7 order the respondents to produce his entire A-file, records of expedited removal proceedings not
8 otherwise contained in his A-file, communications between ICE and Ukrainian officials that
9 might facilitate his removal to Ukraine, and documents relating to the periodic reviews described
10 in 8 C.F.R. §§ 241.4 and 241.13. (Dkt. #4) The Court directed respondents to produce these
11 documents by September 3, 2025. (Dkt. #7 at 2) Respondents ultimately produced 77 pages of
12 documents (Dkt. #19), including communications with the Moldovan Consulate in Sacramento,
13 California, regarding the possibility that that country would accept him for removal (DHS-57).
14 Respondents produced no documentation of communications with diplomatic officials from
15 either Poland or Ukraine.

16 Respondents answered the petition without denying any of Mr. Malitskyi's factual
17 allegations. (Dkt. ##10, 16) They admitted that they had no documentation relating to the
18 required custody reviews under 8 C.F.R. §§ 241.4 or 241.13. And they admitted that they tried to
19 make an end-run around the six-month presumption in *Zadvydas* (Dkt. #17 at 5-6) by issuing him
20 another expedited-removal order on August 26, 2025, the six-month anniversary of his arrest,
21 and then contending that his detention was lawful because he had not yet been in detention for
22 six months since that new expedited-removal order had been issued. (Dkt. #10 at 7-9; Dkt. #16 at
23 7) Respondents otherwise made no effort to rebut Mr. Malitskyi's showing that there was no
24 significant likelihood that he would be removed to Ukraine in the reasonably foreseeable future.
25 (Dkt. #17 at 6) Indeed, three weeks before Mr. Malitskyi filed his reply in support of his petition,
26 the government admitted in another case before this Court that it could not remove *anyone* to
27 Ukraine on account of the war. *See* Response to Petitioner's Motion for an Immediate Ruling on
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1 Preliminary Injunction at 3, *Serbenyuk v. Rivas*, No. 2:25-cv-2082-PHX-MTL (MTM) (D. Ariz.
2 filed Aug. 20, 2025) (Dkt. #22).

3 Thus, as of September 12, 2025, Mr. Malitskyi's petition was fully briefed and ready for a
4 ruling. All the evidence before this Court indicated that there was no significant likelihood of Mr.
5 Malitskyi's removal *at all*. All indications were that Mr. Malitskyi was about to prevail.

6 On November 14, 2025, Mr. Malitskyi asked this Court to order respondents to show
7 cause why his petition should not be granted. (Dkt. #21) Eleven days later, the Court denied the
8 motion for an order to show cause, but also granted his petition and ordered him released from
9 immigration detention. (Dkt. #22) The Court ordered the government to notify it that it had
10 complied with the release order by 4:00 P.M. the next day, November 26, 2025.

11 In its notice of compliance, the government explained to the Court for the first time that
12 the petition was moot on the day that the Court had granted it. According to respondents'
13 counsel, after she received the Court's release order, she "immediately emailed the Court's
14 Order to Immigration and Customs Enforcement." (Dkt. #25 at 1) For the first time, even
15 respondents' *counsel* learned that Mr. Malitskyi had been removed from the United States. "ICE
16 informed undersigned counsel, for the first time, that Petitioner had already been released from
17 custody and was removed from the United States on November 17, 2025, to Poland, pursuant to
18 his final expedited removal order." (Dkt. #25 at 1)

19 **Argument**

20 ***Important note:*** In this section of this filing, Mr. Malitskyi's counsel must stress that the
21 term "respondents" does *not* include their counsel from the U.S. Attorney's Office in Phoenix.
22 Mr. Malitskyi's counsel trusts that respondents' counsel's representations to this Court have
23 complied with Fed. R. Civ. P. 11. At the same time, though, respondents Rivas, Archambeault,
24 Bondi, and Noem; their successors under Fed. R. Civ. P. 25(d), if any; and those acting on their
25 behalf, must be held to account for the information that has been—and has *not* been—presented
26 to this Court.
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1 Respondents' actions frustrated this Court's ability to provide substantial justice to Mr.
2 Malitskyi. Because all the evidence before the Court indicated that he could not be removed to
3 Ukraine—the only country to which he had ever been ordered removed—this Court accordingly
4 ordered Mr. Malitskyi released from custody. But respondents did not release Mr. Malitskyi from
5 immigration detention into the United States, the natural result of a successful *Zadvydas* claim.
6 Instead, without statutory authority, and without giving this Court a chance to adjudicate
7 whether respondents had complied with Mr. Malitskyi's due-process rights (as he alleged in
8 Ground Two of his petition that they had not), respondents removed Mr. Malitskyi to Poland, a
9 country to which he had no ties. From there, he was somehow conscripted into the Ukrainian
10 army.

11 Before this Court issued the order granting Mr. Malitskyi's petition, respondents had
12 concealed from both him and this Court two crucial facts. (The wording of the notice of
13 compliance filed November 26, 2025, suggests that respondents' counsel herself had learned of
14 these crucial facts at most 24 hours before filing.) The first is that they had already removed Mr.
15 Malitskyi, meaning that the petition was moot and this Court had no jurisdiction to grant the
16 petition. *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005) (“Mootness is jurisdictional.”).
17 The second is that they removed Mr. Malitskyi not to Ukraine—the country to which
18 Respondents Noem and Archambeault and their agents had ordered him removed—but instead
19 to Poland, in violation of their own order and the governing statute. *See* 8 U.S.C. § 1231(b)(1)(C)
20 (removal permitted to a country other than the country of citizenship, nationality, birth, or
21 residence only if removal to those countries is “impracticable, inadvisable, or impossible”).
22 There was no evidence before this Court that respondents had given Mr. Malitskyi any notice of
23 their intent to remove him to that country (despite his complete lack of ties to that country). *See*
24 *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (per curiam) (explaining that due process requires
25 notice to an alien “that they are subject to removal” “within a reasonable time and in such a
26 manner as will allow them to seek habeas relief in the proper venue before such removal
27 occurs”). There was no evidence before the Court that Poland was not a country in which Mr.
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1 Malitskyi’s “life or freedom would be threatened” because of his “race, religion, nationality,
2 membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A). And
3 there was no evidence before this Court that Mr. Malitskyi had had *any opportunity at all* to seek
4 relief from removal to Poland on one of those grounds—the violation he alleged in Ground Two
5 of his petition. Indeed, all the evidence before this Court showed that it was impossible to remove
6 Mr. Malitskyi to Ukraine—the only country to which he had been ordered removed—because it
7 was the site of an ongoing war.

8 “Well before the promulgation of the Federal Rules of Civil Procedure..., the Supreme
9 Court had recognized that federal courts have inherent authority to impose submission to their
10 lawful mandates.” *Gregory v. Montana*, 118 F.4th 1069, 1077 (9th Cir. 2024) (quoting *Chambers v.*
11 *NASCO, Inc.*, 501 U.S. 32, 43 (1991)) (cleaned up; ellipsis added). “Such inherent powers
12 include the discretion to fashion an appropriate sanction for conduct which abuses the judicial
13 process.” *Id.* (cleaned up and quotation omitted). “This inherent authority often remains
14 available as an alternative source of sanctioning power even when there are statutes or rules that
15 also provide for sanctions.” *Id.* “This power includes the ability to punish conduct before the
16 court as well as actions beyond the court’s confines, regardless of whether that conduct
17 interfered with courtroom proceedings.” *America Unites for Kids v. Rousseau*, 985 F.3d 1075, 1088
18 (9th Cir. 2021) (citing *Chambers*, 501 U.S. at 44).

19 “When acting under its inherent authority to impose a sanction, as opposed to applying a
20 rule or statute, a district court must find either: (1) a willful violation of a court order; or (2) bad
21 faith.” *Id.* at 1090 (citing *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1035 (9th Cir.
22 2012)). A “sanction may be awarded either for willful disobedience of a court order or when a
23 party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Id.* (citing
24 *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980); *Fink v. Gomez*, 239 F.3d 989, 991 (9th
25 Cir. 2001)).

26 It has been reported that the current administration is aware that Ukrainian nationals
27 deported to Poland would be conscripted for service in the war against Russia. The date listed in
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1 the notice of compliance for Mr. Malitskyi's removal, November 17, 2025, is consistent with
2 reporting in *The Washington Post* about other similar deportations. "The Justice Department said
3 in a court filing Wednesday that the government has plans to deport Roman Surovtsev, 41, to
4 Ukraine as early as Monday. His attorneys said it appears that Immigration and Customs
5 Enforcement may be attempting to remove 'a significant number' of Ukrainian nationals and that
6 other detainees are being told they will be removed 'via military flights to Ukraine or Poland on
7 Monday.'" Maria Sacchetti et al., *Trump officials prepare to deport some Ukrainians despite*
8 *conscription fears*, Wash. Post (Nov. 14, 2025). Lawyers for Mr. Surovtsev were quoted as saying,
9 "In at least some cases, it appears that detainees are not being given the right to demonstrate a
10 fear of removal before being deported. This is unlawful. Ukraine is a war zone, is currently under
11 martial law, and it is likely that any deportees will be forcibly drafted into the army and sent to the
12 front where they face a high likelihood of death." *Id.* According to the November 26 notice of
13 compliance, Mr. Malitskyi was not taken directly to Ukraine, but rather to somewhere in Poland
14 (the notice does not say specifically where). This fact raises questions about whether the either
15 the United States or Polish governments, or both, were complicit in Mr. Malitskyi's return to a
16 war zone—the same war zone from which he had fled a year earlier and from which this country
17 had agreed to resettle him.

18 What the news cannot tell us, however, is why respondents did not inform their counsel
19 that Mr. Malitskyi had been removed at all, let alone to a country to which they were not
20 statutorily authorized to remove him. If respondents had information suggesting that Mr.
21 Malitskyi's petition was moot, they should have informed their counsel immediately. If
22 respondents removed Mr. Malitskyi in violation of his due process rights, as Mr. Malitskyi
23 alleged in his petition, they should be held to account for that violation. This Court has the
24 inherent authority to order the respondents to answer these questions. It should do so in order to
25 signal its lack of tolerance for their respondents' actions that appear to have undermined the
26 orderly administration of justice.

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Conclusion

This Court should order respondents to show cause why they should not be sanctioned for violating this Court’s removal order. The order should require a detailed accounting, under penalty of perjury, of what respondents knew and when they knew it, and what respondents decided with respect to Mr. Malitsky and how they came to that decision. If necessary to fully air the relevant facts, this Court should convene a hearing.

Respectfully submitted:

December 16, 2025.

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