

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

ROMAN ANTATOLEVICH
SUROVTSEV,

Petitioner-Plaintiff,

 $\mathbf{v}_i$

U.S. DEPARTMENT OF
HOMELAND SECURITY, *et al.*,

Respondents-Defendants.

Case No. 3:25-cv-02246

MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, Petitioner-Plaintiff Roman Antatolevich Surovtsev (“Mr. Surovtsev” or “Petitioner”), by and through the undersigned counsel, hereby moves the court for a preliminary injunction ordering his release from Respondents-Defendants’ (“Respondents”) custody during the pendency of this action. This motion is based upon the Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, its exhibits, the accompanying memorandum of points and authorities, and relevant law.

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INTRODUCTION & FACTUAL BACKGROUND

Petitioner-Plaintiff Roman Antatalevich Surovtsev (“Mr. Surovtsev”) is in the custody of Immigration and Customs Enforcement (“ICE”) at the Bluebonnet Detention Center in Anson, Texas, following the revocation of his order of supervision issued after his release from ICE custody in 2015.

Defendants-Respondents have attempted to procure travel documents permitting Mr. Surovtsev’s removal to Ukraine or Russia for a decade to no avail. In 2014-15 and on several occasions since, the Ukrainian government has informed Defendants-Respondents that it was unable to obtain documents necessary to determine Mr. Surovtsev’s status due to the war and subsequent occupation by Russia of Mariupol where Mr. Surovtsev was born. Mr. Surovtsev is not a citizen of Ukraine because he was born in the Union of Soviet Socialist Republics (“USSR”) and fled to the United States with his mother and siblings when he was a child. Nor is Mr. Surovtsev a citizen of Russia. He is stateless, a citizen of no country at all.

Recognizing their inability to remove Mr. Surovtsev, Defendants-Respondents released him from their custody after six months of detention in 2015 on an order of supervision. Mr. Surovtsev has complied with all conditions of his supervision for over a decade, including attending all required check-in appointments.

On August 1, 2025, Mr. Surovtsev attended his ICE check-in with immigration counsel. Without notice or explanation, Defendants-Respondents revoked his order of supervision and returned him to their custody. Defendants-Respondents have not demonstrated any changed circumstances that now render his removal from the

United States significantly likely in the reasonably foreseeable future, nor have they provided Mr. Surovtsev with notice of their reasons for revoking his order of supervision or an opportunity to be heard on the matter.

As such, Mr. Surovtsev's re-detention violates his rights under the Fifth Amendment, as well as the Immigration and Nationality Act and its implementing regulations. Mr. Surovtsev therefore seeks a preliminary injunction ordering Defendants-Respondents to release him from their custody. A preliminary injunction is necessary to avoid irreparable harm to Mr. Surovtsev stemming from his ongoing detention in violation of his constitutional and statutory rights

LEGAL STANDARD

Mr. Surovtsev is entitled to a preliminary injunction if he establishes that he is "likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tip in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "The first two factors are the most critical." *Valentine v. Collier*, 956 F.3d 797, 801 (5th Cir. 2020). The latter two "factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

I. Mr. Surovtsev is Likely to Succeed on the Merits.

A. Mr. Surovtsev's Re-Detention Violates the Fifth Amendment.

Mr. Surovtsev is likely to succeed on the merits of his claim that his continued detention violates the Fifth Amendment Due Process Clause.

The “Due Process Clause applies to all persons within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.*

Detention for non-criminal purposes is only allowed “in narrow nonpunitive circumstances, where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* (internal quotations and citations omitted). With respect to immigration detention, the Supreme Court has recognized two special justifications: preventing flight risk and preventing danger to the community. *See id.* “[B]y definition, the first justification—preventing flight—is weak or nonexistent where removal seems a remote possibility at best.” *Id.*

The Supreme Court has held that the Immigration and Nationality Act (“INA”) “limits a[non-citizen’s] post-removal detention period to a period reasonably necessary to bring about that [non-citizen’s] removal from the United States. It does not permit indefinite detention.” *Id.* at 689; *see id.* at 699 (“Whether a set of circumstances amounts to detention within, or beyond, a period reasonably necessary to secure removal is determinative of whether the detention is, or is not, pursuant to statutory authority.”).

“A [non-citizen] 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 (emphasis added). “[I]f removal is not reasonably foreseeable, the [habeas] court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699. This rule applies to both once-lawful permanent residents and inadmissible non-citizens. *See Clark v. Martinez*, 543 U.S. 371, 378 (2005).

Mr. Surovtsev was ordered removed from the United States on November 4, 2014. ECF No. 1 ¶ 42. He was held in confinement by Immigration and Customs Enforcement (“ICE”) until May 14, 2015, when he was released on an order of supervision pursuant to 8 U.S.C. § 1231(a)(3). ECF No. 1 ¶ 47. ICE released Mr. Surovtsev after concluding on May 11, 2015, “No SLRFF, Zadvydas release,” referring to the Zadvydas acronym requiring release when there is no “Substantial Likelihood of Removal in the Reasonably Foreseeable Future.” ECF No. 1 ¶ 45.

ICE made this determination after months of attempting to secure travel documents for Mr. Surovtsev to Ukraine or Russia. *See* ECF No. 1 ¶¶ 43-46. ICE explained that it had “been advised by both the Ukrainian Consulate that the Ukrainian Region from where SUROVTSEV is from is currently at war and that any information from this region is not likely to occur. Likewise, the Consulate of Russia has stated that the Consulate does not have any information on SUROVTSEV” whose “removal from the United States is not foreseeable in the near future.” ECF No. 1 ¶ 45.

The reasons underlying ICE’s determination that Mr. Surovtsev was unlikely to be removed in the reasonably foreseeable future—the war in Ukraine—have not dissipated, they have metastasized. If information about Mr. Surovtsev’s eligibility

for Ukrainian citizenship exists, it has likely been destroyed in the Russian siege and seizure of Mariupol. Based on the Ukrainian government's prior statements that Mr. Surovtsev's documents were stored in government buildings in Mariupol, the likelihood that the Ukrainian government has any ability to obtain the documents necessary to accept Mr. Surovtsev from Russian-occupied Mariupol is minimal. If the U.S. government believed that there was no substantial likelihood of Mr. Surovtsev's removal a decade ago, there can be no plausible likelihood today.

Given that there is no substantial likelihood that Mr. Surovtsev will be removed in the reasonably foreseeable future, he is likely to succeed on the merits of his Fifth Amendment claim that his continued detention is unlawful under *Zadvydas*.

B. The Revocation of Mr. Surovtsev's Order of Supervision Violates the Administrative Procedure Act, Accardi Doctrine, and Fifth Amendment.

Mr. Surovtsev is also likely to succeed on the merits of his claim that the revocation of his order of supervision and subsequent de-detention violate the Administrative Procedure Act ("APA"), the *Accardi* Doctrine, and his Fifth Amendment Procedural Due Process rights.

The APA empowers courts to "hold unlawful and set aside agency action[s]" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] without observance of procedure required by law[.]" 5 U.S.C. § 706(2)(A)-(C).

Furthermore, administrative agencies must abide by their own regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

The INA requires that orders of supervision are issued pursuant to “regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3). The regulation relevant to supervised release on the basis that there is no significant likelihood of removal in the reasonably foreseeable future is found at 8 C.F.R. § 241.13.

Release pursuant to an order of supervision on this basis may be revoked for two reasons: (a) the non-citizen has violated a condition of release, 8 C.F.R. § 241.13(h)(4)(i)(1), or (b) ICE determines that “on account of changed circumstances, . . . there is a significant likelihood that the [non-citizen] may be removed in the reasonably foreseeable future.” *Id.* § 241.13(h)(4)(i)(2). When ICE revokes an order of supervision, it must notify the non-citizen “of the reasons for revocation” and “promptly . . . afford the [non-citizen] an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* § 241.13(h)(4)(i)(3).

“These regulations clearly indicate, upon revocation of supervised release, it is the [government’s] burden to show a significant likelihood that the [non-citizen] may be removed.” Order Overruling Objections and Adopting Report and Recommendation at 6, *Escalante v. Noem, et al.*, No. 9:25-cv-00182 (E.D. Tex., Aug. 2, 2025) (ECF No. 43).

ICE failed to provide Mr. Surovtsev with any reason for the revocation of his order of supervision. Nor has Mr. Surovtsev been given an opportunity to be heard on these unrevealed reasons. Mr. Surovtsev never violated the conditions of his order of supervision and can only be detained when ICE demonstrates changed circumstances

that render his removal significantly likely. ICE has not done so. They cannot do so, because the Ukrainian government has previously informed the U.S. government that the papers necessary to grant travel document are housed in Mariupol. If the documents exist and were not destroyed in fighting, they are unquestionably in the possession of the Russian government, which presently occupies the city. In other words, if the circumstances that originally justified Mr. Surovtsev's release have changed since 2014-15, they have *worsened* since Russia invaded Ukraine in 2022, rendering it practically impossible that he will be removed to Ukraine in the reasonably foreseeable future.

Having failed to abide by the INA or its own regulations requiring notification of the reason for his re-detention and an opportunity to be heard, ICE's decision to revoke Mr. Surovtsev's order of supervision is unlawful under the APA and *Accardi* doctrine, as well as violative of Mr. Surovtsev's procedural due process rights. Furthermore, ICE's failure to demonstrate changed circumstances that make Mr. Surovtsev likely to be removed in the reasonably foreseeable future render its decision to re-detain him a violation of the APA, the *Accardi* doctrine, and Fifth Amendment.

As such, Mr. Surovtsev is likely to succeed on the merits of his claim that the revocation of his order of supervision and subsequent re-detention without the process prescribed by the INA and relevant regulations violate the APA, the *Accardi* doctrine, and the Fifth Amendment.

II. Mr. Surovtsev Will Suffer Irreparable Harm in the Absence of a Preliminary Injunction.

The violation of an individual's constitutional rights is an irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). “The loss of [constitutional] freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Opulent Life Church v. City of Holly Spring, Miss*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod*, 427 U.S. at 373); see also Charles Alan Wright & Arthur R. Miller, *11A Federal Practice and Procedure* § 2948.1 (3d ed. 1998) (“When an alleged deprivation of a constitutional right is involved, . . . most courts hold that no further showing of irreparable injury is necessary.”).

Irreparable physical and mental harm is inevitable for those incarcerated. As the Supreme Court has explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); see also *Velasco Lopez v. Decker*, 928 F.3d 842, 850 (2d Cir. 2020) (“[t]he deprivation [] experienced [by immigrants] incarcerated [is], on any calculus, substantial. [They] are locked up in jail. [They cannot] maintain employment or see [their] family or friends or others outside normal visiting hours. They use of a cell phone [is] prohibited, and [they] have no access to the internet or email and limited access to the telephone.”); *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (recognizing in “concrete terms the irreparable harm imposed on anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on [persons in detention] and their families as a result of detention,

and the collateral harms to children of [persons in detention] whose parents are detained”).

III. The Balance of Equities Weigh Heavily in Mr. Surovtsev’s Favor and a Preliminary Injunction Is in the Public Interest.

The third and fourth factors tip strongly in Mr. Surovtsev’s favor. Where, as here, the government is a party to a case, the final two injunction factors—*i.e.*, the balance of equities and the public interest—merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

When assessing whether a preliminary injunction is warranted, the Court “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Winter*, 555 U.S. at 24 (internal quotation omitted). “[I]njunctions protecting [constitutional] freedoms are always in the public interest.” *Opulent Life Church*, 697 F.3d at 298 (quoting *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006); *see also Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (“[W]e have held that plaintiffs who are able to establish a likelihood that [a] policy violates the U.S. Constitution . . . have also established that both the public interest and the balance of equities favor a preliminary injunction.”) (cleaned up).

CONCLUSION

For the foregoing reasons, the Court should grant Mr. Surovtsev’s motion for a preliminary injunction ordering his immediate release out of Respondents-

Defendants' unlawful custody and into the care of his U.S. citizen wife and young daughters.

Dated: August 20, 2025

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**Pro Hac Vice forthcoming*

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(b)(3), the undersigned affirms that it was not possible for counsel for Petitioner-Plaintiff to arrange a conference with counsel for the Respondents-Defendants before filing this motion, because no attorney has noticed an appearance on this matter yet for Respondents-Defendants. Counsel for Petitioner-Plaintiff will arrange a conference as quickly as practicable as soon as the U.S. Attorney's Office notices appearances in this case.

/s/ Felix Galvez

Felix Galvez

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CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2025, counsel for Petitioner-Plaintiff provided a copy of this Motion for a Preliminary Injunction by email to the following individuals:

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