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

ROMAN ANTATOLEVICH SUROVTSEV,	§	
	§	
Petitioner,	§	
	§	
v.	§	Case No. 1:25-CV-160-H
	§	
KRISTI NOEM, et al.,	§	
	§	
Respondents.	§	

REPLY TO RESPONDENTS' RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION AND HABEAS PETITION

Respondents' Response (ECF No. 17) to Petitioner Roman Surovtsev's ("Mr. Surovtsev") petition for a writ of habeas corpus (ECF No. 1) and motion for preliminary injunction (ECF No. 2) confirms (1) that the government lacks authority to detain Mr. Surovtsev, (2) that no "changed conditions" justified his re-detention on August 1, 2025 and (3) that there is no significant likelihood of removal in the reasonably foreseeable future. As such, the Court should grant Mr. Suvotsev's request for a preliminary injunction and issue the writ.

ARGUMENT

I. Respondents' Arguments Confirm Petitioner's Likelihood of Success on the Merits.

A. A New Travel Document Request Is Not a "Changed Circumstance" Sufficient to Justify Re-detention.

Respondents agree that their ability to revoke a non-citizen's release must be predicated on changed circumstances that render him significantly likely to be

removed in the reasonably foreseeable future. ECF No. 17, at 5. Respondents point to the fact that Immigration and Customs Enforcement ("ICE") is preparing "a new Ukrainian[1] travel document request" as a sufficient "changed circumstance" to justify the conclusion that "it is now likely that Petitioner will be removed in the reasonably foreseeable future[.]" *Id.* This falls woefully short of what is required to justify the revocation of Mr. Surovtsev's release and continued detention.

Courts in this Circuit and around the country have rejected exactly this argument in similar cases. The preparation of another travel document request does not, on its own, constitute a changed circumstance authorizing re-detention. "Upon revocation of supervised release, it is [ICE's] burden to show a significant likelihood that the [non-citizen] may be removed." *Escalante v. Noem*, Case No. 9:25-cv-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025); *see also Roble v. Bondi*, Case No. 25-cv-3196, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025).

Conclusory statements that ICE is attempting to remove a non-citizen do not satisfy this burden. "A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future." *Escalante*, 2025 WL 2206113 at *4 (quotation omitted). Last month, the District Court for the District of Minnesota rejected the same argument Respondents raise

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[1] Respondents incorrectly claim that Mr. Surovtsev is a "citizen of Ukraine." ECF No. 17 at 1 (cited ECF No. 18, App. p. 2, ¶ 3). Mr. Surovtsev is not a citizen of Ukraine. He was born in the USSR and moved to the United States in 1988. ECF No. 1 ¶ 1. As such, he never obtained Ukrainian citizenship. Inexplicably, Respondents assert that Mr. Surovtsev is a Ukrainian citizen despite being aware that Ukraine "could not [confirm]" Mr. Surovtsev's citizenship. *Compare* ECF No. 18, App. p. 2 ¶ 3 *with* ECF No. 18, App. p. 3 ¶ 6.

here and noted substantial agreement by other district courts. *Roble*, 2025 WL 2443453 at *5 ("Courts faced with similarly paltry evidence of changed circumstances have likewise concluded that the government failed to meet its burden under 8 C.F.R. § 241.13(i)(2)."). In *Hoac v. Becerra*, the Eastern District of California held in no uncertain terms that "[t]he fact that Respondents intend to complete a travel document request for Petitioner does not make it significantly likely he will be removed in the reasonably foreseeable future." Case No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025). As with Mr. Surovtsev, ICE had previously failed to obtain travel documents for the petitioner in *Hoac*. The court found this significant. "Respondents have not provided any details about why a travel document could not be obtained in the past, nor have they attempted to show why obtaining a travel document is more likely this time around. Respondents' intent to eventually complete a travel document request for Petitioner does not constitute a changed circumstance." *Id.*

Respondents say they *intend* to submit a new Ukrainian travel document request. ECF No. 18, App. pp. 3-4, ¶ 8. This intent is not a changed circumstance, but a continuation of the *status quo ante* that has existed for ten years since the last time ICE tried and failed to remove him to Ukraine. ICE previously determined there was no significant likelihood of removal in the reasonably foreseeable future after making a travel document request years ago. ECF No. 1-1, at 20. Merely re-starting this exercise in futility does not create changed conditions that transform the *lack* of a

likelihood of removal in the reasonably foreseeable future into a significant likelihood.[2]

B. Respondents' Intentions and Beliefs Do Not Create a Significant Likelihood of Removal in the Reasonably Foreseeable Future.

The declaration from ICE Deportation Officer ("DO") Zachery Hagerty, ECF No. 18, App. pp. 2-4, makes clear there is nothing about this "new" request which has increased the odds a travel document will be granted by Ukraine. DO Hagerty acknowledges that ICE attempted to procure travel documents from Ukraine over an extended period from 2014 to 2015. App. p. 3, ¶ 6. DO Hagerty also acknowledges that in July 2015, "the Consulate General of Ukraine informed [ICE] ERO that SUROVTSEV's citizenship could not be confirmed at that time, and they therefore could not issue travel documents at this time." *Id.*

Respondents do not deny the assertions cited in Mr. Surovtsev's habeas petition and supporting documents that ICE was "almost positive that we won't get a [travel document] for him," ECF No. 1-1, at 24; that the Ukrainian Consul General Sergiy Aloshyn informed ICE on July 13, 2015 that "the Consulate General cannot issue the Ukrainian travel document for Mr. Surovtsev," *id.* at 1; and that the Ukrainian Vice-Consul called ICE in February 2015 "stating that SUROVTSEV is from a region in Ukraine that is currently at war" and that documents would

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[2] While Respondents do not rely on the possibility of third-country removal in their brief, the exhibits note that exploring this possibility is ICE's Plan B, suggesting that Respondents are aware of the unlikelihood that Ukraine will issue a travel document. *See* ECF No. 18, App. p. 4, ¶ 9. This is no more a qualifying changed circumstance than ICE's intention to request a Ukrainian travel document.

therefore not be forthcoming. *Id.* at 15. Respondents make no attempt to overcome the key factual hurdle in this case: the Ukrainian government told ICE that the only possible way it could conceivably grant travel documents would be to access government records in Mariupol, and those documents are even more inaccessible now than they were in 2014-15 (even assuming they were not destroyed in the 2022 siege or Russian occupation). ECF No. 1, at 14.

There is nothing in Respondents' filing—not a single piece of evidence—to indicate that the Ukrainian consulate is more likely to grant a travel document in 2025 than it was in 2014-15. DO Hagerty's declaration does not indicate that ICE has had any contact with the Ukrainian authorities. Respondents make no attempt to explain what has changed since the Ukrainian government informed ICE years ago that it is simply not possible for the Ukrainian government to issue Mr. Surovtsev travel documents. To the extent conditions in Eastern Ukraine have changed, they have made it far *more* difficult for the Ukrainian government to access the records it would need to potentially issue travel documents to Mr. Surovtsev.

Moreover, it is not even clear that a request for travel documents will ever be made here. DO Hagerty wrote in his declaration dated Wednesday, September 10, 2025, that "I believe I will complete the travel document request this week . . . ." ECF No. 18, App. p. 3, ¶ 8. Nearly three weeks have passed and, at the time of this filing, not only has a travel document request *not* been submitted, but Mr. Surovtsev's request for the travel document request to be translated into English (he does not read or speak Ukrainian) has not even been met. At a minimum, the sluggish pace at

which the government is moving confirms it has no reason to believe the likelihood of removal has increased *at all*.

The timeline of events here makes abundantly clear that the government has no prospects for removing Mr. Surovtsev to Ukraine. Respondents did not attempt to initiate another request for travel documents in the roughly three weeks between Mr. Surovtsev's re-detention on August 1, 2025, and the filing of this petition and motion on August 20, 2025. Had Mr. Surovtsev's re-detention been based on an actual change in conditions indicating a significant likelihood of procuring Ukrainian travel documents, Respondents would have moved on that information and would have been capable of showing this Court what concrete steps it has taken to advance Mr. Surovtsev's removal. But Respondents only brought him travel documents weeks after detaining him, appear to have reacted not to changed conditions but to the initiation of this lawsuit, and have not even proven interested in translating those documents for Mr. Surovtsev to sign. Every day that Mr. Surovtsev remains behind bars as Respondents go through the motions in their futile effort is a violation of his constitutional and statutory rights.

C. Respondents Did Not Inform Mr. Surovtsev of the Basis for His Re-Detention nor Provide Him with an Opportunity to Respond.

Habeas courts have found the failure to provide the petitioner with an informal interview and opportunity to be heard on the reasons for his re-detention independently sufficient to rule for the petitioner. *See Hoac*, 2025 WL at *4 ("Because there is no indication that an informal interview was provided to Petitioner, the court finds Petitioner likely to succeed on his claim that his re-detainment was unlawful.").

Respondents' argument that they provided Mr. Surovtsev with an adequate interview and opportunity to respond is meritless.

As an initial matter, Respondent's assertion that DO Brian Shelton informed Mr. Surovtsev and his counsel of the basis for the re-detention, ECF No. 17, at 2, is false. Neither Mr. Surovtsev nor his attorney, Karina Roque of the Presti Law Firm, PLLC, heard DO Shelton or any other ICE officer provide any reason whatsoever for the re-detention. *See* Exh. C. DO Shelton's claim that he "informed them that ERO was seeking a travel document to remove SUROVTSEV" from Ukraine or a third country, App. p. 7, ¶¶ 5-6, is simply not accurate. According to Attorney Roque:

> At no point did Officer Shelton mention that a new request for travel documents was being made. At no point did Officer Shelton mention the country "Ukraine" or any other country. I was given no notice of the reason for the re-detention beyond Officer Shelton's statement that Mr. Surovtsev had a prior removal order. I was given no opportunity to respond to whatever justification ICE had for re-detaining Mr. Surovtsev, because no reason was given to me.

Exh. C. at ¶ 5. In fact, when Attorney Roque attempted to provide DO Shelton with proof that the Ukrainian consulate had denied travel documents in 2015, DO Shelton refused to accept such documents. *Id.* at ¶4.

In any case, even the interaction Respondents describe would not satisfy the regulatory requirements for revoking an order of supervision. 8 C.F.R. § 241.13(i)(3) requires more than a bare assertion that ICE intends to try to remove Mr. Surovtsev again. Section 241.13(i)(3) requires not only notification of the reasons for the revocation, but also an opportunity to respond, including by "submit[ing] any

evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future[.]" The custody review that follows is required to include "an evaluation of any contested facts[.]" *Id.* The regulations clearly require ICE to explain *why* removal has become significantly likely. What Respondents claim DO Shelton stated is insufficient, especially given that it does not include the basis for ICE's putative belief that Ukraine will issue travel documents now when it was unable to in 2015. Again, DO Shelton explicitly refused to accept evidence showing the Ukrainian government had previously rejected Mr. Surovtsev's request for travel documents. Exh. C at ¶4.

Even if DO Shelton's putative statements satisfy § 241.13(i)(3)'s notice requirement, the exchange that followed do not satisfy the opportunity-to-respond requirement. DO Shelton did not claim he conducted an interview as to any changed circumstances. Instead, he refers to an "informal discussion" which, according to his declaration, merely related to his purported explanation of the revocation process and to the issue of whether he would accept a stay request. ECF No. 18, App. p. 7 ¶ 6. Attorney Roque explained that she had no idea what changed circumstances ICE claims justified the re-detention, and that as a result she had no way to present evidence in response. Exh. C. at ¶ 4. This does not satisfy the requirements of § 241.13(i)(3).

The fact that Respondents failed to make *any* request for travel documents for several weeks after re-detaining Mr. Surovtsev substantially undermines the credibility of DO Shelton's claim to have informed Mr. Surovtsev and his counsel that

such a request was imminent on August 1. If Mr. Surovtsev's re-detention was really triggered by Respondents' plans for a new travel document, why did they wait to bring him documents to sign until after he sued for his release? The answer is that Respondents are making it up as they go, reacting to legal filings and not to any actual change in the likelihood of Mr. Surovtsev's removal to Ukraine. Respondents' assertion that DO Shelton's declaration shows they "complied with this procedural requirement" in § 241.13(i)(3) is not satisfied even if the contents of DO Shelton's declaration were accurate (and they are not).

II. The Remaining Factors Favor Injunctive Relief.

Respondents' brief treatment of the other factors makes clear that they are necessarily satisfied if Petitioner establishes that he is likely to succeed on the merits. For the reasons stated above and in the underlying petition and motion, Mr. Surovtsev is detained in violation of the U.S. Constitution and the INA and its implementing regulations. Unlawful detention is not a "speculative" harm, even if lawful detention "is a constitutionally valid aspect of the deportation process." ECF No. 18, at 7.

Respondents are correct that an order of supervision is conditional. *Id.* But it is conditional on changed circumstances that render removal significantly likely. Where, as here, supervision is revoked without reference to that condition, the consequent detention is unlawful.

Finally, Petitioner agrees that "both the government and the public at large have a strong interest in the enforcement of the immigration laws." *Id.* This case is

about just that. The government may not disregard law and regulation in pursuit of whatever legitimate ends it claims. Nothing could be further from the public interest.

CONCLUSION

Respondents' response brief and declarations support Petitioner's arguments. The government lacks the authority to detain Mr. Surovtsev for even a single day longer. The petition should be granted and the injunction issued as soon as practicable.

Dated: September 25, 2025

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**Pro Hac Vice* forthcoming

CERTIFICATE OF SERVICE

I certify that on September 25, 2025, I electronically filed the foregoing on the Court's CM/ECF system, that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/ Eric Lee
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