

District Judge Kimberly K. Evanson
Magistrate Judge Brian A. Tsuchida

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DZYUBAN DANILO,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:25-cv-01919-KKE-BAT

FEDERAL RESPONDENTS' HABEAS
RETURN

Noted for Consideration:
December 5, 2025

I. INTRODUCTION

This Court should deny pro se Petitioner Danilo Dzyuban's Petition for Writ of Habeas Corpus. Dkt. No. 4. With the assistance of a Qualified Representative, on August 6, 2025, Petitioner withdrew his application for asylum, withholding of removal, and deferral of removal, and agreed to a voluntary departure from the United States under safeguard, no later than September 17, 2025. He did not request a bond hearing. Petitioner did not depart by that date and therefore his voluntary departure converted to a removal order. Federal Respondents are actively working on obtaining for him the appropriate travel documents for his removal.

1 Dismissal is appropriate because Petitioner’s voluntary departure converted to a removal
2 order on September 17, 2025. Under Section 241 of the Immigration and Naturalization Act
3 (“INA”), 8 U.S.C. § 1231, Petitioner is properly detained pursuant to the statutorily required 90-
4 day detention removal period and during the “presumptively reasonable” six-month detention
5 period announced by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 700-01 (2001). His
6 challenge is therefore premature. Accordingly, the Government respectfully requests that the Court
7 deny the Petition.

8 **II. BACKGROUND**

9 **A. Legal Background**

10 The INA contains a complex scheme of authorities governing the detention and release of
11 aliens during and following their removal proceedings. These periods are generally referred to as
12 “pre-order” (meaning before the entry of a final order of removal) and “post-order” (meaning after
13 the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention)
14 *with* § 1231(a) (authorizing post-order detention). Once there is a final order of removal, an alien
15 enters what Congress has called the “removal period.” 8 U.S.C. § 1231(a)(1). During this period
16 of 90 days, Congress has directed that the Secretary of Homeland Security “shall remove the alien
17 from the United States.” *Id.* During the removal period, the United States Immigration and
18 Customs Enforcement (“ICE”)¹ is charged with attempting to effectuate removal of an alien from
19 the United States. 8 U.S.C. § 1231(a)(1). To ensure an alien’s presence for removal while removal
20 is being achieved, “the [Secretary of Homeland Security]² shall detain the alien.” 8 U.S.C.
21 § 1231(a)(2).

22 _____
23 ¹ Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to
execute removal orders.

24 ² Although 8 U.S.C. § 1231(a)(2) refers to the “Attorney General” as having responsibility for detaining aliens, the
Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this authority
to the Secretary of the Department of Homeland Security. *See also* 6 U.S.C. § 251.

1 **B. Factual Background**

2 Petitioner is a native of Ukraine and a citizen of Russia. *See* Declaration of Brett Booth
3 (“Booth Decl.”), at ¶ 4. On June 13, 2024, at approximately 2 AM, Petitioner crossed into the
4 United States from Canada near Lynden, Washington without inspection. *Id.* He was encountered
5 by United States Customs and Border Protection (“CBP”) officers soon after crossing the border.
6 *Id.* CBP conducted a brief interview and determined that Petitioner was inadmissible, had entered
7 the United States illegally, and placed him in custody. *Id.* Petitioner did not have any criminal or
8 immigration history in the United States at that time. *Id.*

9 On June 13, 2024, Petitioner was issued a Notice to Appear (“NTA”) charging him as
10 removable under INA Section 212(a)(6)(A)(i). *Id.*, ¶ 5. He was subsequently transferred to the
11 Northwest ICE Processing Center (NWIPC) in Tacoma, WA, where he was to be detained pursuant
12 to INA Section 236(a). *Id.*

13 On July 3, 2024, ICE Health Service Corps (“IHSC”) located in the NWIPC reported that
14 Petitioner had been diagnosed with a serious mental disorder, an “unspecified psychosis not due
15 to a substance or known psychological condition.” *Id.*, ¶ 6. Upon receiving this report, ERO placed
16 Petitioner into the *Franco-Gonzalez* class membership.³ *Id.* DHS re-served Petitioner his NTA in
17 accordance with class membership requirements. *Id.* Due to Petitioner’s class membership, ERO
18 obtained all medical records related to Petitioner and provided them to the Executive Office of
19 Immigration Review (“EOIR”) prior to his initial hearing in front of an Immigration Judge on
20 July 11, 2024, with the aid of a Russian interpreter. *Id.* The case was continued at that point for
21 Petitioner to file any medical evidence that he had. *Id.*

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24 ³ Class membership is defined in *Franco-Gonzales v. Holder*, Case No. CV-10-02211, 2014 WL 5475097 (C.D. Cal. Oct. 29, 2014).

1 On July 29, 2024, the Immigration Judge conducted a Judicial Competency Inquiry of the
2 Petitioner based upon medical evidence provided by DHS. *Id.*, ¶ 7. The Immigration Judge
3 examined the Petitioner in the Russian language with an interpreter and determined that she did
4 not have a “bona fide doubt” about Petitioner’s ability to represent himself in immigration
5 proceedings. *Id.*

6 On August 1, 2024, Petitioner again appeared in Immigration Court for a Master Calendar
7 hearing and spoke in the Russian language. *Id.*, ¶ 8. At this hearing, he declined to ask for a
8 continuance to find counsel and agreed to represent himself. *Id.* Petitioner admitted all allegations
9 in the NTA and conceded removability. *Id.* The Immigration Judge sustained the charge on the
10 NTA and directed Russia, or in the alternative, Ukraine, as the country of removal. *Id.* Petitioner
11 then claimed fear of return to Russia or Ukraine and was provided a Form I-589, Application for
12 Asylum, by EOIR. *Id.*

13 On August 21, 2024, Petitioner again appeared in Immigration Court and asked for a
14 continuance to complete his Form I-589, Application for Asylum. *Id.*, ¶ 9. The Immigration Judge
15 reset the case. *Id.* The hearing was conducted in the Russian language. *Id.* On September 17, 2024,
16 Petitioner appeared in Immigration Court and filed his I-589, Application for Asylum. *Id.*, ¶ 10.
17 The case was reset to December 2, 2024, for his individual hearing on his asylum application. *Id.*
18 The hearing was conducted in the Russian language. *Id.*

19 On November 29, 2024, DHS filed a *Franco-Gonzalez* class member bond hearing request
20 on behalf of Petitioner with EOIR.⁴ *Id.*, ¶ 11. On December 2, 2024, Petitioner appeared in
21 Immigration Court for his individual hearing to provide testimony in support of his I-589,
22 Application for Asylum. *Id.*, ¶ 12. At the hearing, Petitioner waived his desire for an attorney and
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24 ⁴ According to the *Franco-Gonzales v. Holder* settlement, class members are entitled to a bond hearing after 180 days in DHS custody.

1 stated that he wished to be removed to Ukraine. *Id.* The Immigration Judge issued an order of
2 removal to the Petitioner to Ukraine, or in the alternative, Russia. *Id.* Petitioner waived any appeal
3 of this order. *Id.* Upon entering the final order of removal of the Petitioner, the Immigration Judge
4 also denied Petitioner's pending *Franco-Gonzalez* bond hearing for lack of jurisdiction. *Id.* The
5 hearing was conducted in the Russian language. *Id.*

6 On December 18, 2024, ERO sent an initial Travel Document Request ("TDR") to the
7 Detention and Deportation Officer ("DDO") in ERO Headquarters. *Id.*, ¶ 13. A TDR is a necessary
8 approval step prior to ERO sending a formal request to the removal country's embassy. *Id.* On
9 December 19, 2024, DHS filed a motion to reconsider the Immigration Judge's denial of
10 Petitioner's *Franco-Gonzalez* bond hearing, arguing that the Immigration Judge retains
11 jurisdiction over these bond hearings despite a final order of removal. *Id.*, ¶ 14. EOIR never issued
12 a formal decision on DHS's motion to reconsider but did schedule a bond hearing. *Id.*, ¶ 15. On
13 March 20, 2025, Petitioner appeared for a *Franco-Gonzalez* bond hearing, but after initial inquiries,
14 the Immigration Judge reset the hearing to March 26, 2025. *Id.* This hearing was conducted in the
15 Russian language. *Id.*

16 On March 26, 2025, Petitioner appeared for his *Franco-Gonzalez* bond hearing and was
17 questioned by the Immigration Judge in the Russian language. *Id.*, ¶ 16. At the hearing the
18 Immigration Judge determined that she now had a "bona fide doubt" about the Petitioner's ability
19 to understand the nature of the proceedings and *sua sponte* reopened the case. *Id.* The Immigration
20 Judge also requested updated IHSC medical records from DHS. *Id.* On that same day, EOIR issued
21 a written order reopening Petitioner's case, rescinded the final order of removal, and appointed
22 him a Qualified Representative ("QR"), citing *Franco-Gonzales v. Holder*. *Id.* The Immigration
23 Judge reset the bond hearing until Petitioner's QR could familiarize themselves with the case. *Id.*

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1 On April 8, 2025, Petitioner appeared with his appointed QR at his *Franco-Gonzalez* bond
2 hearing. *Id.*, ¶ 17. On behalf of Petitioner, the QR withdrew the bond request. *Id.*

3 On April 28, 2025, Petitioner appeared in Immigration Court for a Master Calendar hearing
4 with his QR. *Id.*, ¶ 18. At this hearing, through the QR, Petitioner again admitted all the allegations
5 in the NTA and conceded the charge of removability. *Id.* The Immigration Judge sustained the
6 charge of removability and directed Russia, or in the alternative, Ukraine, as the country of
7 removal. *Id.* The Immigration Judge reset the case to August 6, 2025, to take Petitioner's testimony
8 on his Form I-589, Application for Asylum. *Id.*

9 On August 6, 2025, Petitioner appeared in Immigration Court to present testimony on his
10 Form I-589, Application for Asylum, with his QR. *Id.*, ¶ 19. Based on his testimony and other
11 evidence, the Immigration Judge indicated that she was going to deny Petitioner's application, but
12 offered Petitioner pre-conclusion voluntary departure under safeguards. *Id.* Petitioner, through his
13 QR, accepted the voluntary departure order. *Id.* Petitioner was ordered to depart by September 17,
14 2025, with failure to depart by that date resulting in an alternate order of removal taking effect
15 immediately. *Id.*; *see also* Voluntary Departure Order, attached as Exhibit A to the Booth Decl.

16 August 19, 2025, ERO sent a request for information to the DDO inquiring about the TDR
17 previously submitted. Booth Decl., ¶ 20. On October 10, 2025, ERO sent a second request for
18 information from the DDO inquiring about the TDR previously submitted. *Id.*, ¶ 21. On October
19 16, 2025, ERO sent a copy of Petitioner's Russian passport to the DDO, who requested it because
20 the Russian Embassy wished to see the passport. *Id.*, ¶ 22. On October 25, 2025, the DDO
21 requested further information, including an updated TDR application from ERO. *Id.*, ¶ 23. On
22 October 31, 2025, ERO sent a completed TDR application as well as other ancillary documents
23 requested to the DDO. *Id.*, ¶ 24. To date, ERO is actively working to complete Petitioner's TDR
24 so that it may send a formal request to the Russian embassy. *Id.*, ¶ 25.

1 **III. ARGUMENT**

2 Petitioner's detention is mandated by 8 U.S.C. § 1231(a)(2) and comports with
3 constitutional standards. Therefore, Petitioner cannot make out a claim for habeas relief, and this
4 Court must dismiss the petition as premature.

5 ***I. Section 1231(a)(2) prohibits the relief Petitioner seeks.***

6 Petitioner fails to state a basis for habeas relief because the plain language of 8 U.S.C.
7 § 1231(a)(2) requires his detention during the current 90-day removal period. *See* 8 U.S.C.
8 § 1231(a)(2). Accordingly, the 90-day removal period designated in 8 U.S.C. § 1231(a)(2) will
9 not end until December 17, 2025, that is, ninety days after his voluntary departure converted to a
10 removal order on September 17, 2025. Exh. A to Booth Decl. Thus, Petitioner seeks habeas relief
11 during the 90-day removal period and the petition should be dismissed. *Khotessouvan v. Morones*,
12 386 F.3d 1299, 1301 (9th Cir. 2004) (affirming dismissal of habeas petition brought during 90-day
13 removal period); *Muhamd v. ICE Field Office Director*, 20-cv-605-RAJ, 2020 WL 6318686, at *1
14 (W.D. Wash. Oct. 28, 2020) (finding that the court lacked subject matter jurisdiction because the
15 petitioner's detention shifted from §1226(c) to §1231(a)(2)).

16 Considering the limited time and legitimate purpose of the 90-day removal period, the
17 Ninth Circuit has repeatedly found that detention during the removal period "passes constitutional
18 scrutiny," even in cases when an alien's removal "is not reasonably foreseeable." *See*
19 *Khotessouvan*, 386 F.3d at 1299; *see also Rodriguez v. Hayes*, 591 F.3d 1105, 1116 (9th Cir. 2010)
20 (recalling that "Section 1231(a)(2) poses no due process issues, regardless of whether removal of
21 the detained alien is foreseeable, because the statute authorizes detention for only the ninety-day
22 removal period and therefore does not create any danger of unconstitutionally indefinite
23 detention."). Accordingly, the petition should be dismissed.

1 **2. Post-order detention authorized by statute and limited to a definite period does not**
2 **raise a constitutional claim.**

3 Petitioner is also unable to state a constitutional claim for habeas relief because post-order
4 detention of an alien for up to six months is presumptively reasonable. The Supreme Court has
5 adopted six months as a “presumptively reasonable period of detention” *after* which an alien could
6 bring a constitutional challenge to his detention. *Zadvydas*, 533 at 701. Petitioner’s six-month
7 “presumptively reasonable period of detention” runs from September 17, 2025 (the date the
8 removal order became final) through March 17, 2026. Since Petitioner has not been detained for
9 six months after his voluntary departure date passed, his petition raises no constitutional claim for
10 habeas relief based on the length of his detention.

11 **3. An alien’s interest in liberty does not raise a serious constitutional question until**
12 **his detention has become indefinite or permanent.**

13 The Supreme Court in *Zadvydas* recognized that as detention becomes prolonged, an
14 alien’s liberty interest grows and may eventually outweigh Congress’s interest in detaining an alien
15 to facilitate his removal. The six-month period established in *Zadvydas* reflects the earliest
16 moment at which these conflicting interests might raise serious constitutional issues. *See*
17 *Zadvydas*, 533 U.S. at 701 (directing that “[a]fter this six-month period, once the alien provides
18 good reason to believe that there is no significant likelihood of removal in the reasonably
19 foreseeable future, [that] the Government must respond with evidence sufficient to rebut that
20 showing”). As the length of detention grows, a sliding scale of burdens is applied to assess the
21 continuing lawfulness of an alien’s post-order detention. *Id.* (stating that “for detention to remain
22 reasonable, as the period of post-removal confinement grows, what counts as the ‘reasonably
23 foreseeable future’ conversely would have to shrink”).

24 Since *Zadvydas*, the Supreme Court has reaffirmed the presumptively reasonable six-
month detention period. For example, in *Jama v. ICE*, 543 U.S. 335 (2005), the Supreme Court

1 considered the complicated removal of an alien to Somalia, a country with no strong central
2 government and continuing instability. The Court discussed approvingly the three steps of “the
3 country-selection process” to be followed by ICE in trying to remove Jama, and it also
4 acknowledged that these steps may ultimately fail and force ICE to try its last resort – third country
5 removal. *Id.* In that case, though, where the Supreme Court discussed the potential for aliens
6 being in a “removable-but-unremovable limbo,” it never suggested that aliens should be released
7 before ICE had fully explored its “last resort” option. *Jama*, 543 U.S. at 338-348. Instead, the
8 Supreme Court noted approvingly that Jama’s potential release “into American society after six
9 months” would be the appropriate protection of his liberty interest. *Id.* at 347-348 (*citing*
10 *Zadvydas*, 533 U.S. 678; *Clark v. Martinez*, 543 U.S. 371 (2005)); *see also Bah v. Cangemi*, 548
11 F.3d 680, 684-685 (8th Cir. 2008) (“Under *Zadvydas* an alien who has been detained for more than
12 six months can obtain release by showing that there is ‘no significant likelihood of removal in the
13 reasonably foreseeable future,’ which then requires the government to respond with evidence
14 sufficient to rebut that showing.” (*quoting Zadvydas*, 533 U.S. at 701)).

15 Because Petitioner’s detention has been for a short period and has not exceeded the
16 *Zadvydas* six-month threshold, Congress’s interest in exploring possibilities for removing criminal
17 aliens is significant enough that Petitioner’s liberty interest does not raise a serious constitutional
18 question.

19 In the event this Court finds jurisdiction to consider Petitioner’s claims, it should deny the
20 relief requested because Petitioner cannot meet his burden. The burden is on Petitioner *after the*
21 *six-month presumptively reasonable detention period* to provide “good reason to believe that there
22 is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S.
23 at 701. ICE must take steps to secure Petitioner’s departure. This is the implicit basis for the
24 presumptively reasonable detention period. Here, Petitioner’s post-removal detention started on

1 September 17, 2025. ICE has started the process of obtaining his travel document. Booth Decl.,
2 ¶¶ 20-25.

3 Because ICE is pursuing Petitioner's removal and Petitioner's detention furthers
4 Congress's goal of ensuring his presence for removal, Petitioner has failed to meet his burden and
5 his petition should be denied.

6 **IV. CONCLUSION**

7 Petitioner is lawfully detained while the Government works on securing his appropriate
8 travel documents. With the assistance of a Qualified Representative, Petitioner agreed to this
9 specific course of action in August. Now that the deadline for voluntary departure has passed, the
10 Government has at a minimum a 90-day period to remove Petitioner. Thus, Petitioner fails to show
11 that his continued detention violates Due Process. For the foregoing reasons, Federal Respondents
12 respectfully request that this Court deny the habeas petition.

13 DATED this 7th day of November, 2025.

14 Respectfully submitted,

15 CHARLES NEIL FLOYD
16 United States Attorney

17 s/ Kristen R. Vogel

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I certify that this memorandum contains 2,805 words, in compliance with the Local Civil Rules.


CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers.

I further certify on this date, I electronically filed the foregoing and following supporting declaration with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify on this date, I arranged for service of the foregoing on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, addressed as follows:

Danilo Dzyuban, *Pro Se* Petitioner
A# 
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DATED this 7th day of November, 2025.

s/ Albert Kidd
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