1
2
3
4
5
6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 DANILO NIKOLAEVICH DZYUBAN,

9 Petitioner, CASE NO. 2:25-cv-01919-KKE-BAT

10 v. **REPORT AND RECOMMENDATION**

11 ICE & CUSTOMS ENFORCEMENT FIELD OFFICE DIRECTOR, et al.,

12 Respondent.

13 Petitioner, an immigration detainee, filed a *pro se* 28 U.S.C. § 2241 petition for writ of
14 habeas corpus requesting the Court order his immediate release because his prolonged
15 immigration detention violates due process under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Dkt.
16 4. Petitioner also claims his Qualified Representative (QR) was ineffective. Respondents
17 disagree arguing Petitioner has not been detained long enough to merit *Zadvydas* relief. Dkt. 7.
18 The Court recommends **GRANTING** the habeas petition and directing Respondents to
19 release Petitioner within two working days from adoption of this recommendation, subject to
20 reasonable conditions of release.

21 **BACKGROUND**

22 Petitioner was born in Ukraine. When Russia invaded the Ukraine, he was forced to
23 become a Russian citizenship. Dkt. 10 (declaration). Petitioner eventually fled the Ukraine, was

1 arrested for unlawful entry at the United States-Canada border in June 2024 and placed in
2 immigration detention at the NWIPC. *Id.* Petitioner had no criminal or other immigration history.
3 Dkt. 7 at 3. In July 2024, Respondents found Petitioner had a serious mental disorder and placed
4 him into the *Franco-Gonzalez* class. *See Franco-Gonzales et al., v. Holder* 767 F.Supp.2d 1034
5 (C.D. Calif. 2011) (Aliens with severe mental illness and detained for prolonged periods without
6 counsel are entitled to counsel). Thereafter, Petitioner appeared for several hearings before an
7 immigration judge (IJ) to determine his competency and address asylum. Respondents contend
8 on December 2, 2024, Petitioner appeared before an IJ, waived counsel and stated he wished to
9 be removed to Ukraine. Dkt. 7 at 5. The IJ issued a final order of removal to Ukraine or
10 alternatively, Russia, and Petitioner waived appeal. *Id.* The IJ denied Petitioner a bond hearing
11 finding a lack of jurisdiction. *Id.*

12 On December 19, 2024, the Department of Homeland Security (DHS) moved to
13 reconsider the IJ's lack of jurisdiction finding; on March 20, 2025, Petitioner appeared for a
14 *Franco-Gonzalez* bond hearing, and the IJ immigration judge reopened the case finding there
15 was a bona fide doubt about Petitioner's ability to understand the nature of the proceedings. The
16 final order of removal was rescinded, and Petitioner was appointed a "Qualified Representative"
17 (QR). *Id.* at 6-7.

18 On April 8, 2025, Petitioner and his QR appeared. The QR on behalf of Petitioner
19 withdrew the request for bond. On April 28, 2025, Petitioner and the QR appeared before the IJ.
20 Petitioner admitted he was removeable, and the IJ found he was removable to Ukraine or Russia.

21 On August 6, 2025, Petitioner appeared with his QR to present testimony in support of an
22 application for asylum. The IJ indicated she was going to deny the application and offered
23 Petitioner the opportunity to voluntarily depart. Through the QR, Petitioner accepted voluntary

departure, and Petitioner was ordered to voluntarily depart by September 17, 2025 and advised that if he failed to depart his removal order would take effect on that date. *Id.* at 6.

Petitioner contends Respondents have not accurately described his immigration proceedings. He contends his order of deportation became final on October 20, 2024; he did not appear before an IJ on December 2, 2024; he never requested a lawyer; and the IJ's finding he could not represent himself and required appointment of a QR is unfounded. Dkts. 9 and 10 (Declaration). Petitioner indicates he told the QR he wanted to be deported back to Ukraine, the QR made no effort to obtain release from confinement on bond, he did not appeal because the QR provided "insufficient help" and misled Petitioner "about deportation matters," and "the QR counsel did not make an excessive effort to state a valid claim to get me released on bond or end my removal process." Dkt. 10.

Because Petitioner claimed his QR was inadequate, the Court requested additional briefing. Respondent contends individuals appointed to represent noncitizens under *Franco-Gonzalez* need not be lawyers, implying no petitioner can raise an ineffective assistance of counsel (IAC) claim; an IAC claimed must be raised before the immigration judge before it can be raised on habeas; an IAC claim requires a showing the proceeding was so fundamentally unfair that the noncitizen was prevented from reasonably presenting his or her case; and Respondents are not privy to discussions between Petitioner and his QR and thus cannot take a position on the merits of his claim.

DISCUSSION

As Petitioner has been ordered removed, his detention and release are governed by 8 U.S.C. § 1231. Under § 1231(a), the DHS must detain a noncitizen during the 90-day "removal period." 8 U.S.C. §§ 1231(a)(2), (a)(1)(B). Here, the 90-day removal period has lapsed as

Petitioner unlawfully entered the United States in June 2024, was immediately detained, and has been held at NWIPC ever since. Dkt. 8 (Booth declaration). In July 2024, Petitioner was deemed to have a serious mental illness and was placed into the *Franco-Gonzalez* class. *Id.* After several hearings, Respondents claim in December 2024 Petitioner waived counsel, told the immigration judge he wished to be removed, and was ordered removed. *Id.* Petitioner appeared for a bond hearing with a QR and withdrew his request for bond on April 8, 2025. *Id.* Respondents contend the immigration judge denied Petitioner's asylum request, Petitioner agreed to voluntarily depart in August 2025, and a second final order of removal was issued in September 2025. Between August 2025 and November 7, 2025, Respondents claim they have been "actively working to complete Petitioner's TDR (Travel document) so that [they] may send a formal request to the Russian embassy." *Id.*

Respondents have thus detained Petitioner since June 2024. Although § 1231(a)(6) authorizes Respondents to detain him, Respondents cannot do so indefinitely. In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court held § 1231(a)(6) implicitly limits a noncitizen's detention to a period reasonably necessary to bring about that individual's removal and does not permit "indefinite" detention. The Supreme Court determined it is "presumptively reasonable" for DHS to detain a noncitizen for six months following entry of a final removal order while it works to remove the individual from the United States. *Zadvydas*, 533 U.S. at 701. "After this 6-month period, once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* If the Government fails to rebut the noncitizen's showing, the noncitizen is entitled to habeas relief. *Id.*

1 The six-month presumption "does not mean that every [noncitizen] not removed must be
2 released after six months. To the contrary, [a noncitizen] may be held in confinement until it has
3 been determined that there is no significant likelihood of removal in the reasonably foreseeable
4 future." *Zadvydas*, 533 U.S. at 701. Nevertheless, "for detention to remain reasonable, as the
5 period of prior post removal confinement grows, what counts as the 'reasonably foreseeable
6 future' conversely would have to shrink." *Id.*
7 Here, Respondents argue *Zadvydas* relief is unavailable because Petitioner's most recent
8 final order of removal was issued in September 2025 and fewer than six months has passed since
9 then. This disregards Respondents' representation the immigration judge issued a first final order
10 of removal on December 2, 2024, rescinded on March 26, 2025, and then the second final order
11 on September 17, 2025. Thus, Petitioner shows he has been subject to a final order or removal
12 for over six months, and *Zadvydas* relief is available. Petitioner has also shown his detention is
13 prolonged and there is no evidence that Respondents will obtain travel documents in the
14 reasonably foreseeable future.
15 In opposing the petition, Respondents argue *Zadvydas* relief is unavailable "because ICE
16 is pursuing Petitioner's removal and Petitioner's detention furthers Congress's goal of ensuring
17 his presence for removal." Dkt. 7 (Response to petition). Respondent's argument is unpersuasive
18 because it fails to address the due process rights articulated in *Zadvydas.*
19 Additionally, to the extent Respondents contend Petitioner's removal is reasonably
20 foreseeable in the future, the contention fails. First, Respondents submitted the "declaration" of a
21 Deportation Officer in support of its argument the Court should deny the writ. Dkt. 8. The
22 declaration is insufficient. 28 U.S.C. § 1746(2) requires a perjury statement for declarations
23 executed within the country, and the deportation officer's "declaration" lacks such a statement.

As Respondents rely upon an invalid "declaration" they have failed to rebut Petitioner's contention his due process rights have been violated.

Even if the Court considered the "declaration," it contains no facts establishing Petitioner's removal is reasonably foreseeable. Rather it states Respondents are "actively working to complete Petitioner's" travel documents. But Respondents present nothing showing the travel document application is complete, the documents have been transmitted to the proper foreign authorities, the foreign authorities have indicated they will issue travel documents, and there is an anticipated date ICE will receive the documents for Petitioner's removal.

The Court thus finds Respondents' representations are insufficient to rebut Petitioner's showing. Courts in this circuit have regularly refused to find Respondents' burden met where Respondents have offered little more than generalizations regarding the likelihood that removal will occur. *See Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006).

In sum, the record shows Petitioner has been detained since 2024. He has been subject to two final orders of removal and been detained, under these orders, more than six-months. Although Respondents indicate they started working on obtaining travel documents on December 18, 2024, dkt. 8, they have not yet completed the application for travel documents and make no showing it is reasonably foreseeable if or when a travel document will be issued. As Respondents have failed to rebut Petitioner's showing, he is entitled to *Zadvydas* habeas relief. Because the Court finds Petitioner should be released under *Zadvydas* it need not address his claim of ineffective assistance of counsel.

CONCLUSION

The Court recommends the petition for writ of habeas corpus be GRANTED and Respondents be directed to release Petitioner, subject to reasonable conditions, within two

working days of adoption of this recommendation. The Court also recommends Respondent be directed to file a certification within three working days that Petitioner has been released.

OBJECTIONS AND APPEAL

This Report and Recommendation is not an appealable order. Therefore, a notice of appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the assigned District Judge enters a judgment in the case.

Objections, however, may be filed and served upon all parties no later than **February 11, 2026.** The Clerk shall note the matter for **February 12, 2026** as ready for the District Judge's consideration if no objection is filed. If objections are filed, any response is due within 14 days after being served with the objections. A party filing an objection must note the matter for the Court's consideration 14 days from the date the objection is filed and served. The matter will then be ready for the Court's consideration on the date the response is due. The failure to timely object may affect the right to appeal.

DATED this 29th day of January, 2026.

BRIAN A. TSUCHIDA
United States Magistrate Judge