

1 TIMOTHY COURCHAINE
2 United States Attorney
3 District of Arizona
4 NEIL SINGH
5 Assistant United States Attorney
6 Arizona State Bar No. 021327
7 Two Renaissance Square
8 40 North Central Avenue, Suite 1800
9 Phoenix, Arizona 85004-4449
10 Telephone: (602) 514-7500
11 neil.singh@usdoj.gov
12 *Attorneys for Respondents*

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

Vladimir Kaborda,
Petitioner,
v.
Luis Rosa, Jr, *et al.*,
Respondents.

No. 25-cv-03781-DJH (ESW)

**ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS**

In this habeas action, Petitioner seeks his release from detention on two primary bases: a violation of *Zadvydas* because he claims that he faces indefinite detention given that Belarus will not accept his removal by the United States, and a procedural failure to provide him with an “informal interview” prior to revoking his Order of Supervision (OSUP). His *Zadvydas* claim is meritless primarily because he has only been detained for 34 days. As to the process due to Petitioner regarding the OSUP, Petitioner cannot show that he has been deprived of his ability to argue the merits of whether his detention is valid, because he has retained counsel and has fully presented that argument to this Court. The lack of an informal interview is thus harmless procedural error.

Petitioner has filed a Petition for Writ of Habeas Corpus (Doc. 1) and a Motion for Temporary Restraining Order (Doc. 7). The government responds to both in this brief, supported by the attached Declaration of Deportation Officer Nellie M. Martinez (Exhibit 1).

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Petitioner entered the United States in 1995 on a B2 visa. Doc. 1-1 at 4, ¶ 1.¹ Belarus,
3 his country of origin, attained its independence from the former Soviet Union in 1991, four
4 years prior to his arrival.² While Petitioner claims that his citizenship status in Belarus is
5 essentially in limbo, he also admits to traveling to Belarus on at least two post-Soviet
6 occasions: in 1999, and again in 2000. Doc. 1-1 at 4, ¶ 2.

7 Petitioner also has a cryptic record of marriage fraud, by his own admission, and yet
8 fails to now transparently explain these circumstances to the Court. He was evidently married
9 at one point, and possibly still today, to a Belarusian national with whom he has a daughter.
10 Doc. 1-1 at 4, ¶ 2. Who this wife, or ex-wife, or mother of his daughter is exactly, Petitioner
11 does not clarify and leaves the Court with a muddled record. Petitioner states that he married
12 in 1998 an American woman named Sara Gotbeter. Doc. 7 at 5. The United States Department
13 of Homeland Security (DHS), an Immigration Judge (IJ), and the Board of Immigration
14 Appeals in reviewing an appeal, all found that Petitioner and Ms. Gotbeter's marriage was
15 fraudulent. DHS discovered that Petitioner was not actually residing with Ms. Gotbeter, that
16 both Petitioner and Ms. Gotbeter had engaged in "numerous affairs... during the marriage,"
17 that they lacked knowledge regarding major events of each others' lives, that they lacked
18 evidence of any shared life together, and that Ms. Gotbeter was associated with persons who
19 had engaged in "numerous marriages to foreign nationals..." Doc. 1-1 at 16, BIA Decision.

20 Petitioner and Ms. Gotbeter only lived together for six months, followed by over 15
21 years of living apart, during which time Ms. Gotbeter had a child with another sexual partner.
22 *Id.* At the same time, Petitioner was carrying on a romantic relationship with "his ex-wife from
23 Belarus" for a number of years. *Id.* Petitioner now asserts to the Court that he has a "new wife,"
24 who is identified only as "a United States citizen named Yulia..." Doc. 7 at 14. The

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26 _____
27 ¹ Petitioner's declaration is improperly numbered and contains two paragraphs
numbered 1 and another two numbered 2.

28 ² *CIA World Factbook*, "Belarus," <https://www.cia.gov/the-world-factbook/countries/belarus/> (accessed Oct. 21, 2025).

1 government cannot discern from this record whether “Yulia” is the first wife, ex-wife, or
2 mother of his daughter from the late 1990s, or whether she is a third woman.

3 In any event, Petitioner obtained conditional Lawful Permanent Resident status based
4 on one of these marriages, in 1998. Exhibit 1, ¶ 6. In 2008, the government denied Petitioner’s
5 request to remove the condition on residence, because it concluded that he was engaging in
6 marriage fraud. Exhibit 1, ¶ 8. The government then served him with a Notice to Appear and
7 placed him into removal proceedings, in 2011. Exhibit 1, ¶ 9. Petitioner was ordered removed
8 to Belarus in 2012. Exhibit 1, ¶ 10. In 2013, the Board of Immigration Appeals rejected
9 Petitioner’s appeal. Exhibit 1, ¶ 11. Petitioner was then issued an OSUP, on December 2, 2013.
10 Exhibit 1, ¶ 12.

11 On September 17, 2025, DHS took Petitioner into custody. Exhibit 1, ¶ 12. On October
12 15, 2025, the Enforcement and Removal Operations division of United States Immigration and
13 Customs Enforcement requested a travel document from the Embassy of Belarus. Exhibit 1, ¶
14 16. Petitioner has a motion and request for a stay currently pending with the Board of
15 Immigration Appeals, which has not been ruled upon as of October 20, 2025. Exhibit 1, ¶¶ 15-
16 16.

17 STANDARD OF REVIEW FOR HABEAS ACTIONS

18 The detention, release, and removal of noncitizens subject to a final order of removal is
19 governed by § 241 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231. Pursuant
20 to INA § 241(a), the Attorney General has 90 days to remove a noncitizen from the United
21 States after an order of removal becomes final. During this “removal period,” detention of the
22 noncitizen is mandatory. *Id.* After the 90-day period, if the noncitizen has not been removed
23 and remains in the United States, his detention may be continued, or he may be released under
24 the supervision of the Attorney General. INA § 241, 8 U.S.C. §§ 1231(a)(3) and (6). Under
25 this section, ICE may detain a noncitizen for a “reasonable time” necessary to effectuate the
26 noncitizen’s deportation. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite detention is
27 not authorized. *Id.* The INA further provides that noncitizens who are inadmissible under 8
28 U.S.C. § 1182 may be detained beyond the 90-day period pending removal. *See* 8 U.S.C. §

1 1231(a)(6); 8 C.F.R. § 241.4(a)(1), (4).

2 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court defined six months as
3 a presumptively reasonable period of detention. *Zadvydas* places the burden on the noncitizen
4 to show, after a detention period of six months, that there is “good reason to believe that there
5 is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. If the
6 noncitizen makes that showing, the government must then introduce evidence to refute that
7 assertion to keep the noncitizen in custody. *Id.*; see also *Xi v. I.N.S.*, 298 F.3d 832, 839-40 (9th
8 Cir. 2002). The Court must:

9 ... ask whether the detention in question exceeds a period reasonably
10 necessary to secure removal. It should measure reasonableness primarily in
11 terms of the statute’s basic purpose, namely, assuring the alien’s presence at
12 the moment of removal. Thus, if removal is not reasonably foreseeable, the
13 court should hold continued detention unreasonable and no longer authorized
14 by statute.

15 *Zadvydas*, 533 U.S. at 699.

16 Petitioner has the burden to show that his removal is not likely in the reasonably
17 foreseeable future. *Zadvydas*, 533 U.S. at 701. Only then does the burden shift to the
18 government to show that removal is substantially likely in the reasonably foreseeable future.
19 *Id.* In *Zadvydas*, the Supreme Court designated six months as a presumptively reasonable
20 period of time to allow the government to remove a noncitizen detained under 8 U.S.C. §
21 1231(a)(6), but a noncitizen is not entitled to release after six months detention. *Id.* at 701
22 (“This 6-month presumption, of course, does not mean that every noncitizen not removed must
23 be released after six months. To the contrary, a noncitizen may be held in confinement until it
24 has been determined that there is no significant likelihood of removal in the reasonably
25 foreseeable future.”) (emphasis added). The passage of time alone is insufficient to establish
26 that no substantial likelihood of removal exists in the reasonably foreseeable future. *Lema v.*
27 *I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002). In *Lema*, where the petitioner had been
28 detained for more than a year, the district court held that the passage of time was only the first
step in the analysis, and that the petitioner must then provide good reason to believe that no
significant likelihood of removal exists in the reasonably foreseeable future. *Id.*

1 *The Wireless Ass'n v. City of Berkeley, Cal.*, 928 F.3d 832, 852 (9th Cir. 2019)).

2 **LAW AND ARGUMENT**

3 **A. Petitioner's Zadvydas Claim is Meritless.**

4 Petitioner cannot meet his initial burden of proof under *Zadvydas* under the two
5 prongs of the analysis. First, Petitioner holds the burden of showing that he has been in post-
6 removal detention for a period that exceeds six months in the first place. Second, if Petitioner
7 does make such a showing, he must then demonstrate that his continuing detention is, indeed,
8 indefinite. *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008).

9 Petitioner's post-removal detention period is 34 days as of the date of this filing, far
10 below the six-month threshold for proving a violation of *Zadvydas*. Petitioner's order of
11 removal was issued in 2012 and the Board of Immigration Appeals dismissed his appeal of
12 that order in 2013. The government did not then detain him until September 17, 2025. As such,
13 he is only 34 days into the six-month *Zadvydas* period.

14 As to the second prong, Petitioner cannot show that his continuing detention, even if
15 it was beyond six months, will be indefinite. In *Prieto-Romero*, the government had detained
16 a noncitizen for three years. 534 F.3d at 1063. Although the detention was for three years, the
17 period of time was the result of the noncitizen's own "pursuit of judicial review" of his removal
18 order. *Id.* at 1063. As such, the Ninth Circuit held that the petitioner was "not stuck in a
19 'removable-but-unremovable limbo'" as contemplated by *Zadvydas*. *Prieto-Romero*, 534 F.3d
20 at 1063. "It is true that *Prieto-Romero*'s detention lacks a certain end date, but this uncertainty
21 alone does not render his detention *indefinite* in the sense the Supreme Court found
22 constitutionally problematic in *Zadvydas*." *Id.* at 1063 (emphasis in original). The holding of
23 *Prieto-Romero*, in short, requires Petitioner here to show not only that he is beyond the time
24 parameters of *Zadvydas* but also that his detention is indeed foreseeably indefinite. *Prieto-*
25 *Romero*, 534 F.3d at 1064-65.

26 Petitioner's only showing here of the second prong is his questionable assertion that
27 he left Belarus in 1995, which was four years after its independence from the Soviet Union,
28 and as such he did not hold a Belarusian passport. Doc. 7 at 11. He does not explain, despite

1 this assertion, how he re-entered Belarus in 1999 and yet again in 2000, however, DHS has, in
2 any event, contacted Belarus to obtain travel documents. Exhibit 1, ¶ 16. On this record,
3 Petitioner cannot meet his burden of showing a prospect of indefinite detention. The
4 government has not detained him for six months in any event, so even if the government did
5 run into problems with obtaining travel documents from Belarus, *Zadvydas* permits the
6 government to continue detaining Petitioner until at least March 17, 2026, while it makes effort
7 to effectuate his removal to that country.

8 **B. The Lack of an Informal Interview is Harmless Procedural Error.**

9 Petitioner presents a second argument, highlighted as well by the Court in its Order
10 to Show Cause (Doc. 6), that ICE did not provide him with notice and an informal interview
11 in compliance with 8 C.F.R. § 241.13(i)(3). This subsection states the following in the event
12 that ICE seeks to revoke an OSUP:

13 (3) Upon revocation, the alien will be notified of the reasons
14 for revocation of his or her release. The Service will conduct
15 an initial informal interview promptly after his or her return to
16 Service custody to afford the alien an opportunity to respond
17 to the reasons for revocation stated in the notification. The
18 alien may submit any evidence or information that he or she
19 believes shows there is no significant likelihood he or she be
20 removed in the reasonably foreseeable future, or that he or she
21 has not violated the order of supervision. The revocation
22 custody review will include an evaluation of any contested
23 facts relevant to the revocation and a determination whether
24 the facts as determined warrant revocation and further denial
25 of release.

26 8 C.F.R. § 241.13(i)(3). The purpose of subsection 241.13(i)(3), in part, is to allow Petitioner
27 an opportunity to argue prior to his removal that “there is no significant likelihood he or she
28 be removed in the reasonably foreseeable future...” *Id.* In other words, the informal interview
requirement allows Petitioner to make the very argument he is making to this Court. The
failure to provide Petitioner with an informal interview, in other words, is harmless error that
does not require his release from detention.

At least three federal district courts reached the same conclusion when considering
alleged violations by the government of 8 C.F.R. § 241.13(i)(3). In *Ahmad v. Whitaker*, a

1 federal court in the Western District of Washington concluded that it “cannot discern any
2 actionable injury from this violation of the regulations...” No. C18-287-JLR-BAT, 2018 WL
3 6928540, at *5–6 (W.D. Wash. Dec. 4, 2018), *report and recommendation adopted*, 2019 WL
4 95571 (W.D. Wash. Jan. 3, 2019) (*citing Doe v. Smith*, No. 18-11363, 2018 WL 4696748, at
5 *9-*10 (D. Mass. Oct. 1, 2018) (denial of informal interview does not entitle habeas petitioner
6 to release). Similarly, the district court in the Northern District of Texas held that a petitioner
7 who presented his merits arguments to that court, in habeas proceedings, “has received more
8 procedure than he was due under 8 C.F.R. § 241.13(i)(3).” *Nguyen v. Noem*, No. 6:25-CV-
9 057-H, 2025 WL 2737803, at *5 (N.D. Tex. Aug. 10, 2025). The Nguyen court noted that the
10 petitioner had had the opportunity to obtain counsel, make a full argument to a federal court,
11 submit evidence, and respond to the government’s arguments. *Id.* As such, “the error is now
12 harmless in light of the procedures in this case, and there is no basis for which the Court could
13 justify ordering Nguyen’s immediate relief.” *Id.*

14 *Ahmad, Doe, and Nguyen* all pertain to precisely the same subsection of the same
15 regulation at issue here and are persuasive precedents. Petitioner’s argument that he was
16 deprived of due process is premised on the notion that evidence of the impossibility of
17 removing him to Belarus was not heard—a notion that is obviously, factually incorrect. His
18 argument for release from detention because ICE failed to provide him with an informal
19 interview, when he has had a much deeper analysis of his arguments before this Court, is
20 meritless.

21 **C. Analysis of the Winter Factors.**

22 Addressing the first *Winter* factor, Petitioner cannot show that he is likely to succeed
23 on the merits for the reasons fully articulated in this brief, above.

24 As to the second factor regarding irreparable harm, Petitioner argues three main points:
25 (1) his conditions of detention pose medical risks to his health, (2) depriving him of his
26 constitutional rights is *ipso facto* proof of irreparable injury, and (3) transferring him to a
27 different district will frustrate effective review. Doc. 7 at 37. The government has
28 demonstrated in this brief that Petitioner is not, however, deprived of any particular legal or

1 constitutional rights. And nor has Petitioner presented any evidence that ICE actually intends
2 to transfer him outside of the District of Arizona. As to Petitioner's medical claims, the
3 government has insufficient time to contest or address these, but notes that federal courts do
4 not credit such claims in the absence of some "severe illness" or a heightened, "high-risk"
5 medical condition, such as conditions that threatened high-risk individuals during COVID-19.
6 *See, e.g., Habibi v. Barr*, 445 F. Supp. 3d 990, 999-1000 (S.D. Cal. 2020).

7 As to the third and fourth factors, the Court here must balance the public's interest in
8 enforcing the United States' immigration laws on one hand, compared to what Petitioner views
9 as the public interest. Here, Petitioner does not make any substantive arguments and appears
10 to merely repeat his arguments about irreparable harm to himself. Doc. 7 at 39. Weighing the
11 public interest "primarily addresses impact on non-parties rather than parties." *Pacito v.*
12 *Trump*, 768 F. Supp. 3d 1199, 1237 (W.D. Wash. 2025) (quoting *CTIA – The Wireless Ass'n*
13 *v. City of Berkeley, Cal.*, 928 F.3d 832, 852 (9th Cir. 2019)).

14 **CONCLUSION**

15 For the reasons stated, the government respectfully requests that the Court deny
16 Petitioner' Motion for Injunctive Relief, deny Petitioner's request for a writ of habeas corpus,
17 and dismiss this action with prejudice.

18 Respectfully submitted on October 21, 2025.

19
20 TIMOTHY COURCHAINE
21 United States Attorney
22 District of Arizona

23 s/Neil Singh
24 NEIL SINGH
25 Assistant United States Attorney
26 *Attorneys for Respondents*
27
28