The Honorable John H. Chun

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

BINYAMIN TZAFIR, Petitioner, v. PAMELA BONDI, United States Attorney General, *et al.*, Respondents.	Case No. 2:25-cv-02126-JHC FEDERAL RESPONDENTS'[1] RETURN MEMORANDUM

Pursuant to this Court's Order (Dkt. 14), Federal Respondents submit the following factual background as contained in the records of Petitioner Binyamin Tzafir's immigration case and as set forth in the Declaration of Joseph Carnevale ("Carnevale Decl."), as well as the relevant detention authority.

I. DETENTION AUTHORITIES

The Immigration and Nationality Act ("INA") governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and, relevant here, "post-order" (meaning

[1] Respondent Bruce Scott is not a Federal Respondent.

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(206) 553-7970

after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention). When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for removal and to protect the community from noncitizens who may present a danger, Congress has mandated detention while removal is being effectuated. 8 U.S.C. § 1231(a)(2).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

> [A noncitizen] ordered removed who is inadmissible under section 1182, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] to be a risk to the community or unlikely to comply with the order of removal, *may* be detained *beyond the removal period* and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6) (emphasis added).

During the removal period, the U.S. Department of Homeland Security ("DHS") is charged with attempting to effect removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). It was further specified that Section 1231(a)(6) does not permit indefinite detention. *Id.* Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.*, at 699.

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The *Zadvydas* Court recognized that as the length of post-order detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.*, at 701 (stating that "for detention to remain reasonable, as the period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink"). However, the Supreme Court determined that it is "presumptively reasonable" for the Government to detain a noncitizen for six months following entry of a final removal order, while it worked to remove the noncitizen from the United States. *Id.*, at 701. Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizens' detention could raise constitutional issues. *Id.*

B. OSUP and Revocation

Once it is determined that there is no significant likelihood of removal in the reasonably foreseeable future, DHS may release noncitizens on an Order of Supervision ("OSUP"). 8 C.F.R. § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is governed by 8 C.F.R. §§ 241.13(i), 241.4(*l*), and may occur either: (1) if the noncitizen "violates any of the conditions of release," *id.* §§ 241.13(i)(1), 241.4(*l*)(1); or (2) if it is determined "that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." *Id.*, § 241.13(i)(2). Whether there is a significant likelihood that the noncitizen may be removed in the reasonably foreseeable future is determined by assessing a series of factors, including "the history of the alien's efforts to comply with the order of removal, the history of the Service's efforts to remove aliens to the country in question or to third countries … and the views of the Department of State regarding the prospects for removal of aliens to the country or countries in question." *Id.* § 241.13(f). Alternatively, certain designated officials may also revoke an OSUP as an act of discretion when revocation is in the public interest. *Id.* § 241.4(*l*)(2).

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Section 241.13(i)(3) provides that upon revocation, the noncitizen "will be notified of the reasons for revocation of his or her release" and will receive an "initial informal interview promptly" after being detained, to "afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* § 241.13(i)(3). During such an interview, the noncitizen "may submit 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, or that he or she has not violated the order of supervision." *Id.* Then, if the noncitizen's request for release is denied, he or she "may submit a request for review of his or her … six months after [DHS's] last denial of release[.]" *Id.* § 241.13(j).

II. PETITIONER BINYAMIN TZAFIR

Petitioner is a native of Georgia, who was admitted to the United States on or about December 22, 1999, on a visitor visa with an Israeli passport. Carnevale Decl., ¶¶ 3-4. Petitioner remained in the United States without authorization longer than permitted. Carnevale Decl., ¶ 4. Petitioner filed an asylum application in August 2000. Carnevale Decl., ¶ 5.

In 2004, the Immigration and Nationality Service (now DHS) issued a Notice to Appear charging Petitioner as removable for overstaying his visa and placed him in removal proceedings. Carnevale Decl., ¶ 6. An immigration judge ordered Petitioner removed to Israel in April 2004. Carnevale Decl., ¶ 7. Petitioner timely appealed the removal order to the Board of Immigration Appeals ("BIA"), which affirmed in August 2005. Carnevale Decl., ¶ 8. Petitioner filed a petition for review with the Ninth Circuit, which granted the petition on a limited issue concerning the IJ's denial of voluntary departure and remanded the case. Carnevale Decl., ¶ 10; *see also Tzafir v. Mukasey*, 300 F. App'x 583 (9th Cir. 2008). The BIA affirmed the IJ's denial of voluntary departure and dismissed the appeal in March 2009. Carnevale Decl., ¶ 11. Petitioner's removal

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order became administratively final at that time. Carnevale Decl., ¶ 11. During these removal proceedings (and appeals), Petitioner was not in ICE custody. Carnevale Decl., ¶ 12.

In March 2009, DHS worked with Petitioner's family unit and the Israeli Consulate in San Francisco to request travel documents. Carnevale Decl., ¶ 13. Petitioner's expired Israeli passport was provided to the consulate in a package mailed in April 2009. Carnevale Decl., ¶ 13. On May 1, 2009, the Israeli consulate indicated a travel document would be issued, but four days later, the consulate informed DHS that Petitioner no longer had citizenship in Israel. Carnevale Decl., ¶¶ 14-15. On May 13, 2009, DHS released Petitioner on an Order of Supervision ("OSUP") with reporting requirements and other conditions, to include cooperating in acquiring a travel document from appropriate Embassies and Consulates. Carnevale Decl., ¶ 16; Strong Decl., Ex. A.

On October 19, 2025, Petitioner was taken into ICE custody having been provided a Notice of Revocation of Release which stated that it had revoked his OSUP based on DHS's determination that he could be removed pursuant to the final removal order. Carnevale Decl., ¶ 17; Strong Decl., Ex. B. Petitioner completed a travel document request for Georgia, which will be submitted within the week. Carnevale Decl., ¶¶ 18-19. Petitioner also completed a travel document request for Israel, but did not sign the application. Carnevale Decl., ¶ 20.

While detained, DHS has learned that Petitioner's father was born in Russia and his mother in Ukraine. Carnevale Decl., ¶ 21. Petitioner was later uncooperative with DHS regarding applications for a travel document from Russia, Ukraine, and Israel. Carnevale Decl., ¶¶ 22-25. In addition to Georgia and Israel, Petitioner can apply for travel documents to Russia or Ukraine based on his parents' citizenship. Carnevale Decl., ¶ 24. If Petitioner continues to be uncooperative with travel document requests to Russia and Ukraine or continues not to sign the travel document request for Israel, DHS intends to serve re-serve a Warning for Failure to Depart, and if necessary, a Failure to Comply. Carnevale Decl., ¶ 25. DHS is reasonably certain that a travel document will

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be issued by at least one of the countries Petitioner has demonstrated citizenship or blood ties to once Petitioner becomes compliant in filling out the appropriate applications. Carnevale Decl., ¶ 26. DHS will provide notice to Petitioner of any third country removal and provide required screenings before proceeding on a third country removal. Carnevale Decl., ¶ 27.

Petitioner is currently detained under INA § 241 as an alien with a final removal order. Carnevale Decl., ¶ 28. He has been detained less than 180 days. Carnevale Decl., ¶ 28.

III. ARGUMENT

A. Petitioner's detention is not prolonged.

Petitioner has not demonstrated that his detention has become "indefinite" or unconstitutional. The Supreme Court has determined it is "presumptively reasonable" for the Government to detain a noncitizen for six months following entry of a final removal order, while it worked to remove the noncitizen from the United States. *Zadvydas*, 533 U.S. at 701. Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen's detention could raise constitutional issues. *Id.* Here, DHS has detained Petitioner for less than six months since his OSUP was revoked and he was taken into custody. Carnevale Decl., ¶¶ 12, 28.

Furthermore, Petitioner's detention is not constitutionally indefinite. DHS has taken active and concrete steps to remove Petitioner by trying to obtain cooperation for travel document requests to Georgia, Israel, Russia, and Ukraine. Carnevale Decl., ¶¶ 19-20, 23. The fact that Petitioner does not yet have a specific date of anticipated removal does not make his detention indefinite. *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008). Detention becomes indefinite in situations where the country of removal refuses to accept the noncitizen or if removal is legally barred. *Id.* There is no reason to believe that is the situation here. Consequently, Petitioner has failed to demonstrate a good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

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Moreover, the Ninth Circuit has recognized that a noncitizen's continued detention is permissible when "the alien fails to cooperate fully and honestly with officials to obtain travel documents." *Lema v. INS*, 341 F.3d 853, 857 (9th Cir. 2003). "The risk of indefinite detention that motivated the Supreme Court's statutory interpretation in *Zadvydas* does not exist when an alien is the cause of his own detention." *Pelich v. INS,* 329 F.3d 1057, 1060 (9th Cir. 2003). Here, DHS has tried to work with Petitioner to secure travel documents to other countries, including to his birthplace of Georgia and his parent's birthplaces of Russia and Ukraine, but Petitioner has cooperated with only some of those efforts and only in the last month. Carnevale Decl., ¶¶ 19-23; 8 U.S.C. § 1231(b)(2)(D) (providing that if noncitizen cannot be removed to a designated country, DHS will remove the noncitizen to a country where he is a subject, national, or citizen); 8 U.S.C. § 1231(b)(2)(E)(v) (further providing that noncitizen will be removed to country that had sovereignty over noncitizen's birthplace).

To the extent Petitioner may raise issues with DHS seeking travel documents to a country other than Israel (which is the country designated on his final order of removal), DHS will provide notice of any third country removal and provide required screenings before proceeding on a third country removal. Carnevale Decl., ¶ 27. He is free to file a motion to reopen his prior removal proceedings at any time, based on a request for asylum, withholding of removal, or protection under the Convention Against Torture. *See* 8 C.F.R. § 1003.23(b)(4)(i).

B. Petitioner was detained under 8 C.F.R. § 241.13

Petitioner alleges that his detention violates 8 C.F.R. § 241.4(*l*)(2), but his detention arose from 8 C.F.R. § 241.13(i). DHS may revoke a noncitizen's OSUP "if, on account of changed circumstances, [DHS] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 214.13(i)(2); *see also Tran v. Bondi*, No. 25-2335-DGE, 2025 WL 3725677, at *3 (W.D. Wash. Dec. 24, 2025) (noting that "[8 C.F.R.]

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SEATTLE, WASHINGTON 98101
(206) 553-7970

§ 241.4 applies to noncitizens who have been ordered removed in general, while § 241.13 specifically applies to noncitizens whom the government has determined 'there is no significant likelihood … [that they] can be removed in the reasonably foreseeable future'"). DHS notified Petitioner in its Notice of Revocation of Release that it had determined he could be removed pursuant to the final removal order and efforts to do so were ongoing. Carnevale Decl., ¶ 17; Ex. B.

IV. CONCLUSION

Based on the foregoing, Petitioner's habeas petition should be denied. In further response to Dkt. 14, Federal Respondents do not believe that an evidentiary hearing is necessary.

DATED this 31st day of December, 2025.

Respectfully submitted,

CHARLES NEIL FLOYD
United States Attorney

s/ James C. Strong
JAMES C. STRONG, WSBA No. 59151
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: 206-553-7970
Fax: 206-553-4067
Email: james.strong@usdoj.gov

Attorneys for Federal Respondents

I certify that this memorandum contains 2,219 words in compliance with the Local Civil Rules.