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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
Portland Division

MAKARENKO, Gyennady Viktorovich

Petitioner,

v.

CAMMILLA WAMSLEY, Seattle Field
Office Director, Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO"), TODD LYONS, Acting
Director of Immigration Customs
Enforcement ("ICE"), U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT, KRISTI
NOEM, Secretary of the Department of
Homeland Security ("DHS"), U.S.
DEPARTMENT OF HOMELAND
SECURITY, and PAMELA BONDI, Attorney
General of the United States.

Respondents.

Case No.

Agency No. 

PETITION FOR WRIT OF HABEAS
CORPUS

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

INTRODUCTION

1. Petitioner Gyennady Viktorovich Makarenko (“Petitioner”) is a 47-year-old father of six U.S. citizen children and husband to a U.S. citizen spouse, residing in Salem, Oregon.

2. Petitioner entered the United States as a refugee from the USSR on April 13, 1989, was later granted lawful permanent residence, and has lived in the United States for more than 35 years.

3. In 1997, at age 19, Petitioner was ordered deported following several youthful criminal offenses. He has never been removed, because the Ukrainian government determined in 2006 that he is not a Ukrainian citizen and would not be issued travel documents under any circumstances.

4. Petitioner has been under an Order of Supervision since September 16, 1997, checking in with ICE regularly for nearly three decades maintaining continuous residence, employment, and compliance with annual ICE check in appointments.

5. Should ICE detain him at his next scheduled reporting date on November 4, 2025, his detention would be unlawful under the Due Process Clause and 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas v. Davis*, 533 U.S. 678 (2001), because he is stateless, his removal is not reasonably foreseeable and no country has agreed to accept him.

6. Petitioner seeks this Court’s intervention to prevent or remedy any unlawful detention and to declare detention under a final order of removal to a country

that refuses to issue travel documents, or some other third country, violates the Constitution and the Immigration and Nationality Act.

JURISDICTION

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

8. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

10. Venue is proper in the District of Oregon because Petitioner resides in Salem, Oregon, and he will be checking in at the Portland, Oregon Field Office of Immigration and Customs Enforcement, Enforcement and Removal Operations (ERO), which has physical and legal custody authority over him.

11. Until recently, Petitioner's annual in-person reporting requirement was handled through the Eugene Sub-Office of ERO. However, effective June 1, 2025, pursuant to an internal reorganization directive by ICE Enforcement and Removal Operations, all supervision reporting previously conducted at the Medford and Eugene sub-offices has been consolidated into the Portland Field Office.

12. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's constructive custody. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

13. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

15. Petitioner is "in custody" for habeas purposes, even though not physically detained, because ICE's Order of Supervision imposes significant restraints on his liberty, including restrictions on travel, mandatory check-ins, and the constant threat of re-detention and deportation. "[T]he Supreme Court has repeatedly held that the in-custody requirement [of 28 U.S.C. § 2241] is met where the Government restricts a petitioner's freedom of action or movement," including through an immigration order of supervision. *See Doe v. Barr*, 479 F. Supp. 3d 20, 26 (S.D.N.Y. 2020), *citing Jones v. Cunningham*, 371 U.S. 236 (1963) and *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *see also*,

e.g., Devitri v. Cronen, 290 F. Supp. 3d 86, 90 (D. Mass. 2017) (finding the same); *Alvarez v. Holder*, 454 F. App'x 769, 772-72 (11th Cir. 2011) (same).

PARTIES

16. Petitioner is a 47-year-old national of the former Union of Soviet Socialist Republics (USSR). He resides in Salem, Oregon.

17. Respondent Cammilla Wamsley is the Field Office Director for the Seattle Field Office, Immigration and Customs Enforcement and Removal Operations ("ICE"). The Seattle Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens. The Seattle Field Office's area of responsibility includes Alaska, Oregon, and Washington. Respondent Wamsley is a legal custodian of Petitioner.

18. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of Respondent Camilla Wamsley and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

19. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

20. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

21. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

22. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

23. This action is commenced against all Respondents in their official capacities.

FACTUAL BACKGROUND

24. Petitioner is a 47-year-old husband, father, and small business owner residing in Salem, Oregon. He was born in Mariupol, then part of the Union of Soviet Socialist Republics (USSR) and has lived in the United States since April 13, 1989.

25. Petitioner entered the United States as a refugee based on religious persecution of Baptists and Pentecostals in the Soviet Union. He was later adjusted to lawful permanent resident status in 1990, when he 12 years old. His parents, siblings, and extended family were all lawfully admitted and are now U.S. citizens.

26. Petitioner is married to a U.S. citizen, Galina Makarenko, who naturalized in 2009. The couple has six U.S. citizen children, now ages 18, 16, 15, 14, 10, and 5, all of whom reside in the family home in Salem, Oregon.

27. Mr. Makarenko is their sole provider and primary caregiver, particularly during his wife's frequent work-related travel.

28. Petitioner has been a self-employed contractor and home builder for over 30 years, operating his own remodeling company that employs approximately 14

individuals in Marion County. He pays about \$100,000 annually in federal and state taxes, contributes to his local church, and volunteers regularly by painting and remodeling church facilities.

29. Petitioner was ordered deported on April 25, 1997, following youthful criminal convictions. He was only 19 years old at the time of his deportation order and was unrepresented before the immigration court. He did not apply for asylum or any other forms of relief, and he waived appeal.

30. He was detained by the former Immigration and Naturalization Service (INS) for approximately six months, and released under an Order of Supervision on September 16, 1997, after it became apparent that he could not be deported. He has remained under an order of supervision for nearly three decades, faithfully reporting to ICE every year and complying with all conditions without incident.

31. Petitioner is stateless. In 2006, the Vice Consul of Ukraine in San Francisco confirmed because Petitioner entered the United States before Ukraine's independence on August 24, 1991, he is not recognized as a Ukrainian citizen and will not be issued travel documents under any circumstances.

32. He also relinquished his USSR citizenship upon U.S. resettlement and therefore lacks any country of nationality or citizenship.

33. Petitioner's removal has never been effectuated in 28 years. Despite full cooperation with ICE—including multiple requests to the Ukrainian consulate for travel documentation—the U.S. government has not been able to secure travel authorization to Ukraine or any country.

34. Petitioner's wife filed an I-130 petition on behalf of Petitioner on October 31, 2025 (petition for immigrant visa for spouse of a U.S. citizen). Although he is not currently eligible for adjustment of status or consular processing, the couple wanted to initiate this process.

35. On November 4, 2025, Petitioner is filing a motion to reopen his deportation proceedings based on changed country conditions in Ukraine that are material to a claim for asylum, withholding, or CAT protection. Petitioner also filed a motion requesting a discretionary stay while the motion is pending, but there is no automatic stay and he could be arrested, detained, and transferred out of Oregon while the motion for stay is pending.

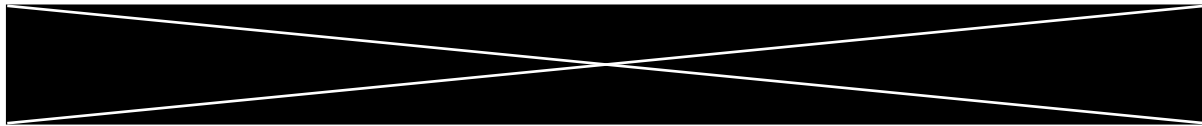
36. In 2022, Russia invaded Ukraine, and Mariupol, his birthplace, was destroyed and occupied by Russian forces. Petitioner only speaks Russian and was born in that region; he is at risk of persecution by both Ukrainian and Russian authorities.

37. Ukraine enacted a new citizenship law, that will take effect January 16, 2026, that allows the government to grant streamline citizenship to ethnic Ukrainians living abroad. This change means that Petitioner, despite decades of statelessness, could suddenly be deemed a Ukrainian citizen and subject to mandatory military service in the war with Russia.

[REDACTED]

[REDACTED] If deported to Ukraine, he fears imprisonment, torture, or death for

[REDACTED] He also fears persecution for being [REDACTED]



39. Petitioner's next reporting date to ICE in Portland, Oregon is November 6, 2025.

LEGAL FRAMEWORK

40. The Due Process Clause of the Fifth Amendment prohibits arbitrary detention by the government. Noncitizens in civil immigration custody are entitled to both procedural and substantive due process protections. *See Demore v. Kim*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

41. In *Zadvydas*, the Supreme Court held that continued detention of a noncitizen subject to a final order of removal is constitutionally permissible only for the period reasonably necessary to effectuate removal. After six months, if there is no significant likelihood of removal in the reasonably foreseeable future, continued detention violates due process.

42. Federal regulations under 8 C.F.R. § 241.4 govern the procedures required for re-detention of a noncitizen released under an order of supervision. Under § 241.4(l), ICE must provide a written notice of revocation, an explanation of the reasons for revocation, and an opportunity for the individual to respond at an informal interview conducted promptly after re-detention.

43. Other federal regulations at 8 C.F.R. §§ 208.31 and 241.8(e) provide that a noncitizen subject to removal to a third country must be provided with a reasonable fear screening if they express fear of persecution or torture in that country. The regulations require that such individuals be referred for an interview by an asylum officer to determine whether there is a reasonable possibility of persecution or torture.

44. In *D.V.D. v. DHS*, No. 1:25-cv-10676 (D. Mass.), the district court issued a preliminary injunction enjoining DHS from removing individuals to third countries without notice and an opportunity to raise fear-based claims. Although that injunction has been stayed by the Supreme Court, the arguments in the case underscore the continuing due process concerns related to third country removals without procedural safeguards. The statutory and constitutional principles at issue in *D.V.D.* remain relevant and support Petitioner's claims.

CLAIMS FOR RELIEF
COUNT ONE
Violation of the Fifth Amendment Due Process Clause

45. The allegations in the above paragraphs are realleged and incorporated herein.
46. Petitioner's continued detention violates the Fifth Amendment because there is no significant likelihood of removal in the reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701.
47. Petitioner is stateless, he has no Ukrainian passport, and Ukraine has not issued travel documents.
48. ICE has offered no evidence that removal is imminent. Petitioner's prolonged detention is thus arbitrary and unconstitutional.

COUNT TWO
Violation of 8 C.F.R. § 241.4

49. The allegations in the above paragraphs are realleged and incorporated herein.

50. ICE must provide Petitioner with written notice, a statement of reasons for revocation, or a prompt informal interview following re-detention, as required by 8 C.F.R. § 241.4(l).

51. ICE's noncompliance would render Petitioner's re-detention unlawful under agency regulations.

COUNT THREE
Violation of Due Process and 8 C.F.R. §§ 208.31, 241.8(e)

52. The allegations in the above paragraphs are realleged and incorporated herein.

53. If ICE seeks to remove Petitioner to a country other than Ukraine—the country designated in his original removal order—it must provide him with written notice, an opportunity to raise fear-based claims, and a reasonable fear interview conducted by an asylum officer.

54. ICE has not indicated it will provide these safeguards and has failed to do so in similar cases nationwide. The regulations and due process require no less.

55. The constitutional and regulatory safeguards require DHS to conduct these screenings before third country removal.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus ordering his immediate release if detained;
3. Declare that continued detention under a final order of removal violates due process where removal is not reasonably foreseeable;
4. Enjoin ICE from detaining Petitioner absent new, material evidence of a viable country of removal;

5. Order periodic reporting and supervision in lieu of detention;
6. Award reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
7. Grant such other and further relief as justice may require.

Dated: November 4, 2025.

/s/ John J. Marandas

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