The Honorable James L. Robart

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

ROMAN VASILCHUK, Petitioner, v. ICE FIELD OFFICE DIRECTOR, Respondent.	Case No. 2:26-cv-00038-JLR FEDERAL RESPONDENT'S RETURN MEMORANDUM

This Court should deny Petitioner Roman Vasilchuk's Petition for Writ of Habeas Corpus. Dkt. 3. Petitioner challenges his detention at the Northwest ICE Processing Center, but his detention is lawful. He is a noncitizen subject to an administratively final order of removal, and he is lawfully detained under Section 241 of the Immigration and Nationality Act (INA). *See* 8 U.S.C. § 1231. Petitioner's detention is not indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The only necessary determination to make under the *Zadvydas* framework is whether there is a significant likelihood of removal in the reasonably foreseeable future. Here, ICE is actively working to obtain travel documents for his removal to Ukraine. Accordingly, Federal Respondent respectfully requests that the Court deny the Petition. Federal Respondent does not believe an evidentiary hearing is necessary.

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I. FACTS

Petitioner is a native and citizen of Ukraine who entered the United States in 1997 and later adjusted his status to a lawful permanent resident in 2003. Baz Decl., ¶ 4. In 2007, Petitioner was convicted in Oregon for unlawful possession of methamphetamine. Baz Decl., ¶ 5; Strong Decl., Ex. A (2007 Judgment in criminal case).

The Department of Homeland Security ("DHS) subsequently issued Petitioner a Notice to Appear on September 18, 2009, charging him with removability pursuant to Section 237(a)(2)(B)(i) of the INA for having been convicted of a violation of any law relating to a controlled substance. Baz Decl., ¶ 6; Strong Decl., Ex. B (Notice to Appear). DHS detained Petitioner at the NWIPC after it issued the Notice to Appear pursuant to 8 U.S.C. § 1226. Baz Decl., ¶ 7. In December 2009, an immigration judge granted Petitioner cancellation of removal, and he was released. Baz Decl., ¶ 8.

In April 2010, Petitioner was convicted in Oregon as a felon in possession of a firearm. Baz Decl., ¶ 9; Strong Decl., Ex. C (2010 Judgment in criminal case). Seven months later, DHS issued a Notice to Appear, charging Petitioner as removable pursuant to INA §§ 237(a)(2)(A)(iii) and 237(a)(2)(C) in that he was convicted of an aggravated felony and had been convicted under any law of possessing a weapon. Baz Decl., ¶ 10; Strong Decl., Ex. D (2d Notice to Appear). Shortly thereafter, Petitioner was served a notice of custody determination and detained under 8 U.S.C. § 1226. Baz Decl., ¶ 11.

On January 4, 2011, an immigration judge ordered Petitioner removed to Moldova, or in the alternative, to Ukraine. Baz Decl., ¶ 12; Strong Decl., Ex. E (Order of the Immigration Judge). Neither party appealed so the order of removal became administratively final on that day. Baz Decl., ¶ 12. Nevertheless, on April 1, 2011, Petitioner was released on an Order of Supervision. Baz Decl., ¶ 13; Strong Decl., Ex. F (Order of Supervision).

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On November 18, 2025, Petitioner missed a video phone call he was required to complete under the Alternative to Detention ("ATD") program. Baz Decl., ¶ 14. He also refused to respond to messages and calls that same day. Baz Decl., ¶ 14. DHS revoked Petitioner's Order of Supervision because of the ATD violations. Baz Decl., ¶ 15; Strong Decl., Ex. G (Notice of Revocation of Release). DHS arrested Petitioner on December 21, 2025, and served with the revocation of the Order of Supervision. Baz Decl., ¶ 16. Petitioner is currently being detained pursuant to 8 U.S.C. § 1231(a). Baz Decl., ¶ 17.

On January 17, 2026, Petitioner signed a warning for failure to depart, an instruction sheet regarding requirements to assist in removal, and a travel document packet for Ukraine. Baz Decl., ¶ 18. DHS is preparing the travel document request packet for supervisory review, which should be submitted by the end of the month. Baz Decl., ¶ 18. DHS believes there is a significant likelihood of removal in the reasonably foreseeable future. Baz Decl., ¶ 18.

II. LEGAL BACKGROUND

The 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 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:

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> During the removal period, the [Secretary of Homeland Security][1] shall detain the [noncitizen]. Under no circumstance during the removal period shall the [Secretary] release [a noncitizen] who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

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, ICE[2] 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*, 533 U.S. at 689. The Supreme Court has identified six months as a presumptively reasonable time to bring about a noncitizen's removal. *Id.* at 701. The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* (stating that "for

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[1] Although 8 U.S.C. § 1231(a)(2) refers to the "Attorney General" as having responsibility for detaining noncitizens, 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 ("DHS"), of which ICE is a component. *See also* 6 U.S.C. § 251.

[2] Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security's authority to execute removal orders.

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detention to remain reasonable, as the period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink"). Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen's detention could raise constitutional issues. *Id.*

III. ARGUMENT

To succeed on a habeas petition, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. However, his claim that his detention is unlawful lacks merit. Petitioner premises his argument on his belief that his detention arises under 8 U.S.C. § 1226(a), but that is not the case. Dkt. 3, p. 4 (arguing "the fact that the custody has changed from 1226(c) to 1226(a) means that the Agency no longer had mandatory detention of the alien, but has the authority to order release on bond or upon conditions"). Section 1226(a), however, applies to noncitizens in removal proceedings who do not have a final order of removal. Petitioner, however, does have such an order. Baz Decl., ¶ 12; Ex. E. Therefore, the arguments raised in his Petition are not relevant.

Giving the benefit of the doubt to the *pro se* Petitioner however, while he argues that "this Petition is not within the Zadvydas mold," Dkt. 3, p. 5, Petitioner is, in fact, lawfully detained under 8 U.S.C. § 1231(a)(6) as a noncitizen with a final order of removal and the Supreme Court's decision in *Zadvydas* is relevant to resolving this petition. The Supreme Court has held that post-order detention is presumptively reasonable for a period of up to six months.[3] *Zadvydas*, 533 U.S.

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[3] Federal Respondents acknowledge that courts in this district disagree as to whether the presumptively reasonable period expires six months after a final order, regardless of whether Petitioner was detained at that time. *Compare Tran v. Bondi*, No. 25-1897-JLR, 2025 WL 3140462 (W.D. Wash. Nov. 10, 2025) *with Wana v. Bondi*, No. 25-2321-RSL, 2025 WL 3628634, at *3, n.2 (W.D. Wash. Dec. 15, 2025). The *Wana* court has the better of the argument because as it noted "the Supreme Court's interpretation of the INA [in *Zadvydas*] was driven by the need to avoid deprivations of liberty without due process. If a noncitizen is not detained, there is no deprivation of liberty that must be curtailed or rendered definite under *Zadvydas*." 2025 WL 3628634, at *3 n.2 (citing *Zadvydas*, 533 U.S. at 689-90).

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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. Petitioner's post-order detention, has exceeded just four months (three in 2011 and one in 2026).[4] Baz Decl., ¶¶ 12-13, 16. Here, the presumptive six-month period under *Zadvydas* does not expire until late March 2026.

Even if the six-month period had expired, Petitioner has not met his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. *Pelich v. INS*, 329 F.3d 1057, 1059 (9th Cir. 2003). Here, DHS has taken active steps to obtain a travel document for Ukraine on Petitioner's behalf. Baz Decl., ¶ 18. DHS believes there is a significant likelihood of removal in the reasonably foreseeable future. Baz Decl., ¶ 18. Meanwhile, Petitioner presents no facts to suggest, much less carry his burden, that his removal is not reasonably foreseeable. *Pelich*, 329 F.3d at 1059.

Last, although Petitioner does not raise any argument about the revocation of his Order of Supervision, DHS acted within its authorities to do so. DHS regulations, namely 8 C.F.R. § 241.13(i), set forth the requirements and process for affecting an Order of Supervision revocation. When a noncitizen has violated any condition of their release, as Petitioner did here in failing to check-in as required, or DHS determines that there is a "significant likelihood" an alien can be removed from the United States within the "reasonably foreseeable future," DHS is permitted to revoke the Order of Supervision and take the noncitizen into custody; nothing else is required for revocation under these circumstances. *Id.* § 241.13(i)(1) and (2); *see also Nizar Esmail v. Noem*, No. 25-8325-WLH, 2025 WL 3030590, at *2 (C.D. Cal. Sept. 12, 2025).

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[4] While Petitioner was detained previously in 2009 and 2010, Baz Decl., ¶¶ 7, 11, those both arose before he received the final order of removal in 2011.

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IV. CONCLUSION

For the aforementioned reasons, the Court should deny Petitioner's petition.

DATED this 30th day of January, 2026.

Respectfully submitted,

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Attorneys for Federal Respondents

I certify that this memorandum contains 1,887 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 that on this date, I electronically filed the foregoing United States' Return Memorandum, and the supporting Declarations of Gennadiy Baz and James C. Strong (with Exhibits A-G) 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 that on this date, I arranged for service of the aforementioned documents on the following non-CM/ECF participant via Certified Mail with return receipt, postage prepaid, addressed as follows:

Roman Vasilchuk, *Pro Se* Petitioner
A# [redacted]
NW ICE Processing Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

DATED this 30th day of January, 2026.

s/ Stephanie Huerta-Ramirez
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