



RE: [EXTERNAL] Re: Fatenko v. Rose, 26-cv-471 - follow-up about your status report

From Becker, Susan (USAPAE) <Susan.Becker@usdoj.gov>

Date Thu 3/26/2026 4:15 PM

To Chambers of Judge Paul S Diamond <Chambers_of_Judge_Paul_S_Diamond@paed.uscourts.gov>; Gabriel Cohen <Gabriel_Cohen@paed.uscourts.gov>

Cc anthony.stjoseph_usdoj.gov <Anthony.StJoseph@usdoj.gov>; Wilkins, Desiree (USAPAE) <Desiree.Wilkins@usdoj.gov>

CAUTION - EXTERNAL:

Good afternoon, your Honor and Mr. Cohen. I hope you are well. Below is my exchange with Mr. Mazur about the outstanding issues he raised regarding Mr. Fatenko since his release in February. Based on Mr. Mazur's response earlier today, I have posed a series of follow-up questions to ICE and then will continue this discussion with Mr. Mazur to see if we can clarify/resolve these issues. I suspect any remaining issues to be resolved may be outside the scope of this district court proceeding, but in any event, I would appreciate holding this matter in abeyance until early next week when I can get more information from ICE and speak with Mr. Mazur (I am out of the office tomorrow for a medical appointment). I have asked whether and how Mr. Fatenko's drivers' license can be returned and whether ICE already has a valid copy of his passport. I am generally available next week for to discuss the matter at the Court's convenience. Respectfully, Susan

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From: Francois-Ihor Mazur, Esq. <mail@lawmazur.com>

Sent: Thursday, March 26, 2026 11:28 AM

To: Becker, Susan (USAPAE) <Susan.Becker@usdoj.gov>

Cc: StJoseph, Anthony (USAPAE) <Anthony.StJoseph@usdoj.gov>; Wilkins, Desiree (USAPAE) <Desiree.Wilkins@usdoj.gov>

Subject: [EXTERNAL] Re: Fatenko v. Rose, 26-cv-471 - follow-up about your status report

Good morning Ms. Becker,

Thank you for providing ICE's responses. On behalf of Mr. Fatenko, I must disagree with some of the assertions ICE has made.

1. As an individual with TPS, Mr. Fatenko not only is not subject to removal, but he is not subject to detention. Moreover, Mr. Fatenko has never been in unlawful status, having arrived here under the U4U humanitarian parole program. ICE was fully aware of these facts; nevertheless, they detained him. Moreover, the language in the Release Order does suggest that he has a final order of removal, given the demand that he provide ICE with documentation regarding submissions to and responses from embassies and consulates regarding travel documents. At this time he is not even removable, much less, under a final order of removal.
2. The reference to providing his passport is entirely separate from the demand he provide documentation regarding submissions to and responses from embassies and consulates regarding travel documents. The explicit threat to revoke his employment authorization in the absence of providing such documentation, as well as the implicit threat to redetain him as well is of great concern. In addition, Mr. Fatenko provided DHS with a copy of his passport when he applied for TPS and it be found in his A-file. Therefore, they have no need to make another copy.
3. TPS may not provide lawful immigrant status, but it is a lawful immigration status. Thus, in the absence of an underlying immigration violation, Mr. Fatenko's NTA was improvidently issued. And again, his detention was unlawful.
4. ICE continues to retain Mr. Fatenko's driver's license.

In summary, ICE has chosen to ignore Mr. Fatenko's temporary protected status. When arrested and detained, he informed ICE that he had TPS, but was told that this did not matter. The Release Order and its terms reflects ICE's refusal to acknowledge the unlawful basis of Mr. Fatenko's detention. I believe the simplest way to resolve this matter is for ICE to cancel the Release Order and end all reporting requirements relating to Mr. Fatenko. Although the NTA was improvidently issued, I acknowledge that this is an issue that must be resolved before immigration court.

Best regards,

Francois

On 3/25/2026 5:16 PM, Becker, Susan (USAPAE) wrote:

Good afternoon, Mr. Mazur. I hope you are well. I had a chance to discuss Mr. Fatenko's situation with our ICE contacts and this is what I understand:

1. As you know, Mr. Fatenko currently has temporary protected status and cannot be removed at this time. He is in removal proceedings, though it does not appear EOIR has yet scheduled a hearing date. He does **not** have a final order of removal (as you are aware) and the language in the Order of Release on Recognizance does not suggest otherwise.
 2. The reference to bringing "travel documents" to his next check-in on August 12, 2026 refers to bringing his passport. As I understand it ERO will make a copy of the passport and return it to him. He is not expected to bring any other documentation. Because temporary protected status could change, ERO is entitled to obtain travel document information in the event Mr. Fatenko – in the future – is subject to a final removal order.
 3. The NTA does not reference his temporary protected status because TPS is by its nature a temporary benefit that does not provide lawful immigration status.
- Please let me know if you have any questions and how you would like me to respond to the Court tomorrow (Thursday March 26) – i.e. whether we can advise the Court the parties agree the matter is resolved and can be dismissed; or if you

prefer that I submit a responsive letter along these lines and ask the Court for a conference call. Regards, Susan