

District Judge John H. Chun

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

DMYTRO MALAKHOV,

Petitioner,

v.

BRUCE SCOTT¹, *et al.*,

Respondents.

Case No. 2:26-cv-00646-JHC

FEDERAL RESPONDENTS' RETURN

Noted for Consideration:
April 6, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Dmytro Malakhov at the Northwest ICE Processing Center pursuant to 8 U.S.C. § 1226(c). On June 4, 2023, Petitioner applied for admission into the United States and was released on parole through a program referred to as Parole Under Uniting for Ukraine² ("UHP"). On October 8, 2024, Petitioner was convicted of 18 U.S.C. § 1956(h), sentenced to 18 months prison, and ordered to

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

² Parole Under Uniting for Ukraine <https://www.uscis.gov/save/whats-new/parole-under-uniting-for-ukraine> ("Form I-94 Record will include a UHP class of admission..." (last accessed Mar. 31, 2026)).

1 pay \$1,417,742 in restitution. Upon his release from federal criminal detention, Petitioner was
 2 detained by ICE and is currently in removal proceedings.

3 Petitioner incorrectly asserts that his detention is pursuant to 8 U.S.C. § 1226(a). Dkt. 1,
 4 pg. 1. Petitioner asserts that his immigration detention violates due process under the Fifth
 5 Amendment, that he has medical vulnerabilities, and there is no individualized justification
 6 demonstrating that he is a danger or flight risk. *Id.*

7 This Court should deny the relief sought here. Petitioner's conviction makes him an
 8 aggravated felon pursuant to 8 U.S.C. § 1101(a)(43)(D). This subjects him to mandatory detention
 9 while a decision on his removal is made pursuant to 8 U.S.C. § 1226(c)(1)(B). Furthermore,
 10 Petitioner's medical needs are being adequately addressed. ICE lawfully detains Petitioner and
 11 his petition should be denied.

12 II. FACTUAL BACKGROUND

13 A. Petitioner Dmytro Malakhov

14 Petitioner is a citizen of Ukraine that previously entered the United States on February 26,
 15 2016, prior to leaving on his own accord on May 6, 2019. Declaration of Jordan Steveson
 16 ("Steveson Decl."), Exh. A, Form I-213. On June 5, 2023, he was temporarily paroled into the
 17 United States under UHP until June 2, 2025. Steveson Decl., Exh. B, Form I-94.

18 On October 8, 2024, Petitioner was convicted of Conspiracy to Launder Monetary
 19 Instruments in violation of 8 U.S.C. § 1956(h)³. Declaration of Deportation Officer Gennadiy Baz
 20 ("Baz Decl."), ¶ 8. Petitioner was sentenced to 18 months prison and ordered to pay \$1,417,742
 21 in restitution. *Id.* On December 29, 2025, ICE detained Petitioner upon his release from the
 22

23 ³ *United States v. Dmytro Malakhov*, Case No. 2:23-cr-00326-SB (C.D. Cal. Oct. 8, 2024) Dkt. 77. The case
 24 appears to be sealed. The judgment was filed in Petitioner's immigration case and is material to his immigration
 relief. Federal Respondents will provide this Court with a copy if required to do so.

1 Bureau of Prisons in SeaTac, Washington. Steveson Decl., Exh. A, Form I-213. ICE issued
2 Petitioner a notice to appear and removal proceedings were initiated. Baz Decl., ¶¶10-11.
3 Petitioner is charged with removal pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.*

4 On March 26, 2026, an immigration judge denied all applications for relief and ordered
5 Petitioner removed to Ukraine. Steveson Decl., Exh. C, IJ Order. Petitioner reserved appeal. He
6 has 30 days from the date of that order to file an appeal with the Board of Immigration Appeals.
7 *Id.*

8 Petitioner is detained at a level 4 facility, meaning it can provide a higher level of care.
9 Dkt. No. 9, Declaration of Dr. Eddie Wang (“Dr. Wang Decl.”), ¶ 4. Healthcare at the NWIPC is
10 provided by ICE Health Services Corps (“IHSC”). *Id.* This includes a team of family and
11 emergency medicine physicians, nurses, pharmacists, and technicians. *Id.* IHSC will send patients
12 to the emergency department for critical cases. *Id.* In cases requiring specialists that are not within
13 the facility, patients are referred to outside medical specialists. *Id.*

14 Petitioner is receiving treatment for issues that he reports to medical personnel. Dr. Wang
15 Decl., ¶¶ 8-22. For example, Petitioner was seen and had his medical history confirmed on
16 December 30, 2025. Dr. Wang Decl., ¶ 8. Labs were ordered and a referral was placed based on
17 those on Petitioner’s reports. *Id.* Additional labs were ordered when Petitioner was identified as
18 Class B Tuberculosis. Dr. Wang Decl., ¶ 9. Based on the lab results, a nephrology referral was
19 made and medication adjusted. Dr. Wang Decl., ¶ 11. By February 8, 2026, Petitioner’s lab results
20 showed improvement in his creatine levels and kidney filtration rates. Dr. Wang Decl., ¶ 14.

21 Crystal in a urine analysis was noted on February 12, 2026, but this was addressed via
22 medication and counseling to increase fluid intake while decreasing sugar and salt. Dr. Wang
23 Decl., ¶ 15. Dr. Wang believes that Petitioner is receiving the appropriate standard of care and
24 that Petitioner’s medical needs are being met. Dr. Wang Decl., ¶ 23.

Petitioner's lab results were reviewed by Franciscan Nephrology and the Nephrologist determined that Petitioner does not meet criteria for nephrology involvement. Supplemental Declaration of Dr. Eddie Wang, M.D. ("S. Dr. Wang Decl."), ¶ 3. In such cases, ICE Health Services Corps will continue to monitor kidney functions every three months. *Id.*, ¶ 4.

III. LEGAL STANDARD

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

Petitioner's detention is statutorily mandated and comports with due process. He is not entitled to a court-ordered bond hearing. Accordingly, this Court should dismiss his habeas petition.

A. ICE lawfully detains Petitioner pursuant to 8 U.S.C. § 1226(c).

Detention pursuant to 8 U.S.C. § 1226(c) is mandatory for noncitizens who commit or are charged with certain criminal offenses. This detention may end prior to the conclusion of removal proceedings "only if the [noncitizen] is released for witness-protection purposes." *Jennings v. Rodriguez*, 583 U.S. 281, 305 (2018) (internal quotation marks and citations omitted). If a

1 noncitizen commits an aggravated felony, then he is subject to mandatory detention during
2 immigration proceedings. 8 U.S.C. §§ 1226(c)(1)(B), 1227(a)(2)(A)(iii).

3 On of the listed aggravated felonies is conviction for “an offense described in section 1956
4 of title 18... if the amount of funds exceeded \$10,000.” 8 U.S.C. § 1101(a)(43)(D).

5 Petitioner’s conviction for 18 U.S.C. § 1956(h), with an order of restitution of \$1,417,742,
6 is an aggravated felony. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1226(c) due to his
7 criminal activity in the United States.

8 **B. Petitioner has not met his burden establishing that his mandatory detention violates**
9 **his rights under the Fifth Amendment’s Due Process Clause.**

10 Petitioner’s approximate three-month detention pursuant to Section 1226(c) does not
11 violate his due process rights. The Supreme Court “has firmly and repeatedly endorsed the
12 proposition that Congress may make rules as to [noncitizens] that would be unacceptable if
13 applied to citizens.” *See Demore v. Kim*, 538 U.S. 510, 522 (2003) (citations omitted). Detention
14 is a constitutionally permissible aspect of the Government’s enforcement of the immigration laws
15 and fulfills the legitimate purpose of ensuring that individuals appear for their removal
16 proceedings. *See Jennings*, 583 U.S. at 285-86; *Demore*, 538 U.S. at 523; *Zadvydas v. Davis*,
17 533 U.S. 678, 690-91 (2001). Consistent with the requirements of due process, Petitioner’s
18 confinement is thus “reasonably related” to a legitimate government interest. *Bell v. Wolfish*, 441
19 U.S. 535, 538-39 (1979).

20 Petitioner incorrectly contends that his detention violates the Fifth Amendment Due
21 Process Clause. Dkt. 1, pg. 1. In *Demore*, the Supreme Court addressed the constitutionality of 8
22 U.S.C. § 1226(c) and therein considered a noncitizen’s claim of a due process violation based on
23 the length of his detention. 538 U.S. at 510-33. In addition to upholding the constitutionality of
24 8 U.S.C. § 1226(c) and finding that the noncitizen’s due process claim must fail, the Supreme

1 Court did not embrace any bright-line rule for when a noncitizen under 8 U.S.C. § 1226(c) *may*
2 suffer a due process violation. In fact, the Court upheld the constitutionality of the noncitizen's
3 detention even though it had surpassed six months and was likely to extend longer. *Id.*; *see Reid*
4 *v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) ("It requires no reading of tea leaves to see that *Demore*
5 is fatal to the claim here that every single person detained for six months must be entitled to a
6 bond hearing."). After *Jennings*, the Ninth Circuit has repeatedly declined in published decisions
7 to state whether noncitizens detained under Section 1226(c) should be afforded bond hearings *at*
8 *any time*. *See, e.g., Avilez v. Garland*, 69 F.4th 525, 538 (9th Cir. 2023) (ruling "we make no
9 determination regarding the issue" as to whether the noncitizen detained under 8 U.S.C. § 1226(c)
10 has suffered a due process violation based on length of detention).

11 In sum, this Court should rule that Petitioner has not established a violation of his due
12 process rights. He is a criminal noncitizen in pending removal proceedings. His detention serves
13 the immigration purpose for which 8 U.S.C. § 1226(c) was enacted into law. Finally, Petitioner
14 has not demonstrated that his detention is unreasonable or unjustified under Supreme Court
15 caselaw for noncitizens in pending civil immigration removal proceedings. *See Demore*, 538
16 U.S. at 527-28, 530-33.

17 **C. Petitioner's detention does not violate his due process rights under the *Martinez* test.**

18 Petitioner's detention meets due process requirements under the multi-factor test
19 previously employed in this District (the "*Martinez* test"). *Martinez v. Clark*, 18-cv-1669, 2019
20 WL 5968089 (W.D. Wash. May 23, 2019) (Report and Recommendation) (applying multi-factor
21 due process analysis), *adopted by*, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019); *but see*
22 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022) (CJ Bumatay, concurring)
23 ("[T]he [Supreme] Court has recently backed away from multifactorial 'grand unified theor[ies]'
24

1 for resolving legal issues”) (citation omitted); *id.* (“I think this case is better decided through the
2 text, structure, and history of the Constitution, rather than through interest balancing.”).

3 In *Martinez*, the district court analyzed

4 (1) the total length of detention to date; (2) the likely duration of future detention;
5 (3) whether the detention will exceed the time petitioner spent in prison for the
6 crime that made him removable; (4) the nature of the crimes that petitioner
7 committed; (5) the conditions of detention; (6) delays in the removal proceedings
caused by petitioner; (7) delays in the removal proceedings caused by the
government; and (8) the likelihood that the removal proceedings will result in a
final order of removal.

8 2019 WL 5968089, at *9. These factors favor the Government’s position that there has not been
9 a violation of Petitioner’s due process rights.

10 First, Petitioner’s approximate three-month detention should not favor granting him
11 release. The district court in *Martinez* stated that the longer mandatory detention continues
12 beyond the “brief” period authorized in *Demore*, the harder it is to justify. *Martinez*, 2019 WL
13 5968089, at *9 (petitioner detained for nearly thirteen months).

14 The second factor analyzes how long detention is likely to continue absent judicial
15 intervention. This factor should be neutral at this time as any projection would be speculative. It
16 is unknown whether Petitioner’s removal proceedings will ultimately end in his removal to
17 Ukraine or further proceedings.

18 The third factor favors Federal Respondents. Petitioner has only spent three months in
19 immigration detention, but his criminal sentence of confinement was 18 months. Baz Decl., ¶ 8.

20 The fourth factor clearly favors the Government. Despite only a stay in the United States
21 from 2016 to 2019, and then again beginning in 2023, Petitioner has caused criminal harm and
22 owes \$1,417,742 in restitution. Baz Decl., ¶¶ 5-8. Section 1226(c) only applies to certain criminal
23 noncitizens that Congress has inherently deemed a danger to society or a flight risk. Congress
24 enacted mandatory detention for certain criminal noncitizens as the outcome of bond hearings

1 “were too risky in some instances.” *Preap*, 139 S. Ct. at 959. As described above, Petitioner’s
2 criminal activities qualifies him for such mandatory detention.

3 The fifth factor analyzes the conditions of detention. This Court should find that this
4 factor either favors the Government or, at worst, is neutral. Petitioner is currently detained at the
5 Northwest ICE Processing Center. Petitioner bears the burden of proof to establish eligibility for
6 a grant of habeas corpus. Petitioner alleges a lack of medical care, but the evidence shows
7 Petitioner is receiving adequate medical care and his health has actually improved at the detention
8 center with treatment. Dr. Wang Decl., ¶ 14.

9 Under the sixth and seventh factors, the Court considers “the nature and extent of any
10 delays in the removal proceedings caused by the petitioner and the government, respectively.”
11 *Martinez*, 2019 WL 5968089, at *10. Petitioner has alleged no facts to support delays in his
12 proceedings by the Government. These factors should favor the Government.

13 The last factor favors the government or at worse is neutral. Petitioner’s conviction may
14 limit his eligibility for some forms of relief. *See e.g.* 8 U.S.C. 1158(b)(2)(ii). Although Petitioner
15 is currently ordered removed, it is not a final decision. Thus, this factor should favor the
16 government or be neutral at this time.

17 Accordingly, neither the *Martinez* test does not demonstrate that Petitioner’s § 236(c)
18 mandatory detention has become unreasonable or his due process rights have been violated.

19 **D. Petitioner’s medical claims are not properly brought in habeas**

20 Petitioner’s allegations regarding inadequate medical treatment are not properly brought
21 in this habeas. Even if it was determined that Petitioner’s medical concerns were not being
22 adequately addressed, the remedy for Petitioner’s alleged concerns is not release, but transfer to
23 a detention facility that would properly address the concerns. This Court should not consider
24 Petitioner’s conditions of confinement claim as part of a 28 U.S.C. § 2241 habeas corpus petition.

1 *See Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023). Petitioner does not allege that detention at
2 *any facility* would be unlawful or unconstitutional. As such, this is a challenge to the conditions
3 of Petitioner's confinement at the NWIPC and not a direct challenge to the legality or duration of
4 his confinement. Thus, "[t]he appropriate remedy for such constitutional violations, if proven,
5 would be a judicially mandated change in conditions and/or an award of damages, but not release
6 from confinement." *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *see also Badea v. Cox*,
7 931 F.2d 573, 574 (9th Cir. 1991) (challenges to conditions of confinement are pursued in a civil
8 rights action).

9 Furthermore, Petitioner is receiving adequate medical care at the detention center.
10 Petitioner asserts – without supporting evidence – that he should be released due to because he is
11 at risk of “irreversible organ damage” and that his condition has deteriorated while in detention.
12 Dkt. 1 at 1, 3. However, Petitioner's allegations are overstated. Petitioner is receiving appropriate
13 medical care, including referrals to outside specialists—there is no medical evidence of the
14 extreme level of harm alleged by Petitioner. Indeed, Petitioner's kidney function appears to have
15 improved compared to when he first arrived at the NWIPC. Dr. Wang Decl., ¶¶ 8, 11, 14, 22; S.
16 Dr. Wang Decl., ¶ 3.

17 V. CONCLUSION

18 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
19 the Petition.

20 //

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23

24 //

1 DATED this 31st day of March, 2026.

2 Respectfully submitted,

3 s/ Jordan C. Steveson

JORDAN C. STEVESON, WSBA No. 40636

4 Special Assistant United States Attorney

United States Attorney's Office

5 Western District of Washington

1201 Pacific Ave., Ste. 700

6 Tacoma, WA 98402

Phone: (253) 428.3802

7 Email: jordan.steveson@usdoj.gov

8 *Attorney for Federal Respondents*

9 *I certify that this memorandum contains 2,559*
10 *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 on today's date, I electronically filed the foregoing, Declaration of Gennadiy Baz, Supplemental Declaration of Eddie Wang, M.D., and the Declaration of Jordan C. Steveson with the supporting Exhibits A through C, 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 on today's date, I arranged for service of the foregoing on the following non-CM/ECF participant(s), via Certified Mail with return receipt, postage prepaid, addressed as follows:

Dmytro Malakhov, *Pro Se Petitioner*
A#
NW ICE Processing Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

Maryna Malakhova
11815 Gilmore St, Apt 211
North Hollywood, CA 91606

DATED this 31st day of March, 2026.

s/ Stephanie Huerta-Ramirez

STEPHANIE HUERTA-RAMIREZ, Legal Assistant
United States Attorney's Office
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, WA 98101
Phone: (206) 553-7970
Fax: (206) 553-4073
Email: Stephanie Huerta-Ramirez@usdoj.gov