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7 Counsel for Petitioner

8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 VADIM N. DMITRUK,



11 Petitioner,

12 vs.

13  
14 KRISTI NOEM, Secretary, U.S. Dept. Of  
15 Homeland Security  
16 C/O Office of the General Counsel  
17 2707 Martin Luther King Jr. Ave, Se  
18 Washington, Dc 20528-0485;

19 TODD LYONS, Acting Director of U.S.  
20 Immigration and Customs Enforcement.  
21 500 12th St SW  
22 Washington, DC 20536

23 PAM BONDI, U.S. Attorney General  
24 950 Pennsylvania Avenue NW  
25 Washington DC 20530

26 JAMES JANECKA,  
27 Warden of the Adelanto ICE Processing Center  
28 10400 Rancho Road  
Adelanto, CA 92301

Respondents.

Case No.:

**PETITION FOR WRIT OF HABEAS  
CORPUS AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

1 Petitioner, through undersigned counsel, respectfully petitions this Court for a Writ of  
2 Habeas Corpus pursuant to 28 U.S.C. § 2241 and requests immediate release from continued  
3 and unlawful detention by Immigration and Customs Enforcement (ICE). Petitioner further  
4 seeks injunctive relief to prevent indefinite civil confinement and to ensure compliance with  
5 constitutional due process and statutory requirements. In support, Petitioner alleges as follows:  
6

7  
8 **I. INTRODUCTION**

9 1. Petitioner has been detained by U.S. Immigration and Customs Enforcement (ICE) since  
10 February 9, 2025, for almost 8 months, under a final order of removal issued in 2015.  
11

12 2. Despite this order, ICE has conceded it cannot remove him to Ukraine, his country of  
13 nationality, because of the ongoing war and because the Ukrainian government has not accepted  
14 the deportation of Petitioner. Petitioner has also been informed that ICE is not seeking removal  
15 to any third country. There is no significant likelihood of removal in the reasonably foreseeable  
16 future.  
17

18 3. Petitioner's ongoing detention is unlawful, as there is no significant likelihood that he will  
19 be removed in the reasonably foreseeable future, such that his detention violates 8 U.S.C. §  
20 1231(a)(6) as interpreted by *Zadvydas v. Davis*, 533 U.S. 678 (2001). Continued detention here  
21 violates 8 U.S.C. § 1231 as construed by *Zadvydas* and violates the Due Process Clause of the  
22 Fifth Amendment. ICE has also failed to timely complete required post-order custody reviews in  
23 accordance with 8 C.F.R. §§ 241.4 and 241.13.  
24

25 4. Petitioner seeks immediate release under appropriate conditions of supervision. He also  
26 seeks declaratory and injunctive relief to prevent re-detention absent materially changed  
27 circumstances and to ensure notice and an opportunity to consult counsel if removal becomes  
28

1 feasible.

2  
3 **II. JURISDICTION AND VENUE**

4  
5 5. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. §§  
6 1101–1538, and its implementing regulations; the Administrative Procedure Act (APA),  
7 5 U.S.C. §§ 500–596, 701–706; and the U.S. Constitution.

8  
9 6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),  
10 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States  
11 Constitution (Suspension Clause).

12  
13 7. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et*.  
14 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28  
15 U.S.C. § 1651; Federal Rule of Civil Procedure 65; and the Court’s inherent equitable  
16 powers.

17  
18 8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because a  
19 substantial part of the events or omissions giving rise to the claims occurred in this District,  
20 Petitioner is detained in this District, and no real property is involved in this action.

21  
22 **III. REQUIREMENTS OF 28 U.S.C. § 2243**

23  
24 9. The Court must grant the petition for writ of habeas corpus or issue an order to  
25 show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to  
26 relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require  
27 respondents to file a return “within *three days* unless for good cause additional time, not  
28

1 exceeding twenty days, is allowed.” *Id.* (emphasis added).

2 10. Courts have long recognized the significance of the habeas statute in protecting  
3 individuals from unlawful detention. The Great Writ has been referred to as “*perhaps the*  
4 *most important writ known to the constitutional law of England, affording as it does a*  
5 *swift and imperative remedy in all cases of illegal restraint or confinement.*” *Fay v. Noia*,  
6 372 U.S. 391, 400 (1963).  
7

8  
9  
10 **IV. PARTIES**

11 11. Petitioner, Vadim Dmitryk, is a 35-year-old native and citizen of Ukraine, born in  
12 Lutsk, Ukraine, on  He entered the United States with his family in April  
13 1994 through a U.S. refugee program. He has resided continuously in the United States  
14 since 1994 and has never departed. He is now detained and waiting on his deportation.  
15

16 12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security.  
17 As Secretary, she oversees the federal agency responsible for implementing and enforcing  
18 the INA, including the detention of noncitizens. She is sued in her official capacity.  
19

20 13. Respondent Todd Lyons is Acting Director of ICE, he oversees ICE detention  
21 decisions and post-order custody reviews for detainees in this region, including Petitioner.  
22 He is sued in his official capacity.  
23

24 14. Respondent Pamela Bondi is the Attorney General of the United States and head  
25 of the U.S. Department of Justice. In that capacity, she oversees EOIR and the immigration  
26 court system the agency administers. She is ultimately responsible for the agency’s  
27  
28

1 operation. She is sued in her official capacity.

2 15. Respondent James Janecka is the Warden of the Adelanto ICE Processing Center,  
3 he is responsible for the custody of immigration detainees at Adelanto, including  
4 Petitioner. He is sued in his official capacity.  
5

6  
7 **V. STATEMENT OF FACTS**

8 16. Petitioner entered the United States in April 1994 under a refugee program extended to  
9 Ukrainians following the dissolution of the USSR. As was then common for minor children, he  
10 was listed on his mother's USSR-era passport. He and his family were granted lawful permanent  
11 resident status.  
12

13 17. In 2010, at the age of 19, Petitioner was convicted in Canyon County, Idaho, of a felony  
14 drug offense, which caused him to lose his immigrant status. In 2015, he was again charged with  
15 drug possession, but those charges were dismissed. Petitioner was then detained in ICE custody  
16 for approximately three months before being released.  
17

18 18. On July 14, 2015, an Immigration Judge in Utah ordered Petitioner removed based on the  
19 past conviction.  
20

21 19. D In August 2020, Petitioner was again detained by ICE. After approximately two weeks  
22 in custody, he was released. He then applied for and was granted withholding of removal due to  
23 the ongoing war between Russia and Ukraine, which made his removal to a war zone  
24 impermissible.

25 20. On January 15, 2025, Petitioner was arrested in Meridian, Idaho, following an incident at  
26 a gas station. He was initially charged with felony assault on law enforcement, resisting arrest,  
27 and disorderly conduct. Petitioner sustained significant injuries during the arrest, required  
28

1 hospitalization, and all toxicology reports were negative. Petitioner maintained that he was  
2 innocent and that he was a victim of police brutality. The State subsequently moved to dismiss  
3 the felony charges, and the matter was resolved with no pending charges.  
4

5 21. On February 9, 2025, Petitioner was taken into ICE custody and transported to the  
6 Adelanto ICE Processing Center, located at 10400 Rancho Road, Adelanto, California. He has  
7 remained in custody since that date.

8 22. On February 21, 2025, Petitioner was served with a Warning for Failure to Depart, despite  
9 being detained at Adelanto.  
10

11 23. Petitioner informs that ICE officers advised him that he would not be removed to Ukraine  
12 because of the ongoing war. At his 90-day custody review, Petitioner inquired whether removal  
13 to a third country was being pursued, given that he has never left the United States since his arrival  
14 in 1994. The only response provided was that ICE had attempted to secure travel documents from  
15 Ukraine, but no response had been received. Despite this, Petitioner has remained detained.  
16 Following his 180-day custody review, Petitioner has not received a decision on whether he will  
17 remain detained.  
18

19 24. The combination of the ongoing war in Ukraine, the Ukrainian government's refusal or  
20 failure to issue travel documents, and ICE's decision not to pursue removal to third countries  
21 demonstrates that Petitioner's removal is not significantly likely to occur in the reasonably  
22 foreseeable future.  
23

24 25. Petitioner has resided in the United States for over 30 years and has established strong  
25 family and community ties. His parents and siblings reside in the United States, and he has a U.S.  
26 citizen child. He has maintained employment, successfully completed a one-year drug treatment  
27 program, and has been sober for the past four years. Petitioner does not pose a danger to society.  
28

1 26. Conditions at Adelanto ICE Processing Center are materially similar to penal  
2 confinement. As of the filing of this petition, Petitioner has been detained well beyond 180 days,  
3 exceeding the presumptively reasonable period recognized in *Zadvydas v. Davis*, 533 U.S. 678  
4 (2001). ICE has failed to issue a timely written 180-day post-order custody review decision as  
5 required by 8 C.F.R. §§ 241.4 and 241.13, and has articulated no concrete, reasonably foreseeable  
6 timeline for Petitioner's removal.  
7

## 8 9 VI. LEGAL BACKGROUND

10 27. The detention of noncitizens with final orders of removal is governed by 8 U.S.C. § 1231.  
11 The statute provides a 90-day "removal period," during which detention is mandatory. 8 U.S.C.  
12 § 1231(a)(2). Thereafter, detention is discretionary under § 1231(a)(6).  
13

14 28. In *Zadvydas*, the Supreme Court construed § 1231(a)(6) to avoid serious constitutional  
15 concerns and held that post-order detention is limited to a period reasonably necessary to effect  
16 removal. The Court recognized six months as a presumptively reasonable period. After that point,  
17 if the noncitizen shows good reason to believe there is no significant likelihood of removal in the  
18 reasonably foreseeable future, the government must respond with evidence sufficient to rebut that  
19 showing; otherwise, the noncitizen must be released subject to appropriate supervision. "*If*  
20 *removal is not reasonably foreseeable, the court should hold continued detention unreasonable*  
21 *and no longer authorized by statute.*" *Zadvydas*; See also *Clark v. Martinez*, 543 U.S. at 384  
22 (stating that *Zadvydas* held that "*detention cannot be continued once removal is no longer*  
23 *reasonably foreseeable*")."  
24  
25

26 29. The Department of Homeland Security's regulations require periodic custody reviews,  
27 including at approximately 90 and 180 days, and require consideration of release under an order  
28

1 of supervision. See 8 C.F.R. §§ 241.4, 241.13, 241.5.

2 30. In the Ninth Circuit, prolonged immigration detention raises serious due process concerns,  
3 and courts retain equitable authority in habeas to order release. *"Substantive due process prohibits*  
4 *civil detention that is punitive in its purpose or effect, including detention that is unreasonably*  
5 *prolonged."* *Leiva v. Becerra*, 23-cv-02027-CRB (N.D. Cal. May 26, 2023).  
6

7  
8 **VII. CLAIMS FOR RELIEF**

9  
10 **Count I: Violation of 8 U.S.C. § 1231(a)**

11 31. Petitioner re-alleges and incorporates the foregoing paragraphs.

12 32. The Immigration and Nationality Act at 8 U.S.C. § 1231(a) authorizes detention "*beyond*  
13 *the removal period*" only for the purpose of effectuating removal. 8 U.S.C. § 1231(a)(6); see also  
14 *Zadvydas*, ("*[O]nce removal is no longer reasonably foreseeable, continued detention is no*  
15 *longer authorized by statute.*"). Because Petitioner's removal is not reasonably foreseeable, his  
16 detention does not effectuate the purpose of the statute and is accordingly not authorized by  
17 § 1231(a).  
18

19 33. Petitioner has been detained far more than six months. He has shown good reason to  
20 believe there is no significant likelihood of removal in the reasonably foreseeable future because  
21 (i) the Ukrainian government will not take him in and is not issuing travel documents; (ii) ICE  
22 has acknowledged it cannot presently remove him to Ukraine; (iii) ICE is not pursuing removal  
23 to any third country; and (iv) the ongoing war materially impedes repatriations to Ukraine.  
24

25 34. Respondents have not demonstrated that removal is significantly likely in the reasonably  
26 foreseeable future. Under *Zadvydas*, continued detention is unlawful, and Petitioner must be  
27 released under appropriate supervision.  
28



**Count II: Violation of Fifth Amendment Right to Due Process**

35. Petitioner re-alleges and incorporates the foregoing paragraphs.

36. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Prolonged detention without an individualized custody determination by a neutral arbiter violates due process. See *Zadvydas*; *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 131 (2018).

37. The Due Process Clause applies to all persons in the United States, including non-citizens, and prohibits government action that strips them of liberty without fair process.

38. Prolonged civil detention, particularly in penal-like conditions and without a neutral, individualized determination that detention is necessary to serve a compelling government interest, violates due process. Respondents have detained Petitioner for more than six months without any bond hearing before a neutral decisionmaker and without clear and convincing evidence that he poses a flight risk or danger that cannot be mitigated by conditions of supervision. Continued detention violates the Due Process Clause.

39. Substantive due process prohibits civil detention that is punitive in its purpose or effect, including detention that is unreasonably prolonged. See *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (“*due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed*”).

40. In *Demore v. Kim*, 538 U.S. 510, 527-28 (2003), the Supreme Court held that “*detention during deportation proceedings is a constitutionally valid aspect of the deportation process*”, and “*that detaining “deportable criminal aliens pending their removal proceedings [...] necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their*

1 *removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be*  
2 *successfully removed."*

3  
4 41. Here, Petitioner's continued detention has become unconstitutionally punitive, as it no  
5 longer serves any legitimate, nonpunitive governmental interest. He poses neither a flight risk nor  
6 a danger to the community. While Petitioner does have a criminal history, none of his offenses  
7 were violent, and they stemmed from prior struggles with narcotics use. Critically, Petitioner has  
8 maintained sobriety for the past four years, eliminating the underlying concern that contributed  
9 to his past conduct. In these circumstances, no legitimate governmental or societal interest is  
10 advanced by detaining Petitioner for an indefinite and unforeseeable period, particularly when the  
11 duration has already exceeded constitutional limits of due process and basic decency.

12  
13 42. Petitioner is effectively being held hostage by U.S. immigration authorities while his  
14 home country, from which he fled to escape the horrors of war and authoritarian rule, continues  
15 to experience ongoing conflict. The war in Ukraine shows no signs of ending in the near future,  
16 and the instability in the region has persisted throughout Petitioner's lifetime.

17  
18 43. Continued detention is also excessive in relation to the government's interest, particularly  
19 given the availability of less restrictive alternatives under ICE policy, such as the Intensive  
20 Supervision Appearance Program (ISAP). ICE permits the use of ankle monitors and other forms  
21 of supervision, including telephonic check-ins or app-based monitoring. These measures are  
22 effective for ensuring compliance and should be employed for individuals like Petitioner,  
23 especially when compelling humanitarian concerns are present.  
24

25  
26 **Count III: Violation of the Administrative Procedure Act**  
27  
28

1  
2 44. Petitioner realleges and incorporates by reference all preceding paragraphs as if  
3 fully set forth herein.

4 45. The APA, 5 U.S.C. §§ 701–706, prohibits agency action that is arbitrary,  
5 capricious, an abuse of discretion, or otherwise not in accordance with law. Specifically,  
6 5 U.S.C. § 706(2)(A) mandates that a court shall "hold unlawful and set aside agency  
7 action, findings, and conclusions found to be... arbitrary, capricious, an abuse of discretion,  
8 or otherwise not in accordance with law."  
9

10  
11 46. In this case, Respondents have failed to timely conduct and complete required  
12 post-order custody reviews, including the 180-day review and issuance of a written  
13 decision, in violation of 8 C.F.R. §§ 241.4 and 241.13. This failure is arbitrary, capricious,  
14 an abuse of discretion, and otherwise not in accordance with law, in violation of the APA,  
15 5 U.S.C. § 706(2), and the Accardi doctrine.  
16

17 47. Furthermore, there is a lack of transparency in the agency's procedures. Petitioner  
18 has received no formal communication regarding his custody review, and all information  
19 he has been able to obtain has come from unofficial conversations with officers during  
20 detention. This absence of clear guidance has created confusion and undermines trust in  
21 the process.  
22

23  
24 48. The Supreme Court has established that agency actions are arbitrary and capricious  
25 if the agency has relied on factors which Congress has not intended it to consider, entirely  
26 failed to consider an important aspect of the problem, offered an explanation for its  
27 decision that runs counter to the evidence before the agency, or is so implausible that it  
28

1 could not be ascribed to a difference in view or the product of agency expertise. (See  
2 *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.*, 463  
3 U.S. 29, 43 (1983)).  
4

5 49. Respondents' failure to conduct timely post-order custody reviews, provide written  
6 decisions, and maintain transparent procedures constitutes agency action that is arbitrary,  
7 capricious, an abuse of discretion, and otherwise not in accordance with law, in violation  
8 of the APA, 5 U.S.C. §§ 701–706.  
9

#### 10 11 **VIII. PRAYER FOR RELIEF**

12 WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:  
13

- 14 1) Assume jurisdiction and proper venue over this matter;
- 15 2) Issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241, ordering Respondents  
16 to immediately release Petitioner from immigration detention, or, in the alternative,  
17 direct ICE to employ less restrictive forms of supervision, such as telephonic check-  
18 ins or app-based monitoring;  
19
- 20 3) Grant declaratory relief holding that continued indefinite and punitive detention of  
21 Petitioner would violate his constitutional and statutory rights, particularly given the  
22 ongoing conflict in his home country and the absence of any foreseeable opportunity  
23 for removal;  
24
- 25 4) Enjoin Respondents from re-detaining Petitioner under § 1231(a)(6) absent  
26 materially changed circumstances demonstrating a significant likelihood of removal  
27  
28

1 in the reasonably foreseeable future, and require advance written notice of at least 14  
2 days to Petitioner and his counsel before effectuating any removal, to permit  
3 consultation and orderly surrender, unless exigent circumstances specifically found  
4 by the Court apply.  
5

6 5) Order Respondents to complete all overdue post-order custody reviews and to  
7 comply with 8 C.F.R. §§ 241.4 and 241.13, including issuance of timely written  
8 decisions that consider all relevant factors and evidence.  
9

10 6) Award Petitioner reasonable attorneys' fees and costs pursuant to the Equal Access  
11 to Justice Act, 28 U.S.C. § 2412; and  
12

13 7) Grant such other and further relief as this Court deems just and proper.  
14

15 Date: September 26, 2025

16 Respectfully submitted,  
17

18 /s/ Marcelo Gondim

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