

The Honorable John H. Chun
The Honorable S. Kate Vaughan

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

MARINA TZAFIR,

Petitioner,

v.

PAMELA BONDI, United States Attorney
General, *et al.*,

Respondents.

Case No. 2:25-cv-02067-JHC-SKV

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Pursuant to this Court's Order (Dkt. 13), Federal Respondents submit the following as contained in the records of Petitioner Marina Tzafir's immigration case and as set forth in the Declaration of Joseph Carnevale ("Carnevale Decl."), as well as the relevant detention authority.

I. DETENTION AUTHORITIES

The Immigration and Nationality Act ("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

¹ Respondent Bruce Scott is not a Federal Respondent.

1 after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order
2 detention) *with* § 1231(a) (authorizing post-order detention). When a final order of removal has
3 been entered, a noncitizen enters a 90-day “removal period.” 8 U.S.C. § 1231(a)(1). Congress has
4 directed that the Secretary of Homeland Security “shall remove the [noncitizen] from the United
5 States.” *Id.* To ensure a noncitizen’s presence for removal and to protect the community from
6 noncitizens who may present a danger, Congress has mandated detention while removal is being
7 effectuated. 8 U.S.C. § 1231(a)(2).

8 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration
9 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention
10 and does not place any temporal limit on the length of detention under that provision:

11 [A noncitizen] ordered removed who is inadmissible under section 1182,
12 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or
13 who has been determined by the [the Secretary of Homeland Security] to be a risk
14 to the community or unlikely to comply with the order of removal, *may* be detained
15 *beyond the removal period* and, if released, shall be subject to the terms of
16 supervision in paragraph (3).

17 8 U.S.C. § 1231(a)(6) (emphasis added).

18 During the removal period, the U.S. Department of Homeland Security (“DHS”) is charged
19 with attempting to effect removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1).
20 Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme
21 Court has held that a noncitizen may be detained only “for a period reasonably necessary to bring
22 about that [noncitizen’s] removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689
23 (2001). It was further specified that Section 1231(a)(6) does not permit indefinite detention. *Id.*
24 Thus, “once removal is no longer reasonably foreseeable, continued detention is no longer
authorized by statute.” *Id.*, at 699.

1 The *Zadvydas* Court recognized that as the length of post-order detention grows, a sliding
2 scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order
3 detention. *Id.*, at 701 (stating that "for detention to remain reasonable, as the period of post-removal
4 confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to
5 shrink"). However, the Supreme Court determined that it is "presumptively reasonable" for the
6 Government to detain a noncitizen for six months following entry of a final removal order, while
7 it worked to remove the noncitizen from the United States. *Id.*, at 701. Thus, the Supreme Court
8 implicitly recognized that six months is the *earliest* point at which a noncitizens' detention could
9 raise constitutional issues. *Id.*

10 **B. OSUP and Revocation**

11 Once it is determined that there is no significant likelihood of removal in the reasonably
12 foreseeable future, DHS may release noncitizens on an Order of Supervision ("OSUP"). 8 C.F.R.
13 § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is
14 governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the noncitizen "violates
15 any of the conditions of release," *id.* §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined "that
16 there is a significant likelihood that the alien may be removed in the reasonably foreseeable future."
17 *Id.*, § 241.13(i)(2). Whether there is a significant likelihood that the noncitizen may be removed in
18 the reasonably foreseeable future is determined by assessing a series of factors, including "the
19 history of the alien's efforts to comply with the order of removal, the history of the Service's efforts
20 to remove aliens to the country in question or to third countries ... and the views of the Department
21 of State regarding the prospects for removal of aliens to the country or countries in question." *Id.*
22 § 241.13(f). Alternatively, certain designated officials may also revoke an OSUP as an act of
23 discretion when revocation is in the public interest. *Id.* § 241.4(l)(2).

1 Section 241.13(i)(3) provides that upon revocation, the noncitizen “will be notified of the
2 reasons for revocation of his or her release” and will receive an “initial informal interview
3 promptly” after being detained, to “afford the alien an opportunity to respond to the reasons for
4 revocation stated in the notification.” *Id.* § 241.13(i)(3). During such an interview, the noncitizen
5 “may submit any evidence or information that he or she believes shows there is no significant
6 likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not
7 violated the order of supervision.” *Id.* Then, if the noncitizen’s request for release is denied, he or
8 she “may submit a request for review of his or her ... six months after [DHS’s] last denial of
9 release[.]” *Id.* § 241.13(j).

10 II. PETITIONER MARINA TZAFIR

11 Petitioner is a native of Uzbekistan, who was admitted to the United States on or about
12 December 22, 1999, on a visitor visa with an Israeli passport. Carnevale Decl., ¶¶ 3-4. Petitioner
13 remained in the United States without authorization longer than permitted. Carnevale Decl., ¶ 4.
14 Petitioner filed an asylum application in August 2000. Carnevale Decl., ¶ 5.

15 In 2004, the Immigration and Nationality Service (now DHS) issued a Notice to Appear
16 charging Petitioner as removable for overstaying her visa and placed her in removal proceedings.
17 Carnevale Decl., ¶ 6. An immigration judge ordered Petitioner removed to Israel in April 2004.
18 Carnevale Decl., ¶ 7. Petitioner timely appealed the removal order to the Board of Immigration
19 Appeals (“BIA”), which affirmed in August 2005. Carnevale Decl., ¶ 8. Petitioner filed a petition
20 for review with the Ninth Circuit, which granted the petition on a limited issue concerning the IJ’s
21 denial of voluntary departure and remanded the case. Carnevale Decl., ¶ 10; *see also Tzafir v.*
22 *Mukasey*, 300 F. App’x 583 (9th Cir. 2008). The BIA affirmed the IJ’s denial of voluntary
23 departure and dismissed the appeal in March 2009. Carnevale Decl., ¶ 11. Petitioner’s removal
24

1 order became administratively final at that time. Carnevale Decl., ¶ 11. During these removal
2 proceedings (and appeals), Petitioner was not in ICE custody. *Id.*, ¶ 12.

3 In March 2009, DHS worked with Petitioner's family unit and the Israeli Consulate in San
4 Francisco to request travel documents. Carnevale Decl., ¶ 13. Petitioner's expired Israeli passport
5 was provided to the consulate in a package mailed in April 2009. Carnevale Decl., ¶ 13. On May
6 1, 2009, the Israeli consulate indicated a travel document would be issued, but four days later, the
7 consulate informed DHS that Petitioner no longer had citizenship in Israel. Carnevale Decl., ¶¶ 14-
8 15. On May 13, 2009, DHS released Petitioner on an Order of Supervision ("OSUP") with
9 reporting requirements and other conditions, to include cooperating in acquiring a travel document
10 from appropriate Embassies and Consulates. Carnevale Decl., ¶ 16; Strong Decl., Ex. A.

11 On August 14, 2025, Petitioner was taken into ICE custody having been provided a Notice
12 of Revocation of Release which stated that it had revoked her OSUP based on DHS's
13 determination that she could be removed pursuant to the final removal order. Carnevale Decl.,
14 ¶ 17; Strong Decl., Ex. B. While detained, Petitioner was uncooperative in November with DHS
15 regarding applications for a travel document to effect removal from the United States. Carnevale
16 Decl., ¶ 20. DHS has served Petitioner a Warning for Failure to Depart in response. Carnevale
17 Decl., ¶ 20. DHS later prepared (but not served) a Failure to Comply for supervisory review given
18 her ongoing noncompliance. Carnevale Decl., ¶ 21.

19 DHS has provided Petitioner with several travel document applications, but she has only
20 returned the application for Israel and Uzbekistan in December. Carnevale Decl., ¶¶ 22-23. On
21 December 19, 2025, DHS sent a travel document request to Uzbekistan. Carnevale Decl., ¶ 24.
22 The travel document request to Israel will be sent within the week. Carnevale Decl., ¶ 25. In
23 addition to Uzbekistan and Israel, Petitioner can apply for travel documents to Russia or
24 Kazakhstan based on her parents' citizenship. Carnevale Decl., ¶¶ 19, 26. If Petitioner continues

1 to be uncooperative with travel document requests to Russia and Kazakhstan, DHS intends to serve
2 re-serve a Warning for Failure to Depart, and if necessary, a Failure to Comply. Carnevale Decl.,
3 ¶ 27. DHS is reasonably certain that a travel document will be issued by at least one of the countries
4 Petitioner has demonstrated citizenship or blood ties to once Petitioner becomes compliant in
5 filling out the appropriate applications. Carnevale Decl., ¶ 28. DHS will provide notice to
6 Petitioner of any third country removal and provide required screenings before proceeding on a
7 third country removal. Carnevale Decl., ¶ 29.

8 Petitioner is currently detained under INA § 241 as an alien with a final removal order.
9 Carnevale Decl., ¶ 30. She has been detained less than 180 days. Carnevale Decl., ¶ 30.

10 III. ARGUMENT

11 A. Petitioner's detention is not prolonged.

12 Petitioner has not demonstrated that her detention has become "indefinite" or
13 unconstitutional. The Supreme Court has determined it is "presumptively reasonable" for the
14 Government to detain a noncitizen for six months following entry of a final removal order, while
15 it worked to remove the noncitizen from the United States. *Zadvydas*, 533 U.S. at 701. Thus, the
16 Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen's
17 detention could raise constitutional issues. *Id.* Here, DHS has detained Petitioner for less than six
18 months since her OSUP was revoked and she was taken into custody. Carnevale Decl., ¶¶ 12, 30.

19 Furthermore, Petitioner's detention is not constitutionally indefinite. DHS has taken active
20 and concrete steps to remove Petitioner by submitting a travel document request to Uzbekistan and
21 soon to Israel. Carnevale Decl., ¶¶ 24-25. The fact that Petitioner does not yet have a specific date
22 of anticipated removal does not make his detention indefinite. *Diouf v. Mukasey*, 542 F.3d 1222,
23 1233 (9th Cir. 2008). Detention becomes indefinite in situations where the country of removal
24 refuses to accept the noncitizen or if removal is legally barred. *Id.* There is no reason to believe

1 that is the situation here. Consequently, Petitioner has failed to demonstrate a good reason to
2 believe that there is no significant likelihood of his removal in the reasonably foreseeable future.
3 *Zadvydas*, 533 U.S. at 701.

4 Moreover, the Ninth Circuit has recognized that a noncitizen's continued detention is
5 permissible when "the alien fails to cooperate fully and honestly with officials to obtain travel
6 documents." *Lema v. INS*, 341 F.3d 853, 857 (9th Cir. 2003). "The risk of indefinite detention that
7 motivated the Supreme Court's statutory interpretation in *Zadvydas* does not exist when an alien
8 is the cause of his own detention." *Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003). Here, DHS
9 has tried to work with Petitioner to secure travel documents to other countries, including to her
10 birthplace of Uzbekistan and her parent's birthplaces of Russia and Kazakhstan, but Petitioner has
11 cooperated with only some of those efforts and only in the last month. Carnevale Decl., ¶¶ 19-23;
12 8 U.S.C. § 1231(b)(2)(D) (providing that if noncitizen cannot be removed to a designated country,
13 DHS will remove the noncitizen to a country where she is a subject, national, or citizen); 8 U.S.C.
14 § 1231(b)(2)(E)(v) (further providing that noncitizen will be removed to country that had
15 sovereignty over noncitizen's birthplace).

16 To the extent Petitioner may raise issues with DHS seeking travel documents to a country
17 other than Israel (which is the country designated on her final order of removal), DHS will provide
18 notice of any third country removal and provide required screenings before proceeding on a third
19 country removal. Carnevale Decl., ¶ 29. She is free to file a motion to reopen her prior removal
20 proceedings at any time, based on a request for asylum, withholding of removal, or protection
21 under the Convention Against Torture. *See* 8 C.F.R. § 1003.23(b)(4)(i).

22 **B. Petitioner was detained under 8 C.F.R. § 241.13**

23 Petitioner alleges that her detention violates 8 C.F.R. § 241.4(l)(2), but her detention arose
24 from 8 C.F.R. § 241.13(i). DHS may revoke a noncitizen's OSUP "if, on account of changed

1 circumstances, [DHS] determines that there is a significant likelihood that the [noncitizen] may be
2 removed in the reasonably foreseeable future.” 8 C.F.R. § 214.13(i)(2); *see also* *Tran v. Bondi*,
3 No. 25-2335-DGE, 2025 WL 3725677, at *3 (W.D. Wash. Dec. 24, 2025) (noting that “[8 C.F.R.]
4 § 241.4 applies to noncitizens who have been ordered removed in general, while § 241.13
5 specifically applies to noncitizens whom the government has determined ‘there is no significant
6 likelihood ... [that they] can be removed in the reasonably foreseeable future’”). DHS notified
7 Petitioner in its Notice of Revocation of Release that it had determined she could be removed
8 pursuant to the final removal order and the Israeli government reviewing her case for issuance of
9 a travel document.² Carnevale Decl., ¶ 17; Ex. B.

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23 ² The declarant was unable to provide information about what review the Israeli government was doing in August
24 when DHS revoked the OSUP. Federal Respondents acknowledge that DHS has not yet sent the travel document
request to the Israeli embassy but will do so within the week. Carnevale Decl., ¶ 25.

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IV. CONCLUSION

Based on the foregoing, Petitioner's habeas petition should be denied. In further response to Dkt. 13, Federal Respondents do not believe that an evidentiary hearing is necessary.

DATED this 31st day of December, 2025.

Respectfully submitted,

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I certify that this memorandum contains 2,311 words in compliance with the Local Civil Rules.