

DETAINED

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

Kelly Vomacka
GIBBS HOUSTON PAUW
1000 Second Avenue, Suite 1600
Seattle, WA 98104
(206) 682-1080
kelly.vomacka@ghp-law.net

Attorney for Petitioner

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

MARINA TZAFIR,

Petitioner,

v.

PAMELA BONDI, *et al.*;

Respondents.

CASE NO.: 2:25-cv-02067-JHC-SKV

PETITIONER'S RESPONSE TO RETURN
(TRAVERSE)

NOTED FOR CONSIDERATION:
January 5, 2026

PETITIONER'S RESPONSE TO RETURN

The government's Return, and its justification for detention, depend entirely on an assertion that the petitioner, Ms. Marina Tzafir, is now subject to a reasonable likelihood of removal in the reasonably foreseeable future. Dkt. 14, at 5; 8 C.F.R. § 241.13(i)(2). This assertion is incorrect, and it overlooks additional claims in the Petition.

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1 **A. The revocation of supervision was unjustified.**

2 On the first claim for relief, Dkt. 1, at 7, the government concedes that Ms. Tzafir has
3 not violated the terms of supervision, which might have justified her detention under 8 C.F.R.
4 241.4(l)(2). In fact, the government denies that Ms. Tzafir is detained under 8 C.F.R.
5 241.4(l)(2), even though the revocation itself cites to both regulations. Dkt. 14, at 7, Dkt. 15-2,
6 at 2. Also, the government makes no argument that Ms. Tzafir was adequately notified of the
7 reasons for the revocation. In the course of conceding that 241.4(l)(2) does not apply, the
8 government does mention the reasons for revocation—“that it had determined she could be
9 removed pursuant to the final order of removal and the Israeli government reviewing her case
10 for issuance of a travel document”, Dkt. 14, at 8—but it does not argue anywhere that these
11 reasons constituted sufficient notice.

12
13 **B. The detention is unreasonable under 8 U.S.C. 1231(a) and *Zadvydas*.**

14 It is on the second claim for relief, Dkt. 1, at 7-8, that the government makes the meat
15 of its argument—that there now exists a substantial likelihood of removal in the reasonably
16 foreseeable future. Dkt. 14, at 7; *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). But this claim
17 is riddled with factual and legal errors and is ultimately unsupported.

18 As to the factual errors, first, the Return and supporting declaration from Deportation
19 Officer (DO) Joseph Carnavale state that Ms. Tzafir is a native of Uzbekistan. Dkt. 14, at 4;

1 Dkt. 16, at 1. She is not. She was born in the Uzbek Soviet Socialist Republic, a country that
 2 no longer exists. She is not a citizen of Uzbekistan. Dkt. 17-2.

3 Second, DO Carnavale states that Ms. Tzafir is a citizen of Israel. Dkt. 16, at 1. She is
 4 not. One piece of evidence of this is the same declaration, where DO Carnavale states that in
 5 2009 Ms. Tzafir “no longer had citizenship in Israel.” Dkt. 16, at 3. This is all the more
 6 concerning because, in the habeas case of Ms. Tzafir’s daughter, [REDACTED] Tzafir, in a declaration
 7 from a different deportation officer, the government submitted the same falsehood. [REDACTED]
 8 *Tzafir v. Bondi*, 2:25-cv-02070, Dkt. 15, at 2. [REDACTED] Tzafir’s case proceeded through court on a
 9 different timeline, and counsel pointed out the error in her brief submitted in that case on
 10 December 22, 2025. *Id.*, Dkt. 16, at 2. The government, having submitted false evidence in the
 11 daughter’s case, and having had the error pointed out to it, barely a week later has submitted
 12 false evidence in the mother’s case.¹ Counsel understands that to err is human, and that she
 13 herself is fallible, but for the government to submit false evidence once, let alone twice, is
 14 unacceptable. RPC 3.3 (Candor Toward the Tribunal); 28 C.F.R. § 77.1 (“The Department of
 15 Justice is committed to ensuring that its attorneys perform their duties in accordance with the
 16 highest ethical standards.”). At the very least, this Court should not rely on these false
 17 statements for any reason.

18 Third, the revocation order states that, as of August 14, 2025, “Your case is under
 19 current review by Israel for the issuance of travel documents.” Dkt. 15-2, at 2. But DO

20 ¹ And the father’s. *Binyamin Tzafir v. Bondi*, 2:25-cv-02126, Dkt. 17, at 1.
 21

1 Carnavale admits this is false. He states, “ERO Tacoma intends to to submit the Israeli TDR
2 [travel document request] within the week.” Dkt. 16, at 4. So the case was not under review
3 by Israel when supervision was revoked, and it was still not under review on the date of the
4 declaration, December 31, 2025. By then, Ms. Tzafir had languished in detention for more
5 than four months awaiting the review. Because the revocation cites grounds that are factually
6 false, the detention is not justified under 8 C.F.R. 241.13(i)(3).

7 Fourth, and moving to the legal errors, the removal period ended years ago. In the
8 absence of a prior confinement, which did not occur here, the removal period runs from when
9 the removal order becomes administratively final or when a court enters a final order. 8
10 U.S.C. § 1231(a)(1)(B). Than was in 2009. Once the removal period runs, it does not reset.
11 *Van Tran v. Bondi*, 2025 U.S. Dist. LEXIS 265787, *11 (W.D. Wash. Dec. 24, 2025). Also,
12 under *Zadvydas*, the 180-day removal period is only presumptively reasonable, and “if
13 removal is not reasonably foreseeable, the court should hold continued detention unreasonable
14 and no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699-700. Therefore, the detention
15 of Ms. Tzafir is not reasonable, for any length of time.

16 Fifth and finally is the central legal error in the government’s argument: There is no
17 substantial likelihood of removal in the reasonably foreseeable future. Even after more than
18 four months, with no impediment by Ms. Tzafir, the government has not so much as
19 submitted the paperwork to Israel. Nor is there any reason to think that Israel might at last
20 issue travel documents, after 16 years. DO Carnevale asserts that, despite failed attempts to

1 obtain travel documents in 2009, “ERO Tacoma is reasonably certain that a travel document
2 will be issued by at least one of the countries Petitioner has demonstrated citizenship or blood
3 ties to once Petitioner becomes compliant in filling out the appropriate applications.” Dkt. 16,
4 at 5. Even assuming, *arguendo*, that DO Carnavale holds this subjective belief, it is not the
5 legal standard. The legal standard rests not on one person’s subjective hope but on evidence of
6 a substantial likelihood of removal.

7 In addition, there is no substantial likelihood of removal to a third country. The
8 government makes unsubstantiated claims that Ms. Tzafir can be removed to Russia or
9 Kazakhstan based on her parents’ prior citizenship in those countries. Dkt. 14, at 5; Dkt. 16, at
10 4. It also claims that Ms. Tzafir has refused to return to Uzbekistan, Georgia, United Arab
11 Emirates (UAE), Dkt. 16, at 4, but it offers no evidence of any ties or possibility of removal to
12 those countries. The assortment of countries—including a first mention of UAE in any of the
13 Tzafir family’s litigation—reveals an improvised *post hoc* rationalization for the detention,
14 rather than conformity with a regulated removal procedure under constitutional constraints.

15 Without more support, the declaration expresses not a reasonable belief based on
16 evidence but only a hope of removal, some way, somehow, to somewhere. “There is no
17 question that hope plays a critical role in human experience[.]” *Porras v. O’Neill*, 25-6801,
18 2025 U.S. Dist. LEXIS 263464, *5 (E.D. Pa. Dec. 22, 2025). But hope is not sufficient to
19 support a finding of a significant likelihood of removal in the reasonably foreseeable future,
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nor is it sufficient to show cause why the writ of habeas corpus should not be issued. Without this finding, both the revocation of supervision and the detention itself are illegal.

C. The detention violates Ms. Tzafir's Due Process rights.

As to the third claim for relief, even if the government had complied with the procedures in 8 C.F.R. § 241.13, those procedures would not provide sufficient protections to comply with Due Process:

Those meager procedures do not, however, provide the process due under the Fifth Amendment, which prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law[.]"... [T]he government action at issue here is at the core of the liberty protected by the Due Process Clause....

Khim v. Bondi, 2025 U.S. Dist. LEXIS 261018, *10-11 (W.D. Wash. December 17, 2025); Dkt. 1, at 8. Because the government has not complied even with the "meager procedures" of the regulation, *a fortiori* it is also in violation of the greater requirements of Due Process.

Mathews v. Eldridge, 424 U.S. 319 (1976), sets out the applicable test for assessing whether the government has violated Due Process:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

1 *Mathews*, 424 U.S. at 335. This Court has already found that the government violated the Due
2 Process rights of Ms. Tzafir's daughter on similar facts.  *Tzafir v. Bondi*, 2:25-cv-02070,
3 Dkt. 17. The government has also violated the Due Process rights of Ms. Tzafir herself.

4 First, as to the private interest, Ms. Tzafir has suffered more than four months in
5 detention, and freedom from detention is "the most elemental" of private interests. *Hamdi v.*
6 *Rumsfeld*, 542 U.S. 507, 529 (2004); see *Zadvydas*, 533 U.S. at 690. Her liberty interest is
7 strengthened by the fact that the government permitted her to remain in the community for
8 more than 16 years, gaining a foothold and developing ties to the United States. See, *Sequen v.*
9 *Kaiser*, 2025 U.S. Dist. LEXIS 181837, *12 (N.D. Cal. Sept. 16, 2025). The first *Mathews*
10 factor favors Ms. Tzafir.

11 Second, there is a high risk of erroneous deprivation of her liberty interest, first because
12 the revocation order itself contains falsehoods, asserting that Israel was already reviewing the
13 travel documents request when in fact it had not even received the request. Dkt. 15-2, at 2;
14 Dkt. 16, at 4. In addition, Ms. Tzafir has informed her son-in-law that ICE has recently lied to
15 Ms. Tzafir in an attempt to get her fill out travel documents. Through her son-in-law, she
16 reports, "[T]he ICE officer handed her a form and told Marina to sign it because the judge
17 decided that Marina had to go to Russia and Kazakhstan." Dkt. 17-1. The form was a Form I-
18 229(a) Failure to Depart, not a court order. Ms. Tzafir did not see a judge's signature on the
19 form, so she refused to sign it. Because ICE is resorting to lying to Ms. Tzafir, and falsely
20 invoking the court's authority in the process, the risk of erroneous deprivation of Ms. Tzafir's

1 liberty only increases. And even still, the government has yet to submit the travel-documents
2 request to Israel. It offers no reason to believe Israel will now honor the request, and it makes
3 only vague, unsupported assertions that Ms. Tzafir can be removed to an assortment of third
4 countries. In addition, the government determined 16 years ago that Ms. Tzafir was not a
5 flight risk or a threat to public safety, and Ms. Tzafir has proven them right, complying with
6 all aspects of the supervision for many years. The risk of erroneous deprivation of her liberty,
7 having already occurred, remains high.

8 Third, the government has little interest in keeping Ms. Tzafir detained. With no
9 substantial likelihood of removal, her detention is only an expense to the government and an
10 ongoing tearing of the fabric of the community to which she belongs. If Ms. Tzafir is released
11 and the government eventually determines that it can in fact remove her, it would face only a
12 minimal burden in holding a hearing to determine the propriety of detention. Ms. Tzafir, like
13 her daughter, has shown that she is diligent in appearing when required by the government.
14 Therefore, all three *Mathews* factors show that by detaining Ms. Tzafir, the government has
15 violated—and continues to violate—her Due Process rights.

16 There is no reason to think that Ms. Tzafir can be removed in the reasonably foreseeable
17 future to any country, and the government has offered false and inadequate evidence to support
18 the revocation of supervision and the current detention. Every day Ms. Tzafir remains in
19 detention is a further violation of her constitutional rights. She asks this Court to grant the
20 relief in her petition, Dkt. 1, at 8, including her immediate release on the previous conditions.

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1000 Second Avenue, Suite 1600
Seattle, WA 98104
(206) 682-1080

1 I certify that this memorandum contains 2,020 words, in compliance with the Local Civil
2 Rules.

3 Dated this 5th day of January, 2026.

4 /s/ Kelly Vomacka

Kelly Vomacka, WSBA 20090
5 GIBBS HOUSTON PAUW
1000 Second Avenue, Suite 1600
6 Seattle, WA 98104
(206) 682-1080
7 kelly.vomacka@ghp-law.net

8 *Attorney for Petitioner*

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