

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

SERGEY SHABUROV,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-45-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER, <sup>1</sup>	:	
	:	
Respondent.	:	

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**RESPONDENT'S RESPONSE**

On February 5, 2025, Petitioner filed a petition for a writ of habeas corpus (“the Petition”). ECF No. 1. Petitioner asserts that his continued detention is unconstitutional under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and seeks release from custody. Pet. at 6-7, ECF No. 1. As explained below, the Petition should be denied.

**BACKGROUND**

Petitioner is a native of the Soviet Union and citizen of Russia. Erickson Decl. ¶ 3 & Ex. A. On September 24, 1992, Petitioner was admitted to the United States at New York, New York as a refugee. *Id.* ¶ 5. On March 8, 1994, Petitioner adjusted his status to lawful permanent resident. *Id.* ¶ 6 & Ex. A. Petitioner has multiple criminal convictions, including: conviction for driving under the influence in Georgia on December 2, 1996; conviction for simple battery, criminal

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<sup>1</sup> In addition to Warden of Stewart Detention Center, Petitioner also names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement (“ICE”) as Respondents in his Petition. “[T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.” *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

interference with government property, battery and criminal trespass in Georgia on March 30, 1999; and conviction of willful obstruction of law enforcement officers in Georgia on June 4, 2010. *Id.* ¶ 7 & Ex. A. Most recently, on May 17, 2011, Petitioner was convicted of attempted murder, two counts of aggravated assault, aggravated battery, two counts of arson-first degree, and burglary, in Dekalb County, Georgia. *Id.* ¶ 8 & Ex. B. Petitioner was sentenced to a total term of imprisonment of 30 years. *Id.* On July 7, 2011, the Department of Homeland Security (“DHS”) issued Petitioner a Notice to Appear charging him as removable under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (“INA”) (8 U.S.C. § 1227(a)(2)(A)(iii)) for having been convicted of aggravated felonies as defined under INA §§ 101(a)(43)(F), (G), and (U) (8 U.S.C. §§ 1101(a)(43)(F), (G), and (U)). Erickson Decl. § 9 & Ex. C.

Petitioner was ordered removed by an Immigration Judge on March 6, 2014, and both parties waived appeals, making the order final on that date. *Id.* § 10 & Ex. D; *see* 8 C.F.R. § 1241.1(b). Petitioner entered the custody of DHS Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE/ERO”) on June 26, 2024. *Id.* ¶ 11.

On August 14, 2024, Petitioner was interviewed by the Russian Consulate. *Id.* ¶ 12. On August 19, 2024, ERO submitted a travel document request to the Russian Consulate. *Id.* ¶ 13. On September 16, 2024, the Russian Consulate sent a request for additional forms to ERO, which request ERO completed and submitted the same day. *Id.* ¶ 14.

ICE/ERO completed a 90-day Post-Order Custody Review on or about September 26, 2024, and it was determined that Petitioner’s detention would continue. *Id.* ¶ 15. Petitioner was notified of this decision on October 16, 2024. *Id.* ¶ 15 & Ex. E.

On November 1, 2024, the Russian Consulate requested additional forms and valid photo ID. *Id.* ¶ 16. ERO has made unsuccessful attempts to obtain a copy of Petitioner’s Georgia

Identification Card. *Id.* On or about January 2025, ICE/ERO conducted a 180-day Post Order Custody Review and determined that Petitioner would continue to be detained. Lasker Decl. ¶ 6. Petitioner was notified by letter on January 16, 2025 of the decision to continue detention. *Id.* ¶ 6 & Ex. F.<sup>2</sup>

ICE/ERO Removal and International Operations (“RIO”) at ICE Headquarters (“HQ”) have made attempts to secure a travel document for Petitioner by submitting a request to the Russian Consulate and following up on requests for additional information. *Id.* ¶ 7. The travel document request for Petitioner currently remains pending due to the Petitioner’s inability to provide an identification document. *Id.* The Russian Consulate has alternative means to verify identity in such a situation and has been able to issue a travel document in similar situations previously. *Id.*

The Russian Consulate is issuing travel documents for return of Russian citizens. *Id.* ¶ 8. Once a travel document is issued by the Russian Consulate, removal flights via commercial air are coordinated within the time frame of the valid travel document. *Id.* ERO has been able to successfully remove Russian citizens via this process. *Id.* In fiscal year 2024, ERO effectuated 464 removals to Russia. *Id.* Currently in fiscal year 2025, ERO was able to effectuate 225 removals to Russia thus far. *Id.* ICE/ERO anticipates Petitioner’s removal in the reasonably foreseeable future. *Id.*

### LEGAL FRAMEWORK

Since Petitioner is detained post-final order of removal, his detention is governed by 8 U.S.C. § 1231. Congress provided in § 1231(a)(1) that ICE/ERO shall remove an alien within

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<sup>2</sup> The declaration improperly refers to this exhibit as “G”. This should have been designated as Exhibit F.

ninety (90) days of the latest of: (1) the date the order of removal becomes administratively final; (2) if a removal is stayed pending judicial review of the removal order, the date of the reviewing court's final order; or (3) the date the alien is released from criminal confinement. *See* 8 U.S.C. §§ 1231(a)(1)(A)-(B). During this ninety-day time frame, known as the "removal period," detention is mandatory. *See id.* at § 1231(a)(2).

If ICE/ERO does not remove an alien within ninety days, detention may continue if it is "reasonably necessary" to effectuate removal. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); 8 U.S.C. § 1231(a)(6) (providing that an alien who is subject to mandatory detention, inadmissible, or who has been determined to be a risk to the community or a flight risk, "may be detained beyond the removal period"). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court determined that, under the Fifth Amendment, detention for six months is presumptively reasonable. 533 U.S. at 700. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701 (emphasis added); *see also* 8 C.F.R. § 241.13. Where there is no significant likelihood of removal in the reasonably foreseeable future, the alien should be released from confinement. *Id.*

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit further elaborated on the framework announced by the Supreme Court in *Zadvydas*, stating that "in order to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 287 F.3d at 1052. Thus, the burden is on Petitioner to demonstrate: (1) post-removal order detention lasting more than six months; and (2) evidence of a good reason to believe that there is no significant likelihood of

removal in the reasonably foreseeable future. *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (per curiam) (quoting *Akinwale*, 287 F.3d at 1051-52).

### ARGUMENT

Other than self-serving statements, Petitioner presents no evidence to show that he is not likely to be removed in the reasonably foreseeable future. He asserts that there is no significant likelihood of removal in the reasonably foreseeable future because ICE/ERO has not yet removed him and because he claims that a counselor with the Russian Embassy told him that the Russian government “can’t provide the travel document to [him], because they don’t have any record on [him] and his removal to Russia in the near future is impossible.” Doc. 1-1 at 5. Setting aside that these statements are self-serving and inadmissible hearsay, Petitioner cannot meet his burden on this basis because record evidence supports the contrary conclusion.

Aside from these self-serving statements, Petitioner relies only on the passage of time without removal. *Id.* As other courts have recognized, a non-citizen cannot meet his burden under *Zadvydas* on this basis. *See Ortiz v. Barr*, No. 20-CV-22449, 2021 WL 6280186, at \*5 (S.D. Fla. Feb. 1, 2021) (“[T]he mere existence of a delay of Petitioner’s deportation is not enough for Petitioner to meet his burden.” (citations omitted)), *recommendation adopted*, 2022 WL 44632 (S.D. Fla. Jan. 5, 2022); *Ming Hui Lu v. Lynch*, No. 1:15-cv-1100, 2016 WL 375053, at \*7 (E.D. Va. Jan. 29, 2016) (“[A] mere delay does not trigger the inference that an alien will not be removed in the foreseeable future.” (internal quotations and citations omitted)); *Newell v. Holder*, 983 F. Supp. 241, 248 (W.D.N.Y. 2013) (“[T]he habeas petitioner’s assertion as to the unforeseeability of removal, supported only by the mere passage of time [is] insufficient to meet the petitioner’s initial burden . . . .” (collecting cases)).

Petitioner's additional assertions that he is unlikely to be removed in the near future are also insufficient to state a claim under *Zadvydas*. See *Novikov v. Gartland*, No. 5:17-cv-164, 2018 WL 4100694, at \*2 (S.D. Ga. Aug. 28, 2018), *recommendation adopted*, 2018 WL 4688733 (S.D. Ga. Sept. 28, 2018); *Gueye v. Sessions*, No. 17-62232-Civ, 2018 WL 11447946, at \*4 (S.D. Fla. Jan. 24, 2018); *Rosales-Rubio v. Att'y Gen. of United States*, No. 4:17-cv-83-MSH-CDL, 2018 WL 493295, at \*3 (M.D. Ga. Jan. 19, 2018), *recommendation adopted*, 2018 WL 5290094 (M.D. Ga. Feb. 8, 2018). Rather, Petitioner must provide “evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Gozo*, 309 F. App'x at 346 (internal quotations omitted) (emphasis added). Petitioner's self-serving recitation of hearsay from a Russian consular official is not sufficient evidence that there is no significant likelihood of his removal in the reasonably foreseeable future because, as discussed below, it is contradicted by recent history and ICE/ERO's continued ability to remove others in the same situation. Petitioner cannot meet his burden under *Zadvydas*, and the Petition should be denied.

Even assuming Petitioner offered evidence sufficient to shift the burden to Respondent to show a likelihood of removal—which he has not—Respondent meets his burden. ICE/ERO is likely to remove Petitioner in the reasonably foreseeable future because the Russian Consulate is issuing travel documents for return of Russian citizens and ICE/ERO has been able to obtain travel documents in similar situations with identification issues. Lasker Decl. ¶ 8. Further, once a travel document is issued by the Russian Consulate, removal flights via commercial air can and have been coordinated within the time frame of the valid travel document, and ICE/ERO has successfully removes Russian citizens via this process. *Id.* In fiscal year 2024, ERO effectuated 464 removals to Russia, and effectuated 225 removals to Russia thus far in fiscal year 2025. *Id.*

These facts contradict Petitioner's self-serving, hearsay statements allegedly from a Russian Embassy official that it would be "impossible" to issue a travel document. Doc. 1-1 at 5. Indeed, despite Petitioner's assertion, the consulate has *not* denied the travel document request, and it remains pending today. Lasker Decl. ¶ 7. Any delay in Petitioner's removal has resulted only from the Russian consulate's continued review of that pending travel document request. But courts have recognized that mere delays in the consulate's issuance of a travel document does not warrant relief under *Zadvydas*. See *Alhousseini v. Whitaker*, No. 1:18-cv-848, 2019 WL 1439905, at \*3 (S.D. Ohio Apr. 1, 2019), *recommendation adopted*, 2020 WL 728273 (S.D. Ohio Feb. 13, 2020) (collecting cases); *Linton v. Holder*, No. 10-20145-Civ-Lenard, 2010 WL 4810842, at \*4 (S.D. Fla. Oct. 4, 2010) ("[A] delay in issuance of travel documents does not, without more, establish that a petitioner's removal will not occur in the reasonably foreseeable future, even where the detention extends beyond the presumptive 180 day (6 month) presumptively reasonable period." (citations omitted)); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002) ("The lack of visible progress since [ICE] requested travel documents from the [foreign] government does not in and of itself meet [the non-citizen's] burden of showing that there is no significant likelihood of removal." (citation omitted))

For example, in *Mirza v. Dep't of Homeland Sec.*, No. 22-cv-02610, 2023 WL 2664860 (D. Colo. Jan. 10, 2023), a district court recently denied a habeas application under analogous circumstances. There, ICE/ERO submitted a travel document request to the foreign consulate, but nearly seven months after the request was originally submitted, the travel document request still remained pending as the consulate attempted to verify the non-citizen's nationality. *Mirza*, 2023 WL 2664860, at \*1-2. Yet, ICE/ERO asserted his removal was likely once a travel document was issued. *Id.* at \*2. The non-citizen sought habeas relief under *Zadvydas*, arguing only that he had

“been compliant in trying to obtain [his] travel document” but that a travel document had not been issued. *Id.* \*3. The Court denied the habeas application, finding that respondent’s assertions concerning the status of the travel document request and the likelihood of his removal after issuance of a travel document demonstrated a significant likelihood of removal in the reasonably foreseeable future. *Id.*

The Court should reach the same conclusion here. Petitioner’s self-serving, hearsay statements about his purported conversation with a Russian consular official are contradicted by (1) the Russian consulate’s issuance of travel documents under analogous circumstances, and (2) that the consulate has not denied the travel document request despite Petitioner’s assertion. Removals to Russia are taking place and can be accomplished under the circumstances presented by Petitioner’s lack of identification. Lasker Decl. ¶ 7-8. Based on this evidence, a significant likelihood of removal in the reasonably foreseeable future exists, and the Petition should be denied.

### CONCLUSION

The record is complete in this matter, and the case is ripe for adjudication on the merits. For the reasons stated herein, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted, this 27th day of February, 2025.

C. SHANELLE BOOKER  
ACTING UNITED STATES ATTORNEY

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**CERTIFICATE OF SERVICE**

This is to certify that I have this date filed the Respondent's Response with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

Sergey Shaburov  
A#   
Stewart Detention Center  
P.O. Box 248  
Lumpkin, GA 31815

This 27th day of February, 2025.

BY: s/ Michael P. Morrill  
MICHAEL P. MORRILL  
Assistant United States Attorney