

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

S.S., *
Petitioner, *
vs. *
CASE NO. 4:25-cv-45-CDL-AGH
PAM BONDI, *et al.*, *
Respondents. *
*

O R D E R

The Immigration and Nationality Act (“INA”) provides that an alien who is ordered to be removed from the United States shall generally be removed within 90 days of the entry of the final order of removal. 8 U.S.C. § 1231(a)(1). The statute further clearly provides that an “alien ordered removed” as a result of violations of certain criminal laws or “who has been determined by the Attorney General[/Secretary of Homeland Security] to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond” the 90- day removal period.¹ *Id.* § 1231(a)(6). The Supreme Court, in a 5-4 decision, has determined that this statutory provision does not permit “indefinite” detention but requires that an alien be detained only for a period “reasonably

¹ *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 n.1 (2021) (“Congress has [] empowered the Secretary of Homeland Security to enforce the [INA].”).

necessary" to secure the alien's removal. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court performed this bit of statutory interpretive magic by construing the clear and unambiguous statutory provision to contain an "implicit 'reasonable time' limitation." *Id.* at 682. The majority excused its creation of an implicit amendment to the statute as a means to avoid constitutional concerns. *Id.* The Supreme Court built upon this "implicit reasonable time limitation" by constructing a "presumptively reasonable" detention period of six months, which is nowhere to be found in the plain language of the statute but has become a "safe harbor" for "reasonable detention" if it is not exceeded and ammunition for habeas corpus petitions if it is. *Id.* at 700-01.

Petitioner, a criminal alien who is subject to a final order of removal, seeks to be released from Respondents' custody because he argues that Respondents have detained him too long in violation of his statutory and constitutional rights. The Magistrate Judge entered a recommendation on January 12, 2026, that Petitioner's petition for habeas corpus relief pursuant to 28 U.S.C. § 2241 be granted (ECF No. 17). Respondents filed an objection to the recommendation, and therefore, the Court reviews the recommendation *de novo*. For the following reasons, the Court finds that there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future. Accordingly, the

Magistrate's Report and Recommendation is rejected, and the Court dismisses this action in its entirety.

BACKGROUND

The Magistrate Judge's recommendation accurately describes the factual background. In summary, Petitioner, a native of the former Soviet Union and a citizen of Russia, entered the United States as a refugee in 1992 and became a lawful permanent resident in 1994. Between the years 1996-2011, Petitioner was convicted of multiple violations of Georgia law: In 1996, he was convicted of driving under the influence; in 1999, he was convicted of simple battery, criminal interference with government property, battery, and criminal trespass; in 2010, he was convicted of willful obstruction of law enforcement; finally, in 2011 Petitioner was convicted of attempted murder, two counts of aggravated assault, aggravated battery, two counts of first-degree arson, and burglary. For the 2011 crimes, Petitioner was sentenced by a Georgia State Superior Court judge to a term of imprisonment of 30 years. Resp'ts' Resp. to Pet. Ex. B, Conviction Records, ECF No. 4-3 at 2.

In July of 2011, the United States Department of Homeland Security ("DHS") charged Petitioner as removeable under the INA for having been convicted of aggravated felonies. On March 6, 2014, an immigration judge ordered Petitioner's removal, and that order became final on the same day. Petitioner entered the

Immigration and Customs Enforcement Agency's ("ICE") custody on June 26, 2024. In August of 2024, ICE began communicating with the Russian Consulate to effectuate Petitioner's removal to Russia. For the next several months, ICE submitted travel document requests and supplied identification forms upon the Consulate's request. Ultimately, on July 11, 2025, the Consulate indicated that it could not verify Petitioner's citizenship and therefore would not issue Petitioner a travel document. Stephens Dec. ¶ 9, ECF No. 15-1.

Petitioner filed his application for habeas corpus on February 5, 2025, seeking relief under *Zadvydas v. Davis*, 533 U.S. 678 (2001), because he was subject to a final order of removal and had been held in detention for over six months. As of today, Petitioner is still in Respondents' custody awaiting removal. In its briefing before the Magistrate Judge, Respondents submitted the declaration of an ICE official who avers that Petitioner's case was "elevated" to the Department of State ("DOS") and that ICE "is awaiting notification from the [DOS] that [Petitioner] will be identified for removal to a third country in accordance with the agreements negotiated by the [DOS]." *Id.* ¶ 12. The official further represented that ICE is "actively working with DOS and DHS on avenues to remove aliens to a third country" and that ICE intends to follow DHS guidance regarding third country removals in effectuating Petitioner's removal. *Id.* ¶¶ 12-13.

DISCUSSION

Petitioner submits a claim for habeas corpus relief pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001). He claims that he has been held in ICE custody longer than the post-removal-period detention statute permits.² That statute provides: "An alien ordered removed who is . . . removable under [8 U.S.C. § 1227(a)(2) due to a conviction for certain crimes, including aggravated felonies,] . . . may be detained beyond the removal period[.]" 8 U.S.C. § 1231(a)(6). In *Zadvydas*, the Supreme Court interpreted the post-removal-period detention statute's permissive detention language to "limit[] an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. The Supreme Court emphasized that the statute does not permit indefinite detention. *Id.* In a remarkably creative bit of statutory interpretation described by some as the writing of a "statutory amendment,"³ the majority read into the statute an implied six-month presumptively reasonable detention period that

² When an alien is subject to a final order of removal, the relevant statutory framework mandates that the alien be removed within the "removal period," a period of 90 days that begins on a certain date depending on the circumstances of the alien's case. 8 U.S.C. § 1231(a)(1). The alien must be detained during the removal period. *Id.* § 1231(a)(2). Recognizing the difficulty of removing every alien within 90 days, Congress provided the Attorney General/Secretary of Homeland Security with authority to detain certain criminal aliens beyond the 90-day removal period. That authority is found in the post-removal-period detention statute.

³ *Id.* at 705 (Kennedy, J., dissenting).

allows immigration authorities to continue detaining criminal aliens for six months after a final order of removal is issued. *Id.* at 700-01. The majority further crafted a standard for situations where an alien is not removed within the presumptively reasonable six-month period. Pointing to no statutory text and instead relying upon invisible implicit terms, the Supreme Court held “[a]fter 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. And for detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Id.* at 701.

The underlying concern that the *Zadvydas* majority attempted to address is that aliens not “be condemned to an indefinite term of imprisonment within the United States.” *Id.* at 695. And the habeas court, in determining whether the detention exceeds a period reasonably necessary to secure removal, should “measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal.” *Id.* at 699. “Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699-700. The Court's review, however, also “must take appropriate account of the greater

immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive . . . efforts to enforce this complex statute, and the Nation's need to 'speak with one voice' in immigration matters." *Id.* at 700. Accordingly, "[o]rdinary principles of judicial review in this area recognize primary Executive Branch responsibility." *Id.* These principles "counsel judges to give expert agencies decisionmaking leeway in matters that invoke their expertise. . . . [a]nd they consequently require courts to listen with care when the Government's foreign policy judgments . . . are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise." *Id.*

With these principles in mind, the Court turns to the present controversy. Preliminarily, the Court observes that it is undisputed that Petitioner has no lawful right to be in the United States. He is a criminal alien, and no one disputes that he is under a valid final order of removal. While the Court acknowledges that the length of prior detention is a factor that must be considered in deciding a reasonable length of time for future detention, the Court's focus is on whether Petitioner will likely be removed in the reasonably foreseeable future based on the facts available to the Court today.

The present record demonstrates that Petitioner has failed to show that, as of today, it is significantly unlikely that he will be removed in the reasonably foreseeable future. To the contrary, the present record establishes that there is a significant likelihood that Petitioner will be removed to a third country in the reasonably foreseeable future. Circumstances have changed since Petitioner filed his habeas petition in February of 2025: When the Government received notice in July of 2025 that Russia would not accept Petitioner, it began the process of seeking approval to remove Petitioner to a third country. Respondents submitted the declaration of an immigration official who avers that, as of the current day, the Government is actively taking steps to effectuate that removal in accordance with DHS guidelines and agreements negotiated by the DOS. These are the type of Executive Branch foreign policy judgments to which the *Zadvydas* Court cautioned judges to "listen with care." *Id.* The Court finds no basis for second-guessing the proffered testimony of the immigration official or concluding that she has perjured herself in an effort to keep Petitioner, a criminal who has committed multiple dangerous felonies, detained within the United States.⁴

⁴ It is judicial arrogance of the highest order for a judge to make what in effect are foreign relations determinations as to whether the effort to remove someone who has no right to be in this country will likely be achieved in the foreseeable future. But the majority opinion in *Zadvydas* arguably charges the habeas court with that responsibility, cautioning only that the court should "listen with care" to the foreign policy judgments of the Executive Branch. Notwithstanding the admittedly

Because Petitioner failed to show that he will not likely be removed in the reasonably foreseeable future and because the Government has shown that there is a significant likelihood that Petitioner will be removed in the reasonably foreseeable future, his continued detention complies with 8 U.S.C. § 1231(a)(6) and does not otherwise violate his constitutional rights. Since his detention is lawful, he is not entitled to the habeas corpus relief that he seeks.⁵

arbitrary nature of such an analysis, such *listening* in this case leads to the conclusion that the Executive Branch is making reasonable efforts to remove Petitioner and will likely succeed in the foreseeable future.⁵ It is rarely advisable for a district judge to purposely express dicta. But *Zadvydas* should be revisited. The four dissenting justices in *Zadvydas* (Rehnquist, Scalia, Kennedy and Thomas) persuasively explain why. See *id.* at 702-03 (Scalia, J., joined by Thomas, J., dissenting) (“[T]he Attorney General[] [has] clear statutory authority to detain criminal aliens with no specified time limit” without implicating a constitutional violation, because no constitutional right to be released into this country exists for a person who has no legal right to be in the United States.); see also *id.* at 705 (Kennedy, J., joined by Rehnquist, Scalia, & Thomas, JJ., dissenting) (noting that the majority’s attempt at constitutional avoidance results in the judiciary’s “writing a statutory amendment of its own” and impermissibly immerses the courts in foreign relations). The Court further observes that the statute clearly authorizes consideration of an alien’s danger to the community and likelihood of complying with the final removal order when evaluating whether an alien subject to a final order of removal should be detained. Here, the Attorney General/Secretary of Homeland Security would be reasonable in concluding that Petitioner’s lengthy and dangerous criminal history makes him a flight risk and a danger to the community. These considerations should be relevant to the *Zadvydas* inquiry. But even if they are not, the Court, as explained in today’s Order, finds that Petitioner’s continued detention is not sufficiently “indefinite” (or “potentially permanent”) to give rise to constitutional or statutory concerns. On the contrary, it is “reasonably necessary” to secure his removal.

CONCLUSION

Based on the foregoing, the Court declines to adopt the Magistrate Judge's January 12, 2026, Report and Recommendation. This action is dismissed in its entirety.⁶

IT IS SO ORDERED, this 16th day of March, 2026.

S/Clay D. Land

CLAY D. LAND

U.S. DISTRICT COURT JUDGE

MIDDLE DISTRICT OF GEORGIA

⁶ In addition to his classic *Zadvydas* claim, Petitioner asserts the following claims: (1) substantive due process claim based on prolonged detention, which is dismissed for the same reasons that the *Zadvydas* claim is dismissed; (2) procedural due process claim based on alleged lack of neutral arbiter, which is dismissed because it seeks to have the Court review individualized bond decisions that it does not have jurisdiction to review under 8 U.S.C. § 1226; and (3) a condition of confinement claim, which cannot be asserted as a means to obtain habeas corpus relief as explained in *A.S.M. v. Warden*, 467 F. Supp. 3d 1341, 1348 (M.D. Ga. 2020).