

TIMOTHY COURCHAIINE
United States Attorney
District of Arizona
THEO NICKERSON
Assistant United States Attorney
Connecticut State Bar No. 429356
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, AZ 85004-4449
Telephone: (602) 514-7500
Fax: (602) 514-7693
Theo.Nickerson2@usdoj.gov

Attorneys for Respondents

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Vladislav Ishmuratov,

Petitioner,

v.

David R. Rivas, et al.,

Respondents.

No. CV-25-01366-PHX-JAT (ESW)

**RESPONSE IN OPPOSITION
TO PETITIONER'S MOTION
FOR DISCOVERY**

INTRODUCTION AND FACTUAL BACKGROUND

This is a habeas case in which Petitioner claims his detention pursuant to a final removal order under 8 U.S.C. § 1231 is prolonged and unconstitutional as defined by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The lone and demonstrably false allegation Petitioner asserts in support of his habeas petition is that he is allegedly “stateless” because Russia does not recognize him as a citizen—therefore, because the government cannot remove him there, there is no significant likelihood of removal in the reasonably foreseeable future and he is entitled to release under *Zadvydas. Id.*; see Doc. 1.

However, the clear and undisputed facts establish that he is indeed a native and citizen of Russia. See generally Doc. 25, Exhibit A. His birth certificate states that he was born in Russia. *Id.* The government of Russia has issued him a passport. *Id.* Though his

1 parents' birth certificates indicate their nationality is Tatar, which is a region of Russia,
2 they too were born in Russia and are Russian citizens. *Id.*

3 Petitioner entered the United States on his Russian passport with a B-2 visitor visa
4 indicating that his nationality is Russian. Doc. 25, Ex. A ¶ 9. He overstayed his visa in
5 violation of United States immigration law and has remained unlawfully in the United
6 States until the present time. *Id.* ¶ 11. Since overstaying his visa, Petitioner has been
7 convicted of several crimes. *Id.* ¶ 12. As a result of his criminal convictions, he was placed
8 in removal proceedings before an Immigration Judge (IJ) who ordered him removed from
9 the United States to Russia in 2017. *Id.* ¶ 13. The removal order became administratively
10 final when Petitioner waived appeal of the IJ's order on December 13, 2017. *Id.* ¶ 14.
11 Therefore, Petitioner was detained pursuant to the final removal order as of December 13,
12 2017 under 8 U.S.C. § 1231. On August 20, 2018, Petitioner was released on an order of
13 supervision. *Id.* ¶ 17. Petitioner remained under supervision until March 26, 2025, when
14 ICE re-detained Petitioner following Petitioner's drug related offenses and an arrest which
15 violated his order of supervision. *Id.* ¶ 24. Petitioner has remained detained since March
16 26, 2025 (approximately two months) while ICE arranges for the required travel documents
17 from Russia to execute the final removal order. *Id.* ¶¶ 24-28.

18 In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable
19 period of detention for aliens, like Petitioner, who are detained under section 1231(a).
20 *Zadvydas*, 533 U.S. at 701-702. *Zadvydas* places the burden on the alien to show, after a
21 detention period of six months, that there is "good reason to believe that there is no
22 significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If the
23 alien makes that showing, the government must then introduce evidence to refute that
24 assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40
25 (9th Cir. 2002).

26 Petitioner's motion for limited discovery in the context of this habeas petition is
27 based on the sheer speculation that with limited discovery Petitioner could establish that
28 there is no significant likelihood of removal in the reasonably foreseeable future on the

1 basis of his unsupported assertion that he is “stateless” and not a Russian citizen. The Court
2 should deny the motion for several reasons. First, Petitioner is not entitled to discovery in
3 the context of a habeas petition and fails to establish good cause to conduct discovery where
4 the uncontroverted evidence establishes that he is in fact a Russian citizen. As stated,
5 Petitioner’s passport was issued by Russia. Petitioner’s birth certificate indicates he was
6 born in Russia. Petitioner’s visa indicates he is a Russian national. Petitioner’s claim that
7 Russia does not recognize him as a citizen is therefore demonstrably false. Petitioner has
8 identified no additional discovery which would allow him to overcome the uncontroverted
9 evidence establishing his Russian citizenship.

10 Second, the requested discovery into Petitioner’s prior removal proceedings is not
11 relevant and has no bearing on whether the government can currently execute the final
12 removal order in the reasonably foreseeable future—which is the only issue in this case.
13 Third, Petitioner’s proposed discovery requests are overbroad and seek irrelevant and
14 privileged information from Petitioner’s Alien-File that would not change the outcome of
15 this case or establish his entitlement to relief. Finally, even if Petitioner were entitled to all
16 the discovery he seeks and could establish that there is no significant likelihood of his
17 removal in the reasonably foreseeable future, the government has already rebutted such a
18 showing by establishing that there *is* a likelihood of removal in the reasonably foreseeable
19 future as it has continued to successfully coordinate with the Russian government to obtain
20 Petitioner’s travel documents. *See generally* Doc. 25.

21 For these reasons, any discovery—even limited discovery—would be futile and a
22 waste of judicial resources. The Court should deny Petitioner’s motion for limited
23 discovery in this habeas case because Petitioner fails to establish good cause.

24 ARGUMENT

25 **I. Discovery is not permitted in the context of a habeas petition absent good** 26 **cause.**

27 A habeas petitioner is not entitled to discovery “as a matter of ordinary course.” *Bracy*
28 *v. Gramley*, 520 U.S. 899, 904, (1997); *see Campbell v. Blodgett*, 982 F.2d 1356, 1358 (9th

1 Cir. 1993). Indeed, there is no general right to discovery in habeas proceedings. *See*
2 *Campbell v. Blodgett*, 982 F.2d 1356, 1358 (9th Cir.1993). Rather, Rule 6 of the Rules
3 Governing Section 2254 Cases provides that “[a] judge may, for good cause, authorize a
4 party to conduct discovery under the Federal Rules of Civil Procedure and may limit the
5 extent of discovery.” Rule 6(a), Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

6 Whether a petitioner has established “good cause” for discovery requires a habeas court
7 to determine the essential elements of the petitioner’s substantive claim and evaluate
8 whether “specific allegations before the court show reason to believe that the petitioner
9 may, if the facts are fully developed, be able to demonstrate that he is...entitled to relief.”
10 *Bracy*, 520 U.S. at 908–09. Conversely, good cause “cannot arise from mere speculation”
11 and “cannot be ordered on the basis of pure hypothesis[.]” *Arthur v. Allen*, 459 F.3d 1310,
12 1311 (11th Cir. 2006); *see also Farrow v. United States*, 580 F.2d 1339, 1360 (9th Cir.
13 1978) (denying further discovery because appellant failed to present more than conclusory
14 allegations).

15 **II. Petitioner cannot establish good cause for discovery in this habeas case.**

16 Establishing good cause for discovery in a habeas case turns on the essential elements
17 of a Petitioner’s claim and whether specific allegations have been made before the Court
18 that, if these factual allegations were fully developed, the Petitioner would be able to
19 demonstrate entitlement to relief. *Bracy*, 520 U.S. at 908–09. Because none of the
20 requested discovery could possibly establish that Petitioner is not a Russian citizen and
21 therefore entitled to the relief he seeks—release from custody—there is no good cause
22 warranting discovery.

23 Here, the substantive elements of Petitioner’s claim in this habeas petition requesting
24 his release from custody is that there is no significant likelihood of his removal in the
25 reasonably foreseeable future such that his approximately two-month detention is
26 unreasonable and unconstitutionally prolonged under *Zadvydas*. Doc. 1. To establish that
27 there is no likelihood of removal in the reasonably foreseeable future Petitioner claims that
28 he is “stateless” and Russia does not recognize him as a citizen and that accordingly

1 because the government cannot return him there, there is no significant likelihood of
2 removal in the foreseeable future.

3 Therefore, to establish good cause warranting discovery Petitioner bears the burden of
4 demonstrating to the Court that with the additional limited discovery requested Petitioner
5 could demonstrate that he is “stateless” and not a Russian citizen such that no country will
6 accept him and he is therefore entitled to the relief he seeks—release from custody.

7 However none of the discovery requested can establish that Petitioner is stateless in the
8 face of the direct and uncontroverted evidence the government has provided to the contrary.
9 Indeed, the government can establish that Petitioner is in fact a native and citizen of Russia.
10 Doc. 25, Ex. A. Petitioner’s birth certificate establishes he was born in Russia. *Id.* His
11 parents were born in Russia. *Id.* Russia has issued him a passport. *Id.* The visa he received
12 from the State Department indicates Petitioner is Russian. *Id.* No discovery is required for
13 Petitioner to access his own birth certificate, visa and passport all of which establish that
14 he is indeed a Russian citizen. Accordingly, none of the additional documents requested in
15 Petitioner’s motion for limited discovery can prove that he is stateless in light of this clear
16 evidence to the contrary. Petitioner fails to establish good cause for discovery.

17 Specifically, in his request for limited discovery, Petitioner requests information related
18 to the removal proceedings which resulted in the final order of removal which now
19 provides the basis for his detention. Doc. 26 at p. 3 ¶¶ 1-3. He requests the application for
20 relief from removal submitted to the IJ, transcripts of the proceedings and the notice to
21 appear in removal proceedings. *Id.* None of these documents can establish, or are relevant,
22 to Petitioner’s sole allegation that his detention is indefinite under *Zadvydas* because he is
23 stateless and cannot be removed to Russia. His underlying removal proceedings are simply
24 not relevant to the sole issue in this habeas case—whether Petitioner currently can be
25 removed to Russia in the reasonably foreseeable future. Further, it is highly unlikely that
26 any information from Petitioner’s removal proceedings would prove his allegation that he
27 is not a Russian citizen, where the IJ ordered him removed to Russia. Doc. 25, Ex. A ¶ 13.
28 There is simply no good cause for discovery where the information requested is not
relevant and even if provided would have no bearing on Petitioner’s entitlement to relief.

1 Next, Petitioner’s request for the United States government’s communications with the
2 Russian government seek highly-sensitive privileged law enforcement and diplomatic
3 communications. Doc. 26 at p. 3 ¶¶ 5-7. More importantly, given the fact that the Russian
4 Embassy is currently coordinating with Immigration and Customs Enforcement (“ICE”),
5 and has not indicated that Petitioner is not a Russian citizen to ICE, it is unlikely that any
6 information in these privileged law enforcement sensitive and diplomatic communications
7 would prove that Petitioner is not a Russian citizen—certainly not in the face of the
8 overwhelming record evidence indicating that he is in fact a Russian citizen.

9 Petitioner also requests records of his orders of supervision Doc. 26 at p. 3 ¶ 8. These
10 orders have been provided to Petitioner and more importantly, do not contain any
11 information that would bolster Petitioner’s allegation that he is “stateless” and not a
12 Russian citizen. Petitioner also identifies any and all documents related to Petitioner’s
13 custody reviews during the entire time he has been in ICE custody. *Id.* at ¶¶ 9-10. However,
14 the only relevant time frame to Petitioner’s habeas petition is during his current ICE
15 custody since March 26, 2025. Further, any custody review is not relevant to, and does not
16 contain information that could support, Petitioner’s allegation that he is not a Russian
17 citizen and is therefore not likely to be removed in the reasonably foreseeable future.
18 Finally, there has been no determination by ICE regarding whether there is a significant
19 likelihood of removal in the reasonably foreseeable future under 8 C.F.R. § 241.3. Doc.
20 26 at 4 ¶ 11. Rather, that is the issue before this Court and for all the reasons argued in the
21 Response to Petitioner’s habeas petition, the Court should find that Petitioner has failed to
22 demonstrate that there is no significant likelihood of his removal in the reasonably
23 foreseeable future. *See* Doc. 25.

24 In sum, the only issue before the Court raised by the habeas petition is whether
25 Petitioner has established that his current approximately two-month detention is
26 unconstitutionally prolonged under *Zadvydas*. The lone allegation that Petitioner makes in
27 support of this contention is that he is “stateless” and Russia does not recognize him as a
28 citizen. Because the uncontroverted evidence, namely Petitioner’s passport, birth
certificate and visa, all indicate the Petitioner is a native and citizen of Russian, there is no

1 good cause for further discovery on this issue. The Court should deny Petitioner's motion
2 for limited discovery in support of the habeas petition.

3 Respectfully submitted this 2nd day of June, 2025.

4 TIMOTHY COURCHINE
5 United States Attorney
6 District of Arizona

7 *s/Theo Nickerson*
8 THEO NICKERSON
9 Assistant United States Attorney
10 *Attorneys for Defendant*
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and mailed a copy by U.S. Mail of the same to the following individual, who is not registered in the CM/ECF System:

Keith Hilzendeger
Federal Public Defender
250 N. 7th Ave., Ste. 600
Phoenix, AZ 85007
Keith_Hilzendeger@fd.org

s/ Mary Simeonoff
United States Attorney's Office