UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

ALEM WOLDEGHERGISH, Petitioner, vs. ROBERT K. LYNCH, ICE Field Office Director, Enforcement and Removal Operations Detroit, Respondent.	Case No. 1:25-cv-00461 District Judge Susan J. Dlott Magistrate Judge Karen L. Litkovitz

PETITIONER'S RESPONSE TO RESPONDENT'S UPDATE

Petitioner submits this response to Respondent's update and respectfully notes areas of agreement and disagreement that are material to the resolution of the issues presently before this Court. While both parties agree that Congress did not authorize indefinite detention and that such detention would pose serious constitutional concerns, Respondent misapplied the framework established in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and failed to demonstrate that Petitioner's removal is reasonably foreseeable.

Petitioner agrees with Respondent on two critical points. First, Petitioner concurs with the statement that "Congress did not clearly intend to authorize long-term detention of unremovable aliens" and that the constitutional threat can be avoided by "construing the statute as not authorizing detention once removal is no longer reasonably foreseeable." (Respondent's Response to Sept. 15 Order, Doc. 21, PageID 131 (citing *Zadvydas*, 533 U.S. at 697-99)). Second, Petitioner concurs with Respondent that the "indefinite and potentially permanent civil

detention of . . . an alien would clearly pose serious substantive due process concerns." (Respondent's Response to Sept. 15 Order, Doc. 21, PageID 131 (citing *Zadvydas*, 533 U.S. at 696)).

I. Petitioner's Detention Is Unlawful, Respondent Misapplied *Zadvydas*

Respondent fundamentally misapplied the framework established in *Zadvydas*. Respondent asserts that "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." (Respondent's Response to Sept. 15 Order, Doc. 21, PageID 131 (citing *Zadvydas*, 533 U.S. at 701)). Based on this, Respondent concludes that "Petitioner cannot make a claim under *Zadvydas* because he has yet to be detained beyond six months." (Respondent's Response to Sept. 15 Order, Doc. 21, PageID 132). Respondent also concludes that "[Petitioner] cannot demonstrate that there is no significant likelihood of his removal in the reasonably foreseeable future." (Respondent's Response to Sept. 15 Order, Doc. 21, PageID 132). For the reasons outlined *infra*, this interpretation misapplies both the burden-shifting framework and *Zadvydas* six-month presumption.

A. The Six-Month Presumption Does Not Apply to Redetention

Petitioner contends that the six-month presumption of reasonableness established in *Zadvydas* should not apply to the circumstances of this case because he was re-detained over seven years after his final removal order and Respondent has not shown that removal is reasonably foreseeable. (Petitioner's Reply to Respondents' Return of Writ, Doc. 16, Page ID 113 (citing *Munoz-Saucedo v. Pittman*, No. 25-cv-2258, 2025 WL 1750346 (D.N.J. June 24, 2025); *see also Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvydas* 6-month presumption not applicable where alien is "re-detained" after having

been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501 (D. N.J. June 13, 2025) (finding 6-month presumption had long lapsed while petitioner was on supervised release and it is respondent's burden to show removal is now likely in the reasonably foreseeable future)).

Zadyvdas dealt with the initial detainment of an alien awaiting removal whereas the present case deals with redetention of Petitioner. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner's removal order became final on May 10, 2018. (Declaration of Luke H. Affholter, Doc. 13-1, PageID 65, ¶ 7). Following the removal order, ICE detained Petitioner between April and August of 2018. (Petition, Doc. 4, PageID 15, ¶ 13-16). In 2018, Petitioner was initially detained for approximately 90 days until released pursuant to 8 U.S.C. § 1231(a)(3). (*Id.* ¶ 15). On or around June 10, 2025, ICE arrested and redetained Petitioner during a routine ICE check-in appointment. (*Id.* ¶ 17). Accordingly, the *Zadvydas* six-month presumption does not apply, as Petitioner – like the aliens in *Munoz-Saucedo*, *Nguyen*, and *Tadros* – was redetained years after his initial detention and release on supervised order.

B. The Six-Month Presumption, If Applicable, Is Rebuttable

Even assuming *arguendo* that the six-month presumption applies to cases of redetention, Petitioner's claim is not precluded. While *Zadvydas* established a presumptively reasonable period of six months for post-removal-order detention, 533 U.S. at 701, this presumption is rebuttable and does not create an absolute bar to habeas relief for those detained less than six months. *See Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d 703, 706-07 (S.D. Tex. 2020) ("This six-month presumption is not a bright line, … and *Zadyvdas* did not automatically authorize all detention until it reaches constitutional limits."); *Hoang Trinh v. Homan*, 333 F. Supp. 3d 894,

994 (C.D. Cal. 2018) ("The six-month *Zadyvdas* presumption is just that – a presumption … not a prohibition on claims challenging detention less than six months." (internal quotations omitted)); *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wisc. 2008) ("The *Zadyvdas* Court did not say that the presumption is irrebuttable.").

Here, Respondent incorrectly states that "Petitioner cannot make a claim under *Zadvydas* because he has yet to be detained beyond six months." (Respondent's Response to Sept. 15 Order, Doc. 21, PageID 132). The Court described the six-month mark as a "guide", not a rigid threshold. *Zadyvdas*, 533 U.S. at 701; *see also*, *Munoz-Saucedo v. Pittman*, 2025 WL 1750346, Case 25-2258, *9 (D.N.J June 24, 2025) ("[A]s the period of postremoval confinement grows, what counts as the reasonably foreseeable future conversely concurrently shrinks."). Accordingly, Petitioner is not barred from making a claim under *Zadyvdas*.

C. Petitioner Provided Good Reason to Belief Removal to Eritrea or Malta Is Not Reasonably Foreseeable

"Once removal is no longer foreseeable, continued detention is no longer authorized by statute." 533 U.S. at 699. When an alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the burden shifts to the government to respond with evidence sufficient to rebut that showing. (Respondent's Response to Sept. 15 Order, Doc. 21, PageID 130 (citing *Zadvydas*, 533 U.S. at 701)).

Petitioner remains in custody and has been detained for 132 days. Moreover, 2,720 days – over seven years – have passed since Petitioner received a final order of removal. During this time, ICE has not been able to effectuate Petitioner's removal to either Eritrea or Malta. This extraordinary passage of time, among additional reasons described *infra*, indicates that removal is not reasonably foreseeable.

II. Respondent Did Not Meet Its Burden

In *Zadvydas*, the Court articulated that habeas courts are not required to defer blindly to the Government's assertions: "The Government seems to argue that, even under our interpretation of the statute, a federal habeas court would have to accept the Government's view about whether the implicit statutory limitation is satisfied in a particular case, conducting little or no independent review of the matter. In our view, that is not so." 533 U.S. at 699. Under *Zadvydas*, the Court may independently determine the reasonableness.

Here, Respondent's sole evidence consists of a declaration from a local ICE supervisor, and claims:

1. An ICE headquarters officer "confirmed that the Government of Eritrea is reviewing travel documents for individuals confirmed to be citizens of Eritrea" on July 15, 2025 (Declaration of Luke H. Affholter, Doc. 21-1, PageID 135, ¶ 4); and
2. There is "a significant likelihood of removal in the reasonably foreseeable future . . . because Eritrea and/or Malta is expected to issue a travel document for the petitioner" (Declaration of Luke H. Affholter, Doc. 21-1, PageID 135, at ¶ 6).

This evidence is insufficient for multiple, independent reasons. Namely, Respondent did not offer documentary proof to support these assertions. Moreover, Respondent did not provide names of Eritrean or Maltese government officials who confirmed a change in policy. Respondent did not provide documentary evidence that Eritrea or Malta is now issuing travel documents. Respondent did not provide evidence that they have successfully obtained travel documents for any other Eritrean nationals.

By Respondent's own admission, they did not request travel documents until July 30, 2025 – seven weeks after detaining Petitioner. (Declaration of Luke H. Affholter, Doc. 21-1,

PageID 135, ¶ 5). Nearly three months have passed since that request, with no indication that travel documents have been issued.

Most significantly, Respondents did not fully address the Proclamation, issued on June 4, 2025 – less than one week before Petitioner's detention. The Proclamation explicitly states: "The United States questions the competence of the central authority for issuance of passports or civil documents in Eritrea." (Pres. Proc. No. 10949, 90 FR 24497, 2025 WL 1626552).

From the moment ICE detained Petitioner, his removal was not reasonably foreseeable. The federal government had just sanctioned Eritrea for its refusal to issue travel documents. ICE detained Petitioner, waited more than a month to confirm that Eritrea *might* issue documents, and then waited nearly two more months to request documents. The Government did not provide additional details on progress it had made to facilitate Petitioner's removal.

CONCLUSION

Respondent concedes that indefinite detention would be unconstitutional but ask this Court to require Petitioner to endure at least six months of unlawful detention before challenging its reasonableness. The law does not support this position. Under *Zadvydas*, detention is authorized only when it serves the statutory purpose of effectuating removal. When removal is not reasonably foreseeable at the time of detention and remains unforeseeable today, continued detention is not authorized by statute regardless of its duration.

Respondent offered uncorroborated evidence to justify Petitioner's ongoing detention. Respondent did not sufficiently address the Proclamation that directly contradicts their position. Respondent also did not provide documentary evidence, firsthand testimony, or any concrete

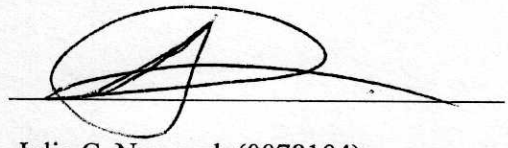
examples of successful removals to Eritrea or Malta. The Court should not credit such evidence, particularly in light of the constitutional interests at stake.

For these reasons, Petitioner respectfully requests that this Court grant the petition for writ of habeas corpus and order Petitioner's immediate release.

Date:

10/20/2025

Respectfully submitted,



Julie C. Nemecek (0078104)
Counsel for Petitioner
The Nemecek Firm, Ltd.
471 East Broad Street, Suite 1200
Columbus, Ohio 43215
(614) 459-2180
julie@jnimmigration.com