

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

NURBOLOT MISIRBEKOV,

Petitioner,

v.

Case No. 1:25-CV-00168

FRANK VENEGAS, *ET. AL.*,

Respondents.

RESPONDENTS' RESPONSE TO PETITIONER'S WRIT OF HABEAS CORPUS

Petitioner's detention pending removal is authorized under 8 U.S.C. § 1231(a)(6). And it is not unconstitutionally prolonged under the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner, however, has not carried his burden of demonstrating there is "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Instead, the evidence demonstrates that U.S. Immigration and Customs Enforcement ("ICE") is engaged in continuing and progressing efforts to effectuate Petitioner's removal to an alternate country. Indeed, ICE has identified and is engaging the appropriate channels regarding outreach to a potential third country for approval of Petitioner's removal. Furthermore, Petitioner's assertions that ICE cannot effectuate his removal are speculative. For these reasons, the Court should dismiss the *Zadvydas* claim. And finally, Petitioner's detention is permissible because his six-month presumptively reasonable period under *Zadvydas* should be tolled by his failure to cooperate.

BACKGROUND

Petitioner, Nurbolot Misirbekov (hereinafter “Petitioner”), is a political refugee from Krgyzstan currently detained at the Ell Valle Detention Center. (Dkt. No. 1). On August 1, 2025, Petitioner filed a petition for writ of habeas corpus. *Id.* Simultaneously, Petitioner filed a Motion for a Temporary Restraining Order to enjoin Respondents from transferring, relocating or removing Petitioner “before the Court can consider the merits of his habeas petition.” (Dkt. Nos. 2-3) and a Motion for Order to Show Cause (Dkt. No. 4). The same day, before the government had an opportunity to respond to Petitioner’s motions, the Court granted them both and ordered Respondent to file a submission to show cause why the writ of habeas corpus should not be granted by August 15, 2025. (Dkt. No. 5).

A. Efforts to Effectuate Petitioner’s Third-Country Removal

The following is a summary of ICE’s efforts to effectuate Petitioner’s removal to an alternate third country:

On March 24, 2025, ERO Harlingen submitted a Request for Acceptance of Alien, Form I-241, to the Russian consulate.

On March 27, 2025, after receiving no response from the Russian consulate, ERO Harlingen resent ICE Form I-241 to the Russian consulate. No response from the Russian consulate was received from the follow-up email.

On April 29, 2025, ERO Harlingen sent an email to the RIO Asia/Europe Removal Management Division for assistance and guidance in reaching out to the Russian consulate for a response.

On May 16, 2025, ERO Harlingen, Deportation Officer (DO) called the RIO Asia/Europe Removal Management Division Officers. Left messages for DDO Harrison and Dobson. On that same day, ERO Harlingen sent email to the Russian consulate and to the consulate of Costa Rica and Mexico requesting acceptance of MISIRBEKOV. The Russian consulate nor the Mexican consulate responded to ERO's request to accept MISIRBEKOV.

On May 19, 2025, the Costa Rican consulate advised ERO Harlingen of their denial for acceptance of MISIRBEKOV. On that same date, ERO Harlingen received an email from RIO Asia/Europe Removal Management Division Officer Harrison, asking for MISIRBEKOV's ID or passport copy. A copy of MISIRBEKOV's ID and passport was sent via email to the RIO Asia/Europe Removal Management Division. *See* Exhibit 1, Gonzalez Declaration.

ARGUMENT

Petitioner's *Zadvydas* claim fails because Petitioner has not met his initial burden of showing there is no significant likelihood of removal in the reasonably foreseeable future. In *Zadvydas*, the Supreme Court cautioned that even a detention beyond the six-month period "does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701. The Supreme Court's interpretation of 8 U.S.C. § 1231(a)(6) in *Zadvydas* aims to protect against the indefinite detention of aliens who the government is unable to remove—those in "removable-but-unremovable limbo." *Jama v. ICE*, 543 U.S. 335, 347 (2005). That is not this case.

A. Petitioner Has Not Met His Initial Burden of Demonstrating Good Reason to Believe There is No Significant Likelihood of Removal in the Reasonably Foreseeable Future

The Supreme Court has held that, after the six-month period, the alien bears the initial burden to demonstrate “good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Detention beyond the six-month period, without more, is not enough. As explained by the Supreme Court, “[t]his 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* Here, Petitioner has failed to carry this initial burden.

Petitioner’s claim that he has “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, has three premises: (1) by law, he cannot be deported to Kyrgyzstan because he has withholding of removal; (2) “he does not have citizenship in any other country, nor any ties to any other country” (ECF. No. 1, ¶ 52); and (3) DHS has made efforts to remove him to other third countries, but these efforts have been “unsuccessful” (*Id.*). These assertions are too speculative and conclusory to satisfy Petitioner’s burden of demonstrating “good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701; see *Rene v DHS*, No. 06-336 (JAG), 2007 WL 708905, at *4 (D.N.J. Mar. 5, 2007) (“To carry his burden, Petitioner must present evidence beyond his own speculation.”); cf. *James v. Lowe*, No. 23-1862, 2024 WL 1837216, at *3 (M.D. Pa. Apr. 26, 2024) (rejecting “unsupported contentions” and speculation that “it could take ‘years’ for” removal).

ICE is actively pursuing Petitioner's removal and has identified a potential third country and has made progress with the RIO Asia/Europe Removal Management Division. *See* Exhibit 1; Gonzalez Declaration, ¶ 11. Whether ICE was unable to secure travel documents or identify an alternate country during the initial 90-day period has no bearing on ICE's present, ongoing efforts. Furthermore, the absence of an exact date of Petitioner's removal does not undermine the conclusion that there is still a significant likelihood of removal in the reasonably foreseeable future. The Third Circuit has specifically held that removal remains "reasonably foreseeable" under *Zadvydas* even when the detention lacks a specific end date. *See Castellanos v. Holder*, 337 F. App'x 263 (3d Cir. 2009). In *Castellanos*, the petitioner's removal order was reinstated, and his case was remanded to an immigration judge to conduct full withholding-of-removal proceedings. *See id.* at 264-67. The Third Circuit upheld the district court's rejection of the petitioner's *Zadvydas* claim that his removal was no longer reasonably foreseeable (he had been detained for over six months) simply because the execution of his removal order was contingent on the resolution of a claim for humanitarian protection, the end date of which was unknown. *See id.* at 268.

Furthermore, Petitioner's continued detention is permissible, and he fails to state a claim upon which relief may be granted, because his six-month presumptively reasonable period under *Zadvydas* should be tolled. *See Lawal v. Lynch*, 156 F. Supp. 3d 846, 854-55 (S.D. Tex. 2016) (citing *Balogun v. I.N.S.*, 9 F.3d 347, 351 (5th Cir. 1993)). In *Balogun*, the Fifth Circuit held that a six-month period available for deportation can be tolled if the conduct of a deportable alien "hampers" or delays removal. *Balogun v. I.N.S.*, 9 F.3d 347, 350-51 (5th Cir. 1993).

Here, Petitioner received an order of removal on December 31, 2024. ECF No. 1. But he does not allege he made any attempt to cooperate in his removal in the more since then. He does not allege that he made any effort to obtain travel documents, such as by submitting applications for travel documents to embassies or consulates as was required by INA. That failure to cooperate in removal forecloses Petitioner's *Zadvydas* claim.

For similar reasons, Petitioner's detention is also lawful under 8 U.S.C. § 1231(a)(1)(C), which provides for suspension of the removal period and detention "beyond a period of 90 days" if an alien "fails or refuses to make timely application in good faith for travel or other documents necessary to [his or her] departure." "Courts have long held that [8 U.S.C. § 1231(a)(1)(C)] not only stands for the proposition that the removal period may be extended where an alien is the impediment to his [or her] own removal, but also that such an alien cannot demand his [or her] release under *Zadvydas* as he [or she] has the keys to his [or her] freedom in his [or her] pocket and could likely effectuate his [or her] removal by providing the necessary information to the appropriate officials." *Bailey v. Lynch*, No. 16-2600 (JLL), 2016 WL 5791407, at *3 (D.N.J. Oct. 3, 2016). Here, again, Petitioner does not allege that he made any effort to assist in his removal.

b. There is a Significant Likelihood of Removal to a Third Country in the Reasonably Foreseeable Future

Only if the alien makes the initial showing must the government "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1310-11 (10th Cir. 2004) (stating "onus is on the alien to provide [] good reason to believe that there is no [such] likelihood' before 'the Government must respond with evidence sufficient to rebut that shown.' (internal citation omitted)). Here, even if the Court

were to conclude Petitioner met his burden, Respondents have rebutted that showing because the evidence establishes that there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future.

As noted above and outlined in the attached declaration, since March 24, 2025, ICE has engaged in continuing efforts to effectuate Petitioner's removal to a third country. Most recently, on May 19, 2025, ICE progressed to the next step by sending a copy of Petitioner's ID and passport to the RIO Asia/Europe Removal Management Division. *See* Gonzalez Decl.

¶ 11. That process remains ongoing.

The Supreme Court has stressed that the reasonably-foreseeable inquiry requires taking "appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive [ICE] efforts to enforce this complex statute, and the Nation's need to speak with one voice in immigration matters." *Zadvydas*, 533 U.S. at 700. In addition, courts must "recognize Executive Branch primacy in foreign policy matters," and "grant the Government appropriate leeway when its judgments rest upon foreign policy expertise." *Id.* Taking these considerations into account, the Court adopted a six-month presumptively reasonable period "to limit the occasions when courts will need to make" the type of "difficult judgments" inherent in reviewing this area of "primary Executive branch responsibility." *Id.* at 700-01. This case is exactly

While this case is not one of those occasions, it should not be a difficult judgment. In this case, where the government is authorized to detain Petitioner for the "period reasonably necessary to bring about [his] removal from the United States," *Johnson v. Arteaga-Martinez*, 596

U.S. 573, 579 (2022) (cleaned up), and ICE is actively engaged in continuing efforts to effectuate Petitioner's third-country removal, it would be premature to conclude that Petitioner's detention exceeds the time necessary to secure his removal or that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future.

CONCLUSION

For these reasons, the Court should deny Petitioner's writ of habeas corpus.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 15, 2025, the foregoing pleading was filed with the Court through the Court's CM/ECF system on all parties and counsel registered with the Court CM/ECF system.

/s/Lander B. Baiamonte
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