

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EMMANUEL STEPHANE RUKIRANDE
MUKIZA,

Petitioner,

v.

THOMAS BERGAMI, et al.,

Respondent.

Civil Action No. 3:25-CV-02081-E-BT

SUPPLEMENTAL RESPONSE

On September 30, 2025, Respondents filed their response to Petitioner's Preliminary Injunction and Habeas Petition. ECF 13. Petitioner filed a Reply brief on October 31, 2025, containing documentation denying a travel request for Petitioner to Gabon. In response, on November 17, 2025, the Court ordered Respondents to file a supplemental response. Respondents respectfully respond now as follows:

I. Argument & Authorities

Petitioner's Detention is Proper Because it Has Not Exceeded the Time Limit Allowed by Statute and the Supreme Court.

ICE can lawfully detain Petitioner because he is subject to a final order of removal and can be detained under 8 U.S.C. § 1231(a)(6). Section 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes extended post-order detention for certain aliens. *Zadvydas v. Davis*, 533 U.S. 678 (2001). In *Zadvydas*, the Supreme Court held that §

1231(a) authorizes detention for a period reasonably necessary to accomplish an alien's removal, and determined that ICE maintains the authority to continue detention where it fairly aids the Government in its legitimate efforts to remove individuals with final orders of removal. *Id.* at 701. The Supreme Court further determined that six months is a presumptively reasonable period of time to allow the government to remove an alien after the removal period has commenced. *Id.* at 701. Once the six-month period has lapsed, and "the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, [then] the Government must respond with evidence sufficient to rebut that showing." *Id.*; see also *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (alien must show "post-removal order detention in excess of six months" and "evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future"). The six-month presumptively reasonable period under *Zadvydas* begins when the alien is taken into custody. See *Callender v. Shanahan*, 281 F. Supp. 3d 428, 435 (S.D.N.Y. 2017).

Petitioner's claim that his detention violates the Fifth Amendment lacks merit, because he has been detained less than six months making his detention presumptively reasonable. Because Petitioner has been detained less than six months, his Due Process challenge must fail.

Petitioner's claim also fails as he has the burden of showing that he is unlikely to be removed in the near future. *Zadvydas*, 533 U.S. at 701. *Zadvydas* does not require the release of every alien held in detention for more than six months; rather, the Court held: "This 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.* (emphasis added). To satisfy this burden, Petitioner must provide “evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002) (emphasis added). In instances where an alien is unable to produce evidence demonstrating good cause to believe that there is no significant likelihood of removal in the reasonably foreseeable future, courts have sustained continuing periods of detention pending removal well beyond the six-month time frame described as presumptively reasonable by the Supreme Court in *Zadvydas* in order to accommodate the issuance of travel documents. *See, e.g., Issa v. Holder*, No. 4:11-cv-19, 2011 WL 1671915, at *3 (M.D. Ga. Apr. 11, 2011); *Edmund v. Gonzales*, No. 05-00347, 2007 WL 2187258, at *2 (N.D. Fla. July 27, 2007) (holding that detention may still be reasonable after the “presumptively reasonable” period of detention has passed)

Petitioner fails to establish that ICE will be unable to effectuate his removal in the reasonably foreseeable future. Although Gabon denied the request for travel documents for Petitioner, ICE plans to request travel documents from the Democratic Republic of the Congo. App. p. 3, ¶4. Petitioner has an expired passport issued by the Democratic Republic of the Congo, which is good evidence of identity. *Id.* ICE believes that once a travel document is requested, removal is significantly likely in the reasonable future. ICE cannot request the travel document until after the Court’s do not remove order expires on December 15, 2025, but will request soon thereafter.

In contrast, Petitioner has not offered any specific evidence otherwise and cannot meet his burden under *Zadvydas*. The initial burden is on a petitioner to provide “good reason to believe” that there is no significant likelihood of his removal in the reasonably foreseeable future. *Id.* Petitioner has made no such showing. He has not produced any evidence to establish that the Democratic Republic of the Congo will not issue a travel document for him or that ICE will be unable to remove him. *See Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002) (“[P]etitioner, in effect, seeks to place the burden on the Government to show when it will remove petitioner, whereas the Supreme Court held that it is petitioner’s burden first to show good reason to believe that there is no significant likelihood of removal. All petitioner has shown is the passage of some time.”). Accordingly, Petitioner fails to assert *any* evidence regarding his impending removal, let alone enough evidence to establish that there is *no* significant likelihood of his removal to the Democratic Republic of the Congo in the reasonably foreseeable future. This is insufficient to satisfy his burden. *Fahim*, 227 F. Supp. 2d at 1365 (“Petitioner’s bare allegations are insufficient to demonstrate a significant unlikelihood of his removal in the reasonably foreseeable future.”). Petitioner’s claim thus fails under *Zadvydas*.

II. Conclusion

For these reasons, the Court should dismiss the Petition and deny injunctive relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On November 24, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
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