

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

VLADISLAV BERNSHTEIN,

Petitioner,

v.

Case No. 3:25-cv-01153-MMH-PBD

U.S. ATTORNEY GENERAL, U.S.  
DEPARTMENT OF HOMELAND  
SECURITY, and U.S. IMMIGRATION  
AND CUSTOMS ENFORCEMENT

Respondents.

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**RESPONDENTS' MOTION TO DISMISS**  
**PETITION FOR WRIT OF HABEAS CORPUS**

Respondents move to dismiss the Petition for Writ of Habeas Corpus (“Petition”) (Doc. 1) because Petitioner’s claim is not ripe for review pursuant to § U.S.C. § 1231(a), nor has he demonstrated that there is good reason to believe that there is no significant likelihood of his removal from the United States in the reasonably foreseeable future. As discussed more fully below, Petitioner failed to cooperate with immigration officials in their attempt to obtain travel documents; however, despite this, the government continues to work diligently to effectuate his removal and expects that he will be removed in the reasonably foreseeable future. As such, the Petition should be dismissed.

**Factual Background**

Petitioner, Vladislav Bernshtein, is 45-year-old male who is a native of the

former USSR and a citizen of Belarus. Exhibit 1, Declaration of Deportation Officer Luke Tine (“Tine Decl.”), at ¶ 3. Petitioner entered the United States as a refugee on January 25, 1990, and became a lawful permanent resident effective August 16, 1991. *Id.* at ¶ 4.

On October 17, 2019, Petitioner was convicted in the Seventh Judicial Circuit Court, in and for Flagler County, Florida, pursuant to Section 863.13(6)(a), Florida Statutes, for the unlawful possession of Heroin and Clonazepam, a Schedule IV Substance. *Id.* at ¶ 5. On January 30, 2020, Petitioner was issued a Notice to Appear (“NTA”), and on June 2, 2020, an immigration judge (“IJ”) ordered Petitioner’s removal pursuant to INA (“Immigration and Nationality Act”) § 237(a)(2)(B)(i), as amended, 8 U.S.C. § 1227(a)(2)(B)(i). *Id.* at ¶ 6.

Petitioner appealed the IJ’s removal order to the Board of Immigration Appeals (“BIA”) and it was dismissed on November 18, 2020. *Id.* at ¶ 7. Enforcement and Removal Operations (“ERO”) requested travel documents from Belarus and Russia on December 30, 2020. *Id.* at ¶ 8. On January 12, 2021, the Embassy of Belarus informed ERO that it would not issue travel documents to Petitioner, and on January 22, 2021, the Embassy of the Russian Federation informed ERO that it had no record of Petitioner’s Russian citizenship. *Id.* at ¶ ¶ 9-10. As a result, ERO released Petitioner from custody under an order of supervision on February 2, 2021. *Id.* at ¶ 11.

Subsequently, on March 29, 2025, the Flagler County Sheriff’s Office notified ERO’s Miami’s Jacksonville Criminal Alien Program Unit that it had arrested Petitioner for driving under the influence. As a result, ERO performed a records check

confirming Petitioner's final order of removal and lodged a Form I-247 ICE detainer with the Flagler County Jail, and Petitioner was transferred to Baker County Detention Center in ICE custody on March 31, 2025. *Id.* at ¶¶ 13-15.

On April 17, 2025, Petitioner refused to complete an application for travel documents. *Id.* at ¶ 16. On June 19, 2025, ERO submitted a request for an electronic travel document to Headquarters Removal and International Operations for evaluation by the Detention and Deportation Officer (collectively, "HQ RIO DDO") responsible for Russia and Belarus. *Id.* at ¶ 16. On July 18, 2025, ERO requested a status update on the Travel Document Review, and HQ RIO DDO confirmed receipt of the Travel Document Review on July 23, 2025. *Id.* at ¶¶ 18-19.

ERO conducted a Post-Order Custody Review ("POCR") on August 2, 2025, and issued a decision on August 3, 2025, to continue Petitioner's detention. *Id.* at ¶¶ 20-21. The ERO's to continue detention cited Petitioner's criminal history and the existence of a significant likelihood of removal in the reasonably foreseeable future. *Id.* at ¶ 21. ERO requested a case status update and Travel Documents Review update from HQ RIO DDO on August 2 and 7, 2025, and on September 8, 15, and 19, 2025. *Id.* at ¶¶ 20, 22-24. On September 19, 2025, HQ RIO DDO informed ERO that neither Russia nor Belarus would issue travel documents. *Id.* at ¶ 27.

On September 16, 2025, Petitioner was served a Notice to Alien for Review of Custody Status, and on September 22, 2025, ERO conducted a pre-180-day Post-Order Custody Review for Headquarters custody determination which concluded that Petitioner's continued detention was warranted. *Id.* at ¶¶ 25 and 28.

On October 24, 2025, Headquarters Removal and International Operations referred Petitioner's case for possible third country removal and is continuing to explore third-country removal options for Petitioner. *Id.* at ¶¶ 29-30. Based on the foregoing, the government believes there is a *significant* likelihood Petitioner will be removed in the reasonably foreseeable future. *Id.* at ¶ 31.

### **Discussion**

Generally, this Court has jurisdiction to consider a challenge to a petitioner's continued detention in habeas corpus proceedings. *See Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491 (2001). While the Court has jurisdiction to consider Petitioner's challenge to his continued detention, the Petition should be dismissed because Delancy has failed to establish his detention by ICE is unlawful. The relevant detention provision governing Petitioner's detention is § 241(a) of the Immigration and Nationality Act, as amended 8 U.S.C. § 1231(a), which covers detention following entry of a final removal order. This provision generally affords the Attorney General a 90-day period to accomplish removal. *See* 8 U.S.C. § 1231(a)(1)(A). The statute provides that, in certain circumstances, the Attorney General may continue to detain an alien after expiration of the 90-day removal period when the alien is:

An alien ordered removed who is inadmissible under 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6). Hence, Petitioner's continued detention has a basis in law in that he is removable as charged under the INA. *See generally* Tine Decl. Moreover, Petitioner does not dispute his removability.

The statute provides that the removal period commences on the latest of the following events:

- i. The date the order of removal becomes administratively final.
- ii. If the removal order is judicially reviewed and if the court orders a stay of the removal of the alien, the date of the court's final order.
- iii. If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B). Here, Petitioner was ordered removed on or about June 2, 2020, which removal order became final on November 18, 2020, when the BIA dismissed his appeal.

In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a) permits the government to detain an alien during the 90-day removal period in § 1231(a)(1), and an additional 90 days to effectuate the alien's removal from the United States. 553 U.S. at 701; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005). Stated differently, the Supreme Court "confirmed that six months is a presumptively reasonable period to detain a removable alien awaiting deportation under such circumstances." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051-1052 (11th Cir. 2002) (*citing Zadvydas*, 533 U.S. at 701).

While six months is a presumptively reasonable detention period, the *Zadvydas* Court also made clear that the six-month presumption did not mean that every alien

not removed within this timeframe must be released after six months. *Zadvydas*

at 701. The Court explained, “[t]o the contrary, an alien may be held in confinement until it had been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

In *Akinwale*, the Eleventh Circuit concluded that “to state a claim under *Zadvydas* 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.” 287 F.3d at 1052. Thus, the burden is on Petitioner to demonstrate: (1) post removal order detention for a period exceeding six months; **and** (2) that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.

*Id.*

**A. Petitioner Failed to Cooperate in obtaining travel documents; thus, at the time of filing Petitioner’s post-removal order detention had not exceeded six months.**

Petitioner is required to assist in efforts to remove him pursuant to INA § 243(a), as amended 8 U.S.C. § 1253(a). Specifically, the statute provides that any alien with a final order who:

[W]illfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure, or who connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such, may be fined under Title 18 or imprisoned for not more than four years or both.

8 U.S.C. § 1253(a)(1)(B), (C). Thus, repatriation is a shared responsibility of the alien,

his sovereign, and the U.S. government.

Petitioner's refusal to complete an application for a travel document impeded ICE's ability to submit a request for an electronic travel document to Headquarters for a period of 63 days. Tine Decl. at ¶¶ 16-17. This refusal led to a cumulative delay in the time it then took for ICE to receive a response regarding the possible issuance of travel documents from Belarus or the Russian Federation, which in turn lead to more time additional time having passed before Headquarters referred Petitioner's case for possible third country removal. *See Id.* at ¶¶ 16-30.

Applying the rationale set forth in *Akinwale* to the present case, the removal period, pursuant to 8 U.S.C. §§ 1231(a)(1)(A) and 1231(a)(1)(B)(iii) of the Act, began, the date Petitioner entered immigration custody on March 31, 2025, and the "presumptively reasonable" 6-month period would have ended on or about September 27, 2025. However, Petitioner's own refusal to cooperate with ICE lead to a prolongation of his detention period, "for like the orphan who sought sympathy after murdering his parents, petitioner cannot claim that his pre-removal detention is unreasonably long when he is the cause of the delay in his removal." *Olajide v. BICE*, 402 F. Supp.2d 688, 689 (E.D. Va. 2005).

The Fifth Circuit has held that "if it is shown that petitioner by his conduct has intentionally prevented the INS from effectuating his deportation, the six-month period should be equitably tolled until petitioner begins to cooperate with the INS in effectuating his deportation or his obstruction no longer prevents the INS from

bringing that about.” *Balogun v. I.N.S.*, 9 F.3d 347, 351 (5th Cir. 1993) (“The alien should not be allowed to profit from his own wrong and *contra non valentem agere nulla currit praescriptio*.”). Other circuit and district courts have found the same. *See Lema v. INS*, 341 F.3d 853, 856-57 (9th Cir. 2003) (stating “the risk of indefinite detention that motivated the Supreme Court’s statutory interpretation in *Zadvydas* does not exist when the alien “has the keys [to freedom] in his pocket and could likely effectuate his removal by providing the information requested by the INS”) (alteration in original); *Riley v. Greene*, 149 F.Supp.2d 1256, 1262 (D. Colo. 2001) (tolling the detention period when an alien intentionally causes a delay); *Sango–Dema v. District Director*, 122 F.Supp.2d 213, 221 (D.Mass.2000) (alien cannot trigger right to freedom from indefinite detention “with his outright refusal to cooperate with INS officials”).

Accordingly, Petitioner’s period of detention should be tolled for the 63-day delay ICE encountered in submitting a request for travel documents because Petitioner refused to complete an application for travel documents. Thus, Petitioner’s detention period had not exceeded six months at the time he filed his Petition, and it must be dismissed. *Akinwale*, 287 F.3d at 1052 (“in order to state a claim under *Zadvydas* the alien [. . .] must show post-removal order detention in excess of six months.”).

**B. Petitioner has failed to good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.**

Although the burden shifts to the Respondents only once a petitioner satisfies his burden under *Zadvydas*, Respondents have nonetheless provided evidence to establish that Petitioner’s removal is likely to occur in the reasonably foreseeable

future. As discussed above, Headquarters Removal and International Operations have recently referred Petitioner's case and are considering possible third country removals. The request was submitted on October 24, 2025, and ERO is awaiting Headquarters determination. In conclusion, Petitioner has not met the burden-shifting prerequisite in *Zadvydas* that "the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. See *Akinwale*, 287 F.3d at 1052 (stating "in order to state a claim under *Zadvydas* the alien must not only 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") Petitioner's continued detention, therefore, is lawful under § 1231.

### **Conclusion**

Based on the foregoing, ICE's continued detention of the Petitioner is lawful. Not only has Petitioner failed to meet his burden in establishing detention in excess of six months prior to filing his Writ of Habeas Corpus, his Petition should also be dismissed because he has failed to meet the second prong of the *Akinwale* test in failing to establish that his removal is not reasonably foreseeable. Rather, ICE has been working diligently to effectuate his removal such that his removal is reasonably foreseeable. Consequently, as the Petitioner's detention is legal, the Court should dismiss the instant Petition

Date: December 8, 2025

Respectfully submitted,

GREGORY W. KEHOE  
United States Attorney

/s/ Kyesha Mapp

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December\_5, 2025, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system. I further certify that a copy of the foregoing document will be sent to the below non-CM/ECF participant via U.S. Mail.

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