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9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 Evgenii Ivanov,  
13  
14 Petitioner,  
15 v.  
16 David R. Rivas, et al.,  
Respondents.

No. 2:25-cv-04160-SHD--ASB

**RESPONSE IN OPPOSITION TO  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

17 Respondents David R. Rivas, Warden, San Luis Regional Detention Center, and  
18 Pamela Bondi, Attorney General of the United States (“Respondents”), by the through  
19 undersigned counsel, respond in opposition to the Petition for Habeas Corpus for Release  
20 Under 28 U.S.C. § 2241 (Doc. 1). Petitioner alleges that he has been detained since January  
21 26, 2025, and must be released claiming that there is no significant likelihood of removal in  
22 the reasonably foreseeable future. The Petitioner should be denied because Petitioner has  
23 failed to cooperate or provide information to secure travel documents from Russia.

24 **I. FACTUAL BACKGROUND.**

25 Petitioner is a citizen of Russia and was ordered removed to Russia on January 22,  
26 2020. Ex. A, Decl. of Jorge E. Hernandez, at ¶ 4. Petitioner appealed his removal order to  
27 the Board of Immigration Appeals (“BIA”). *Id.* In May 2020, Petitioner was released from  
28 immigration detention with Alternatives to Detention (“ATD”) as a result of a preliminary

1 injunction entered in a class action lawsuit filed by individuals in immigration detention  
2 who alleged they were at heightened risk of contracting COVID-19. Ex. A at ¶ 5. In May  
3 2021, Petitioner's removal order became final when the BIA dismissed Petitioner's appeal,  
4 and Petitioner did not seek further review. Ex. A at ¶ 9. On January 26, 2025, Petitioner was  
5 terminated from the ATD program and detained. Ex. A at ¶ 10. On May 13, 2025, Petitioner  
6 was interviewed and requested to fill out Form I-217, Information for Travel Document or  
7 Passport and the travel document request that contained the information required by the  
8 Russian Federation to verify citizenship. Ex. A at ¶ 15. Petitioner refused to complete the  
9 documents and claimed a fear of returning to Russia. *Id.* On August 13, 2025, ICE again  
10 requested Form I-217 and the travel document request from Petitioner, who again refused  
11 to provide the necessary information and said he would not go back to Russia. Ex. A at ¶ 18.  
12 On October 22, 2025, Petitioner again refused to complete the documents or provide the  
13 necessary information. Ex. A at ¶ 20. Petitioner refused again on October 29, 2025, and was  
14 served with a form I-229(a) – Warning for Failure to Depart. Ex. A at ¶ 21. On November  
15 10, 2025, Petitioner was served with a Notice of Failure to Comply. Ex. A at ¶ 22.

16 After Petitioner's repeated refusals to provide the information necessary to submit  
17 the request for travel documents, Deportation Officer Hernandez reviewed Petitioner's  
18 paper A-file to gather sufficient information to prepare a travel document request packet to  
19 present to ERO Headquarters – Removal International Operations (“HQ-RIO”). Ex. A at ¶  
20 23. The request was submitted to HQ-RIO on November 19, who returned it for minor edits  
21 on December 11. Ex. A at ¶¶ 24, 25. Once the edits are complete, the travel document request  
22 packet will be sent by HQ-RIO to the Embassy of the Russian Federation in Washington,  
23 D.C., for Petitioner's citizenship to be verified. Ex. A at ¶ 27. Once the Russian Federation  
24 verifies Petitioner's citizenship, it will request that HQ-RIO submit a travel itinerary, and  
25 will schedule an in-person interview of Petitioner to occur within 10-14 days before his  
26 scheduled entry into Moscow. Ex. A at 28. If Russia refuses to issue a travel document, HQ-  
27 RIO will work with DHS and the State Department to coordinate a Third Country Removal.  
28 Ex. A at ¶ 29.

1 **II. ARGUMENT.**

2 **A. Standard governing detention of aliens pending removal.**

3 The detention, release, and removal of aliens subject to a final order of removal is  
4 governed by § 241 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231.  
5 Pursuant to INA § 241(a), the Attorney General has 90 days to remove an alien from the  
6 United States after an order of removal becomes final. During this “removal period,”  
7 detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been  
8 removed and remains in the United States, his detention may be continued, or he may be  
9 released under the supervision of the Attorney General. INA § 241, 8 U.S.C. §§ 1231(a)(3)  
10 and (a)(6). Under this section, ICE may detain an alien for a “reasonable time” necessary to  
11 effectuate the alien’s removal. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite  
12 detention is not authorized. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The statute also  
13 allows officials to extend the 90-day removal period “if the alien fails or refuses to make  
14 timely application in good faith for travel or other documents necessary to the alien’s  
15 departure or conspires or acts to prevent the alien’s removal subject to an order of removal.”  
16 INA § 241(a)(1)(C); 8 U.S.C. § 1231(a)(1)(C).

17 In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable  
18 period of detention. *Zadvydas* places the burden on the alien to show, after a detention period  
19 of six months, that there is “good reason to believe that there is no significant likelihood of  
20 removal in the reasonably foreseeable future.” *Id.* at 701. If the alien makes that showing,  
21 the Government must then introduce evidence to refute that assertion to keep the alien in  
22 custody. *Id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40 (9th Cir. 2002). The court must “ask  
23 whether the detention in question exceeds a period reasonably necessary to secure removal.  
24 It should measure reasonableness primarily in terms of the statute’s basic purpose, namely,  
25 assuring the alien’s presence at the moment of removal. Thus, if removal is not reasonably  
26 foreseeable, the court should hold continued detention unreasonable and no longer  
authorized by statute.” *Zadvydas*, 533 U.S. at 699.

27 The purpose of § 1231(a)(6) detention is to effectuate removal. *Demore v. Kim*, 538  
28 U.S. 510, 527 (2003) (analyzing *Zadvydas* and explaining the removal period was based on

1 the “reasonably necessary” time in order “to secure the alien’s removal”). The statute  
2 provides that—if the alien is not removed—the alien “shall be subject to supervision” under  
3 relevant regulations with certain requirements. 8 U.S.C. § 1231(a)(3). Here, Petitioner has  
4 been detained for approximately eleven months while the Government attempts to execute  
5 his valid final removal order to Russia. His continued detention, while the Government seeks  
6 to effectuate his removal and enforce a valid removal order, violates neither § 1231 nor  
7 *Zadvydas*. 533 U.S. at 689.

8 **B. Petitioner’s failure to cooperate is the basis for his continued detention so**  
9 ***Zadvydas* does not apply.**

10 Petitioner’s continued detention is justified because he has knowingly and actively  
11 hindered his removal from the United States. It is well established that *Zadvydas* does not  
12 apply where a detainee who holds “the keys to his freedom” thwarts his removal by lying  
13 or refusing to cooperate with ICE. *Pelich v. I.N.S.*, 329 F.3d 1057, 1061 (9th Cir. 2003).

14 This principle is implemented by regulation found at 8 C.F.R. § 241.4(g)(5), which  
15 provides:

- 16 (i) Release will be denied and the alien may remain in detention if the  
17 alien fails or refuses to make timely application in good faith for travel  
18 documents necessary to the alien’s departure or conspires or acts to  
19 prevent the alien’s removal. The detention provisions of section  
20 241(a)(2) of the Act will continue to apply, including provisions that  
21 mandate detention of certain criminal and terrorist aliens.
- 22 (ii) The Service shall serve the alien with a Notice of Failure to Comply,  
23 which shall advise the alien of the following: the provisions of sections  
24 241(a)(1)(C) (extension of removal period) and 243(a) of the Act  
25 (criminal penalties related to removal); the circumstances  
26 demonstrating his or her failure to comply with the requirements of  
27 section 241(a)(1)(C) of the Act; and an explanation of the necessary  
28 steps that the alien must take in order to comply with the statutory  
obligations.

1 (iv) The fact that the Service does not provide a Notice of Failure to  
2 Comply, within the 90-day removal period, to an alien who has failed  
3 to comply with the requirements of section 241(a)(1)(C) of the Act,  
shall not have the effect of excusing the alien's conduct.

4 8 C.F.R. § 241.4(g)(5)(i)-(iv).

5 The Ninth Circuit considers failure to cooperate as an exception to *Zadvydas* pursuant  
6 to INA § 241(a)(1)(C); 8 U.S.C. § 1231(a)(1)(C). The Ninth Circuit has held that an “alien  
7 cannot assert a viable constitutional claim when his indefinite detention is due to his failure  
8 to cooperate with the INS’s efforts to remove him.” *Pelich*, 329 F.3d at 1061. The court  
9 determined that the petitioner’s continued detention was due to his own conduct:  
10 “[Petitioner] could likely effectuate his own removal (and free himself from detention) by  
11 providing the Polish government with the requested information. It naturally follows that  
12 his detention is not destined to be indefinite.” *Id.* at 1061. Thus, the Ninth Circuit has  
13 interpreted INA § 241(a)(1)(C) after *Zadvydas* to permit continued detention of a removable  
14 alien “so long as the alien fails to cooperate fully and honestly with officials to obtain travel  
documents.” *Lema v. I.N.S.*, 341 F.3d 853, 857 (9th Cir. 2003).

15 In this case, the record demonstrates that Petitioner’s refusal to cooperate with ICE  
16 is the cause of his continued detention. Petitioner has prolonged his own detention by failing  
17 to provide the information necessary for ICE to request a travel document for him from  
18 Russia. Ex. A at ¶¶ 15 (Petitioner refused to provide information on May 13, 2025), 18  
19 (Petitioner refused to provide information on August 13, 2025), 20 (Petitioner refused to  
20 provide information on October 22, 2025), 21 (Petitioner refused to provide information on  
21 October 29, 2025, and was served with Form I-229(a)). Petitioner held the keys to his  
22 freedom but refused to use them. Instead, Petitioner attempted to delay or thwart removal  
23 by refusing to provide the information necessary for ICE to request travel documents from  
24 Russia. Petitioner’s prolonged detention is due solely to his refusal to cooperate with ICE in  
25 what appears to be a calculated effort by Petitioner to prevent his removal. As such,  
26 Petitioner cannot state a viable constitutional claim requiring his release.

27 **C. Petitioner has not demonstrated that his removal is not substantially  
likely to occur in the reasonably foreseeable future.**

28 To be entitled to release, it is Petitioner’s burden to establish that there is no

1 likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 689.  
2 Petitioner has done nothing to meet his burden and instead relies upon the mere passage of  
3 time.

4 In *Pelich*, the Ninth Circuit held that a “detainee cannot convincingly argue that there  
5 is no significant likelihood of removal in the reasonably foreseeable future if the detainee  
6 controls the clock.” 329 F.3d at 1060. Similarly, in *Lema v. I.N.S.*, the Ninth Circuit said  
7 that when an alien refuses to cooperate fully and honestly with officials to secure travel  
8 documents from a foreign government, the alien cannot meet his burden to show there is no  
9 significant likelihood of removal in the reasonably foreseeable future. *Lema*, 341 F.3d 853,  
10 856-57 (9th Cir. 2003). The court stated that “[w]e cannot know whether an alien’s removal  
11 is a ‘remote possibility,’ until the alien makes a full and honest effort to secure travel  
12 documents.” *Id.* at 856 (quoting *Zadvydas*, 533 U.S. at 690). Indeed, “a particular alien may  
13 have a very good chance of being removed, but if that alien is refusing to cooperate fully  
14 with officials to secure travel documents, neither the INS nor a court can sensibly ascertain  
15 the alien’s chance of removal.” *Id.* at 856-57.

16 Petitioner has not established that there is no substantial likelihood of his removal being  
17 effectuated in the reasonably foreseeable future. Russia routinely issues travel document for  
18 Russian citizens, and the United States routinely removes aliens to Russia. Once Petitioner’s  
19 identity and citizenship is verified by the Russian Federation, there is no reason why  
20 Petitioner will not be granted travel documents and removed to Russia. That Petitioner has  
21 been detained for more than six months is merely the first step in the analysis, and Petitioner  
22 must do more than simply establish that he has been detained for more than six months to  
23 be entitled to release. *See Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002)  
24 *aff’d sub nom. Lema v. I.N.S.*, 341 F.3d 853 (9th Cir. 2003) (“The mere fact that six months  
25 has passed since petitioner was taken into INS custody does not satisfy his burden. While  
26 an alien’s detention will no longer be presumed to be reasonable after six months, there is  
27 nothing in *Zadvydas* which suggests that the Court must or even should assume that any  
28 detention exceeding that length of time is unreasonable. Rather, the passage of time is

1 simply the first step in the analysis. Petitioner must then provide good reason to believe that  
2 there is no significant likelihood of removal in the reasonably foreseeable future.”).

3 The delay in securing Petitioner’s travel documents arose from Petitioner’s refusal to  
4 provide any of the information to ICE necessary to submit the travel document request to  
5 the Russian Federation. Petitioner has not produced any evidence to indicate that travel  
6 documents will not issue once Russia confirms Petitioner’s identity and citizenship, that  
7 Russia has rejected the Government’s request for travel documents or is likely to do so, or  
8 that some other impediment exists to prevent his removal to Russia once his citizenship is  
9 confirmed.

10 This case is distinguishable from *Zadvydas* (removal of aliens could not be  
11 effectuated because their designated countries either refused to accept them or the United  
12 States lacked a repatriation treaty with the receiving country) and *Nadarajah v. Gonzales*,  
13 443 F.3d 1069 (9th Cir. 2006) (alien had twice been granted asylum by the Board of  
14 Immigration Appeals and afforded protection under the Convention Against Torture, but  
15 detention continued for over five years while the government appealed) because Petitioner  
16 is an alien whom the government lawfully can remove. Although more than six months have  
17 passed, this alone does not make Petitioner’s removal unlikely. Unlike the aliens in  
18 *Zadvydas* and *Nadarajah*, the Government is not at a dead-end in seeking Petitioner’s  
19 removal. Rather, efforts to remove Petitioner are continuous and ongoing, and have been  
20 delayed solely as a result of Petitioner’s refusal to cooperate with ICE’s attempts to obtain  
21 the information necessary to request travel documents from the Russian Federation.

22 Further, uncertainty as to Petitioner’s exact removal date does not warrant his  
23 release. In *Prieto-Romero v. Clark*, the Ninth Circuit declined to read *Zadvydas* and  
24 *Nadarajah* to mean that an alien’s removal is no longer “reasonably foreseeable” and his  
25 detention unauthorized by statute, whenever some degree of uncertainty exists as to when  
26 his detention will conclude. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).  
27 Petitioner remains capable of being removed, and the Government retains an interest in  
28 “assuring [his] presence at removal.” *Zadvydas*, 544 U.S. at 699.

1 **III. CONCLUSION.**

2 Petitioner states the standards, citing to *Zadvydas*, and notes that he has been detained  
3 for more than six months, but supplies no supporting facts establishing any “good reason”  
4 why his removal is not likely. Petitioner’s continued detention is due to his refusal to  
5 cooperate with ICE, and he has not met his burden to show “good reason” why his removal  
6 is not likely in the reasonably foreseeable future—he makes no showing at all. For the  
7 foregoing reasons, the Government respectfully requests that Petitioner’s Petition for Writ  
8 of Habeas Corpus be denied.

9 Respectfully submitted this 15th day of December, 2025.


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12 District of Arizona

13 *s/ Katherine R. Branch*  
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15 Assistant United States Attorney  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 15<sup>th</sup> day of December, 2025, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and served a copy of the document, via first-class mail, postage prepaid, to the following party who is not a CM/ECF registrant:

Evgenii Ivanov A   
San Luis Regional Detention Center  
P.O. Box 7710  
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*s/ Katherine R. Branch*  
U.S. Attorney’s Office