UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

EKATERINA LEKSINA	)	**CIVIL ACTION NO: 6:25-cv-01767**
	)	
VERSUS	)	**JUDGE SUMMERHAYS**
	)	
SHAD RICE, *ET AL.*	)	**MAGISTRATE JUDGE WHITEHURST**
	)	

FEDERAL RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

On November 13, 2025, Ekaterina Leksina, Petitioner, filed an application with this Court through which she seeks the issuance of a writ of *habeas corpus* directing her release from the institutional detention maintained by the Department of Homeland Security (DHS). ECF 1. According to Petitioner, her continued detention within the institutional custody of DHS is violative of her Fifth Amendment due process rights. *Petition (Pet.)* at 2-3. For the following reasons, Petitioner's application should be denied and this action dismissed.

II. THE FACTUAL BACKGROUND

Petitioner, a native and citizen of Russa, applied for admission into the United States from Mexico at the Otay Mesa, California Port of Entry. *See Pet., App'x.* A at 12, Notice and Order of Expedited Removal. Petitioner was determined to be inadmissible as she was not a citizen or national of the U.S. and she was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act (INA). *Id.* Thus, Petitioner was subject to expedited removal under INA § 235. See 8 U.S.C. § 1225. Upon inspection, Petitioner alleged and was found to have a credible fear of persecution. *See* Record of

Determination/Credible Fear Worksheet, attached as Gvmt. Ex. A. Petitioner was issued a Notice to Appear charging her as inadmissible and was placed in removal proceedings under 8 U.S.C. § 1229a. *See Pet., App'x.* A at 9, Notice to Appear. On February 28, 2025, an Immigration Judge (IJ) found Petitioner to be inadmissible under § 212(a)(7)(i)(I) of the INA and ordered her removed to Russa. *See Pet., App'x.* A at 5, Order of the Immigration Judge. In response to Petitioner's requests for relief, the IJ denied her application for asylum, but granted her application for withholding of removal under INA § 241(b)(3). *Id.* Both parties reserved their right to appeal; however, no appeals were filed, and Petitioner's removal order became final on April 1, 2025. *Id.*

Petitioner is currently detained at the South Louisiana ICE Processing Center in Basile, LA. *Pet.* at 2. Thus, Petitioner has been detained under 8 U.S.C. § 1231 pending her removal for eight months, 5 days. Based upon information and belief, DHS through its Enforcement and Removal Operations (ERO) has applied to three alternate countries for Petitioner's removal: Honduras, Guatemala, and Poland. Further, ICE conducted Post Order Custody Reviews in June and August 2025 and determined Petitioner was a flight risk, that her removal is likely to occur in the reasonably foreseeable future, and her continued detention is in the public interest. *See Pet., App'x.* B at 25 - 39, Notices to Alien of File Custody Review and Decision to Continue Detention.

III. ARGUMENT

A. Petitioner is not entitled to immediate release under *Zadvydas*[1].

Petitioner is under a final order of removal and is detained pursuant to 8 U.S.C. § 1231(a). § 1231(a)(1)(A) provides that the Attorney General has 90 days after an order of removal becomes final in which to effect an alien's removal. Although DHS has 90 days to remove an alien after he is ordered

[1] In *Clark v. Martinez*, 543 U.S. 371 (2005), the Supreme Court held that its ruling in *Zadvydas* applies equally to inadmissible aliens.

removed under § 1231 (a)(1)(A), the Supreme Court has held that § 1231 permits the detention beyond 90 days, for a period reasonably necessary to bring about that alien's removal from the United States. Pursuant to *Zadvydas*, detention for up to six months after the removal order becomes final is "presumptively reasonable." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

The Supreme Court clearly indicated that the lapse of the presumptive period does not mandate release and concluded that, "[t]o 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." *Zadvydas*, 121 S.Ct. at 2505. Conversely, detention beyond the six-month period is not presumptively unreasonable and DHS may continue to detain an alien if there is a significant likelihood of removal within the reasonably foreseeable future. *See e.g. Janvier v. INS*, 174 F.Supp.2d 430, 436, n. 10 (E.D. Va. 2001). Thus, to state a claim for relief under the *Zadvydas* decision, an alien must: 1) establish post-removal order detention more than six months at the time of the filing of his or her petition; and 2) establish good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *See e.g. Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002).

To satisfy her burden under the second prong:

> [A]n alien's claim must be supported by more than mere "speculation and conjecture." In order to shift the burden to the Government, an alien must demonstrate that "the circumstances of his status" or the existence of "particular individual barriers to his repatriation" to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future. If the alien fails to come forward with an initial offer of proof, the petition is ripe for dismissal.

Galtogbah v. Sessions, No. 6:18-CV-00880, 2019 WL 3766280, at *2 (W.D. La. June 18, 2019), *report and recommendation adopted,* No. 6:18-CV-00880, 2019 WL 3761637 (W.D. La. Aug. 8, 2019) (internal citations omitted).

In addition, inadmissible aliens, who have been determined to be either a risk to the community or unlikely to comply with the removal order, may be detained beyond the removal period. 8 U.S.C. § 1231(a)(6).

Here, Petitioner's removal order became final on April 1, 2025, when neither party filed an appeal. *See Pet., App'x.* A at 5. The instant petition was filed on November 13, 2025, just one month after the expiration of the six-month presumptively reasonable period. Petitioner has been in DHS's custody for approximately eight months since her removal order became final. Even though Petitioner's detention exceeds the presumptively reasonable six-month period, she fails to show that there is no significant likelihood of removal in the reasonably foreseeable future. *Singh v. DHS/ICE*, 771 F. Supp. 2d 372, 377 (D.N.J. 2011) ("Alien's detention of more than 305 days continued to be authorized by [8 U.S.C. § 1231] after removal order became administratively final because he alleged no facts to substantiate the conclusion that there was good reason to believe that there was no significant likelihood of his removal to India in the reasonably foreseeable future so as to require government to respond with evidence sufficient to rebut that showing."); *see also, Lakhani v. Bondi*, No. 1:25-CV-00763, 2025 WL 2811345, at *2 (W.D. La. Sept. 17, 2025), *report and recommendation adopted*, No. 1:25-CV-00763, 2025 WL 2808506 (W.D. La. Oct. 2, 2025)

Nor has Petitioner identified any "particular individual barriers to her repatriation" to Honduras, Guatemala, and Poland. *Galtogbah v. Sessions*, *supra.* In fact, Petitioner admits that she has requested to be removed to "any country except Russia". *Pet.* at 7. A grant of deferral does not guarantee the alien will be released from custody. *See* 8 C.F.R. § 208.17(b)(1)(ii), (c). Even if an alien has been granted withholding of removal, the removal order remains valid and enforceable, albeit not executable to the specific country for which the alien has demonstrated a likelihood of persecution or

torture. 8 U.S.C. § 1231(b)(2)(E); 8 C.F.R. § 1208.16(f); *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021) ("If an immigration judge grants an application for withholding of removal, he prohibits DHS from removing the alien to that particular country, not *from* the United States." (emphasis in original)). Petitioner's deferral applies only to Georgia; it does not entitle Petitioner to remain in the United States. And though Petitioner has been detained beyond the 90-day removal period in 8 U.S.C. § 1231(a)(1)(A), continued detention is authorized by 8 U.S.C. § 1231(a)(6) because Petitioner is an inadmissible alien, who has been determined to be a flight risk. *Pet., App'x.* B at 30. Since Petitioner cannot be removed to Russia, DHS must remove her to a third country. 8 U.S.C. §1231(b)(E)(vii). Thus, Petitioner fails to meet the second prong of the *Zadvydas* analysis, and her petition should be dismissed.

Petitioner is subject to an administratively final order of removal as an inadmissible alien. She has been determined to be a flight risk. A travel document for removal to Honduras, Guatemala, and Poland has been requested, and it is anticipated that DHS will receive a travel document for her removal in the reasonably foreseeable future. Therefore, the continued detention of Petitioner, pending her removal, is reasonable. *Zadvydas* demands nothing more. Moreover, Petitioner has been afforded post removal order custody reviews in June and September 2025. While Petitioner may disagree with the conclusion reached during the custody reviews, the discretionary determination to continue custody is not itself subject to judicial review. 8 U.S.C. § 1252(a)(2)(B).

It is undisputed that Petitioner entered the U.S. without valid documents for entry into the United States. She is now under a final order of removal, and her removal is pending the issuance of a travel document from a third country. Petitioner's detention does not violate due process.

B. Petitioner cannot invoke habeas to challenge the conditions of her confinement.

Petitioner incorporates numerous allegations of abuse in DHS's custody. *Pet.* at 7; *see also*, *Pet.*, *App'x.* D. However, to the extent that Petitioner invokes habeas corpus to raise constitutional challenges to her conditions of confinement and to seek release, a civil rights action, rather than a habeas action, is the proper vehicle for any such claims.

A petitioner may seek habeas relief under § 2241 if she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c). The United States Court of Appeals for the Fifth Circuit has clarified that "habeas is not available to review questions unrelated to the cause of detention." *Foster v. Prator*, 5:22-CV-01940, 2022 WL 18456945 (W.D. LA. 9/22/22), report and recommendation adopted, 2023 WL 373884 (W.D. La. 2023) (*citing Rice v. Gonzalez*, 985 F.3d 1069, 1070 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 216 (2021); *Perez v. Zook*, 3:20-CV-02092, 2022 WL 348664, at *1 (N.D. Tex. 2022), report and recommendation adopted, 2022 WL 347608 (N.D. Tex. 2022). Habeas exists solely to "grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose." *Pierre v. United States*, 525 F.2d 933, 935–36 (5th Cir. 1976).

Thus, where a prisoner challenges the conditions of her confinement or prison procedures, the proper vehicle is a civil rights action if a determination in the prisoner's favor would not automatically result in his accelerated release. *Carson v. Johnson*, 112 F.3d 818, 820-21 (5th Cir. 1997); *see also Poree v. Collins*, 866 F.3d 235, 243-44 (5th Cir. 2017) (summarizing general Fifth Circuit principles and noting circuit split as to whether conditions of confinement claims can be brought in habeas petitions); *Cook v. Hanberry*, 596 F.2d 658, 660 (5th Cir. 1979) (noting the proper remedy for unconstitutional conditions of confinement should be equitable—to correct the unlawful practices that make the conditions intolerable). *Reynoso v. Reeves Country Det. Ctr.*, 2:22-CV-00108, 2022 WL 18215908 (S.D. TX. 12/8/22) (Eighth Amendment violations and being unconstitutionally held in

segregation are civil rights claims and the proper vehicle is a civil rights suit). To the extent that Petitioner challenges the conditions of her confinement, this Court lacks jurisdiction over such claims brought in this habeas action.

C. Petitioner is not entitled to Attorney's Fees and Costs under EAJA.

Petitioner asks this Court to award her costs and reasonable attorneys' fees in this action, under the Equal Access to Justice Act, 28 U.S.C. § 2412. *Pet.* at 19. "EAJA is a limited waiver of sovereign immunity, allowing for the imposition of attorney's fees and costs against the United States in specific civil actions." *Barco v. Witte*, 65 F.4th 782, 784 (5th Cir. 2023). (*citing Ardestani v. I.N.S.*, 502 U.S. 129, 137, 112 S.Ct. 515, 116 L.Ed.2d 496 (1991)). The "threshold issue" in *Barco* was whether "EAJA expressly and unequivocally waives the United States' sovereign immunity regarding attorney's fees in immigration habeas corpus actions." *Barco*, 65 F.4th at 785. Finding that habeas corpus proceedings are not purely civil proceedings, but are "hybrid" cases, the Court concluded that EAJA's limited waiver of sovereign immunity does not extend to immigration habeas corpus actions. *Id.* Therefore, regardless of the resolution of Petitioner's substantive claims, the Court should reject her request for EAJA fees.

IV. CONCLUSION

For the foregoing reasons, Federal Respondents request that the Court deny the Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241.

Respectfully submitted,

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