UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

VADIM IGOREVICH KARGUIN,	§	
	§	Case No. 4:25-cv-05472
Petitioner,	§	
	§	
v.	§	
	§	
RAYMOND THOMPSON, Warden, *et al.*,	§	
	§	
Respondents.	§	
	§	

RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Petitioner, Vadim Igorevich Karguin, submits this response and opposition to the Government's motion for summary judgment. Respondents' motion, and the declaration filed in support of said motion, establish that they are currently detaining Petitioner with no cause and in violation of his due process rights because his removal is not reasonably foreseeable. Petitioner's continued detention is unconstitutional, and this Court should deny the motion for summary judgment and the writ of habeas corpus should issue.

I. The Post-Order Removal Period

Respondents posit that Petitioner is lawfully detained pursuant to 8 U.S.C. § 1231 and that his petition is premature as it has been less than 6 months since he was detained. (ECF No. 5 at 4-6). They cite to *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), for the presumption that post-removal-period detention of six months is reasonable

to allow the United States to effectuate removal. Thus, they allege, the Petitioner's detainment since July 21, 2025, is well within that time frame and the claim is premature at this time. (ECF No. 5 at 1). However, they cite to no authority that Petitioner *must* be detained for six months before his detention is unreasonable or unlawful.

Here, the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A) expired on September 28, 2017 or over eight years ago. That is because, the removal period is triggered by only three events under the statute: (1) the date an order of removal becomes administratively final; (2) the date of a court's final order if a court has issued a stay pending judicial review of the removal order; or (3) the date a noncitizen is released from detention or confinement that is not part of an immigration process. 8 U.S.C. § 1231(a)(1)(B). The removal period thus began and ended under the plain language of the statute 90 days after Petitioner's removal order became administratively final regardless of whether he was detained for all or none of that period. Respondents misstate Petitioner's argument about when the removal period begins and ends—as well as when the *Zadvydas* period begins and ends—by claiming he has argued he had to be *removed* by December 27, 2017. ECF No. 5 at 6. Petitioner did not and could not make such an argument. Rather, Petitioner's arguments concern the period of time he may be *detained* in order to effectuate

removal and whether removal is sufficiently foreseeable to justify his continued detention.

Respondents also argue that the presumptive period of time during which post-removal detention is reasonable only runs when a noncitizen is detained. ECF No. 5 at 5. However, that question is far from settled. *Puertas-Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *3 (W.D. Tex. Oct. 22, 2025)(noting that "it is unclear whether *Zadvydas*'s six-month period begins immediately when the removal period ends or when the challenging party is physically detained."). Here, the Petitioner was not detained when his removal order became final but there can be no doubt that the 90-day removal period has run because the statute does not require that a noncitizen be detained in order to trigger the removal period but rather provides that they should be detained *during* the period. 8 U.S.C. §§ 1231(a)(1)(B), (a)(2). If ICE did not detain Petitioner in 2017 the 90-day period still commenced and concluded in 2017.

Petitioner likewise argues that the 6-month period during which detention is presumptively reasonable has long expired. *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501 (D. N.J. June 13, 2025); *Cordon-Salguero v. Noem*, No. 25-1626-GLR, Mot. Hr'g Tr. at 33–34 (D. Md. June 23, 2025)(Dkt. No. 21)(finding that the six-month period was not tolled upon release from detention); *Farez-Espinoza v.*

Chertoff, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009)(concluding that, where the Government was aware of a noncitizen's address but failed to pursue her removal until more than 15 months after the removal order was entered, "the removal period, as well as any presumptively reasonabl[e] six-month period of removal to which the Government may have been entitled" had expired six months after the entry of the removal order). Even if the Court finds that the 6-month period has not expired, Petitioner's detention could still be found unlawful if his removal is not reasonably foreseeable. As *Zadvydas explained*, after the 90-day removal period ends, the government "may" continue to detain a noncitizen or release them under supervision. *Zadvydas*, 533 U.S. at 683. However, the Supreme Court's decision put limits on the option of continuing to detain—the detention could only continue for "a period reasonably necessary to bring about that alien's removal from the United States" and once removal becomes unlikely, it is no longer authorized. *Id.* at 689.

II. Removal is Unlikely in the Reasonably Foreseeable Future

The basic responsibility of the habeas court is to "ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. In so doing, the habeas court "should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the noncitizen's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no

longer authorized by statute." *Id.* at 699-700. "A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future." *Kane v. Mukasey*, No. CV B-08-037, 2008 WL 11393137, at *5 (S.D. Tex. Aug. 21, 2008), *superseded by*, 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008) (a new report and recommendation was entered denying the petition as moot because petitioner was deported prior to the order adopting), *R & R adopted*, 2008 WL 11393148 (S.D. Tex. Oct. 7, 2008).

Petitioner acknowledges that he has the initial burden of proof in these proceedings and notes that "because the habeas proceeding is civil in nature," he "must satisfy his burden of proof by a preponderance of the evidence." *Villanueva v. Tate*, No. CV H-25-3364, 2025 WL 2774610, at *4 (S.D. Tex. Sept. 26, 2025)(quoting *Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011); also citing *Bruce v. Estelle*, 536 F.2d 1051, 1058 (5th Cir. 1976)). Respondents argue that Petitioner has not made an initial offer of proof that his removal is unlikely. ECF No. 5 at 6-7. They characterize Petitioner's sworn statements as "conclusory assertions that are devoid of plausible, supporting factual allegations." Id. Respectfully, Respondents have mischaracterized the evidence in this matter.

It is not speculative or conclusory to state that Petitioner has no travel or repatriation documents.[1] Petitioner explained in his sworn declaration that he was given an application for such a document but was unable to read it but attempted to complete it to the best of his ability. ECF No. 1-1 at ¶ 16. The affidavit submitted by Respondents from Assistant Field Office Director ("AFOD") John D. Linscott corroborates the truth of this statement. ECF No. 5-1 at ¶ 32. If Petitioner possessed a passport or travel document, or if Respondents had been able to secure one, then he would not need to apply for one now. The truth of the statement is evident under the circumstances. It is also not speculative or conclusory to state that no other country has agreed to accept Petitioner upon removal. He has not been asked to apply for travel documents for any other country. ECF No. 1-1 at ¶ 17. Neither Petitioner nor counsel have been informed of any requests made to third countries nor did AFOD Linscott state in his affidavit that requests had been made to third countries but rather states only that the application for a travel document to Russia remains pending. ECF No. 5-1 at ¶ 32.

The authorities cited by Respondents are easily distinguishable from the facts and circumstances of this case. In *Andrade*, the petitioner relied only on "conclusory

[1] Petitioner acknowledges the recent notice filed by Respondents, indicating their readiness to execute his removal order. ECF No. 7. However, counsel for Petitioner has made a diligent effort to verify the existence of a travel document and also to confirm that he will be removed to his native country of Russia rather than a third country and has been unable to do so. Petitioner's counsel and Respondents' counsel have communicated regarding this issue and hope to have greater clarity prior to the currently scheduled hearing on December 15, 2025. For purposes of this reply, Petitioner assumes that no travel document has been secured.

statements *suggesting* that he [would] not be *immediately* removed…following the resolution of his appeals." *Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006)(emphasis added). Both *Tawfik* and *Gonzalez* involved petitioners for whom travel documents had previously been issued by the government of their home country, unlike Petitioner here. *Tawfik v. Garland*, No. CV H-24-2823, 2024 WL 4534747, at *4 (S.D. Tex. Oct. 21, 2024); *Gonzalez v. Bureau of Immigr. & Customs Enf't*, No. CIV.A. 1:03-CV-178-C, 2004 WL 839654, at *2 (N.D. Tex. Apr. 20, 2004). Finally, the petitioner in *Apau* was determined to have failed to cooperate and to have deliberately delayed his own removal while Petitioner here has done nothing of the sort. *Apau v. Ashcroft*, No. 3:02-CV-2652-D, 2003 WL 21801154, at *3 (N.D. Tex. June 17, 2003).

Turning to the affidavit relied on by Respondents, it does nothing to support their arguments in support of summary judgment. Of particular interest is that Respondents did not even ask Petitioner to complete a travel document until approximately a month and a half after detaining him. ECF No. 5-1 at ¶ 31. Moreover, AFOD Linscott notes that Petitioner "attempted to fill out a travel document request" which would appear to be an admission that Respondents are aware that Petitioner could not read the application—and was not provided with translation—and that the application was thus incomplete. Id. at ¶ 32. The attempt to fill out the travel document was on October 17, 2025 but there is no information

as to when it was actually submitted. Id. Petitioner would argue that a partially completed (and it cannot even be certain that the completed portions of the request were completed correctly as Petitioner could not read it) travel document request, pending for an indefinite period of time, does not support the conclusory assertion that there is "significant likelihood DHS would be able to execute his removal order in the imminent future." Id. at ¶ 30. Instead, the uncontested facts provided by Petitioner demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future.

III. Petitioner's Due Process Claim

Contrary to Respondents' assertions, Petitioner did not fail to show a due process violation. Instead, this would be properly characterized as a factual dispute underpinning the legal question of whether a due process violation occurred. Petitioner has sworn that he did not have and was not properly informed of the custody review required by 8 C.F.R. § 241.4(k). ECF No. ¶ 49-50; ECF No. 1-1 ¶ 3-4. Respondents submitted an affidavit attesting to the opposite. ECF No. 5-1 ¶ 30. Apart from the affidavit, Respondents did not submit a copy of the results of the custody review which was allegedly served on Petitioner, nor did they submit any documentation prepared as part of the custody review. At present, the evidence does not show that such review occurred or what factors were considered. If—as alleged

by Petitioner—they did not provide said review, then they are in violation of their own regulations.

Under the *Accardi* doctrine, "when an agency fails to follow its own procedures or regulations, that agency's actions are generally invalid." *United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260, 268 (1954). The Fifth Circuit has likewise recognized that an agency's violation of its regulations may support a procedural due process claim. *Ayala Chapa v. Bondi*, 132 F.4th 796, 799 (5th Cir. 2025) (citing *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). Here, Respondents violated regulations that were clearly put in place to protect the due process rights of individuals like Petitioner, and this violation prejudiced Petitioner as it likely prolonged his detention.

IV. Conclusion

Based on the foregoing, Petitioner asks this Court to deny the Respondents' motion for summary judgment.

Respectfully submitted,

Date: December 12, 2025

/S/ Amanda Waterhouse

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing with the Court and on Respondents via the Court's electronic filing system on December 12, 2025.

/s/ Amanda Waterhouse
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