

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Aleksandr SNETKOV,

Petitioner,

v.

Kristi Noem et al.,

Respondents.

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Case No. 5:25-cv-01761-FB

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Mr. Snetkov is likely to succeed on the merits of his petition for a writ of habeas corpus, and this Court should therefore grant his motion for a temporary restraining order and preliminary injunction.

ARGUMENT

The Court should issue a temporary restraining order and preliminary injunction ordering Mr. Snetkov's release from detention.

I. Mr. Snetkov Is Likely to Succeed on the Merits.

Petitioner is likely to succeed on the merits of his claims that there is not a significant likelihood that he will be removed from the U.S. in the reasonably foreseeable future, that his indefinite detention violates his substantive due process rights, and that the revocation of his OSUP violates 8 C.F.R. §§ 241.13(i)(2)-(3). The arguments Respondents make in their response, ECF No. 9, do not undermine the high likelihood that Mr. Snetkov will succeed on the merits.

A. The presumption that six months of post-removal-order detention is reasonable is rebuttable and, in any case, Mr. Snetkov has been detained for over six months combined.

Respondents claim that in order to prevail under *Zadvydas*, Mr. Snetkov must show "he has been detained in post-removal-order detention for six months or longer." Not so. In *Clark v. Martinez* the Supreme court clarified that "*Zadvydas* did not hold that the statute authorizes detention until it approaches constitutional limits; it held that. . . the statute should be read. . . to authorize detention only for a period consistent with the purpose of effectuating removal." 543 U.S. 371, 384 (2005).

District courts in the Fifth Circuit have correctly applied this rule. “This six-month presumption is not a bright line, however, and *Zadvydas* did not automatically authorize all detention until it reaches constitutional limits . . . Rather, habeas courts have the duty to ask whether detention has ‘exceed[ed] a period reasonably necessary to secure removal.’” *Ali v. Dep’t of Homeland Sec.*, 451 F. Supp. 3d 703, 707 (S.D. Tex. 2020) (quoting *Zadvydas*, 533 U.S. at 699-700). “Whereas the *Zadvydas* Court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional.” *Id.* at 708. *See also Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008) (“Nothing about [the *Zadvydas*] scheme supports the conclusion drawn by many courts that the presumptive legality of detention within the first six months is irrebuttable.”); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 395 (D.N.J. 2025) (“Although the Supreme Court established a six-month period of presumptively reasonable detention, it did not preclude a detainee from challenging the reasonableness of his detention before such time.”); *Medina v. Noem*, 794 F. Supp. 3d 365, 375 (D. Md. 2025) (“The reasoning in *Zadvydas* suggests that before the six-month period expires, the burdens of production and persuasion remain with a person who has been detained, to establish that removal is not reasonably foreseeable.”); *Ziaei v. Ortiz*, No. 1:25-cv-01111-MLG-KBM, ECF No. 22 (D.N.M. Dec 15, 2025). Respondents cite several cases referring to the general presumption that detention is presumptively lawful under § 1231(a)(6) for six

months, but none of these cases involved a petitioner who had already been denied travel documents by the designated country of removal.¹

Even if the Court agreed with Respondents that a challenge is not ripe if a petitioner has not been detained for six months, that argument would not help Respondents here. Mr. Snetkov has been detained for over six months and counting, because the three periods of his post-final removal order detention must be combined in the aggregate. *See Villanueva v. Tate*, No. 25-cv-03364, 2025 WL 2774610 at *10 (S.D. Tex. Sept. 26, 2025) (quoting *Chen v. Holder*, No. 14-cv-2530, 2015 WL 13236636, at *2 (W.D. La. Nov. 20, 2015) (“Surely, under the reasoning of *Zadvydas*, a series of releases and re-detentions by the government, while technically not in violation of the presumptively reasonable jurisprudential six month removal period, in essence results in an indefinite period of detention, albeit executed in successive six months intervals.”) (cleaned up)).

According to the declaration of Celestina Pena, ECF No. 8-1, Mr. Snetkov’s removal order became final on January 18, 2007. He was detained from that date to

¹ *Chance v. Napolitano*, 453 F. App’x 535, 2011 WL 6260210 (5th Cir. Dec. 15, 2011), and *Agyei-Kodie v. Holder*, 418 F. App’x 317, 2011 WL 891071 (5th Cir. Mar. 15, 2011), are one-page, unpublished cases involving pro-se petitioners that make no reference to any argument that the petitioners had been declined travel documents during previous detentions. The petitioners in *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917 (W.D. Tex. 2018), did not challenge their detention under *Zadvydas* and had not been denied travel documents by Mexico. In *Kasangaki v. Barr*, 2019 WL 13221026 (W.D. Tex. July 31, 2019), the Kenyan government had granted a travel document to the Kenyan petitioner, and so the detention was lawful under the six-month presumption outlined in *Zadvydas*. In *Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 (W.D. Tex. Aug. 12, 2025), the detention was caused by the petitioner’s delays.

June 5, 2007, when he was released on OSUP for the first time, for a total of 4.5 months. *Id.* at 2. Then, he was re-detained by ICE on March 5, 2008, and released on OSUP again on May 8, 2008, another two months. *Id.* at 3. He has been detained for over a month since his third re-detention on November 17, 2025. Combined, he has been detained for a total of 7.5 months.² As a result, the government's argument that Mr. Snetkov cannot challenge his detention until he has been detained for six months is not only erroneous but also irrelevant.

B. Mr. Snetkov is not significantly likely to be removed in the reasonably foreseeable future.

Respondents' recent filings support Mr. Snetkov's likelihood of success on the merits because they acknowledge that the Moldovan government has already declared that Mr. Snetkov is not a Moldovan citizen. *Id.* Supervisor Pena declares: "On May 16, 2007, the Embassy of Moldova issued a letter stating SNETKOV did not hold Moldovan citizenship and could not be issued travel or identification documents." *Id.* Despite this, Supervisor Pena incorrectly and improperly refers to Mr. Snetkov as a "citizen of Moldova." *Id.* at 1. Supervisor Pena's declaration contains no information indicating that there has been any change in the Moldovan government's policy regarding Mr. Snetkov, and Deportation Officer Gonzales

² Mr. Snetkov does not possess the documentation establishing the exact dates and length of time he was previously detained by ICE, and his memory of these dates is not exact. Based on his recollection, he believed that his first detention took place on or about 2005 or 2006 and lasted for six months and that his second detention took place on or about 2006 or 2007 and lasted three months. ECF No. 1 at ¶24. As a result, the Petition for a Writ of Habeas Corpus stated that Mr. Snetkov had been detained for 9 months. *Id.* Petitioner does not contest that the Pena Declaration states the correct dates and lengths of his prior detentions.

expressly denied that ICE had any reason to believe the Moldovan Embassy would reverse its prior refusal when the undersigned inquired on December 22. *See* Exh. B.

Respondents argue that “a lack of visible progress in the removal process” is not sufficient to establish a lack of significant likelihood of removal and that Mr. Snetkov “has not shown any good reason to believe that removal is unlikely.” *See* ECF No. 8 at 5-6. But Respondents’ own filing acknowledges that Mr. Snetkov has provided much more than a “lack of visible progress” on the part of the Moldovan Embassy. The embassy has already stated Mr. Snetkov is not a citizen and that it will not grant him travel documents. The next year Respondents tried and failed to procure a travel document for the second time in 2008. ECF No. 8-1 at 3. The Pena Declaration contains no assertion that the government of Moldova is now more likely to reverse its prior determination that Mr. Snetkov is not a citizen and that it will not accept him. Respondents assert that Moldova accepted 14 deportees in Fiscal Year 2024, ECF No. 8 at 6, but they have not provided any evidence that any of those individuals were non-Moldovan citizens like Mr. Snetkov. The fact that Moldova accepts those it has acknowledged are its own citizens has zero bearing on the likelihood that it would accept Mr. Snetkov, to whom it has twice before refused to issue travel documents after concluding he “does not hold Moldovan citizenship.” ECF No. 8-1 at 3.

Respondents cite a series of cases that are distinguishable for this very reason. *Ali v. Johnson*, No. 3:21– CV–00050-M, 2021 WL 4897659, at *1 (N.D. Tex. Sept. 24, 2021), involved an Indian for whom the Indian consulate *had previously verified* his

Indian citizenship. *Gonzalez v. Bureau of Immigr. & Customs Enft*, No. CIV.A. 1:03-CV-178-C, 2004 WL 839654, at *2 (N.D. Tex. Apr. 20, 2004) likewise involved a Haitian for whom “a travel document . . . had previously been obtained from Haitian authorities.” *Idowu v. Ridge*, No. 3:03-CV-1293-R, 2003 WL 21805198, at *2-4 (N.D. Tex. Aug. 4, 2003) involved a Nigerian for whom travel documents had likewise been procured by the Nigerian government. In *Nagib v. Gonzales*, No. 3:06-CV-0294-G, 2006 WL 1499682, at *2 (N.D. Tex. May 31, 2006), the Sudanese government informed the petitioner’s deportation officer “that his travel document request was still pending.” In *Boroky v. Holder*, No. 3:14-CV-2040-L-BK, 2014 WL 6809180 (N.D. Tex. Dec. 3, 2014) the petitioner had withheld information from ICE about his Iraqi citizenship and had refused to cooperate with ICE’s efforts to secure travel documents from that country. In *Thanh v. Johnson*, No. EP-15-CV-403-PRM, 2016 WL 5171779, at *4 (W.D. Tex. Mar. 11, 2016) the Vietnamese consulate had never refused to grant travel documents to the petitioner in the past and had not previously stated the petitioner was not a citizen of that country. In *Linares*, ECF No. 14, at *15-16, Judge Pitman held that a petitioner cannot win release based on a lack of likelihood of removal in the reasonably foreseeable future based solely on a pending BIA appeal, because the appeal delay was the petitioner’s doing and he had not shown the delay was “due to anything other than ordinary litigation processes.”³

³ The remaining cases Respondents cite to support their claim that Mr. Snetkov “has not shown any reason to believe that removal is unlikely” are coronavirus-related challenges to conditions of confinement. See *Nogales v. Dept. of Homeland Sec.*, No. 21-10236, 2022 WL 851738 (5th Cir. Mar. 22, 2022); *Rice v. Gonzalez*, 985 F.3d 1069,

Here, by contrast, Moldova stated in 2007 that Mr. Snetkov is not a citizen and they would not accept him. Respondents then tried to remove him to Moldova again in 2008, but the consulate refused to provide travel documents a second time. ECF No. 8-1, at 3. Supervisor Pena provides no indication that the Moldovan government will change its longstanding position vis-à-vis non-Moldovan citizens like Mr. Snetkov, and Officer Gonzales told the undersigned that ICE has not had contact with the embassy and that “the only reason they brought him in was to try again.” Exh. B. They did not, in fact, “try again” for well over a month after Mr. Snetkov was detained on November 17, 2025, and only made the new travel document request on December 22, after Mr. Snetkov filed this petition and after the Court set a briefing schedule. ECF No. 8-1 at 3. Respondents clearly have no likelihood of removing Mr. Snetkov to Moldova, and he has a high likelihood of success on the merits.

C. Respondents violated Mr. Snetkov’s Procedural Due Process Rights by revoking his OSUP without respect to the requirements of 8 C.F.R. § 241.13(i), and the appropriate remedy is release.

ICE violated Mr. Snetkov’s procedural due process rights by revoking his OSUP without reason and without providing him an opportunity to respond, as required by 8 C.F.R. § 241.13(i). The appropriate remedy for such a violation is release. “[I]ndividuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1997). Respondents issued Mr. Snetkov an OSUP after necessarily

1070 (5th Cir. 2021); *Akbar v. Barr*, SA-20-CV-01132-FB, 2021 WL 1345530 (W.D. Tex. Mar. 5, 2021).

determining that (1) he was not removable in the foreseeable future, and (2) he was not a flight risk or a danger to the community. See 8 C.F.R. § 241.4(d).

Because Mr. Snetkov possessed a liberty interest in his release, the Court must consider the following three factors to determine what process Mr. Snetkov was owed prior to his re-detention: (1) “the private interest that will be affected by the official action”; (2) “the risk of erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Elridge*, 424 U.S. 319, 335 (1976). All three factors tilt in Mr. Snetkov’s favor. His private interest in his continued release on supervision is strong. See *Morrissey*, 408 U.S. at 482. This risk of erroneous deprivation is high where ICE can revoke an OSUP without considering—or in Mr. Snetkov’s case, by disclaiming—the mandatory considerations provided by 8 C.F.R. § 241.13(i). Finally, the government’s interest in re-detaining Mr. Snetkov without respect to the requirements of 8 C.F.R. § 241.13 is low and non-existent where Mr. Snetkov is not significantly likely to be removed in the reasonably foreseeable future. Nor does it have an interest in preventing any flight or danger risks by Mr. Snetkov where it has previously determined that he presents no such risks and not provided any reason to conclude those circumstances have changed.

Respondents assert that “[e]ven if the Court were to find a procedural due process violation here, the remedy is substitute process,” citing *Mohammad v. Lynch*,

No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016). ECF No. 8 at 7. First, *Mohammad v. Lynch* entailed a challenge to delayed ninety-day and 180-day custody reviews which the government ultimately did conduct. Therefore, the court held in the footnote to which Respondents cite, “his injury has already been redressed.” *Id.* Here, the injury is ongoing and is the proximate cause for Mr. Snetkov’s unlawful detention. Had Respondents followed their own regulations or listened to Mr. Snetkov’s efforts to explain that Moldova had refused to grant him travel documents in the past, his Fifth Amendment rights would never have been violated. The remedy for unlawful detention is release, as courts outside this district have consistently held. *See* ECF No. 2 at 4-5.

“[T]he Court has flexibility in fashioning a habeas remedy[.]” *Trejo v. Warden of ERO El Paso East Montana*, --- F. Supp. 3d. ----, 2025 WL 2992187, at *11 (W.D. Tex. Oct. 24, 2025). *Trejo* involved a petitioner who, like Mr. Snetkov, challenged his re-detention on *Zadvydass* and due process grounds based on the OSUP regulations. The *Trejo* Court found that the petitioners’ removal was not significantly likely and that the government violated the OSUP regulations. *Id.* In fashioning a remedy, the Court ordered either release or a bond hearing at which the government bore the burden of proof. *Id.* Notably, the Court’s *Zadvydass* ruling was based on the fact that the governments to whom the respondents submitted travel document requests had simply not responded for several months. *Id.*, at *6. Here, Moldova has affirmatively refused to issue travel documents for Mr. Snetkov several times in the past and has confirmed that he is not a Moldovan citizen. As such, the conclusion that Moldova

will not issue Mr. Snetkov travel documents is on even firmer footing than the conclusion that the countries in *Trejo* would either sit on the requests indefinitely or eventually refuse. In such circumstances, the normal *Zadvydas* remedy of release is more appropriate than the regulatory remedy of a bond hearing and the Court should order Mr. Snetkov's immediate release.

II. Respondents Do Not Deny that Mr. Snetkov will suffer irreparable harm, the balance of equities tip in Mr. Snetkov's favor and a TRO is in the public interest .

Respondents' Response does not argue Mr. Snetkov will not suffer irreparable harm. "The loss of [constitutional] freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Opulent Life Church v. City of Holly Spring, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012). Respondents' sole argument as to equities and public interest is that "both the government and the public at large have a strong interest in the enforcement of the immigration laws." ECF No. 9 at 7. But Respondents are applying immigration laws in an unconstitutional manner to Mr. Snetkov for the reasons stated *supra*. "[A]n injunction protecting Petitioner[s]' interest in being free from unconstitutional detention is in the public interest." *Nuziard v. Minority Bus. Dev. Agency*, 676 F. Supp. 3d 473, 485 (N.D. Tex. 2023). Therefore, the remaining two *Nken* factors militate strongly in Mr. Snetkov's favor.

CONCLUSION

For the foregoing reasons, the Court should grant Petitioner's Motion for a Temporary Restraining Order and Preliminary Injunction.

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**Pro Hac Vice* pending

Certificate of Service

I certify that I filed this Reply on December 30, 2025, via the Court's CM/ECF system which will serve all counsel of record.

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