FILED
FEB 13 2026
Clerk, U.S. District Court
By: _____ Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BORIS PHILIP KASSAP
Pro Se, Petitioner

V.

CRYSTAL CARTER, BRADLEY MCNARY,
TODD LYONS, PAM BONDI,
and KRISTI NOEM
Respondents.

TRAVERSE TO RESPONDENTS' RETURN TO WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Petitioner respectfully submits this Traverse in response to the Government's opposition to his Petition for Writ of Habeas Corpus challenging his prolonged and indefinite detention by ICE. Petitioner has now been detained for more than one year (a year and four months) following a Final Order of Removal, despite his consistent cooperation with removal efforts and despite the Government's admitted inability to secure travel documents or identify any country willing to accept him.

2. The Government's Response relies on misstatements of facts, dates, material omissions, and internal contradiction to suggest that Petitioner's continued detention is justified. When the record is accurately presented, however, it demonstrates the opposite: Petitioner is stateless, multiple countries have formally refused to accept him, and ICE has no realistic prospect of effecting removal in the reasonably foreseeable future.

3. Contrary to the Government's assertions, Petitioner did not serve a prior 90-day sentence of confinement before ICE custody, did not refuse to designate a country of removal and did not engage in willful noncooperation. Rather, Petitioner who was unrepresented for substantial portion of his Immigration proceedings, repeatedly sought lawful alternatives, completed travel document requests for multiple countries, and complied with ICE's demands once those demands were clearly communicated.

4. The Immigration Judge ordered Petitioner's removal on September 13, 2024, a final order from which neither party reserved appeal. Since that date, ICE has unsuccessfully pursued removal to Russia, Canada, the Dominican Republic, and Moldova. Canada and the Dominican Republic formally refused to accept Petitioner despite his full cooperation. Moldova likewise declined, conditioning a consideration on citizenship criteria that Petitioner does not and cannot meet, a fact acknowledged in ICE's own records. Furthermore, it has been more than six (6) months since Petitioner signed Travel Document Request ("TDR") for Russia, which DHS does not provide any updates about, and it is unclear whether they have contacted Russian consulate regarding Petitioner's TDR.

5. The Government now concedes that Petitioner is stateless, yet simultaneously relies on speculative and unsupported assertion that removal remains reasonably foreseeable. At the same time, ICE acknowledges that no country has agreed to accept Petitioner, that his travel document requests remain pending without explanation, and that his post-order custody reviews have languished for months without resolution.

6. The Government further attempts to toll the Zadvydas reasonableness period by characterizing Petitioner's request for alternative options as a "recent" noncooperation, which Respondents have dated back to February

2025. Even if accepted as true which Petitioner disputes (he asked for alternative options, and signed documents to present his full cooperation), this event occurred more than a year ago and cannot justify indefinite detention where Petitioner has otherwise cooperated fully and where removal has proven impossible.

7. Under Zadvydas v. Davis, detention beyond six months after a final order of removal is presumptively unreasonable when there is no significant likelihood of removal in the reasonably foreseeable future. Here, the length of detention, the repeated refusals by foreign governments, the Government's own admissions, and the absence of any concrete removal plan establishes that continued detention violates due process.

8. For these reasons, and as set forth more fully below, the Government has failed to rebut Petitioner's showing under Zadvydas, and the Write should be granted.

II. RESPONDENTS FAIL TO REBUT PETITIONER'S ZADVYDAS SHOWING

9. Under Zadvydas, the Government must provide specific, non-speculative evidence that removal is likely in the reasonably foreseeable future. General references to ongoing efforts, pending communication, or theoretical cooperation does not satisfy this standard. Here, Respondents have offered no:

Travel Document issuance timeline
Confirmation of acceptance by any receiving country
Scheduled removal date
Evidence resolving known barriers to removal

10. Furthermore, Respondents misstate the Zadvydas burden-shifting framework. Under Zadvydas, once detention exceeds six months:

1) Petitioner must provide "good reason to believe" removal is not reasonably foreseeable
2) The burden then shifts to the Government to rebut that showing with evidence

11. Here, Petitioner has met that burden by showing:

1) No country has accepted him
2) No update or explanation regarding the country of removal (Russia), even though a TDR was signed by petitioner more than six months ago
3) Third-country inquiries have produced no results
4) DHS has provided no timeline, assurance, or concrete progress

12. Lastly, even though it has been about One Year and Four Months since Petitioner's Order of Removal became final, the length of detention is not dispositive, the likelihood of removal is. Here, removal has affirmatively failed, and detention continues with no destination, no timeline, and no meaningful prospect of success. Courts consistently reject the arguments "ICE will continue its efforts to identify alternative countries to which Petitioner can be removed" as irrelevant when practical removal barriers exist.

A. Respondents' Assertion: "Petitioner refused to designate a country of removal"

13. The record does not support Respondents' contention that Petitioner "refused" to designate a country for removal; rather, Petitioner to designated Canada but did so truthfully (stating he has no citizenship with any country), and the Immigration Judge ("IJ") then designated Russia without considering Petitioner's actual request.

14. Under 8 U.S.C. § 1231(b)(2), an alien ordered removed may designate a country to which he wants to be removed and the Attorney General shall remove the alien to the country he designated, subject to statutory limitations. When Petitioner clearly articulated a preferred destination (Canada), where he has Family ties. Respondents' characterization as a "refusal" misconstrues Petitioner's testimony. Petitioner responded honestly to the IJ's question when he was asked if he was a citizen of Canada, to which he responded that he is not a citizen of any country, but rather a " Lawful Permanent Resident of USA", since 1996, and the IJ summarily chose to designate Russia as the country of removal without further inquiry or explanation about the willingness of Russia or feasibility of such removal.

15. The Board of Immigration Appeals and federal courts have repeatedly held that an IJ must give meaningful consideration to an alien's designation and must investigate whether the designated country will accept the alien before imposing a unilateral designation. See, e.g., 8 C.F.R. § 1241.2(b)(2)(ii) (requiring inquiry into acceptance by designated country). Failure to do so may render the removal order and any ensuing continued detention unlawful under habeas review.

16. This is especially significant in prolonged detention challenged, where ongoing custody must be tethered to a realistic plan for removal: Russia is unwilling or unable to accept Petitioner, then continued detention becomes indefensible under Zadvydas v. Davis and related habeas principles.

B. Moldova TDR: Moldova says "apply for citizenship"; Government asserts Petitioner hasn't applied for a citizenship

Argument One: Moldova's position is an effective refusal absent a speculative uncertain citizenship grant

17. Moldova's statement "we wont consider accepting him unless he applies for citizenship" is not an actionable plan for removal unless DHS can show (1) Petitioner was asked to apply, (2) he is eligible, and (3) there is a realistic timeline leading to acceptance and travel document.

18. Under Zadvydas, DHS must rebut with evidence not speculation. After the detainee's showing, "the Government must respond with evidence sufficient to rebut that showing."

Argument Two: Futility: DHS's own record indicate Petitioner cannot meet Moldovan's citizenship prerequisite.

19. Respondents cite Moldova's "apply for citizenship" prerequisite while also acknowledging (DO Bradly McNary's Declaration, Respondents' Response, Exhibit 1, Page 12) that Moldova's citizenship rules require residence on Moldovan territory on June 23, 1990 and thereafter, and Petitioner entered the United States on March 29, 1990, where he has remained ever since, which would disqualify him.

20. Respondents' own evidence makes their Moldova theory untenable. If Moldova will not consider acceptance absent a citizenship application and DHS's own record reflects Petitioner cannot satisfy the residency requirement, the removal to Moldova is not "significantly likely in the reasonably foreseeable future." The law does not permit detention to continue bases on a futile prerequisite and a speculative possibility that a foreign sovereign might deport from its stated rule.

Argument Three: "has not applied for Moldovan citizenship" is not valid detention justification if DHS never requested it (and its not reasonably capable of producing removal).

21. Respondents assert: "As it remains, the Petitioner has not applied for Moldovan citizenship." Here what the Government fails to mention is that (1) Petitioner was never asked to apply for a Moldovan citizenship, (2) He was not aware of such requirement. As the record shows, Government does not assert that Petitioner refused to apply for a Moldovan citizenship, admitting that he was never asked to do so.

22. Taken together, Respondents timeline confirms, not refutes Petitioner's Zadvydas showing: multiple countries have refused acceptance despite Petitioner's cooperation and Respondents' remaining "options" depend on speculative prerequisites with no demonstrated timeline to an actual travel document or departure. After six months (here it has been about 16 months), once detainee provides good reason to believe removal is not significantly likely in the reasonably foreseeable future, the burden shifts and the Government must rebut with evidence sufficient to show removability is realistically forthcoming.

23. That standard is about real-world removability, not about whether DHS is still making calls (which in this case, even the phone calls have ceased). Where multiple countries have refused and no accepting country is on the horizon, continued detention becomes unauthorized under the post-order detention statute as construed to avoid serious constitutional concerns.

C. Refusal of Russian TDR/said USSR/wanted Canada/asked for Attorney

24. Respondents assert that Petitioner refused to cooperate in regards to obtaining a TD from Russia. Petitioner believes he did not refuse to cooperate, instead, he asked for alternative options, which ICE agreed to pursue. Petitioner asked DHS to try Canada first because he has family there and is afraid to go to Russia. On a different occasion, Petitioner asked to speak with his attorney before having to sign anything. That is not the same as "acting to prevent" removal. A Preference (or fear-based request), or requesting to speak with one's attorney is not an affirmative obstruction like hiding identity, providing false biographical info, refusing to appear for interview, or sabotaging a scheduled departure.

25. Respondents try to frame Petitioner's fear-based request as "refusal." But the removal statutes' constitutional limit turns whether removal is significantly likely in the reasonably foreseeable future not on whether Petitioner expressed fear of one destination, wanting his attorney present, or asking DHS to attempt an available third country where he has family ties.

26. Furthermore, Respondents claim that at some point they contemplated prosecution under 8 U.S.C. § 1253(a), but withdrew their prosecution because he had complied with their request. Respondents' admission that persecution was withdrawn is a concession of fail compliance. A § 1253(a) prosecution may only proceed upon willful failure of refusal to cooperation. Its withdrawal conclusively establishes that Petitioner did not obstruct removal.

D. Canada, Dominican Republic TDR, and their refusal to accept the Petitioner

27. Respondents omit that Petitioner completed the requested paperwork for both Canada and the Dominican Republic. In fact, Respondents fail to mention anywhere in their response that Petitioner had signed any forms (including Moldovan and Russian TDR). Petitioner believes this omission is due to the fact that it would show the opposite of noncooperation; it is affirmative assistance to DHS's removal efforts and supports his showing that removal is not reasonably foreseeable despite his cooperation.

E. "As recently as Feb 19, 2025 Petitioner failed to cooperate by refusing to sign travel documents to Russia."

28. "As recently as" is inaccurate and undermines respondents' narrative. February 19, 2025 is not "recent" in a case where detention has lasted more than a year (about 14 months now). Even if accepted, it has been almost a year since Feb 19, 2025.

F. DHS acknowledges Petitioner's statelessness

29. DHS says petitioner is stateless (no country recognizes him as a national for purposes of issuing travel documents), and is ordered removed to Russia, yet simultaneously references "third country of removal for Moldovan citizen." That internal inconsistency matters because it shows respondents do not have a stable fact

based removal theory, and are instead relying on labels that shift depending on litigation needs.

30. Even taking statement at face value, DHS concedes: (a) Petitioner is stateless, and (b) the U.S. State Department has not provided any third country option. That is exactly the kind of record that demonstrates removal is not "reasonably foreseeable." This contradiction undercuts DHS credibility and highlights the absence of a real destination.

31. If DHS's own records show he is not a Moldovan citizen, and he is ordered removed to Russia, DHS cannot reasonably treat "Moldova" as the operative removal country while also calling him "stateless." As a result, we are left with:

1) No settled country of removal. and
2) No identified third country, and
3) Therefore detention is continued based on speculation, not evidence, precisely what Zadvydas condemns.

G. Detention No Longer Serves Its Asserted Purpose

32. The sole permissible purpose of post-order detention is facilitation of removal. Demore v. Kim, 538 U.S. 510, 527 (2003). When removal is not reasonably foreseeable, continued detention becomes punitive, violating due process regardless of statutory authorization. "civil detention is excessive in relation to its purpose violates due process." Jackson v. Indiana, 406 U.S. 715, 738 (1972).

III. RESPONDENTS HAVE NOT REBUTTED PETITIONER'S SHOWING

33. Respondents claim of "rebutted" is solely based on ICE's continued inquiries with headquarters. On page 9 of Respondents' response, Government states: "ICE/ERO Headquarters informed ERO Kansas City that Petitioner is stateless and that the U.S. Department of State has not provided a third country of removal for Moldova citizens. On or about December 24, 2025, ERO Kansas City contacted ICE/ERO Headquarters regarding the status of Petitioner's TDR for Moldova. ICE will continue its efforts to identify alternative countries to which Petitioner can be removed."

34. Here DHS has made several crucial points clear: (1) Petitioner is stateless, (2) There are no third country options for Petitioner, (3) Even though Petitioner is ordered removed to Russia, and is not a Moldovan citizen, Government treats him as such, (4) ERO Kansas City has been following up on Moldovan TDR, which Moldova officially refused to issue several months ago. This is insufficient as a matter of law.

35. "General assertions that ICE continues to make efforts to remove an alien do not satisfy the governments' burden absent evidence of a realistic prospect of success." Abdi v. Nielsen, 287 F. Supp. 3d 327, 334 (W.D.N.Y 2018). Respondents identify no country willing to accept Petitioner, no travel documents in progress, and no anticipated timeline after 14 months post-order detention. That is not rebuttal; it is speculation. "Where the Government fails to rebut the showing, continued detention violates the statute." Zadvydas, 533 U.S. at 701.

IV. CONCLUTION

36. Petitioner has been in custody of U.S. Immigration and Customs Enforcement (ICE) since may 10, 2024. On September 13, 2024, an Immigration Judge ordered Petitioner removed to Russia. Following that order, Petitioner initially requested removal to alternative countries, including Canada and the Dominican Republic. ICE agreed to pursue those alternatives and submitted the appropriate travel document requests. Both countries, however, formally refused to accept Petitioner.

37. Thereafter, as per ICE's request, Petitioner signed a TDR for Moldova, which also declined to accept him. Ultimately, Petitioner signed a TDR for Russia, approximately eight months ago. To date, that request remains

listed as "pending," with no evidence that it has been submitted to the Russian consulate, no confirmation of receipt, no response, and no indication of any timeline for adjudication.

38. In addition, Petitioner participated in his 180-day post custody review interview on August 27, 2025, yet, almost five months later, no decision has been issued. Such an extended delay following a mandatory custody review further underscores the absence of meaningful progress toward removal and the arbitrary nature of Petitioner's continued detention.

39. ICE headquarters has acknowledged that Petitioner is stateless and that there is no identified country presently willing to accept him. The only countries ICE has relied upon are those that have already refused Petitioner or, in the case of Russia, have taken no discernible action for well beyond the presumptively reasonable six-month period recognized by the Supreme Court.

40. Respondents now assert that they will continue efforts to identify alternative countries of removal. This assertion however, comes after multiple failed removal attempts, over a year and four months of continued detention, and no concrete evidence that removal is significantly likely in the reasonably foreseeable future. "The Governments' detention authority is not limitless, even when it acts in good faith." Zadvydas, 533 U.S. at 696.

41. Under Zadvydas v. Davis, the Supreme Court held that once removal is no longer reasonably foreseeable, continued detention is no longer authorized.

42. Here, the undisputed record demonstrates repeated refusals by potential receiving countries, prolonged administrative inaction, and acknowledgement of Petitioner's statelessness. Respondents have failed to rebut Petitioner's showing with any concrete evidence of progress toward removal.

43. Courts have constituently held that speculative assertions of future removal efforts do not justify continued detention. See Clark v. Martinez, 543 U.S. 371, 386 (2005) (Extending Zadvydas protections to noncitizens): Diouf v. Napolotanos, 634 F.3d 1081, 1092 (9th Cir. 2011) ("Prolonged detention without adequate procedural protections raises serious constitutional concerns.").

44. The Constitution does not permit Petitioner's liberty to be restrained indefinitely based on hope, speculation, or administrative delays. As the Supreme Court emphasized, immigration detention is not punitive and must bear a reasonable relation to its purpose effecting removal. Zadvydas, 533 U.S. at 690.

45. Because Petitioner's removal is not significantly likely in the reasonably foreseeable future, his continued detention violates both statutory and constitutional limits.

46. Accordingly, the Court should grant the Petition for Writ of Habeas Corpus and order Petitioner's immediate release under appropriate conditions of supervision.

V. REQUEST FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that the Court:

1. Grant the Petition for Writ of Habeas Corpus;
2. Order Petitioner's immediate release from ICE custody under reasonable conditions of supervision;
3. Enjoin Respondents from continued detention absent concrete evidence of imminent removal;
4. Grant any further relief the Court deems just and proper.

VI. VERIFICATION

I BORIS KASSAP, declare under penalty of perjury under the laws of the United States that I am the Petitioner in above-entitled action; that I have read the Traverse to Respondents' Response and know the contends, therefore; and that the same is true and correct to the best of my knowledge, information, and belief.

02/10/2026

FCI Leavenworth
[redacted]

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