

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

MIKHAIL IVANOVICH KORCHAK,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-526-CDL-CHW
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER,	:	
	:	
Respondent.	:	

MOTION TO DISMISS

The Court received Petitioner’s application for habeas corpus relief (“Petition”) on December 31, 2025, following a transfer from the Northern District of Georgia. ECF No. 1. Petitioner argues that his detention has become unreasonably prolonged, presumably under *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). *Id.* On January 2, 2026, the Court ordered Respondent to respond to the Petition within twenty-one days. ECF No. 5. For the reasons explained below, the Petition should be dismissed.

BACKGROUND

Petitioner is a native of the U.S.S.R. and a citizen of Ukraine. Declaration of Deportation Officer Tartanger Stephens at ¶ 3. Petitioner was admitted to the United States on or about March 14, 1991; he adjusted his status to a legal permanent resident on July 9, 1992, retroactive to his date of admission. *Id.* at ¶ 4. On June 1, 2018, ICE/ERO encountered Petitioner at the Catoosa County Correctional Center following an arrest for Failure to Appear. *Id.* at ¶ 5. ICE/ERO issued Petitioner a notice to appear charging him

with removal pursuant to sections 237(a)(2)(A)(iii), (ii) of the Immigration and Nationality Act (“INA”) based on multiple criminal convictions, including Aggravated Burglary, Theft, and Possession of a Prohibited Weapon. *Id.*

Petitioner appeared for several hearings before the Immigration Court in Atlanta, Georgia, while in ICE/ERO custody, and on June 24, 2019, an Immigration Judge denied his applications for relief from removal and ordered him removed to Ukraine. *Id.* at ¶ 6. Petitioner did not appeal the decision. *Id.* On October 23, 2019, after attempts to obtain a travel document from Ukraine were unsuccessful, ICE/ERO released Petitioner from custody on an order of supervision (“OSUP”). *Id.* at ¶ 7. Since ICE/ERO released Petitioner from custody he has been arrested for drug possession and probation violations. *Id.* at ¶ 8. On May 30, 2025, Petitioner was encountered by ICE/ERO at the Walker County Sheriff’s Office after an arrest for driving without a license or with a revoked license, in violation of O.C.G.A. § 40-5-121. *Id.* That same day, Petitioner entered ICE/ERO custody and is currently detained at the Stewart Detention Center in Lumpkin, Georgia. *Id.*

On October 9, 2025, ICE/ERO issued a Certificate of Identity (Form I-269) to facilitate transportation to Ukraine. *Id.* at ¶ 9 & Ex. A, Form I-269. On November 6, 2025, Petitioner was manifested for removal to Ukraine with the Form I-269, and on November 15, 2025, he was transferred to Florence Staging Facility for removal to Ukraine. *Id.* at ¶ 10. But on November 18, 2025, ICE/ERO was informed that Ukraine would not permit removal with Form I-269. *Id.* at ¶ 11. ICE/ERO has continued its efforts to remove Petitioner from the United States. *Id.* at ¶ 13. Negotiations to effectuate the removal of

Petitioner and others similarly situated (i.e., U.S.S.R./Ukrainians) from the United States to Ukraine are ongoing. *Id.*

LEGAL FRAMEWORK

Since Petitioner is detained post-final order of removal, his detention is governed by 8 U.S.C. § 1231. Congress provided in § 1231(a)(1) that ICE/ERO shall remove an alien within ninety (90) days of the latest of: (1) the date the order of removal becomes administratively final; (2) if a removal is stayed pending judicial review of the removal order, the date of the reviewing court's final order; or (3) the date the alien is released from criminal confinement. *See* 8 U.S.C. § 1231(a)(1)(A)-(B). During this ninety-day time frame, known as the "removal period," detention is mandatory. *See id.* at § 1231(a)(2).

If ICE/ERO does not remove an alien within ninety days, detention may continue if it is "reasonably necessary" to effectuate removal. *See Zadvydas v. Davis*, 533 U.S. at 689; 8 U.S.C. § 1231(a)(6) (providing that an alien who is subject to mandatory detention, inadmissible, or who has been determined to be a risk to the community or a flight risk, "may be detained beyond the removal period"). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court determined that, under the Fifth Amendment, detention for six months is presumptively reasonable. 533 U.S. at 700. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701 (emphasis added); *see also* 8 C.F.R. § 241.13. Where there is no significant likelihood of removal in the reasonably foreseeable future, the alien should be released from confinement. *Id.*

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit further elaborated on the framework announced by the Supreme Court in *Zadvydas*, stating that “in order to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” 287 F.3d at 1052. Thus, the burden is on Petitioner to demonstrate: (1) post-removal order detention lasting more than six months; and (2) “evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009) (per curiam) (quoting *Akinwale*, 287 F.3d at 1051-52) (internal quotations omitted).

ARGUMENT

I. **Petitioner fails to state a claim pursuant to *Zadvydas*.**

Petitioner argues that his continued detention violates the INA. Pet. at 6. This claim should be dismissed because Petitioner fails to state a claim under *Zadvydas*. Specifically, he fails to meet his evidentiary burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. Further, even if the burden is shifted, Respondent meets his burden.

Petitioner cannot carry his burden under *Zadvydas*. He argues that he is entitled to release because he has been in detention for more than six months and his removal has not yet occurred. Pet. at 5. But Petitioner misapprehends the relevant standard, which places the initial burden of production upon the petitioner to show that removal is not significantly likely in the reasonably foreseeable future. *Akinwale*, 287 F.3d at 1051-52.

Petitioner cannot meet his *Zadvydas* burden by simply noting that his removal has not yet occurred. See *Ortiz v. Barr*, No. 20-CV-22449, 2021 WL 6280186, at *5 (S.D. Fla. Feb. 1, 2021) (“[T]he mere existence of a delay of Petitioner’s deportation is not enough for Petitioner to meet his burden.” (citations omitted)), *recommendation adopted*, 2022 WL 44632 (S.D. Fla. Jan. 5, 2022); *Ming Hui Lu v. Lynch*, No. 1:15-cv-1100, 2016 WL 375053, at *7 (E.D. Va. Jan. 29, 2016) (“[A] mere delay does not trigger the inference that an alien will not be removed in the foreseeable future.” (internal quotations and citations omitted)); *Newell v. Holder*, 983 F. Supp. 241, 248 (W.D.N.Y. 2013) (“[T]he habeas petitioner’s assertion as to the unforeseeability of removal, supported only by the mere passage of time [is] insufficient to meet the petitioner’s initial burden” (collecting cases)). Petitioner’s summary statement that he cannot be removed to Ukraine in the future is insufficient.

Petitioner argues in conclusory fashion that “it is now clear that Respondents cannot remove him.” Pet. at 5. But as courts in the Eleventh Circuit—including this Court—have recognized, such conclusory assertions are insufficient to state a claim under *Zadvydas*. See *Novikov v. Gartland*, No. 5:17-cv-164, 2018 WL 4100694, at *2 (S.D. Ga. Aug. 28, 2018), *recommendation adopted*, 2018 WL 4688733 (S.D. Ga. Sept. 28, 2018); *Gueye v. Sessions*, No. 17-62232-Civ, 2018 WL 11447946, at *4 (S.D. Fla. Jan. 24, 2018); *Rosales-Rubio v. Att’y Gen. of United States*, No. 4:17-cv-83-CDL-MSH, 2018 WL 493295, at *3 (M.D. Ga. Jan. 19, 2018), *recommendation adopted*, 2018 WL 5290094 (M.D. Ga. Feb. 8, 2018). Rather, Petitioner must provide “evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Gozo*, 309 F. App’x at 346 (internal quotations omitted) (emphasis added). Further, as this Court has

repeatedly held, the “focus [for *Zadvydas*] is on *today*[.]” *Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018). Because Petitioner provides no *evidence* to show he cannot be removed under the current circumstances, he cannot meet his burden under *Zadvydas*.

Even if Petitioner had presented evidence sufficient to shift the burden to Respondent— which he has not— Respondent meets his burden. In evaluating the present likelihood of removal, courts “must take appropriate account of the greater immigration-related expertise of the Executive Branch” and “listen with care [to] the Government’s foreign policy judgments[.]” *Zadvydas*, 533 U.S. at 700. This is particularly true “for example, [when] the status of repatriation negotiations[] are at issue[.]” *Id.* In that case, courts must “grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.” *Id.*; *see also Meskini*, 2018 WL 1321576, at *3-4.

Petitioner is in a unique situation given his birth in the U.S.S.R. and Ukrainian citizenship. But negotiations to effectuate the removal of Petitioner and others similarly situated (i.e., U.S.S.R./Ukrainians) from the United States to Ukraine are ongoing. Stephens Decl. at ¶ 13. If those negotiations are fruitful, the documentation necessary for Petitioner’s removal is likely and Petitioner can then be removed to Ukraine. District courts in the Eleventh Circuit have held that the mere delay in the procurement of a travel document is insufficient to warrant relief under *Zadvydas*. *See Novikov*, 2018 WL 4100694, at *2 (denying non-citizen’s *Zadvydas* claim where the non-citizen did “not explain how the past lack of progress in the issuance of his travel documents means that [his country of nationality] will not produce the documents in the foreseeable future”); *Linton v.*

Holder, No. 10-20145-Civ-Lenard, 2010 WL 4810842, at *4 (S.D. Fla. Oct. 4, 2010) (“[A] delay in issuance of travel documents does not, without more, establish that a petitioner’s removal will not occur in the reasonably foreseeable future, even where the detention extends beyond the presumptive 180 day (6 month) presumptively reasonable period.” (citations omitted)); accord. *Alhousseini v. Whitaker*, No. 1:18-cv-848, 2019 WL 1439905, at *3 (S.D. Ohio Apr. 1, 2019), *recommendation adopted*, 2020 WL 728273 (S.D. Ohio Feb. 13, 2020) (collecting cases). The Court should reach the same conclusion here and find that Petitioner’s current detention does not exceed the limitations set forth by *Zadvydas*.

Petitioner’s continued detention pursuant to 8 U.S.C. § 1231(a)(6) – as interpreted by *Zadvydas* – satisfies due process because there is a significant likelihood of removal within the reasonably foreseeable future. Accordingly, the Petition should be dismissed.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted this 23rd day of January, 2026.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed Respondent's Motion to Dismiss with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that, due to the time of filing, on January 26, 2026, a copy of the Motion to Dismiss will be mailed by United States Postal Service to the following non-CM/ECF participants:

Mikhail Ivanovich Korchak

Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

Respectfully submitted this 23rd day of January, 2026.

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