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MSGA-091

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

**MIKHAIL IVANOVICH KORCHAK**

A. 

**Petitioner,**

**v.**

**WARDEN, STEWART  
DENTETION CENTER**


**Respondents.**

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**Case No. 4:25-CV-526-CDL-  
CHW-28 U.S.C §§241**

**COMES NOW**, Petitioner, **MIKHAIL IVANOVICH KORCHAK**, (“Korchak”) and files his Response to Respondent’s Motion to Dismiss showing the Court the following:

**BACKGROUND**

For purposes of his Response, the Respondent shall be referred to as the (“ICE”). Contrary to ICE’s assertion Korchak is not now, nor has he ever been a citizen of Ukraine. Korchak was born on  in what was then the U.S.S.R . Korchak, accompanied by his parents and siblings lawfully immigrated to the United States on March 14, 1991.

Korchak adjusted his status to a permanent resident on July 9, 1992, retroactive to the date of his admission into the United States. Korchak’s initial encounter w

ith ICE occurred on June 1, 2018 at the Catoosa Couty Correctional Facility. At that time, Korchak was cited for removal pursuant to sections 237 (a)(2)(A) (ii) and (iii) of the Immigration

and Nationality Act (“INA”). On June 24, 2019, Korchak’s application for relief from removal was denied, and he was ordered removed to Ukraine. Korchak did not appeal this decision. The date of Korchak’s removal order should not go unnoticed. Korchak’s removal order is dated June 24, 2019. It directed that Korchak be removed to Ukraine. On June 24, 2026, it will have been seven (7) years since the removal order became final.

According to ICE the obstacle that prevents Korchak from being deported is ICE’s inability to obtain a travel document allowing Korchak to travel to Ukraine. ICE’s opposition to Korchak’s petition to be released from detention is premised on a travel document that ICE has not been able to obtain even having spent seven (7) years trying. Despite the obvious, ICE clings to the notion that this obscure travel document will be forthcoming soon. However, the Certificate of Identity attached to ICE’s motion seems to say the opposite. As it relates to Korchak, Form I-269 states clearly and unequivocally that a national passport or any form of travel document cannot be obtained for Korchak’s travel to Ukraine. ICE’s arguments notwithstanding, this pronouncement does not lend itself to an inference that a travel document for Korchak’s deportation is coming any time soon or ever for that matter. At some point this fantasy under which this operates must give way to reality.

### **LEGAL FRAMEWORK**

For purpose of this Response, Korchak concurs that the duration of his detention in the United States is governed by 8 U.S.C §1231. This code section provides cascading time periods for detention after a post final order of removal is entered. The (“removal period”). According to 8 U.S.C §1231(a)(1)(A)-(B) an alien shall be removed 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. Korchak stipulates that (i) there is a final order of removal (ii) that he did not seek judicial review of that order, and (iii) he is not in criminal confinement.

At the time he first entered ICE custody in June, 2018, Korchak had a number of criminal charges that were in varying stages of being adjudicated. Since his initial detention in June, 2018, Korchak submits that all criminal charges against him have been adjudicated and all forms of punishment resulting from those charges have been completed. This can be verified by an in camera review of the file ICE has maintained on Korchak since their initial contact with Korchak on June 1, 2018. Hence, the removal period has long since expired. Yet Korchak remains in detention at the insistence of ICE.

### **ARGUMENT**

For purposes of ICE's Motion to Dismiss, it appears that both parties agree that the framework for determining whether detention after the removal period is reasonable is governed by *Zadvydas v. Davis* 533 U.S. 678 (2001). ICE argues that a *Zadvydas* analysis places the initial burden of production upon Korchak to show that removal to Ukraine is not significantly likely in the reasonably foreseeable future. Respondent goes on to argue that Korchak has not produced any evidence to meet his burden. Contrary to Respondent's argument, the proof the Respondent claims is lacking is in ICE's file.

In its Brief, ICE correctly asserts that Korchak is a native of the U.S.S.R. However, ICE is wrong in asserting that Korchak is a citizen of Ukraine. Respondent acknowledges that Korchak was lawfully admitted into the United States on March 14, 1991. What ICE fails to consider is that

Ukraine's parliament (the Verkhovna Rada) did not adopt the Act of Declaration of Independence of Ukraine formally proclaiming the country's independence from the Soviet Union until August 24, 1991. This declaration of independence was ratified by a nationwide referendum on December 1, 1991. These are facts over which this Court can take judicial notice pursuant to Rule 201(b)(2) of the Federal Rules of Evidence.

Korchak submits that the reason he has been denied passage to Ukraine lies in the fact that he is not a Ukrainian citizen. His case is factually similar to Zadvydas. In that case, the Petitioner was born to Lithuanian parents in a displaced person camp in Germany. All attempts by ICE to deport Zadvydas failed because neither Germany nor Lithuania would accept him because he was not a citizen of their country.

In vacating the continued detention of Zadvydas, the Supreme Court interpreted 8 U.S.C. §1231(a)(C) to contain an implicit reasonable time limitation of six months, which would be subject to federal court review. In its Motion to Dismiss, ICE finds fault with Korchak's sole reliance on the six-month detention period established by the Supreme Court in Zadvydas to meet his burden that he is being unlawfully detained. This misconstrues Korchak's position. Korchak challenges his detention on the fact that ICE has been trying to deport him to Ukraine for almost seven (7) years without success and Ukraine's refusal to accept Korchak is presumably based upon Korchak not being a citizen.

This is evidence that strongly suggests that there is no significant likelihood of Korchak's removal in the reasonably foreseeable future. Now the burden shifts to ICE to show that removal is likely in the reasonably foreseeable future. Even ICE concedes that Korchak is in a unique situation given his birth in the U.S.S.R. and Korchak's citizenship status. The fallacy in ICE's argument is this unsupported assertion that Korchak is a Ukrainian citizen. ICE argues that it is in

negotiations to effectuate the removal of Petitioner and others similarly situated (i.e. U.S.S.R/ Ukrainians) from the United States to Ukraine. However, Korchak is not one of those individuals "similarly situated". The group of those "similarly situated" contemplate individuals that were born in the U.S.S.R and became Ukrainian citizens in the referendum that ratified Ukraine's Declaration of Independence. Korchak does not fall within that group. Korchak had been lawfully admitted into the United States nine (9) months before the referendum to ratify Ukraine's Declaration of Independence was held. As opposed to including Korchak in a group of individuals that self-identify as Ukrainian citizens, ICE needs to accept that Korchak has never been a Ukrainian citizen.

#### CONCLUSION

Korchak's indefinite detention in ICE custody violates his rights under the Due Process clause of the Fifth Amendment which forbids the federal government to deprive any person of life, liberty, or property without due process of law. Accordingly, Petitioner prays that his Petition for Writ of Habeas Corpus be granted and that he receives such other and further relief as the Court deems just.

Respectfully submitted this 18 day of Feb, 2026

  
MIKHAIL IVANOVICH KORCHAK/ PRO SE