

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

AZMERA KESETE

CIVIL ACTION NO. 25-1749

VS.

SECTION P

JUDGE TERRY A. DOUGHTY

BRIAN ACUNA, ET AL.

MAG. JUDGE KAYLA D. MCCLUSKY

REPORT AND RECOMMENDATION

Petitioner Azmera Kesete,¹ a detainee in the custody of the Department of Homeland Security (“DHS”) and the Bureau of Immigration and Customs Enforcement (“ICE”), petitions the Court for a writ of habeas corpus under 28 U.S.C. § 2241.² For reasons below, the Court should deny the petition.

Background

Petitioner is a citizen of Eritrea. [doc. # 1, p. 1]. Before he arrived in the United States of America, he received asylum in Germany. *Id.* at 4. However, he departed Germany and arrived in the United States on April 6, 2023. *Id.* On October 26, 2023, an immigration judge ordered Petitioner removed from the United States but granted withholding of removal to Eritrea. [doc. # 1-3, pp. 1-4]. Petitioner appealed the order to the Board of Immigration Appeals (“BIA”). On April 3, 2024, the BIA denied his appeal. [doc. # 1-1, p. 5].

¹ Petitioner’s “A-Number” is 241-136-248.

² This matter has been referred to the undersigned for review, report, and recommendation under 28 U.S.C. § 636, and the standing orders of the Court.

Petitioner filed this proceeding on November 12, 2025. [doc. # 1]. Citing *Zadvydas v. Davis*, 533 U.S. 678 (2001), he claims that there is no significant likelihood of his removal in the reasonably foreseeable future. [doc. # 1, p. 6]. Again relying on *Zadvydas*,³ he also claims that his “continued detention” violates his right to substantive due process because his detention is not narrowly tailored to serve a compelling government interest. *Id.* at 7. He argues that “[b]ecause [he] is unlikely to be removed, his continued indefinite detention violates substantive due process.” *Id.* Finally, he claims that the Government has violated his right to procedural due process because he has been denied a “meaningful opportunity to demonstrate that he should not be detained.” *Id.* at 7-8.

Respondents oppose the petition. [doc. # 15]. They argue, “ICE has been working diligently to remove Petitioner to Germany, where he had prior residency status.” [doc. # 15, p. 2]. They conclude that “Petitioner’s continued detention is lawful because his removal is reasonably foreseeable in the near future.” [doc. # 15, p. 3].

Petitioner did not file a reply.

Law and Analysis

I. Overstay in Detention

Under 8 U.S.C. § 1231(a)(1)(A), “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the ‘removal period’).” Under Section 1231(a)(6), “An alien ordered removed who is inadmissible[,] . . . removable[,] . . . or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained

³ Petitioner also cites *Kay v. Reno*, 94 F. Supp. 2d 546, 551 (M.D. Pa. 2000). [doc. # 1, p. 7].

beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).” In *Zadvydas*, 533 U.S. at 682, the Supreme Court construed Section 1231(a)(6) “to contain an implicit ‘reasonable time’ limitation, the application of which is subject to federal-court review.”

“[T]he Court construed § 1231(a)(6) to mean that an alien who has been ordered removed may not be detained beyond ‘a period reasonably necessary to secure removal,’ 533 U.S., at 699, 121 S.Ct. 2491 and it further held that six months is a presumptively reasonable period, *id.*, at 701, 121 S.Ct. 2491. After that, the Court concluded, if the alien ‘provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,’ the Government must either rebut that showing [with evidence] or release the alien.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 843 (2018) (quoting *Zadvydas*, 533 U.S. at 699).⁴ “[A]s the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Zadvydas*, 533 U.S. at 701. If removal is not reasonably foreseeable, “the alien’s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances, and the alien may no doubt be returned to custody upon a violation of those conditions.” *Id.* at 700.

“[R]eview must take appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive INS efforts to enforce this complex statute, and the Nation’s need to ‘speak with one voice’ in immigration matters.” *Id.* at 700.

⁴ “The alien bears the initial burden of proof in showing that no such likelihood of removal exists.” *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006).

Here, Respondents presented the declaration of Quincy Hodges, an Assistant Field Office Director for DHS and ICE, who declared:

6. On April 17, 2024, Petitioner was presented with a German passport application to complete and send to the German Consulate to facilitate his removal from the U.S. to Germany.
7. On April 24, 2024, Petitioner notified ERO that he would not complete any of the necessary travel document forms to facilitate his removal to Germany.
8. On April 25, 2024, Petitioner notified ERO that he had changed his mind and that he would complete the necessary German travel document forms.
9. On May 6, 2024, Petitioner completed the German passport application and provided it to ERO to send to the German Consulate. ERO sent Petitioner's passport application to the German Consulate on May 8, 2024.
10. On May 31, 2024, the German Consulate notified ERO that additional documentation and information was needed to confirm Petitioner's status and ability to return to Germany. On June 7, 2024, the German Consulate provided additional forms to ERO for Petitioner to complete. On June 13, 2024, ERO provided the additional German travel document forms to Petitioner to complete.
11. On June 28, 2024, Petitioner completed the German travel document forms. On June 30, 2024, ERO sent the completed forms to the German Consulate along with a request for an official German travel document for Petitioner.
12. ERO sent follow-up requests to the German Consulate regarding the status of Petitioner's travel document on July 10, 2024, August 21, 2024, September 17, 2024, November 21, 2024, February 11, 2025, April 24, 2025, May 21, 2025, June 11, 2025, July 14, 2025, October 29, 2025, and November 16, 2025.
13. On November 17, 2025, the German Consulate responded to ERO's last follow-up request and provided a German visa application for the Petitioner to complete. The application was presented to Petitioner for completion that same day, but Petitioner told ERO he would not sign the application or any other form that would assist in his removal from the U.S. 14. On November 24, 2025, Petitioner again refused to complete the necessary German visa application.
15. As of . . . December 12, 2025, Petitioner still has not completed the necessary travel document forms to assist in his removal from the U.S. As such, ERO has been unable to effectuate Petitioner's removal to Germany. ERO is still actively trying to remove Petitioner to Germany or another third country.

[doc. # 9-1, p. 2]. On March 18, 2026, Respondents presented Quincy Hodges' updated declaration, in which he declares:

4. On December 26, 2025, Petitioner signed his completed Application for National Visa as a returning refugee (visa application) and it was sent to the German consulate.

5. On January 5, 2026, ERO received the necessary money order for the filing fee, and ERO immediately mailed the visa application to the German consulate for review.

6. On January 27, 2026, ERO received notification that the visa application was approved. Subsequently, Petitioner needed to complete a travel document for foreigner's application (travel document), as he had lost his German passport. ERO requested a second money order for this travel document application fee that same day.

7. The travel document was placed on hold until ERO could receive the money order for the filing fee.

8. On March 12, 2026, ERO received the money order and mailed out the travel document application, that same day, to the German consulate.

9. As of today, March 16, 2026, ERO is waiting for the return of Petitioner's travel document so that they may effectuate his removal to Germany.

[doc. # 16].

Petitioner does not dispute Hodges' declarations. He has not cooperated in efforts to remove him. As above, on April 17, 2024, ICE presented him with a German passport application to facilitate his removal to Germany but, on April 24, 2024, he notified ICE that he would not sign any necessary forms to facilitate his removal to Germany. He eventually completed the passport application on May 6, 2024, and ICE sent it to the German consulate on May 8, 2024. [doc. # 15, p. 2]. Then, "when Germany provided a visa application for completion on November 17, 2025, and again on November 24, 2025, Petitioner refused to sign the necessary documents." *Id.* at 3. Thus, "ICE had not been able to obtain the necessary travel documents for Germany due to Petitioner's refusal to sign the necessary documents as required

by INA Section 241(a)(1)(C), 8 U.S.C. § 1231(a)(1)(C).” *Id.* On December 26, 2025, Petitioner signed his completed Application for National Visa as a returning refugee, and it was sent to the German consulate.

Petitioner, not ICE, prolonged his detention and diminished his likelihood of removal (at that time) by overtly thwarting his removal. *See Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003) (“[T]he detainee cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock.”) (cited with approval by *Hook v. Lynch*, 639 F. App'x 229, 230 (5th Cir. 2016) (denying a petition where the petitioner failed to cooperate with efforts to remove him)).⁵

Now, Petitioner has cooperated. Following his cooperation: (A) On January 5, 2026, ERO received the necessary money order for the filing fee, and ERO immediately mailed the visa application to the German consulate for review; (B) On January 27, 2026, ERO received notification that the visa application was approved and, subsequently, Petitioner needed to complete a travel document for foreigner’s application (travel document), as he had lost his German passport; ERO requested a second money order for this travel document application fee that same day; (C) On March 12, 2026, ERO received the money order and mailed the travel document application to the German consulate; and (D) As of March 16, 2026, ERO is waiting for the return of Petitioner’s travel document so that it may effectuate his removal to Germany. [doc. # 16].

⁵ *See also Lusanga v. Ramos*, 2019 WL 2851759, at *2 (W.D. La. 2019) (“An alien is not entitled to relief for a delay that he himself has intentionally caused by deliberately obstructing his otherwise imminent deportation; it would be inequitable to allow him to benefit from that delay.”).

Considering (i) Petitioner’s latest necessary act of cooperation on December 26, 2025, (ii) Respondents’ contentions that they are actively trying to remove Petitioner, that they have mailed a travel document application to the German consulate on March 12, 2026, and that they are awaiting the consulate’s response, and (iii) that Germany has shown willingness to accept Petitioner in the past by granting him asylum and issuing him a German Travel Document,⁶ Petitioner fails to establish that there is no significant likelihood of removal in the reasonably foreseeable future. *See Gonzalez v. Gills*, 2022 WL 1056099, at *1 (5th Cir. Apr. 8, 2022) (opining, where the petitioner impeded his removal, that the district court did not err in determining that the petitioner failed to show that there was no significant likelihood of his removal in the reasonably foreseeable future if he cooperated).^{7, 8} The Government is actively attempting to remove Petitioner, and there is little indication that it will not succeed.

⁶ [doc. # 10-1].

⁷ *See also Oladokun v. U.S. Atty. Gen.*, 479 F. App’x 895, 897 (11th Cir. 2012) (“In contrast to the petitioner in *Zadvydas*, who could not be removed because the receiving countries refused to accept him, Oladokun’s non-cooperation is the only barrier to his removal. The Department could have removed Oladokun to Nigeria, but for his misconduct at the airport.”); *Linares v. Dep’t of Homeland Sec.*, 598 F. App’x 885 (11th Cir. 2015) (reasoning, where the detainee refused to board a plane, that the petitioner could not meet his burden and that there was a significant likelihood that he would be removed “as soon as he cease[d] obstructing the government’s efforts to remove him.”); *Iwuoha v. Viator*, 2014 WL 4678860, at *3 (W.D. La. Sept. 19, 2014) (“[I]t is clear that Nigeria is willing to accept Petitioner—travel documents for Petitioner had already been issued and Petitioner was in the process of boarding the airplane bound for Nigeria when his own intentional criminal conduct intervened.”); *Sam-Kabba v. Napolitano*, 2013 WL 5960670, at *1 (W.D. La. Nov. 6, 2013).

⁸ Under 8 U.S.C. § 1231(a)(1)(C), “The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the alien’s removal subject to an order of removal.” Applying Section 1231(a)(1), the Fifth Circuit Court of Appeals reasoned in two unpublished opinions that when a detainee fails to cooperate with efforts to remove him, the “removal period” under Section 1231(a)(1)(A), is effectively tolled. *Hook*, 639 F. App’x at 230 (unpub.); *Gonzalez v. Gills*, 2022 WL 1056099, at *1 (5th Cir. Apr. 8, 2022) (unpub.). Here, the

Accordingly, Petitioner’s detention remains reasonable. He may re-urge his claim if he develops good reason to believe, in light of any changes in circumstance or new evidence—beginning with his full cooperation with efforts to remove him—that his removal is not significantly likely in the reasonably foreseeable future.⁹

II. Substantive Due Process

Petitioner claims that ICE is depriving him of his substantive due process right to liberty. [doc. # 1, p. 7]. Petitioner, however, grounds his substantive due process claim in his claim of prolonged detention under *Zadvydas*, which essentially outlined the process a removable alien detainee is due in this context. *Zadvydas*, 533 U.S. at 690 (“A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment’s Due Process Clause forbids the Government to ‘depriv[e] any person . . . of . . . liberty . . . without due process of law.’”).¹⁰ As his claim under *Zadvydas* fails, his due process claim fails. *See Linares v. Dep’t of Homeland Sec.*, 598 F. App’x 885, 887 (11th Cir. 2015) (“Llovera–Linares’s procedural and substantive due process claims were both grounded in the government’s alleged

undersigned need not determine if Petitioner’s actions tolled the removal period in Section 1231(a)(1)(A), because, regardless, he is not entitled to relief under *Zadvydas*. That said, it is worth noting that Section 1231(a)(1)(C), “evidences Congress’ intent to permit continued detention when an alien refuses to cooperate and attempts to thwart the INS’ efforts to deport him.” *Lema v. I.N.S.*, 214 F. Supp. 2d 1116 (W.D. Wash. 2002). Otherwise stated, Congress plainly declined to fault the government for failing to remove a detainee by a deadline when the detainee fails to cooperate in effecting his removal.

⁹ *See, e.g., Adefemi v. Gonzales*, 228 F. App’x 415, 416-17 (5th Cir. 2007).

¹⁰ “‘*Zadvydas* was . . . explaining that the Government’s ability to detain individuals is generally subject to the limitations imposed by the Due Process Clause.’” *Tran v. Mukasey*, 515 F.3d 478, 483 (5th Cir. 2008) (quoting *Tuan Thai v. Ashcroft*, 366 F.3d 790 (9th Cir.2004)); *see Demore v. Kim*, 538 U.S. 510, 527 (2003) (“In *Zadvydas*, the Court considered a due process challenge to detention of aliens . . .”).

violation under *Zadvydus*, and he has failed to demonstrate a violation of the law to support these claims. As such, the district court properly declined to grant Llovera–Linares's § 2241 petition”). The Court should dismiss this claim.

III. Procedural Due Process

Petitioner claims that the Government violated his right to procedural due process by denying him a “meaningful opportunity to demonstrate that he should not be detained.” [doc. # 1, pp. 7-8]. Petitioner’s claim is unclear, but he appears to argue that he has been denied a bond hearing before a “neutral arbiter.” *Id.* at 8.

First, his claim is entirely unsupported. At best, he cites three out-of-circuit district court cases¹¹ for the immaterial proposition that, in the 1990’s, ICE had a “substantial bias” “toward the continued detention of aliens, raising the risk of an erroneous deprivation to constitutionally high levels.” [doc. # 1, p. 8]. He does not cite any cases to support his claim that a failure to provide him with a neutral arbiter to review his custody status violates his right to procedural due process.

Second, when Petitioner “became subject to an administratively final removal order,” “authority for his detention then shifted to 8 U.S.C. Section 1231.” *Vetcher v. Barr*, 809 F. App’x 254, 256 (5th Cir. 2020). Under Section 1231, the Government is authorized to detain “noncitizens who have been ordered removed from the United States.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022). “During the removal period”—i.e., after “an alien is ordered removed”—“detention is mandatory” for ninety days. *Johnson v. Guzman Chavez*, 594 U.S. 523, 528 (2021) (citing 8 U.S.C. § 1231(a)(2)). Following the ninety-day mandatory

¹¹ *Phan v. Reno*, 56 F. Supp. 2d 1149, 1157 (W.D. Wash. 1999); *St. John v. McElroy*, 917 F. Supp. 243, 251 (S.D.N.Y. 1996); *Rivera v. Demore*, 199 WL 5277, *7 (N.D. Cal. Jul. 13, 1999).

detention period, “An alien ordered removed who is inadmissible under section 1182 . . . may be detained beyond the removal period” 8 U.S.C. § 1231(a)(6).

Here, the Government found that Petitioner was removable under Sections 212(a)(6)(A)(i), and 212(a)(7)(A)(i)(I). [doc. # 1-3, p. 1]. Those Sections are codified under 8 U.S.C. § 1182. Consequently, Petitioner is an “alien ordered removed who is inadmissible under section 1182” and may, therefore, “be detained beyond the removal period.” Section 1231(a)(6), “does not” require “the Government to offer detained noncitizens bond hearings after six months of detention” *Johnson*, 596 U.S. at 575; *see Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (“§ 1231, unlike § 1226, does not entitle an alien to a bond hearing before an IJ.”). Further, with respect to due process, *Zadvydas* addressed the extent to which due process demands relief in the § 1231(a) setting, concluding that relief is required only when continued detention is unreasonable.

Consequently, the Government has not and is not violating Petitioner’s right to procedural due process. *See Hernandez-Esquivel v. Castro*, 2018 WL 3097029, at *8-9 (W.D. Tex. June 22, 2018); *Martinez v. Larose*, 968 F.3d 555, 566 (6th Cir. 2020) (“The Supreme Court has had occasion to consider the constitutional implications of indefinite detention under § 1231(a). . . . [T]he Court offered us a standard through which to judge indefinite-detention cases—the *Zadvydas* standard we applied in this case. We see no cause to question the wisdom of that decision.”); *Castaneda*, 95 F. 4th at 760 (“[A] § 1231 detainee who fails the *Zadvydas* test fails to prove a due process violation.”).¹²

¹² *See also Linares v. Collins*, 2025 WL 2726549, at *5 (W.D. Tex. Aug. 12, 2025), *report and recommendation adopted*, 2025 WL 2726067 (W.D. Tex. Sept. 24, 2025) (“[T]he Supreme Court [in *Zadvydas*] set out the standard for when detention pursuant to § 1231(a)(6) violates due process: when there is no significant likelihood of removal in the reasonably foreseeable future.

The Court should dismiss this claim.

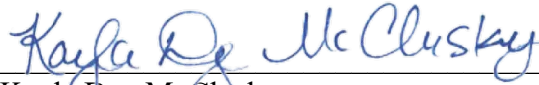
Conclusion

For the reasons above, **IT IS RECOMMENDED** that Petitioner Azmera Kesete's petition be **DISMISSED WITHOUT PREJUDICE** to Petitioner's right to re-urge his claim of prolonged detention if he has good reason to believe, in light of any changes in circumstance or new evidence, that his removal is not significantly likely in the reasonably foreseeable future.

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Rule 72(b), parties aggrieved by this recommendation have **fourteen (14) days** from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within **fourteen (14) days** after being served with a copy of any objections or response to the district judge at the time of filing.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed. R. Civ. P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. See *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

In Chambers, Monroe, Louisiana, this 31st day of March, 2026.



Kayla Dye McClusky
United States Magistrate Judge

Use of this standard is also consistent with the practice of other district courts in the Fifth Circuit.”) (citing cases).