

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

Oleg Ashmarov, A 71 276 862,
Petitioner

v.

John Ashcroft, Attorney General, Tom
Ridge, Secretary of Homeland Security,
Michael Garcia, Commissioner, Bureau of
Immigration and Customs Enforcement
(BICE), Department of Homeland Security,
Steve Farquharson, Boston District Director,
BICE, Department of Homeland Security,
Daniel Ciesco, Interim Officer in Charge,
BICE, Hartford, CT,
Respondents

No.

May 5, 2003

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Oleg Ashmarov, immigration file no. A 71 276 862, respectfully applies to this court for a Writ of Habeas Corpus to remedy his unlawful detention by Respondents. Although a removal order was entered against Mr. Ashmarov on November 21, 2001, the government has been unable to effectuate his removal. Mr. Ashmarov, who was born in Russia, lived from infancy to early adulthood in Latvia, was admitted to the United States as a refugee on August 18, 1994, and adjusted to permanent residence on April 8, 1996. On November 21, 2001, an immigration judge ordered that Mr. Ashmarov be removed to Latvia, with an alternative order of removal to Russia, based on convictions for which he served forty-five days of jail time. However, in a letter dated November 14, 2001 Latvia had denied the issuance of a travel document to Mr. Ashmarov and stated that he had no

legal status in Latvia. Russia has also failed to issue a travel document for Mr. Ashmarov, leaving him detained and effectively stateless. Mr. Ashmarov's indefinite detention violates § 241(a)(6) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1231(a)(6), as well as Mr. Ashmarov's rights to due process and equal protection under the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491 (2001).

JURISDICTION AND VENUE

1. Jurisdiction is conferred on this court by 28 U.S.C. § 2241. *See Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491 (2001). Jurisdiction is also conferred by 28 U.S.C. § 1331; 5 U.S.C. § 701 *et seq*; Art. 1, § 9, Cl. 2, the Suspension Clause of the U.S. Constitution, and the common law.

2. Venue lies within the U.S. District Court for the District of Connecticut, because Petitioner was arrested, charged, and detained in Connecticut by the INS, Petitioner's removal proceedings were held here, and Petitioner is currently detained here and is under the docket control of the BICE for the Boston District. 28 U.S.C. § 1391(e).

3. No petition for Habeas Corpus has previously been filed in any court to review the decisions and actions described in this complaint.

EXHAUSTION

4. Petitioner has exhausted his administrative remedies. The INS's denial of his request for release from custody pending removal, cannot be appealed, as 8 C.F.R. § 241.4(d) (66 Fed. Reg. 56967 (11/14/01)), no longer permits any appeal of custody decisions. *See also* 8 C.F.R. § 241.13(g)(2).

PARTIES

5. Petitioner was a permanent resident of the United States and is currently being detained by the BICE at Corrigan Correctional Institution in Uncasville, Connecticut, pending execution of his removal order of November 21, 2001.

6. Respondent John Ashcroft is the Attorney General. Respondent Tom Ridge is the Secretary of Homeland Security. Respondent Michael Garcia is the Assistant Secretary of Homeland Security, charged with direction of the Bureau of Immigration and Customs Enforcement, which includes the Detention and Removal Operations Section of the former INS. Respondent Steve Farquharson is the Boston District Director, for the Bureau of Immigration and Customs Enforcement. The Boston District includes Connecticut, where the petitioner is detained. Daniel Ciesco is the Interim Officer in Charge of the Hartford office of the Bureau of Immigration and Customs Enforcement. That office has day-to-day responsibility for Mr. Ashmarov's detention. Mr. Ashmarov was arrested, detained, charged as removable, ordered removed, and remains detained under their authority.

II. FACTS AND PROCEDURAL BACKGROUND

7. Oleg Ashmarov was born in Russia on May 18, 1973. When Mr. Ashmarov was one year old, his family moved to Latvia to avoid religious persecution. Mr. Ashmarov traveled to the U.S. under a Soviet passport, issued in Latvia, and was admitted as a refugee. On August 18, 1994, when Mr. Ashmarov arrived in the U.S., he made Erie, Pennsylvania his home. *See* Warrant for Arrest of Alien, attached Exhibit at 1. Mr.

Ashmarov received lawful permanent resident status on April 8, 1996. *See* Notice to Appear, attached Exhibit at 2.

8. While in Pennsylvania, Mr. Ashmarov earned an Associate's degree in computer networking. He had previously earned a Bachelor's degree in Latvia. As a result of his education and training, Mr. Ashmarov is certified in many areas, mainly involving computers. He is a licensed Electrician, he is A-Plus certified, he is a certified engineer, and he is a certified network administrator. Prior to his detention, Mr. Ashmarov was employed in computer networking jobs with companies such as ComNet and ITC. In his last position, with ITC in Erie, Pennsylvania, Mr. Ashmarov was earning a yearly salary of \$52,000.

A. MR. ASHMAROV'S CONVICTIONS

9. On March 18, 1999, while visiting Connecticut, Mr. Ashmarov was convicted for driving under the influence (DUI), Conn. Gen. Stat. 14-227a, and was given a 90 day sentence, execution suspended, a year of probation, and a \$500 fine. *See* Connecticut Criminal Conviction Record, attached Exhibit at 3. A few months later, on July 25, 1999, Mr. Ashmarov was charged with interfering with an officer/resisting arrest. This case was disposed of in 2001 when Mr. Ashmarov's probation on the DUI charge was revoked based on his Pennsylvania conviction. He was sentenced to 30 days in jail, concurrent, on the interfering charge, and his sentence on the DUI charge was revised to a straight sentence of 45 days of confinement. Id.

10. In Erie, Pennsylvania, on September 3, 2000, Mr. Ashmarov was arrested and pled guilty to a charge of Terroristic Threats under 18 Pa. Cons. Stat. § 2706,¹ which is classified as a misdemeanor of the first degree. *See* Notice to Appear, attached Exhibit at 2. The offense is comparable to a Connecticut Threatening charge, Conn. Gen. Stat. § 53a-62, a class A misdemeanor. Mr. Ashmarov went to the Pizza Hut where his girlfriend worked, to complain to the manager for forcing her to work extensive overtime. This was the third time Mr. Ashmarov had gone to the restaurant to complain about the scheduling problem. Mr. Ashmarov became angry and overbearing, and allegedly threatened to “destroy” the Pizza Hut if the manager continued to overwork his girlfriend. Mr. Ashmarov was arrested after the manager called the police. On April 6, 2001 Mr. Ashmarov received a suspended sentence of 6 to 23 months for his offense. *See* Pennsylvania Court of Common Pleas, Order of Parole, attached Exhibit at 4.

11. After returning to Connecticut, on May 8, 2001, Mr. Ashmarov was charged with a probation violation based on his Pennsylvania conviction, and his original probation was revoked. *See* Connecticut Criminal Conviction Record, attached Exhibit at 3. On July 23, 2001, after serving his Connecticut sentences, Mr. Ashmarov was detained by the INS. *See* Warrant for Arrest, attached Exhibit at 1. He has remained in INS/BICE custody ever since.

¹ 1- 18 Pa.C.S. §2706 - A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to: (1) commit any crime of violence with intent to terrorize another; (2) cause evacuation of a building, place of assembly or facility of public transportation; or (3) otherwise cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.

12. On November 21, 2001, in removal proceedings before an immigration judge, Mr. Ashmarov was ordered to be removed from the United States to Latvia, or in the alternative to Russia. *See* Order of Immigration Judge, attached Exhibit at 5.

B. THE INS/BICE HAS BEEN UNABLE TO EFFECT MR. ASHMAROV'S REMOVAL

13. In a letter dated November 14, 2001, The Ministry of the Interior of Latvia officially denied Mr. Ashmarov any legal status and denied the issuance of travel papers. *See* Letter from Latvian Embassy, attached Exhibit at 6.

14. BICE Detention and Removal Officer Linda Trinks confirms that her office has requested a travel document from the Russian consulate, but that the Consulate has not issued a travel document or given any indication that it intends to do so. Meeting with Linda Trinks, BICE DRO, Hartford, CT, May 1, 2003.

15. After filing several requests for release with the INS, on June 20, 2002 Mr. Ashmarov had a brief detention review meeting with a deportation officer. Contrary to 8 CFR § 241.4(h) which mandates thirty days advance notice of a custody review, Mr. Ashmarov was only given notice of this detention review the day *after* the hearing took place. *See* Notice to Alien of File Custody Review and stamped envelope, attached Exhibit at 7, 8. Mr. Ashmarov never received a custody determination decision or any further correspondence from the deportation officer after the detention review took place.

16. Mr. Ashmarov has made several attempts to expedite his removal and has requested further detention review several times. *See* Letters, attached Exhibit at 9-23. Though he has been denied deportation by Latvia, he has sent letters to Canada and Russia of his own free will. *See* Letters, attached Exhibit at 15-23. Furthermore, he has written numerous requests to various INS officials inquiring about the status of his case

and requesting action on his case. *See* Letters, attached Exhibit at 9-14. Mr. Ashmarov has also requested a copy of his files from the INS, by filing FOIA requests with the INS offices in Hartford and Boston three or four times, but so far none of his requests have been answered. *See* Letters, attached Exhibit at 24-35.

IRREPARABLE HARM

17. Mr. Ashmarov is suffering irreparable harm in that he is deprived of his liberty while he is illegally detained by the BICE.

STATEMENT OF CLAIM FOR WRIT OF HABEAS CORPUS

COUNT ONE

(Statutory claim)

18. The allegations in paragraphs 1-17, above, are repeated and incorporated here.

19. Petitioner's continued detention by the Respondents violates INA § 241(a)(6), as interpreted by *Zadvydas*. The Petitioner's ninety-day removal period provided by INA § 241(a)(6) and six-month presumptively reasonable period for continued removal efforts established in *Zadvydas* have both passed. Respondents will be unable to remove the Petitioner to Latvia, as Latvia has already denied him any legal status. It is also extremely unlikely that Respondents will be able to remove the Petitioner to Russia or any other country in the reasonably foreseeable future. Mr. Ashmarov has cooperated with the INS and BICE, and has even wrote letters on his own to facilitate deportation, yet nothing has happened. The Supreme Court held in *Zadvydas* that the continuing detention in such circumstances is unreasonable and not authorized by INA § 241.

COUNT TWO

(Substantive Due Process Claim Regarding Indefinite Detention)

20. The allegations in paragraphs 1-17, above, are repeated and incorporated here.

21. Mr. Ashmarov's continued detention violates his right to substantive due process by depriving him of his core liberty interest to be free from bodily restraint. *See Zadvydas*, 121 S.Ct. at 2498-99. The Due Process Clause requires that the deprivation of the Petitioner's liberty be narrowly tailored to serve a compelling government interest. While the Respondents would have a compelling government interest in detaining the Petitioner in order to effect his deportation, that interest does not exist if he is unlikely to be deported. *Zadvydas* interpreted INA § 241 to allow continued detention only for a period reasonably necessary to secure the alien's removal because any other reading would go beyond the government's articulated interest to effect the alien's removal. *See Zadvydas*, 121 S.Ct. at 2499.

COUNT THREE

(Procedural Due Process Claim Regarding Indefinite Detention)

22. The allegations in paragraphs 1-17, above, are repeated and incorporated here.

23. When a person faces long-term indefinite loss of liberty, as the Petitioner does, the Due Process Clause entitles him to "strong procedural protections," *Zadvydas*, 121 S.Ct. at 2499, including an opportunity to present evidence to an independent decision maker regarding whether there is reasonable likelihood of his removal in the foreseeable future and whether he is a "specially dangerous individual," *Id.*, subject to detention regardless of whether he can be removed timely. The regulations at 8 C.F.R. § 241.4

(2001) and those that preceded them do not afford such procedural protections.

Petitioner's detention therefore violates the procedural requirements of the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Oleg Ashmarov respectfully prays that this Court:

1. Issue a Writ of Habeas Corpus, directing the respondents and those acting under them to release the petitioner under an order of supervision within seven days.
2. Award attorney's fees and costs to the petitioner.
3. Grant such other and further relief as to this Court seems proper under the circumstances.

Petitioner
Oleg Ashmarov, by

Michael Boyle, his attorney
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Phil Tegeler, Legal Director
Joshua Nassi, law student intern
Connecticut Civil Liberties Union Foundation
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860-247-9823

VERIFICATION OF COMPLAINT

I, Michael J. Boyle, state under penalty of perjury that I am the attorney for the Petitioner in the foregoing Petition, and declare the facts alleged here are true, except

those made on information and belief, which I believe to be true. I have relied on documents and information provided to me by the petitioner and a brief meeting with the petitioner's Detention and Removal Officer in preparing the petition.

North Haven, CT
May 5, 2003

Michael J. Boyle ct13518
Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by hand on the office of the U.S. Attorney, New Haven, CT, and mailed first class, postage paid on May 5, 2003 to: John Ashcroft, Attorney General, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530; Tom Ridge, Secretary of Homeland Security, Washington, D.C. 20528; Michael Garcia, Assistant Secretary of Homeland Security, Washington, D.C. 20528; Steven Farquharson, District Director, BICE, JFK Federal Building, Boston, MA 02203; and Daniel Ciesco, Interim Officer in Charge, BICE, 450 Main Street, Hartford, CT 06103.

Michael Boyle

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**MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF
HABEAS CORPUS**

I. INTRODUCTION

In *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491 (2001), the Supreme Court held that six months is the presumptively reasonable period of time for the government to effect the removal of a noncitizen with a final order of removal. The Bureau of Immigration and Customs Enforcement (BICE), one of the successor agencies of the former Immigration and Naturalization Service (INS), continues to detain the petitioner, Mr. Ashmarov, more than sixteen months after his order of removal was entered.

Mr. Ashmarov, who was born in Russia, lived from infancy to early adulthood in Latvia and was admitted to the United States as a refugee on August 18, 1994. On November 21, 2001, based on convictions for which he served forty-five days of jail time, an immigration judge ordered that he be removed to Latvia, and entered an alternative order of removal to Russia. However, in a letter dated November 14, 2001

Latvia had denied the issuance of a travel document to Mr. Ashmarov and stated that he had no legal status in Latvia. Similarly, Russia has not issued a travel document since November 2001, despite requests by the BICE Detention and Removal Operations (DRO) office in Hartford, and Mr. Ashmarov's writing to the Russian Consulate.

Caught in the vise-like grip of intransigence of the BICE, Latvia and Russia, Mr. Ashmarov faces indefinite, civil detention. This is precisely the situation that the Supreme Court found unacceptable in *Zadvydas*. Accordingly, Mr. Ashmarov now is filing this habeas petition.

Pursuant to the Supreme Court's holding in *Zadvydas*, the Respondents' detention of Mr. Ashmarov violates § 241(a)(6) of the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6) because "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 2505. Therefore the Mr. Ashmarov must be released under an order of supervision as described in 8 U.S.C. § 1231(a)(3). *Id.* at 2505.

II. FACTS AND PROCEDURAL BACKGROUND

This section is identical to the corresponding section of the petition.

Oleg Ashmarov was born in Russia on May 18, 1973. When Mr. Ashmarov was one year old, his family moved to Latvia to avoid religious persecution. Mr. Ashmarov traveled to the U.S. under a Soviet passport, issued in Latvia, and was admitted as a refugee. On August 18, 1994, when Mr. Ashmarov arrived in the U.S., he made Erie, Pennsylvania his home. *See* Warrant for Arrest of Alien, attached Exhibit at 1. Mr. Ashmarov received lawful permanent resident status on April 8, 1996. *See* Notice to Appear, attached Exhibit at 2.

While in Pennsylvania, Mr. Ashmarov earned an Associate's degree in computer networking. He had previously earned a Bachelor's degree in Latvia. As a result of his education and training, Mr. Ashmarov is certified in many areas, mainly involving computers. He is a licensed Electrician, he is A-Plus certified, he is a certified engineer, and he is a certified network administrator. Prior to his detention, Mr. Ashmarov was employed in computer networking jobs with companies such as ComNet and ITC. In his last position, with ITC in Erie, Pennsylvania, Mr. Ashmarov was earning a yearly salary of \$52,000.

A. MR. ASHMAROV'S CONVICTIONS

On March 18, 1999, while visiting Connecticut, Mr. Ashmarov was convicted for driving under the influence (DUI), Conn. Gen. Stat. 14-227a, and was given a ninety day sentence, execution suspended, a year of probation, and a \$500 fine. *See* Connecticut Criminal Conviction Record, attached Exhibit at 3. A few months later, on July 25, 1999, Mr. Ashmarov was charged with interfering with an officer/resisting arrest. This case was disposed of in 2001 when Mr. Ashmarov's probation on the DUI charge was revoked based on his Pennsylvania conviction. He was sentenced to 30 days in jail, concurrent, on the interfering charge, and his sentence on the DUI charge was revised to a straight sentence of 45 days of confinement. *Id.*

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After returning to Connecticut, on May 8, 2001, Mr. Ashmarov was charged with a probation violation based on his Pennsylvania conviction, and his original probation was revoked. *See* Connecticut Criminal Conviction Record, attached Exhibit at 3. On July 23, 2001, after serving his Connecticut sentences, Mr. Ashmarov was detained by the INS. *See* Warrant for Arrest, attached Exhibit at 1. He has remained in INS/BICE custody ever since.

On November 21, 2001, in removal proceedings before an immigration judge, Mr. Ashmarov was ordered to be removed from the United States to Latvia, or in the alternative to Russia. *See* Order of Immigration Judge, attached Exhibit at 5.

cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.

B. THE INS/BICE HAS BEEN UNABLE TO EFFECT MR. ASHMAROV'S REMOVAL

In a letter dated November 14, 2001, The Ministry of the Interior of Latvia officially denied Mr. Ashmarov any legal status and denied the issuance of travel papers. *See* Letter from Latvian Embassy, attached Exhibit at 6.

24. BICE Detention and Removal Officer Linda Trinks confirms that her office has requested a travel document from the Russian consulate, but that the Consulate has not issued a travel document or given any indication that it intends to do so. Meeting with Linda Trinks, BICE DRO, Hartford, CT, May 1, 2003.

After filing several requests for release with the INS, on June 20, 2002 Mr. Ashmarov had a brief detention review meeting with a deportation officer. Contrary to 8 CFR § 241.4(h) which mandates thirty days advance notice of a custody review, Mr. Ashmarov was only given notice of this detention review the day *after* the hearing took place. *See* Notice to Alien of File Custody Review and stamped envelope, attached Exhibit at 7, 8. Mr. Ashmarov never received a custody determination decision or any further correspondence from the deportation officer after the detention review took place.

Mr. Ashmarov has made several attempts to expedite his removal and has requested further detention review several times. *See* Letters, attached Exhibit at 9-23. Though he has been denied deportation by Latvia, he has sent letters to Canada and Russia of his own free will. *See* Letters, attached Exhibit at 15-23. Furthermore, he has written numerous requests to various INS officials inquiring about the status of his case and requesting action on his case. *See* Letters, attached Exhibit at 9-14. Mr. Ashmarov has also requested a copy of his files from the INS, by filing FOIA requests with the INS

offices in Hartford and Boston three or four times, but so far none of his requests have been answered. *See* Letters, attached Exhibit at 24-35.

III. ARGUMENT

A. THE COURT HAS JURISDICTION OVER THE CASE

Pursuant to 28 U.S.C. § 2241(c)(3), this court has jurisdiction to determine whether Petitioner’s detention violated the laws of the United States. *See Zadvydas*, 121 S.Ct. at 2497-2498. Specifically, this court has the authority to determine “whether a set of particular circumstances amounts to detention within, or beyond, a period reasonably necessary to secure removal...” and thus whether of not it is statutorily authorized. *Id.* at 2504.

B. THE INDEFINITE DETENTION OF THE PETITIONER VIOLATES THE SUPREME COURT’S DECISION IN ZADVYDAS V. DAVIS

1. *Zadvydas* strictly limits post-final order detention.

In *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491 (2001), the Supreme Court held that INA § 241, 8 U.S.C. § 1231, implicitly limits detention of a non-citizen with a final order of removal to a period reasonably necessary to execute the non-citizen’s removal, which is normally six months. The *Zadvydas* court held that indefinite detention raises serious constitutional questions. *Id.* at 666-667. Freedom from imprisonment is a core liberty interest protected by the Due Process Clause of the Constitution. *See Foucha v. Louisiana*, 504 U.S. 71, 80, 118 L. Ed. 2d 437, 112 S. Ct. 1780 (1992). In civil immigration proceedings there must be a “strong special justification” combined with strong procedural safeguards to justify ongoing detention. *Zadvydas*, at 667. The Court

noted “obvious” constitutional problems raised by allowing potentially indefinite detention to be decided in administrative proceedings. *Id.* at 668. Finally, the *Zadvydas* Court held that non-citizens with final orders of removal should only be detained while “there is a significant likelihood of removal in the reasonably foreseeable future,” normally six months. *Id.* at 674-674. The Court noted that, “for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the “reasonably foreseeable future” conversely would have to shrink.” *Id.* at 674.

2. The government’s detention of Mr. Ashmarov violates the limits on post-final order detention set by the *Zadvydas* Court.

a. Mr. Ashmarov is not likely to be removed in the foreseeable future.

The BICE has detained Mr. Ashmarov for well beyond the limits of post-order detention discussed by the Supreme Court in *Zadvydas*, and does not claim that Mr. Ashmarov is likely to be removed in the foreseeable future. The letter denying Mr. Ashmarov’s citizenship and travel papers from Latvia is dated November 14, 2001, before his removal was ordered on November 21, 2001. Thus, from the time that the immigration judge ordered his removal, there has not been a foreseeable likelihood of removal.

If there were a likelihood of removal at all, it would have to have been to the alternative removal location, Russia. However, the likelihood of removal to Russia has severely diminished over time. The likelihood of removal in the reasonably foreseeable future continues to decrease with the passage of time. Mr. Ashmarov has not only attempted to expedite the removal process by cooperating with the INS and BICE, but he

has also pursued removal on his own, by writing to the Russian Republic Consulate and Canadian Government, to no avail.

The BICE has been unable to effect Mr. Ashmarov's removal over the sixteen months that he has been detained. Removal to Latvia was unforeseeable from the moment the decision was entered, and as time passes, it has become unreasonable to expect that Russia will agree to Mr. Ashmarov's removal in the foreseeable future. While the BICE has refused to acknowledge its inability to remove Mr. Ashmarov by releasing him, release is what the Supreme Court has mandated where removal in the near future is not foreseeable.

Mr. Ashmarov suffers increasing harm as a result of his indefinite detention. Mr. Ashmarov has valuable computer and electrical skills that should fit him to be a productive member of today's computer-based society, but these skills are being wasted as his indefinite civil immigration detention has taken over his life. During each month that Mr. Ashmarov has passed in detention, the employment market has tightened, potentially hindering his ability to smoothly reenter the job market. Similarly, each month that passes increases Mr. Ashmarov's estrangement from his family and loved ones. Rather than completing his forty-five day sentence and having the opportunity to rehabilitate himself and return to normal life, Mr. Ashmarov is trapped in a Connecticut state prison, far from family or friends, and ineligible for most rehabilitation programs because of his status as an INS room-and-board detainee.

The BICE has been unable to obtain a travel document for Mr. Ashmarov in over sixteen months because Russia does not readily cooperate in arranging for removal of its nationals, especially when those nationals, like Mr. Ashmarov, appear to have a closer

connection to an independent, former Soviet republic (Latvia in this case) than to Russia itself. Mr. Ashmarov left Russia when he was one year old, was granted refugee status from Latvia, and has never returned to Russia for any significant period of time.

b. Mr. Ashmarov has suffered repeated violations of his due process rights

The *Zadvydas* Court noted potential constitutional problems raised by allowing an administrative agency largely unfettered control over custody decisions. *Zadvydas*, 533 U.S. at 668. The facts of this case underscore those concerns. The BICE officers who are directly responsible for Mr. Ashmarov's detention have repeatedly failed to acknowledge or respond to his requests to review his case. They did not comply with the notice requirements regarding the custody review, and only informed him of his custody review meeting *after* it occurred, thus limiting his ability to meaningfully participate in the process. Furthermore, there is an apparent conflict in the BICE's roles as jailer, travel facilitator, and release evaluator. In this case it appears that the BICE has succumbed to the temptation to paper over difficulties in obtaining travel documents for an effectively stateless former resident of a former Soviet republic by treating him as if his removal is imminent, when it clearly is not.

IV. CONCLUSION

The BICE has violated INA § 241, 8 U.S.C. §1231, as interpreted by the Supreme Court in *Zadvydas*. It has denied Mr. Ashmarov his constitutional right to be free of bodily restraint and by means of a procedure that denies him procedural due process. Since the *Zadvydas* Court held that detention beyond the removal period must be based on a reasonable likelihood of removal in the foreseeable future, absent a reasonable

likelihood of removing Mr. Ashmarov promptly there is no lawful basis for continuing to detain him. For all these reasons, the court should grant the writ and order that Mr. Ashmarov be released on an order of supervision within seven days of its decision.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by hand on the office of the U.S. Attorney, New Haven, CT, and mailed first class, postage paid on May 5, 2003 to: John Ashcroft, Attorney General, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530; Tom Ridge, Secretary of Homeland Security, Washington, D.C. 20528; Michael Garcia, Assistant Secretary of Homeland Security, Washington, D.C. 20528; Steven Farquharson, District Director, BICE, JFK Federal Building, Boston, MA 02203; and Daniel Ciesco, Interim Officer in Charge, BICE, 450 Main Street, Hartford, CT 06103.

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MOTION FOR ORDER TO SHOW CAUSE

The petitioner, Oleg Ashmarov, moves this Court for an Order requiring the respondents to appear before this Court at such time and place as this Court may set, to show cause why relief should not be issued as prayed for.

The petitioner is suffering irreparable harm in that he is indefinitely and illegally detained by the INS. Mr. Ashmarov's detention infringes his fundamental liberty interest in being free from physical restraint. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). If his claims are not reviewed promptly, he will suffer irreparable harm because he will never be able to obtain correction of the respondents' misconduct and errors of law.

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860-247-9823

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by hand on the office of the U.S. Attorney, New Haven, CT, and mailed first class, postage paid on May 5, 2003 to: John Ashcroft, Attorney General, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530; Tom Ridge, Secretary of Homeland Security, Washington, D.C. 20528; Michael Garcia, Assistant Secretary of Homeland Security, Washington, D.C. 20528; Steven Farquharson, District Director, BICE, JFK Federal Building, Boston, MA 02203; and Daniel Ciesco, Interim Officer in Charge, BICE, 450 Main Street, Hartford, CT 06103.

Michael Boyle

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

Oleg Ashmarov, A-71-276-862,
Petitioner

v.

John Ashcroft, Attorney General, Tom Ridge,
Secretary of Homeland Security, Michael
Garcia, Commissioner, Bureau of
Immigration and Customs Enforcement
(BICE), Department of Homeland Security,
Steve Farquharson, Boston District Director,
BICE, Department of Homeland Security,
Daniel Ciesco, Interim Officer in Charge,
BICE, Hartford, CT,
Respondents

No.

May 5, 2003

ORDER TO SHOW CAUSE

Good cause appearing therefore and upon reading the verified petition and the petitioner's memorandum of law in support of the petition for a writ of habeas corpus, all of which are filed herewith,

It is hereby ordered that the respondents, file an answer to the petition with this Court on _____, 2003 to show cause why a writ of habeas corpus should not be issued, as is prayed for, and it is further

ordered, that the petitioner file a reply with this Court by _____, 2003.

Done and ordered at _____, this ____ day of _____ 2003.

United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

Oleg Ashmarov, A-71-276-862,
Petitioner

v.

John Ashcroft, Attorney General, Tom Ridge,
Secretary of Homeland Security, Michael Garcia,
Commissioner, Bureau of Immigration and
Customs Enforcement (BICE), Department of
Homeland Security, Steve Farquharson, Boston
District Director, BICE, Department of Homeland
Security, Daniel Ciesco, Interim Officer in Charge,
BICE, Hartford, CT,

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No.

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**EXHIBIT IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS**

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Michael Boyle