

DISTRICT JUDGE JAMAL N. WHITEHEAD
MAGISTRATE JUDGE THERESA L. FRICKE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SERGEY P. KAZAKOV,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

No. CV25-352-JNW-TLF

SERGEY KAZAKOV'S RESPONSE
TO RESPONDENTS' MOTION TO
DISMISS

Sergei Kazakov, through counsel, respectfully responds to ICE's motion to dismiss. Because undisputed evidence shows that Russia will not grant Mr. Kazakov a travel document in the reasonably foreseeable future, the Court should grant his petition and order ICE to release Mr. Kazakov on appropriate conditions.

I. BACKGROUND

The following seems undisputed: Mr. Kazakov was born in the Soviet Union and entered the United States as a refugee in approximately 2002. An immigration judge ordered him removed to the Russian Federation in March of 2024. Dkt. 13-1 at 2. He does not have a Russian passport or other evidence of Russian citizenship.

After the immigration judge ordered deportation, ICE exchanged some preliminary information about Mr. Kazakov with Russia. Communications with Russia ended in September 2024. Despite "actively" working to obtain a travel document, ICE

1 has had no contact with Russia about Mr. Kazakov in more than eight months. Dkt 12
2 at 2.

3 Mr. Kazakov thus has been imprisoned for fourteen months since he was ordered
4 removed. In that time, Russia has not interviewed Mr. Kazakov or given any indication
5 that it recognizes him as a citizen of that country. *See* Dkt 12. This intransigence is
6 entirely predictable. In September 2024, six months after Mr. Kazakov was ordered
7 removed, ICE disclosed that the United States government has designated Russia an
8 “uncooperative country” because it does not cooperate in the return of its nationals. *See*
9 Ex. 1 (explaining that countries designated “uncooperative” do not conduct interviews,
10 issue travel documents in a timely manner, or accept the physical return of their
11 nationals by scheduled commercial or charter flights consistent with ICE and/or foreign
12 government removal guidelines.). As one measure of Russia’s recalcitrance, ICE
13 records show that Russia accepted 464 people for removal in 2024, *see* FY 2024 | ICE
14 Annual Report¹ at 101, leaving at least 3,500 on the non-detained docket awaiting
15 removal, Ex. 1, and 1,300 in detention with final removal orders. *See* FY 2024 | ICE
16 Annual Report at Fig. 15. In other words, fewer than 10% of people with deportation
17 orders to Russia are removed to that country. And even that small percentage is an
18 outlier: 2024 saw a far higher number of removals to Russia than in prior years. *Id.* at
19 101.²

20 II. DISCUSSION

21 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the U.S. Supreme Court rejected the
22 government’s claimed authority to imprison forever people who had been ordered
23 deported and instead concluded that the legality of prolonged detention is subject to a

24
25 ¹ Available at: <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>

26 ² Information about how many people have been deported to Russia in 2025 is not
publicly available, but if the Court may choose to order ICE to provide that
information.

1 sliding scale. The government has six months to effectuate removal without Court
2 oversight. *Id.* at 701. After that time, a federal court should order the petitioner released
3 on appropriate conditions unless there is “good reason to believe” that removal will
4 occur in the “reasonably foreseeable future.” *Id.* As the petitioner’s detention grows
5 longer, what counts as the “reasonably foreseeable future” correspondingly shrinks. *Id.*
6 *See also D’Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 406 (W.D.N.Y. 2009).

7 *Zadvydas* also rejected the government’s insistence that courts should accept
8 unquestioningly the government’s belief about whether removal was “significantly
9 likely in the reasonably foreseeable future.” *See also id.* (“The Government seems to
10 argue that . . . a federal habeas court would have to accept the Government’s view about
11 whether the implicit statutory limitation is satisfied in a particular case, conducting little
12 or no independent review of the matter. In our view, that is not so.”). Indeed, the Court
13 admonished district courts not to “abdicat[e] their legal responsibility to review the
14 lawfulness of an alien’s continued detention.” *Id.* When exercising that “legal
15 responsibility,” courts should consider whether the government has credibly explained
16 the delay. *See Lema v. U.S. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002)
17 (“The continuing failure of a destination country to respond to a request for travel
18 documents may provide the Court with ‘good reason to believe’ that deportation is not
19 [significantly] likely in the reasonably foreseeable future . . . where the destination
20 country’s lack of response is combined with the INS’ inability to explain the silence
21 and the absence of any indication that the situation may change.”).

22 The official recognition that Russia does not cooperate with deportations of its
23 citizens, Ex. 1, suffices to show “good reason to believe” that Mr. Kazakov’s removal is
24 not significantly likely to occur in the reasonably foreseeable future. After all, he has
25 been imprisoned for a year, has not yet been interviewed or determined to be a Russian
26 citizen, and Russia has not communicated with ICE in more than eight months. As

1 reflected by the many people with removal orders who remain on the non-detained
2 docket, these facts would have been sufficient at any other point in the last two decades
3 for ICE, following *Zadvydas*, to release Mr. Kazakov on appropriate conditions.

4 For the foreseeable future, however, the responsibility of “review[ing] the
5 lawfulness of [Mr. Kazakov’s] continued detention” must fall to the Court. In
6 exercising that responsibility here, the Court should consider that ICE’s insistence that
7 Mr. Kazakov’s application for travel documents remains pending, *see* dkt. 10 at 6, is
8 meaningless if, as ICE’s own publications make clear, Russia does not meaningfully
9 process such applications. That ICE is “actively seeking” a travel document, dkt 11 at 1,
10 but has made no progress in 14 months also proves that removal is not significantly
11 likely. *See Singh v. Whitaker*, 362 F. Supp. 3d 93, 101–02 (W.D.N.Y. 2019) (“[I]f DHS
12 has no idea of when it might reasonably expect Singh to be repatriated, this Court
13 certainly cannot conclude that his removal is likely to occur—or even that it might
14 occur—in the reasonably foreseeable future.”) (internal citations omitted). And, of
15 course, that Mr. Kazakov has been detained for more than a year means that the
16 “reasonably foreseeable future” has shrunk. Even if the Court concludes, as ICE
17 “believe[s],” that Mr. Kazakov is likely to be removed “ultimately,” Dkt. 12 at 3, there
18 is not good reason to believe any removal will occur within the reduced period
19 constituting the “foreseeable future.”

20 **III. CONCLUSION**

21 Mr. Kazakov does not need to prove he will not be removed eventually, only that
22 there is not “good reason” to believe his removal is “substantially likely” in the
23 “reasonably foreseeable future.” *See D’Alessandro v. Mukasey*, 628 F. Supp. 2d 368,
24 404 (W.D.N.Y. 2009) (“[T]he burden upon the detainee is not to ‘demonstrate’ no
25 reasonably foreseeable, significant likelihood of removal or ‘show that his detention is
26 indefinite . . .’ Rather, the detainee need only provide ‘good reason to believe’ that

1 removal is not significantly likely in the reasonably foreseeable future.). Considering
2 the undisputed evidence about federal respondents' inability to obtain a travel document
3 and the undisputed evidence that Russia does not cooperate with ICE by issuing travel
4 documents in a timely manner, Mr. Kazakov more than meets his burden. The Court
5 should grant his petition and order his release on conditions.

6 DATED this 21st day of May 2025.

7 Respectfully submitted,

8 *s/ Gregory Murphy*
9 Assistant Federal Public Defender
10 Attorney for Sergey Kazakov

11 I certify this response contains 1,178 words in compliance with the Local Civil Rules.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26