

JON M. SANDS
Federal Public Defender
KEITH J. HILZENDEGER #023685
Assistant Federal Public Defender
250 North 7th Avenue, Suite 600
Phoenix, Arizona 85007
(602) 382-2700 voice
keith_hilzendeger@fd.org
Attorneys for Petitioner Ishmuratov

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Vladislav Ishmuratov,

Petitioner,

vs.

David R. Rivas, Warden, et al.,

Respondents.

No. 2:25-cv-1366-PHX-JAT (ESW)

**Reply in Support of Motion for Limited
Discovery in Support of Petition for a
Writ of Habeas Corpus and Motion for a
Preliminary Injunction**

The crux of the government’s argument against granting discovery is easy to grasp. Because Mr. Ishmuratov was born in Russia, the government says, the Russian Federation *certainly* will issue him travel documents necessary for him to be deported (and never mind that it has refused to do so when ICE asked for those documents twice before). Mr. Ishmuratov contends that Russia refuses to recognize him as a citizen, and that is why he cannot obtain a Russian passport or other travel documents. The government counters that the “clear and undisputed facts establish that he is indeed a native and citizen of Russia.” (Dkt. #29 at 1) But the facts are hardly undisputed. Indeed, the government persuaded Mr. Ishmuratov to agree to let it remove those facts from the record in this case—yet continues to rely on those documents in opposing his discovery request. And, with respect to those documents that the government has already shared with him, Mr. Ishmuratov vigorously disputes that they say what the government says they say.

First, as to the government’s withdrawing the supporting facts from the record: Mr. Ishmuratov filed this petition on April 24, 2025. (Dkt. #1) On May 9, the government filed a response (Dkt. #15), to which it attached certain documents as exhibits (Dkt. #15-2). Those

documents were: (1) a passport issued to a 7-year-old Vladislav Ishmuratov bearing the seal of the Union of Soviet Socialist Republics on April 28, 1995; (2) the visa issued by the U.S. Embassy in Moscow on June 14, 1995, which describes his nationality as “RUS” and on the basis of which he was allowed entry into the United States; (3) copies of Mr. Ishmuratov’s original Russian-language birth certificate and a certified translation thereof, reflecting that he was born on May 19, 1988, in the city of Sverdlovsk, in the Russian S.S.R.; (4) a removal order issued by an immigration judge on December 6, 2017, that lists Russia as the country designated for removal; (5) an order of supervision issued on August 20, 2018; (6) Mr. Ishmuratov’s criminal history; (7) further orders of supervision issued on November 8, 2019; January 29, 2020; December 14, 2020; February 25, 2021; and August 16, 2021; and (8) the declaration of Osvaldo Flores, a supervisory detention and deportation officer stationed at the Otay Mesa Detention Center in San Diego, California. But then, owing to the need to “correct misstatements of law in” its response, the government withdrew (with Mr. Ishmuratov’s consent) both the response filed on May 9 and the accompanying exhibits. Now the only supporting documentation on which the government’s answer relies is Mr. Flores’s declaration. (*Compare* Dkt. #17 *with* Dkt. #25-1) At the same time, the government says in response to Mr. Ishmuratov’s specific request for his orders of supervision that they “have been provided to Petitioner.” (Dkt. #29 at 6) If the government meant to withdraw all the exhibits it submitted with its original answer, such that neither Mr. Ishmuratov nor this Court were meant to rely on them in this litigation, then its observation that it has already provided Mr. Ishmuratov with supervision records suggests that this Court should rely on the withdrawn exhibits to parse Mr. Flores’s declaration. So Mr. Ishmuratov will rely on those documents here, as if the government had not withdrawn them from the record in this matter.

Second, as to Mr. Ishmuratov’s nationality, he was not born in the Russian Federation. His birth certificate and the official translation say that he was born in “Russia”—presumably the Russian Soviet Socialist Republic—on May 19, 1988. (Dkt. #15-2 at 5, 7, 9) The Soviet Union collapsed in 1991, after which Russia became an independent state (along with the other 14 Soviet

1 Republics). *See, e.g., United States v. Kozeny*, 667 F.3d 122, 126 (2d Cir. 2011) (“Azerbaijan
 2 reclaimed its independence in 1991 following the collapse of the Soviet Union.”). Yet Mr.
 3 Ishmuratov’s passport was issued when he was nearly 7 years old, on April 28, 1995, under the
 4 seal of the Union of Soviet Socialist Republics. None of these documents appear to shed any light
 5 on whether the Russian Federation recognizes Mr. Ishmuratov as a citizen, when he was born in
 6 the Russian S.S.R. and traveled to the United States on a passport issued by the U.S.S.R.¹

7 Moreover, the fact that an immigration judge ordered Mr. Ishmuratov removed to Russia
 8 says nothing about whether Russia recognizes him as one of its citizens. Although the
 9 immigration judge was required to designate a country of removal at the time the removal order
 10 was entered, 8 U.S.C. § 1231(b)(2)(A)(i), the government may remove Mr. Ishmuratov to “a[ny]
 11 country of which [he] is a subject, national, or citizen unless the country is not willing to accept
 12 the alien into the country,” *id.* § 1231(b)(2)(D)(ii). In short, a person may be ordered removed to
 13 a particular country “regardless of whether they have accepted her.” *Fedosseeva*, 492 F.3d at 845
 14 (citing *Jama v. Immigration & Customs Enforcement*, 543 U.S. 335, 342 (2005)). The government
 15 says that here the “uncontroverted evidence establishes that he is in fact a Russian citizen.”
 16 (Dkt. #29 at 3) The documents that the government has thus far produced do not appear to
 17 establish that fact against the backdrop of applicable law. Nor does the mere fact that Mr.
 18 Ishmuratov was born in the Russian S.S.R. establish any likelihood of his being removed to the
 19 present-day Russia anytime in the reasonably foreseeable future.

20 Third, the gravamen of Mr. Ishmuratov’s due process claim is that there is no reasonable
 21 likelihood that he will be removed to Russia in the foreseeable future. The government has
 22 information in its sole possession that is directly relevant to this likelihood. Mr. Flores, the
 23 deportation officer, explained that the government has twice previously attempted to obtain a
 24 passport or other travel documents for Mr. Ishmuratov from the Russian Federation. Mr. Flores

25
 26 ¹ This anomaly does not appear to be isolated to Mr. Ishmuratov. *See Fedosseeva v. Gonzales*, 492
 27 F.3d 840, 843 (7th Cir. 2007) (“She said that she came to the United States using a Soviet
 28 passport that was issued in Latvia in 1993, but she did not explain why Latvia was issuing Soviet
 passports two years after the collapse of the Soviet Union.”).

1 says that on December 21, 2017, “ICE formally requested, in writing, that the Embassy of the
2 Russian Federation to the United States issue a travel document to facilitate Ishmuratov’s
3 return.” (Dkt. #25-1 at 5 ¶ 16) He conspicuously does not say whether that request was fruitful.
4 But it apparently was not—the next event that Mr. Flores describes is Mr. Ishmuratov’s release
5 from ICE custody on an order of supervision on August 20, 2018. (Dkt. #25-1 at 5 ¶ 17) Mr.
6 Flores explains that the government next tried to obtain a passport or other travel documents for
7 Mr. Ishmuratov on November 7, 2019. (Dkt. #25-1 at 5 ¶ 20) This request relied on information
8 “stated on Ishmuratov’s 1995 relief application (which was filed by his mother)” (because he was
9 *seven years old* at the time it was submitted). He conspicuously does not say whether this second
10 request was fruitful. But it too was apparently not fruitful—the next events that Mr. Flores
11 describes are six orders of supervision issued between November 2019 and April 2024. Thus Mr.
12 Flores’s declaration invites an obvious question—*why* was the government unable to obtain travel
13 documents for Mr. Ishmuratov in 2017 and 2019?

14 In its response to Mr. Ishmuratov’s motion for discovery, the government does not
15 answer this question. Instead, it hides behind what it sees as “highly-sensitive privileged law
16 enforcement and diplomatic communications.” (Dkt. #29 at 6) This effort is both legally and
17 factually flawed.

18 As for the law: The government identifies no source of law on which its assertion of
19 privilege rests. ICE agents are not “protected by a powerful privilege or covered by a
20 presumption of constitutional behavior.” *United States v. Sellers*, 906 F.3d 848, 853 (9th Cir.
21 2018) (quoting *United States v. Davis*, 793 F.3d 712, 720 (7th Cir. 2015) (en banc)). Nor does the
22 government’s assertion of privilege “include sufficient detail for the court to make an
23 independent determination of the validity of the claim of privilege and the scope of evidence
24 subject to the privilege.” *Fazaga v. FBI*, 124 F.4th 637, 654–55 (9th Cir. 2024) (quoting *Mohamed*
25 *v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1080 (9th Cir. 2010) (en banc)). The government’s
26 assertion of privilege is thus no valid reason to withhold the documents that Mr. Ishmuratov
27 seeks through discovery.
28

As for the facts: The government ignores the fact that those communications, however sensitive and privileged they may be, were initiated with Mr. Ishmurov's express permission. *See* 8 C.F.R. § 241.4(g)(5)(i) ("Release will be denied and the alien may remain in detention if the alien fails or refuses to make timely application in good faith for travel documents necessary to the alien's departure."). If he had failed or refused to allow ICE to obtain travel documents on his behalf, he could have faced criminal penalties. *See* 8 U.S.C. § 1253(a)(1)(B) (any alien who "willfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure" faces a maximum of 4 or 10 years in prison). The government does not say that it does not know why it was unable to obtain travel documents for Mr. Ishmurov. Nor does it say that when it tried to obtain these documents, it was met with radio silence from the Russian Embassy. All the government says is that the "last residential address reported by Ishmurov" (based on information provided by his mother when he was seven years old) "was both misspelled and incorrect." (Dkt. #25-1 at 5 ¶ 20) The government must have written explanations why these requests for travel documents were unsuccessful. This Court should not permit the government to hid behind privilege to justify withholding from Mr. Ishmurov information that he himself authorized the government to obtain on his behalf.

Along these lines, the government asserts, without supporting evidence, that "the Russian Embassy is currently coordinating with Immigration and Customs Enforcement." (Dkt. #29 at 6) The government does not even narrow this unsupported assertion to address the crux of Mr. Ishmurov's due-process claim—that the Russian Embassy is cooperating with ICE's request on Mr. Ishmurov's behalf for travel documents. Mr. Flores did not even say that this coordination was presently taking place. He said that he supplied the Russian Embassy with the same information that was provided in 2019 (Dkt. #25-1 at 6 ¶ 25)—information that evidently did not result in the issuance of travel documents. Beyond that, he simply expresses the inchoate hope that the Russian Embassy will cooperate this time, because of "the recent change in Administration." (Dkt. #25-1 at 7 ¶ 28) Mr. Ishmurov's discovery request is thus aimed at dispelling the notion that the third time is the charm here.

1 The government also insists that documents relating to Mr. Ishmuratov's requests for
2 relief from removal, to the reason why he was ordered removed, and to his underlying alien file
3 and immigration court records are "simply not relevant to the sole issue in this habeas case —
4 whether Petitioner currently can be removed to Russia in the reasonably foreseeable future."
5 (Dkt. #29 at 5) In the government's view, the only fact that matters is that Mr. Ishmuratov was
6 born in the former Soviet Union, and for that reason he may be returned to Russia—an entirely
7 different country than the one he was born into—in the reasonably foreseeable future. But surely
8 the facts surrounding his and his family's departure from Russia in 1995, the reason he was
9 ordered removed, and any requests for relief from removal that he made would shed *some* light on
10 the likelihood of accomplishing his removal based on this third attempt to obtain travel
11 documents for him. *See Batyuchenko v. Reno*, 56 F. Supp. 2d 1163, 1164 (W.D. Wash. 1999)
12 (ordering an evidentiary hearing to take more evidence regarding "the likelihood of Belarus or
13 Russia reconsidering their decisions" not to claim the petitioner as one of their citizens and "the
14 extent of the government's efforts to secure travel documents for [the petitioner] from a third
15 country," among other things).

16 At bottom, all of the information that Mr. Ishmuratov included in his discovery request
17 flows from the assertions that Mr. Flores made in his declaration. If that information was relevant
18 to Mr. Flores, and helped him put the declaration together, Mr. Ishmuratov should be allowed to
19 see it. If there are gaps in that information, Mr. Ishmuratov should be allowed to know where
20 they are. If there is additional information that bears on either Mr. Ishmuratov's claim or the
21 accuracy of Mr. Flores's declaration, this Court should order the government to produce it.

22 Respectfully submitted:

June 3, 2025.

23 JON M. SANDS
24 Federal Public Defender

25 s/Keith J. Hilzendeger
26 KEITH J. HILZENDEGER
27 Assistant Federal Public Defender
28 Attorney for Petitioner Ishmuratov