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UNITED STATES DISTRIC COURT
FOR THE
DISTRICT COURT OF MINNESOTA
Civil No. 25-cv-02746-PJS-DTS

ROMAN SERGEEVICH GOLOVANOV
A# [redacted]
Petitioner,

V.

James Mchenry and Lisa Monaco,
US ATTORNEY GENERAL;
Kristi Noem,
SECRETARY OF DEPARTMENT OF
HOMELAND SECURITY;
Peter Berg,
FIELD OFFICE DIRECTOR FOR THE
MINNEAPOLIS FIELD OFFICE
Warden of Freeborn County Detention Center,

Respondents,

BRIEF IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS

Question Presented

1) Has petitioner carried his burden in proving that there is not a significant likelihood of his removal in the reasonably foreseeable future?

2) Has Respondent provided enough evidence to rebut petitioner's burden?

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INTRODUCTION

Respondent filed a response to the petition for writ of habeas corpus. Petitioner file a response in opposition to this motion.

BACKGROUND

On August 16, 2024 Petitioner was detained for removal. Petitioner was ordered removed on November 26, 2024. Petitioner notified ICE that he was not appealing the IJ decision On December 12, 2024. Thus, the 6-month presumptive removal period ended at the latest on June 12, 2025.

On February 24, 2025 ICE reviewed petitioner's custody status, and on March 4, 2025 determined petitioner should continue to be detained.

On May 14, 2025 ICE conducted a second custody review which has been pending for 60 days, violating petitioner's due process rights.

On July 12, 2025 petitioner was attacked by an inmate at his own cell. Petitioner was

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follow-up appointments with the doctor to check the healing process and to prevent complications.

Petitioner fear for his life while he is in detention. He is suffering with PTSD from the incident to cause his face to be deformed. Petitioner could be given alternatives to detention due to the extreme circumstances.

ARGUMENT

I. TRAVEL DOCUMENT

Russian ongoing war has led to the closing of consulates in the United States. Russian is not issuing travel documents to his citizens and the only Russian citizen that has been able to be removed from the United States are the individuals with valid unexpired travel documents or passports. Respondent asserts that ICE is removing Russian citizens and ICE statistics reflects that ICE successfully removed 433 individuals last year. Respondent also claims that ICE has removed only 127 individuals this year, which is only 29 % of the total amount of individuals they were successfully able to remove last year.

Petitioner has been living in the United States as a Lawful permanent resident since 2005. Petitioner left Russia as a child and was admitted to United States as a child accompanying a parent to the United States who is a fiancée of a United States citizen. Petitioner passport expired over 15 years ago and Russia has not record of identification from petitioner as an adult. Petitioner travel document will be delay or rejected due to the lack of records in the Russian national system. Petitioner will face indefinite detention because ICE is not certain they will obtain travel document for petitioner. In a similar case, ICE determined the following: "because there is only one Russian Embassy open in the United States, it may take up to two years to get a response regarding Petitioner's citizenship and travel documents." Khabarov v. Sessions, 2018 U.S. Dist. LEXIS 95970 (May 8, 2018). ICE released Khabarov under an order of supervision

because they determined that removal was not imminent. Here, petitioner is in a similar situation, his removal is not imminent. Therefore, he has met his initial burden that there is no significant likelihood of removal in the reasonable foreseeable future.

II. REASONABLE FORESEEABILITY OF PETITIONER'S REMOVAL

Petitioner has provided "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." Zadvydas, 533 U.S. at 701. As the court has determined in Senor v. Barr, 2020 U.S. App. LEXIS 138361, 2020 WL 1862195 (2d Cir. Aug 15, 2019) "[G]ood reason to believe," id., does not place a "burden upon the detainee . . . to 'demonstrate' no reasonably foreseeable, significant likelihood of removal or 'show that his detention is indefinite,'"; it is something less than that. D'Alessandro v. Mukasey, 628 F. Supp. 2d 368, 404 (W.D.N.Y. 2009). And this Court has determined that "the passage of time combined with" the "government [being] no closer to . . . repatriating [a detainee] than they were once they first took him into custody" as being sufficient to meet that "initial burden." Singh v. Whittaker, 362 F. Supp. 3d 93, 102-03 (W.D.N.Y. 2019).

In this case, the process hasn't started smoothly enough. On January 23, 2025, after petitioner was order removed for 2 months, DHS sent the Russian consulate a request for a travel document so that petitioner could be removed. In that application, the government "respectfully request[ed] that [the embassy] issue a passport or other suitable travel document to Mr. Golovanov. But after 180 days passed, the Russian government apparently had not provided Petitioner with a travel document as requested. Petitioner haven't had an interview with the Russian Consulate in New York, NY, to obtain travel documents for removal which is the initial step for the requets. And there is no indication from the record that anyone has taken any further action in the seven months since, a period longer than the entire presumptively reasonable period of detention.

Respondent argues that even if petitioner has met his initial burden, it has "more than adequately rebutted this showing, justifying his continued detention under Zadvydas." Specifically, Respondent argues that "DHS is diligently working with the Embassy of Russia in order to secure travel documents to facilitate petitioner's removal." But respondent cites only one paragraphs in a deportation officer's declaration referring to the request for travel documents made back in January 23. Respondent argues that "DHS is expecting the travel documents to be issued in the near future," but points only to their own conclusory statement in their decision to continue detention saying the same thing. There is nothing in the record suggesting that ICE has taken or is taking any further action to facilitate petitioner's receipt of the necessary travel documents.

Respondent observes that many other individuals have been removed to Russia. That might well be true, but it sheds little light on why petitioner's removal has been delayed and what that means for petitioner's prospects for removal occurring in the reasonably foreseeable future. See Kacanic v. Elwood, 2002 U.S. Dist. LEXIS 21848, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) ("Without any kind of information that would allow for a meaningful comparison of these removed aliens to the Petitioner's case, the [statistics showing successful removals to a country do] not give any indication of whether or not the Petitioner will be removed in the near future."). As one court has explained in response to similar statistics offered as rebuttal evidence: "If the government is able to remove this number of [Russians] annually, it may underscore the problems [it] has had attempting to remove petitioner." Seretse-Khama v. Ashcroft, 215 F. Supp. 2d 37, 50 (D.D.C. 2002).

As the second circuit concluded in Senor v. Barr, "The government has not given this Court any reason to believe that removal is significantly likely to occur in the reasonably foreseeable future". Indeed, the Russian Embassy did not provide petitioner with travel authorization even

close to the time when DHS requested it, and seven months have passed since there has been any identifiable progress toward petitioner's removal. So there is a real question about when-or even whether-that removal will occur.

III. PROCEDURAL DUE PROCESS CLAIM AND 8 U.S.C. § 1231(a)(6)'S IMPLICIT BOND HEARING REQUIREMENT

"When government action depriving a person of . . . liberty . . . survives substantive due process inquiry, it must still be implemented in a fair manner." United States v. Salerno, 481 U.S. 739, 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). "This requirement has traditionally been referred to as 'procedural' due process." In this case, DHS has reviewed petitioner's custody twice. As part of one of those reviews, it provided petitioner with a personal interview before deciding to continue his detention pending removal. Thus, DHS has provided petitioner with some process regarding its deprivation of his liberty pending removal.

But there are serious questions about whether that process was constitutionally sufficient. In many instances when the government deprives a person of only a property interest, "an impartial decision maker is essential" to satisfy procedural due process. Goldberg v. Kelly, 397 U.S. 254, 271, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). And in other civil detention contexts, procedural due process is not satisfied unless the government establishes the grounds permitting confinement by "clear and convincing evidence." See Foucha v. Louisiana, 504 U.S. 71, 86, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992); Addington v. Texas, 441 U.S. 418, 433, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979); see also Santosky v. Kramer, 455 U.S. 745, 756, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (internal citations omitted) (due process requires "an intermediate standard of proof-'clear and convincing evidence'-when the individual interests at stake in a . . . proceeding are both 'particularly important' and 'more substantial than mere loss of money.'").

Although petitioner has had some opportunity to be heard as part of the custody-review process, that process did not involve a neutral decision maker and required petitioner to carry the burden of proof. And the second circuit has held some statutes to be unconstitutional as applied when they authorize unreasonably prolonged detention without providing the detainee a robust hearing regarding the reasons justifying that detention. See, e.g., Campbell v. Barr, 387 F. Supp. 3d 286, 2019 U.S. Dist. LEXIS 81224, 2019 WL 2106387, at *9 (W.D.N.Y. May 14, 2019). But "the nature of [an alien's due process] protection may vary depending upon status and circumstance." Zadvydas, 533 U.S. at 694; see, e.g., Clerveaux v. Searls, 397 F. Supp. 3d 299, 2019 U.S. Dist. LEXIS 127919, 2019 WL 3457105, at *17 (W.D.N.Y. July 31, 2019).

"When 'a serious doubt' is raised about the constitutionality of an act of Congress, 'it is a cardinal principle that [courts must] first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.'" Jennings v. Rodriguez, 138 S. Ct. 830, 842, 200 L. Ed. 2d 122 (2018) (quoting Crowell v. Benson, 285 U.S. 22, 62, 52 S. Ct. 285, 76 L. Ed. 598 (1932)); see United States ex rel. Paktorovics v. Murff, 260 F.2d 610, 615 (2d Cir. 1958). Therefore, for the reasons given by the Third Circuit in Guerrero-Sanchez v. Warden York Cty Prison, 905 F.3d 208, 224 (3d Cir. 2018), and by the Ninth Circuit in Diouf v. Napolitano, 634 F.3d 1081, 1092 (9th Cir. 2011), 8 U.S.C. § 1231(a)(6) implicitly requires the government to provide "an alien facing prolonged [§ 1231(a)(6)] detention . . . a bond hearing before an immigration judge and [to release the alien] from detention unless the government establishes that the alien poses a risk of flight or a danger to the community." Guerrero-Sanchez, 905 F.3d at 224 (quoting Diouf, 634 F.3d at 1092). "The [g]overnment must meet its burden in such bond hearings by clear and convincing evidence." Id. at 224 n.12. Specifically, as this Court has explained in similar contexts, the "government is required, in a full-blown adversary hearing, to convince a

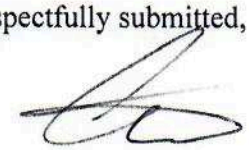
neutral decision maker by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any person . . . or ensure that the alien will appear for any future proceeding." Campbell, 2019 U.S. Dist. LEXIS 81224, 2019 WL 2106387, at *8 (internal citations omitted). And "an alien detained under § 1231(a)(6) is generally entitled to a bond hearing after six months (i.e., 180 days) of custody." Guerrero-Sanchez, 905 F.3d at 226.4

Here, as discussed above, Petitioner's post-removal period detention is prolonged; as respondent stated: "petitioner detention exceeds the presumptively reasonable six-month period under Zadvydas v. Davis, 533 U.S. 678 (2001). Zadvydas, 533 U.S. at 701. Furthermore, there is enough evidence that Petitioner's removal is not imminent. The evidence demonstrates that Petitioner's removal is no likely to occur in the reasonably foreseeable future.

CONCLUSION

Petitioner should be granted immediate released, or in alternative, a bond hearing where the government carry the burden of proving by clear and convincing evidence that petitioner is a danger to the community or a flight risk.

Respectfully submitted,



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Date: July 30, 2025