DISTRICT JUDGE RICHARD A. JONES
MAGISTRATE JUDGE BRIAN A. TSUCHIDA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AVEL REVENKO, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	No. CV25-02149-RAJ-BAT MR. REVENKO'S RESPONSE TO RESPONDENTS' RETURN

I. INTRODUCTION

As *Zadvydas* petitions go, this is not a close case. Mr. Revenko has been detained 18 months since his removal order became final and well over two years in total. Although ICE insisted six months ago that Moldova would issue travel documents, it now appears that representation was incorrect, and that Moldova has not even agreed Mr. Revenko is a Moldovan citizen. Indeed, Respondents' most recent filing states that ERO has not yet submitted a complete application for citizenship or travel documents. The extraordinary length of Mr. Revenko's detention means that "what counts as the reasonably foreseeable future" as shrunk to the present time, and Mr. Revenko should be released even if the Court concludes that removal to Moldova is substantially likely at some future point.

Unfortunately, ICE's refusal to consider the legality of Mr. Revenko's detention means that it has not taken the requisite steps (or any steps) to provide for Mr. Revenko's conditional release. Mr. Revenko suffers from serious mental health

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issues and was adjudged incompetent in removal proceedings. But Mr. Revenko's mental health disabilities do not authorize continued detention, nor do they license ICE to continue damaging Mr. Revenko's mind by holding him in prolonged "segregated" confinement. Rather, because *Zadvydas* requires Mr. Revenko's release, the Court should order ICE, through government counsel, to arrange for Mr. Revenko to be released to a Washington hospital pursuant to an Involuntary Treatment Act hold. The Federal Defender's Office will assist in this placement. Mr. Revenko can then receive treatment—not torture—under circumstances that provide the robust procedural protections the Constitution requires.

II. DISCUSSION

A. Factual Background

ICE's efforts to deport Mr. Revenko to Moldova are described in three contradictory declarations that are discussed in more detail in Mr. Revenko's motion to compel discovery. Dkt. 12. In summary, those declarations show that Moldova has not granted Mr. Revenko citizenship, and that ICE has not yet submitted a complete application for a travel document to remove him to that country.

The same records appear to show that ICE justifies Mr. Revenko's prolonged detention on the ground that he would be a danger to the community if released, not because there is any likelihood of removal in the reasonably foreseeable future. Indeed, after Moldova denied ICE's request for a travel document in December 2024, ICE had no further communications with Moldova until May 23, 2025. During that six-month period that no application was pending, there is no plausible argument that Mr. Revenko was lawfully held in immigration custody. Respondents' only theory for his detention was that they did not want to release him.

For the last six months, ICE claims to have been preparing a new application for Moldovan citizenship and a Moldovan travel document. For a variety of reasons, most

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recently because it has not yet received a State Department apostille, ICE has not yet submitted a complete application to the Moldovan government.

Throughout this process, Mr. Revenko has been held in segregation because of his mental illness. He has not been afforded the procedural protections the Constitution requires. *See Zadvydas v. Davis*, 533 U.S. 678, 692 (2001) (procedural protections for potentially dangerous detained immigrants are constitutionally inadequate). International law recognizes that solitary confinement exceeding fifteen days is cruel and degrading treatment that amounts to torture. *See* "United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)," (General Assembly resolution (annex) A/RES/70/175). 17 December 2015. Rules 44, 45.

B. The law does not permit Mr. Revenko's continued detention.

The *Zadvydas* Court believed that the indefinite detention of noncitizens posed a "serious constitutional threat" under the Fifth Amendment's Due Process Clause. 533 U.S. at 699. The Court therefore interpreted 8 U.S.C. 1231(a)(6) to permit only detention related to the statute's "basic purpose [of] effectuating [a noncitizen]'s removal[.]" *Id.* at 696–99. The presumptive period during which the detention is reasonably necessary to effectuate a noncitizen's removal is six months. After that, the noncitizen is eligible for conditional release if there is "no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

After the "presumptively reasonable" period of six months, when the noncitizen can "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," then "the Government must respond with evidence sufficient to rebut that showing." *Id.* This does not mean a noncitizen may not be held past the six-month period of presumptive reasonability. *Id.* "To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." But, "as the

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period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* "[I]f removal is not reasonably foreseeable, . . . continued detention [is] no longer authorized by statute." *Id.* at 699–700.

A petitioner's potential dangerousness does not permit detention when there is no substantial likelihood of removal in the reasonably foreseeable future. *Id. See also id.* at 690–91 ("[W]e have upheld preventive detention based on dangerousness only when limited to specially dangerous individuals and subject to strong procedural protections."). The two petitioners in *Zadvydas* both had significant criminal history. Mr. Zadvydas himself had "a long criminal record, involving drug crimes, attempted robbery, attempted burglary, and theft," as well as "a history of flight, from both criminal and deportation proceedings." *Id.* at 684. The other petitioner, Kim Ho Ma, was "involved in a gang-related shooting [and] convicted of manslaughter." *Id.* at 685. But the Supreme Court held that the immigrant's liberty interests were weightier than the government's concerns. *Id.* The Court emphasized that it had never countenanced "civil confinement" without strong procedural protections, even in cases presenting serious mental health concerns. *Id.* at 691.

Instead of continued detention, the government should to use the many tools at its disposal to mitigate risk posed by release: "[O]f course, 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. The Ninth Circuit later elaborated, "All aliens ordered released must comply with the stringent supervision requirements set out in 8 U.S.C. § 1231(a)(3). [They] will have to appear before an immigration officer periodically, answer certain questions, submit to medical or psychiatric testing as necessary, and accept reasonable restrictions on [their] conduct and activities,

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including severe travel limitations. More important, if [they] engage[ ] in any criminal activity during this time, including violation of [their] supervisory release conditions, [they] can be detained and incarcerated as part of the normal criminal process." *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1115 (9th Cir. 2001).

Finally, the Court obligated district courts to "independently review" the government's justifications for prolonged detention. *See Zadvydas*, 533 U.S. at 699 ("The Government seems to argue that . . . a federal habeas court would have to accept the Government's view about whether the implicit statutory limitation is satisfied in a particular case, conducting little or no independent review of the matter. In our view, that is not so."). The Court cautioned courts not to accept ICE's representations unquestioningly. *Id.* at 700 (admonishing district courts not to "abdicat[e] their legal responsibility to review the lawfulness of an alien's continued detention"). And the Supreme Court specifically rejected the argument that ICE may detain a person so long as it is "actively working" on his removal. *Id.* at 702 (rejecting argument that detention is lawful so long as "good faith efforts to effectuate removal continue"). *See also Ahrach v. Baltazar*, No. CV25-03195-PAB, 2025 WL 3227529, at *4 (D. Colo. Nov. 19, 2025) ("Diligent efforts alone will not support continued detention.") (quoting *Hassoun v. Sessions*, No. CV18-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019)). Indeed, the *Zadvydas* Court remanded so that the district courts could discharge their obligations to conduct such fact finding as would be necessary to "independent[ly] review" the government's detention authority. 533 U.S. at 699.

C. Mr. Revenko has met his initial burden.

Because the six-month grace period has passed, this Court must evaluate Mr. Revenko's claim using the burden-shifting framework set forth in *Zadvydas*. At the first stage of the framework, Mr. Revenko must "provide[] good reason to believe that

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there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

This standard can be broken down into three parts:

"Good reason to believe." The "good reason to believe" standard is a relatively forgiving one. "A petitioner need not establish that there exists no possibility of removal." *Freeman v. Watkins*, No. CV B:09-160, 2009 WL 10714999, at *3 (S.D. Tex. Dec. 22, 2009). Nor does "'[g]ood reason to believe' . . . 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." *Rual v. Barr*, No. CV20-06215 EAW, 2020 WL 3972319, at *3 (W.D.N.Y. July 14, 2020) (*quoting Senor v. Barr*, 401 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says: petitioners need only give a "good reason."

"Significant likelihood of removal." This component focuses on whether Mr. Revenko will likely be removed: Continued detention is permissible only if it is "significant[ly] like[ly]" that ICE will be able to remove him. *Zadvydas*, 533 U.S. at 701. This inquiry targets "not only the existence of untapped possibilities, but also [the] probability of success in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis added). In other words, even if "there remains some possibility of removal," a petitioner still meets his preliminary burden by providing a good reason to believe that successful removal is not "significantly likely." *Kacanic v. Elwood*, No. CIV.A. 02-8019, 2002 WL 31520362, at *4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

"In the reasonably foreseeable future." This component of the test focuses on *when* Mr. Revenko will likely be removed: continued detention is permissible only if removal is likely to happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE's removal efforts. If the Court has "no

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idea of when it might reasonably expect [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it might occur—in the reasonably foreseeable future." *Palma v. Gillis*, No. CV19-112-DCB-MTP, 2020 WL 4880158, at *3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL 4876859 (S.D. Miss. Aug. 19, 2020) (*quoting Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that Mr. Revenko "would eventually receive" a travel document, he meets his burden by giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*, 2016 WL 6679830, at *2 (E.D. Mich. Nov. 14, 2016). Mr. Revenko's burden under this factor diminishes as the length of his detention increases.

Mr. Revenko readily satisfies his burden under this standard. First, because ICE has not yet submitted an application, there is no basis on which to conclude—and certainly no good reason to believe—that Moldovan citizenship or a travel document will be granted in the reasonably foreseeable future. Further, because it is impossible to determine from the varying and inconsistent evidence before the Court whether Moldova will ever grant Mr. Revenko citizenship, the Court has is no basis to find a substantial likelihood of removal. At a minimum, Mr. Revenko's 18-month detention without any progress towards obtaining (or even requesting) a travel document means that "what counts as the 'reasonably foreseeable future,'" *Zadvydas*, 533 U.S. at 701, has shrunk to the present time. *See D'Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 406 (W.D.N.Y. 2009) ("Given the [16-month] detention . . . the reasonably foreseeable future has nearly shrunk to the point of being the present time."); *Hassoun v. Sessions*, No. CV18-586-FPG, 2019 WL 78984, at *6 (W.D.N.Y. Jan. 2, 2019) ("At fourteen months of detention, Petitioner's removal need not necessarily be imminent, but it cannot be speculative."); *Shefqet v. Ashcroft*, No. 02 C 7737, 2003 WL 1964290, at *4 (N.D. Ill. Apr. 28, 2003) ("The period of Petitioner's post-final-order detention has at

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this time exceeded seventeen months and so the 'reasonably foreseeable future' must now come very quickly."). *Lawrikow v. Kollus*, No. CV08-1403, 2009 WL 2905549, at *12 (D. Ariz. July 27, 2009) ("[T]he period of Petitioner's post-removal-period detention is well over two times longer than the six-month period presumed reasonable in *Zadvydas*. Thus, the 'reasonably foreseeable future' must be near."). Certainly, the prolonged delay in satisfying Moldova's documentation requirements provides no "good reason to believe" that will issue a travel document expeditiously if it finally receives a complete application.

Thus, Mr. Revenko has met his initial burden, and the burden shifts to the government. Unless the government can prove a "significant likelihood of removal in the reasonably foreseeable future," Mr. Revenko must be released. *Zadvydas*, 533 U.S. at 701.

D. The government has not met its burden.

Respondents' only basis for claiming any likelihood of removal to Moldova is the purportedly "regular and consistent communication with the Moldovan government regarding the Petitioner's removal there." But, as Judge Lasnik, quoting Judge Peterson, recently explained, that is not enough for the government to meet its burden:

> At most, the Government's arguments and declarations here show there is at least some possibility that [Petitioner's country] will accept Petitioner at some point. [T]hat is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701, 121 S.Ct. 2491. Courts in this circuit have regularly refused to find Respondents' burden met where Respondents have offered little more than generalizations regarding the likelihood that removal will occur. *See, e.g.*, *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006); *Chun Yat Ma*, 2012 WL 1432229, at *4–5; *Hoac*, 2025 WL 1993771, at *3.

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> For example, in *Singh v. Gonzales*, the court found that ICE had not met its burden where it "merely assert[ed] that it has followed up on its request for travel documents" but could not provide any "substantive indication regarding how or when it expect[ed] to obtain the necessary travel document from the Indian government." 448 F. Supp. 2d at 1220. And in *Chun Yat Ma v. Asher*, the court considered an affidavit from an ICE official that included a statement that an individual's travel documents would "likely" be issued soon. 2012 WL 1432229, at *4. Yet, the court noted, a deportation officer could not give any "indication of when the issuance may occur." *Id.*

Kamyab v. Bondi, No. CV25-389-RSL, 2025 WL 2917522, at *4 (W.D. Wash. Oct. 14, 2025).

This case is the same. As Respondents can give no indication of whether or when Mr. Revenko will be removed to Moldova, it cannot meet its burden to show a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.

E. The Court should order Respondents to set conditions of release.

Because Respondents have no continuing statutory authority to detain Mr. Revenko, they must identify appropriate conditions for his release. Considering Mr. Revenko's diagnosed mental illness and Respondents' assessment of his dangerousness, counsel suggests that the appropriate first step would be to deliver him into a medical facility pursuant to a legal authorization that provides the "strong procedural protections" the Constitution requires. *Zadvydas*, 533 U.S. at 699. Respondents' preferred alternative—indefinite detention in segregation without treatment or meaningful procedural protections—is illegal.

Wellfound Behavioral Health Hospital is approximately five miles from the NWIPC. Counsel's research shows that, if Respondents' counsel makes a referral to a

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Designated Crisis Responder explaining that Mr. Revenko has been found incompetent and will be released imminently, the responder will issue an Involuntary Treatment Act hold permitting Mr. Revenko to be committed to Wellfound. There may be additional details to work out but, considering Respondents' prior failure to consider release conditions even when there was no pending release application, the Court should order Respondents to take steps to secure Mr. Revenko's release from immigration custody forthwith

III. CONCLUSION

Mr. Revenko respectfully asks the Court to order Mr. Revenko's release on appropriate conditions.

DATED this 21st day of November 2025.

Respectfully submitted,

s/ *Gregory Murphy*
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