

DISTRICT JUDGE JAMAL N. WHITEHEAD
CHIEF 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

OBJECTIONS TO REPORT AND
RECOMMENDATION (DKT. 20)

I. INTRODUCTION

Sergey Kazakov has been held in immigration custody for approximately 18 months since an immigration judge ordered his removal to Russia, but there remains no evidence that Mr. Kazakov's removal will occur in the reasonably foreseeable future. To the contrary: the U.S. Department of State has designated Russia an uncooperative country because Russia does not cooperate with U.S. efforts to deport Russian citizens. Records suggest that 137 people were removed to Russia in the last year, but thousands of Russian citizens remain in immigration custody or subject to orders of supervision.¹

These undisputable facts — Mr. Kazakov's 18-month detention, Russia's designation as an uncooperative country, the evidence of actual removals to Russia — suffice to show there is not "good reason to believe" that Mr. Kazakov's removal is

¹ ICE.gov statistics show 12,882 Russian citizens in detention since 2021, and 2,105 people with Russian citizenship are on orders of supervision. *See* <https://www.ice.gov/statistics> (search limited by "country of citizenship" to Russia).

1 “significantly likely” in the “reasonably foreseeable” future. Under *Zadvydas v. Davis*,
2 533 U.S. 678 (2001), there is no longer any statutory authority to detain Mr. Kazakov.
3 Accordingly, the Court should order his removal on conditions.

4 The Report and Recommendation (“R&R”) reaches a different conclusion, but it
5 errs in at least three ways. First, the R&R does not consider that Mr. Kazakov’s 18-
6 month detention has reduced his burden. Second, it does not hold Respondents to their
7 burden. And finally, the R&R’s conclusion relies on citations from *Diouf v. Mukasey*,
8 (“*Diouf I*”), 542 F.3d 1222, 1233 (9th Cir. 2008) that are misleading when stripped of
9 their context. The Court should not adopt the R&R.

10 **II. BACKGROUND**

11 The attached timeline, Ex. A, details Mr. Kazakov’s post-removal detention. In
12 brief, he was ordered deported on March 14, 2024. Over the next six months, ERO
13 unsuccessfully submitted at least two requests for travel documents. On September 12,
14 2024, the Russian embassy requested color photographs of Mr. Kazakov or a copy of
15 his passport. Nothing else happened for five months.

16 Mr. Kazakov filed a petition pursuant to 28 U.S.C. § 2241 on March 25, 2025.
17 Two months later, on April 30, 2025, ICE averred that it was “actively working” to
18 obtain a travel document. It made the same representation a month later.

19 Mr. Kazakov provided ICE a copy of his expired passport on May 29, 2025, but
20 ERI waited two months to submit that to the Russian Consulate. ICE reports no
21 communication with Russia about Mr. Kazakov since July 23, 2025. All told, ICE has
22 requested a travel document three times, but has received no suggestion from Russia
23 when or if it will issue permit Mr. Kazakov’s removal. Mr. Kazakov has been detained
24 19 months.

25 Meanwhile, seven months passed between the time that Mr. Kazakov requested
26 relief from prolonged detention and the issuance of the Report and Recommendation,

1 which asks this Court to conclude that Mr. Kazakov has not shown that “good reason to
2 believe” his removal is “significantly likely” in the reasonably foreseeable future.

3 **III. DISCUSSION**

4 **A. Mr. Kazakov has met his burden under *Zadvydas*.**

5 In *Zadvydas*, the Supreme Court was asked to decide whether 8 U.S.C.
6 § 1231(a)(6) — the statute under which Mr. Kazakov is detained — “authorizes the
7 Attorney General to detain a removable alien indefinitely beyond the [90-day] removal
8 period or only for a period *reasonably necessary* to secure the alien's removal.” 533
9 U.S. at 682 (emphasis in original). Because a statute that permitted indefinite detention
10 would “raise serious constitutional concerns,” the Supreme Court read an implicit
11 “reasonable time” limitation into the statute. *Id.* Specifically, the Court concluded that
12 the government would have six months after an order of removal during which a
13 person’s detention would be presumptively reasonable. *Id.* at 701. After that six-month
14 period, if the person shows “good reason to believe” that removal is not “significantly
15 likely” in the “reasonably foreseeable future,” the government must release the person
16 on appropriate conditions. *Id.* The Court emphasized that “for detention to remain
17 reasonable, as the period of prior post-removal confinement grows, what counts as the
18 ‘reasonably foreseeable future’ conversely would have to shrink.” *Id.*

19 *Zadvydas* requires federal courts to determine whether this implicit “reasonable
20 time” limitation has been met. *Id.* at 682. In making that determination, courts may not
21 defer to the government’s view of whether the statutory limit has been reached, but
22 rather must conduct an “independent review” of the matter. *Id.* at 699. “The habeas
23 court must ask whether the detention in question exceeds a period reasonably necessary
24 to secure removal [and] should measure reasonableness primarily in terms of the
25 statute’s basic purpose, namely, assuring the alien’s presence at the moment of
26 removal.” *Id.*

1 When a petitioner shows that that there is not good reason to believe that
2 removal is “significantly likely” to occur in the reasonably foreseeable future,
3 respondents must respond with rebuttal evidence. Declarations that are “both vague and
4 conclusory” are inadequate to meet their burden. *Nguyen v. Scott*, No. 2:25-CV-01398,
5 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025). *See also Hoac v. Becerra*, No.
6 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025)
7 (“Respondents’ contention that Petitioner’s removal is reasonably foreseeable because
8 removals to Vietnam are in fact occurring is unpersuasive.”); *Nguyen v. Hyde*, No. 25-
9 CV-11470-MJJ, 2025 WL 1725791, *4 (D. Mass. June 20, 2025) (generalized evidence
10 of removals to Vietnam insufficient).

11 Mr. Kazakov has met his initial burden here. First, because he has now been
12 detained more than three times the presumptively lawful period, “what counts as the
13 foreseeable future” has shrunk to the present time. *See D’Alessandro v. Mukasey*, 628
14 F.Supp. 368 (W.D.N.Y. May 29, 2009) (“The post-removal-period confinement has
15 thus been almost double the length of what is considered presumptively reasonable
16 Given the protracted [16-month] detention thus far, I believe the reasonably foreseeable
17 future has nearly shrunk to the point of being the present time.”). The absence of any
18 progress on his application for travel documents, despite at least three submissions over
19 19 months also provides “good reason to believe” that his application will continue to
20 be delayed. *See Singh v. Whitaker*, 362 F. Supp. 3d 93, 101–02 (W.D.N.Y. 2019) (“[I]f
21 DHS has no idea of when it might reasonably expect Singh to be repatriated, this Court
22 certainly cannot conclude that his removal is likely to occur—or even that it might
23 occur—in the reasonably foreseeable future.”). That conclusion is supported by the
24 designation of Russia as an uncooperative country, Ex. B., and by ICE’s statistics of
25 removals to Russia.

1 The R&R concludes that removal is reasonably foreseeable but does not consider
 2 that the duration of Mr. Kazakov's detention has reduced Mr. Kazakov's burden. It also
 3 errs by concluding — contrary to Russia's designation as an uncooperative country —
 4 that "nothing in the record suggests that there is currently any unusual difficulty in
 5 obtaining travel documents." Dkt. 20 at 7. Finally, the R&R simply accepts the
 6 government's view of whether removal is reasonably foreseeable, without conducting
 7 the independent analysis *Zadvydas* requires. *See* Dkt. 20 at 3 (citing declaration
 8 expressing that "DSHS has every reason to believe that the government of Russia will
 9 ultimately issue one [a travel document] for petitioner."); Dkt. 20 at 7 ("[N]othing in
 10 the record suggests that there is currently any unusual difficulty in obtaining travel
 11 documents.").

12 **B. The R&R errs by reading *Diouf I* out of context.**

13 The Report and Recommendation to deny Mr. Kazakov's petition primarily
 14 relies on *Diouf I*. *See* Dkt. 20 at 8 ("The Court should hold that, under *Diouf v. Mukasey*
 15 . . . petitioner's habeas corpus petition should be denied."). But *Diouf I* addresses an
 16 entirely different factual situation than was present in *Zadvydas* or is present here. In
 17 *Diouf I*, ICE arrested the petitioner after he failed to depart voluntarily. *Diouf v.*
 18 *Mukasey*, 542 F.3d 1222, 1226 (9th Cir. 2008). "ICE then made arrangements for Diouf
 19 to depart for Senegal, but, after Diouf refused to leave on that date, continued to detain
 20 him." *Id.* Diouf fought off deportation by filing two motions to reopen and by obtaining
 21 a series of stays of removal from the Ninth Circuit. *Id.* The result was that Diouf's
 22 detention became prolonged.

23 The reason for Diouf's prolonged detention, therefore, and the only obstacle to
 24 his removal, was Diouf's own pending petition before the Ninth Circuit and the
 25 attendant stay order. Diouf's detention also was not open-ended (or indefinite), since it
 26 would naturally terminate upon a decision by the Ninth Circuit. The import of *Diouf I*,

1 therefore, is that a petitioner objecting to his removal cannot obtain release under
2 *Zadvydas* unless he shows he would be “unremovable even if the government defeated
3 his petition for review.” *Id.* at 1233 (citing *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th
4 Cir. 2008). Since Senegal had already issued travel documents, Diouf did not meet that
5 burden.

6 The Report and Recommendation omits this context and, instead, treats
7 *Zadvydas* and *Diouf I* as addressing the same legal question. It therefore cites *Diouf I*
8 for the proposition that “detention *becomes* indefinite if, for example, the country
9 designated in the removal order refuses to accept the noncitizen, or if removal is barred
10 by the laws of this country.” Dkt. 20 at 7 (citing *Diouf I*, 542 F.3d at 1233). But *Diouf I*
11 makes that observation only to distinguish the cause of the delay in *Diouf I* (the
12 petitioner’s decision to prevent removal) from cases, like *Zadvydas*, where removal
13 cannot be effectuated for reasons other than the petition for review. And Mr. Kazakov
14 presents the prototypical *Zadvydas* case, because the delay in Mr. Kazakov’s removal is
15 caused by ICE’s inability to obtain removal documents from an uncooperative country,
16 despite Mr. Kazakov’s full cooperation with efforts to remove him.

17 The Report errs again when it urges the Court to “hold that, under *Diouf v.*
18 *Mukasey* (*‘Diouf I’*), 542 F.3d 1222, 1233 (9th Cir. 2008) petitioner’s habeas corpus
19 petition should be denied, because uncertainty as to when removal will occur does not
20 establish that detention is indefinite.” But in context, the Ninth Circuit was simply
21 emphasizing that any “uncertainty as to when the removal will occur” in *Diouf*’s case
22 was cabined by the decision to pursue his case. Indeed, *Diouf I* goes on to cite *Casas–*
23 *Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942, 948–49 (9th Cir. 2008), as support
24 for this position because that case concluded that an alien’s nearly seven-year detention
25 remained authorized because nothing would prevent his removal if he were ultimately
26 unsuccessful in his then-pending petition for review.

1 **IV. CONCLUSION**

2 After the failure of three applications over 19 months, there is no reason to
3 believe that Mr. Kazakov will be removed in the reasonably foreseeable future, as that
4 period has shrunk to the present time. The Court, acting de novo, therefore should order
5 Mr. Kazakov's release on conditions. The Court may hold a hearing to gather any
6 additional facts that would be helpful to the Court's decision.

7 DATED this 30th day of September 2025.

8 Respectfully submitted,

9 *s/ Gregory Murphy*
10 Assistant Federal Public Defender
11 Attorney for Sergey Kazakov
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SERGEY KAZAKOV'S NOTICE OF
SUPPLEMENTAL AUTHORITY

Pursuant to LCR 7(n), Petitioner respectfully brings to the Court the following supplemental authority issued after the most recent briefing.

In *Lapshin v. Bondi*, CV25-2245-KKE (January 9, 2026), the Court considered similar facts and rejected similar arguments about the likelihood of the Petitioner's removal to Russia.

DATED this 12th day of January 2026.

Respectfully submitted,

s/ Gregory Murphy
Assistant Federal Public Defender
Attorney for Sergey Kazakov