

Finding ICE did not rebut initial burden:

- *Hajbeh v. Loiselle*, 490 F.Supp.2d 689 (E.D. Va. 2007) [quoting *Zadvydas* and finding that the government did not rebut the initial burden].

Lack of Repatriation agreement:

- Lack of a repatriation agreement and other factors. *Ma v. Ashcroft*, 208 F.3d 815 (9th Cir.), *aff'd, sub nom. Zadvydas v. Davis*, 533 U.S. 678 (2001), *on remand*, 257 F.3d 1095 (9th Cir. 2001).

Refusal by countries to issue travel documents:

- *Elashi v. Sabol*, 714 F.Supp.2d 502 (M.D. Pa. 2010) [Palestinian detained 7 months beyond presumptive release period who documented that 14 countries, UNHCR and the PLO all declined to issue him travel documents was ordered released where DHS could only demonstrate it has ongoing discussions and meetings regarding "foreseeability"];
- *Abdel-Muhti v. Ashcroft*, 314 F.Supp.2d 418, 424–26 (M.D. Pa. 2004) [Palestinian detained for over 2 years subsequent to final removal order was granted release where Honduras and Jordan would not accept him and there was no concrete evidence that Palestinian authorities would accept him];

ICE already received extra time:

- *Andreasyan v. Gonzales*, 446 F.Supp.2d 1186, 1189–92 (W.D. Wash. 2006) [where ICE asked for a few more weeks to deport LPR ordered removed to Uzbekistan and ICE had not removed him 8 months later, removal was not reasonably foreseeable];

Issuance of documents in other cases not dispositive

- *Rajigah v. Conway*, 268 F.Supp.2d 159, 166–67 (E.D.N.Y. 2003) [the fact that foreign government regularly issues travel documents does not make removal reasonably foreseeable];

Finding that ICE did rebut initial burden:

- *D'Alessandro v. Mukasey*, 628 F.Supp.2d 368, 404–05 (W.D.N.Y. 2009) (Magistrate, J) [the burden on reasonable foreseeability is "good reason to believe" and not to "demonstrate" no reasonable foreseeability, significant likelihood or that his detention is indefinite].

Relying on ICE's statistical evidence:

- *Almonte v. Holder*, 983 F.Supp.2d 234, 240 (W.D. N.Y. 2013) [relying in part on statistical evidence that DHS has deported persons to the DR as basis to argue removal is reasonably foreseeable];

Sufficient cooperation:

- *Bah v. Cangemi*, 489 F.Supp.2d 905, 922 (D. Minn. 2007) [a foreign government's refusal to issue travel documents while the applicant is seeking legal relief from his removal does not constitute an action by respondent frustrating his removal under [INA §241\(a\)\(1\)\(C\)](#) and the court developed an "unencumbered-time" approach to determine how to count the 90 days where a person was successful on appeal to the federal court];
- *Rajigah v. Conway*, 268 F.Supp.2d 159, 164–67 (E.D.N.Y. 2003) [no bad faith preventing release where detainee's counsel truthfully advised Guyanese Ambassador that he intended to file a court action and the policy of the Guyanese government was to decline to issue travel documents while action was pending];
- *Seretse-Khama v. Ashcroft*, 215 F.Supp.2d 37, 49 (D.D.C. 2002) [telling consulate he did not want to return to Liberia did not constitute noncooperation and court ordered release].
- *Khan v. Gonzales*, 481 F.Supp.2d 638 (W.D. Tex. 2006) [rejecting government argument that noncooperation included original acts of destroying passport before removal proceedings to Bangladesh began];
- *Singh v. Gonzales*, 448 F.Supp.2d 1214, 1218–20 (W.D. Wash. 2006) [where ICE fails to comply with [8 CFR §§241.4\(g\)\(1\)\(ii\) and \(5\)\(ii\)](#) and fails to provide respondent a Notice of Failure to

Comply *before* expiration of the removal period, the court ordered release];

- *Abdel-Muhti v. Ashcroft*, 314 F.Supp.2d 418, 426–30 (M.D. Pa. 2004) [Palestinian detained for over 2 years subsequent to order was released where misrepresentations about his identity occurred years before and he since cooperated]

Lack of cooperation:

- *Davis v. Gonzales*, 482 F.Supp.2d 796 (W.D. Tex. 2007) [where Nigerian did not take overt steps to thwart removal, but did not exhaust available resources in making a good faith effort toward removal, habeas denied];
- *Yacouba v. District Director, ICE*, 593 F.Supp.2d 737 (M.D. Pa. 2008) [denying petition under *Zadvydas* where detainee failed on 2 occasions to cooperate in removal and engaged in institutional misconduct];
- *Lema v. INS*, 341 F.3d 853 (9th Cir. 2003) [where person told Ethiopian officials he was Eritrean habeas denial affirmed because "when an alien refuses to cooperate fully and honestly with officials to secure travel documents from a foreign government, the alien cannot meet his or her burden to show there is no significant likelihood of removal in the reasonably foreseeable future"];
- *Leslie v. Herrion*, 677 F.Supp.2d 651 (W.D.N.Y. 2010) [rejected prolong detention claim where

delay due to petitioner's false claim to U.S. citizenship for which he was separately charged and convicted];

- ***Agbanyo v. Cabral*, 518 F.Supp.2d 326 (D. Mass. 2007) [detainee told Liberian consulate he was a USC];**