

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

DORIAN ABAD AMBROSI,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No.: 5:25-cv-13
	)	
WARDEN, FOLKSTON ICE	)	
PROCESSING CENTER,	)	
	)	
Respondent.	)	

OBJECTIONS TO REPORT AND RECOMMENDATION

The magistrate judge assigned to this case entered a Report and Recommendation (“R&R”) on August 18, 2025. Doc. 26. Respondent respectfully objects to the R&R and asks that the Court reject it.

Under the Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), federal law authorizes detention only for as long as “reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689, 701 (concerning certain types of removals); *Clark v. Martinez*, 543 U.S. 371, 378 (2005) (extending *Zadvydas* to inadmissible aliens). The Supreme Court did not conclude that every alien must be released if not removed within six months. *Zadvydas*, 533 U.S. at 701. Rather, detention ordinarily is reasonable when it is used to prevent flight; once “removal seems a remote possibility at best . . . detention’s goal is no longer practically attainable” and detention ceases to be justified by that goal. *Id.* at 690. It therefore instructed a court reviewing a habeas claim to “ask whether the detention in question exceeds a period reasonably necessary to secure removal.” *Id.*

at 699. In making this determination, the Court “should measure reasonableness primarily in terms of assuring the statute’s basic purpose, namely, assuring the alien’s presence at the moment of removal.” *Id.* This inquiry “must take appropriate account” of the executive branch’s expertise in immigration matters, as well as the “serious administrative needs and concerns inherent in the necessarily extensive INS efforts to enforce this complex statute.” *Id.* at 700.

To provide courts with practical guidance on how to implement these general principles, the Supreme Court created a presumption that detention is reasonable for a period of six months, at which point a detained alien must provide “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. If—and only if—the detainee makes this showing will the burden shift to the government to rebut it. *Id.* Regardless of these shifting burdens, however, the Supreme Court made clear that “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.” *Id.*

Petitioner’s detention differs from that of the detainees described in *Zadvydas* (and the majority of cases interpreting it) in an important respect. Petitioner’s removal order was entered on June 22, 2017, and he returned to Ecuador two-and-a-half years later on December 5, 2020. Doc. 7-1 at 52. When he reentered the United States illegally on June 2, 2023, he was detained. *Id.* at 54. The Department of Homeland Security notified him the following day that it intended to reinstate the final order of removal under 8 U.S.C. § 1231(a)(5). Under that authority, the 2017

order of removal was reinstated and not subject to further review. The reinstated order “does not, however preclude an alien from pursuing withholding-only relief to prevent DHS from executing his removal to [Ecuador].” *Johnson v. Guzman Chavez*, 594 U.S. 523, 530 (2021). If withholding of removal is granted, it is “country specific” and does not prevent removal to a third country. *Id.*

Due to this distinction, courts have held that individuals like Petitioner who pursue withholding-only relief from a reinstated order of removal are not entitled to release under *Zadvydas*, regardless of how long the withholding proceedings take. *See, e.g., Castaneda v. Perry*, 95 F.4th 750, 758 (4th Cir. 2024); *G.P. v. Garland*, 103 F.4th 898, 902 (1st Cir. 2024); *Martinez v. Larose*, 968 F.3d 555, 565 (6th Cir. 2020). That is because, unlike the situation in *Zadvydas* where the government tried and failed to remove the detainees for years after immigration proceedings concluded, leading to what amounted to indefinite detention, withholding-only proceedings have a definite termination point. *Castaneda*, 95 F.4th at 757. This reasoning applies equally where it is DHS that appeals an immigration judge’s order granting withholding relief to the BIA, even where the petitioner alleges DHS’s appeal is without merit or taken in bad faith. *See Arostegui-Maldonado v. Baltazar*, ___ F. Supp. 3d ___, No. 25-cv-2205, 2025 WL 2280357, at *5, 8 (D. Colo. Aug. 8, 2025).

The issue confronting this Court—the reasonableness of detention pending removal to a third country once withholding-only relief from a reinstated order of removal has been granted—appears to be an issue of first impression. Once the withholding-only proceedings terminated in Petitioner’s favor on June 9, 2025, when

BIA affirmed the immigration judge's withholding decision, "the government [had] to begin the process of finding a different country to accept him." *G.P.*, 103 F.4th at 902. Respectfully, the R&R has afforded DHS too little time—barely two months—to complete this task. In so doing, the R&R applied *Zadvydas* too rigidly, without proper consideration of the question the Supreme Court charged courts reviewing § 2241 petitions to ask: whether "it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701. That conclusion is premature and DHS should be permitted additional time to effect Petitioner's removal.

Therefore, Respondent respectfully asks this Court to reject the R&R, decline to adopt it, and dismiss the Petition.

Respectfully submitted, this 3rd day of September, 2025,

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