

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MELGAR HERNANDEZ,

Petitioner,

v.

BAKER, *et al.*,

Respondents.

*
*
*
*
*
*
*
*

No. 1:25-cv-01663-LKG

RESPONSE IN OPPOSITION TO PETITIONER'S SUPPLEMENTAL BRIEF

I. INTRODUCTION

Petitioner is a detainable, removable alien. He has been detained for less than six months while the Government endeavors to complete his removal. His detention and removal are consistent with applicable law. The Court's July 23, 2025, order asks for briefing regarding "whether the Petitioner has shown that there is . . . no significant likelihood that the Petitioner will be removed from the United States in the reasonably foreseeable future." ECF 19. Not only is the answer to this question, "no," but the question itself is premature considering caselaw that offers wide berth for detentions lasting less than six months.

II. ARGUMENT

A. At this early point in the removal process, Petitioner's detention is presumptively valid.

The Court should reject Petitioner's attempt to foist the burden on the Government to establish reasonability of detention because he been detained less than six months. The Supreme Court set forth a framework to mount a challenge to post-final order detention in *Zadvydas v. Davis*, 533 U.S. 678 (2001). That framework provides that, while the government cannot indefinitely detain an alien before removal, detention for up to six months is "presumptively

reasonable.” *Id.* at 701. Because Petitioner has been detained less than six months, his challenge must fail.

The Government is allowed to detain aliens before removing them. The Supreme Court has recognized that “detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). When evaluating “reasonableness” of detention, the touchstone is whether an alien’s detention continues to serve “the statute’s basic purpose, namely, assuring the alien’s presence at the moment of removal.” *Zadvydas*, 533 U.S. at 699. To set forth a Constitutional violation for § 1231 detention, an individual must satisfy the *Zadvydas* test. *See Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (explaining that “*Zadvydas*, largely, if not entirely forecloses due process challenges to § 1231 detention apart from the framework it established.”).

The Supreme Court put guard rails in place to avoid unlimited detention, but this judicial review kicks in only after six months of detention. In *Zadvydas*, the Supreme Court considered the government’s ability to detain an alien subject to a final order of removal before the removal is effectuated. 533 U.S. at 699. The Supreme Court held that the government cannot detain an alien “indefinitely,” limiting “post-removal-period detention to a period reasonably necessary to bring about the alien’s removal from the United States.” 533 U.S. at 682, 689. The Court further held that a detention period of six months is “presumptively reasonable.” *Id.* at 701. Then after this first six months, the burden is on the petitioner to show “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future” before the burden shifts back to the government to rebut that showing. *Id.* *See also, Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021) (noting that only after six months of detention may an alien

make a showing that “there is no significant likelihood of removal in the reasonably foreseeable future” (internal quotations omitted)).

Courts routinely deny habeas petitions that are filed with less than six months of detention. *See, e.g., Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331, 335 (D. Mass. 2017) (“As petitioner has been detained for approximately two months as of this date, the length of his detention does not offend due process.”); *Julce v. Smith*, No. CV 18-10163-FDS, 2018 WL 1083734, at *5 (D. Mass. Feb. 27, 2018) (deeming habeas petition “premature at best” as it was filed after three months of post-final order detention); *Farah v. U.S. Att’y Gen.*, 12 F.4th 1312, 1332-33 (11th Cir. 2021) (“If after six months he is still in custody and has not been removed from the United States, then he can challenge his detention under section 1231(a). But until then, his detention is presumptively reasonable under *Zadvydas*.”), *overruled on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411, 419-23 & n.2 (2023).

Here, Petitioner’s challenge fails on two fronts. First, he has been detained less than six months, making his detention presumptively reasonable. His effort to shift the burden to the government at this early point runs counter to *Zadvydas*. 533 U.S. at 700–01 (recognizing presumptively reasonable six-month detention period “to limit the occasions when courts will need to make” difficult judgments that encroach on complicated executive branch negotiations regarding immigration enforcement). Second, as discussed in the next section, there is no non-speculative indication in the record that his removal is not reasonably foreseeable.

B. Petitioner has not established that his removal is unlikely in the reasonably foreseeable future.

According to Petitioner’s own filing, the wheels are in motion to proceed with his removal. At this early point in the removal process, he has not established his removal is not reasonably foreseeable.

As discussed above, the Supreme Court has recognized a “6-month period” during which detention is presumptively reasonable. *Zadvydas*, 533 U.S. at 701. “After this 6-month period,” then the burden is on the petitioner to “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* See also, *Guzman Chavez*, 594 U.S. at 529 (emphasizing petitioner can make a showing of “no significant likelihood of removal” only “[a]fter that point” of six months in detention). If the Petitioner makes that showing, then the burden shifts to the Government to “respond with evidence sufficient to rebut that showing.” *Zadvydas*, 533 U.S. at 701. A petitioner fails to make this showing where he alleges only that he does not know when his potentially lengthy proceedings will end. *Castaneda v. Perry*, 95 F. 4th 750, 757–58 (4th Cir. 2024). In *Castaneda*, the Fourth Circuit underscored that the Supreme Court’s concern in *Zadvydas* was the “indefinite and potentially permanent” detention of an alien for whom the government did not even identify a country to which he could be removed. *Id.*

In contrast, where the Government has identified a country for removal and there is no dispute as to an alien’s removability, the same concerns about indefinite and permanent detention do not arise. *Id.* at 758. This is true even where a petitioner challenges his removal to a specific country but “nothing would prevent ICE from removing him to another country,” even where that country is not yet identified. *Id.* Indeed, the Supreme Court has highlighted the important “distinction between whether an alien is to be removed and where an alien is to be sent.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 538 (2021). See also, *id.* at 545–46 (“DHS retains its authority during withholding-only proceedings to remove the alien to any country other than the country that is the subject of those proceedings.”).

Here, Petitioner does not dispute that he is a removable alien. He further admits to his withholding-only proceedings moving along because he has received a reasonable fear interview.

ECF 22 at 6. As of the time of this filing, approximately one week has elapsed since that interview. *See id.* (noting interview occurred on July 29, 2025). Although Petitioner believes he is entitled to withholding of removal to Mexico, he has not established he is reasonably likely to receive such a withholding. Nor has he presented anything more than speculation that removal after a “positive fear determination” would “take years to complete” or would result in “indefinite” detention. ECF 22 at 7. *See also*, ECF 23-1 at ¶ 7 (USCIS has not yet adjudicated Petitioner’s credible fear claim).

C. Petitioner has not established a significant likelihood that Mexico will not accept him.

Petitioner’s fear that Mexico will not accept him is equally speculative. Indeterminate allegations based on rumor or conjecture cannot satisfy a petitioner’s burden to show no significant likelihood of removal. *See Singh v. Napolitano*, 433 Fed. App’x 549, 551 (9th Cir. 2011) (“Singh’s speculative argument, supported by indeterminate evidence, that India will not accept him because he is Sikh is insufficient to support the conclusion that his detention is ‘indefinite and potentially permanent.’” (quoting *Prieto-Romero v. Clark*, 534 F.3d 1053, 1064 (9th Cir. 2008)). A petitioner does not meet this standard merely by showing that “there is some degree of uncertainty as to when his detention will conclude.” *Prieto-Romero*, 534 F.3d at 1064. Only if Petitioner makes such a nonspeculative showing does the burden shift to the Government. *Zadvydas*, 533 U.S. at 701.

Here, Petitioner does not make a showing of unlikelihood of removal sufficient to shift the burden to the Government. In support of his contention that his removal to Mexico is not reasonably foreseeable, he cites to the facts that the Mexican embassy did not confirm receipt of the government’s Request for Acceptance of Alien, that U.S. officials have not asked Petitioner for help with his own removal, and references rumors from other detainees that Mexican officials told detainees that “they were not taking any more deportees.” ECF 22 at 7–8. Allegations regarding his own contacts with Mexico are not probative as to his removability. And generalized

