

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

AMIR HOSSEIN MAHDEJIAN, §  
§  
Petitioner, §  
§  
v. §  
§  
BRET BRADFORD, in his official capacity §  
as Field Office Director of the Immigration §  
and Customs Enforcement, Enforcement §  
and Removal Operations, Houston Field §  
Office, ALEXANDER SANCHEZ, §  
in his official capacity as Facility Director §  
of the IAH Secure Adult Detention Facility, §  
and KRISTI NOEM, in her official capacity §  
as Secretary, U.S. Department of Homeland §  
Security, §  
§  
Respondents. §

CASE NO. 9:25-cv-00191-MJT-CLS

**FEDERAL RESPONDENTS' OBJECTION TO MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION**

Respondents submit these objections to the Magistrate Judge's October 23, 2025 Report and Recommendation (R&R). ECF No. 37.

**BACKGROUND**

Petitioner Amir Hossein Mahdejian is a native and citizen of Iran who entered the country in approximately 1998. ECF No. 1, ¶ 39. On July 20, 2011, after removal proceedings, an Immigration Judge entered a removal order but granted Petitioner withholding of removal to Iran by an Immigration Judge ("IJ"). ECF No. 1-1. The IJ further found that Petitioner could be removed to Germany, "any in the alternative, any country other than Iran permitted under section 241 of the Immigration and Nationality Act, as amended." *Id.*

Notwithstanding being subject to a final order of removal, Petitioner remained in the United States. At the October 21, 2025 evidentiary hearing, Petitioner testified that despite being subject to a final order of removal since 2011, he has never taken any steps to locate a country other than Iran, a “third-country,” to remove himself to.

On June 23, 2024, agents with the United States Immigration and Customs Enforcement (“ICE”) apprehended petitioner. ECF No. 1, ¶ 44. Since June 23, 2025, Petitioner has been detained at the IAH Secure Adult Detention Facility at Livingston, Texas. *Id.*

Since his apprehension, Respondents have been attempting to remove Petitioner from the United States. Originally, because Germany is mentioned in his final order of removal as a permissible country, Respondents worked with Petitioner to pursue his removal to Germany. *See generally* ECF Nos. 20, 23, 25. On or about September 12, 2025, ICE learned that Germany would not accept Petitioner. ECF No. 25. Following Germany’s refusal, Respondents began to attempt to identify a third country to which Petitioner may be removed. ECF No. 25. As of the Evidentiary hearing, the Petitioners had been working toward that goal for 39 days and are continuing to do so.

On October 23, 2025, the Magistrate Judge entered the R&R recommending Petitioner be released upon the district court’s order adopting the report and recommendation. ECF No. 37 at 15–16. In reaching that conclusion, the Magistrate Judge determined that: (1) that the six-month period of presumptively reasonable detention established by the United States Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001) (hereinafter the “six-month period”) expired in 2012, *id.* at 11; (2) the Respondents had the burden to establish the likelihood of Petitioner’s removal in the reasonably foreseeable future, *id.* at 14; and (3) found that Petitioner satisfied what should have been his burden to establish there was no likelihood of removal, *id.* at 14. These conclusions are

incorrect. The burden shifting is inconsistent with the constitutional concerns underpinning *Zadvydas*. Further, Petitioner failed to establish that his removal was not reasonably foreseeable. Finally, the Court improperly conflated a failed attempt to remove the Petitioner to a particular country—Germany—with an inability to remove the Petitioner to a third country. Accordingly, Respondents object to the R&R and ask that the Petition be denied.

### ARGUMENT

#### **I. The Magistrate erred in finding that the six-month period expired in 2012.**

The Magistrate incorrectly found that the six-month period expired in 2012. In *Zadvydas v. Davis*, the Court addressed the constitutional implications of potentially indefinite detention of aliens. 503 U.S. 678 (2001). Recognizing that indefinite detention created a serious issue with the Fifth Amendment's Due Process Clause, the Court held that post-final order detention is presumptively reasonable for six-months. *Id.* at 700. Determining when the six-months starts is important because it allocates the burden of proof and persuasion regarding whether an alien's removal is reasonably foreseeable. During the six-month period, the Petitioner bears the burden of proof and persuasion that removal is not reasonably foreseeable. *Id.* at 700–01.

In the R&R, the Magistrate found that the six-month period expired in 2012, which was six months following Petitioner's final order of removal becoming administratively final. ECF No. 37 at 10–11. The Magistrate Judge's conclusion in this regard fails to appreciate the issues facing the Court in *Zadvydas*. The constitutional concerns facing the Court in *Zadvydas* arose out of potentially indefinite *detention*. *Zadvydas*, 503 U.S. at 690. Without detention, there would have been no deprivation of liberty, and consequently no Fifth Amendment concern.

The R&R fails to recognize that the impetus for *Zadvydas* was *detention*. In this case, prior to 2025, Petitioner has never been detained for purposes of effectuating his removal. The R&R

acknowledges that ICE originally picked him up in 2009, released him on the same day, and then he has remained on supervised release since his final order of removal was signed on July 20, 2011. ECF No. 37 at 3–4. Because Petitioner was never in detention prior to June of 2025, the concerns addressed in *Zadvydas* could not have presented themselves until at least that time. Thus it is completely inconsistent with *Zadvydas* to find that a presumptively reasonable period of *detention* started and lapsed during periods where Petitioner was never detained. The Magistrate Judge’s conclusion in this regard was in error.

In attempting to justify finding that a reasonable period of detention can lapse when an alien has never been detained, the Magistrate Judge cites to the Fifth Circuit’s opinion in *Zadvydas* on remand. But that opinion does not contain an analysis of when the six-month period commences. The Fifth Circuit merely references the six-month period as “*apparently* beginning with the beginning of the removal period.” *Zadvydas v. Davis*, 285 F.3d 398, 403 (5th Cir. 2002). This aside is not binding let alone persuasive.

The Court also references 8 C.F.R. § 241.13, which provides:

The HQPDU has no obligation to release an alien under this section until the HQPDU has had the opportunity during a six-month period, dating from the beginning of the removal period (whenever that period begins and unless that period is extended as provided in section 241(a)(1) of the Act), to make its *determination* as to whether there is a significant likelihood of removal in the reasonably foreseeable future.”

8 C.F.R. § 241.13(b)(2)(ii) (emphasis added).

Again, this section does not address when the *Zadvydas* six-month presumptively removable period commences. This merely establishes a period during which the Service’s Post-order Detention Unit (HQPDU) shall decide the likelihood of removal in the reasonably foreseeable future. Although they may be related considerations, they are not the same. As such, it fails to support the R&R’s conclusion.

Finally, the R&R seemingly relies on non-binding out of circuit precedent to support finding that the six-month period ended in 2012. *See* ECF NO. 37 at 11–14. But these cases are not dispositive of the issue. And, in fact, at least one case presumes that the six-month period does not automatically expire 90 days after the removal period and instead, consistent with *Zadvydas*, is based on actual time in custody. *Munoz-Saucedo*, No. CV 25-2258, 2025 WL 1750346 (D.N.J. June 24, 2025).

In *Munoz-Saucedo*, among other things, the court considered whether *Zadvydas* allowed petitioner to challenge his detention prior to the expiration of the six-month period. *Id.* at 398. Implicit in the court addressing this issue is an assumption that the presumptively removal period is tied to actual time in custody. Consider the facts. The petitioner in *Munoz-Saucedo* was originally detained in December 2022 following his final order of removal. He was released after 90 days and remained out of custody for two years until he was re-detained in March of 2025. *Id.* at 391. If the six-month presumptively reasonable period ended 90 days after the removal period, as the Magistrate Judge held in this case, then the court in *Munoz-Saucedo* would not have had to consider whether the petitioner’s challenge was premature under *Zadvydas* because the six-month period would have expired in 2023. *Munoz-Saucedo* cannot be harmonized with the Magistrate Judge’s conclusion that in this case the presumptively reasonable period ended in 2012.

The Magistrate Judge incorrectly concluded that the six-month period expired in 2012. The better conclusion, which is consistent with *Zadvydas*, is that the six-month period did not begin to run until he was taken into custody on June 23, 2025. ECF No. 1 ¶ 44. The Court should overrule the R&R’s conclusion that the presumptively reasonable six-month period expired in 2012 and should hold that it does not expire until December 23, 2025.

**II. The Respondents did not bear any burden and Petitioner failed to carry his burden.**

The Magistrate Judge's conclusion regarding the expiration of the six-month triggered a second error. Because the Magistrate Judge incorrectly concluded that the six-month period had expired, she improperly shifted the burden to the Respondents to establish substantial likelihood of removal in the reasonably foreseeable future. ECF No. 37 at 14. After this Court corrects that error, the Petitioner bears the burden to establish that his removal is not reasonably foreseeable.

During the six-month period, “the presumption of reasonableness is the default,’ and the government ‘bears no burden to justify detention.’” *Medina v. Noem*, --- F.Supp.3d ---, ---, 2025 WL 2306274, \*6 (D. Md. Aug. 11, 2025) (quoting *Munoz-Saucedo v. Pittman*, ---F.Supp.3d ---, ---, 2025 WL 1750346, \*6 (D.N.J. June 24, 2025)); *see also* *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011) (finding that a *Zadvydas* challenge is “premature” prior to the expiration of the six-month period); *Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006) (“The alien bears the initial burden of proof in showing that no such likelihood of removal exists. In the instant case, Andrade has offered nothing beyond his conclusory statements suggesting that he will not be immediately removed to Cape Verde following resolution of his appeals. His constitutional claim is meritless.”).

The Magistrate Judge should have placed the burden of proof and persuasion on the Petitioner. Petitioner did not carry that burden.

**III. Petitioner failed to carry the burden of establishing his removal is not reasonably foreseeable.**

The Petitioner offered no evidence that his removal was not reasonably foreseeable. The R&R seemingly concludes Petitioner satisfied this burden merely by showing that attempts to remove him to Germany from June to September of this year had failed. ECF No. 37 at 14 (“To the extent Petitioner can show a negative (no likelihood of removal) with no information or

evidence from the Government other than two failed attempts at removing him to Germany, he has done so.”). But that conclusion that removal is not reasonably foreseeable merely because one country would not accept Petitioner during a three-month window of attempted removal simply does not follow. To the contrary, it seemingly punishes Respondents for efforts to effect removal to a country acceptable to Petitioner.

Setting aside Germany’s failure to accept Petitioner, what evidence did Petitioner offer that his removal was not likely? None. Petitioner failed to offer any evidence that Respondents attempted to remove him to other countries other than Germany. Petitioner could have offered testimony that Respondents had sought his assistance obtaining travel documents to other countries, but those removal efforts ultimately failed. He did not. In fact, the Petitioner did not offer any evidence that Respondents actively sought to remove him between 2011-2025. The mere fact he was not removed does not support the Magistrate Judge’s conclusion that removal is not reasonably foreseeable if it was not also established that there were *attempts* made to remove him during that period. And it was not the Respondent’s burden to offer any evidence regarding what attempts were made, if any. That burden was on Petitioner, and he failed to offer any evidence regarding other attempts to unsuccessfully remove him. *Medina* 2025 WL 2306274, at \*6 (during the six-month period “the government bears no burden to justify detention”).

Petitioner also failed to offer any evidence that Respondents have been unsuccessful in third country removal efforts generally. To the contrary, the impetus for the Petition and his request for emergency relief were concerns that Respondents would quickly remove him to a third country. *See generally* ECF Nos. 1–3. Thus, not only has Petitioner failed to offer evidence that removal is not reasonably foreseeable, but he requested emergency relief in this case because of a recognition that the government is successfully effectuating removals to third countries. *Id.* The Petitioner’s

failure to offer any evidence other than a failure to remove him to Germany cannot satisfy his burden. The R&R's contrary conclusion should be overruled.

**CONCLUSION**

For the foregoing reasons, the Court should sustain Respondents' objection to the R&R and dismiss the case.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2025, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

/s/ James Gillingham  
JAMES GILLINGHAM  
Assistant United States Attorney