

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

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Adriana Quiroz Zapata,  
Petitioner

AGENCY FILE No. A 

Case No. **3:25-cv-0376-LS**

v.

**PETITIONER'S MOTION FOR  
JUDGMENT AS A MATTER OF LAW**

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MARY ANDA-YBARRA, Field Office  
Director, El Paso Field Office, Immigration  
and Customs Enforcement, MARTIN  
SARELLANO JR., Assistant Field Office  
Director, El Paso Field Office, Immigration  
and Customs Enforcement, TODD M.  
LYONS, Acting Director, U.S. Immigration  
and Customs Enforcement, KRISTI NOEM,  
Secretary, U.S. Department of Homeland  
Security, PAMELA JO BONDI, Attorney  
General of the United States, *in their official  
capacities.*

Respondents.

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In their reply, Respondents, the government, confirm that as of today, not a single country is willing to accept Petitioner, Ms. Zapata, and that this matter is well past the presumptively reasonable six-month period of detention in a *Zadvydas* claim. *See* ECF at Respondent's Reply. *See also Zadvydas*, 533 U.S. at

701. Therefore, this Court should rule in favor of Petitioner's release as a matter of law, where the government has failed to establish that there is any significant likelihood of removal in the reasonably foreseeable future. *Id.*

The Court should rule accordingly because Respondent have failed to meet their burden of proof; while Respondents, have an expressed "desire" to deport Petitioner, Ms. Zapata, they have offered absolutely no evidence or objective reason for this Court to believe that **any particular country** will accept her in the foreseeable future – and are in fact, turning BACK to a country that has already denied Petitioner; Mexico. *Id.*

8 U.S.C. §1231(a) permits DHS-ICE to detain noncitizens during the "removal period," which is defined as the 90-day period during which "the Attorney General shall remove the alien from the United States." 8 U.S.C. §1231(a)(1)(A). After the expiration of the removal period, 8 U.S.C. § 1231(a)(3) provides that ICE shall release unremovable noncitizens on an order of supervision (the immigration equivalent of supervised release, with strict reporting and other requirements). Pursuant to 8 U.S.C. § 1231(a)(6), even noncitizens with aggravated felony convictions may be "released" if "subject to the terms of supervision" set forth in 8 U.S.C. § 1231(a)(3). As established, Ms. Zapata has no such criminal record.

Therefore, "where detention's goal is no longer practically attainable, detention no longer 'bear[s][a] reasonable relation to the purpose for which the individual [was] committed.'" *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

As the *Zadvydas* Court established a rebuttable presumption regarding what constitutes a "reasonable period of detention" for noncitizens after a removal order, determining that six months detention could be deemed a "presumptively reasonable period of detention," after which the burden shifts to the government to

justify continued detention if the noncitizen provides a “good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future” and, as here, Petitioner offers the fact that she has remained detained for 8 months post-decision in her case, without any third country acceptance, as good reason to believe there is not a significant likelihood of removal in the reasonably foreseeable future, where the government is admitting it cannot meet its burden, it appears they are not able to show her removal is likely to occur in the reasonably foreseeable future. *Id.* See also Respondent’s Reply at ECF No. 3

This Court owes due deference to the government’s assessment of the likelihood of removal and the time it will take to execute removal, however, **just as pro forma findings of dangerousness do not suffice to justify indefinite detention, pro forma statements that removal is likely without some showing of that likelihood, do not satisfy the government’s legal burden. *Id.***

Several cases support that the government may only rebut a detainee’s showing that there is no significant likelihood of removal in the reasonably foreseeable future, with “evidence.” *Gebrelibanos v. Wolf*, No. 20-cv-1575-WQH-RBB, 2020 U.S. Dist. LEXIS 185302, at \*9 (S.D. Cal., Oct. 6, 2020) (citing *Kim v. Ashcroft*, 02cv1524-J(LAB) (S.D. Cal., June 2, 2003), ECF No. 25 at 8 (citing *Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002)); see also *Carreno v. Gillis*, No. 5:20-cv-44-KS-MTP, 2020 U.S. Dist. LEXIS 248926, at \*5 (S.D. Miss., Dec. 16, 2020) (granting petitioner’s habeas claim because the government failed to show that removal would be imminent after obtaining a travel document and failing to remove petitioner within the document’s validity period) (emphasis added).

Other courts that have denied habeas petitions, did so primarily where the U.S. government had already procured petitioner’s travel documents and only travel

arrangements were outstanding, **which is not the case here**. See *Berhe*, 2019 WL 3734110 at \*4 (denying Petitioner’s habeas petition because “Eritrea has issued a travel document and Petitioner has presented no evidence to suggest there are other barriers to his removal”); *Tekleweini-Weldemichael v. Book*, No. 1:20-CV- 660-P, 2020 WL 5988894, at \*5 (W.D. La., Sept. 9, 2020), *report and recommendation adopted*, No. 1:20-CV-660-P, 2020 WL 5985923 (W.D. La., Oct. 8, 2020) (denying without prejudice Petitioner’s habeas petition because he possessed a travel document valid through December 19, 2020, and noting that he is not precluded from filing a new petition upon the expiration or cancellation of his travel document).

Again, in their reply, Respondents confirm that as of today, not a single country is willing to accept Petitioner, Ms. Zapata, who was granted relief under the Convention Against Torture (CAT) this past February of 2025. Therefore, as Ms. Zapata has made clear she has no history or likelihood in future of noncompliance with requests to report to ICE for any reason; even the local congressional office of Rob Menendez in New Jersey where she plans to reside upon release, has assured their assistance in this regard, along with all of her family members with whom she plans to reside there in New Jersey, it appears that neither the government’s subjective desire to remove her, nor the fact that they are making several failed efforts to do so, sufficiently meets the legal standard set forth in *Zadvydas*, because the standard is an objective one: whether removal is significantly likely to succeed. See Exhibits, attached. See also *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

The government’s argument in this case is that the mere *existence* of third-country removal somehow means that no-one can win a *Zadvydas* claim unless and until the government gives up their efforts at removal, and unfortunately, that is not the legal standard, which we ask the Court to acknowledge.

In conclusion, Petitioner through counsel requests this Court adhere to the legal standard by finding as a matter of law, that eight months of detention post-decision granting CAT relief, is a presumptively reasonable period of time for detention, and the government has failed to meet their standard of proof to continue her detention, because no established third country is willing to accept Petitioner, thus it cannot be said that there is a significant likelihood of removal in the reasonably foreseeable future, and she should be released to join her family in New Jersey.<sup>1</sup>  
Thank you.

Respectfully Submitted,

/s/ Lauren O'Neal

Lauren O'Neal, Esq.

Virginia State Bar No.: 91662

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Adriana Quiroz Zapata, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Motion for Judgment as a Matter of Law, are true and correct to the best of my knowledge.

Dated this 3<sup>rd</sup> day of November, 2025.

/s/ Lauren O'Neal

Lauren O'Neal, Esq.

Virginia State Bar No.: 91662

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<sup>1</sup> Petitioner has in fact been detained for a total of 14 months since her entry and as previously noted, has ailing health.