

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

FERNANDO GONZALEZ GUTIERREZ,

Petitioner,

v.

CRYSTAL CARTER, et al.,

Respondents.

Case No. 5:25-cv-3233-JWL

PETITIONER'S REPLY IN SUPPORT
OF PETITION FOR WRIT OF
HABEAS CORPUS

INTRODUCTION

Respondents' Response (Dkt. 5) demonstrates that this case is indistinguishable from numerous other cases recently decided by this Court, and indeed, Respondents make no attempt to distinguish those cases (or even mention them). *See, e.g., Hanna v. Carter*, 25-cv-3203, Dkt. 6 (D. Kan. Nov. 17, 2025); *Moreno v. Bondi*, 25-cv-3168, 2025 WL 2926547 (D. Kan. Oct. 15, 2025); *Manago v. Carter*, 25-cv-3183, 2025 WL 2841209 (D. Kan. Oct. 7, 2025); *Batzogs v. Carter*, 25-cv-3127, 2025 WL 2550321 (D. Kan. Aug. 14, 2025).

Resolution of this case is governed by two words from *Zadvydas*: “significant” and “reasonably.” Once a petitioner shows that “there is no *significant* likelihood of removal in the *reasonably* foreseeable future,” the Government must produce evidence to rebut that showing. *Zadvydas*, 533 U.S. 678, 701 (2001) (emphasis added). Here, the Government’s evidence amounts to: (1) at some indeterminate point in the past, some unspecified attempt was made to remove Petitioner to Canada, Guatemala, and Peru, “with no success”; and (2) ICE had an “intention” of removing Petitioner to El Salvador that was doomed in advance to fail, since, as Respondents concede, “El Salvador does not ordinarily accept third country removals.” Dkt. 5-1 at ¶¶ 16, 18, 20.

Ultimately, Respondents admit that they have no country in mind where they might send Petitioner, only vaguely offering to “update the Court” if there are “any further developments.” *Id.* at ¶ 21. Under *Zadvydas* and this Court’s case law, that is not good enough. For the reasons that follow, the Petition should be granted.

ARGUMENT

I. Petitioner has met his initial burden of showing that removal is not significantly likely in the reasonably foreseeable future, thus shifting the burden to the Government.

Respondents argue that Petitioner has not shown “good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future.” Dkt. 5 at 4 (quote mark omitted). However, in his Petition, Mr. Gonzalez Gutierrez offered several specific facts to meet his burden. First, he points out that his immigration order was final on March 31, 2025, and thus he has been detained for nearly eight months under 8 U.S.C. § 1231. Dkt. 1 at ¶¶ 23-24. In analogous cases, this Court has found that detention in excess of *Zadvydas*’ presumptively reasonable six-month period can be considered in assessing whether a Petitioner has met his burden. *See, e.g., Moreno*, 2025 WL 2926547, at *2 (“The Court disagrees with respondents’ contention that petitioner can point to nothing more than the failure to effect his removal within six months. Petitioner remains detained more than 7.5 months since his removal order became final, a significant period beyond the presumptively-reasonable period.”); *Manago*, 2025 WL 2841209 at *2 (seven months).

Additionally, Mr. Gonzalez Gutierrez argued that his grant of deferral of removal under the Convention Against Torture prevents his removal to Mexico and that courts have found this to be relevant in assessing whether removal is significantly likely in the reasonably foreseeable future. Dkt. 1 at ¶¶ 38, 40. *See also Manago*, 2025 WL 2841209, at *2 (“As petitioner notes, because he

cannot be removed to his home country under the withholding order, officials must find a third country that is willing to accept him, and petitioner has no ties to any other country.”). In fact, Petitioner cited evidence from 2020-2023 showing that only five noncitizens in Petitioner’s position were removed to third countries, and data in one Supreme Court case that showed that only 1.6% of noncitizens in his position were ever actually removed. Dkt. 1 at ¶ 40.

Furthermore, Mr. Gonzalez Gutierrez noted in his Petition that his immigration attorney had reached out to ICE on October 1, 2025 and again on October 14, 2025, and in both of their responses, DHS indicated that, despite the passage of more than six months, it had still not identified any third country to which he might be sent. Dkt. 1 at ¶ 27. In *Zhuzhiashvili v. Carter*, -- F. Supp. 3d --, 2025 WL 2837716 (D. Kan. Oct. 7, 2025), at *2, this Court found similar admissions of futility by ICE officials to be “additional evidence buttressing [the petitioner’s] claim.” The Court found in that case that ICE’s admissions about inability to remove to a third country “provide further support for the conclusion that petitioner has provided good reason to believe that removal is unlikely in the foreseeable future.” *Id.*

In short, Petitioner has met his initial burden to show that his removal is not significantly likely in the reasonably foreseeable future, thus shifting the burden to Respondents.

II. Respondents have failed to meet their burden under *Zadvydas*.

Respondents attempt to meet their burden via a declaration from Deportation Officer Katherine Peralta Vargas, which details Respondents’ purported efforts to remove Petitioner to a third country. Dkt. 5-1. This declaration only demonstrates that this case is indistinguishable from several others where this Court has recently granted habeas relief.

First, the declarant states that, “Since the Immigration Judge’s order, DHS has attempted to procure Petitioner’s removal to Canada, Guatemala, and Peru, with no success.” Dkt. 5-1 at

¶ 16. This Court has repeatedly found such statements insufficient. Just as in *Manago*, “The declarant claims that officials have attempted to remove petitioner to [three] different countries, but [she] does not describe those attempts at all. Thus, it is not clear whether requests were actually sent to those other countries, and if so, what responses were received. Nor does the declarant state when those ‘attempts’ were made.” 2025 WL 2841209 at *2; *see also Moreno*, 2025 WL 2926547, at *2 (same); *Hanna*, 25-cv-3203, Dkt. 6, slip op. at 4 (same). As this Court has pointed out, too, “the fact that officials have been unsuccessful with their first choices suggests that officials will have difficulty eventually finding a country that will accept petitioner.” *Manago*, 2025 WL 2841209, at *2.

The declarant also mentions “ICE’s intention to remove [Petitioner] to El Salvador.” Dkt. 5-1 at ¶ 18. However, it is not clear whether this “intention” ever translated into any actual action, such as requesting travel documents. In any event, the declarant concedes that “I was advised that El Salvador does not ordinarily accept third country removals, unless the alien has contacts there.” *Id.* at ¶ 20. The use of the word “ordinarily” suggests that this is a longstanding practice in El Salvador, begging the question of why DHS officials conceived an intention of sending him there or extending his detention on the basis that he might be sent there. The fact that DHS would detain Petitioner for an additional several months based on a removal attempt that is predestined to fail further “belies any claim that officials have exercised diligence with respect to petitioner’s case.” *Ndayizeye v. Warden, Chase County Detention Ctr.*, 25-cv-3200, 2025 WL 3250878 (D. Kan. Nov. 21, 2025), at *2.

In short, although DHS has had eight months to remove Petitioner, it is no closer to doing so today than it was on March 31, as the declarant concedes: “ICE will continue its efforts to identify alternative countries to which Petitioner can be removed and will update the Court on any

further developments in this matter.” Dkt. 5-1 at ¶ 21. To say ICE “will continue its efforts to identify alternative countries” is a long-winded way of saying it has not identified any. If ICE cannot name a single country to which Petitioner might ever be removed, it cannot be contended that there is a “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701; *see also Manago*, 2025 WL 2841209, at *3 (“In sum, respondents have not been able to provide evidence or even point to any specific fact that creates a significant likelihood that ... petitioner will nonetheless be removed to a third country in the reasonably foreseeable future.”).

CONCLUSION

Because no one can say when, where, or even *if* Mr. Gonzalez Gutierrez will be removed, this Court should order his immediate release.

Dated: November 28, 2025

Respectfully submitted,

/s/ James D. Jenkins
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed this 28th day of November, 2025 via the Court’s CM/ECF system, which sent notice of such filing to all parties.

/s/ James D. Jenkins
Attorney for Petitioner