

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE SERGIO TENEZACA-QUIROZ,

Petitioner,

v.

25-CV-01166-LJV

TAMMY MARICH, Field Office Director, Buffalo Field Office
of Immigration and Customs Enforcement,

Respondents.

**RESPONDENTS' OPPOSITION TO PETITIONER'S RESPONSE TO THE ORDER
TO SHOW CAUSE**

Petitioner now admits that the statute authorizing his detention is 8 U.S.C. § 1231. ECF No. 10 at pg. 2. As 8 U.S.C. § 1231(a)(5) makes pretty clear, the removal period does not begin “on the date that [Quiroz] reentered the United States, which was approximately January 20, 2015.” ECF No. 10 at pg. 5. Likewise, the removal period does not begin “when [Quiroz] alerted DHS to his presence in the United States by applying for asylum and withholding of removal with USCIS.” *Id.* at pg. 6. Section 1231 explicitly states when the removal period begins:

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, **under an order of removal, the prior order of removal is reinstated from its original date** and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

8 U.S.C. § 1231(a)(5) (boldface added). Thus, the removal period is neither of the ones posited by Quiroz, but the one set forth clearly by statute—the date of his prior order of removal: June 23, 2014. ECF No. 7 at pg. 2.

As applied to Quiroz, the statute's mandatory detention of period of 90 days, and the 6-month presumptively reasonable period of detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001), have both passed. However, Quiroz has the *Zadvydas* standard exactly backwards, arguing that

If the removal period began more than six months ago, then Petitioner's ongoing detention under section 1231 is presumptively unlawful. In which case, the Government must prove that Petitioner's removal is reasonably foreseeable in the near term, or else release him until such time as his removal is reasonably foreseeable.

ECF No. 10 at pg. 4. The Supreme Court in *Zadvydas* instead held that although Congress reduced the removal period to 90 days in 1996, Congress did not believe that all reasonably foreseeable removals could be accomplished in that time. 533 U.S. at 701. However, it did appear to the Court that Congress had doubts about the constitutionality of detention exceeding a period of six months. *Id.* Thus, the Supreme Court set forth a framework by which, "[a]fter this 6-month period, **once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future**, the Government must respond with evidence sufficient to rebut that showing." *Id.* (boldface added). Thus, it is Petitioner's burden at the outset to come forward with good reason to believe that his removal is not likely to occur within the reasonably foreseeable future, a burden he has not even addressed at all, let alone met. Accordingly, the Petition fails to state a claim upon which relief can be granted and should be denied in its entirety.¹

¹ Amendment of the Petition would be futile in this instance because the government has already produced evidence that Petitioner's removal is significantly likely to occur in the reasonably foreseeable future. ECF No. 12. Thus, even if Petitioner could meet his burden, the government can easily rebut it.

CONCLUSION

Because Petitioner has failed to allege good reason to believe his removal is not significantly likely to occur within the reasonably foreseeable future—as required by *Zadvydas*—he has failed to state a claim upon which relief can be granted and thus the Petition should be denied.

Respectfully submitted,

MICHAEL DIGIACOMO
United States Attorney
Western District of New York

BY: /s/ADAM A. KHALIL
Assistant United States Attorney
100 State Street, Suite 500
Rochester, New York 14614
(585) 399-3979
adam.khalil@usdoj.gov