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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Meliza Chavarria Quiroz,)
)
Petitioner,)
)
v.)
)
Martin Frink, Warden, Houston)
Processing Center; **Paul McBride,** *Field Office*)
Director of Immigration & Customs Enforcement,)
Enforcement And Removal Operations Houston)
Field Office, **Todd Lyons,** Acting Director, ICE,)
Kristi Noem; Secretary of the U.S.)
Department of Homeland Security; and **Pamela**)
Bondi, Attorney General of the United States,)
in their official capacities,)
)
Respondents.)
_____)

Case No. 4:25-CV-06142
**PETITION FOR WRIT OF
HABEAS CORPUS**

**ORAL ARGUMENT
REQUESTED**

**PETITIONER’S OPPOSITION TO RESPONDENTS’
RESPONSE & MOTION FOR SUMMARY JUDGMENT**

1. The Petitioner files this response in opposition to the motion for summary judgement and the response in opposition filed by the Respondents on December 30, 2025 and moves the Court to deny the Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56 and to grant the Petitioner’s Petition for Habeas Corpus filed on December 19, 2025.

RESPONSE TO MOTION FOR SUMMARY JUDGEMENT

2. The Respondents’ motion for summary judgement should be denied. Summary judgment

is appropriate under Rule 56 of the Federal Rules of Civil Procedure only if the pleadings, along with evidence, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also* Fed. R. Civ. P. 56(c). Here, the Petition for Habeas Corpus, does present genuine issues as to material facts which need to be addressed by This Court. Specifically, as to whether the Petitioner can assert a claim based *on Zadvydas* prior to six months of detention and whether she has met her burden of proof in doing so. As such, the Motion for Summary Judgement should be denied.

OPPOSITION TO RESPONDENT’S RESPONSE

3. The Petitioner opposes the arguments stated in the Respondent’s response and argues that their interpretation and application of the decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), is incomplete and does not address all of the avenues available to the Petitioner under *Zadvydas* that can be used to make her argument in support of habeas relief. Respondent’s argument, in a nutshell, is that petitioner does not have the right to argue for her release under a Petition for Habeas Corpus because her petition was “premature.” The response states, “Petitioner cannot show that the length of her detention was unreasonable under the *Zadvydas* framework because (1) she cannot count the period of detention prior to her final order of removal and (2) *Zadvydas* is inapplicable to someone who is within the 90-day removal period,” Respondent’s Response at Page 3.

4. Arguing that *Zadvydas* is “inapplicable” when asserted within the 90-day removal period of detention is erroneous. Such an argument is incomplete because it concludes that the inability to demonstrate detention for a specific period of time serves as an automatic bar to a habeas petition under *Zadvydas*. Simply put, it asserts that the 90-day period creates black line rule that detention

is constitutional so long as it does not extend beyond 90 days. It does not. *Zadvydas* recognized a “presumptively”—not categorically—reasonable period of detention. 533 U.S. at 699. In a later decision, the Court clarified and explained their decision. “Nothing in *Zadvydas* indicates that §1231(a)(6) authorizes detention until it approaches constitutional limits. Nor does §1182(d)(5) independently authorize continued detention of these aliens. Pp. 5–14,” See *Clark v. Martinez*, 543 U.S. 371 (2005).

5. *Zadvydas*’s creation of a *presumption* and the case’s actual rule—“if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute”—command against that understanding. See *Zadvydas*, 533 U.S. at 699–700. In *Villanueva v. Tate*, (2025), United States District Court, S.D. Texas, Houston Division, the court concluded, “Even *within the presumptively constitutional detention period*, whether a noncitizen’s detention is constitutional hinges on whether his removal from the United States is reasonably likely in the foreseeable future, not on how long the noncitizen has been detained.” *Villanueva*, (2025.)

6. Therefore, the Petitioner is not barred from asserting that she has relief under *Zadvydas* because it is premature. The decision, instead of barring her, provides a framework for an argument made within the six-month period in lieu of an argument that can be made without the time period. To make out a *Zadvydas* claim after the six months have run, a detained noncitizen need only “provide *good reason* to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. If they do so, “the Government must respond with evidence sufficient to rebut that showing.” *Id.*

7. But before the six-month period has run, a Petitioner must do something more. See *id.* “In

practical terms, before the six-month period elapses, the petitioner must claim and prove, that his removal is not reasonably foreseeable.” *Munoz-Saucedo*, 789 F. Supp. 3d at 397. This means that petitioners must claim and prove “that there is no significant likelihood of removal in the reasonably foreseeable future.” *See Zadvydas*, 533 U.S. at 701 (recognizing that a noncitizen “may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future”).

8. Thus, Petitioner, in filing her petition within the 90-day removal period, is given the opportunity to prove that there is no significant likelihood of removal in the reasonably foreseeable future.” *See Zadvydas*, 533, U.S. at 701. Although she must meet a stronger burden of proof here than she would have had to assert by providing a “good reason,” Petitioner would argue that there is no significant likelihood of removal in the reasonably foreseeable future in her case.

9. It is important to note here that the Respondent in their response has made no argument that Petitioner will be removed in the “reasonably foreseeable future,” but rather simply is arguing that given the amount of calendar days involved, she is barred from asserting relief under *Zadvydas*. In doing so they point out that the time she spent in detention prior to her decision cannot be counted towards a calculation of her time in detention under her November 12, 2025 removal order. They assert that she only possesses approximately 30 days of detention. Petitioner does not dispute these facts and instead seeks to meet the required burden of proof as a petitioner seeking relief under *Zadvydas* prior to six months in detention.

10. In meeting her burden of proof, the first question is how does one define “no significant likelihood of removal in the reasonably foreseeable future.” The Supreme Court’s comment on the burden of proof used by the Fifth Circuit Court of Appeals in *Zadvydas* prior to the Writ of Certiorari sheds some light on what is not needed to show a significant likelihood of removal.

“The Fifth Circuit held Zadvydas’ continued detention lawful as long as “good faith efforts to effectuate... removal continue” and Zadvydas failed to show that removal will prove “impossible.” 185 F. 3d, at 294, 297. But this standard would seem to require an alien seeking release to show the absence of any prospect of removal—no matter how unlikely or unforeseeable—which demands more than our reading of the statute can bear,” *See Zadvydas*, 533 U.S. at 702. So, based on the decision, the Petition in this case does not have to show that removal will be “impossible.” Likewise, the acts of the government in trying to secure her removal would not be sufficient if they amounted only to “good faith efforts.”

11. The facts of this case clearly meet this burden and demonstrate that there is “no significant likelihood of removal in the reasonably foreseeable future.” Two sets of facts support this assertion. First, the efforts made thus far by DHS/ICE demonstrate that the Respondents have not and will not process her removal fast enough to deport her in the reasonably foreseeable future as *Zadvydas* does not permit unlimited detention to effectuate removal. Second, the Petitioner’s basis for being in detention and its relationship to being accepted by a third-party country will also create a situation in which there is no significant likelihood of removal in the reasonably foreseeable future.

12. Thus far, the steps taken by DHS/ICE to effectuate the removal of the Petitioner have been slow and disorganized at best. Keeping in mind that a “good faith effort to effectuate” does not rise to the level to merit continued detention under *Zadvydas*, the Petitioner would argue that the Respondent’s failure to pursue her removal before and after November 2025 and the procedural matters that will have to be tended to prior to her removal meet her burden. When proceedings commenced before the Conroe Immigration Court in June, 2025, the Notice to Appear was admitted into evidence and pleading were taken. The petitioner, through her counsel, admitted to

the allegations, conceded the charge and declined to designate a country of removal. As an Application for Asylum, Withholding and Protection under the Convention Against Torture (CAT) was already pending with the immigration court, DHS, at this juncture could have asked the court to designate another country, namely Ecuador, in addition to naming Mexico, *See Exhibit A, filed by Respondents*. It failed to do so. Such a designation would have sped up processing of her removal and helped to negate the petitioner's burden by demonstrating that efforts were being made to remove her. This is especially true when you consider that her expedited removal order was already on-file with the court. That combined with the facts of her case, created a situation where DHS should have anticipated a grant of deferral of removal under CAT as it is a common grant for someone seeking relief who also has convictions for drug trafficking and/or and admission to the same. DHS/ERO removal officers waited too long to start the process of seeking out a third-party county when there was no reason to do so. Following the immigration judge's decision on November 12, 2025, ***only DHS counsel reserved appeal***. By waiving her rights to appeal, Petitioner accepted the decision of the court. The government was the only party that could have appealed the decision by December 12, 2025. Despite this, removal staff waited 10 days after the period for submitting a Notice of Appeal to the Board of Immigration Appeals had elapsed to begin discussing removal to a third-party country with Petitioner, *See Exhibit 1, filed by Respondents*. Again, there was no reason to do so. This would have been different if the Petitioner had reserved appeal. From the record, very little has been done to effectuate her removal. Indeed, prior to filing her petition in this case, the only two actions taken by DHS/ICE were to discuss third-party removal with the petitioner and to send a letter to the government of Ecuador requesting they accept her. Given that DHS/ICE had a least 70 days, and perhaps more, prior to December 12, 2025, the government actions in this case do not even demonstrate due diligence in pursuing

removal. Indeed, they do not even constitute the “good faith effort” the Supreme Court deemed statutorily overboard in their decision, *See Zadvydas, Supra*. Given this history, Petitioner has met her burden to show that she will not be removed in the reasonably foreseeable future.

13. In addition to the work that has already been done in her case, Petitioner would also point to the work that has to be done in the future before she can be removed to demonstrate she will be removed in the reasonable future. The following is a list of the steps needed to be completed prior to removal, *see Villanueva, Supra*.

- a. In determining the location of removal, the law entitles the noncitizen to first voluntarily select a country of removal. See 8 U.S.C. § 1231(b)(2)(A)(i); 8 C.F.R. § 1240.10(f).
- b. If the noncitizen does not do so, the immigration judge will designate the country of removal and may also designate alternate countries to which the noncitizen may be removed. See 8 C.F.R. § 1240.10(f).
- c. In addition, the immigration judge may designate a country or countries to which the noncitizen may not be removed if the noncitizen proves to the court's satisfaction that the noncitizen is likely to be tortured or persecuted if removed to that country. See 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(b).
- d. In that circumstance, the government may remove the noncitizen to any third “country whose government will accept the [noncitizen] into that country.” 8 U.S.C. § 1231(b)(2)(E)(vii). But the noncitizen may not be removed to any country in which there is reason to believe that he would be tortured or persecuted. See 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16-208.18; 8 C.F.R. §§ 1208.16-1208.18.

- e. When the government intends to remove a noncitizen to a third country, the government must provide notice of the intended removal that is sufficient to enable the noncitizen to challenge that removal either as violating an order of withholding or as removing him to a country that will subject him to torture or persecution. See, e.g., *Noem v. Abrego Garcia*, No. 24A949, 2025 WL 1077101, at *2 (Apr. 10, 2025) (Sotomayor, J., concurring); *Andriasian v. Immigr. & Naturalization Serv.*, 180 F.3d 1033, 1041 (9th Cir. 1999). The “notice must be afforded within a reasonable time and in such a manner as will allow [the noncitizen] to actually seek relief in the proper venue before removal occurs.” *J.G.G.*, 2025 WL 1024097.

14. The second set of facts asserted by the Petitioner are simple and straight forward. Removing her to another country, Ecuador or any other, is not as easy as the government makes it to be. We need to keep in mind that despite the urgings of the United States Government, Ecuador and other nations are sovereign and the decision to accept the Petitioner will be theirs’ alone. In this case, they are going to have to agree to take someone who has admitted to being involved in several instances of international drug and money trafficking and who had contacts with Mexican Cartel members, *See Exhibit 1, Filed by Respondent*. This is far more complex than negotiating with Mexico to allow a Salvadoran with a CAT claim based on political opinion to stay in Mexico. Here the government is going to have to convince a third-party nation to allow someone to live in their country with no ties to the country, no means of earning a living and no knowledge of the country. Taken as a whole, these issues will cause problems in obtaining the Petitioner permission to live in a third-party country other than Mexico.

CONCLUSION

15. Petitioner has presented a genuine issue that should be heard by the court. The fact that she

has not spent 90 days or 6 months in detention does not bar her from asserting relief under *Zadvydas*. Instead, it provides her with an opportunity argue her case under a higher standard. In lieu of simply stating a “good reason,” she has the burden to show that “no significant likelihood of removal in the reasonably foreseeable future. The limited actions taken by DHS/ICE to effectuate removal, the additional tasks yet to be completed and the likelihood that a third-party country will allow Petitioner to enter the country given her criminal history all combine to meet this burden of proof. Therefore, the facts and case law stated above establish that the motion for summary judgement should be dismissed and the petition for habeas corpus should be granted.

Dated: January 12, 2026

Respectfully submitted,



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CERTIFICATE OF SERVICE

On January 12, 2026, undersigned counsel served a copy of this motion on the U.S. Attorney for the Southern District of Texas as required by serving one of his designated agents for service of process. In addition, undersigned counsel emailed this motion to the U.S. Attorney.

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