





1 government to detain immigrants for whom there is “no significant likelihood of  
2 removal in the reasonably foreseeable future.” 533 U.S. 678, 701 (2001).

3 **I. Count One: Petitioner’s detention violates *Zadvydas* and 8 U.S.C.  
4 § 1231.**

5 **A. Legal background**

6 Ms. Li’s continued incarceration violates the statute authorizing detention,  
7 8 U.S.C. § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme  
8 Court considered a problem affecting similarly situated people. Federal law  
9 requires ICE to detain an immigrant during the “removal period,” which typically  
10 spans the first 90 days after the immigrant is ordered removed. 8 U.S.C.  
11 § 1231(a)(1)-(2). After that 90-day removal period expires, detention becomes  
12 discretionary—ICE may detain the migrant while continuing to try to remove  
13 them. *Id.* § 1231(a)(6). Ordinarily, this scheme would not lead to excessive  
14 detention, as removal happens within days or weeks. But some detainees cannot  
15 be removed quickly. Perhaps their removal “simply require[s] more time for  
16 processing,” or they are “ordered removed to countries with whom the United  
17 States does not have a repatriation agreement,” or their countries “refuse to take  
18 them,” or they are “effectively ‘stateless’ because of their race and/or place of  
19 birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and  
20 other circumstances, detained immigrants can find themselves trapped in  
21 detention for months, years, decades, or even the rest of their lives.

22 If federal law were understood to allow for “indefinite, perhaps permanent,  
23 detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at  
24 699. In *Zadvydas*, the Supreme Court avoided the constitutional concern by  
25 interpreting § 1231(a)(6) to incorporate implicit limits. *Id.* at 689.

26 As an initial matter, *Zadvydas* held that detention is “presumptively  
27 reasonable” for at least six months. *Id.* at 701. This acts as a kind of grace period  
28 for effectuating removals.

1           Following the six-month grace period, courts must use a burden-shifting  
2 framework to decide whether detention remains authorized. First, the petitioner  
3 must make a prima facie case for relief: She must prove that there is “good reason  
4 to believe that there is no significant likelihood of removal in the reasonably  
5 foreseeable future.” *Id.*

6           If she does so, the burden shifts to “the Government [to] respond with  
7 evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of  
8 proof rests with the government: The government must prove that there is a  
9 “significant likelihood of removal in the reasonably foreseeable future,” or the  
10 immigrant must be released. *Id.*

11           **B.     The six-month grace period has nearly expired.**

12           As an initial matter, the six-month grace period has almost expired for  
13 Ms. Li. The *Zadvydas* grace period lasts for “*six months* after a final order of  
14 removal—that is, *three months* after the statutory removal period has ended.” *Kim*  
15 *Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001). Here, Ms. Li’s order  
16 of removal became final no later than October 31, 2025—nearly six months ago.<sup>1</sup>  
17 Accordingly, her 90-day removal period began on that respective date. 8 U.S.C.  
18 § 1231(a)(1)(B). The *Zadvydas* grace period will therefore expire no later than  
19 May 1, 2026. The threshold requirement is therefore met.

20           **C.     There is good reason to believe that there is no significant**  
21                   **likelihood of removal in the reasonably foreseeable future.**

22           Because the six-month grace period is about to expire, this Court must  
23 evaluate Petitioner’s *Zadvydas* claim using the burden-shifting framework. At the  
24 first stage of the framework, there must be “good reason to believe that there is no

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25 <sup>1</sup> Because Ms. Li’s negative credible fear finding and expedited removal order  
26 occurred well before the IJ’s review of it, Ms. Li’s six-month grace period has  
27 arguably already expired. See 8 C.F.R. § 235.3(b)(7) (stating that an expedited  
28 removal order that is reviewed and approved by the appropriate supervisor “is  
considered final”). But because this petition will likely not be decided before six  
months from the October 31, 2025, date have passed, the Court need not resolve  
that issue.

1 significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,  
2 533 U.S. at 701. This standard can be broken down into three parts.

3       **“Good reason to believe.”** The “good reason to believe” standard is a  
4 relatively forgiving one. “A petitioner need not establish that there exists no  
5 possibility of removal.” *Freeman v. Watkins*, No. CV B:09-160, 2009 WL  
6 10714999, at \*3 (S.D. Tex. Dec. 22, 2009). Nor does “[g]ood reason to  
7 believe’ . . . place a burden upon the detainee to demonstrate no reasonably  
8 foreseeable, significant likelihood of removal or show that his detention is  
9 indefinite; it is something less than that.” *Rual v. Barr*, No. 6:20-CV-06215 EAW,  
10 2020 WL 3972319, at \*3 (W.D.N.Y. July 14, 2020) (quoting *Senor v. Barr*, 401  
11 F. Supp. 3d 420, 430 (W.D.N.Y. 2019)). In short, the standard means what it says:  
12 Petitioner need only give a “good reason”—not prove anything to a certainty.

13       **“No significant likelihood of removal.”** This component focuses on  
14 *whether* Petitioner will likely be removed: Continued detention is permissible  
15 only if it is “significant[ly] like[ly]” that ICE will be able to remove her.  
16 *Zadvydas*, 533 U.S. at 701. This inquiry targets “not only the *existence* of  
17 untapped possibilities, but also [the] probability of *success* in such possibilities.”  
18 *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010) (second emphasis  
19 added). In other words, even if “there remains *some* possibility of removal,” a  
20 petitioner can still meet its burden if there is good reason to believe that  
21 successful removal is not significantly likely. *Kacanic v. Elwood*, No. CIV.A. 02-  
22 8019, 2002 WL 31520362, at \*4 (E.D. Pa. Nov. 8, 2002) (emphasis added).

23       **“In the reasonably foreseeable future.”** This component of the test  
24 focuses on when Petitioner will likely be removed: Continued detention is  
25 permissible only if removal is likely to happen “in the reasonably foreseeable  
26 future.” *Zadvydas*, 533 U.S. at 701. This inquiry places a time limit on ICE’s  
27 removal efforts. If the Court has “no idea of when it might reasonably expect  
28 [Petitioner] to be repatriated, this Court certainly cannot conclude that his removal

1 is likely to occur—or even that it might occur—in the reasonably foreseeable  
2 future.” *Palma v. Gillis*, No. 5:19-CV-112-DCB-MTP, 2020 WL 4880158, at \*3  
3 (S.D. Miss. July 7, 2020), *report and recommendation adopted*, 2020 WL  
4 4876859 (S.D. Miss. Aug. 19, 2020) (quoting *Singh v. Whitaker*, 362 F. Supp. 3d  
5 93, 102 (W.D.N.Y. 2019)). Thus, even if this Court concludes that the Petitioner  
6 “would *eventually* receive” a travel document, she can still meet her burden by  
7 giving good reason to anticipate sufficiently lengthy delays. *Younes v. Lynch*,  
8 2016 WL 6679830, at \*2 (E.D. Mich. Nov. 14, 2016).

9 Ms. Li has good reason to think that ICE cannot remove her, since six  
10 months of effort have borne no fruit. Thus, she has met her initial burden. And  
11 because the government’s failure to remove her for six months shows that her  
12 removal is not significantly likely in the reasonably foreseeable future, this Court  
13 should immediately grant her habeas petition.

14 **II. This Court must hold an evidentiary hearing on any disputed facts.**

15 Resolution of a prolonged-detention habeas petition may require an  
16 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).

17 Petitioner hereby requests such a hearing on any material, disputed facts.

18 **III. Prayer for relief**

19 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 20 1. Order Respondents to immediately release Petitioner from custody;
- 21 2. Enjoin Respondents from re-detaining Petitioner unless and until ICE  
22 obtains a travel document for her removal; and
- 23 3. Order all other relief that the Court deems just and proper.

24 Respectfully submitted,

25 Dated: April 13, 2026

26 */s/ Kara Hartzler*

**Kara Hartzler**

Federal Defenders of San Diego, Inc.

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**PROOF OF SERVICE**

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney's Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Date: April 13, 2026

/s/ Kara Hartzler  
Kara Hartzler