IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

ELVIS RAFAEL REQUENA,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-33-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On January 24, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition"). ECF No. 1. Petitioner asserts that his continued detention is unconstitutional and seeks release from custody. Pet. 6-7, ECF No. 1. As explained below, the Petition should be dismissed.

BACKGROUND

Petitioner is a native and citizen of Venezuela who is detained post-final order of removal pursuant to 8 U.S.C. § 1231(a)(2). Gloster Decl. ¶ 3. On or about December 10, 2021, Petitioner unlawfully entered the United States at Hidalgo, Texas and was encountered by Customs and Border Protection ("CBP"). *Id.* ¶ 4 & Ex. A.

On December 12, 2021, CBP issued Petitioner a Notice to Appar ("NTA") charging him with inadmissibility pursuant to Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i), 8

[1] In addition to the Warden of Stewart Detention Center, Petitioner also names former officials with the Department of Justice, Department of Homeland Security ("DHS"), and Immigration and Customs Enforcement ("ICE") as respondents. "[T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

U.S.C. § 1182(a)(6)(A)(i), based on his unlawful presence in the United States without admission or parole. *Id.* ¶ 5 & Ex. B. The NTA advised Petitioner that his initial hearing before an immigration judge ("IJ") would be held on December 6, 2023 at the Orlando, Florida immigration court. *Id.* ¶ 5 & Ex. B. On December 17, 2021, Petitioner was released from custody on recognizance. *Id.* ¶ 6 & Ex. C. On December 6, 2023, the IJ removed the case from the docket because Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") failed to upload the NTA to the immigration court's electronic docket. *Id.* ¶ 7 & Ex. D.

On December 20, 2022, Petitioner was arrested in Pike County, Georgia for driving under the influence, first-degree vehicular homicide, and reckless stunt driving. *Id.* ¶ 8 & Ex. E. On November 21, 2024, he was convicted of vehicular homicide and reckless driving and sentenced to one year imprisonment. Gloster Decl. ¶ 8 & Exs. E, F. On November 23, 2024, Petitioner entered ICE/ERO custody. *Id.* ¶ 9. On November 25, 2024, ICE/ERO issued Petitioner a new NTA again charging him with inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* ¶ 10 & Ex. G. The NTA notified Petitioner of his hearing before an IJ on December 13, 2024. *Id.* ¶ 10 & Ex. G. On December 13, 2024, the IJ ordered Petitioner removed to Venezuela. *Id.* ¶ 11 & Ex. H. Petitioner waived appeal, making his removal order final. *Id.* ¶ 11 & Ex. H; 8 C.F.R. § 1241.1(b). On January 7, 2025, ICE/ERO notified Petitioner that it would initiate a 90-day post-order custody review ("POCR") on March 3, 2025. *Id.* ¶ 12 & Ex. I.

On February 10, 2025, the Nicolas Maduro regime in Venezuela sent two flights to the United States and transported 190 Venezuelan nationals from the United States to Venezuela. Schultz Decl. ¶ 8. ICE is in continuous communication with other U.S. government agencies regarding future removal flights. *Id.* On February 14, 2025, Petitioner was transferred to the facility from which removals are slated to take place. *Id.*; Gloster Decl. ¶ 13. ICE expects that additional

flights to Venezuela are imminent. Schultz Decl. ¶ 8. ICE also expects Petitioner to be manifested on one of the upcoming flights. *Id.* Accordingly, there is a significant likelihood of removal to Venezuela for Venezuelan nationals generally and Petitioner specifically. *Id.* ¶ 9.

LEGAL FRAMEWORK

Since Petitioner is detained post-final order of removal, his detention is governed by 8 U.S.C. § 1231. Congress provided in § 1231(a)(1) that ICE/ERO shall remove an alien within ninety (90) days of the latest of: (1) the date the order of removal becomes administratively final; (2) if a removal is stayed pending judicial review of the removal order, the date of the reviewing court's final order; or (3) the date the alien is released from criminal confinement. *See* 8 U.S.C. § 1231(a)(1)(A)-(B). During this ninety-day time frame, known as the "removal period," detention is mandatory. *See id.* at § 1231(a)(2).

If ICE/ERO does not remove an alien within ninety days, detention may continue if it is "reasonably necessary" to effectuate removal. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); 8 U.S.C. § 1231(a)(6) (providing that an alien who is subject to mandatory detention, inadmissible, or who has been determined to be a risk to the community or a flight risk, "may be detained beyond the removal period"). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court determined that, under the Fifth Amendment, detention for six months is presumptively reasonable. 533 U.S. at 700. "After 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.* at 701 (emphasis added); *see also* 8 C.F.R. § 241.13. Where there is no significant likelihood of removal in the reasonably foreseeable future, the alien should be released from confinement. *Id.*

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit further elaborated on the framework announced by the Supreme Court in *Zadvydas*, stating that "in order to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 287 F.3d at 1052. Thus, the burden is on Petitioner to demonstrate: (1) post-removal order detention lasting more than six months; and (2) "evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (per curiam) (quoting *Akinwale*, 287 F.3d at 1051-52) (internal quotations omitted).

ARGUMENT

Petitioner appears to seek relief under *Zadvydas*, asserting that his post-final order of removal detention violates due process because there is no significant likelihood of removal in the reasonably foreseeable future. Pet. 6-7. The Petition should be dismissed for two reasons. ***First***, Petitioner's *Zadvydas* claim is premature on its face because he has not been detained post-final order of removal for six months. ***Second***, even assuming Petitioner could state a claim for relief under *Zadvydas*—which he cannot—he fails to show that he is entitled to relief. For these reasons, the Court should dismiss the Petition.

I. The Petition should be dismissed as premature under *Zadvydas*.

In evaluating *Zadvydas* claims, the Eleventh Circuit has made clear that the "six-month period thus must have expired at the time [Petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002); *see also Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 833 (11th Cir. 2016); *Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013).

Here, Petitioner most recently entered ICE/ERO custody on November 23, 2024. Gloster Decl. ¶ 9. The IJ ordered Petitioner removed on December 13, 2024. *Id.* ¶ 11 & Ex. H. Because Petitioner waived appeal, his removal order became final the same day. *Id.* ¶ 11 & Ex. H; 8 C.F.R. § 1241.1(b). The 90-day removal period also commenced on this date and will not end until March 13, 2025. 8 U.S.C. § 1231(a)(1)(A), (a)(1)(B)(i). Additionally, the six-month presumptively reasonable detention period under *Zadvydas* will not end until June 13, 2025, *Zadvydas*, 533 U.S. at 700.

Petitioner filed the Petition on January 24, 2025.[2] *See generally* Pet. He cannot state a claim for relief under *Zadvydas*—which concerns discretionary detention under 8 U.S.C. § 1231(a)(6)—because he is mandatorily detained during the removal period under 8 U.S.C. § 1231(a)(2). Additionally, the *Zadvydas* six-month presumptively reasonable detention period will not expire for nearly four months. Thus, Petitioner cannot state a claim under *Zadvydas* because his detention is currently mandatory and will remain presumptively reasonable until June 13, 2025. *Akinwale*, 287 F.3d at 1052.

Courts throughout the Eleventh Circuit—including this Court—have dismissed non-citizens' habeas petitions raising *Zadvydas* claims where the presumptively reasonable six-month period had not expired when they filed their petitions. *S.H. v. Warden, Stewart Det. Ctr.*, No. 4:21-CV-185-CDL-MSH, 2022 WL 1280989, at *2 (M.D. Ga. Feb. 15, 2022), *recommendation adopted*, 2022 WL 1274385 (M.D. Ga. Apr. 28, 2022); *Singh v. Garland*, No. 3:20-cv-899, 2021

[2] Although the Court received the Petition on January 24, 2025, Petitioner signed it on January 13, 2025—11 days earlier. "Under the prison mailbox rule, a *pro se* prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing." *United States v. Glover*, 686 F.3d 1203, 1205 (11th Cir. 2012) (internal quotations and citation omitted). "Unless there is evidence to the contrary, like prison logs or other records, we assume that a prisoner's motion was delivered to prison authorities on the day he signed it." *Id.* Using either date, Petitioner filed the Petition well before the 90-day removal period and the six-month presumptively reasonable detention period under *Zadvydas* expire.

WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021); *Elienist v. Mickelson*, No. 15-61701-Civ, 2015 WL 5316484, at *3 (S.D. Fla. Aug. 18, 2015), *recommendation adopted*, 2015 WL 5308882 (S.D. Fla. Sept. 11, 2015); *Maraj v. Dep't of Homeland Sec.*, No. CA 06-0580-CG-C, 2007 WL 748657, at *3 (S.D. Ala. Mar. 7, 2007); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1363-65 (N.D. Ga. 2002). The Court should similarly dismiss the Petition here.

II. In the alternative, Petitioner fails to show that he is entitled to relief under *Zadvydas*.

Even if the Court ignores that Petitioner's *Zadvydas* claim is premature on its face—which it should not—Petitioner fails to show that he is entitled to release under *Zadvydas*.

Petitioner presents no evidence to show that he is not likely to be removed in the reasonably foreseeable future. Instead, he states in conclusory fashion—and without any supporting evidence—that "ICE is not likely to remove [him] in the near future Pet. 6. But Petitioner's conclusory statements that he is unlikely to be removed in the near future are insufficient to state a claim under *Zadvydas*. *See Novikov v. Gartland*, No. 5:17-cv-164, 2018 WL 4100694, at *2 (S.D. Ga. Aug. 28, 2018), *recommendation adopted*, 2018 WL 4688733 (S.D. Ga. Sept. 28, 2018); *Gueye v. Sessions*, No. 17-62232-Civ, 2018 WL 11447946, at *4 (S.D. Fla. Jan. 24, 2018); *Rosales-Rubio v. Att'y Gen. of United States*, No. 4:17-cv-83-MSH-CDL, 2018 WL 493295, at *3 (M.D. Ga. Jan. 19, 2018), *recommendation adopted*, 2018 WL 5290094 (M.D. Ga. Feb. 8, 2018). Rather, Petitioner must provide "*evidence* of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future". *Gozo*, 309 F. App'x at 346 (internal quotations omitted) (emphasis added). Because Petitioner provides none, he cannot meet his burden under *Zadvydas*.

Even assuming Petitioner offered evidence sufficient to shift the burden to Respondent to

show a likelihood of removal—which he has not—Respondent meets his burden. ICE/ERO is able to remove Venezuelan nationals to Venezuela, as evidenced by the flight to Venezuela only four days ago. Schultz Decl. ¶ 8. ICE remains in constant communication with other U.S. government agencies regarding future flights and expects that additional flights to Venezuela are imminent. *Id.* As to Petitioner in particular, ICE expects him to be manifested on an upcoming flight. *Id.* Indeed, Petitioner has already been transferred to the facility from which removals are slated to take place. *Id.*; Gloster Decl. ¶ 13. For these reasons, the evidence shows that there is a significant likelihood of removal in the reasonably foreseeable future, and the Petition should be dismissed because Petitioner fails to show that he is entitled to relief under *Zadvydas*.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted, this 20th day of February, 2025.

C. SHANELLE BOOKER
ACTING UNITED STATES ATTORNEY

BY: *s/ Roger C. Grantham, Jr.*
ROGER C. GRANTHAM, JR.
Assistant United States Attorney
Georgia Bar No. 860338
United States Attorney's Office
Middle District of Georgia
P. O. Box 2568
Columbus, Georgia 31902
Phone: (706) 649-7728
roger.grantham@usdoj.gov

CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Respondent's Motion to Dismiss with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

Elvis Rafael Requena
A# [redacted]
El Paso Service Processing Center
8915 Montana Ave.
El Paso, TX 79925

This 20th day of February, 2025.

BY: *s/ Roger C. Grantham, Jr.*
ROGER C. GRANTHAM, JR.
Assistant United States Attorney