

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

**NTONE NDEMBA SAMMY JACKSON, :**

**Petitioner, :**

**v. :**

**WARDEN, STEWART DETENTION  
CENTER,<sup>1</sup> :**

**Respondent. :**

**Case No. 4:25-CV-43-CDL-AGH  
28 U.S.C. § 2241**

**MOTION TO DISMISS**

On February 4, 2025, Petitioner filed a petition for a writ of habeas corpus (“Petition”). ECF No. 1. Petitioner asserts that his detention is unconstitutional under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and seeks release from custody. Pet. ¶¶ 20-27, ECF No. 1. As explained below, the Petition should be dismissed because Petitioner’s claim is premature. In the alternative, Petitioner fails to show he is entitled to relief.

**BACKGROUND**

Petitioner is a native and citizen of Cameroon who is detained post-final order of removal. Bush Decl. ¶ 4. On December 17, 1992, he was admitted into the United States pursuant to a B-2 temporary, non-immigrant visa. *Id.* ¶ 4 & Ex. A. On February 25, 2010, Petitioner was indicted in the U.S. District Court for the Eastern District of Louisiana for multiple charges related to wire

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<sup>1</sup> In addition to the Warden of Stewart Detention Center, Petitioner also names former officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as respondents to the Petition. “[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.

fraud, counterfeiting, and conspiracy to commit the same. *Id.* ¶ 5 & Ex. B. On December 2, 2010, Petitioner was convicted of (1) conspiracy to counterfeit in violation of 18 U.S.C. §§ 471 and 371, and (2) counterfeiting in violation of 18 U.S.C. § 471. *Id.* ¶ 5 & Ex. B. He was sentenced to 18 months imprisonment and 2 years supervised release. *Id.* ¶ 5 & Ex. B.

On December 17, 2010, Petitioner entered Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) custody for the first time. *Id.* ¶ 6. On December 20, 2010, ICE/ERO issued Petitioner a Notice to Appear (“NTA”) charging him with removability pursuant to Immigration and Nationality Act (“INA”) § 237(a)(1)(B), 8 U.S.C. § 1227(a)(1)(B), based on his unlawful presence in the United States. Bush Decl. ¶ 7 & Ex. C. On February 1, 2011, an immigration judge (“IJ”) ordered Petitioner removed to Cameroon. *Id.* ¶ 8 & Ex. D. Petitioner failed to file an appeal by his deadline to do so, and his removal order became final on March 3, 2011. *Id.* ¶ 8; *see* 8 C.F.R. §§ 1003.38(b), 1241.1(c). Petitioner completed a travel document application on December 20, 2010, and ICE/ERO submitted the travel document request to the Cameroon consulate on April 5, 2011. Bush Decl. ¶ 10. On November 8, 2011, Petitioner was released from ICE/ERO custody on an order of supervision. *Id.* ¶ 11 & Ex. E.

On December 30, 2012, Petitioner was arrested in Gwinnett County, Georgia for driving under the influence of alcohol. *Id.* ¶ 12 & Ex. G. On February 2, 2014, he was convicted of this offense and sentenced to, *inter alia*, 24 hours confinement and 12 months probation. *Id.* ¶ 12 & Ex. G. On September 7, 2016, Petitioner was arrested in Gwinnett County, Georgia for driving while license suspended or revoked. *Id.* ¶ 12 & Ex. G. On the same day, he entered a *nolo contendere* plea, and his sentence was suspended. *Id.* ¶ 12 & Ex. G. On September 24, 2024, Petitioner was arrested in Dunwoody, Georgia for battery, and this charge remains pending. Bush Decl. ¶ 13 & Ex. G. On September 25, 2024, ICE/ERO encountered Petitioner while he was in

criminal confinement with the Dekalb County, Georgia Sheriff's Office. *Id.* ¶ 14. On October 2, 2024, he re-entered ICE/ERO custody. *Id.*

On November 6, 2024, Petitioner completed a second travel document application, and ICE/ERO submitted the travel document request to the Cameroon consulate on the same day. *Id.* ¶ 15. Cameroon is currently open for international, and there are no travel bans in place. *Id.* ¶ 17. ICE/ERO is currently removing non-citizens to Cameroon and successfully removed 10 non-citizens to Cameroon in fiscal year 2024. *Id.* ICE/ERO is also able to secure travel documents from the Cameroon consulate and recently received travel documents from the consulate on August 9, 2024 and on October 10, 2024. Bush Decl. ¶ 18. ICE/ERO's travel document request for Petitioner remains pending with the Cameroon consulate, and ICE/ERO will provide any additional information or documents upon request from the consulate. *Id.* ¶ 19.

### 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).

## ARGUMENT<sup>2</sup>

The Petition should be dismissed for two reasons. *First*, Petitioner’s *Zadvydas* claim is premature because he has not been detained post-final order of removal for more than six months

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<sup>2</sup> Respondent addresses Petitioner’s claims for relief together because, in each claim, Petitioner seeks relief for alleged prolonged post-final order of removal detention under *Zadvydas*. *See, e.g., Linares v. Dep’t of Homeland Sec.*, 598 F. App’x 885, 887 (11th Cir. 2015) (evaluating the petitioner’s claims together because the “procedural and substantive due process claims were both grounded in the government’s alleged violation under *Zadvydas*”). To the extent that the Court interprets Petitioner’s claims for relief differently, Respondent respectfully requests an opportunity to amend this Response.

since he re-entered ICE/ERO custody in 2024. *Second*, in the alternative, Petitioner fails to show that he is otherwise entitled to relief under *Zadvydas*.

**I. The Petition should be dismissed because Petitioner’s *Zadvydas* claim is premature.**

The Petition is premature on its face under *Zadvydas* because Petitioner has been detained post-final order of removal for less than six months since he re-entered ICE/ERO custody on October 2, 2024. The Court should therefore dismiss the Petition because Petitioner cannot state a claim under *Zadvydas*.

In evaluating *Zadvydas* claims, the Eleventh Circuit has made clear that the “six-month [presumptively reasonable detention] period thus must have expired at the time [Petitioner’s] § 2241 petition was filed in order to state a claim under *Zadvydas*.” *Akinwale*, 287 F.3d at 1052; *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).

As this Court has recognized, *Zadvydas* is not “a permanent ‘Get Out of Jail Free Card’ that may be redeemed at any time just because an alien was detained too long in the past.” *Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at \*3 (M.D. Ga. Mar. 14, 2018). Rather, the “focus [for *Zadvydas*] is on *today*[.]” *Id.* (emphasis in original). For this reason, this Court has held that when a petitioner has been detained post-final order of removal multiple times, the *Zadvydas* six-month presumptively reasonable detention period runs from the date the petitioner most recently entered ICE/ERO custody and does not cumulate with prior periods of detention.

In *M.K. v. Warden, Stewart Detention Center*, No. 4:23-cv-136-CDL-AGH (M.D. Ga. Oct. 19, 2023), a non-citizen was detained post-final order of removal for approximately seven months before his release under an order of supervision. *M.K.*, No. 4:23-cv-136, R. & R. 2 (M.D. Ga. Oct. 19, 2023), ECF No. 12, *recommendation adopted*, Order 1 (M.D. Ga. Dec. 1, 2023), ECF No. 13.

ICE/ERO re-detained him approximately eleven years later, and the non-citizen sought habeas relief under *Zadvydas* approximately two months after his re-detention. *Id.* The Court held that the *Zadvydas* six-month period re-commenced when the non-citizen was most recently detained by ICE/ERO. *Id.* at 3-7. In reaching this conclusion, the Court reasoned that the *Zadvydas* six-month period was intended “to allow the Government to arrange for an alien’s removal.” *Id.* at 6 (citing *Zadvydas*, 533 U.S. at 700-01). If a non-citizen’s prior periods of post-final order of removal detention were cumulated with his present period of detention, this “would effectively eviscerate § 1231(a)’s purpose of allowing the Government time to arrange for an alien’s removal, including contacting foreign consulates and obtaining necessary travel documents.” *Id.* at 6-7. Because the non-citizen’s most recent period of post-final order of removal detention had not exceeded six months, the Court dismissed his petition as premature. *Id.*

Here, the facts are nearly identical to those presented in *M.K.* Petitioner was ordered removed by the IJ on February 1, 2011. Bush Decl. ¶ 8 & Ex. D. The removal order became final on March 3, 2011, when Petitioner’s time to appeal to the Board of Immigration Appeals expired. 8 C.F.R. §§ 1003.38(b), 1241.1(c). The 90-day removal period commenced on that same date and ended on April 2, 2011. 8 U.S.C. § 1231(a)(1)(A), (a)(1)(B)(i). Petitioner was previously detained post-final order of removal for approximately 7 months from April 2, 2011 to November 8, 2011. Bush Decl. ¶¶ 6, 8, 11.

Petitioner was then released from ICE/ERO custody for nearly 13 years. *Id.* ¶¶ 11, 14. He most recently re-entered ICE/ERO custody on October 2, 2024, after his release from state criminal custody. *Id.* ¶ 14. Thus, applying this Court’s precedent, the six-month presumptively reasonable detention period under *Zadvydas* will not end until April 2, 2025. *Zadvydas*, 533 U.S. at 700; *M.K.*, No. 4:23-cv-136, R. & R. 5-7 (M.D. Ga. Oct. 19, 2023), ECF No. 12; *accord Meskini*, 2018 WL

1321576, at \*3-4. Petitioner, however, filed the Petition on February 4, 2025—just over four months after he re-entered ICE/ERO custody and nearly two months before the six-month presumptively reasonable detention period will expire.<sup>3</sup> *See generally* Pet.

Because Petitioner has not been detained for more than six months post-final order of removal since he most recently re-entered ICE/ERO custody, Petitioner cannot state a claim under *Zadvydas* because his detention is presumptively reasonable. *Akinwale*, 287 F.3d at 1052; *M.K.*, No. 4:23-cv-136, R. & R. 6-7 (M.D. Ga. Oct. 19, 2023), ECF No. 12. Courts throughout the Eleventh Circuit 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 WL 1516066, at \*2 (M.D. Fla. Apr. 16, 2021); *Elieenist 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). And this Court has done so under facts nearly identical to those presented here. *M.K.*, No. 4:23-cv-136, R. & R. 5-7 (M.D. Ga. Oct. 19, 2023), ECF No. 12 (dismissing a *Zadvydas* claim as premature where the petitioner was

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<sup>3</sup> Although the Court received the Petition on February 4, 2025, Petitioner signed it on January 23, 2025—12 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 six-month presumptively reasonable detention period under *Zadvydas* expires.



previously detained by ICE/ERO approximately 11 years prior to his present detention). 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—the Petition should be dismissed because Petitioner fails to show that he is entitled to release under *Zadvydas*.

Petitioner has not presented evidence sufficient to meet his burden to show that he is not likely to be removed in the reasonably foreseeable future.<sup>4</sup> First, Petitioner relies entirely on the mere passage of time without removal—in other words, stating simply that he has not yet been removed—in an attempt to establish that there is no significant likelihood of removal in the reasonably foreseeable future. *Id.* ¶¶ 15-16, 23. But as other courts have recognized, “the mere existence of a delay of Petitioner’s deportation is not enough for Petitioner to meet his burden.” *Ortiz v. Barr*, No. 20-CV-22449, 2021 WL 6280186, at \*5 (S.D. Fla. Feb. 1, 2021) (citations omitted)), *recommendation adopted*, 2022 WL 44632 (S.D. Fla. Jan. 5, 2022); *see also Ming Hui Lu v. Lynch*, No. 1:15-cv-1100, 2016 WL 375053, at \*7 (E.D. Va. Jan. 29, 2016) (“[A] mere delay does not trigger the inference that an alien will not be removed in the foreseeable future.” (internal quotations and citations omitted)); *Newell v. Holder*, 983 F. Supp. 241, 248 (W.D.N.Y. 2013) (“[T]he habeas petitioner’s assertion as to the unforeseeability of removal, supported only by the mere passage of time [is] insufficient to meet the petitioner’s initial burden . . . .” (collecting

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<sup>4</sup> Petitioner also alleges that he suffers medical conditions that purportedly arose as a result of his detention and asks the Court to consider those conditions. Pet. ¶ 19. But these allegations are unrelated to the standard governing his due process claim in the Petition. Even if the Court construes this allegation as potentially raising a conditions-of-confinement claim, that claim is not cognizable in this habeas proceeding and should be dismissed. *Nelson v. Campbell*, 541 U.S. 637, 643 (2004); *Vaz v. Skinner*, 634 F. App’x 778, 781 (11th Cir. 2015) (per curiam); *A.S.M. v. Warden, Stewart Cnty. Det. Ctr.*, 467 F. Supp. 3d 1341, 1348-49 (M.D. Ga. 2020).



cases)). The mere fact that ICE/ERO has not removed Petitioner thus far—standing alone—is insufficient for Petitioner to meet his burden.

Second, aside from this insufficient assertion, Petitioner relies only on conclusory statements—unsupported by any evidence—that he is unlikely to be removed in the near future. Pet. ¶¶ 23, 26, 27. These conclusory statements are also 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*, and the Petition should be dismissed.

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’s travel document request for Petitioner remains pending with the Cameroon consulate. Bush Decl. ¶ 19. ICE/ERO is able to secure travel documents from the Cameroon consulate, and the consulate recently issued travel documents for other non-citizens on both August 9, 2024 and October 11, 2024. *Id.* ¶ 18. Once the Cameroon consulate issues a travel document, ICE/ERO will be able to execute it by removing Petitioner. Cameroon is open for international travel, and ICE/ERO is currently removing non-citizens to Cameroon. *Id.* ¶ 17. Indeed, ICE/ERO removed ten non-citizens to Cameroon in the last fiscal year. *Id.*

Thus, any delay in Petitioner's removal has resulted from the Cameroon consulate's continued review of ICE/ERO's pending travel document request. Courts have recognized that mere delays in the consulate's issuance of a travel document does not warrant relief under *Zadvydas*. See *Alhousseini v. Whitaker*, No. 1:18-cv-848, 2019 WL 1439905, at \*3 (S.D. Ohio Apr. 1, 2019), *recommendation adopted*, 2020 WL 728273 (S.D. Ohio Feb. 13, 2020) (collecting cases). For example, in *Mirza v. Dep't of Homeland Sec.*, No. 22-cv-02610, 2023 WL 2664860 (D. Colo. Jan. 10, 2023), a district court recently denied a habeas application under analogous circumstances. There, ICE/ERO submitted a travel document request to the foreign consulate, but nearly seven months after the request was originally submitted, the travel document request still remained pending as the consulate attempted to verify the non-citizen's nationality. *Mirza*, 2023 WL 2664860, at \*1-2. Yet, ICE/ERO asserted his removal was likely once a travel document was issued. *Id.* at \*2. The non-citizen sought habeas relief under *Zadvydas*, arguing only that he had "been compliant in trying to obtain [his] travel document" but that a travel document had not been issued. *Id.* \*3. The Court denied the habeas application, finding that respondent's assertions concerning the status of the travel document request and the likelihood of his removal after issuance of a travel document demonstrated a significant likelihood of removal in the reasonably foreseeable future. *Id.*

District courts in the Eleventh Circuit have similarly denied relief under *Zadvydas* where a delay in removal resulted from a consulate's review of a travel document request. See *Linton v. Holder*, No. 10-20145-Civ-Lenard, 2010 WL 4810842, at \*4 (S.D. Fla. Oct. 4, 2010) ("[A] delay in issuance of travel documents does not, without more, establish that a petitioner's removal will not occur in the reasonably foreseeable future, even where the detention extends beyond the presumptive 180 day (6 month) presumptively reasonable period." (citations omitted)); *Fahim v.*

*Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002) (“The lack of visible progress since [ICE] requested travel documents from the [foreign] government does not in and of itself meet [the non-citizen’s] burden of showing that there is no significant likelihood of removal.” (citation omitted)). The Court should reach the same conclusion here and dismiss the Petition because Petitioner fails to meet his evidentiary burden under *Zadvydas*.

### CONCLUSION

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

Respectfully submitted, this 26th day of February, 2025.

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**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:

Ntone Ndemba Sammy Jackson  
A#   
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This 26th day of February, 2025.

BY: s/ Roger C. Grantham, Jr.  
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