

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

<b>JAWAD ALALI,</b>	:	
	:	
<b>Petitioner,</b>	:	
	:	<b>Case No. 4:25-CV-82-CDL-AGH</b>
<b>v.</b>	:	<b>28 U.S.C. § 2241</b>
	:	
<b>WARDEN, STEWART DETENTION CENTER,<sup>1</sup></b>	:	
	:	
<b>Respondent.</b>	:	

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**MOTION TO DISMISS**

On March 7, 2025, the Court received Petitioner’s petition for a writ of habeas corpus (“Petition”). ECF No. 1. Petitioner asserts that his post-final order of removal detention is unconstitutional under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and seeks release from custody. Pet. 7-8, ECF No. 1. The Court should dismiss the Petition because (1) Petitioner cannot state a claim for relief under *Zadvydas* because his Petition is premature, and (2) in the alternative, Petitioner fails to show he is entitled to relief under *Zadvydas*.

**BACKGROUND**

Petitioner is a native and citizen of Syria who is detained post-final order of removal pursuant to 8 U.S.C. § 1231. Carter Decl. ¶ 3 & Ex. A. On March 29, 2024, Petitioner unlawfully entered the United States at or near Lukeville, Arizona and was encountered by Customs and

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<sup>1</sup> In addition to the Warden of Stewart Detention Center, Petitioner also names officials with the Department of Justice (“DOJ”), Department of Homeland Security (“DHS”), and Immigration and Customs Enforcement (“ICE”) as Respondents in his 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.

Border Protection (“CBP”). *Id.* ¶ 4 & Ex. A. On April 29, 2024, CBP issued Petitioner a Notice to Appear (“NTA”) charging him with removability pursuant to 8 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.

On April 30, 2024, the Department of Homeland Security filed the NTA with the immigration judge (“IJ”). *Id.* ¶ 6. On September 9, 2024, the IJ denied Petitioner’s applications for relief from removal and ordered him removed to Syria. *Id.* ¶ 7 & Ex. C. Petitioner reserved the right to appeal the IJ’s removal order to the Board of Immigration Appeals (“BIA”). *Id.* ¶ 8 & Ex. C. Petitioner was required to file any appeal to the BIA within 30 days. 8 C.F.R. § 1003.38(b). However, he failed to file an appeal within this timeframe, so his removal order became final on October 9, 2024. 8 C.F.R. § 1241.1(c).

On October 18, 2024, Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) confirmed that Petitioner’s file contained an expired Syrian passport. Carter Decl. ¶ 9 & Ex. D. On April 2, 2025, ICE Headquarters (“HQ”) was contacted to assist with obtaining a travel document for Petitioner. Edwards Decl. ¶ 5. For the purpose of obtaining travel documents for Syrian nationals, the Department of State (“DOS”) serves as an intermediary between ICE HQ and the Syrian Mission. *Id.* ¶ 6 & n.2. ICE HQ presented Petitioner’s case to DOS for submission to the Syrian Mission. *Id.* ¶ 6.

On April 7, 2025, DOS notified ICE HQ that the Syrian Mission intends to issue temporary travel documents for Syrian nationals with passports that the Syrian Mission verifies as valid. *Id.* ¶ 7. On April 8, 2025, the Syrian Mission verified Petitioner’s passport and notified DOS and ICE HQ that they require passport photos and an itinerary for Petitioner to issue a temporary travel document. *Id.* ¶ 8. Currently, there are no impediments to the physical removal of Syrian nationals to Syria. *Id.* ¶ 9. ICE/ERO plans to conduct a two-part witness departure removal process for

Syrian nationals. Edwards Decl. ¶ 9. Specifically, ICE/ERO will escort Syrian nationals to a pre-designated foreign country for the first part of the removal process. *Id.* Thereafter, ICE/ERO will facilitate and witness the departure of the Syrian national from that designated foreign country to Syria. *Id.*

Since he entered ICE/ERO custody, Petitioner has also received custody reviews. On December 12, 2024, ICE/ERO initiated Petitioner's 90-day post-order custody review ("POCR"). Carter Decl. ¶ 10 & Ex. E. On April 7, 2025, ICE/ERO served Petitioner its decision to continue his detention. *Id.* ¶ 10 & Ex. E. On the same day, ICE/ERO initiated a 180-day POCR and served Petitioner with a notice informing him of the review. *Id.* ¶ 11 & Ex. F. Petitioner, however, refused to sign the notice and refused to be interviewed pursuant to the POCR. *Id.* ¶ 11 & Ex. F.

### 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<sup>2</sup>

Petitioner seeks 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. 7-8. The Petition should be dismissed for two reasons. *First*,

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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 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, Respondents respectfully request an opportunity to amend this Response. But to the extent Petitioner claims he has not received custody reviews, Pet. 5-8, his claim should be denied because ICE/ERO has conducted custody reviews, Carter Decl. ¶¶ 10-11 & Exs. E, F.

Petitioner's *Zadvydas* claim is premature on its face because he had not been detained post-final order of removal for six months at the time he filed the Petition. **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. Petitioner fails to state a claim because the Petition is 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*, 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).

Here, Petitioner entered immigration custody on March 29, 2024. Carter Decl. ¶ 4 & Ex. A. The IJ ordered Petitioner removed on September 9, 2024. *Id.* ¶ 7 & Ex. C. Because Petitioner reserved the right to appeal his removal order, *id.* ¶ 8 & Ex. C, his removal order became final on October 9, 2024 when his 30 days to appeal expired, 8 C.F.R. § 1003.38(b); 8 C.F.R. § 1241.1(c). Therefore, the six-month presumptively reasonable detention period under *Zadvydas* did not end until April 9, 2025. *Zadvydas*, 533 U.S. at 700.

Petitioner signed the Petition on February 28, 2025. Pet. 10. Because Petitioner is detained, the Petition is deemed filed on that date. *United States v. Glover*, 686 F.3d 1203, 1205 (11th Cir. 2012) (internal quotations and citation omitted). Thus, at the time the Petition was filed, the *Zadvydas* six-month presumptively reasonable detention period would not expire for over one more month.<sup>3</sup> Thus, Petitioner cannot state a claim under *Zadvydas* because his detention is presumptively reasonable. *Akinwale*, 287 F.3d at 1052.

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<sup>3</sup> The Court received the Petition on March 7, 2025. ECF No. 1. Even using this date, the Petition was still premature.

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 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). 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 has the burden to 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. Petitioner presents no evidence to meet this burden. At most, he appears to rely on the mere passage of time without removal, stating that ICE/ERO “has been unable to remove [him] to Syria or any other country.” Pet. 4. But as other courts have recognized, a non-citizen cannot meet his *Zadvydas* burden by simply noting that his removal has been delayed. *See Ortiz v. Barr*, No. 20-CV-22449, 2021 WL 6280186, at \*5 (S.D. Fla. Feb. 1, 2021) (“[T]he mere existence of a delay of Petitioner’s deportation is not enough for Petitioner to meet his burden.” (citations omitted)), *recommendation adopted*, 2022 WL 44632 (S.D. Fla. Jan. 5, 2022); *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 cases)).

Apart from this unsubstantiated and insufficient assertion, Petitioner relies only on a conclusory restatement of the *Zadyvdas* standard, stating that his “removal to Syria or any other country is not significantly likely to occur in the reasonably foreseeable future.” Pet. 7; *see also id.* at 8. But a non-citizen’s conclusory statements that he is unlikely to be removed in the near future are insufficient to state a claim under *Zadyvdas*. *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 *Zadyvdas*.

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 obtain travel documents for Syrian nationals with verified Syrian passports. Edwards Decl. ¶ 7. As to Petitioner specifically, ICE/ERO has a copy of Petitioner’s expired Syrian passport. Carter Decl. ¶ 9 & Ex. D. The Syrian Mission has verified Petitioner’s passport and recently provided ICE/ERO with the requirements—a photograph and a travel itinerary—for obtaining a travel



document. Edwards Decl. ¶ 8. Further, ICE/ERO has developed a travel itinerary to remove non-citizens to Syria through a two-part witness departure process. *Id.* ¶ 9. Thus, the evidence shows that not only will ICE/ERO be able to obtain a travel document for Petitioner, but it will also be able to execute Petitioner's removal upon receipt of the travel document.

Even though ICE/ERO has not yet received a travel document for Petitioner, even the lack of any visible progress on a travel document request is insufficient to 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); *Novikov*, 2018 WL 4100694, at \*2 (denying non-citizen's *Zadvydas* claim where the non-citizen did "not explain how the past lack of progress in the issuance of his travel documents means that [his country of nationality] will not produce the documents in the foreseeable future"); *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)). Here, by contrast, ICE/ERO has made significant progress in securing a travel document for Petitioner. Edwards Decl. ¶¶ 7-9.

Further, courts have also held that there is a significant likelihood of removal in the reasonably foreseeable future where removal is delayed based on ICE/ERO difficulty in securing a removal flight. See *Ortiz*, 2021 WL 6280186, at \*1, 4-5; *Guilarte v. Barr*, No. 4:20-cv-401, 2020



WL 8084169, at \*1-2, 4 (N.D. Fla. Dec. 3, 2020), *recommendation adopted*, 2021 WL 75763 (N.D. Fla. Jan. 8, 2021); *Shah v. Wolf*, No. 3:20-CV-994-C-BH, 2020 WL 4456530, at \*2-4 (N.D. Tex. July 13, 2020); *Deqa M.Y. v. Barr*, No. 20-cv-1091, 2020 WL 4928321, at \*1, 4, 6 (D. Minn. June 16, 2020); *Chardey v. Gonzales*, No. H-07-0053, 2007 WL 1256623, at \*1-2 (S.D. Tex. Apr. 30, 2007). But here, ICE/ERO has already begun developing a removal itinerary for Petitioner in anticipation of receiving a travel document. Edwards Decl. ¶ 9.

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 11th day of April, 2025.

C. SHANELLE BOOKER  
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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:

Jawad Alali  
A#   
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This 11th day of April, 2025.

BY: s/ Roger C. Grantham, Jr.  
ROGER C. GRANTHAM, JR.  
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