

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

NELSON RAY ALEXANDER

GUZMAN-GONZALEZ,

Petitioner,

v.

**WARDEN, STEWART DETENTION
CENTER,**

Respondent.

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**Case No. 4:25-CV-87-CDL-AGH
28 U.S.C. § 2241**

MOTION TO DISMISS

On March 11, 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 and seeks release from custody. Pet. 6-7, ECF No. 1. The Court should dismiss the Petition because (1) Petitioner cannot state a claim for relief because his Petition is premature, and (2) in the alternative, Petitioner fails to show he is entitled to relief.

BACKGROUND

Petitioner is a native and citizen of Venezuela who is detained post-final order of removal pursuant to 8 U.S.C. § 1231. Scott Decl. ¶ 3 & Ex. A. On August 15, 2021, Petitioner entered the United States without inspection near Del Rio, Texas. *Id.* ¶ 4 & Ex. B. He was encountered by Customs and Border Protection and released on parole. *Id.* ¶ 4 & Ex. B.

On February 20, 2022, Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") issued Petitioner a Notice to Appear ("NTA") charging him with removability pursuant to (1) Immigration and Nationality Act ("INA") § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), based on his lack of a valid entry document at the time he applied for

admission into the United States, and (2) INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), based on his presence in the United States without admission or parole. *Id.* ¶ 5 & Ex. C. The NTA was lodged with the Miami Immigration Court. *Id.* ¶ 5.

On December 17, 2024, Petitioner was convicted in the Superior Court of Cobb County, Georgia of exploitation and intimidation of a disabled adult, elder person or resident in violation of O.C.G.A. § 16-5-102(a). *Id.* ¶ 6 & Ex. D. He was sentenced to 10 years to serve 2 years in confinement and the remainder on probation. Scott Decl. ¶ 6 & Ex. D. On December 19, 2024, ICE/ERO encountered Petitioner at the Cobb County, Georgia Sheriff's Office. *Id.* ¶ 7. He entered ICE/ERO custody the same day and was transferred to Stewart Detention Center. *Id.*

On December 26, 2024, the Department of Homeland Security ("DHS") moved to change venue of Petitioner's case from the Miami Immigration Court to the Stewart Immigration Court, and the immigration judge ("IJ") granted the motion the same day. *Id.* ¶ 8 & Ex. F. On January 15, 2025, Petitioner appeared before the IJ, conceded the charges of inadmissibility in the NTA, and requested a removal order. *Id.* ¶ 9. The IJ ordered Petitioner removed to Venezuela. *Id.* ¶ 9 & Ex. G. Both parties waived appeal, Scott Decl. ¶ 9 & Ex. G, so the removal order became final the same day, 8 C.F.R. § 1241.1(b). On April 21, 2025, Petitioner was transferred to Coastal Bend Detention Center in Robstown, Texas. Scott Decl. ¶ 10.

There is a significant likelihood of Petitioner's removal to Venezuela in the reasonably foreseeable future. Diplomatic and working relationships with Venezuela are positive. *Id.* ¶ 11. Venezuela is accepting its citizens and nationals for removals, and ICE/ERO is currently removing non-citizens to Venezuela. *Id.* Petitioner is manifested for removal to Venezuela by commercial flight within the next month. *Id.* ¶¶ 10-11.

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 contend that his detention is unconstitutional because there is no significant likelihood of removal in the reasonably foreseeable future. Pet. 6. Because he is detained post-final order of removal, Respondent liberally construes Petitioner’s assertion as raising a claim pursuant to *Zadvydas*.¹ The Petition should be dismissed for two reasons. **First**, 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 ICE/ERO custody on December 19, 2024. Scott Decl. ¶ 7; Pet. 4. The IJ ordered Petitioner removed on January 16, 2025. Scott Decl. ¶ 9 & Ex. G; Pet. 4. Because

¹ To the extent the Court construes the Petition as raising a different claim for relief, Respondent respectfully requests the opportunity to submit supplemental briefing.

Petitioner waived his right to appeal his removal order, *id.* ¶ 9 & Ex. 6, his removal order became final on the same day, 8 C.F.R. § 1241.1(b). Therefore, Petitioner's 90-day removal period of mandatory detention did not end until April 16, 2025. *See* 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A). Petitioner's six-month presumptively reasonable detention period under *Zadvydas* will not end until July 16, 2025. *Zadvydas*, 533 U.S. at 700.

Petitioner did not date the Petition. *See* Pet. 8. However, the envelope in which the Petition was delivered is dated March 7, 2025, ECF No. 1-1, and the Court received the Petition on March 11, 2025, ECF No. 1. Thus, at the time the Petition was filed, Petitioner remained mandatorily detained during the 90-day removal period. And the *Zadvydas* six-month presumptively reasonable detention period would not expire for nearly three months. Thus, Petitioner cannot state a claim under *Zadvydas* because his detention is presumptively reasonable. *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 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 because Petitioner cannot state a claim for relief under *Zadvydas*. *Akinwale*, 287 F.3d at 1052.

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. His only pertinent allegation is an assertion that Venezuela will not accept non-citizens for removals.² Pet. 6. But this assertion is merely conclusory, and as this Court and others have held, a non-citizen’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

² Petitioner also states that his “life is in danger in” Venezuela. Pet. 6. To the extent Petitioner attempts to raise a fear-based challenge to his removal, only the immigration court has jurisdiction over that claim. Notably, Petitioner did not seek relief from removal before the IJ and requested a removal order. Scott Decl. ¶ 9. Regardless, this Court lacks subject matter jurisdiction over any challenge to Petitioner’s removal order. 8 U.S.C. § 1252(a)(5), (b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-83 (1999); *see also Linares v. Dep’t of Homeland Sec.*, 529 F. App’x 983, 983-85 (11th Cir. 2013) (per curiam) (holding that a district court lacked jurisdiction over a non-citizen’s fear-based claim raised in a habeas petition).

currently maintains positive diplomatic and working relationships with Venezuela. Scott Decl. ¶ 11. Venezuela is currently accepting its citizens and nationals for removals, and ICE/ERO is currently conducting removals to Venezuela. *Id.* Further, Petitioner is currently manifested for removal to Venezuela by commercial flight within the next month. *Id.* ¶¶ 10-11. 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 29th day of April, 2025.

C. SHANELLE BOOKER
ACTING UNITED STATES ATTORNEY


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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:

Nelson Ray Alexander Guzman-Gonzalez
A# 
Coastal Bend Detention Center
4909 FM 2826
Robstown, TX 78380

This 29th day of April, 2025.

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