

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

<b>PANKAJKUMAR PATEL,</b>	:	
	:	
<b>Petitioner,</b>	:	
	:	<b>Case No. 4:25-CV-88-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 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 under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and seeks release from custody. Pet. 6, 8-10, ECF No. 1. The Court should dismiss the Petition because (1) Petitioner’s *Zadvydas* claim 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 India detained post-final order of removal under 8 U.S.C. § 1231(a). Hayes Decl. ¶ 3 & Ex. A. On November 11, 2010, Petitioner was encountered by immigration officials upon entering the United States in Texas and taken into custody. *Id.* ¶ 4

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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.

& Ex. A. On December 7, 2010, Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) issued him a Notice to Appear (“NTA”) charging him with removability pursuant to Immigration and Nationality Act (“INA”) § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), based on his application for admission without a valid visa or other entry document. *Id.* ¶ 5 & Ex. B. On February 25, 2011, Petitioner was released from ICE/ERO custody on bond. *Id.* ¶ 6 & Ex. C.

On April 4, 2014, Petitioner failed to appear for his scheduled hearing in his removal proceedings in Memphis, Tennessee. *Id.* ¶ 7 & Ex. D. The Immigration Judge (“IJ”) ordered Petitioner removed *in absentia*, making his removal order final on the same day. *Id.* ¶ 7 & Ex. D; 8 C.F.R. § 1241.1(e). On April 11, 2021, Petitioner was arrested in Gallatin, Tennessee for domestic assault. Hayes Decl. ¶ 8 & Ex. C. On May 5, 2021, the charge was “retired.” *Id.* ¶ 8 & Ex. C. On or about November 18, 2024, Petitioner was arrested in Dalton, Georgia for, *inter alia*, driving under the influence and giving fictitious information to law enforcement. *Id.* ¶ 9 & Ex. C.

On December 8, 2024, Petitioner re-entered ICE/ERO custody for the first time since his removal order became final when he was turned over from state criminal custody. *Id.* ¶ 10. On March 19, 2025, Petitioner exited ICE/ERO custody and was turned over to the Whitfield County, Georgia Sheriff’s Office on outstanding warrants. *Id.* ¶ 11. On March 22, 2025, Petitioner was returned to ICE/ERO custody. *Id.* ¶ 12.

On March 24, 2025, ICE/ERO initiated a travel document request. Hayes Decl. ¶ 13. On March 27, 2025, ICE/ERO submitted a travel document request for Petitioner’s removal to the Indian consulate. *Id.* ICE/ERO maintains positive diplomatic and working relationships with India. *Id.* ¶ 14. India is issuing travel documents and accepting its citizens and nationals for removals. *Id.* ICE/ERO regularly removes non-citizens to India via commercial flights. *Id.* Thus far in fiscal

year 2025, the ICE Atlanta Field Office alone has arranged at least 25 commercial removal flights to India. *Id.*

### 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. 6, 8-10. 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. 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*,

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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.

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, the IJ ordered Petitioner removed on April 4, 2014. Hayes Decl. ¶ 7 & Ex. D. Because Petitioner failed to appear for his scheduled hearing and was ordered removed *in absentia*, *id.* ¶ 7 & Ex. D, his removal order became final the same day it was issued, 8 C.F.R. § 1241.1(e). On December 8, 2024, Petitioner entered ICE/ERO custody for the first time since his removal order became final. Hayes Decl. ¶ 10. Immediately before Petitioner re-entered ICE/ERO custody on this date, he was criminally detained by state authorities. *Id.* ¶¶ 9-10 & Ex. C. Therefore, the 90-day removal period commenced on the same date and did not end until March 8, 2025. 8 U.S.C. § 1231(a)(1)(A), (a)(1)(B)(iii). The six-month presumptively reasonable detention period under *Zadvydas* will not end until June 8, 2025. *Zadvydas*, 533 U.S. at 700.

Petitioner signed the Petition on February 25, 2025. Pet. 11. 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, Petitioner remained mandatorily detained within the 90-day removal period under 8 U.S.C. § 1231(a)(2). Further, the *Zadvydas* six-month presumptively reasonable detention period will not expire for over two more months.<sup>3</sup> 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-

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<sup>3</sup> Petitioner alleges he was “taken into immigration custody” on November 22, 2024. Pet. 4. Even assuming the Court calculates the *Zadvydas* six-month presumptively reasonable detention period using this date—which it should not—the Petition is still premature because that period would not end until May 22, 2025.

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 presents no evidence to show that he is not likely to be removed in the reasonably foreseeable future. In an attempt to meet his burden, he appears to rely on the mere passage of time without removal, stating that he “still has not been removed[.]” Pet. 9. 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 statement that “ICE is not likely to remove [him] in the near future.” Pet. 6; *see also id.* at 9 (same). 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 *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 Indian nationals to India because the Indian government is issuing travel documents and accepting its citizens and nationals for removals. Hayes Decl. ¶ 14. ICE/ERO regularly removes non-citizens to India via commercial flights. *Id.* Indeed, in fiscal year 2025, just the ICE Atlanta Field Office alone has successfully arranged at least 25 commercial removal flights to India. *Id.*

As to Petitioner’s case specifically, ICE/ERO has submitted a travel document request to the Indian consulate, and that request remains pending. *Id.* ¶ 13. Although ICE/ERO has not yet received updates on its recent travel document request, Petitioner is not entitled to relief under *Zadvydas* based solely upon the Indian consulate’s lack of perceived progress in acting on ICE/ERO’s travel document request over the past week. *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)).

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 1st day of April, 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](mailto: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:

Pankajkumar Patel  
A#   
Stewart Detention Center  
P.O. Box 248  
Lumpkin, GA 31815

This 1st day of April, 2025.

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