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

RICARDO LOZIN,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-97-CDL-MSH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
	:	
Respondents.	:	

MOTION TO DISMISS

On March 18, 2025, the Court received Petitioner's application for a writ of habeas corpus ("Petition"). ECF No. 1. On March 20, 2025, the Court ordered Respondent to file a comprehensive response within twenty-one days. ECF No. 3. Respondent now files this Motion to Dismiss the Petition. Petitioner's motion is premature, and consequently, it should be dismissed.

BACKGROUND

Petitioner is a native of the Bahamas and a citizen of Haiti who is detained post-final order of removal pursuant to 8 U.S.C. § 1231. Scott Decl. ¶ 4. On December 17, 1992, Petitioner was admitted into the United States with a B-2 visa. *Id.* On March 14, 2002, Petitioner adjusted his status to that of a lawful permanent resident ("LPR").

[1] In addition to Warden of Stewart Detention Center, Petitioner also names current and 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.

On January 24, 2012, Petitioner was convicted in the Seventeenth Judicial Circuit for Broward County, Florida, for murder in the second degree. *Id.* ¶ 5 & Ex. B. Petitioner was sentenced to 20 years of incarceration. *Id.* ¶ 5. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO) encountered Petitioner in state criminal custody on January 31, 2012 and lodged a detainer on February 14, 2012. *Id.* ¶ 6.

On March 6, 2012, ICE/ERO issued Petitioner a Notice to Appear ("NTA") charging him with removability pursuant to Immigration and Nationality Act ("INA") §§ 237(a)(2)(A)(i) and 237(a)(2)(A)(iii), 8 U.S.C. §§ 1227(a)(2)(A)(i) and 1227(a)(2)(A)(iii), and placing him in removal proceedings pursuant. *Id.* ¶ 7 & Ex. A. On July 9, 2012, Petitioner appeared with counsel for his master hearing where he was given advisals, and the case was reset. Scott Decl. ¶ 8. Petitioner appeared for the reset master hearing on November 5, 2012, where Petitioner confirmed that he was a native and citizen of Haiti, and the NTA was sustained. *Id.* ¶ 9. On that date, an immigration judge ("IJ") ordered Petitioner removed to Haiti. *Id.* ¶ 9 & Ex. C. Both parties waived appeal, and the order became final on the same day. *Id.* ¶ 9; *see* 8 C.F.R. § 1241.1(b).

On April 1, 2024, Petitioner was released from the Florida Department of Corrections and transferred to the Baker County Sherriff's Department under ICE/ERO's detainer. *Id.* ¶ 10. Then, on May 7, 2024, Petitioner was transferred to Folkston Main ICE Processing Center. *Id.* On May 15, 2024, Petitioner filed a Motion to Reopen removal proceedings, which the IJ granted. Scott Decl. ¶ 11. On August 13, 2024, Petitioner was transferred to the Stewart Detention Center, and venue was changed to the Stewart Immigration Court. *Id.* ¶ 12.

On October 30, 2024, Petitioner appeared for a master hearing. *Id.* ¶ 13. Petitioner previously filed an application for relief, and the IJ set a merits hearing on November 21, 2024. *Id.* At that hearing, new evidence was provided that Petitioner was born in the Bahamas. *Id.* ¶ 14. In

light of this evidence, the IJ reset the merits hearing to December 4, 2024. *Id.* On December 4, 2024, all parties appeared for the merits hearing, and the IJ denied Petitioner's application for relief and ordered him removed to the Bahamas and to Haiti in the alternative. Scott Decl. ¶ 15. Both parties waived appeal, and the removal order became final on the same day. *Id.* ¶ 15 & Ex. D; *see* 8 C.F.R. § 1241.1(b).

On December 10, 2024, Petitioner completed an application for a travel document ("TD"). Scott Decl. ¶ 16. On the same day, ICE/ERO submitted TD requests to the Consulate of the Bahamas and to the Consulate of Haiti. *Id.* ICE/ERO followed up with both consulates on January 28, 2025, and the TD requests remain pending. *Id.* There is a significant likelihood of removal in the reasonably foreseeable future as ICE/ERO maintains positive working relationship with both The Bahamas and Haiti. *Id.* ¶ 17.

ARGUMENT

The Petition should be dismissed for two reasons. First, to the extent Petitioner asserts that his detention post-final order of removal has become prolonged under *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Petition is premature and should be dismissed. Second, Petitioner fails to show that he is otherwise entitled to release 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. Petitioner therefore cannot state a claim under *Zadvydas*, and the Petition should be dismissed.

Because 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 the Department of Homeland Security ("DHS") shall remove an alien within ninety (90) days of the date of the order of removal becomes

administratively final. *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 does not remove an alien during the removal period, detention may continue if it is "reasonably necessary" to effectuate removal. *See Zadvydas*, 533 U.S. at 689. In *Zadvydas*, 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).

The Eleventh Circuit has made clear that "[t]his 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). Even if the Petition was filed after the six-month post-removal detention period, Petitioner also carries the burden to establish that there is no "reasonable likelihood of removal" in the foreseeable future. *Zadvydas*, 533 U.S. at 701.

Here, Petitioner was ordered removed on December 4, 2024. Scott Decl. ¶ 14 & Ex. D. Because both parties waived appeal, *Id.* ¶ 14 & Ex. D, his removal order became final on the same day, 8 C.F.R. § 1241.1(b). Petitioner signed the Petition on March 10, 2025—just over three months later. Pet. 10, ECF No. 1. 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). Indeed, Petitioner admits that only three months have passed since his removal order became final. Pet. ¶ 13. Therefore, at the time the Petition was filed, Petitioner has not been detained beyond the *Zadvydas* six-month presumptively reasonable detention period. For this

reason, the Petition should be dismissed as premature because he cannot state a claim for relief. *See Akinwale*, 287 F.3d at 1052; *Themeus*, 643 F. App'x at 833; *Guo Xing Song*, 516 F. App'x at 899.

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. *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021); *Garcon v. Warden, Irwin Cty. Det. Ctr.*, No. 7:16-CV-158-WLS-MSH, 2017 WL 9250368, at *2 (M.D. Ga. Aug. 30, 2017), *recommendation adopted*, 2018 WL 2056562 (M.D. Ga. Feb. 27, 2018); *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*.

In the alternative, even if the Petition was filed after the six-month post-removal detention period—which it was not—Petitioner also fails to show that he is entitled to relief under *Zadvydas*.

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit 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. Petitioner has the burden 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*, 309 F. App'x at 346 (citing *Akinwale*, 287 F.3d at 1051-52).

Petitioner fails to meet his burden. Petitioner claims he spoke with an official at the Bahamian consulate who informed him that the Bahamas will not recognize him as a citizen. Pet. ¶ 14. He also asserts that an official at the Haitian consulate stated that he was not a Haitian citizen and indicated "the possibility that no travel document would be issued" after an investigation. *Id.* As an initial matter, both of Petitioner's contentions constitute inadmissible hearsay. But even setting that aside, he does not claim that either consular official stated that the country would deny ICE/ERO's travel document request. At most, Petitioner notes a mere "possibility" that the Haitian consulate would deny the travel document request. *Id.* Such speculations constitute conclusory statements that he is unlikely to be removed in the near future, but these statements 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).

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 maintains positive working relationships with both the Bahamian and Haitian consulates, and both consulates are issuing travel documents to facilitate removals. Scott Decl. ¶ 17. As explained above, ICE/ERO has requested a travel document from both the Bahamian and Haitian consulates, and both requests remain pending. *Id.* ¶ 16. And both requests remain pending despite Petitioner's unsubstantiated speculations about how the consulates may respond to the requests. *Id.*

Courts have recognized that a consulate's mere delay in responding to a travel document request and non-citizens' unsubstantiated speculations that a consulate will not ultimately issue a travel document are insufficient to warrant relief under *Zadvydas*. 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 petition 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 petition, 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 held that the mere delay in a consulate's issuance of a travel document is insufficient for a non-citizen to meet his evidentiary burden under *Zadvydas*. *See 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, 1336 (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, importantly, ICE/ERO will be able to remove Petitioner if either the Bahamian or Haitian consulate issues a travel document. ICE/ERO is currently removing non-citizens to both the Bahamas and Haiti and is able to arrange removal flights to both countries upon receipt of a travel document. Scott Decl. ¶ 17. For these reasons, is a significant likelihood of removal in the reasonably foreseeable future. Because Petitioner fails to establish that he is entitled to relief under *Zadvydas*—even assuming his claim is timely, which it is not—the Petition should be dismissed.

CONCLUSION

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

Respectfully submitted this 10th 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 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:

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This 10th day of April, 2025.

BY: *s/ Roger C. Grantham, Jr.*
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