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

SEKOU FADE,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-121-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE

On April 11, 2025, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. Petitioner primarily asserts that his detention violates his Fifth Amendment due process rights pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001), and seeks release from custody. Pet. 6-9, ECF No. 1. As explained below, the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of Ivory Coast who is detained post-final order of removal pursuant to 8 U.S.C. § 1231(a). Almodovar Decl. ¶ 3 & Ex. A. On or about November 6, 2002, Customs and Border Protection ("CBP") encountered Petitioner at or near Miami, Florida. *Id.* ¶ 4 & Ex. A. Petitioner claimed relief from removal, and he was not detained by CBP beyond this initial encounter. *Id.* ¶ 4 & Ex. A.

[1] In addition to the Warden of Stewart Detention Center, Petitioner also names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement 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.

On November 18, 2003, United States Citizenship and Immigration Services ("USCIS") referred Petitioner's application for relief from removal to the immigration court. *Id.* ¶ 5 & Ex. B. On the same day, USCIS served Petitioner with a Notice to Appear ("NTA") charging him with removability pursuant to Immigration and Nationality Act ("INA") § 237(a)(1)(A), 8 U.S.C. §1227(a)(1)(A), because at the time of entry he was inadmissible under INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* ¶ 5 & Ex. C. On December 7, 2004, an immigration judge ("IJ") ordered Petitioner removed *in absentia*. *Id.* ¶ 6 & Ex. D. Because the removal order was issued *in absentia*, it became final on the same day. 8 C.F.R. § 1241.1(e).

Petitioner filed a motion to reopen his removal proceedings, and the IJ denied the motion to reopen on January 5, 2005. Almodovar Decl. ¶ 7 & Ex. E. On January 21, 2005, Petitioner filed an appeal with the Board of Immigration Appeals ("BIA"). *Id.* ¶ 8 & Ex. F. In a letter to the BIA, Petitioner characterized his filing as a challenge to his *in absentia* removal order. *Id.* ¶ 9 & Ex. G. On February 24, 2005, the BIA rejected Petitioner's brief. *Id.* ¶ 10 & Ex. H. On April 28, 2005, the BIA dismissed Petitioner's appeal. *Id.* ¶ 11 & Ex. I.

In March 2007, Petitioner was arrested by the Mississippi Bureau of Narcotics for possession of marijuana with intent to distribute. *Id.* ¶ 12 & Ex. J. On May 4, 2007, Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") detained Petitioner following his arrest. Almodovar Decl. ¶ 12 & Ex. J. On December 5, 2007, Petitioner was released from ICE/ERO custody under an order of supervision. *Id.* ¶ 13 & Ex. K.

On February 28, 2013, Petitioner was convicted in the Fayette County, Georgia Superior Court of identity theft in violation of O.C.G.A. § 16-9-121(a)(1). *Id.* ¶ 14 & Ex. A. He was sentenced to 4 months imprisonment and 4 years, 8 months probation. *Id.* ¶ 14 & Ex. A. On February 16, 2024, Petitioner was arrested by the Oglethorpe County, Georgia Sheriff's Office for

trafficking in cocaine, illegal drugs, marijuana, or methamphetamine. *Id.* ¶ 15 & Ex. A. On September 21, 2024, Petitioner re-entered ICE/ERO custody at Stewart Detention Center. *Id.* ¶ 16.

After Petitioner re-entered ICE/ERO custody, ICE/ERO took multiple steps to facilitate Petitioner's removal, including (1) requesting Petitioner's alien file from the National Records Center given the age of the file, (2) corresponding with the BIA to confirm the finality of Petitioner's removal order, (3) corresponding with ICE Headquarters ("HQ"), Removal and International Operations ("RIO") to request submission of a travel document request to the Ivory Coast embassy. Almodovar Decl. ¶ 17. On April 3, 2025, ICE/ERO submitted a travel document request to the Ivory Coast embassy. *Id.* ¶ 19 & Ex. M. That request remains pending. *Id.* ¶ 19. ICE/ERO maintains positive diplomatic and working relationships with Ivory Coast, and Ivory Coast is issuing travel documents to facilitate removals. *Id.* ¶ 21. Ivory Coast is open for international travel, and ICE/ERO is removing non-citizens to Ivory Coast. *Id.* ¶ 21. In fiscal year 2025, ICE/ERO has effectuated 10 removals to Ivory Coast. *Id.* ¶ 21.

Since Petitioner re-entered ICE/ERO custody, he has also received custody reviews. On or about January 3, 2025, ICE/ERO conducted a post-order custody review ("POCR") and determined that Petitioner should remain detained. Almodovar Decl. ¶ 18 & Ex. L. On or about April 11, 2025, ICE/ERO conducted a second POCR and again determined that Petitioner should remain detained. *Id.* ¶ 20 & Ex. N.

LEGAL FRAMEWORK

Since Petitioner is detained post-final order of removal, his detention is governed by 8 U.S.C. § 1231. Congress provided in 8 U.S.C. § 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

Petitioner appears to raise two claims for relief. He primarily asserts that his detention violates due process under *Zadvydas*. Pet. 6-9. He also appears to seek judicial review of his removal order, arguing the IJ and BIA erred in finding him removable as charged in the NTA. *Id.* at 5. The Petition should be denied for two reasons. ***First***, Petitioner is not entitled to relief under *Zadvydas* because he cannot meet his evidentiary burden and because there is a significant likelihood of removal in the reasonably foreseeable future. ***Second***, Petitioner's claim seeking to challenge his removal order should be denied because the Court lacks subject matter jurisdiction to judicially review Petitioner's removal order.

I. Petitioner's detention complies with due process, and he is not entitled to relief under *Zadvydas*.[2]

Petitioner is not entitled to relief under *Zadvydas* because he fails to meet his burden to "provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Akinwale*, 287 F.3d at 1052.

Petitioner presents no evidence to meet his burden. Rather, he simply restates the relevant standard, repeatedly alleging without supporting evidence that "there is no significant likelihood that Petitioner['s] removal will occur in the reasonably foreseeable future." Pet. 8; *see also id.* at 4, 7. Petitioner'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

[2] Respondent addresses Petitioner's enumerated due process claims together because, in each claim, Petitioner seeks relief for alleged prolonged post-final order detention under *Zadvydas*. Pet. 6-9; *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. To the extent Petitioner claims he has not received custody reviews, his claim should be denied because ICE/ERO has reviewed Petitioner's custody status and determined that he should remain detained. Almodovar Decl. ¶¶ 18, 20 & Exs. L, N.

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*.

At most, Petitioner appears to claim that he is entitled to relief under *Zadvydas* because he has not yet been removed despite his cooperation with ICE/ERO's efforts to secure a travel document. Pet. 5 (noting that Petitioner signed documents related to the travel document request and submitted to biometrics). But 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)). For these reasons, Petitioner fails to meet his burden to present evidence that there is no significant likelihood of removal in the reasonably foreseeable future, and the Petition should be denied.

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 secure a travel document for Petitioner's removal because ICE/ERO maintains positive diplomatic relations with Ivory Coast. Almodovar Decl. ¶ 21. And Ivory Coast is currently issuing travel documents to ICE/ERO to facilitate removals. *Id.* As to Petitioner specifically, ICE/ERO gathered the necessary information and submitted a travel document to the Ivory Coast embassy on April 3, 2025, and that request remains pending. *Id.* ¶¶ 17, 19

Although ICE/ERO is still awaiting a decision on the pending travel document request, as other courts have held, Petitioner is not entitled to under *Zadvydas* based solely upon the Ivory Coast embassy's lack of perceived progress in acting on ICE/ERO's travel document request. *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)).

Further, ICE/ERO will be able to remove Petitioner to Ivory Coast once it receives a travel document. Ivory Coast is open for international travel, and ICE/ERO is currently removing non-citizens to Ivory Coast. Almodovar Decl. ¶ 21. Indeed, ICE/ERO has already effectuated 10 removals to Ivory Coast in fiscal year 2025. *Id.* For these reasons, the evidence establishes that there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future, and Petitioner therefore is not entitled to relief under *Zadvydas*.

II. The Court lacks jurisdiction to judicially review Petitioner's removal order.

Although unclear, Petitioner also appears to seek judicial review of his removal order, asserting that the IJ and BIA erred "in their analysis pursuant to the modified categorical approach." Pet. 5. According to the Petitioner, based on the IJ's error in his removal proceedings, "on December 7, 2004, a final order of removal was issued[.]" *Id.* To the extent Petitioner requests that the Court judicially review his removal order, the Court lacks subject matter jurisdiction over this claim, and it should be denied.

"Following enactment of the REAL ID Act of 2005, district courts lack habeas jurisdiction to entertain challenges to final orders of removal." *Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 832 (11th Cir. 2016) (per curiam) (citing 8 U.S.C. § 1252(a)(5), (b)(9)). "Instead, 'a petition for review filed with the appropriate court is now an alien's exclusive means of review of a removal order.'" *Id.* (quoting *Alexandre v. U.S. Att'y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006)). Section 1252(b)(9) provides in full:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under [subchapter II of chapter 12 (8 U.S.C. §§ 1151-1378)] shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other

> provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9).

The Supreme Court has described section 1252(b)(9) as an "unmistakable zipper clause" that streamlines litigation by consolidating and channeling claims first to the agency and then to the circuit courts through petitions for review. *Reno v. American-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 483 (1999). In *AADC*, the Court elaborated on the breadth of section 1252(b)(9), explaining that it serves as a "general jurisdictional limitation" on challenges to actions arising from removal operations and proceedings. *Id.* at 482. District courts are barred from reviewing removal proceedings regardless of how the non-citizen characterizes his claim. *Mata v. Sec'y of Dep't of Homeland Sec.*, 426 F. App'x 698, 700 (11th Cir. 2011) (per curiam) (affirming district court's dismissal of challenge to removal order brought pursuant to the federal question and mandamus statutes, Administrative Procedure Act, and the Declaratory Judgment Act).

Here, Petitioner appears to challenge his removal order by claiming that the IJ and BIA erred him finding him removable on the charge lodged in his NTA. Pet. 5; *see* Almodovar Decl. ¶¶ 6, 11 & Exs. E, I. But under section 1252(b)(9), district courts lack habeas jurisdiction to entertain challenges to final orders of removal." *Themeus*, 643 F. App'x at 832. Indeed, the Eleventh Circuit has specifically held that claims challenging a ground of removability fall within the scope of the section 1252(b)(9) jurisdictional bar. *Id.* at 831-32. Petitioner's claim here is no different, and the Court should deny the claim for lack of subject matter jurisdiction.

CONCLUSION

The record is complete in this matter, and the case is ripe for adjudication on the merits. Petitioner fails to show that he is entitled to relief on either of his claims. Petitioner is not entitled to relief under *Zadvydas* because (1) he fails to meet his evidentiary burden, and (2) alternatively,

there is a significant likelihood of removal in the reasonably foreseeable future. And to the extent Petitioner seeks to challenge his removal order, the Court lacks subject matter jurisdiction over this claim. For these reasons, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted this 19th day of May, 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

CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Respondent's Response 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:

Sekou Fade
A# [redacted]
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 19th day of May, 2025.

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