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

SAMUEL FRIMMBONG ADUSAH,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-129-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On April 18, 2025, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. On April 21, 2025, the Court ordered Respondent to file a response within twenty-one days. ECF No. 4. On April 28, 2025, the Court received Petitioner's First Motion for Leave to File a Supplemental Pleading. ECF No. 5. On May 5, 2025, the Court received Petitioner's Second Motion for Leave to File a Supplemental Pleading. ECF No. 7. The Court granted both motions and ordered Respondent to respond to the Petition and both supplemental pleadings within the original 21-day response period. ECF Nos. 6, 8. Through these filings, Petitioner appears to challenge the length of his detention, his removal order, his prior criminal conviction, and his conditions of confinement. For the reasons explained below, all of Petitioner's claims should be dismissed.

[1] Petitioner names the United States Attorney General, United States Secretary of Homeland Security along with officials from United States Immigration and Customs Enforcement 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 Steward Detention Center as the sole appropriately named respondent in this action.

BACKGROUND

Petitioner is a native and citizen of Ghana who is detained post-final order of removal pursuant to 8 U.S.C. § 1231. Stephens Decl. ¶ 4 & Ex. A. On November 1999, Petitioner was admitted into the United States on a B2 Visitor for Pleasure Visa at or near New York, New York with authorization to remain in the United States through May 23, 2000. *Id.* ¶ 4 & Ex. A. He married a United States citizen, and on or about January 31, 2002, his spouse submitted an I-130 Petition for Alien Relative to United States Citizenship and Immigration Services ("USCIS") on his behalf. *Id.* ¶ 4. On April 19, 2002, Petitioner submitted an I-485 Application to Register Permanent Residence or Adjust Status to USCIS. *Id.* On August 1, 2005, USCIS denied the I-485. *Id.*

On October 17, 2006, Petitioner was arrested by Gwinnett County, Georgia Sheriff's Office and charged with one count of rape, two counts of aggravated child molestation, and three counts of child molestation. *Id.* ¶ 5 & Ex. B. On May 30, 2008, Petitioner was convicted of two counts of aggravated child molestation and three counts of child molestation. Stephens Decl. ¶ 5 & Ex. B. He was sentenced to 30 years to serve 18 years in confinement and 12 years on probation. *Id.* ¶ 5 & Ex. B.

On October 22, 2008, Petitioner was encountered and interviewed by Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") at the Georgia Diagnostic Prison in Jackson, Georgia where he was serving his criminal prison sentence. *Id.* ¶ 6. He refused to participate in an interview with ICE/ERO. *Id.* On October 22, 2008, Petitioner was personally served with a Notice to Appear ("NTA") charging him with removability under Immigration and Nationality Act ("INA") § 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), based on his conviction of an aggravated felony—specifically, a crime of violence with a term of

imprisonment of at least one year within the meaning of INA § 101(a)(43)(F), 8 U.S.C. § 1101(a)(43)(F). *Id.* ¶ 7 & Ex. D.

On March 20, 2009, Petitioner filed an application for relief from removal. *Id.* ¶ 8. On October 22, 2010, Petitioner appeared *pro se* for a master calendar hearing where he admitted and conceded to the allegations and charge in the NTA. Stephens Decl. ¶ 9. On December 17, 2010, Petitioner appeared *pro se* for his individual merits hearing on his pending application for relief from removal. *Id.* ¶ 10. At the conclusion of the hearing, the immigration judge ("IJ") denied his application for relief from removal and ordered him removed to Ghana. *Id.* ¶ 10 & Ex. E. Petitioner reserved appeal. *Id.* ¶ 10 & Ex. E. Petitioner had thirty days—until January 10, 2011—to appeal his removal order to the Board of Immigration Appeals ("BIA"). 8 C.F.R. § 1003.38(b). Petitioner, however, did not file an appeal, so his removal order became final on that date. Stephens Decl. ¶ 10; *see* 8 C.F.R. § 1241.1(c). On June 1, 2022, Petitioner filed a Motion to Reopen. Stephens Decl. ¶ 11. On September 28, 2022, the IJ issued an order denying the Motion to Reopen. *Id.*; *see also* Pet. Ex. E at 9, ECF No. 1-5.

On October 15, 2024, Petitioner entered ICE/ERO custody at Stewart Detention Center after his release from the custody of the Georgia Department of Corrections ("GDC"). *Id.* ¶ 12. On or about January 6, 2025, ICE/ERO submitted a travel document request to the Ghana consulate. *Id.* ¶ 13. On or about April 6, 2025, ICE/ERO manifested Petitioner to be removed from the United States via a commercial flight departing the Hartsfield-Jackson Atlanta International Airport on April 30, 2025. *Id.* ¶ 15. On or about April 25, 2025, ERO received Petitioner's travel document from the Ghana consulate, and the travel document remains valid through July 23, 2025. *Id.* ¶ 16 & Ex. F.

On April 30, 2025, Petitioner was transferred from Stewart Detention Center to the Atlanta District Hold Room for the purpose of executing his removal. Stephens Decl. ¶ 17. While at the airport, Petitioner refused to board the plane for his scheduled removal flight. *Id.* ICE/ERO is in the process of serving Petitioner with a Failure to Comply notice based on this incident. *Id.* On the same day, Petitioner was transferred to Federal Correctional Institution, Atlanta where he currently remains. *Id.* ¶ 18. There is a significant likelihood of Petitioner's removal in the reasonably foreseeable future. Ghana is open for international travel and is issuing travel documents to ICE/ERO to facilitate removals. *Id.* ¶ 19. ICE/ERO is currently removing non-citizens to Ghana. *Id.*

Since Petitioner entered ICE/ERO custody, he has also received custody reviews. On or about March 14, 2025, ICE/ERO conducted a 90-day post-order custody review and served Petitioner with its decision that he should remain detained. Stephens Decl. ¶ 14; *see also* Pet. 13 ("Petition[er] was served with a written decision order Petitioner['s] continued [d]etention . . ."); Pet. Ex. F at 2-3, ECF No. 1-6 (Notice to Alien of File Custody Review served on March 3, 2025).

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).

ARGUMENT

Petitioner's arguments raised in his three filings are difficult to follow. However, he appears to raise four claims: (1) his detention violates due process under *Zadvydas* because there

is no significant likelihood of removal in the reasonably foreseeable future, Pet. 7-9, 12, 15-16, ECF No. 1; 2d Mot. to Suppl. 2-3, ECF No. 7; (2) the IJ erred in ordering him removed, Pet. 5, 17; (3) he was wrongfully convicted or sentenced during his state criminal proceedings, Pet. 4, 11, 14, 17-18; and (4) he is entitled to release because he has received inadequate medical treatment while in custody, Pet. 4, 10, 14; 1st Mot. to Suppl. 2-4, ECF No. 5; 2d Mot. to Suppl. 3.

The Petition should be dismissed for five reasons. ***First***, Petitioner is now mandatorily detained under 8 U.S.C. § 1231(a)(1)(C) based on his failure to comply with ICE/ERO's efforts to remove him, and he therefore is not entitled to relief under *Zadvydas*. ***Second***, in the alternative, Petitioner's *Zadvydas* claim lacks merit. ***Third***, to the extent Petitioner attempts to challenge his removal order, the Court lacks jurisdiction to judicially review a removal order. ***Fourth***, to the extent Petitioner seeks to challenge his prior state criminal conviction, the Court lacks subject matter jurisdiction to judicially review Petitioner's conviction because Petitioner is not in custody pursuant to any criminal conviction and sentence. ***Fifth***, to the extent Petitioner seeks to challenge the conditions of his confinement, that claim is not cognizable in a habeas corpus proceeding, and Petitioner is not entitled to release from custody on this basis.

I. The Petition is premature because Petitioner is mandatorily detained based on his failure to comply with removal efforts.[2]

Although Petitioner has been detained for more than six months since his removal order became final, he is mandatorily detained within the removal period because he has failed to comply with removal efforts. Accordingly, his *Zadvydas* claim should be dismissed as premature.

[2] The Petition attempts to enumerate three separate claims concerning the likelihood of removal. Pet. 7-9. All three claims rely on *Zadvydas*, so Respondent has addressed those claims together. To the extent the Court construes the Petition as raising a different claim for relief not discussed herein, Respondent respectfully requests the opportunity to file a supplemental response, particularly given the vagueness of Petitioner's underlying allegations. To the extent Petitioner claims he has not received a custody review, that claim should be denied because Petitioner has received a custody review. Stephens Decl. ¶ 14; *see also* Pet. 13; Pet. Ex. F at 2-3.

The removal period of mandatory detention "shall be extended beyond a period of 90 days[,] and the alien may remain in detention[,] . . . if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure." 8 U.S.C. § 1231(a)(1)(C); 8 C.F.R. § 241.4(g)(1)(ii), (g)(5); *see also Johnson v. Guzman Chavez*, 549 U.S. 523, 528 (2021) ("[T]he removal period may be extended if the alien fails to make a timely application for travel documents or acts to prevent his removal." (citation omitted)).

This extension of the removal period pursuant to 8 U.S.C. § 1231(a)(1)(C) based on a non-citizen's failure to comply with efforts to remove him also tolls the *Zadvydas* six-month period of presumptively reasonable post-final order of removal detention. *Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013) ("The [*Zadvydas*] six-month period is tolled, however, if the alien acts to prevent his removal." (citation omitted)). The removal period remains extended—and the *Zadvydas* six-month period tolled—"until the [non-citizen] demonstrates to [ICE/ERO] that he or she has complied with the statutory obligations" under 8 U.S.C. § 1231(a)(1)(C). 8 C.F.R. § 241.4(g)(1)(ii).

Further, "[t]he risk of indefinite detention that motivated the Supreme Court's statutory interpretation in *Zadvydas* does not exist when an alien is the cause of his own detention." *Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1314 (11th Cir. 2019) (internal quotations and citation omitted). Accordingly, a non-citizen is not entitled to relief under *Zadvydas* where the removal period has been extended pursuant to 8 U.S.C. § 1231(a)(1)(C) based on a non-citizen's failure to comply with efforts. *Id.* ("[I]f the removal period was extended by operation of § 1231(a)(1)(C), then ICE can continue to detain [a non-citizen] because the keys to [the non-citizen's] freedom are in his pocket and he could likely effectuate his removal by providing the information requested, so he

cannot convincingly argue that there is no significant likelihood of removal." (internal quotations, alterations, and citation omitted)).

Here, an IJ ordered Petitioner removed to Ghana on December 17, 2010 while Petitioner was serving his sentence with the GDC, and Petitioner reserved the right to appeal his removal order to the BIA. Stephens Decl. ¶ 10. But because Petitioner failed to appeal within 30 days, *id.*; 8 C.F.R. § 1003.38(b), his removal order became final on January 10, 2011, 8 C.F.R. § 1241.1(b). On October 15, 2024, Petitioner entered ICE/ERO custody for the first time since his removal order became final.[3] Stephens Decl. ¶ 12. ICE/ERO secured a travel document for Petitioner's removal, manifested him for removal on a commercial flight departing the Atlanta Airport on April 30, 2025, and transported Petitioner to the airport to remove him on this flight. *Id.* ¶¶ 13, 15-17 & Ex. F. However, Petitioner refused to board the plane for his scheduled removal flight, and the removal mission was cancelled as a result. *Id.* ¶ 17.

Petitioner's failure to comply in good faith with the attempt to finalize and effectuate his removal has extended the removal period under 8 U.S.C. § 1231(a)(1)(C). Were it not for Petitioner's refusal to board his removal flight, he would have been removed—and out of ICE/ERO custody—nearly two weeks ago. *Id.* ¶ 17. Because the removal period has not expired,

[3] Petitioner also cannot state a claim under *Zadvydas* because the Petition is premature on its face, as Petitioner had not been detained post-final order of removal for more than six months at the time he filed the Petition. Petitioner signed the Petition on April 4, 2025, and the Petition is deemed filed on that date. *United States v. Glover*, 686 F.3d 1203, 1205 (11th Cir. 2012). Because the Petition was filed less than six months after Petitioner entered post-final order of removal custody on October 15, 2024, the Petition should be dismissed as premature because Petitioner cannot state a claim under *Zadvydas*. *Akinwale*, 287 F.3d at 1052 (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*.").

Petitioner's continued detention is mandatory, and his request for habeas relief should be dismissed.[4]

The Eleventh Circuit has routinely affirmed dismissals of *Zadvydas* claims where the petitioners acted to prevent their removals. *See, e.g., Vaz v. Skinner*, 634 F. App'x 778, 782 (11th Cir. 2015) (per curiam) (affirming dismissal of habeas petition where alien "refus[ed] to voluntarily sign his travel document or inform [his home country] that he is willing to return"); *Linares v. Dep't of Homeland Sec.*, 598 F. App'x 885, 887 (11th Cir. 2015) (per curiam) (explaining that petitioner's "acts to prevent [his] removal . . . extended the removal period beyond the 90 days following the finalization of his removal order"). Indeed, the Eleventh Circuit has specifically held that a non-citizen's refusal to board a removal flight—the precise circumstances presented here—constitutes a failure to comply that forecloses relief under *Zadvydas*. *Oladokun v. U.S. Attorney Gen.*, 479 F. App'x 895, 896-97 (11th Cir. 2012) (per curiam). This Court has recognized the same. *See G.M.N.G. v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:20-cv-184-WLS-MSH, 2021 WL 8268065, at *1-2 (M.D. Ga. Oct. 15, 2021).

The Court should reach the same conclusion here and find that Petitioner's failure to comply with removal efforts extends the removal period and tolls the *Zadvydas* presumptively reasonable six-month period. Accordingly, Petitioner fails to show that he is entitled to relief under *Zadvydas*, and the Petition should be denied.

[4] Given the recency of Petitioner's failure to comply, ICE/ERO is still in the process of serving Petitioner with his Failure to Comply notice. Stephens Decl. ¶ 17. But the applicable regulation makes clear that "[t]he fact that [ICE/ERO] does not provide a Notice of Failure to Comply, within the 90-day removal period, to a[] [non-citizen] who has failed to comply with the requirements of [8 U.S.C. § 1231(a)(1)(C)], shall not have the effect of excusing the [non-citizen's] conduct." 8 C.F.R. § 241.4(g)(5)(iv).

II. In the alternative, Petitioner's *Zadvydas* claim lacks merit.

Even if the Court finds that the Petition is not premature—which it is for the reasons set forth above—Petitioner has nevertheless failed to carry his evidentiary burden of demonstrating that there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. To satisfy his burden, Petitioner must 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 (emphasis added). Petitioner has failed to make this showing.

Petitioner advances two arguments purporting to show that there is no significant likelihood of removal in the reasonably foreseeable future. First, he asserts that ICE/ERO will be unable to secure a travel document from the Ghana consulate in light of the passage of time and his compliance with ICE/ERO's efforts to procure a travel document. Pet. 15-16; Adusah Decl. ¶ 4, ECF No. 1-1. Second, he asserts that even if ICE/ERO receives a travel document, it will be unable to remove him to Ghana. Pet. 16. Both assertions are disproven by the record.

As to the first, on April 25, 2025, ICE/ERO received Petitioner's travel document from the Ghana consulate, and that travel document remains valid through July 23, 2025. Stephens Decl. ¶ 16 & Ex. F. As to the second, Petitioner does not even dispute that ICE/ERO has removed non-citizens to Ghana for at least the past four years and continues to do so. Pet. 16 (noting that ICE/ERO has consistently removed non-citizens to Ghana since 2021). To the extent Petitioner alleges ICE/ERO will not be able to remove him specifically, this amounts to nothing more than a conclusory statement which is insufficient to state a claim of unlawful detention under *Zadvydas*. *See Rosales-Rubio v. Attorney Gen.*, No. 4:17-CV-83-CDL-MSH, 2018 WL 493295, at *3 (M.D. Ga. Jan. 19, 2018). For these reasons, Petitioner fails to meet his burden under *Zadvydas*.

Even if Petitioner had offered evidence sufficient to shift the burden to Respondent to show a likelihood of removal, Respondent has easily met his burden. ICE/ERO successfully received a travel document from the Ghana consulate for Petitioner, which remains valid for nearly three more months. Stephens Dec. ¶ 16 & Ex. F. Further, Ghana is open for international travel, and ICE/ERO is currently removing non-citizens to Ghana. *Id.* ¶ 19. As to Petitioner specifically, ICE/ERO manifested him for a removal flight departing an Atlanta airport on April 30, 2025 and transported him to the airport to execute his removal. *Id.* ¶¶ 15, 17. But for his failure to comply with removal efforts by refusing to board the plane, Petitioner would have been removed—and out of ICE/ERO custody—on that date. *Id.* ¶ 17. Accordingly, the evidence supports a conclusion that there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future, and the Petition should therefore be dismissed because Petitioner's *Zadvydas* claim fails on the merits.

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

Petitioner appears to challenge his removal order, claiming the IJ erred by finding that he is removable for an aggravated felony as alleged in the NTA. Pet. 5, 17. To the extent Petitioner requests that the Court judicially review his removal order, the Court lacks jurisdiction over this claim, and it should be dismissed.

"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).

Indeed, 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's NTA charged him with removability based on his commission of an aggravated felony, and the IJ ordered him removed on this basis. Stephens Decl. ¶¶ 7, 10 & Ex. E. Thus, to the extent Petitioner requests that the Court review that conclusion, he plainly seeks review of a "question[] of law or fact" that arose in an "action taken or proceeding brought to remove an alien from the United States" within the meaning of 8 U.S.C. § 1252(b)(9).[5] Indeed, the

[5] For the same reason, the Court lacks jurisdiction over any claim by Petitioner that his prior criminal conviction is insufficient basis for his charge of removability in the NTA. *Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 831-32 (11th Cir. 2016) (per curiam) (holding that under 8 U.S.C. § 1252(b)(9), a district

Eleventh Circuit has specifically held that an attempt to challenge a removal order's reliance on a criminal conviction falls within the section 1252(b)(9) jurisdictional bar. *Themeus*, 643 F. App'x at 832. Petitioner's claim is no different, and the Court should dismiss the claim for lack of subject matter jurisdiction.

IV. The Court lacks jurisdiction to review Petitioner's criminal conviction and sentence.

Petitioner repeatedly states that he has filed a motion for new trial to challenge his state criminal conviction. Pet. 4, 11, 14, 17-18; *see also* Pet. Ex. D, ECF No. 1-4. Although unclear, he appears to claim that the Court should find this conviction invalid.[6] Because Petitioner is not in custody pursuant to this conviction, the Court lacks jurisdiction over this claim.

"A district court may entertain a habeas corpus petition only if a petitioner is 'in custody in violation of the Constitution or laws or treaties of the United States.'" *Lovera-Linares v. Florida*, 559 F. App'x 949, 951 (11th Cir. 2014) (quoting 28 U.S.C. §§ 2241(c)(3), 2254(a)). "This 'in custody' requirement is jurisdictional." *Id.* For the "in custody" requirement to be satisfied, a petitioner must "be 'in custody' under the conviction or sentence under attack at the time his petition is filed." *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989).

Here, Petitioner appears to attack the validity of his 2008 conviction in Gwinnett County, Georgia. *See* Stephens Decl. ¶ 5 & Ex. B. But Petitioner is not in state custody pursuant to this conviction and sentence. He was released from criminal custody on October 15, 2024. *Id.* ¶ 12. Rather, he is detained in immigration custody based on his final order of removal and his failure to comply with ICE/ERO's efforts to execute that removal order.

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court lacked jurisdiction over a non-citizen's habeas claim asserting that his prior criminal conviction was an insufficient basis for his removal order).

[6] Respondent raises this argument out of an extraordinary abundance of caution, particularly given that Petitioner's arguments are difficult to follow.

As a result, Petitioner's immigration detention, although arguably a collateral consequence of his state court conviction, does not cause him to be "in custody" under his state conviction. *See, e.g., Lovera-Linares*, 559 F. App'x at 952 ("Because the *collateral consequences* of [a] conviction are not themselves sufficient to render an individual 'in custody' for the purposes of a habeas petition, Lovera-Linares's present immigration detention does not satisfy the 'in custody' requirement for federal habeas petitions.") (internal quotation marks omitted) (emphasis and alteration in original). This Court thus lacks jurisdiction over Petitioner's claim attacking his state conviction and sentence. Indeed, this Court has reached this precise conclusion before. *M.A.M.M. v. Warden, Irwin Cty. Det. Ctr.*, No. 7:21-cv-47-WLS-MSH, 2022 WL 452452, at *2 (M.D. Ga. Feb. 14, 2022), *recommendation adopted*, 2022 WL 794716 (M.D. Ga. Mar. 14, 2022). Petitioner's claim for relief should be dismissed.

V. Petitioner's conditions of confinement claims are not cognizable in habeas corpus.

Petitioner alleges that he suffers from multiple medical conditions and appears to claim that he has not received adequate treatment for those conditions. Pet. 4, 10, 14; 1st Mot. to Suppl. 2-4; 2d Mot. to Suppl. 3. In support, he has submitted a purported declaration of a physician stating that his detention and continued detention are detrimental to his conditions. Zeldin Decl., ECF No. 5-1. To the extent Petitioner claims he is entitled to release from custody based on allegedly inadequate treatment for those conditions while in custody, that claim should be dismissed for two reasons. First, conditions of confinement claims are not cognizable in a habeas corpus proceeding. Second, allegations concerning conditions of confinement, even if proven, do not entitle Petitioner to release.

First, Petitioner's claim should be denied because it is not cognizable in habeas. "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and

that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "[W]here an inmate seeks injunctive relief challenging the fact of his conviction or the duration of his sentence . . . [s]uch claims fall within the 'core' of habeas corpus[.]" *Nelson v. Campbell*, 541 U.S. 637, 643 (2004). "By contrast, constitutional claims that merely challenge the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core[.]" *Id.* For these reasons, in the immigration context, the Eleventh Circuit has held that a "§ 2241 petition is not the appropriate vehicle for raising . . . a claim challeng[ing] the conditions of confinement, not the fact or duration of that confinement." *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015) (per curiam) (affirming dismissal of immigration detainee's habeas petition alleging the denial of inadequate medical care because the claim was not cognizable in habeas).

In reliance on these principles, courts throughout the Eleventh Circuit have held that immigration detainees' claims concerning their conditions of confinement are not cognizable in habeas. *Benavides v. Gartland*, No. 5:20-cv-46, 2020 WL 3839938, at *4 (S.D. Ga. July 8, 2020); *Louis v. Martin*, No. 2:20-cv-349-FtM-60NPM, 2020 WL 3490179, at *7 (M.D. Fla. June 26, 2020); *A.S.M. v. Warden, Stewart Cnty. Det. Ctr.*, 467 F. Supp. 3d 1341, 1348-49 (M.D. Ga. 2020); *Archilla v. Witte*, No. 4:20-cv-00596-RDP-JHE, 2020 WL 2513648, at *12 (N.D. Ala. May 15, 2020); *Matos v. Lopez Vega*, 614 F. Supp. 3d 1158, 1167-68 (S.D. Fla. 2020). Petitioner similarly attempts to challenge his conditions of confinement in immigration custody through a habeas petition under section 2241. The Court should deny this claim because it is not cognizable in this habeas proceeding.

Second, Petitioner's claim should be denied because he is not entitled to release from custody to remedy any purportedly unlawful condition of confinement. "[E]ven if a prisoner

proves an allegation of mistreatment in prison that amounts to cruel and unusual punishment, he is not entitled to release." *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990) (citing *Cook v. Hanberry*, 596 F.2d 658, 660 (5th Cir. 1979), *cert. denied*, 442 U.S. 932 (1979)). Rather, "[t]he appropriate Eleventh Circuit relief from prison conditions that violate the Eighth Amendment during legal incarceration is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment." *Id.*

The Eleventh Circuit has specifically held that "even if [an immigration detainee] established a constitutional violation [in a habeas proceeding], he would not be entitled to the relief he seeks because release from imprisonment is not an available remedy for a conditions-of-confinement claim." *Vaz*, 634 F. App'x at 781 (citing *Gomez*, 899 F.2d at 1126); *see also A.S.M.*, 467 F. Supp. 3d at 1348 ("Release from detention is not available as a remedy for unconstitutional conditions of confinement claims." (citations omitted)). Accordingly, even assuming Petitioner could establish an unlawful condition of confinement arising from the treatment of his medical condition, his habeas claim should be denied because he is not entitled to release from custody as a remedy.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition. In the alternative, the Petition should be denied.

Respectfully submitted this 12th day of May, 2025.

C. SHANELLE BOOKER
ACTING UNITED STATES ATTORNEY

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

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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:

Samuel Frimmbong Adusah
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Federal Correctional Institution
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Samuel Frimmbong Adusah
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This 12th day of May, 2025.

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