

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

BIPINCHANDRA KADIYA,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No.: 5:25-cv-42
	)	
WARDEN MICHAEL BRECKON.	)	
	)	
Respondent.	)	

MOTION TO DISMISS

COMES NOW, Respondent, by and through the United States Attorney for the Southern District of Georgia and the undersigned Assistant United States Attorney, and moves to dismiss the Petition, Doc. 1, pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Petitioner Bipinchandra Kadiya (“Petitioner”) filed this habeas corpus petition pursuant to 28 U.S.C. § 2241 to challenge his detention by Immigrations and Customs Enforcement (“ICE”). Because his detention is lawful and does not violate any provision of the Constitution, Respondent asks this Court to dismiss or deny the Petition.

FACTUAL BACKGROUND

Petitioner is a native and citizen of India. Exhibit 1, Declaration of James Kelley (“Kelley Dec.”), ¶ 4. He entered the United States on October 24, 2016, via a B2 Visitor’s visa. *Id.* He was served with a Notice to Appear on August 15, 2024, that charged him with violating the Immigration and Nationality Act (“INA”) § 237(a)(1)(B). *Id.*, ¶ 5. That provision provides that “[a]ny alien who is present in the

United States . . . whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is deportable.” 8 U.S.C. § 1227(a)(1)(B) (codifying INA § 237(a)(1)(B)).

On September 17, 2024, Petitioner was arrested in New Jersey and charged with simple assault and terroristic threats. Kelley Dec., ¶ 6. At the same time, ICE placed a detainer on Petitioner. *Id.*, ¶ 7. The following day, Petitioner was released from New Jersey custody and came into ICE custody. *Id.*, ¶¶ 8-9.

On January 14, 2025, an immigration judge ordered Petitioner removed to India. Kelley Dec., ¶ 11. Petitioner waived his right to appeal, and so the order was administratively final that same day. *Id.* After ninety days passed, Petitioner’s custody status was reviewed and it was determined that Petitioner is a significant threat to public safety and a flight risk if released from custody. Kelley Dec., Attachment E.

Petitioner’s request for travel authorization from the Embassy of India is currently pending. Kelley Dec., ¶ 14. There are no current impediments to removal to India. *Id.*, ¶ 15.

Petitioner is detained pursuant to INA § 241(a), which is codified at 8 U.S.C. § 1231(a), and which applies to individuals detained after a final order of removal is entered. Kelley Dec., ¶ 16.

PETITIONER'S ALLEGATIONS

Petitioner argues that the length of his detention and the fact of his detention are improper, in part because he claims it violates Section 241 of the INA [8 U.S.C. § 1231(a)] because it has exceeded 90 days. Doc. 1 at 6-7. He also claims his detention violates his Sixth Amendment right to a speedy trial. *Id.* He does not contest his removability or any decision by an immigration judge.

ARGUMENT

I. Petitioner's detention is mandatory, and he has not established a *Zadvydas* claim.

Petitioner argues that his continued detention is improper and that it violates Section 241 of the INA because it has exceeded 90 days in length. Doc. 1 at 7. Although Petitioner does not cite the case, Respondent construes this claim as one arising pursuant to the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Under the Immigration and Nationality Act, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). The Attorney General must detain the alien during that initial removal period. *Id.* § 1231(a)(2). When that period expires, the Attorney General may continue to detain an inadmissible alien. *Id.* § 1231(a)(6). The continued detention under that statute must not be indefinite, however, as federal law authorizes detention only for as long as "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689, 701 (concerning certain types of removals); *Clark v. Martinez*, 543 U.S. 371, 378 (2005)

(extending *Zadvydas* to inadmissible aliens). While the Supreme Court has held that detention of six months is presumptively reasonable, the Supreme Court also made clear that the six-month presumption does not mean that every alien not removed in this timeframe must be released after six months. *Zadvydas*, 533 U.S. at 701. To state a *Zadvydas* claim, an 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.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002).

Respondent concedes that Petitioner has been detained for longer than six months. However, Petitioner has failed to argue—let alone support such an argument with any evidence—that there is no significant likelihood of removal in the reasonably foreseeable future. *See Akinwale*, 287 F.3d at 1052. In fact, the available evidence shows otherwise: there are no current impediments to removal to India, and the deportation officer states affirmatively that there is a significant likelihood of Petitioner’s removal to India in the reasonably foreseeable future. Kelley Dec., ¶ 15. Travel documents are pending with the Embassy of India. *Id.*, ¶ 12. In addition, the Attorney General has reviewed Petitioner’s custody status and determined Petitioner is “a significant threat to public safety and a flight risk if released from custody.” Kelley Dec., Attachment E. Therefore, his continued detention complies with the requirements of § 1231(a) and also with the Supreme Court’s decision in *Zadvydas*.

Petitioner presents no argument about his confinement other than his conclusory statement that it is improper. *See, e.g.*, Doc. 1 at 6. He has failed to state

a *Zadvydas* claim. Therefore, this Court should dismiss Petitioner's claims about the fact and the length of his detention.

II. Petitioner's detention does not violate the Sixth Amendment.

Petitioner also claims that his detention violates the speedy trial clause of the Sixth Amendment. He is incorrect.

"The Sixth Amendment is limited by its very terms to criminal prosecutions." *Little v. City of N. Miami*, 805 F.2d 962, 968 (11th Cir. 1986); *see also Rothgery v. Gillespie Cnty., Tex.*, 554 U.S. 191, 198 (2008) (holding that the Sixth Amendment right to counsel attaches only after the commencement of a prosecution). "In addition, because INS detentions preceding deportation are civil in nature, they do not trigger the Speedy Trial Act." *United States v. Noel*, 231 F.3d 833, 836 (11th Cir. 2000). When a plaintiff fails to allege that any criminal charges were brought against him, dismissal of a Sixth Amendment claim is proper. *Little*, 805 F.2d at 968; *Johnson v. Cannon*, 947 F. Supp. 1567, 1572 (M.D. Fla. 1996) (granting motion to dismiss when plaintiff was not charged with a crime and therefore "ha[d] not alleged any facts that would implicate the protections provided by the Sixth Amendment.").

Here, the Speedy Trial clause does not apply. Petitioner is not in criminal custody; he is in immigration detention at the Folkston ICE Processing Center. *See Kelley Dec.*, ¶¶ 9, 13. His immigration detention is not due to pending criminal charges or a past criminal conviction. He is detained pending removal to India. *Id.*, ¶ 16.

Despite Petitioner's apparent confusion on the reason for his detention, *see* Doc. 1 at 6 (stating his immigration detention is due to a "pending charge"), he has been informed of these reasons. He received formal notice of the immigration charges against him. *See* Kelley Dec., Attachment B (Notice to Appear). As recently as May 9, 2025, ICE reviewed Petitioner's custody status and again informed him that his immigration detention was due to his pending removal. Kelley Dec., Attachment E.

Therefore, this Court should dismiss Petitioner's Sixth Amendment argument.

CONCLUSION

For the above reasons, the Petition should be dismissed.

Respectfully submitted, this 3rd day of July, 2025,

TARA M. LYONS
ACTING UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2025, I have caused to be sent by United States mail the documents to the following non-CM/ECF participants:

Bipinchandra Kadiya
A # 
Folkston ICE Processing Center
3026 HWY 252 E
Folkston, GA 31537

/s/ O. Woelke Leithart
Assistant United States Attorney