

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

TAI WAH YEUNG,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-179-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,¹	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE

On June 18, 2025, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. Petitioner asserts that his detention violates his Fifth Amendment due process rights pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001), and challenges his conditions of confinement. Pet. 3-15, ECF No. 1. As explained below, the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of China who is detained post-final order of removal pursuant to 8 U.S.C. § 1231(a). Declaration of Deportation Officer David Bush ("Bush Decl.") ¶¶ 3 & Ex. A. Petitioner last entered the United States on or about August 28, 1986 as a Lawful Permanent Resident, class IR-1 in New York. *Id.* ¶ 4 & Exs. A, B, C. On February 12, 1991, Petitioner was convicted in the United States District Court for the Western District of

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.

Pennsylvania of three counts: 1) Failure to possess alien registration card in violation of 8 U.S.C. § 1304(e), 2) Interstate travel in aid of racketeering enterprise in violation of 18 U.S.C. § 1952(a)(3), and 3) Conspiracy to distribute and possess with intent to distribute Heroin, in violation of 21 U.S.C. § 846. Bush Decl. ¶ 5 & Ex. D. Petitioner was sentenced to 30 days confinement for count 1, 60 months for count 2, and 126 months for count 3. *Id.*

On November 18, 1991, Petitioner was issued an Order to Show Cause and Notice of Hearing charging him with removability pursuant to former section 241(a)(2)(B)(i) of the Immigration and Nationality Act (“INA”) and former section 241(a)(2)(A)(iii) of the INA. Bush Decl. ¶ 6 & Ex. B. On April 26, 1996, an immigration judge (“IJ”) ordered Petitioner removed to China. *Id.* ¶ 7 & Ex. E. On April 8, 2009, Petitioner was detained and entered Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) custody. *Id.* ¶ 8 & Ex. A. Petitioner was released on an Order of Supervision (“OSUP”) on September 30, 2009. *Id.* ¶ 8.

On November 21, 2024, Petitioner re-entered ICE/ERO custody. *Id.* ¶ 9 & Ex. F. On December 2, 2024, ICE/ERO elevated a request for travel documents to ICE Headquarters (“HQ”), Removal and International Operations (“RIO”) for submission to the Chinese government. Bush Decl. ¶ 10. On December 10, 2024, HQ-RIO submitted the travel document request to the Chinese government. *Id.* That request remains pending. *Id.* ICE/ERO maintains positive diplomatic and working relationships with China, and China is issuing travel documents to facilitate removals of Chinese nationals. *Id.* ¶ 11. China is open for international travel, and ICE/ERO is removing non-citizens to China via commercial and charter flight operations. *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 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 enumerates six claims for relief. Counts One, Two, Three, and Six all allege that his post-final order of removal detention has become prolonged and violates due process under *Zadvydas*. Pet. 6-9. Counts four and five challenge the conditions of his confinement. *Id.* at 7-14. 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.² **Second**, Petitioner’s claims challenging the condition of his confinement should be denied because the claims are not cognizable in habeas and because Petitioner is not entitled to release from custody as a remedy.

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

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.

² Respondent addresses these Counts One, Two, Three, and Six collectively because Petitioner seeks relief under *Zadvydas* in each. 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, Respondent respectfully requests an opportunity to amend this Response.

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 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 there is no significant likelihood of removal because he has not yet been removed despite his cooperation with ICE/ERO’s efforts to secure a travel document. Pet. 3-4 (noting that Petitioner has given all necessary consents and presented passports and other identification for both China and Taiwan). 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 China. Bush Decl. ¶ 11. And China is currently issuing travel documents to ICE/ERO to facilitate removals. *Id.* As to Petitioner specifically, HQ-RIO submitted a travel document request to the Chinese government on December 10, 2024, and that request remains pending. *Id.* ¶ 11.

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 Chinese government’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 China once it receives a travel document. China is open for international travel, and ICE/ERO is currently removing non-citizens to China. Bush Decl. ¶ 11. 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. Petitioner’s conditions of confinement claims are not cognizable in habeas, and he is not entitled to release.

In his habeas petition, Petitioner seeks to challenge the conditions of his confinement in immigration custody and claims indifference to his medical needs by Defendants and seeks release from custody as a remedy. Petitioner’s claims in this regard should be denied 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—including this Court—have held that immigration detainees’ claims concerning their conditions of confinement are not cognizable in habeas, including those regarding unlawful conditions and indifference to medical needs. *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 § 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 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, his habeas claim should be denied because he is not entitled to release from custody as a remedy.

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 any 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 Petitioner’s claims regarding his conditions of confinement (1) are not cognizable in habeas, and (2) would not entitle Petitioner to release from custody, anyway. For these reasons, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted this 9th day of July, 2025.

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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:

Tai Wah Yeung
A# 
Stewart Detention Center
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This 9th day of July, 2025.

BY: s/ Michael P. Morrill
Michael P. Morrill
Assistant United States Attorney