

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

MOHAMED LAMINE KOUYATE,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-184-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER,¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On June 20, 2025, the Court received Petitioner’s petition for a writ of habeas corpus (“Petition”). ECF No. 1. On August 7, 2025, the Court ordered Respondent to file a response within twenty-one days. ECF No. 6. For the reasons explained below, all of Petitioner’s claims should be dismissed.

BACKGROUND

Petitioner is a native and citizen of Guinea who is detained post-final order of removal pursuant to 8 U.S.C. § 1231. Declaration of Deportation Officer Jeffrey Knowles (“Knowles Decl.”) ¶ 4 & Ex. A, Form I-213. On January 12, 2016, Petitioner was admitted into the United States as an advance parolee at George Bush International Airport in Houston, Texas, with authorization to remain in the United States through January 11, 2017 and pending the outcome of

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 Stewart Detention Center as the sole appropriately named respondent in this action.

his application to Register Permanent Residence or Adjust Status (Form I-485). *Id.*² On February 18, 2016, U.S. Citizenship and Immigration Services denied Petitioner's Form I-485 application. *Id.* On May 30, 2017, the Board of Immigration Appeals ("BIA") denied his Notice of Appeal or Motion. *Id.* Petitioner remained in the United States after his not to exceed date without authorization. *Id.*

On July 22, 2020, Petitioner was convicted in the Circuit Court of Montgomery County, Maryland of Theft Scheme Having a Value Over \$100,000 and Identity Fraud Scheme Having a Value over \$100,000. Knowles Decl. ¶ 5 & Ex. B, Conviction Records. Petitioner was sentenced to 15 years on each count, with all but 6 years suspended, to run consecutively. *Id.* He was also sentenced to 5 years on probation and ordered to pay restitution upon his release. *Id.*

On December 13, 2022, Petitioner was arrested in Morristown, New Jersey, for the offenses of theft by deception, forgery – false authentication, identity crime – impersonation, and knowingly exhibiting a false government ID. Knowles Decl. ¶ 6 & Ex. A. On December 14, 2022, ERO encountered Petitioner at the Morris County Jail following his arrest. *Id.* On December 21, 2022, Petitioner entered ICE custody in Elizabeth, New Jersey. *Id.* ¶ 7. Petitioner was served with a Notice to Appear ("NTA") charging him as removable under Immigration and Nationality Act ("INA") 237(a)(1)(B) (8 U.S.C. § 1227(a)(1)(B)) in that after admission as a nonimmigrant under Section 101(a)(15) of the INA, he remained in the United States for a time longer than permitted. *Id.* ¶ 7 & Ex. C, Notice to Appear.

² According to the Fourth Circuit Court of Appeals' decision affirming the IJ's rulings in Petitioner's immigration proceedings, Petitioner was previously admitted to the United States in 2014 as a visitor. *Kouyate v. Garland*, 122 F.4th 132, 136 (4th Cir. 2024), *cert. denied sub nom. Kouyate v. Bondi*, 221 L. Ed. 2d 973 (May 19, 2025). Subsequently, Petitioner obtained a change of status to advance parolee in 2016. *Id.*

On December 23, 2022, Petitioner was transferred to Moshannon Valley Processing Center in Philipsburg, Pennsylvania. *Id.* ¶ 8. On December 27, 2022, Petitioner appeared, pro se, for a master hearing at which he was given advisals and the Immigration Judge (“IJ”) reset the case to January 10, 2023 to allow Petitioner an opportunity to seek counsel. *Id.* ¶ 9. On January 10, 2023, Petitioner appeared, pro se, for the scheduled master hearing. Knowles Decl. ¶ 10. Petitioner admitted to and conceded the allegations and charge on the NTA. *Id.* The IJ reset the case to February 21, 2023 to allow Petitioner an opportunity to file any applications for relief. *Id.*

On February 2, 2023, Petitioner filed an application for relief in addition to an I-485 Application to Register Permanent Resident or Adjust Status (“I-485 Application”). *Id.* ¶ 11. On February 21, 2023, Petitioner appeared, pro se, for the scheduled master hearing. The IJ determined that Petitioner was ineligible to adjust his status because he did not have an approved petition from USCIS. *Id.* ¶ 12. Petitioner’s case was rescheduled for a merits hearing on March 17, 2023. *Id.*

On March 17, 2023, Petitioner appeared, pro se, for the merits hearing. Knowles Decl. ¶ 14. Following testimony and evidence, including with regard to Petitioner’s criminal history, the IJ denied Petitioner’s application for relief and ordered him removed to Guinea. *Id.* ¶¶ 13-14. On April 4, 2023, Petitioner filed a Notice of Appeal with the BIA. *Id.* ¶ 15. On April 24, 2023, the BIA issued a briefing schedule requiring all briefs by the parties to be submitted by May 15, 2023. *Id.* On May 5, 2023, Petitioner submitted a request to the BIA for an extension and the BIA granted his request extending the deadline for all briefs to be submitted by June 5, 2023. *Id.* On July 3, 2023, Petitioner submitted his legal brief along with a motion to accept late appeal. *Id.* DHS did not submit a legal brief.

On or about August 14, 2023, the BIA issued a writing decision dismissing Petitioner's appeal. Knowles Decl. ¶ 16. On or about September 13, 2023, Petitioner filed a petition for review with the United States Court of Appeals for the Fourth Circuit. *Id.*

While Petitioner's appeal was pending, on or about October 2, 2023, ERO received Petitioner's travel documents from the Embassy of Guinea. *Id.* ¶ 17. On this same day, Petitioner was transferred to Stewart Detention Center in Lumpkin, Georgia. *Id.* On November 27, 2023, Petitioner was scheduled to be on a flight and removed from the United States, but Petitioner physically resisted an immigration officer's attempt to escort him to the airport and was declared a failure to comply. *Id.* ¶ 18.

On December 15, 2023, the Fourth Circuit issued a stay pending appeal, pausing ERO's removal efforts. Knowles Decl. ¶ 19 & Ex. D. On or about November 27, 2024, the Fourth Circuit denied Petitioner's petition for review. *Id.* ¶ 20.³

On or about February 26, 2025, ERO submitted a request for renewed travel documents to the Embassy of Guinea for Petitioner, as the previous travel documents had expired. *Id.* ¶ 21. On or about April 16, 2025, ERO received Petitioner's renewed travel documents with an expiration date of October 15, 2025. *Id.* On or about July 30, 2025, ERO received new travel documents from the Embassy of Guinea with an expiration date of January 30, 2026. *Id.* ¶ 24.

On August 6, 2025, ERO scheduled Petitioner to be on a commercial flight on August 22, 2025 for removal from the United States. Knowles Decl. ¶ 25. On August 22, 2025, ERO transferred Petitioner from Stewart Detention Center to the Atlanta Distribution Holding Room for imminent removal from the United States. *Id.* At the airport, Petitioner refused to get out of the vehicle to board the flight and was again declared a failure to comply. *Id.* On August 25, 2025,

³ Petitioner also submitted a writ of certiorari to the Supreme Court of the United States that was ultimately denied on May 19, 2025. Knowles Decl. ¶ 22 & Ex. F.

Petitioner was returned to Stewart Detention Center and served with a failure to comply notice. *Id.* & Ex. I, Failure to Comply Notice.

Petitioner is detained pursuant to INA § 241(a) (8 U.S.C. § 1231(a)) for purposes of effectuating his removal to Guinea. *Id.* ¶ 26. Guinea is open for international travel and ERO is currently removing non-citizens to Guinea. *Id.* ¶ 27. It remains ERO's intention to remove Petitioner to Guinea upon his compliance. *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 § 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 claims that he has been detained beyond six months since his removal order became final, and therefore his detention violates due process under *Zadvydas* because there is no significant likelihood of removal in the reasonably foreseeable future, Pet. 4-6, ECF No. 1. He claims that Guinea does not have a functioning government, and despite having been told by his deportation officer that he has a travel document, Petitioner does not believe this because of his understanding of the status of the Guinean government. *Id.*

The Petition should be dismissed for two 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.

I. The Petition is premature because Petitioner is mandatorily detained based on his failure to comply with removal efforts.⁴

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.

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).

⁴ 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.

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 Guinea on March 17, 2023. Knowles Decl. ¶ 14. On April 4, 2023, Petitioner appealed that to the BIA. *Id.* ¶ 15. On August 14, 2023, the BIA dismissed Petitioner's appeal. *Id.* ¶ 16. Pursuant to 8 CFR § 1241.1, Petitioner's removal order became final upon the BIA's dismissal of Petitioner's appeal. 8 CFR § 1241.1.

On September 13, 2023, Petitioner appealed the BIA decision to the Fourth Circuit. *Id.* ¶ 16. Petitioner sought and received a stay pending appeal from the Fourth Circuit, which prevented additional steps to secure his removal during that time.⁵ *Id.* ¶ 19. The Fourth Circuit eventually denied Petitioner's petition for review of the BIA decision on November 27, 2024. *Id.* ¶ 20. Petitioner thereafter submitted a petition for writ of certiorari to the Supreme Court of the United States, which petition was denied on May 19, 2025. Knowles Decl. ¶ 22 & Ex. F.

ICE/ERO has made several attempts to effectuate Petitioner's removal, including obtaining multiple travel documents from the Embassy of Guinea for Petitioner, and scheduling him on multiple flights. *See id.* ¶¶ 18-19, 21, 24-25. Most recently, on August 22, 2025, Petitioner was scheduled on a flight from Hartsfield-Jackson Atlanta International Airport, but Petitioner refused

⁵ Prior to the stay, ICE/ERO continued attempts to remove Petitioner. Despite having a travel document and a plane ticket, Petitioner failed to comply with ICE/ERO attempts to remove him on November 27, 2023. Knowles Decl. ¶ 18.

to get out of the vehicle to board the flight. *Id.* ¶ 25. Petitioner was issued a failure to comply notice on August 25, 2025. *Id.*

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 comply with ICE/ERO efforts to put him on his removal flight, he would have been removed—and out of ICE/ERO custody—as early as November 27, 2023, and more recently, on August 22, 2025. *Id.* ¶¶ 18, 25. Because the removal period has not expired, Petitioner’s continued detention is mandatory, and his request for habeas relief should be dismissed.

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.

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 Guinean consulate in light of what he describes as a lack of functioning government in Guinea. Pet. 4-5. Second, he asserts that any travel document ICE/ERO receives will be invalid. *Id.* Both assertions are disproven by the record.

As to the first, ICE/ERO most recently received Petitioner’s travel document from the Guinean consulate, and that travel document remains valid through January 30, 2026. Knowles Decl. ¶ 24 & Ex. H. As to the second, Petitioner does not provide any evidence to dispute that Guinea is open for international travel and that ICE/ERO is currently removing non-citizens to Guinea. *Id.* ¶ 27. 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 Guinean consulate for Petitioner, which remains valid for nearly five more months. Knowles Dec. ¶ 24 & Ex. H. Further, Guinea is open for international travel, and ICE/ERO is currently removing non-citizens to Guinea. *Id.* ¶ 27. As to Petitioner specifically, ICE/ERO manifested him for a removal flight departing an Atlanta airport on August 22, 2025 and transported him to the airport to execute his removal. *Id.* ¶ 25. 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.* 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.

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 27th day of August, 2025.

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CERTIFICATE OF SERVICE

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

MOHAMED LAMINE KOUYATE

A# 

Stewart Detention Center

P.O. Box 248

Lumpkin, GA 31815

This 27th day of August, 2025.

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