

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

DAVID ERNESTO ORTIZ,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-202-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER, <sup>1</sup>	:	
	:	
Respondent.	:	

---

**RESPONDENT'S RESPONSE**

On June 30, 2025, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. Petitioner challenges his post-final order of removal pursuant to *Zadvydas v. Davis*, 478 U.S. 633 (2001). Pet. 6-8, ECF No. 1. As explained below, the Petition should be denied.

**BACKGROUND**

Petitioner is a native and citizen of El Salvador who is detained post-final order of removal under 8 U.S.C. § 1231(a) pursuant to a reinstated removal order. Stephens Decl. ¶¶ 3-4 & Ex. A.

On January 9, 2018, Petitioner was arrested for the offense of Driving Under the Influence in Alpharetta, Georgia. *Id.* ¶ 5 & Ex. A. He was convicted on or about April 18, 2018. *Id.* ¶ 5 & Ex. A. On October 30, 2019, Immigration and Customs Enforcement, Enforcement and Removal

---

<sup>1</sup> Petitioner names the United States Attorney General, United States Secretary of the Department of Homeland Security, and 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.

Operations (“ICE/ERO”) encountered Petitioner at the Fulton County Jail following his arrest for Driving Without a License. Stephens Decl. ¶ 6 & Ex. A. He was served with a Notice to Appear (“NTA”) on or about the same date charging him with removability pursuant to Immigration and Nationality Act (“INA”) § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* ¶ 6 & Ex. B. On December 11, 2019, an Immigration Judge (“IJ”) found that Petitioner was removable but granted him voluntary departure in lieu of an order of removal. Stephens Decl. ¶ 7 & Ex. C. However, Petitioner did not depart during the allowed time period, and the removal order become final on January 10, 2020. *Id.* Petitioner was removed to El Salvador on March 27, 2020, via an ICE charter flight. *Id.* ¶ 7 & Ex. D.

On September 21, 2020, U.S. Border Patrol (“USBP”) encountered Petitioner near Nogales, Arizona. Stephens Decl. ¶ 8 & Ex. E. On the same day, USBP served Petitioner with a Notice and Order of Expedited Removal pursuant to INA § 235(b)(1), 8 U.S.C. § 1225(b)(1). *Id.* ¶ 8 & Ex. F. Petitioner was removed to El Salvador on October 13, 2020. *Id.*

On September 20, 2023, Petitioner was arrested for Driving While License Suspended or Revoked in Alpharetta, Georgia. Stephens Decl. ¶ 10 & Ex. G. On October 18, 2023, ICE/ERO encountered Petitioner following his release from Georgia state custody for this charge. *Id.* ¶ 11. Petitioner entered ICE/ERO custody on this date. *Id.* On October 18, 2023, ICE/ERO served Petitioner with the Notice of Intent/Decision to Reinstate Prior Order. *Id.* ¶ 12 & Ex. H. Petitioner claimed entitlement to relief from removal. *Id.* On January 19, 2024, Petitioner was referred to the IJ for further proceedings pursuant to his claim to relief from removal. Stephens Decl. ¶ 13 & Ex. I. Petitioner appeared for the hearing on January 19, 2024, and the IJ issued a decision for further proceedings. *Id.* ¶ 13 & Ex. J.

Petitioner was scheduled for a master hearing on February 6, 2024. Stephens Decl. ¶ 14 & See Ex. K. Petitioner appeared pro se and the case was continued to April 19, 2024 for him to obtain counsel and file applications for relief from removal. *Id.* ¶ 14 & Ex. L. On April 9, 2024, Petitioner appeared for the master hearing with counsel and requested a continuance to file applications for relief from removal. *Id.* ¶ 15. The case was reset to April 30, 2024. *Id.* ¶ 15 & Ex. M. On April 30, 2024, Petitioner appeared with counsel, and the IJ continued the case to July 31, 2024 for a hearing on the merits of Petitioner's application for relief. *Id.* ¶ 16 & Ex. N. On July 31, 2024, Petitioner appeared with counsel. *Id.* ¶ 17. After a full hearing, the IJ denied all relief and returned the case to the Department of Homeland Security ("DHS") to execute the reinstated removal order. *Id.* ¶ 17 & Ex. O.

On August 19, 2024, Petitioner filed an appeal with the Board of Immigration Appeals ("BIA"). Stephens Decl. ¶ 18 & Ex. P. On January 15, 2025, the BIA issued a decision remanding proceedings to the IJ for additional fact-finding and analysis. *Id.* ¶ 19 & Ex. Q. Following the BIA's remand, the IJ scheduled a master hearing for February 5, 2025. *Id.* ¶ 20 & Ex. R. On February 5, 2025, Petitioner appeared with counsel, and the case was continued to February 20, 2025 for a hearing on the merits of Petitioner's application for relief. *Id.* ¶ 20 & Ex. S.

On February 20, 2025, Petitioner appeared with counsel for the merits hearing. Stephens Decl. ¶ 21. Following arguments and discussion of the evidence in the record, the IJ reserved the matter for a written decision. *Id.* On March 14, 2025, the IJ issued a written decision granting Petitioner's application for relief. *Id.* ¶ 22 & Ex. T. On April 14, 2025, DHS timely filed a Notice of Appeal with the BIA. *Id.* ¶ 23 & Ex. U. On May 14, 2025, the BIA issued a briefing schedule requiring both parties to file briefs by June 4, 2025. *Id.* ¶ 23 & Ex. V. DHS timely filed its brief

on June 3, 2025, but Petitioner did not file a brief. *Id.* ¶ 23. The appeal remains pending with the BIA. *Id.* ¶ 24.

There is a significant likelihood of Petitioner’s removal in the reasonably foreseeable future. Stephens Decl. ¶ 25. El Salvador is open for international travel and is issuing travel documents to facilitate removals of Salvadoran nationals. *Id.* ICE/ERO is currently removing non-citizens to El Salvador. *Id.*

### LEGAL FRAMEWORK

8 U.S.C. § 1231(a)(5) provides for the reinstatement of a prior order of removal “from its original date” if DHS “finds that an [non-citizen] has reentered the United States illegally after having been removed . . . under an order of removal[.]” *See also* 8 C.F.R. § 1241.8(a). A reinstated removal order “is not subject to being reopened or reviewed[.]” 8 U.S.C. § 1231(a)(5). Further, a non-citizen subject to a reinstated removal order “has no right to a hearing before an immigration judge,” 8 C.F.R. § 1241.8(a), and “is not eligible and may not apply for any relief” from removal, 8 U.S.C. § 1231(a)(5). *See Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 35 (2006) (recognizing that section 1231(a)(5) “applies to all illegal reentrants, explicitly insulates the removal orders from review, and generally forecloses discretionary relief from the terms of the reinstated order”).

Even though a non-citizen may not challenge his reinstated removal order, he may claim that he is entitled to relief from removal—an assertion that he cannot be removed to a specific country. 8 U.S.C. § 1231(b)(3)(A). However, a grant of relief from removal does not affect the validity of a final order of removal. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 428 n.6 (1987). Relief from removal “bars [removing] a[] [non-citizen] to a particular country[.]” *INS v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999); *see also* 8 C.F.R. § 1208.22. But a grant of relief from removal “does not disturb the final order of removal” and “does not affect the validity of the final order of

removal[.]” *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). “[T]he noncitizen still ‘may be removed at any time to another country[.]’” *Id.* (citing 8 C.F.R. §§ 1208.17(b)(2), 1208.16(f)); *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 531-32 (2021) (“[B]ecause [relief from] removal is a form of country specific relief, nothing prevents DHS from removing the alien to a third country. . . .” (internal quotations, alterations, and citations omitted)).

Once a removal order is reinstated, the non-citizen’s detention is governed by 8 U.S.C. § 1231. 8 C.F.R. § 1231(a)(5); 8 C.F.R. § 1241.8(c); *see also Guzman Chavez*, 594 U.S. at 533-47. 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).

In sum, a non-citizen in withholding-only proceedings cannot challenge *whether* he will be removed; he may only challenge *where* he will be removed to, and during his challenge, he continues to be detained pursuant to section 1231.

### ARGUMENT

Petitioner claims that his post-final order of removal detention violates due process under *Zadvydas*.<sup>2</sup> Pet. 6-8. The Petition should be denied because Petitioner cannot meet his evidentiary burden under *Zadvydas* and because there is a significant likelihood of removal in the reasonably foreseeable future.

---

<sup>2</sup> 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 be entitled to relief under *Zadvydas*, Petitioner has the burden to show 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. Here, the Petition should be denied because Petitioner presents no evidence to meet his burden. At most, he states simply that he has not yet been removed. Pet. 4 (“I still haven’t been removed . . . .”); *id.* at 7 (“Petitioner still has not been removed . . . .”). 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)).

Beyond this insufficient assertion, Petitioner only restates the relevant standard, repeatedly alleging without supporting evidence that his “removal . . . is not significant[ly] likely to occur in the reasonably foreseeable future.” Pet. 7; *see also id.* at 8 (same). But 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*.

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 because El Salvador is currently issuing travel documents to facilitate removals of Salvadoran nationals. Stephens Decl. ¶ 25. Further, ICE/ERO will be able to remove Petitioner because El Salvador is open for international travel. *Id.* Indeed, ICE/ERO is currently removing Salvadoran nationals to El Salvador. *Id.* As to Petitioner specifically, ICE/ERO has already successfully removed Petitioner to El Salvador twice since 2020. *Id.* ¶¶ 7, 9 & Exs. D, F.

The only current impediment to Petitioner’s removal is DHS’s appeal of the IJ’s decision granting Petitioner relief from removal. This impediment will cease when the BIA rules on the IJ’s decision. Furthermore, even assuming the BIA affirms the IJ’s decision, that determination will have no impact on Petitioner’s reinstated order of removal; it affects only the country to which Petitioner can be removed. *Guzman Chavez*, 594 U.S. at 531-32. Thus, at best, Petitioner can show only uncertainty as to the precise date he will be removed due to circumstances outside ICE/ERO’s control.

Multiple circuit courts of appeals have addressed similar circumstances: whether a non-citizen is entitled to relief under *Zadvydas* where removal has been delayed only by the non-citizen’s pursuit of an ongoing legal proceeding. All of those courts have held that “this uncertainty

alone does not render [a non-citizen's] detention *indefinite* in the sense the Supreme Court found constitutionally problematic in *Zadvydas*.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008); *see also G.P. v. Garland*, 103 F.4th 898, 903 (1st Cir. 2024) (“[B]ecause [the legal proceedings] have a definite ending point, then so too must the detention pending the resolution of those proceedings.” (internal quotations and citation omitted)); *Castaneda v. Perry*, 95 F.4th 750, 758 (4th Cir. 2024) (“[C]ongoing withholding-only proceedings do not, standing alone, cast doubt on the foreseeability of an alien’s removal in the future.”); *Martinez v. Larose*, 968 F.3d 555, 565-66 (6th Cir. 2022) (“[W]e agree with the district court that [the non-citizen’s] removal is reasonably foreseeable. If [he] does not prevail in his pending actions before this court and the BIA, nothing should impede the government from removing him . . . .”); *Andrade v. Gonzales*, 459 F.3d, 543-44 (5th Cir. 2006) (finding *Zadvydas* claim meritless where the non-citizen “offered nothing beyond his conclusory statements suggesting that he will not be immediately removed . . . following the resolution of his appeals”); *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (affirming dismissal of *Zadvydas* claim where the non-citizen’s continued detention was “clearly neither indefinite nor potentially permanent like the detention held improper in *Zadvydas*; it [was], rather, directly associated with a judicial review process that has a definite and evidently impending termination point.”).

Further, while the Eleventh Circuit has not yet addressed the issue, one district court in the Eleventh Circuit has similarly held that a non-citizen is not entitled to relief under *Zadvydas* based solely upon the non-citizen’s pursuit of relief from removal. *Rodriguez v. Meade*, No. 20-cv-24382, 2021 WL 671333, at \*5 (S.D. Fla. Feb. 22, 2021) (“It is reasonably foreseeable that a termination point (i.e., removal) will occur after the conclusion of Petitioner’s withholding-only proceeding” (internal quotation and citation omitted)).

This Court should reach this same conclusion and deny the Petition because there is a significant likelihood of removal in the reasonably foreseeable future. The Supreme Court created its test in *Zadvydas* to address one specific issue: the possibility of “indefinite detention” where a non-citizen is detained for the purpose of removal but cannot be removed. *Zadvydas*, 533 U.S. at 690-96. In that narrow circumstance, a non-citizen is placed in a “removable-but-unremovable limbo[.]” *Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 347 (2005). But in *Zadvydas*, the non-citizens were placed in this limbo because no country would accept them for removal, meaning there was no possibility of removal whatsoever. *Zadvydas*, 533 U.S. at 684-86. Their detention was therefore “potentially permanent.” *Id.* at 691.

Here, however, those concerns are not present. Petitioner is detained pending the completion of his relief from removal “proceedings that he voluntarily initiated.” *Castaneda*, 95 F.4th at 757. But for those proceedings, Petitioner likely would have been removed shortly after detention commenced given that ICE/ERO has successfully removed him twice before. Stephens Decl. ¶¶ 7, 9. But “[c]ritically, [relief from removal] proceedings are *finite*.” *Castaneda*, 95 F.4th at 757 (emphasis in original). “[I]f he is ultimately denied relief, [ICE/ERO] will be able to move forward with removing him[.]” *G.P.*, 103 F.4th at 902. And even if Petitioner is granted relief, he is still subject to an executable final order of removal, and ICE/ERO “may still remove [him] to another country[.]” *Castaneda*, 95 F.4th at 757. “In either case, however, the withholding-only proceedings *end*. And if the withholding-only proceedings have a definite ending point, then so too must the detention *pending* the resolution of those proceedings.” *Id.* (citations omitted) (emphasis in original). “There thus appears to be little chance of a removable-but-unremovable limbo for” Petitioner such as the one that motivated the Supreme Court’s opinion in *Zadvydas*. *G.P.*, 103 F.4th at 902.

Because Petitioner's present detention is not "indefinite" or "potentially permanent," *Zadvydas*, 533 U.S. at 691, there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future, and his detention complies with due process. The Court should therefore deny the Petition.

### CONCLUSION

The record is complete in this matter and the case is ripe for adjudication on the merits. For the reasons stated herein, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted this 21st day of July, 2025.

WILLIAM R. KEYES  
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](mailto:roger.grantham@usdoj.gov)

**CERTIFICATE OF SERVICE**

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

David Ernesto Ortiz  
A#   
Stewart Detention Center  
P.O. Box 248  
Lumpkin, GA 31815

This 21st day of July, 2025.

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