

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

GERARDO RUIZ PEREZ,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-259-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,¹	:	
	:	
Respondent.	:	

RESPONDENT’S RESPONSE

On August 13, 2025, the Court received Petitioner’s petition for a writ of habeas corpus (“Petition”). ECF No. 1. On September 12, 2025, the Court ordered Respondent to file a response within twenty-one days. ECF No. 5. Respondent now files this response. The Court should deny the Petition because (1) Petitioner cannot state a claim for relief because his Petition is premature, and (2) in the alternative, Petitioner fails to show he is entitled to relief.

BACKGROUND

Petitioner is a native and citizen of Mexico who is mandatorily detained post-final order of removal pursuant to 8 U.S.C. § 1231. Karwowski Decl. ¶¶ 4, 14, 15. Petitioner was first encountered by Homeland Security Investigation (“HSI”) on September 25, 2015, while driving a work truck picking up HSI’s primary target. *Id.* ¶ 4 & Ex. A. Upon investigation by HSI, it was

¹ Petitioner names the United States Attorney General, United States Secretary of the Department 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.

determined that Petitioner was unlawfully present in the United States, and he was turned over to Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE/ERO”) for processing. *Id.* Further investigation by ICE/ERO found that Petitioner had been convicted on September 8, 2014, in New Hanover County, North Carolina, for driving while impaired and sentenced to sixty days imprisonment. *Id.* Petitioner was placed in ICE custody at that time. *Id.*

On September 28, 2015, Petitioner was personally served with a Notice to Appear (“NTA”) charging him as being inadmissible under Immigration and Nationality Act (“INA”) 212(a)(6)(A)(i) (8 U.S.C. § 1182(a)(6)(A)(i)) in that he is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time other than as designed by the Attorney General. *Id.* ¶ 5 & Ex. B. On October 2, 2015, Petitioner was transferred from York County Detention Center in York, South Carolina, to Irwin County Detention Center in Ocilla, Georgia. *Id.* ¶ 6. On October 7, 2015, Petitioner was transferred to Stewart Detention Center, where he remained until he posted bond on October 13, 2015. *Id.* & Ex. C.

In June 2018, Petitioner filed an Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (“42b Application”). *Id.* ¶ 7. On November 27, 2019, Petitioner appeared, with counsel, for his master calendar hearing. *Id.* ¶ 8. On this day, Petitioner admitted and conceded the allegations and charge. *Id.* The NTA was sustained, and Mexico was designated as the country of removal. *Id.* Petitioner’s merits hearing was scheduled for July 14, 2022. *Id.*

On July 14, 2022, Petitioner appeared, with counsel, for his merits hearing to adjudicate the pending 42b Application. *Id.* ¶ 9. DHS notified the Immigration Judge (“IJ”) about an issue with Petitioner’s biometrics and asked the IJ to find that Petitioner had abandoned his 42b Application for failure to complete prints. *Id.* The IJ granted DHS’s request to find Petitioner had

abandoned his application for relief and then granted Petitioner's request for post-conclusion voluntary departure. *Id.* & Ex. D. On August 11, 2022, Petitioner filed a Notice of Appeal of the IJ's July 14, 2022 decision with the Board of Immigration Appeals ("BIA"). *Id.* ¶ 10. The BIA issued a briefing schedule and subsequently granted Petitioner's request for an extension to file his brief in support of his appeal by August 17, 2023. *Id.* DHS was granted until September 7, 2023, to respond. *Id.* Petitioner filed his brief with the BIA, and DHS elected to not file a brief. *Id.* To date, the BIA has not issued a decision on the appeal. *Id.*

On August, 26, 2022, DHS filed with the BIA a Motion to Remand Proceedings to the IJ on the basis that DHS had determined that the issue with Petitioner's biometrics raised at the July 14, 2022 hearing was an error and Petitioner's prints were now current for his application for relief. *Id.* ¶ 11. This motion is still pending with the BIA. *Id.*

On July 23, 2024, Petitioner was arrested by the New Hanover County Sheriff's Office in Castle Hayne, North Carolina, for the offenses of assault on a female, injury to personal property, and a domestic violence protective order violation. *Id.* ¶ 12 & Ex. A. On October 28, 2024, Petitioner was convicted of the offenses of assault on a female and injury to personal property. *Id.* The domestic violence protective order charge was dismissed. *Id.* On or about November 4, 2024, following Petitioner's release from New Hanover County Detention Center, Petitioner entered ICE custody where he is currently being detained at Stewart Detention Center in Lumpkin, Georgia. *Id.* ¶ 13.

On or about September 18, 2025, Petitioner, through counsel, submitted a Notice of Withdrawal of Appeal to the BIA indicating he would accept a final order of removal. *Id.* ¶ 14 & Ex. F.² As a result of Petitioner withdrawing his appeal, the IJ's July 14, 2022 order has become

² There is no Exhibit E.

final, and Petitioner is now being detained pursuant to INA § 241 authority (8 U.S.C. § 1231). *Id.*

¶ 15. There is a significant likelihood of Petitioner’s removal in the reasonably foreseeable future.

Id. ¶ 16. Mexico is open for international travel, and ERO is currently removing non-citizens to Mexico. *Id.*

LEGAL FRAMEWORK

Petitioner is now detained post-final order of removal, and 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 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 timeframe, 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*, 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; *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).

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*, -- U.S. --, 141 S. Ct. 2271, 2281 (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)).

“The 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 at removal. *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)).

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).

ARGUMENT

Petitioner’s Petition is sparse. He appears to seek relief under *Zadvydas*, asserting that his detention violates due process because there is no significant likelihood of removal in the reasonably foreseeable future. Pet. 6–8. The Petition should be denied for two reasons. First, Petitioner’s *Zadvydas* claim is premature on its face because he has not been detained post-final order of removal for six months. Second, even assuming Petitioner could state a claim for relief under *Zadvydas*—which he cannot—he fails to show that he is entitled to relief. For these reasons, the Court should deny the Petition.

I. The Petition should be denied as premature under *Zadvydas*.

In evaluating *Zadvydas* claims, the Eleventh Circuit has made clear that 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*.” *Akinwale*, 287 F.3d at 1052; *see also Themeus v. U.S. Dep’t of Justice*, 643 F. App’x 830, 833 (11th Cir. 2016); *Guo Xing Song*, 516 F. App’x at 899.

Here, Petitioner most recently entered ICE/ERO custody on November 4, 2024. Karwowski Decl. ¶ 13. Before that date, on July 14, 2022, Petitioner requested and was granted a post-conclusion voluntary departure after an IJ deemed that he had abandoned his application for relief. *Id.* ¶ 9. On August 11, 2022, Petitioner filed a Notice of Appeal with the BIA of the IJ’s July 14, 2022 decision. *Id.* ¶ 10. To date, however, the BIA has not issued a decision on the appeal. *Id.* On or about September 18, 2025, Petitioner submitted a Notice of Withdrawal of Appeal to the BIA indicating he would accept a final order of removal. *Id.* ¶ 14. As a result of Petitioner withdrawing his appeal, the IJ’s July 14, 2022 order became final on or about September 18, 2025. *Id.* ¶ 15. The ninety-day removal period also commenced on this date and does not expire until December 17, 2025. 8 U.S.C. § 1231(a)(1)(A), (a)(1)(B)(i). Moreover, the six-month presumptively reasonable detention period under *Zadvydas* will not expire until March 18, 2026, *Zadvydas*, 533 U.S. at 700.

Petitioner filed the Petition on August 6, 2025—just over one month before his removal order became final.³ *See generally* Pet. The *Zadvydas* six-month presumptively reasonable detention period had not even begun. Accordingly, Petitioner cannot state a claim under *Zadvydas* because his detention is presumptively reasonable. *Akinwale*, 287 F.3d at 1052. Courts throughout the Eleventh Circuit—including this Court—have dismissed non-citizens’ habeas petitions raising *Zadvydas* claims where the presumptively reasonable six-month period had not expired when they filed their petitions. *S.H. v. Warden, Stewart Det. Ctr.*, No. 4:21-CV-185-CDL-MSH, 2022 WL

³ Although the Court received the Petition on August 13, 2025, Petitioner signed it on August 6, 2025—7 days earlier. “Under the prison mailbox rule, a *pro se* prisoner’s court filing is deemed filed on the date it is delivered to prison authorities for mailing.” *United States v. Glover*, 686 F.3d 1203, 1205 (11th Cir. 2012) (internal quotations and citation omitted). “Unless there is evidence to the contrary, like prison logs or other records, we assume that a prisoner’s motion was delivered to prison authorities on the day he signed it.” *Id.* Using either date, Petitioner filed the Petition well before the six-month presumptively reasonable detention period under *Zadvydas* expires.

1280989, at *2 (M.D. Ga. Feb. 15, 2022), *recommendation adopted*, 2022 WL 1274385 (M.D. Ga. Apr. 28, 2022); *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021); *Elieenist v. Mickelson*, No. 15-61701-Civ, 2015 WL 5316484, at *3 (S.D. Fla. Aug. 18, 2015), *recommendation adopted*, 2015 WL 5308882 (S.D. Fla. Sept. 11, 2015); *Maraj v. Dep't of Homeland Sec.*, No. CA 06-0580-CG-C, 2007 WL 748657, at *3 (S.D. Ala. Mar. 7, 2007); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1363-65 (N.D. Ga. 2002). The Court should similarly deny the Petition here.

II. In the alternative, Petitioner fails to show that he is entitled to relief under *Zadvydas*.

Even if the Court ignores that Petitioner's *Zadvydas* claim is premature on its face—which it should not—Petitioner fails to show that he is entitled to release under *Zadvydas*.

Petitioner presents no evidence to show that he is not likely to be removed in the reasonably foreseeable future. Instead, he merely restates the *Zadvydas* standard and states in conclusory fashion—and without any supporting evidence—that his “removal to Mexico or any other country is not significantly likely to occur in the reasonably foreseeable future.” Pet. 7. 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. There is a significant likelihood of Petitioner’s removal in the reasonably foreseeable future. Karwowski Decl. ¶ 16. Mexico is open for international travel and ERO is currently removing non-citizens to Mexico. *Id.*

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 3rd day of October, 2025.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

By: s/ W. Taylor McNeill
W. Taylor McNeill
Assistant United States Attorney
Georgia Bar No. 239540
United States Attorney’s Office
Middle District of Georgia
P.O. Box 1702
Macon, GA 31202
Tel.: 478.752.3511
Email: taylor.mcneill@usdoj.gov

CERTIFICATE OF SERVICE

This is to certify that I have this date filed 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:

Gerardo Ruiz Perez
A# 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 3rd day of October, 2025.

By: s/ W. Taylor McNeill
W. Taylor McNeill
Assistant United States Attorney