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

VLADIMIR KIM,	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-262-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE

On August 15, 2025, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. On August 18, 2025, the Court ordered Respondent to file a comprehensive response within twenty-one days. ECF No. 3. As explained below, the Petition should be denied.

BACKGROUND

Petitioner is a native of Uzbekistan who is detained post-final order of removal pursuant to 8 U.S.C. § 1231(a). Declaration of Deportation Officer Marilyn Guerra ("Guerra Decl.") ¶¶ 3, 7, 11. On August 18, 200, Petitioner was admitted to the United States as a lawful permanent resident. Guerra Decl. ¶ 3. At the time of his admission, he was a citizen and national of Uzbekistan. *Id.*

On September 30, 2008, Petitioner was convicted of aggravated assault with a deadly weapon and burglary in Fulton County Superior Court in Atlanta, Georgia. Guerra Decl. ¶ 4. He

[1] In addition to the Warden of Stewart Detention Center, Petitioner also names officials with the 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.

was sentenced to serve seven years incarceration for each crime to run concurrently and was ordered to pay restitution. *Id.* ¶ 5, Ex. A.

On February 19, 2009, Petitioner encountered Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") while at the Gwinnett County Jail following his arrest on February 2, 2009 for a failure to appear warrant. Guerra Decl. ¶ 6 & Ex. B. On March 6, 2009, Petitioner was personally served with a Notice to Appear ("NTA") that charged him as removable under Immigration and Nationality Act ("INA") § 237(a)(2)(A)(iii) (8 U.S.C. § 1227(a)(2)(A)(iii)) in that after admission he was convicted of an aggravated felony, as defined by § 101(a)(43)(F) of the Act, a crime of violence, for which the term of imprisonment ordered is at least one year. *Id.* & Ex. C. He was also charged with removability under § 237(a)(2)(A)(iii) (8 U.S.C. § 1227(a)(2)(A)(iii)) in that, after admission, he was convicted of an aggravated felony, as defined by § 101(a)(43)(G) of the Act, a law relating to a theft or burglary offense for which the term of imprisonment was at least a year. *Id.*

On April 2, 2009, Petitioner appeared for his master calendar hearing. Guerra Decl. ¶ 7. On this day, the Immigration Judge ("IJ") ordered Petitioner removed to Uzbekistan citing he was not eligible for relief. *Id.* ¶ 7 & Ex. D. Petitioner waived appeal. *Id.* In April 2009, ERO began arranging to obtain travel documents from Uzbekistan and scheduled his removal for May 1, 2009, however, the Uzbekistan Embassy refused to issue travel documents and the May 1, 2009 removal plans were cancelled. *Id.* ¶ 8. During this time, Petitioner was being detained at Etowah County Detention Center in Gadsden, Alabama. *Id.*

On or about July 29, 2009, ERO released Petitioner pursuant to an Order of Supervision because Uzbekistan would not issue travel documents. Guerra Decl. ¶ 9 & Ex. E. As part of his release, he was required to regularly report to ERO and did so from 2009 to 2023. *Id.* In February

2023, Petitioner was enrolled in CART with a reporting frequency of once a year. *Id.* ¶ 10. However, on February 20, 2024, Petitioner failed to report. *Id.*

On February 25, 2025, Petitioner reported and was arrested by ERO because he failed to report the previous year. Guerra Decl. ¶ 11. He was transferred to Stewart Detention Center. *Id.* In April 2025, ERO began efforts of obtaining travel documents for Petitioner from the Consulate of Uzbekistan and was advised by the Consulate that a travel itinerary was required before issuance of travel documents. *Id.* ¶ 12. ERO then confirmed that Petitioner was ready for removal and a flight was scheduled for May 6, 2025. *Id.* On April 14, 2025, ERO submitted the itinerary to the Consulate. *Id.* On or about April 26, 2025, the Consulate notified ERO despite Petitioner being born in Uzbekistan and having always been a citizen of Uzbekistan, travel documents could not be issued since he renounced his citizenship in 2012 and is therefore no longer a citizen of Uzbekistan. *Id.* ¶ 13.

On or about August 15, 2025, Petitioner received a 90-day post-order custody review ("POCR"), and it was determined that his detention should be continued. *Id.* ¶ 14, Ex. F. Petitioner was served with the 90-day POCR decision on August 15, 2025. To date, Petitioner remains detained at Steward Detention Center pursuant to INA § 241(a) (8 U.S.C. § 1231(a)).

LEGAL FRAMEWORK

Because 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* 8 U.S.C. § 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 (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 (emphasis added). 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 primarily asserts that his detention violates due process under *Zadvydas*. Pet. 21–22. Petitioner argues that his detention is (1) a statutory violation; (2) a substantive due process violation; and (3) a procedural due process violation. *Id.* The Petition is premature on its face under *Zadvydas* because at the time of filing his Petition, Petitioner had been detained post-final order of removal for less than six months.

Because 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 the Department of Homeland Security ("DHS") shall remove an alien within ninety (90) days of the date the order of removal becomes administratively final. *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 does not remove an alien during the removal period, detention may continue if it is "reasonably necessary" to effectuate removal. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). In *Zadvydas*, the Supreme Court determined that, under the Fifth Amendment, detention for six months is presumptively reasonable. *Zadvydas*, 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.

The Eleventh Circuit has made clear that "[t]his 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 v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002); *see also Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 833 (11th Cir. 2016); *Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013). Even if the Petition was filed after the six-month post-removal detention period—which it was not—Petitioner also carries the burden to establish that there is no "reasonable likelihood of removal" in the foreseeable future. *Zadvydas*, 533 U.S. at 701.

Petitioner was ordered removed on April 2, 2009. Guerra Decl. ¶ 7, Ex. X. On July 29, 2009, Petitioner was released pursuant to an Order of Supervision because Uzbekistan would not issue travel documents at that time. *Id.* ¶ 9, Ex. X. Petitioner reentered ICE/ERO custody on February 25, 2025, because he failed to report the previous year. *Id.* ¶¶ 10–11. The Court received the Petition on August 15, 2025—just over 171 days after Petitioner's detention on February 25, 2025. *See* ECF No. 3. Petitioner, therefore, had not been detained beyond the presumptively reasonable six-month period under *Zadvydas* at the time he filed his Petition.

Courts throughout the Eleventh Circuit—including this Court—have dismissed non-citizens' habeas applications raising *Zadvydas* claims where the presumptively reasonable six-month period had not expired when they filed their petitions. *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021); *Garcon v. Warden, Irwin Cty. Det. Ctr.*, No. 7:16-CV-158-WLS-MSH, 2017 WL 9250368, at *2 (M.D. Ga. Aug. 30, 2017), *recommendation adopted*, 2018 WL 2056562 (M.D. Ga. Feb. 27, 2018); *Elienist 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).

Petitioner also suggests that his previous period of post-final order of removal detention—between March 6, 2009, and July 23, 2009—should be added to the current period of detention in calculating whether he has been detained beyond the six-month presumptively reasonable period. *See* Pet. 7. This argument should be rejected.

As this Court has recognized, *Zadvydas* is not "a permanent 'Get Out of Jail Free Card' that may be redeemed at any time just because an alien was detained too long in the past." *Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018). Rather, the "focus [for *Zadvydas*] is on *today*[.]" *Id.* (emphasis in original). For this reason, the Court has held that the *Zadvydas* six-month presumptively reasonable detention period re-commences when a non-citizen is re-detained after previously spending time in ICE/ERO custody.

In *M.K. v. Warden, Stewart Det. Ctr.*, No. 4:23-cv-136 (M.D. Ga. Oct. 19, 2023), a non-citizen was detained post-final order of removal for approximately seven months before his release under an order of supervision. *M.K.*, No. 4:23-cv-136, Order 2 (M.D. Ga. Oct. 19, 2023), ECF No. 12. ICE/ERO re-detained him approximately eleven years later, and the non-citizen sought habeas relief under *Zadvydas* approximately two months after his re-detention. *Id.* The Court held that the *Zadvydas* six-month period re-commenced when the non-citizen was most recently detained by ICE/ERO. *Id.* at 3-7. In reaching this conclusion, the Court reasoned that the *Zadvydas* six-month period was intended "to allow the Government to arrange for an alien's removal." *Id.* at 6 (citing *Zadvydas*, 533 U.S. at 700-01). If a non-citizen's prior periods of post-final order of removal detention were cumulated with his present period of detention, this "would effectively eviscerate § 1231(a)'s purpose of allowing the Government time to arrange for an alien's removal, including contacting foreign consulates and obtaining necessary travel documents." *Id.* at 6-7. Because the non-citizen's most recent period of post-final order of removal detention had not exceeded six months, the Court dismissed his petition as premature. *Id.*

Here, although Petitioner was previously detained post-final order of removal between March 6, 2009, and July 23, 2009, he has been detained for only 171 days since he was most recently re-detained on February 25, 2025. *See* Guerra Decl. ¶ 11. Just like in *M.K.*, his *Zadvydas* claim is, therefore, premature because he cannot show more than six months of post-final order of removal detention. Although the Court has acknowledged that the six-month presumptively reasonable detention period may not restart "[i]f there was evidence the Government's detention, release, and re-detention of Petitioner was some sort of effort to manipulate the *Zadvydas* detention period," there is no such evidence here. Accordingly, the Petition should be dismissed as premature.

CONCLUSION

The record is complete in this matter, and the case is ripe for adjudication on the merits. The Petition is premature as it was filed before the presumptively reasonable six-month period expired. For this reason, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted this 8th day of September, 2025.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

BY: */s/ Michael P. Morrill*

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Petitioner,	)	
v.	)	Case No. 4:25-cv-262-CDL-AGH
	)	28 U.S.C. § 2241
Warden, STEWART DETENTION CENTER, *et al.*,	)	
	)	
	)	
Respondents.	)	
	)	

DECLARATION OF
DEPORTATION OFFICER (DO) MARILYN GUERRA

Pursuant to 28 U.S.C. § 1746, I, Marilyn Guerra, do hereby declare:

1. I am employed by U.S. Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"), and currently serve as a Deportation Officer. I have been employed by ICE since August 11, 2024.

2. In my current position, my responsibilities include handling detained cases at the Stewart Detention Center, at the Atlanta Field Office. I have held this position since January 2025. I am the officer assigned to the case involving Vladimir Kim ("Petitioner"), whose alien registration number is A[redacted]

3. I provide this declaration based on my personal knowledge, belief, reasonable inquiry, and information obtained from various records, systems, databases, other DHS employees, employees of DHS contract facilities, and information portals maintained and relied upon by DHS in the regular course of business.

4. Petitioner was admitted to the United States on August 18, 2000 as a lawful permanent resident. At the time of this admission, he was a citizen and national of Uzbekistan.

5. On September 30, 2008, Petitioner was convicted of aggravated assault with a deadly weapon and burglary in Fulton County Superior Court in Atlanta, Georgia. He was sentenced to serve seven years incarcerated for each crime, to run concurrently. He was also ordered to pay restitution. *See* Attachment A, Final Disposition Documents

6. On or about February 2, 2009, Petitioner was encountered by ERO while at Gwinnett County Jail, in Georgia, following his arrest the same day for a failure to appear warrant. On March 6, 2009, Petitioner was personally served with a Notice to Appear ("NTA") that charged him as removable under Immigration and Nationality Act ("INA") § 237(a)(2)(A)(iii) in that after admission he was convicted of an aggravated felony, as defined by Section 101(a)(43)(F) of the Act, a crime of violence, for which the term of imprisonment ordered is at least one year. He was also charged with removability under Section § 237(a)(2)(A)(iii) in that, after admission, he was convicted of an aggravated felony, as defined by Section 101(a)(43)(G) of the Act, a law relating to a theft or burglary offense for which the term of imprisonment was at least a year. *See* Attachment B, Record of Deportable/Inadmissible Alien (the "I-213"); *See* Attachment C, Notice to Appear.

7. On April 2, 2009, Petitioner appeared for his master calendar hearing. On this day, the Immigration Judge ordered Petitioner removed to Uzbekistan citing he was not eligible for relief. Petitioner waived appeal. *See* Attachment D, Order of Removal.

8. In April 2009, ERO began arranging to obtain travel documents from Uzbekistan and scheduled his removal for May 1, 2009, however, the Uzbekistan Embassy refused to issue travel documents and the May 1, 2009 removal plans were cancelled. During this time, Petitioner was being detained at Etowah County Detention Center in Gadsden, Alabama.

9. On or about July 29, 2009, ERO released Petitioner pursuant to an Order of Supervision because Uzbekistan would not issue travel documents. As part of his release, he was required to regularly report to ERO and did so from 2009 to 2023. *See* Attachment E, Order of Supervision.

10. In February 2023, Petitioner was enrolled in CART with a reporting frequency of once a year. However, on February 20, 2024, Petitioner failed to report.

11. On February 25, 2025, Petitioner reported and was arrested by ERO because he failed to report the previous year. He was transferred to Stewart Detention Center.

12. In April 2025, ERO began efforts of obtaining travel documents for Petitioner from the Consulate of Uzbekistan and was advised by the Consulate that a travel itinerary was required before issuance of travel documents. ERO then confirmed that Petitioner was ready for removal and a flight was scheduled for May 6, 2025. On April 14, 2025, ERO submitted the itinerary to the Consulate.

13. On or about April 23, 2025, the Consulate notified ERO that travel documents could not be issued for Petitioner since he renounced his citizenship in 2012 and is therefore no longer a citizen of Uzbekistan.

14. On or about August 15, 2025, Petitioner received a 90-day post-order custody review ("POCR"), and it was determined that his detention should be continued. Petitioner was served with the 90-day POCR decision on August 15, 2025. *See* Attachment F, 90-day POCR.

15. To date, Petitioner remains detained at Stewart Detention Center pursuant to INA § 241(a).

Pursuant to Title 28, U.S. Code Section 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, this 8th day of September, 2025.

MARILYN N GUERRA

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Date: 2025.09.08 12:57:42 -04'00'

Marilyn Guerra, Deportation Officer
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Immigration and Customs Enforcement
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