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

RODNEY TAYLOR,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-286-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE

On September 16, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition"). ECF No. 1. Petitioner asserts that his post-final order of removal detention violates due process because he has been denied a bond hearing. Pet. ¶¶ 42-45, ECF No. 1. As explained below, the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of Liberia who has been detained post-final order of removal under 8 U.S.C. § 1231(a) pursuant to a final administrative removal order since January 15, 2025. Declaration of Deportation Officer Jeffrey Knowles ("Knowles Decl.") ¶¶ 3-4 & Ex. A.

Petitioner claims to have entered the United States on or about August 31, 1984, in New York, New York pursuant to a non-immigrant temporary visitor visa. *Id.* ¶ 5 & Ex. A. Petitioner

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

was placed in removal proceedings, and on January 27, 1984, he was ordered to voluntarily depart the United States by July 25, 1984. *Id.* ¶ 6 & Ex. A. Petitioner, however, did not depart the United States as ordered. *Id.* ¶ 6.

On April 22, 1997, Petitioner was criminally charged with burglary in Dekalb County, Georgia. *Id.* ¶ 7 & Ex. B. On November 14, 1997, following a guilty plea, Petitioner was convicted of this offense and sentenced to two years imprisonment, to serve one on probation. *Id.* ¶ 7 & Ex. B. On August 18, 1998, Petitioner was arrested for probation violation in Dekalb County. Knowles Decl. ¶ 8 & Ex. A. On September 11, 1998, Petitioner was convicted of probation violation and sentenced to one year imprisonment. *Id.* ¶ 8 & Ex. A. On December 2, 2010, the Georgia State Board of Pardons and Paroles granted Petitioner a conditional pardon without restoration of his right to receive, possess, or transport in commerce a firearm. *Id.* ¶ 9 & Ex. C.

On January 15, 2025, Petitioner entered Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") custody. *Id.* ¶ 4. On the same day, ICE/ERO commenced proceedings pursuant to Immigration and Nationality Act ("INA") § 238(b), 8 U.S.C. § 1228(b), by serving Petitioner with a Form I-851 Notice of Intent to Issue a Final Administrative Removal Order. *Id.* ¶ 10 & Ex. D. Petitioner was charged with removability pursuant to Immigration and Nationality Act ("INA") § 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii), based on his conviction of an aggravated felony as defined in INA § 101(a)(43)(G), 8 U.S.C. § 1101(a)(43)(G). *Id.* ¶ 10 & Ex. D. On February 24, 2025, ICE/ERO ordered Petitioner removed as charged by serving him with a Form I-851A Final Administrative Removal Order ("FARO"). Knowles Decl. ¶ 11 & Ex. E.

On March 17, 2025, Petitioner's case was referred to an immigration judge ("IJ") to give Petitioner the opportunity to file any request for relief from removal. *Id.* ¶ 12. Petitioner filed a

request for bond redetermination, and the IJ held a bond hearing on April 2, 2025. *Id.* ¶ 13 & Ex. F. The IJ denied bond for lack of jurisdiction, and Petitioner appealed the bond decision to the Board of Immigration Appeals ("BIA"). *Id.* ¶ 13 & Ex. F. On August 12, 2025, the IJ held a hearing on Petitioner's applications for relief from removal. *Id.* ¶ 14. On August 18, 2025, the BIA dismissed Petitioner's appeal of the IJ's bond decision. *Id.* ¶ 15 & Ex. G. On September 24, 2025, the IJ issued a written decision denying Petitioner's applications for relief from removal. Knowles Decl. ¶ 16 & Ex. H. Petitioner reserved the right to appeal to the BIA, and his appeal is due on or before October 24, 2025. *Id.* ¶ 16 & Ex. H; *see also* 8 C.F.R. § 1003.38(b) (requiring filing of an appeal to the BIA within thirty days of the IJ's decision).

LEGAL FRAMEWORK

Petitioner is detained post-final order of removal pursuant to a final administrative removal order ("FARO"). Title 8 United States Code Section 1228 permits ICE/ERO to issue FAROs to certain non-citizens convicted of aggravated felonies. Section 1228 applies to, *inter alia*, non-citizens who (1) have not been admitted as lawful permanent residents or who have permanent residency on a conditional basis, and (2) are removable under 8 U.S.C. § 1227(a)(2)(A)(iii) based on a conviction of an aggravated felony as defined in 8 U.S.C. § 1101(a)(43). 8 U.S.C. § 1228(b)(1), (2); 8 C.F.R. § 1238.1(b)(1)(i)-(iv). ICE/ERO may commence proceedings under section 1228 and detain a non-citizen by serving a Form I-851 Notice of Intent to Issue a Final Administrative Removal Order. 8 C.F.R. § 238.1(b)(1), (b)(2)(i), (g). The non-citizen has an opportunity to respond to the Form I-851. 8 C.F.R. § 238.1(c). If ICE/ERO determines that the requirements of section 1228(b)(1) have been satisfied, ICE/ERO issues a FARO. 8 C.F.R. § 238.1(d)(1), (d)(2)(i), (d)(2)(ii)(B). If a non-citizen subject to section 1228 requests withholding

of removal, ICE/ERO "shall, upon issuance of a [FARO], immediately refer the [non-citizen's] case to an asylum officer to conduct a reasonable fear determination[.]" 8 C.F.R. § 238.1(f)(3).

A non-citizen subject to a FARO 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)).

Because a FARO operates as a final order of removal, the detention of a non-citizen subject to a FARO is governed by 8 U.S.C. § 1231(a). *See* 8 U.S.C. § 1231(a)(6) (authorizing detention of, *inter alia*, a non-citizen "who is . . . removable under section . . . 1227(a)(2) . . . of this title"); *Clark v. Martinez*, 543 U.S. 371, 377-78 (2005) (holding that the detention of non-citizens described in section 1231(a)(6) is governed by *Zadvydas*); *see also Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013) (per curiam) (applying the provisions of section 1231(a) and the *Zadvydas* standards to a non-citizen detained pursuant to a FARO); *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (per curiam) (same).

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*, 309 F. App'x at 346 (quoting *Akinwale*, 287 F.3d at 1051-52).

ARGUMENT

Petitioner brings this Petition arguing that his detention violates his due process rights, Pet ¶¶ 42-45, though the specific bases for that contention are difficult to follow. Petitioner briefly argues about the legality of his FARO. Pet. ¶ 20. However, much of the Petition focuses on the validity of Petitioner's detention without a pre-detention hearing. Pet. ¶¶ 31-41. Lastly, Petitioner brings both procedural and substantive due process claims regarding his current detention, citing *Zadvydas*. Pet. ¶¶ 42-45. His claims should be rejected for three reasons. First, this Court is without jurisdiction over any claim challenging Petitioner's FARO, and even if it had jurisdiction, such a claim lacks merit. Second, the Court is without jurisdiction over any claim that Petitioner's arrest and detention was unlawful, and even if it had jurisdiction, such a claim also lacks merit. Third, Petitioner cannot meet his burden under *Zadvydas*, and his habeas petition should be denied.

I. Petitioner's FARO challenge should be denied.

a. The Court lacks jurisdiction over any challenge to Petitioner's FARO.

To the extent Petitioner alleges his FARO was improper, Pet. ¶¶ 20-21, the Court lacks jurisdiction under 8 U.S.C. §§ 1252(a)(5) and (b)(9). A claim may proceed in this Court only if federal subject matter jurisdiction exists. *Lifestar Ambulance Serv., Inc. v. United States*, 365 F.3d 1293, 1295 (11th Cir. 2004). This is because "[f]ederal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (citation omitted). "The limits upon federal jurisdiction, whether imposed by the

Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). Additionally, "[a] petitioner may not create the jurisdiction that Congress chose to remove simply by cloaking an . . . argument in constitutional garb." *Arias v. U.S. Att'y Gen.*, 482 F.3d 1281, 1284 (11th Cir. 2007) (internal quotations and citations omitted).

In the immigration context, "[f]ollowing enactment of the REAL ID Act of 2005, district courts lack habeas jurisdiction to entertain challenges to final orders of removal." *Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 832 (11th Cir. 2016) (per curiam) (citing 8 U.S.C. § 1252(a)(5), (b)(9)). "Instead, 'a petition for review filed with the appropriate court is now an alien's exclusive means of review of a removal order.'" *Id.* (quoting *Alexandre v. U.S. Att'y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006)). Section 1252(b)(9) provides in full:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under [subchapter II of chapter 12 (8 U.S.C. §§ 1151-1378)] shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9).

Indeed, the Supreme Court has described section 1252(b)(9) as an "unmistakable zipper clause" that streamlines litigation by consolidating and channeling claims first to the agency and then to the circuit courts through petitions for review. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). In *AADC*, the Court elaborated on the breadth of section 1252(b)(9), explaining that it serves as a "general jurisdictional limitation" on challenges to actions arising from removal operations and proceedings. *Id.* at 482. District courts are barred from

reviewing removal proceedings regardless of how the non-citizen characterizes his claim. *Mata v. Sec'y of Dep't of Homeland Sec.*, 426 F. App'x 698, 700 (11th Cir. 2011) (per curiam) (affirming district court's dismissal of challenge to removal order brought pursuant to the federal question and mandamus statutes, Administrative Procedure Act, and the Declaratory Judgment Act).

Additionally, 8 U.S.C. § 1252(g) provides that

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). "When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) provision applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *AADC*, 525 U.S. at 482 (emphasis in original). Section 1252(g) operates as "a 'discretion-protecting provision' designed to prevent the 'deconstruction, fragmentation, and hence prolongation of removal proceedings.'" *Camarena v. Director, Imm. & Customs Enf't*, 988 F.3d 1268, 1272 (11th Cir. 2021) (quoting *AADC*, 525 U.S. at 487).

To the extent that Petitioner challenges his FARO, the Court is without jurisdiction to consider that challenge under 8 U.S.C. §§ 1252(b)(9), (a)(5), and (g). Only the appropriate court of appeals has jurisdiction to review such questions of law or fact through the petition for review process. *See* 8 U.S.C. § 1252(a)(2)(D); *Guo Xing Song*, 516 F. App'x at 896. Whether a conviction constitutes an aggravated felony is one such question. *See Balogun v. U.S. Att'y Gen.*, 425 F.3d 1356, 1360 (11th Cir. 2005). Further, to the extent Petitioner challenges ICE/ERO's decision to

pursue a FARO, the Court lacks jurisdiction pursuant to 8 U.S.C. § 1252(g). *See Guo Xing Song*, 516 F. App'x at 897 ("To the extent that [Petitioner] challenges DHS's decision to commence expedited removal proceedings [through a FARO] against him, we lack jurisdiction to review this claim." (citing 8 U.S.C. § 1252(g)).

b. Any challenge to Petitioner's FARO lacks merit.

If the Court determines that it retains jurisdiction over Petitioner's FARO claims—which it should not—the claim should be denied because the Eleventh Circuit has held that the procedures leading to a FARO under 8 U.S.C. § 1228 and 8 C.F.R. § 238.1 comply with due process, including the lack of a hearing. *See Francis v. U.S. Att'y Gen.*, 603 F. App'x 908, 912-13 (11th Cir. 2015) (per curiam). In *Francis*, the petitioner argued "that the expedited removal process in general constitutes a denial of due process because [*inter alia*] it does not involve a hearing before a neutral magistrate[.]" 603 F. App'x at 912. The Eleventh Circuit rejected this contention:

> [T]he INA provides that aliens in expedited removal proceedings must be allowed (1) reasonable notice of the charges; (2) the privilege of being represented by counsel (at no expense to the government); (3) a reasonable opportunity to inspect the evidence and rebut the charges; (4) a determination for the record that the individual upon whom the notice is served is, in fact, the alien named in such notice; (5) a record maintained for judicial review; and (6) a procedure designed to ensure that the same person who issues the charges does not adjudicate the final order of removal. 8 U.S.C. § 1228(b)(4). Our fellow circuit courts of appeal that have considered the constitutionality of such provisions have all concluded that these procedures comport with due process. *See United States v. Rangel de Aguilar,* 308 F.3d 1134, 1138 (10th Cir.2002); *United States v. Garcia–Martinez,* 228 F.3d 956, 961 (9th Cir.2000); *United States v. Benitez–Villafuerte,* 186 F.3d 651, 659 (5th Cir.1999). We agree.

Id. at 912–13. So too here, Petitioner was afforded the process authorized by the INA, which process comports with due process. *Id*. Petitioner's contention should be denied.[2]

[2] Petitioner argues that the FARO was "improperly served" on Petitioner "despite the full pardon." Pet. ¶ 20. This is both misleading and inaccurate. Petitioner did receive a *conditional* pardon from the Georgia State Board of Pardons and Paroles regarding the 1997 burglary conviction which serves as the basis for the FARO. *See* Knowles Decl. ¶ 9 & Ex. C. However, because the Board did not reinstate Petitioner's

II. The challenge to Petitioner's arrest without a hearing is meritless.

Petitioner argues that he should have been given an opportunity to challenge his detention before he was detained.[3] The Court is without jurisdiction to consider such a claim, and it is plainly without merit.

a. A claim challenging an arrest is not cognizable in habeas.

To the extent Petitioner is challenging the circumstances of his arrest, such a claim is not cognizable in habeas. Although not couched in terms of the Fourth Amendment, the Petition seemingly argues that ICE officials violated his Fourth Amendment rights in arresting him and taking him into immigration custody. That claim should be denied because it is not cognizable in habeas, the Court lacks jurisdiction over the claim, and the Eleventh Circuit has declined to recognize a Fourth Amendment cause of action in this context under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

Petitioner's claim is not cognizable in habeas because it attempts to raise a civil claim concerning the nature of his arrest—not a challenge to his ongoing detention. At most, this claim would amount to a *Bivens* claim against the officials who arrested Petitioner. *See Alvarez v. U.S.*

Second Amendment rights, this is not a "full pardon" and does not satisfy the requirement in 8 U.S.C. § 1227(a)(2)(A)(iv) to exclude the conviction from consideration in immigration proceedings. *See Castillo v. U.S. Atty. Gen.*, 756 F.3d 1268, 1274 (11th Cir. 2014) ("[W]e hold that a pardon is only 'full' within the meaning of § 1227(a)(2)(A)(vi) when it vacates *all* future punishment for the underlying conviction, thereby restoring *all* lost rights.") (emphases in original).

[3] The Petition frequently frames its arguments as though Petitioner's release is pre-ordained, and that the real argument is about whether and how Petitioner could be re-detained. *See*, *e.g.*, Pet. ¶ 24. This puts the cart before the horse. The Petition must be considered with the current state of affairs in mind, which are that Petitioner is in detention pursuant to a FARO, is in the process of seeking relief from removal, and upon the completion of that process, will be in detention for the purpose of effectuating his removal. Therefore, the question is not whether Petitioner should be entitled to a pre-detention hearing in the future, if he is released, and if the government then seeks to re-detain him. That question is not before the Court. Instead, the proper inquiry in this habeas proceeding is whether Petitioner's current detention is pursuant to a valid detention authority and whether that detention has become prolonged under the Supreme Court's *Zadvydas* holding. To the extent the Court construes the Petition as arguing that Petitioner should have been given a pre-detention hearing, such a contention is meritless.

Immigr. & Customs Enf't, 818 F.3d 1194, 1205-1213 (11th Cir. 2016). Petitioner, however, may not raise habeas claims and a *Bivens* claim in the same action. *See Corbin v. Dep't of Veteran Affairs*, No. 2:15-cv-1174, 2015 WL 10384134, at *2 (N.D. Ala. Dec. 11, 2015). "Although the scope of the writ of habeas corpus has been extended beyond that which the most literal reading of the statute might require, the Court has never considered it a generally available federal remedy for every violation of federal rights." *Lehman v. Lycoming Cty. Children's Servs. Agency*, 458 U.S. 502, 510, (1982). "[W]hatever the expanded scope of our jurisdiction may be, the remedy that habeas corpus provides remains tied to some form of relief from the petitioner's custody." *Arnaiz v. Federal Satellite Low*, 594 F.3d 1326, 1329 (11th Cir. 2010) (per curiam). Given that Petitioner's claim challenges only the nature of his arrest and not his ongoing detention, the claim is not cognizable in habeas and should be denied.

Second, even if Petitioner's claim is generally cognizable in habeas, the Court lacks subject-matter jurisdiction over the claim pursuant to 8 U.S.C. § 1252(g). As discussed above, Section 1252(g) provision applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *AADC*, 525 U.S. at 482 (emphasis in original). The decision to initiate FARO proceedings against Petitioner and to take him into custody in furtherance of those proceedings plainly falls within the decisions that Section 1252(g) covers. Therefore, Petitioner's claim that his arrest was unlawful should be denied.

b. Petitioner was not entitled to a pre-arrest hearing.

To the extent the Court construes Petitioner's claim as arguing that he is entitled to a pre-arrest hearing before a neutral magistrate, such a contention is meritless. Courts around the country

have repeatedly held that detention of non-citizens in removal proceedings without bond complies with due process.

The Supreme Court has recognized that the removal of non-citizens and the promulgation of policies and regulations concomitant thereto are among the plenary powers of Congress and the Executive. Non-citizens in removal proceedings are entitled to due process, but their rights are limited. As to detention specifically, the Supreme Court has repeatedly affirmed that detention during removal proceedings is a necessary and constitutionally valid part of that process.

"For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). "[A]ny policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 589 (1952). "[O]ver no conceivable subject is the legislative power of Congress more complete[.]" *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (internal quotations and citation omitted). For these reasons, the Supreme Court has "long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Id.* (collecting cases).

"[T]he Fifth Amendment entitles non-citizens to due process of law in [removal] proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993) (citation omitted). "But when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Demore v. Kim*, 538 U.S. 510, 528 (2003). Rather, "[i]n the exercise of its broad power over naturalization and immigration, Congress

regularly makes rules that would be unacceptable if applied to citizens." *Id.* at 522 (citations omitted).

Based on these fundamental principles, the Supreme Court has held that detention during removal proceedings complies with due process even in the absence of a bond hearing. *Id.* at 511 ("[D]etention during [removal] proceedings is a constitutionally valid aspect of the process."); *Flores*, 507 U.S. at 306 ("Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid.").

In the context of pre-final order of removal detention, the Supreme Court has upheld the facial constitutionality of detaining criminal noncitizens "for the brief period necessary for their removal proceedings." *Demore*, 538 U.S. at 522. In doing so, the Court reiterated its longstanding holdings that "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Id.* at 531 (citing *Wong Wing*, 163 U.S. at 235; *Carlson*, 342 U.S. at 538; *Flores*, 507 U.S. at 306). As the Court found, mandatory detention, "for the limited period of his removal proceedings, is governed by these" holdings. *Id*. Clearly, then, if mandatory detention without a bond hearing prior to a final order of removal complies with due process, there can be no constitutional requirement of a pre-detention hearing.

Here, Petitioner was taken into custody on January 15, 2025 and served with a Form I-851, Notice of Intent to Issue a Final Administrative Removal Order. Knowles Decl. ¶ 10 & Ex. D. Petitioner was at that time in removal proceedings and detained similar to the petitioner in *Demore*.

Thus, the holding in *Demore* applies to Petitioner's circumstance, and he was not entitled to any more process than the petitioner there.[4] Since he became subject to a FARO on February 24, 2025, his detention authority shifted to post-final order detention under 8 U.S.C. § 1231(a), which mandates detention during the 90-day removal period and authorizes continued detention for the purposes of removal. Under these circumstances, the only mechanism available to Petitioner to show his detention has become prolonged such that its continuation violates due process is that proscribed by *Zadvydas*. For the reasons discussed below, Petitioner's *Zadvydas* claim also fails.

III. Petitioner cannot meet his burden under *Zadvydas*.

Lastly, Petitioner claims that his post-FARO detention violates due process under *Zadvydas*.[5] Pet. ¶¶ 42-45. 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.

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. Petitioner states in conclusory fashion that "[w]hile the respondents would have a compelling government interest in detaining Mr. Taylor in order to effect his deportation,

[4] Furthermore, given that Petitioner is now subject to a FARO, any claim regarding his detention and rights under that prior detention authority is moot and should be denied. *See Djadju v. Vega*, 32 F.4th 1102, 1106 (11th Cir. 2022) ("A cause of action becomes moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.") (internal quotations and citation omitted).

[5] 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. ¶¶ 42-45; *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.

that interest does not exist if Petitioner cannot be deported." Pet. ¶ 43. But Petitioner gives no basis for the contention that "Petitioner cannot be deported." Despite the burden falling upon Petitioner, Respondent has shown the inverse: once any remaining claims before the IJ are resolved, Petitioner's removal to Liberia is likely in the reasonably foreseeable future. Knowles Decl. ¶ 17.

To the extent that Petitioner is claiming that there is no significant likelihood of removal because his removal has not yet occurred, this is insufficient to state a *Zadvydas* claim. *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)).

Petitioner's conclusory statement that he "cannot be deported" is 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 Liberia is currently issuing travel documents to facilitate removals of Liberian nationals. Knowles Decl. ¶ 17. Further, ICE/ERO will be able to remove Petitioner because Liberia is open for international travel. *Id.*

The only current impediment to Petitioner's removal is Petitioner's appeal of the IJ's denial of his application for relief from removal. 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) ("[O]ngoing 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, "[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 7th day of October, 2025.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

BY: *s/ Michael P. Morrill*
MICHAEL P. MORRILL
Assistant United States Attorney
Georgia Bar No. 545410
United States Attorney's Office
Middle District of Georgia
P. O. Box 2568
Columbus, Georgia 31902
Phone: (706) 649-7728

michael.morrill@usdoj.gov