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

BANDA CHIFUNILO,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-314-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE

On October 8, 2025, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. Petitioner primarily asserts that his detention violates his Fifth Amendment due process rights, and seeks release from custody. Pet. 6–7, ECF No. 1. As explained below, the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of Zambia who is detained post-final order of removal at Stewart Detention Center since February 22, 2025, pursuant to 8 U.S.C. § 1231(a). Chambliss Decl. ¶¶ 3, 4 & Ex. A. Petitioner was previously detained in Immigration and Customs Enforcement ("ICE") custody from on or about October 4, 2019, through on or about November 12, 2020, when he was released on an order of supervision. *Id.* ¶ 5.

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

Petitioner was admitted to the United States at New York, New York on or about February 19, 2001, as a non-immigrant visitor. Chambliss Decl. ¶ 6 & Ex. A. On or about December 20, 2007, United States Citizenship and Immigration Services ("USCIS") issued Petitioner a Notice to Appear ("NTA"), charging him with removability pursuant to § 237(a)(1)(B), for having remained in the United States longer than he was authorized. *Id.* ¶ 7 & Ex. B. Petitioner appeared for hearings at the Atlanta Immigration Court on August 5, 2008, September 9, 2008, October 8, 2008, June 19, 2009, October 27, 210, and March 30, 2011. *Id.* ¶ 8.

On March 30, 2011, Petitioner appeared for a hearing at the Atlanta Immigration Court. Chambliss Decl. ¶ 9. The Immigration Judge ("IJ") granted Petitioner's request for voluntary departure. *Id.* Petitioner was required to post a $500 voluntary departure bond and to depart the United States on or before May 31, 2011. *Id.* & Ex. C. Petitioner filed a motion to reopen on or about June 7, 2011. *Id.* ¶ 10. On June 30, 2011, the IJ denied the motion to reopen. *Id.* & Ex. D.

On or about February 22, 2025, ICE/ERO detained Petitioner to effectuate his removal. Chambliss Decl. ¶ 11. On or about March 6, 2025, ICE/ERO sent a travel document request to the Zambian consulate. *Id.* ¶ 12. The consulate interviewed Petitioner on or about March 19, 2025. *Id.* On April 16, 2025, Petitioner appeared with counsel for a custody redetermination hearing at the Stewart Immigration Court. *Id.* ¶ 13 & Ex. E. The IJ denied the request for lack of jurisdiction based on the final order of removal. *Id.*; *see also* Ex. F. On September 29, 2025, the Republic of Zambia issued a travel document, which expires on December 28, 2025. *Id.* ¶ 14 & Ex. G. Given that Zambia is open for international travel, ICE/ERO is in possession of the travel document, and removal is pending, repatriation is expected in the reasonably foreseeable future. *Id.* ¶ 15.

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 days of the latest of: (1) the date the order of removal becomes administratively final; (2) if a removal is stayed pending judicial review of the removal order, the date of the reviewing court's final order; or (3) the date the alien is released from criminal confinement. *See* 8 U.S.C. §§ 1231(a)(1)(A)-(B). During this ninety-day time frame, known as the "removal period," detention is mandatory. *See id.* at § 1231(a)(2).

If ICE/ERO does not remove an alien within ninety days, detention may continue if it is "reasonably necessary" to effectuate removal. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); 8 U.S.C. § 1231(a)(6) (providing that an alien who is subject to mandatory detention, inadmissible, or who has been determined to be a risk to the community or a flight risk, "may be detained beyond the removal period"). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court determined that, under the Fifth Amendment, detention for six months is presumptively reasonable. 533 U.S. at 700. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701 (emphasis added); *see also* 8 C.F.R. § 241.13. Where there is no significant likelihood of removal in the reasonably foreseeable future, the alien should be released from confinement. *Id.*

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit further elaborated on the framework announced by the Supreme Court in *Zadvydas*, stating that "in order to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no

significant likelihood of removal in the reasonably foreseeable future." 287 F.3d at 1052. Thus, the burden is on Petitioner to demonstrate: (1) post-removal order detention lasting more than six months; and (2) evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (per curiam) (quoting *Akinwale*, 287 F.3d at 1051-52).

ARGUMENT

While Petitioner appears to raise four claims for relief, two of Petitioner's claims—Grounds One and Four—assert that his detention violates due process under *Zadvydas* and will be addressed together. Pet. 6–7. In his second claim, Petitioner alleges that ICE violated its own regulation when it re-detained him after he was under an order of supervision. *Id.* 6. For Petitioner's third claim, he asserts both his age and health issues as reasons for his release. *Id.* The Petition should be denied for three reasons. ***First***, Petitioner is not entitled to relief under *Zadvydas* because he cannot meet his evidentiary burden and because there is a significant likelihood of removal in the reasonably foreseeable future. ***Second***, Petitioner's claim challenging his re-detention following release on an OSUP should be denied because the Court lacks subject matter jurisdiction. ***Third***, Petitioner's claim concerning his medical conditions is non-cognizable under a habeas petition because it fails to challenge the legality of his custody.

I. Petitioner's detention complies with due process, and he is not entitled to relief under *Zadvydas*.

Petitioner is not entitled to relief under *Zadvydas* because he fails to meet his burden to "provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Akinwale*, 287 F.3d at 1052.

Petitioner presents no evidence to meet his burden. Rather, he simply states that he "has been detained for too long" and alleges without supporting evidence that "after seven and a half

months his removal is still unlikely." Pet. 6. 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*.

At most, Petitioner appears to claim that he is entitled to relief under *Zadvydas* because he has not yet been removed after being in custody for seven and a half months. Pet. 6 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)). For these reasons, Petitioner fails to meet his burden to present evidence that there is no

significant likelihood of removal in the reasonably foreseeable future, and the Petition should be denied.

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 has secured a travel document for Petitioner's removal to Zambia that expires on December 28, 2025. Chambliss Decl. ¶ 14. And Zambia is currently open for international travel. *Id.* at 15. Petitioner's removal is pending. *Id.* For these reasons, there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future, and Petitioner is not entitled to relief under *Zadvydas*.

II. To the extent Petitioner challenges his detention following release under an OSUP, the Court lacks jurisdiction over this claim, and the claim otherwise lacks merit.

Petitioner also states that he is entitled to release from custody because he was previously out of custody pursuant to his 2020 OSUP. Pet. 6; *see also* Chambliss Decl. ¶ 5. Petitioner may. To the extent Petitioner's claims raises a challenge to ICE/ERO's decision to detain him based on that prior OSUP, it should be dismissed for two reasons: (1) the Court lacks jurisdiction over the claim pursuant to 8 U.S.C. § 1252(g), and (2) in the alternative, ICE/ERO has the discretion to revoke an OSUP.

First, the Court lacks jurisdiction over Petitioner's claim under 8 U.S.C. § 1252(g) because it seeks judicial review of an action to execute a removal order.[2] 8 U.S.C. § 1252(g) is a jurisdiction-stripping provision in the INA, which 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.

[2] Respondent contends that section 1252(g) bars only any claim by Petitioner challenging ICE/ERO's *decision to detain him at all* rather than release him. As discussed above, Petitioner's challenge to whether his *continued detention* complies with 8 U.S.C. § 1231(a)(6) is governed by *Zadvydas*, and Respondent does not contend that section 1252(g) bars that challenge.

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) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

ICE/ERO's decision to detain a non-citizen subject to a final order of removal is an action taken to "execute removal order" within the meaning of the section 1252(g) jurisdictional bar. In the context of pre-final order of removal detention, the Eleventh Circuit has held that "securing a[] [non-citizen] while awaiting a removal determination constitutes an action taken to commence proceedings" within the purview of section 1252(g). *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This Court has reached the same conclusion. *Cho v. United States*, No. 5:13-cv-153-MTT, 2016 WL 1611476, at *7 (M.D. Ga. Apr. 21, 2016) ("Plaintiff's claims that she was falsely arrested when she was transferred into ICE custody . . . 'challenge[] the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts.'" (quoting *Gupta*, 709 F.3d at 1065 (alterations in original))).

Here, ICE/ERO's detention of Petitioner upon revocation of his OSUP was an action taken to execute his removal order because there is a significant likelihood of his removal in the reasonably foreseeable future. *See* Chambliss Decl. ¶ 15. Other courts have adopted this view and held that section 1252(g) bars any challenge to ICE/ERO's decision to detain a non-citizen pending execution of a final order of removal. *See Kareva v. United States*, 9 F. Supp. 838, 844 (S.D. Ohio 2014) ("The Court finds that Section 1252(g) does apply in this case because Plaintiff's claim for false arrest and imprisonment arises from "the decision or action by the Attorney General to . . .

execute removal orders." (quoting 8 U.S.C. § 1252(g)); *Khorrami v. Rolince*, 493 F. Supp. 2d 1061, 1067-68 (N.D. Ill. 2007) (holding that section 1252(g) barred plaintiff's claim arising from his arrest pursuant to his final order of removal). The Court should therefore dismiss Plaintiff's challenge to ICE/ERO's decision to detain him for lack of subject matter jurisdiction.

Second, even assuming the Court finds it retains jurisdiction over Petitioner's claim—which it should not—the claim lacks merit because ICE/ERO retains the discretion to revoke an OSUP. If a non-citizen is released under an OSUP, ICE/ERO is permitted to revoke the OSUP in its discretion in two ways. First, ICE/ERO may revoke an OSUP if the non-citizen violates the conditions of release. 8 C.F.R. § 241.4(l)(1), (l)(2)(ii). Second, ICE/ERO has the discretion to revoke an OSUP even if the non-citizen does not violate the conditions of release:

> A district director [of ICE/ERO] may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:
>
> > (i) The purposes of release have been served;
> > (ii) The alien violates any condition of release;
> > (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
> > (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

8 C.F.R. § 241.4(l)(2).

Here, ICE/ERO released Petitioner under an OSUP on November 12, 2020. Chambliss Decl. ¶ 5. However, on February 22, 2025, ICE/ERO exercised its discretion to re-detain Petitioner. *Id.* ¶ 11. Petitioner protests that he did not violate the conditions of his OSUP while released. Pet. 6. But as explained above, ICE/ERO has the discretion to continue detention despite his earlier release under an OSUP even if he did not violate the conditions of his release. 8 C.F.R. § 241.4(l)(2). Another district court in the Eleventh Circuit just recently reached this same

conclusion. *Grigorian v. Bondi*, No. 25-cv-22914-RAR, 2025 WL 1895479, at *6 (S.D. Fla. July 8, 2025) ("It is therefore not the case that ICE may revoke an order of supervision only if an alien violates conditions of release or if the conditions supporting release no longer exist."). Thus, ICE/ERO validly exercised its discretion to detain Petitioner despite his prior release under an OSUP.

III. Petitioner's health conditions are non-cognizable

Petitioner states that he is "66 years old with serious and concerning health issues." Pet. 7. He further states that he is suffering from "high blood pressure, kidney disease, and autoimmune disease." *Id.* Petitioner does not allege that detention officials are ignoring his medical issues. Petitioner only states that he has those conditions.[3] Petitioner's claim should be denied.

Petitioner's claim should be denied because it is not cognizable in habeas. "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "[W]here an inmate seeks injunctive relief challenging the fact of his conviction or the duration of his sentence . . . [s]uch claims fall within the 'core' of habeas corpus[.]" *Nelson v. Campbell*, 541 U.S. 637, 643 (2004). Petitioner's medical conditions alone do not challenge either the facts or duration of his detention. Here, there is no attack upon the legality of Petitioner's custody based upon his medical conditions. Accordingly, the Court should deny this claim because it is not cognizable in this habeas proceeding.

CONCLUSION

The record is complete in this matter, and the case is ripe for adjudication on the merits. Petitioner fails to show that he is entitled to relief on his claims. Petitioner is not entitled to relief

[3] To the extent that the Court interprets Petitioner's claims for relief differently, Respondents respectfully request an opportunity to amend this Response.

under *Zadvydas* because (1) he fails to meet his evidentiary burden, and (2) alternatively, there is a significant likelihood of removal in the reasonably foreseeable future. To the extent Petitioner challenges his re-detention following his release on an OSUP, the Court lacks subject matter jurisdiction over this claim. Lastly, Petitioner's medical conditions are non-cognizable under a habeas petition because he is not challenging his custody. For these reasons, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted this 29th day of October 2025.

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CERTIFICATE OF SERVICE

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

Banda Chifunilo
A# [redacted]
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This 29th day of October 2025.

BY: *s/ Travis D. Lynes*
TRAVIS D. LYNES
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