

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

YORDAN ROMAY VALDES,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-333-CDL-CHW
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER, ¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On October 20, 2025, Petitioner filed a petition for a writ of habeas corpus (“Petition”) challenging his post-final order of removal detention pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001). ECF No. 1. Because the Petition is premature, Petitioner fails to state a claim under *Zadvydas*, and the Petition should be dismissed.

BACKGROUND

Petitioner is a native and citizen of Cuba. Declaration of Deportation Officer Lukeisha O. Atkinson (“Atkinson Decl.”) ¶ 4 & Ex. A. On or about March 18, 2008, U.S. Customs and Border Protection (CBP) encountered Petitioner at or near Key West, Florida. *Id.* On March 18, 2008, CBP issued Petitioner a Notice to Appear (NTA) charging him under sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA) (8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I)). *Id.* ¶ 5 & Ex. B. Petitioner was released on recognizance. *Id.* ¶ 5 & Ex. C.

¹ In addition to the Warden of Stewart Detention Center, Petitioner names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents. “[T]he default rule [28 U.S.C. § 2241 petitions] 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.

On October 14, 2017, Miami-Dade Police Department (MDPD) arrested the Petitioner for Driving Under the Influence and Careless Driving. *Id.* ¶ 6. Immigration and Customs Enforcement (“ICE”)/Enforcement and Removal Operations (“ERO”) encountered Petitioner at Turner Guildford Knight (TGK) Jail and lodged an immigration detainer. *Id.* ¶ 6 & Ex. D. On January 04, 2018, ICE/ERO issued Petitioner a Notice to Appear (NTA) charging him under section 212(a)(7)(A)(i)(I) of the INA and placed him into ICE custody. Atkinson Decl. ¶ 7 & Ex. E.

On January 25, 2018, an Immigration Judge (IJ) ordered Petitioner removed from the United States to Cuba. *Id.* ¶ 8 & Ex. F. On April 26, 2018, Petitioner was released from ICE/ERO custody under an Order of Supervision. *Id.* ¶ 9 & Ex. G. On January 27, 2025, Petitioner was convicted of the crime of “Smuggling Aliens,” and was sentenced to 12 months in the custody of the United States Bureau of Prisons. *Id.* ¶ 10 & Ex. H. On July 14, 2025, the Petitioner entered ICE/ERO custody and is presently detained under the authority of INA § 241(a) (8 U.S.C. § 1231(a)). *Id.* ¶ 11. On November 3, 2025, ICE/ERO served Petitioner with the Notice of Third Country Removal. *Id.* ¶ 12 & Ex. I. ICE/ERO intends to remove the Petitioner to Mexico and is taking steps to effectuate his removal. Atkinson Decl. ¶ 12.

LEGAL FRAMEWORK

Since 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 ICE/ERO shall remove an alien within ninety (90) days of the latest of: (1) the date the order of removal becomes administratively final; (2) if a removal is stayed pending judicial review of the removal order, the date of the reviewing court’s final order; or (3) the date the alien is released from criminal confinement. *See* 8 U.S.C. § 1231(a)(1)(A)-(B). During this ninety-day time frame, known as the “removal period,” detention is mandatory. *See id.* at § 1231(a)(2).

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

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit further elaborated on the framework announced by the Supreme Court in *Zadvydas*, stating that “in order to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” 287 F.3d at 1052. Thus, the burden is on Petitioner to demonstrate: (1) post-removal order detention lasting more than six months; and (2) “evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009) (per curiam) (quoting *Akinwale*, 287 F.3d at 1051-52) (internal quotations omitted).

ARGUMENT²

Petitioner seeks relief under *Zadvydas*, asserting that his post-final order of removal detention violates due process because there is no significant likelihood of removal in the reasonably foreseeable future. Pet. 4-7, ECF No. 1. The Petition should be dismissed 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 since he most recently entered ICE/ERO custody. *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.

I. Petitioner fails to state a claim under *Zadvydas* because the Petition is premature.

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 v. U.S. Att’y Gen.*, 516 F. App’x 894, 899 (11th Cir. 2013).

Here, Petitioner was ordered removed on January 25, 2018. Atkinson Decl. ¶ 8 & Ex. F. His removal order became final the same day when he waived appeal. *See* 8 C.F.R. § 1241.1(b). Petitioner most recently entered ICE/ERO custody on July 14, 2025. Atkinson Decl. ¶ 11. Petitioner signed the Petition on October 16, 2025—just 94 days later. Pet. 11. Under the prison mailbox rule, the Petition is deemed filed on that date. *Daker v. Comm’r, Georgia Dep’t of Corr.*, 820 F.3d 1278, 1286 (11th Cir. 2016) (quotations and citations omitted). Therefore, at the time the

² Respondent addresses Petitioner’s claims for relief together because, in each claim, Petitioner seeks relief for alleged prolonged post-final order detention under *Zadvydas*. *See, e.g., Linares v. Dep’t of Homeland Sec.*, 598 F. App’x 885, 887 (11th Cir. 2015) (evaluating the petitioner’s claims together because the “procedural and substantive due process claims were both grounded in the government’s alleged violation under *Zadvydas*”). To the extent that the Court interprets Petitioner’s claims for relief differently, Respondents respectfully request an opportunity to amend this Response.

Petition was filed, Petitioner had not been detained beyond the presumptively reasonable six-month period under *Zadvydas* since he re-entered ICE/ERO custody. Accordingly, he fails to state a claim under *Zadvydas*, and the Petition should be dismissed as premature. See *Akinwale*, 287 F.3d at 1052; *Themeus*, 643 F. App'x at 833; *Guo Xing Song*, 516 F. App'x at 899.

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). The Court should similarly dismiss the Petition here because Petitioner cannot show that the *Zadvydas* six-month presumptively reasonable detention period had “expired *at the time [Petitioner's] § 2241 petition was filed[.]*” *Akinwale*, 287 F.3d at 1052 (emphasis added).

Petitioner argues that his *Zadvydas* claim is not premature based on his prior period of post-final order of removal detention between January 25, 2018 and April 26, 2018. Pet. 3. He asserts this period “gave him a credit of 117 days to use in a Habeas Corpus petition[.]” *Id.* In other words, Petitioner appears to argue that the Court should cumulate all periods of post-final order of removal detention in determining whether his *Zadvydas* claim is timely. He relies on out-of-circuit caselaw for purported support for this argument. *Id.* However, this Court has rejected Petitioner's argument and should continue to do so here.

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) (denying *Zadvydas* claim where the non-citizen had multiple periods of post-final order of removal detention that collectively amounted to more than six months). 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.* This Court recently reached this same conclusion in a case presenting nearly identical facts. See *J.A.S. v. Warden, Stewart Detention*

Center, No. 4:25-cv-244-CDL-CHW, Order & R. 4-8 (M.D. Ga. Oct. 14, 2025), ECF No. 8 (dismissing a Cuban habeas petitioner’s *Zadvydas* claim as premature where he had been detained post-final order of removal less for less than six months following re-arrest after a period of release).

Here, although Petitioner was previously detained post-final order of removal for 91 days between January 25, 2018 and April 26, 2018, he had been detained for only 94 days at the time he filed the instant Petition. 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. *See also J.A.S.*, No. 4:25-cv-244-CDL-CHW, Order & R. 4-8 (M.D. Ga. Oct. 14, 2025), ECF No. 8. 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, Petitioner cannot “state a claim under *Zadvydas*,” *Akinwale*, 287 F.3d at 1052, and the Petition should be dismissed as premature.

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*. He fails to meet his evidentiary 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. And even if he does, Respondent meets its shifted burden to show a significant likelihood of removal in the reasonably foreseeable future.

Petitioner presents no evidence to show that he is not likely to be removed in the reasonably foreseeable future. He raises two arguments in an attempt to meet his burden. First, he argues Cuba

will not accept him for removal. Pet.4. However, Cuba is not the only country to which he could be removed under the INA. Section 236(b) of the INA (8 U.S.C. § 1231) provides the statutory authority for removal of non-citizens to alternate countries. Where it is determined that a non-citizen under a final order of removal cannot be removed to the designated country of removal, and where it is “impracticable, inadvisable, or impossible” to remove the non-citizen to any of the other options detailed in § 1231(b)(2)(E)(i)-(vi), DHS is authorized to remove the non-citizen to “any country whose government will accept the [non-citizen] into that country.” 8 U.S.C. § 1231(b)(2)(E)(vii). On November 3, 2025, ICE/ERO served Petitioner with the Notice of Third Country Removal, indicating that ICE/ERO intends to remove Petitioner to Mexico and is taking steps to effectuate his removal. Atkinson Decl. ¶ 12 & Ex. I. Accordingly, Petitioner fails to meet his evidentiary burden through this assertion.

Second, Petitioner relies on the mere passage of time without removal, asserting that he has not yet been removed. Pet. 5. As other courts have recognized, a non-citizen cannot meet his burden under *Zadvydas* on this basis. *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)). 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*, and the Petition should be denied.

Nevertheless, even accepting Petitioner's conclusory statements, he still cannot satisfy his burden under *Zadvydas*. Petitioner was notified on November 3, 2025 of ICE/ERO's intention to remove him to Mexico. Atkinson Decl. ¶ 12 & Ex. I. ICE/ERO is taking steps to effectuate that removal. *Id.* Therefore, there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future and his Petition should be denied.

CONCLUSION

For the foregoing reasons, Respondent requests that the Petition be dismissed or, alternatively, denied.

Respectfully submitted this 12th day of November, 2025.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

BY: s/ Roger C. Grantham, Jr.
ROGER C. GRANTHAM, JR.
Assistant United States Attorney
Georgia Bar No. 860338
United States Attorney's Office
Middle District of Georgia
P. O. Box 2568
Columbus, Georgia 31902
Phone: (706) 649-7728
roger.grantham@usdoj.gov

CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Respondent's Motion to Dismiss 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:

Yordan Romay Valdes
A 088-846-584
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 12th day of November, 2025.

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