UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

SEDIK MOHAMMED ABUBAKARI,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 5:25-cv-123
	)	
WARDEN, FOLKSTON ICE PROCESSING CENTER, ET AL.,	)	
	)	
	)	
Respondents.	)	

MOTION TO DISMISS

COMES NOW, Respondent, by and through the United States Attorney for the Southern District of Georgia and the undersigned Assistant United States Attorney, and moves to dismiss the Petition [Doc. 1], pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Petitioner Sedik Mohammed Abubakari ("Petitioner") filed this habeas corpus petition pursuant to 28 U.S.C. § 2241 to challenge his detention by Immigrations and Customs Enforcement ("ICE"). He claims he has been unlawfully detained in violation of due process and such detention is contrary to *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Court should dismiss the Petition for failure to state a claim because Petitioner is mandatorily detained pursuant to the Immigration and Naturalization Act ("INA"), § 235(b)(1), 8 U.S.C. § 1225(b)(1), and because he is not otherwise entitled to habeas corpus relief.

FACTUAL BACKGROUND

Petitioner is a citizen of Ghana. [Doc. 4-1], Declaration of Deportation Officer Erica Pensack ("Pensack Decl.") at ¶ 3. He is currently detained at the Folkston ICE

Processing Center ("Folkston") in Folkston, Georgia. *Id.* at ¶ 4. His detention is pursuant to INA, § 235(b)(1), which is codified at 8 U.S.C. § 1225(b)(1). *Id.*

Petitioner entered the United States on January 14, 2025, near Lukeville, Arizona, and was encountered by U.S. Border Patrol on the same day, following his unlawful entry into the United States. *Id.* at ¶ 5. Petitioner entered into DHS/ICE custody on January 14, 2025, when encountered. *See id.* at ¶ 4. Petitioner has been charged as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)[1] and 8 U.S.C. § 1182(a)(7)(A)(i). *Id.* at ¶ 6.

As an "arriving alien" under 8 U.S.C. § 1225(b)(1) who entered the United States illegally without valid documentation, Petitioner was subject to expedited removal and served with a Form I-860 Notice and Order of Expedited Removal on January 14, 2025, the same day he was encountered near the border by U.S. Border Patrol. *Id.* at ¶ 5, Exhibit B. Detention is mandatory under this provision. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). After being served with the Notice and Order of Expedited Removal, Petitioner requested relief from removal[2] and USCIS issued a Form I-862 Notice to Appear for March 20, 2025. Pensack Decl. at ¶ 6.

At his first hearing before the immigration court on March 20, 2025, Petitioner requested a continuance in order to file an application for relief, and the case was continued until April 24, 2025. *See id.* at ¶ 7. At the April 24, 2025 hearing, Petitioner

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[1] INA § 212, referenced in the Pensack Decl., is codified at 8 U.S.C. § 1282.

[2] Petitioner refers to the request for relief from removal as "Petitioner's Asylum Application." *See* Doc. 1 at p.10.

requested a final hearing be scheduled. *Id.* at ¶ 8. After a final hearing was set for July 10, 2025, an attorney entered an appearance for Petitioner and, on June 18, 2025, Petitioner's counsel filed a motion to continue the hearing scheduled for July 10, 2025, which the immigration court granted with a rescheduled final hearing date set for August 8, 2025. *Id.* at ¶¶ 7-9.

On August 8, 2025, the immigration judge conducted a full hearing, denied all relief, and ordered Petitioner removed. *Id.* at ¶ 11. On September 5, 2025, Petitioner filed an appeal with the Board of Immigration Appeals ("BIA") and on October 30, 2025, the BIA issued a briefing schedule with briefs due by November 20, 2025. *Id.* at ¶¶ 12-13.[3] On November 18, 2025, Petitioner requested an extension to the briefing deadline; the BIA granted the request and amended the briefing schedule with briefs now due by December 11, 2025. *See* BIA Notice, Exhibit 1. Petitioner's appeal remains pending with the BIA.

ARGUMENT

Petitioner seeks a writ of habeas corpus from this Court ordering his immediate release by challenging his "immigration detention" via the "order of removal" that is currently the subject of his pending BIA appeal. [Doc. 1] at p. 2, ¶¶ 5-7; *see also* Exhibit 1. But Petitioner's allegations do not state a claim that his Due Process rights have been violated. Because he has not stated a claim for relief, Respondents ask this Court to dismiss this habeas petition.

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[3] On October 20, 2025, while the BIA appeal was pending, Petitioner filed his habeas Petition [Doc. 1] seeking release from detention.

I. Petitioner has failed to state a Due Process claim.

Petitioner alleges that his Due Process rights have been violated. *See* [Doc. 1] at pp. 9-10. He appears to base this on two separate grounds: (a) the fact of his detention at Folkston, and (b) the length of his detention being longer than six months. In support of the latter claim, he cites the Supreme Court's opinion in *Zadvydas v. Davis*, 533 U.S. 678 (2001). *Id.*

A. *Petitioner's mandatory detention does not violate Due Process.*

The Supreme Court "has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). Under 8 U.S.C. § 1225(b)(1)(B)(ii), detention is mandatory for individuals who are detained pursuant to this clause. *See D. A. F. v. Warden, Stewart Det. Ctr.*, No. 4:20-cv-79, 2020 WL 9460467, at *8 (M.D. Ga. May 8, 2020) ("Detention of an arriving alien pending completion of removal proceedings is statutorily mandated, even if an asylum officer determines the alien has a credible fear of persecution."), *report and recommendation adopted in part*, No. 4:20-cv-79, 2020 WL 9460341 (M.D. Ga. July 24, 2020). The terms of this statute do not require detention to be limited to six months or less. *Jennings v. Rodriguez*, 583 U.S. 281, 301 (2018).

Here, Petitioner is detained pursuant to § 1225(b)(1). Pensack Decl. ¶ 4. Because Petitioner is subject to expedited removal, detention is mandatory. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (Aliens subject to expedited removal "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed."). He does not present any specific allegations outlining

how his detention pursuant to § 1225(b)(1) violates his Due Process rights. Since mandatory detention does not on its own violate the Constitution, *see Demore*, 538 U.S. at 523, Petitioner's vague references to Due Process are insufficient to establish a claim for relief.

Therefore, the fact of Petitioner's detention alone does not violate Due Process.

B. *Petitioner has failed to state a* Zadvydas *claim.*

Petitioner alleges that his detention violates *Zadvydas,* 533 U.S. 678. It does not.

Although the Supreme Court discussed due process, the *Zadvydas* opinion specifically concerned the applicability of 8 U.S.C. § 1231(a)(6). That provision concerns "[i]nadmissible or criminal aliens" who have already been ordered removed. 8 U.S.C. § 1231(a)(6). The Supreme Court found that the statute's use of the term "may" was ambiguous and thus concluded that six-months' detention after an order of removal was presumptively reasonable. *Zadvydas*, 533 U.S. at 701; *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (discussing *Zadvydas*). Thus, to state a *Zadvydas* claim, an 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." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002).

Here, Petitioner does not meet either *Zadvydas* element. First, he has not been detained for longer than six months post-removal order. Because the IJ's August 8, 2025 order on removal has been appealed to the BIA, it is not yet a final order of

removal. Even if it were considered a final order of removal, which it is not, six months have not yet passed since it was issued, and thus any attempted *Zadvydas* claim is premature. As such, he cannot meet the first part of a *Zadvydas* claim. Petitioner is also not detained under § 1231(a)(6), the statute at issue in *Zadvydas*. Instead, he is detained pursuant to § 1225(b)(1). Pensack Decl. ¶ 4. Thus, *Zadvydas* is inapplicable. As one court noted, "*Zadvydas*, however, only applies to aliens subject to a removal under 8 U.S.C. § 1231, not aliens detained under 8 U.S.C. § 1225(b)(1)." *H.C. v. Warden, Stewart Det. Ctr.*, No. 4:22-cv-148, 2023 WL 2745176, at *5 (M.D. Ga. Mar. 31, 2023), *report and recommendation adopted sub nom. H.C. v. Washburn*, No. 4:22-cv-148, 2023 WL 3365166 (M.D. Ga. May 10, 2023). The reasoning of the Supreme Court in *Zadvydas* was based on the ambiguity in § 1231(a)(6). *Zadvydas*, 533 U.S. at 697. But § 1225(b)(1) contains no such ambiguity—detention is mandatory. *Jennings*, 538 U.S. at 300.

Petitioner also cannot meet the second *Zadvydas* prong and does not even attempt to argue that his removal to Ghana is not reasonably foreseeable. Ghana is currently open for international travel and is issuing travel documents to facilitate removals of Ghanaian nationals. Pensack Decl. ¶ 15. Further, ICE/ERO is currently removing non-citizens to Ghana. *Id.* Petitioner makes no attempt to controvert Ghana's status as being open for removal. Therefore, Petitioner's Due Process claim should be dismissed.

II. Removal cannot be challenged in a habeas action.

It is not clear whether Petitioner is challenging a potential future removal from the United States. *See* [Doc. 1], ¶ 6; *see also* [Doc. 1] p. 10. Even if he is, such a challenge should be dismissed.

When Congress passed the REAL ID Act in 2005, it expanded the jurisdiction of federal courts of appeals to review errors in removal errors, but it precluded relief under 28 U.S.C. § 2241 in federal district courts. *Fagan v. United States*, No. 21-13524, 2023 WL 2663239, at *2 (11th Cir. Mar. 28, 2023) (affirming United States District Court for the Southern District of Georgia). The statute is explicit:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, 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.A. § 1252(g). A petition for review in a court of appeals is the "exclusive means" for reviewing an order of removal. *Alexandre v. U.S. Att'y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006). An expedited order of removal is further not subject to judicial review, "even by a court of appeals." *H.C.*, 2023 WL 2745176, at *3. Thus, challenges to removal proceedings are not cognizable under § 2241. *Themeus v. U.S. Dep't of Just.*, 643 F. App'x 830, 832 (11th Cir. 2016).

Here, Petitioner is currently in ICE detention, pursuant to the authority of 8 U.S.C. § 1225(b)(1). Petitioner does not explicitly challenge the removal process, but regardless, challenges to Petitioner's removal cannot be brought in this Court under

28 U.S.C. § 2241. Therefore, this Court should dismiss any construed challenge to Petitioner's removal.

CONCLUSION

For the reasons set forth above, this Court should dismiss this Petition.

Respectfully submitted, this 24th day of November, 2025.

MARGARET E. HEAP
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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2025, I have caused to be sent by United States mail the documents to the following non-CM/ECF participants:

Sedik Mohammed Abubakari
[redacted]
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/s/ Jason W. Blanchard
Jason W. Blanchard
Assistant United States Attorney