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

JOSE ADALBERTO TOMAYO BAUTISTA,	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-341-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
WARDEN, STEWART DETENTION CENTER,[1]	:	
Respondent.	:	

RESPONDENTS' RESPONSE TO PETITION

On November 3, 2025, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. In his Petition, Petitioner asserts that his detention violates his Fifth Amendment due process rights pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001). ECF No. 1, Pet. 2. Petitioner also argues that his detention violates due process. ECF No. 1, Pet. 5-7. He seeks release from custody, a stay from transferring Petitioner out of the district, and a stay of removal. *Id.* As explained below, the Petition should be dismissed or, alternatively, denied.

BACKGROUND

Petitioner is a native and citizen of Cuba who is detained post-final order of removal pursuant to 8 U.S.C. § 1231(a). Declaration of Deportation Officer Dennis Karwowski ("Karwowski Decl.") ¶¶ 3, 13 & Ex. A. Petitioner applied for admission into the United States on

[1] In addition to the Warden of Stewart Detention Center, Petitioner also names officials with the Department of Justice, 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 as the sole appropriately named respondent in this action.

September 27, 2019, at the Paso Del Norte Port of Entry in El Paso Texas. *Id.* ¶ 4 & Ex. A. On September 28, 2019, United States Customs and Border Protection served the petitioner with a Form I-862, Notice to Appear (NTA) charging him with inadmissibility as an arriving alien pursuant to INA § 212(a)(7)(A)(i)(I). *Id.* ¶ 5 & Ex. B, Notice to Appear dated September 28, 2019. On or about September 28, 2019, Petitioner was returned to Mexico to be processed under the Migrant Protection Protocols and the case was set to an initial master calendar hearing on January 16, 2020. *Id.* ¶ 6 & Ex. C, Migrant Protection Protocols Information. On March 31, 2021, Petitioner was paroled into the United States for the purpose of attending immigration court hearings after several continuances on the MPP docket. *Id.* ¶ 7 & Ex. D, Form I-261: Additional Charges of Inadmissibility/Deportability. On April 8, 2024, the immigration judge granted the respondent's motion to terminate to pursue adjustment of status before United States Citizenship and Immigration Services. *Id.* ¶ 8 & Ex. E, IJ Order dated April 8, 2024.

On February 13, 2025, Petitioner was encountered by ICE/ERO at the Lowndes County Sheriff's Office in Valdosta, Georgia, and entered ICE/ERO custody on that same date. *Id.* ¶ 9. Petitioner had not previously been detained by ICE/ERO. *Id* & Ex. F, Form I-213 Record of Deportable/Inadmissible Alien dated February 14, 2025. On February 14, 2025, ICE/ERO served Petitioner with a Notice to Appear charging him with inadmissibility as an arriving alien pursuant to INA § 212(a)(7)(A)(i)(I). *Id.* ¶ 10 & Ex. G, Notice to Appear dated February 14, 2025. On March 11, 2019, the immigration judge held a bond redetermination hearing and denied Petitioner's request for bond finding that the court did not have jurisdiction as Petitioner is an arriving alien. *Id.* ¶ 11 & Ex. H, IJ Bond Order. On March 19, 2025, Petitioner appeared at the master calendar hearing without an attorney and conceded the charge and allegation under INA §

212(a)(7)(A)(i)(I). The IJ sustained the charge of inadmissibility and Petitioner was ordered removed to Cuba. *Id.* ¶ 12 & Ex. H, IJ Order date March 19, 2025.

On or about September 23, 2025, ICE/ERO initiated the 180-day review of Petitioner's custody status and continued detention. *Id.* ¶ 14. On the same day, September 23, 2025, Petitioner was served with Notice to Alien of File Custody Review, Notice to Alien of Interview for Review of Custody, I-229(a) Warning for Failure to Depart. *Id.* ¶ 15 & Ex. I. On November 19, 2025, ICE/ERO served Petitioner with the Notice of Third Country Removal. ICE/ERO intends to remove Petitioner to Mexico and is taking steps to effectuate his removal. *Id.* ¶ 16 & Ex. J, Notice of Removal. On November 19, 2025, Lowndes County, Georgia requested to extradite the petitioner for the charge of Drug Trafficking. *Id.*

LEGAL FRAMEWORK

I. Jurisdiction Over Final Orders of Removal

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).

The Supreme Court has described § 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.* ("*AADC*"), 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 her 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) 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).

II. Post-Final Order Detention and *Zadvydas*

Since 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 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*, 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).

III. Third Country Removals

The INA provides the Executive Branch with the authority to execute orders of removal and to ensure that aliens who have been ordered removed are in fact removed from the United States. This authority is broad. The United States may remove aliens to various countries including, where other options are unavailable, to any country willing and able to accept them. *See* 8 U.S.C. § 1231(b). Of course, under the statute and regulations implementing the Convention Against Torture ("CAT"), the United States will not remove any alien to a country where the United States has found he is likely to be tortured—*i.e.*, the extreme scenario where the alien is likely to face severe pain or suffering intentionally inflicted by the hand or with the consent of the public official. The standard for "torture" is a high bar and is plainly not easily met.

Although the INA authorizes removal of aliens who have received a final order of removal to a third country (*see*, 8 U.S.C. § 1231(b)(1)(E)), it does not provide any additional specific process that aliens must receive under CAT after a final order of removal has been issued but prior to removal to a third country. Congress has delegated the decision regarding the appropriate process entirely to the Executive Branch. *See* 8 U.S.C. § 1231 note. On March 30, 2025, the Department of Homeland Security ("DHS") issued guidance detailing its policy in this context, following Executive Order 14165 regarding removal of aliens subject to final orders of removal.

See March 30, 2025 Guidance, *attached hereto as* Exhibit D, Executive Order 14165, 90 Fed. Reg. 8467, *attached hereto as* Exhibit E.

The DHS Guidance establishes a two-track system to address aliens who have been ordered removed but for various reasons cannot be sent to a country specifically designated in their removal orders. First, where the United States has received a sufficient assurance from a third country that no aliens will be tortured upon removal there, the Executive may remove the alien to that country without any further process. *See* Ex. D, Guidance at 1–2. A section applies for countries where the United States has not received such an assurance. In that case, the DHS policy provides that the alien is entitled to notice of the third county and an opportunity for a prompt screening of any asserted fear of being tortured there. *Id.* at 2.

ARGUMENT

Petitioner asserts two main arguments: (1) that his detention violates due process under *Zadvydas* because he allegedly cannot be removed to Cuba, and (2) that his continued detention violates due process. *See generally* ECF No. 1. The Petition should be dismissed for lack of jurisdiction, or alternatively, denied on the merits. ***First***, the Court lacks jurisdiction to entertain challenges to ICE/ERO's decision or action to execute final orders of removal. ***Second***, if the Court reaches Petitioner's argument regarding due process, it should find the claim is without merit. Because Petitioner's *Zadvydas* claim relies on the success of his argument that he cannot be removed, and because Petitioner can be removed to Mexico in the reasonably foreseeable future, his claim fails.

I. The Court is without jurisdiction to intervene to prevent Petitioner's removal or stay his transfer.

Section 1252(b)(9) deprives the Court of jurisdiction over Petitioner's request that the Court stay his removal. By seeking a stay of removal, Petitioner plainly challenges ICE/ERO's

decision to execute his removal from the United States. In doing so, he seeks "[j]udicial review of [a] question[] of law and fact . . . arising from an[] action taken or proceeding brought to remove [a non-citizen] from the United States[.]" 8 U.S.C. § 1252(b)(9). Accordingly, courts lack jurisdiction to stay removal in a habeas proceeding. *Id.* ("[N]o court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision . . . to review such an order or such questions of law or fact."). This Court has routinely denied requests for stays of removal during habeas proceedings. *See, e.g., C.R.L. v. Dickerson*, No. 4:25-cv-175-CDL, 2025 WL 1800209, at *3 (M.D. Ga. June 30, 2025) (recognizing "well-established precedent that this Court has no jurisdiction to interfere with the execution of a final order of removal"); *C.B.M. v. Warden, Stewart Det. Ctr.*, No. 4:19-cv-44-CDL, 2019 WL 5243067, at *1 (M.D. Ga. Aug. 30, 2019) ("The Court lacks jurisdiction to stay Petitioner's removal." (citation omitted)); *Watson v. Stone*, No. 4:13-cv-480-CDL, 2013 WL 6072894, at *2 (M.D. Ga. Nov. 18, 2013) (denying a non-citizen's motion to stay his removal and noting that § 1252(a)(5) "has consistently been interpreted by district courts faced with a motion to stay removal as stripping them of jurisdiction to provide such relief[]" (collecting cases)).

Further, § 1252(g) similarly bars jurisdiction. By requesting a stay of removal, Petitioner seeks to challenge "the decision or action by the Attorney General to . . . execute [her] removal order[.]" 8 U.S.C. § 1252(g) The Eleventh Circuit has made clear that § 1252(g) deprives the Court of jurisdiction to stay removal. In *Camarena v. Director, Immigration and Customs Enforcement*, 988 F.3d 1268 (11th Cir. 2021), two non-citizens subject to final orders of removal "filed . . . habeas petition[s] and . . . emergency motion[s] to halt the execution of [their] removal order[s]." 988 F.3d at 1270-71. The district courts denied their requests for stays of removal, finding they lacked subject matter jurisdiction. *Id.* The Eleventh Circuit affirmed on appeal,

holding that the non-citizens' "claims [fell] squarely within § 1252(g)'s jurisdictional bar" because they challenged "the government's execution of [their] removal orders." *Id.* at 1272.

Like the non-citizens in *Camarena*, Petitioner is subject to a final order of removal and seeks a stay of his removal. In doing so, Petitioner challenges ICE/ERO's action to "execute [his] removal order[.]" 8 U.S.C. § 1252(g). As the Eleventh Circuit recognized in *Camarena*, such a challenge "fall[s] squarely within § 1252(g)'s jurisdictional bar[.]" *Camarena*, 988 F.3d at 1272. The Court, therefore, lacks subject matter jurisdiction over Petitioner's request that his removal be stayed, and his Petition should be denied to the extent he seeks a stay of his removal.

Similarly, to the extent that Petitioner requests that this Court enjoin his transfer, the Court should decline to make any such ruling. DHS is authorized to determine the "appropriate place[] of detention for [non-citizens] detained pending removal or a decision on removal.' 8 U.S.C § 1231(g)(1). Multiple courts of appeals have held that this affords DHS the "discretionary power to transfer [non-citizens] from one locale to another, as [DHS] deems appropriate[.]" *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (citations omitted); *see also Calla-Collado v. Att'y Gen. of U.S*, 663 F.3d 680, 685 (3d Cir. 2011); *Gandarillas-Zambrana v. Bd. of Imm. Appeals*, 44 F.3 1251, 1256 (4th Cir. 1995); *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985). District courts in the Eleventh Circuit have recognized the same. *Golding v. DHS/ICE*, No. 4:19-cv-01160, 2019 WL 11720287, at *2 (N.D. Ala. Oct. 3, 2019); *Sasso v. Milhollan*, 735 F. Supp. 1045, 1048 (S.D. Fla. 1990).

Because any transfer of Petitioner is a discretionary decision by DHS, the Court lacks jurisdiction to enjoin any transfer under 8 U.S.C. § 1252(a)(2)(B)(ii), which provides that

> Notwithstanding any other provision of law (statutory or nonstatutory), including [28 U.S.C. § 2241], or any other habeas corpus provision, . . . *no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this*

> *subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security*[.]

(emphasis added). Multiple courts have concluded that § 1252(a)(2)(B) deprives district courts of jurisdiction to enjoin DHS's discretionary transfer of a detained non-citizen. *Van Dinh*, 197 F.3d at 433; *Golding*, 2019 WL 11720287, at *2; *Lway Mu v. Whitaker*, No. 6:18-cv-06924, 2019 WL 2373883, at *5 (W.D.N.Y. June 4, 2019). The Court should deny Petitioner's request for an order preventing his transfer.

II. Petitioner is not entitled to relief under *Zadvydas*.

ICE's detention authority stems from 8 U.S.C. § 1231, which provides for the detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days, which is known as the "removal period." During the removal period, ICE must detain the alien. 8 U.S.C. § 1231(a)(2) (noting the mandatory language "shall detain"). If the removal period expires, ICE can either release an individual pursuant to an Order of Supervision as directed by § 1231(a)(3) or may continue detention under § 1231(a)(6). ICE may continue detention beyond the removal period for three categories of individuals: (i) those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182; (ii) those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or (iii) those whom immigration authorities have determined to be a risk to the community or "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6)(A). Put another way, if ICE/ERO does not remove an alien within ninety days, detention may continue if it is "reasonably necessary" to effectuate removal for these categories of detainees. *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).

Here, Petitioner cannot carry his burden under *Zadvydas*. Petitioner argues that he is entitled to release under *Zadvydas* because he has been in detention for more than six months and he alleges that the Government has not shown removal to Cuba is reasonably foreseeable. ECF No. 1 Pet. 5. But Petitioner misapprehends the relevant standard, which places the initial burden of production upon the petitioner to show that removal is not significantly likely in the reasonably

foreseeable future. *Akinwale*, 287 F.3d at 1051-52. Petitioner 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)). Petitioner's summary statement that he cannot be removed to Cuba in the future is insufficient.

Further, the relevant question for the Court is not limited to the likelihood of Petitioner's removal to Cuba specifically. Rather, it is the likelihood of Petitioner's removal to any appropriate country. Here, Petitioner was issued a Notice of Third Country Removal on November 19, 2025, informing him that ICE/ERO intends to remove him to Mexico and ICE/ERO is taking steps to effectuate his removal. Karwowski Decl. ¶ 16 & Ex. J. Thus, Petitioner's removal is scheduled to occur in the reasonably foreseeable future and his *Zadvydas* claim must fail.

CONCLUSION

For the reasons stated above, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted this 24th day of November, 2025.

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