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

ANGEL ALIPIO BAYAR HERNANDEZ,	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-346-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE

On November 3, 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 pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001), and seeks release from custody. Pet. 5-6, ECF No. 1. Petitioner also claims a due process right to notice and an opportunity to be heard to contest his removal to any country other than his designated country of removal. *Id.* at 7 As explained below, the third-country removal claim should be dismissed for lack of jurisdiction and the Petition should be 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 Supervisory Detention and Deportation Officer

[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 of Stewart Detention Center as the sole appropriately named respondent in this action.

Tartanger Stephens ("Stephens Decl.") ¶ 4 & Ex. A. Petitioner was paroled into the United at El Paso, Texas on May 17, 2016. *Id.* & Ex. A. On November 29, 2018, Petitioner was accorded Lawful Permanent Resident ("LPR") Status. *Id.* & Ex. A. On or about June 30, 2023, Petitioner was convicted in the United States District Court for the Southern District of Florida on two counts of possession with intent to distribute a controlled substance. *Id.* ¶ 5 & Ex. B. Petitioner was sentenced to 30 months' imprisonment. *Id.*

Petitioner originally entered Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") custody on or about March 10, 2025. *Id.* ¶ 6. Petitioner was served with a Notice to Appear ("NTA") charging him with removability pursuant to the Immigration and Nationality Act ("INA") sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) (8 U.S.C. §§ 1182(a)(2)(A)(i)(II) and 1182(a)(2)(C)). Stephens Decl. ¶ 6. On April 9, 2025, Petitioner appeared before an Immigration Judge ("IJ"), at which time he admitted to the factual allegations and conceded the charge of removability on the NTA. *Id.* ¶ 7. The IJ reset the hearing to April 30, 2025. *Id.* ¶ 7 & Ex. D. On that day, Petitioner appeared and requested an order of removal. *Id.* ¶ 8. The IJ ordered Petitioner removed from the United States to Cuba, and Petitioner waived appeal. *Id* ¶ 8 & Ex. E.

Petitioner is presently detained at Stewart Detention Center under the authority of INA § 241(a) (8 U.S.C. § 1231(a)). *Id.* ¶ 9. On May 21, 2025, ICE/ERO sent a packet nominating Petitioner for removal to ERO HQ. Stephens Decl. ¶ 10. On September 27, 2025, ICE/ERO sent a removal acceptance request to ERO HQ, which request remains pending. *Id.* ¶ 11.

LEGAL FRAMEWORK

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).

ARGUMENT

Petitioner primarily asserts that his detention violates due process under *Zadvydas*. Pet. 5-6. Petitioner also argues that in the event Respondent decides to remove him to a country other than Cuba, he must be given notice and an opportunity to contest that removal under CAT. Pet. 7. The Petition should be denied. First, the Court lacks subject matter jurisdiction over Petitioner's claim regarding a hypothetical third-country removal. Petitioner has not been removed without notice, so there is no present case or controversy for the Court to decide on the matter. Second, even if the Court had jurisdiction, the claim fails on the merits pursuant to the Supreme Court's rejection of the District Court's injunction on this issue in *Department of Homeland Security v. D.V.D.*, No. 24-A-1153, 2025 WL 1732103 (2025). Third, 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.

I. The Court lacks subject matter jurisdiction over Petitioner's hypothetical claim regarding third-country removal, and, alternatively, his claim lacks merit.

Petitioner's argument regarding the need for notice and an opportunity to be heard if he is going to be removed to a third country other than Cuba is not an active case or controversy because

ICE/ERO has not notified him of any such intent.[2] The case-or-controversy requirement of Article III, section 2 of the United States Constitution subsists through all stages of federal judicial proceedings. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998). A petitioner "must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990).

Petitioner's claim that it would be a procedural due process violation if he were removed from the United States to a country other than Cuba, *see* Pet. 7, is not ripe because he has not been given any notice that such a plan is in place. Petitioner cannot raise a hypothetical claim based on circumstances not applicable to him and seek relief. Because there is no active case or controversy on this issue, the Court lacks subject matter jurisdiction over this claim.

Alternatively, Petitioner's claim would fail because the Supreme Court has clearly signaled that even a petitioner who has been notified of the Government's intent to remove them to a third country does not have the level of notice that Petitioner claims, per his reliance on the District Court's ruling in *D.V.D. See Dep't of Homeland Sec. v. D.V.D.*, No. 24-A-1153, 2025 WL 1732103 (2025). There, the Supreme Court rejected the District Court's injunction which required a minimum of 10 days' notice and an opportunity following that notice to raise a fear-based claim for CAT protection prior to removal. *See id.*; *see also D.V.D. v. DHS*, No. 12-cv-10767 (BEM) (D. Mass.) (ECF No. 118). The Supreme Court's ruling indicates its belief that the Government is likely to succeed on the merits of its appeal of the District Court's injunction.

Furthermore, Petitioner has given no reason to believe that he would not have a sufficient opportunity to raise a fear-based claim if ICE/ERO did notify him of an intent to remove him to a

[2] To the extent Petitioner is, at some point in the future, notified of an intent to remove him to a country other than Cuba, Petitioner will be provided with written notice and, should he claim fear of removal to the alternative country, ICE will refer him to U.S. Citizenship and Immigration Services (USCIS) for screening.

third country. Again, should Petitioner be notified of such intent, and should he claim fear of removal to the alternative country, ICE/ERO will refer him to USCIS for screening. Thus, in addition to such a claim being premature or unripe, Petitioner has not provided sufficient evidence to support the likelihood that he is at risk of any violation of his rights in this regard. For all these reasons, Petitioner's claim regarding third-country removal should be dismissed or denied.

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

As discussed above, a petitioner seeking relief under *Zadvydas* must not only show six months of post-final order detention, but must Petitioner 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). Here, Petitioner presents no evidence to meet his burden. Rather, he simply restates the relevant standard, alleging without supporting evidence that "all parties acknowledge that Cuba did not accept [Petitioner] back to Cuba." Pet. 4. Petitioner's conclusory statement 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 come forth with evidence to support this claim. 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 been in detention for more than six months and he believes he cannot be removed to Cuba. Pet. 5. 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)). Yet, that is all Petitioner provides in his Petition. This is simply insufficient. Furthermore, as Petitioner points out, Cuba is not the only option for his removal, notwithstanding his asserted fear that he will not be given sufficient notice of a third-country removal. To the extent Petitioner cannot be removed to Cuba, which he has not shown evidence to support, ICE/ERO may be able to remove him to a third country. Thus, 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.

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 either of his claims. Petitioner is not entitled to relief under *Zadvydas* because he fails to meet his evidentiary burden to show there is no significant likelihood of removal in the reasonably foreseeable future. Further, Petitioner's claim regarding third-country removal is not ripe and the Court lacks jurisdiction to consider it, and, alternatively, the claim lacks merit. For these reasons, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted this 25th day of November, 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

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:

Angel Alipio Bayar Hernandez
A# [redacted]
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 25th day of November, 2025.

BY: */s/ Michael P. Morrill*
MICHAEL P. MORRILL
Assistant United States Attorney