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

YIRANDY ROSALES ALMARAL,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-425-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On December 4, 2025, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. On December 8, 2025, the Court ordered Respondent to file a response within twenty-one days. ECF No. 5. Petitioner's four counts challenge his continued detention under the Due Process Clause of the Fifth Amendment and the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). For the reasons explained below, Petitioner's claims should be dismissed.

BACKGROUND

Petitioner is a native and citizen of Cuba who is detained post-final order of removal pursuant to 8 U.S.C. § 1231. Declaration of Tartanger Stephens ("Stephens Decl.") ¶¶ 4, 14. On February 22, 2015, Petitioner was paroled into the United States at or near the Brownsville, Texas

[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 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.

Port of Entry with authorization to remain until February 21, 2017, pursuant to the Cuban Refugee Adjustment Act. *Id.* ¶ 4. On or about December 15, 2016, Petitioner was convicted of conspiracy to transport illegal aliens and two counts of illegal alien transport in the United States District Court for the Western District of Texas. *Id.* ¶ 5 & Ex. A. On May 23, 2017, Petitioner was sentenced to serve 16 months on each count, to run concurrently. Stephens Decl. ¶ 5 & Ex. A.

On January 10, 2018, Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") served Petitioner with a Notice to Appear ("NTA") charging him with removability under Immigration and Nationality Act ("INA") § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* ¶ 6 & Ex. B. On or about February 2, 2018, Petitioner was released from Bureau of Prisons custody and entered ICE custody. He was transported to Prairieland Detention Center in Alvarado, Texas. *Id.* ¶ 7. On February 27, 2018, Petitioner appeared, pro se, for his master hearing. *Id.* ¶ 8. He admitted and conceded to the allegations listed on the NTA, and confirmed he did not want to apply for relief from removal proceedings and would accept a removal order instead. *Id.* ¶ 8. The Immigration Judge therefore entered an order of removal to Cuba. *Id.* ¶ 8 & Ex. C. Petitioner waived appeal, making his removal order final as of February 27, 2018. Stephens Decl. ¶ 8 & Ex. C.

On or about May 29, 2018, Petitioner was released from ICE custody pursuant to an Order of Supervision ("OSUP") based on ICE/ERO's determination that there was no significant likelihood of removal in the reasonably foreseeable future to Cuba for Petitioner at the time. *Id.* ¶ 9. Petitioner was required to periodically report to ICE as part of his release conditions. *Id.* ¶ 9.

On October 29, 2025, Petitioner was arrested by ICE/ERO while reporting. *Id.* ¶ 10. Petitioner was transported to Stewart Detention Center in Lumpkin, Georgia. *Id.* ¶ 10. ICE/ERO served Petitioner with an OSUP revocation notice and conducted an informal interview at which

he declined to make a statement. *Id.* ¶ 10 & Ex. D. On or about November 21, 2025, Petitioner was served with the Third Country Removal Notice and ICE/ERO confirmed Petitioner was ready for removal to Mexico. Stephens Decl. ¶ 11. On December 11, 2025, Petitioner was transported to El Paso East Camp Montana in El Paso, Texas for third country removal to Mexico. *Id.* ¶ 12. On December 23, 2025, Petitioner refused to leave his pod for removal to Mexico. *Id.* ¶ 13.

To date, Petitioner remains detained at El Paso East Camp Montana pursuant to INA § 241(a). *Id.* ¶ 14.

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).

ARGUMENT

Petitioner raises one overarching claim, despite listing four counts: that his detention violates due process under *Zadvydas* because there is no significant likelihood of removal in the reasonably foreseeable future, Pet. 5-7, ECF No. 1.

The Petition should be dismissed for three reasons. ***First***, the Petition is premature because Petitioner has not been detained beyond the presumptively reasonable six months as stated in *Zadvydas* and *Akinwale*. ***Second***, Petitioner is now mandatorily detained under 8 U.S.C. § 1231(a)(1)(C) based on his failure to comply with ICE/ERO's efforts to remove him, and he therefore is not entitled to relief under *Zadvydas*. ***Third***, in the alternative, Petitioner's *Zadvydas* claim lacks merit.

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

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, the IJ ordered Petitioner removed on February 27, 2018 and Petitioner waived appeal. Stephens Decl. ¶ 8 & Ex. C. Therefore, his removal order became final on that day. *Id.* Petitioner was released from ICE custody on May 29, 2018, approximately three months later, based on ICE/ERO's finding that there was no significant likelihood of removal to Cuba in the reasonably foreseeable future. *Id.* ¶ 9. On October 29, 2025, Petitioner re-entered ICE/ERO custody. *Id.* ¶ 10 & Ex. D. Petitioner filed his petition on December 4, 2025, just over one month after he was re-detained. ECF No. 1. Thus, at the time the Petition was filed, Petitioner had been detained for only four months total, even if the Court were to include the previous period of detention (which it should not)[2], and therefore the *Zadvydas* six-month presumptively reasonable detention period had not expired at the time he filed his Petition. Thus, Petitioner cannot state a claim under *Zadvydas* because his detention is presumptively reasonable. *Akinwale*, 287 F.3d at 1052.

Courts throughout the Eleventh Circuit—including this Court—have dismissed non-citizens' habeas petitions raising *Zadvydas* claims where the presumptively reasonable six-month period had not expired when they filed their petitions. *S.H. v. Warden, Stewart Det. Ctr.*, No. 4:21-

[2] Although Petitioner vaguely argues that the "180-day detention period ended years ago" based on a case incorrectly attributed to the Eleventh Circuit, he acknowledges that he had only been detained for 117 days at the time of his Petition. Pet. 1. Respondent also notes that this Court has previously ruled on multiple occasions that prior periods of detention should not be counted toward the determination of the six-month detention period. *See, e.g., M.K. v. Warden, Stewart Det. Ctr.*, No. 4:23-cv-136, ECF No. 12 (M.D. Ga. Oct. 19, 2023). Thus, the Petition is approximately five months premature under that framework.

CV-185-CDL-MSH, 2022 WL 1280989, at *2 (M.D. Ga. Feb. 15, 2022), *recommendation adopted*, 2022 WL 1274385 (M.D. Ga. Apr. 28, 2022); *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021); *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.

II. The Petition is premature because Petitioner is mandatorily detained based on his failure to comply with removal efforts.

In addition to the fact that the Petition is premature, Petitioner is also mandatorily detained within the removal period because he has failed to comply with removal efforts. Accordingly, his *Zadvydas* claim should be dismissed as premature.

The removal period of mandatory detention "shall be extended beyond a period of 90 days[,] and the alien may remain in detention[,] . . . if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure " 8 U.S.C. § 1231(a)(1)(C); 8 C.F.R. § 241.4(g)(1)(ii), (g)(5); *see also Johnson v. Guzman Chavez*, 549 U.S. 523, 528 (2021) ("[T]he removal period may be extended if the alien fails to make a timely application for travel documents or acts to prevent his removal." (citation omitted)).

This extension of the removal period pursuant to 8 U.S.C. § 1231(a)(1)(C) based on a non-citizen's failure to comply with efforts to remove him also tolls the *Zadvydas* six-month period of presumptively reasonable post-final order of removal detention. *Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013) ("The [*Zadvydas*] six-month period is tolled, however, if the alien acts to prevent his removal." (citation omitted)). The removal period remains extended—and the *Zadvydas* six-month period tolled—"until the [non-citizen] demonstrates to [ICE/ERO]

that he or she has complied with the statutory obligations" under 8 U.S.C. § 1231(a)(1)(C). 8 C.F.R. § 241.4(g)(1)(ii).

Further, "[t]he risk of indefinite detention that motivated the Supreme Court's statutory interpretation in *Zadvydas* does not exist when an alien is the cause of his own detention." *Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1314 (11th Cir. 2019) (internal quotations and citation omitted). Accordingly, a non-citizen is not entitled to relief under *Zadvydas* where the removal period has been extended pursuant to 8 U.S.C. § 1231(a)(1)(C) based on a non-citizen's failure to comply with efforts. *Id.* ("[I]f the removal period was extended by operation of § 1231(a)(1)(C), then ICE can continue to detain [a non-citizen] because the keys to [the non-citizen's] freedom are in his pocket and he could likely effectuate his removal by providing the information requested, so he cannot convincingly argue that there is no significant likelihood of removal." (internal quotations, alterations, and citation omitted)).

On or about November 21, 2025, Petitioner was served with the Third Country Removal Notice and ICE/ERO confirmed Petitioner was ready for removal to Mexico. Stephens Decl. ¶ 11. Petitioner was later moved to a detention center in Texas in preparation for his removal to Mexico. *Id.* ¶ 12. On December 23, 2025, after more than one month's notice of ICE/ERO's intent to remove him to Mexico, ICE/ERO attempted to effectuate Petitioner's removal to Mexico, but Petitioner refused to leave his pod for removal to Mexico, and the removal mission was cancelled as a result. *Id.* ¶ 13.

Petitioner's failure to comply in good faith with the attempt to finalize and effectuate his removal has extended the removal period under 8 U.S.C. § 1231(a)(1)(C). Were it not for Petitioner's refusal to leave his pod, he would have been removed—and out of ICE/ERO custody—on December 23, 2025. *Id.* ¶ 13. Because the removal period has not expired,

Petitioner's continued detention is mandatory, and his request for habeas relief should be dismissed.[3]

The Eleventh Circuit has routinely affirmed dismissals of *Zadvydas* claims where the petitioners acted to prevent their removals. *See, e.g., Vaz v. Skinner*, 634 F. App'x 778, 782 (11th Cir. 2015) (per curiam) (affirming dismissal of habeas petition where alien "refus[ed] to voluntarily sign his travel document or inform [his home country] that he is willing to return"); *Linares v. Dep't of Homeland Sec.*, 598 F. App'x 885, 887 (11th Cir. 2015) (per curiam) (explaining that petitioner's "acts to prevent [his] removal . . . extended the removal period beyond the 90 days following the finalization of his removal order"). Indeed, the Eleventh Circuit has specifically held that a non-citizen's refusal to board a removal flight—similar to Petitioner's refusal to leave the pod for removal—constitutes a failure to comply that forecloses relief under *Zadvydas*. *Oladokun v. U.S. Attorney Gen.*, 479 F. App'x 895, 896-97 (11th Cir. 2012) (per curiam). This Court has recognized the same. *See G.M.N.G. v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:20-cv-184-WLS-MSH, 2021 WL 8268065, at *1-2 (M.D. Ga. Oct. 15, 2021).

The Court should reach the same conclusion here and find that Petitioner's failure to comply with removal efforts extends the removal period and tolls the *Zadvydas* presumptively reasonable six-month period. Accordingly, Petitioner fails to show that he is entitled to relief under *Zadvydas*, and the Petition should be denied.

[3] Given the recency of Petitioner's failure to comply, ICE/ERO is still in the process of serving Petitioner with his Failure to Comply notice. Stephens Decl. ¶ 13. But the applicable regulation makes clear that "[t]he fact that [ICE/ERO] does not provide a Notice of Failure to Comply, within the 90-day removal period, to a[] [non-citizen] who has failed to comply with the requirements of [8 U.S.C. § 1231(a)(1)(C)], shall not have the effect of excusing the [non-citizen's] conduct." 8 C.F.R. § 241.4(g)(5)(iv).

III. In the alternative, Petitioner's *Zadvydas* claim lacks merit.

Even if the Court finds that the Petition is not premature—which it is for the reasons set forth above—Petitioner has nevertheless failed to carry his evidentiary burden of demonstrating that there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. To satisfy his burden, Petitioner must 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 (emphasis added). Petitioner has failed to make this showing.

Petitioner attempts to show that there is no significant likelihood of removal in the reasonably foreseeable future by stating that he "knows for sure that Cuba will deny and has denied any and all request for travel documents," despite his cooperation. Pet. 4. This is insufficient to carry his burden because ICE/ERO is within its statutory authority to remove Petitioner to a third country, here, Mexico, and Petitioner has made no showing that his removal to Mexico is not significantly likely to occur in the reasonably foreseeable future. *See* 8 U.S.C. § 1231(b).

To the extent Petitioner alleges ICE/ERO will not be able to remove him specifically, this amounts to nothing more than a conclusory statement which is insufficient to state a claim of unlawful detention under *Zadvydas*. *See Rosales-Rubio v. Attorney Gen.*, No. 4:17-CV-83-CDL-MSH, 2018 WL 493295, at *3 (M.D. Ga. Jan. 19, 2018). For these reasons, Petitioner fails to meet his burden under *Zadvydas*.

Even if Petitioner had offered evidence sufficient to shift the burden to Respondent to show a likelihood of removal, Respondent has easily met his burden. ICE/ERO was prepared to effectuate Petitioner's removal to Mexico on December 23, 2025. Stephens Dec. ¶ 13. Only Petitioner's failure to comply prevented that removal from being carried out. Accordingly, the evidence supports a conclusion that there is a significant likelihood of Petitioner's removal in the

reasonably foreseeable future, and the Petition should therefore be dismissed because Petitioner's *Zadvydas* claim fails on the merits.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition. In the alternative, the Petition should be denied.

Respectfully submitted this 29th day of December, 2025.

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CERTIFICATE OF SERVICE

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

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This 29th day of December, 2025.

BY: */s/ Michael P. Morrill*
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