

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

ARGENIS JOSE IBARRA IBARRA,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-447-CDL-ALS
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER, ¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS PETITION

On December 9, 2025, Petitioner filed a petition for a writ of habeas corpus (Petition). ECF No. 1. The Court ordered Respondent to file his comprehensive response on or before December 30, 2025. ECF No. 6. Respondent obtained a ten-day extension of that deadline, extending the due date to January 9, 2026. ECF No. 9. For the reasons explained below, the Petition should be dismissed.

BACKGROUND

Petitioner is a native and citizen of Venezuela. Declaration of Deportation Officer Charles Fields ¶ 4. U.S. Border Patrol (USBP) encountered Petitioner on May 4, 2023, shortly after he entered the United States without authorization. *Id.* USBP issued

¹ In addition to the Warden of Stewart Detention Center, Petitioner names officials with the Department of Justice, Department of Home and 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.

Petitioner a Notice to Appear (NTA) charging him with inadmissibility pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA). *Id.* ¶ 5 & Ex. A. During his encounter with USBP, Petitioner provided USBP with an address in Pennsylvania. *Id.* ¶ 6 & Ex. B. Accordingly, the NTA notified Petitioner that he should appear before the Immigration Court in Philadelphia, Pennsylvania, on July 3, 2024. *Id.* However, there is no record of USBP filing the NTA with the Philadelphia Immigration Court. *Id.*

USBP released Petitioner on an order of recognizance with instructions to report to an ICE/ERO office in Pennsylvania on June 5, 2023. *Id.* ¶ 7 & Ex. C. Petitioner failed to report as instructed. *Id.* On February 23, 2024, ICE/ERO, in coordination with other law enforcement agencies, encountered Petitioner in Athens, Georgia, during an investigation into the murder of a University of Georgia student. *Id.* ¶ 8 & Ex. D. ICE/ERO took Petitioner into custody and issued another NTA. *Id.* & Ex. E. Petitioner appeared for two master hearings on March 20, 2024 and May 8, 2024, before the Stewart Immigration Court in Lumpkin, Georgia. *Id.* ¶ 9. Petitioner was scheduled for a merits hearing on July 11, 2024, for the Immigration Judge to adjudicate his application for Voluntary Departure, but Petitioner failed to appear. *Id.*

Petitioner did not appear for the hearing on July 11, 2024, because on July 8, 2024, Petitioner was transferred from ICE/ERO custody to the custody of the U.S. Marshall's Service (USMS) pursuant to a superseding indictment filed in the U.S. District Court for the Middle District of Georgia on June 11, 2024. *Id.* & Ex. F. The indictment charged

Petitioner with four counts relating to Possession of Counterfeit Immigration Documents in violation of 8 U.S.C. 1546(a). *Id.*

On August 8, 2024, DHS filed a motion to administratively close Petitioner's removal proceedings because Petitioner remained in USMS custody. *Id.* ¶ 10. The Immigration Judge granted the motion on August 8, 2024. *Id.* & Ex. G. On March 19, 2025, Petitioner pled guilty to count 3 of the superseding indictment and was sentenced to time served. *Id.* ¶ 11 & Ex. H. On March 21, 2025, Petitioner returned to Stewart Detention Center and the custody of ICE/ERO. *Id.* ¶ 12. On March 27, 2025, ICE/ERO served Petitioner with a warrant of apprehension and removal pursuant to Title 50, section 21, of the United States Code. *Id.* ¶ 13. On December 24, 2025, ICE/ERO served Petitioner with an updated warrant of apprehension and removal pursuant to Title 50, section 21, of the United States Code. *Id.*

On December 23, 2025, DHS filed a motion to recalender Petitioner's removal proceedings before the Immigration Court pursuant Title 8 of the United States Code. *Id.* ¶ 14 On January 9, 2026, the Immigration Judge granted the motion. Petitioner is scheduled for a master hearing before the Immigration Court on January 15, 2026. *Id.* Petitioner remains detained at Stewart Detention Center pursuant to Title 50, section 21, of the United States Code and, in the alternative, under section 235(b)(2) of the INA. *Id.* ¶ 15.

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. He also claims in Count Four that his due process rights have been violated because he has not received notice and an opportunity to be heard prior to his removal to a third country. Pet. 7. All of Petitioner's claims should be dismissed.

I. Petitioner fails to state a claim under *Zadvydas*.

Counts One through Three of the Petition assert that Petitioner's continued detention has become prolonged under 8 U.S.C. § 1231(a)(6) and that he is entitled to release pursuant to *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Specifically, Petitioner claims that he has been subject to a final order of removal since March 2025 but that Respondent cannot remove him to Venezuela in the reasonably foreseeable future. Pet. at ¶¶ 22-30.

Congress provided in § 1231(a)(1) that ICE/ERO shall remove an alien within ninety 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. at 689; 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 alier 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 alier should be released from confinement. *Id.*

Contrary to the allegations in the Petition, Petitioner is not detained under § 1231. Petitioner has not been ordered removed to Venezuela, and he is not subject to a final order of removal. *See* Fields Decl. ¶¶ 13-15. Rather, Petitioner is detained under Title 50, section 21, of the United States Code and § 235(b)(2) of the INA, 8 U.S.C. § 1225(b)(2). *Id.* Because *Zadvydas* "only applies to aliens subject to a removal order under 8 U.S.C. § 1231," the framework established by the Supreme Court's decision in that case is inapplicable. *H.C. v. Warden, Stewart Det. Ctr.*, No. 4:22-cv-148-CDL-MSH, 2023 WL 2745176, at *5 (M.D. Ga. Mar. 21, 2023), *recommendation adopted by* 2023 WL 3365166 (M.D. Ga. May 10, 2023). Accordingly, because Petitioner's claims in Counts One through Three are premised entirely on the mistaken contention that he is subject to a final order of removal under § 1231(a)(6), those claims should be dismissed.

- 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 in Count Four regarding the need for notice and an opportunity to be heard if he is going to be removed to a third country other than

Venezuela 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).

Any claim by Petitioner that it would be a procedural due process violation if he were removed from the United States to a country other than Venezuela 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 ten days’ notice and an opportunity following that notice to raise a fear-based claim for CAT protection prior to

² To the extent Petitioner is, at some point in the future, notified of an intent to remove him to a country other than Venezuela, 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.

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 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.

CONCLUSION

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

Respectfully submitted this 9th day of January, 2026.

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UNITED STATES ATTORNEY


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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, due to the time of filing, on January 12, 2026, a copy of the Motion to Dismiss will be mailed by United States Postal Service to the following non-CM/ECF participants:

Argenis Jose Ibarra Ibarra
A# 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

Respectfully submitted this 9th day of January, 2026.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

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