

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

YURI MAIKEL HERNANDEZ PEREZ,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-462-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER, ¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On December 10, 2025, Petitioner filed a petition for a writ of habeas corpus (“Petition”). ECF No. 1. Petitioner claims his detention has become prolonged and that he will not be removed in the reasonably foreseeable future. *Id.* On December 12, 2025, the Court ordered Respondent to respond to the Petition within twenty-one days. ECF No. 5. For the reasons explained below, the Petition should be dismissed.

BACKGROUND

Petitioner is a native and citizen of Cuba. Declaration of Deportation Officer Kent Ray ¶ 4. On April 12, 2011, Petitioner was paroled into the United States for a two-year period at or near Laredo, Texas, pursuant to the Cuban Refugee Adjustment Act. *Id.* On

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.

or about August 15, 2022, Petitioner was convicted in the United States District Court for the Southern District of Alabama of Conspiracy to Possess with Intent to Distribute Methamphetamine and Possession with Intent to Distribute Methamphetamine. *Id.* ¶ 5. Ex. A. He was sentenced to eighty-five months imprisonment on each count to run concurrently. *Id.* On November 8, 2022, Petitioner was encountered by ICE/ERO while he was incarcerated at the Bureau of Prisons Federal Correction Institute Allenwood Low in White Deer, Pennsylvania. *Id.* ¶ 6. Following an interview, ICE/ERO determined Petitioner was removable from the United States and that he would be processed as an expedited removal upon his release from prison. *Id.* An immigration detainer was issued. *Id.* & Ex. B. On August 9, 2023, Petitioner was served with an executed Notice and Order of Expedited Removal that indicated Petitioner had been found inadmissible pursuant to § 212(a)(7)(A)(i) of the Immigration and Nationality Act (“INA”). *Id.* ¶ 7 & Ex. C.

On or about July 7, 2025, Petitioner was released from Bureau of Prisons custody into ICE custody, and he was transported to Stewart Detention Center in Lumpkin, Georgia. *Id.* ¶ 8. In August 2025, Petitioner made claims that required review from the United States Citizenship and Immigration Services (“USCIS”), which prevented his removal from the United States. *Id.* ¶ 9. USCIS has since resolved its review. *Id.* On November 21, 2025, ICE/ERO began gathering information for Cuba submission for repatriation. *Id.* ¶ 10. On January 1, 2026, ICE/ERO contacted Headquarters Removal and International Operations (“HQRIO”) to have Petitioner vetted for either Cuban or third country removal. *Id.* ¶ 11. If Petitioner is scheduled for third country removal, ICE/ERO will comply with all necessary procedures to include notice and an opportunity to seek

relief. *Id.* ¶ 11. Petitioner remains detained at Stewart Detention Center under INA § 235(b)(1). *Id.* ¶ 12.

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. 7-9. 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. 9.

But Petitioner is mandatorily detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), which requires detention of detainees with a negative credible fear finding until their removal. Petitioner fails to argue or demonstrate that his detention pending expedited removal violates any constitutional, statutory, or other legal authority and his application for habeas relief should be denied.

Moreover, even if the Court reached Petitioner's claims premised on *Zadvydas*, they are likewise meritless. First, the Petition is premature because Petitioner has not been detained beyond the presumptively reasonable six months as stated in *Zadvydas* and *Akinwale*. Second, in the alternative, Petitioner's *Zadvydas* claim lacks merit. And third, Petitioner's claim related to notice and an opportunity to be heard prior to removal to a third country is premature but nonetheless moot in light of the evidence currently before the Court.

I. Petitioner is mandatorily detained under § 1225(b), and his due process rights are not violated by that detention.

Petitioner is not entitled to a bond hearing under 8 U.S.C. § 1226(a) or any other relief because he is mandatorily detained under 8 U.S.C. § 1225(b)(1) as an arriving alien without a credible fear. Petitioner is an applicant for admission into the United States without entry documents and is therefore inadmissible pursuant to INA § 212(a)(7)(A)(i), as codified at 8 U.S.C. § 1182(a)(7)(A)(i). Petitioner subsequently sought additional relief through USCIS, but USCIS concludes its review without awarding any relief that would prevent Petitioner's removal. Ray Decl. ¶ 9. Non-citizens applying for credible fear under the expedited removal process "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Consequently, Petitioner's case was referred to ERO for Petitioner's removal, and Petitioner is subject to mandatory detention until his removal. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Furthermore, Petitioner's due process rights are not violated by his mandatory detention. The Supreme Court "has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (citing cases); *Kleindienst v. Mandel*, 408 U.S. 753, 767 (1972) ("[T]hat the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues of our body politic as any aspect of our government."). The political branches' broad power over

immigration is “at its zenith at the international border.” *United States v. Flores-Montano*, 541 U.S. 149, 152-53 (2004). The power to admit or exclude aliens is a sovereign prerogative vested in the political branches, and “it is not within the province of any court, unless expressly authorized by law, to review [that] determination.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); see *Jennings*, 138 S. Ct. at 836 (“To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.”).

“It is [also] well-established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (internal citations omitted). The Eleventh Circuit has previously explained that “[a]liens seeking admission to the United States . . . have no constitutional rights with regard to their applications and must be content to accept whatever statutory rights and privileges they are granted by Congress.” *Jean v. Nelson*, 727 F.2d 957, 968 (11th Cir. 1984). In coming to that conclusion, the Eleventh Circuit found *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) to be particularly instructive. *Jean*, 727 F.2d at 969-70.

In *Mezei*, the Supreme Court explained that “an alien on the threshold of initial entry stands on a different footing” than an alien who has “passed through our gates, even illegally[.]” *Mezei*, 345 U.S. at 212. “Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” *Id.* Thus, based on *Mezei*, the Eleventh Circuit held that aliens seeking admission have “no constitutional rights with respect to their applications for admission, asylum, or parole.” *Jean*, 727 F.2d at 970,

984. And the Supreme Court recently reaffirmed this “century-old rule regarding the due process rights of an alien seeking initial entry[]” – that for aliens not admitted to the United States, “the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1982 (2020) (internal quotation marks and citation omitted).

Petitioner is thus entitled to the “statutory rights and privileges . . . granted by Congress.” *Jean*, 727 F.2d at 968. A non-citizen at the threshold of entry who is seeking admission without valid documentation lacks entitlement to enter the United States. *See* 8 U.S.C. § 1225(b)(1)(B). Petitioner is such an alien and is subject to mandatory detention under § 1225(b)(1)(B)(iii)(IV). Petitioner’s detention is thus statutorily and constitutionally permissible and his application for habeas relief should be denied.

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

Petitioner is not entitled to release 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 August 9, 2023. Ray Decl. ¶ 7 & Ex. C. Petitioner entered ICE custody on or about July 7, 2025. *Id.* ¶ 8. Petitioner sought additional relief with USCIS, but USCIS resolved its review in August 2025. *Id.* ¶ 9.

Petitioner's removal order became final at that time. Petitioner filed his petition on December 10, 2025, just over five months after he was re-detained and four months after his removal order became final. ECF No. 1. Thus, at the time the Petition was filed, the *Zadvydas* six-month presumptively reasonable detention period had not expired. 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-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.

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 has denied any and all requests for travel documents.” Pet. 5. This conclusory claim is insufficient to carry his burden because ICE/ERO is within its statutory authority to remove Petitioner to a third country, and Petitioner has made no showing that his removal to either Cuba or a third country is not significantly likely to occur in the reasonably foreseeable future. *See* 8 U.S.C. § 1231(b).

Even if Petitioner had offered evidence sufficient to shift the burden to Respondent to show a likelihood of removal, Respondent has met his burden. ICE/ERO began gathering information for Cuba repatriation in November 2025, and has also taken the necessary preliminary steps to have Petitioner vetted for Cuban and third country removal. Ray Decl. ¶¶ 10-11. 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.

IV. 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).

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 Cuba 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 1752103 (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 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. *See Ray Decl.* ¶ 11.

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. To the contrary, the only evidence before the Court is that Petitioner will be provided with the notice he seeks. Ray Decl. ¶ 11. 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 herein, Respondent respectfully requests that the Court dismiss the Petition. In the alternative, the Petition should be denied.

Respectfully submitted this 2nd day of January, 2026.

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