

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

AMIRIS MEDINA HERRERA,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-483-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,¹	:	
	:	
Respondent.	:	

MOTION TO DIMISS

On December 17, 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. 2–3, ECF No. 1. The Court should dismiss the Petition because (1) Petitioner’s *Zadvydas* claim is premature, and (2) in the alternative, Petitioner fails to show he is entitled to relief under *Zadvydas*.

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). Scott Decl. ¶¶ 4, 8 & Ex. A.

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.

Petitioner entered the United States on or about November 19, 1965, as a Public Interest Parolee at Key West, Florida. Scott Decl. ¶ 4 & Ex. A. Petitioner did not adjust status to that of a Lawful Permanent Resident; however, he did apply to renew his parole on August 15, 2009, with U.S. Citizenship and Immigration Services (“USCIS”), which was denied on February 4, 2010. *Id.* ¶ 5 & Ex. B. On or about May 12, 2022, Petitioner was encountered by Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE/ERO”) agents while he was incarcerated in the Georgia Department of Corrections. *Id.* ¶ 6 & Ex. C. A Form I-862, Notice to Appear (“NTA”), was also filed and served on May 12, 2022, charging Petitioner as being inadmissible under sections 212(a)(7)(A)(i) and 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (“INA”). *Id.* & Ex. D.

On or about November 10, 2022, Petitioner filed an application for relief from removal before the Executive Office for Immigration Review (“EOIR”). Scott Decl. ¶ 7. Petitioner appeared before the Immigration Court for an individual merits hearing on January 4, 2023, pro se from the Georgia Department of Corrections, whereat his application for relief was denied. *Id.* ¶ 8. Petitioner was found inadmissible under INA § 212(a)(2)(A)(i)(I) and ordered removed to Cuba. *Id.* Petitioner waived his appeal rights at that hearing. *Id.* & Ex. E.

On or about September 12, 2023, ICE took custody of Petitioner upon his release from the Georgia Department of Corrections via Form I-205, Warrant of Removal/Deportation, based on the final removal order from the Immigration Court. Scott Decl. ¶ 9 & Ex. F. On September 12, 2023, ICE transmitted a formal request for travel documents for the Petitioner from his home state of Cuba via the Consul-General. *Id.* ¶ 10 & Ex. G. Petitioner was then released by ICE under supervision pending removal on December 14, 2023. *Id.* ¶ 11 & Ex. H.

On or about July 10, 2025, during a scheduled appointment pursuant his order of release, Petitioner was taken into ICE custody by a Form I-205, Warrant of Removal Deportation, and transported to the Stewart Detention Center. Scott Decl. ¶ 12 & Ex. I. ICE then initiated an additional custody review of Petitioner on November 13, 2025, which remains pending. *Id.* ¶ 13 & Ex. J. On or about January 4, 2026, a new nomination for Petitioner to be repatriated to Cuba was issued. *Id.* ¶ 14. On or about January 6, 2026, ICE served Petitioner with written notice of third country removal to Mexico, which routinely accepts individuals in similar circumstances as Petitioner. *Id.* ¶ 15.

LEGAL FRAMEWORK

Because 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 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 seeks relief under *Zadvydas*, asserting that his post-final order of removal detention violates due process because there is no significant likelihood of removal in the reasonably foreseeable future. Pet. 6, 2–3. The Petition should be dismissed for two reasons. *First*, Petitioner’s *Zadvydas* claim is premature on its face because he has not been detained post-final order of removal for six months. *Second*, even assuming Petitioner could state a claim for relief under *Zadvydas*—which he cannot—he fails to show that he is entitled to relief. For these reasons, the Court should dismiss the Petition.

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

The Petition is premature on its face under *Zadvydas* because Petitioner has been detained post-final order of removal for less than six months. The Petition should be dismissed because Petitioner is not entitled to any relief.

Because 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 the Department of Homeland Security (“DHS”) shall remove an alien within ninety (90) days of the date the order of removal becomes administratively final. *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 does not remove an alien during the removal period, detention may continue if it is “reasonably necessary” to effectuate removal. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). In *Zadvydas*, the Supreme Court determined that, under the Fifth Amendment, detention for six months is presumptively reasonable. *Zadvydas*, 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.

The Eleventh Circuit has made clear that “[t]his 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 v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002); *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). Even if the Petition was filed after the six-month post-removal detention period—which it was not—Petitioner also carries the burden to establish that there is no “reasonable likelihood of removal” in the foreseeable future. *Zadvydas*, 533 U.S. at 701.

Here, the IJ ordered Petitioner removed on January 4, 2023. Scott Decl. ¶ 8 & Ex. E. Petitioner was then taken into ICE custody following his release from the Georgia Department of Corrections on September 12, 2023. Scott Decl. ¶ 9 & Ex. F. On December 14, Petitioner was released by ICE under supervision pending removal. Scott Decl. ¶ 11 & Ex. H. On July 10, 2025, Petitioner most recently was taken into ICE custody. Scott Decl. ¶ 12 & Ex. I. The six-month presumptively reasonable detention period under *Zadvydas* will not end until January 10, 2026. *Zadvydas*, 533 U.S. at 700.

Courts throughout the Eleventh Circuit—including this Court—have dismissed non-citizens' habeas applications raising *Zadvydas* claims where the presumptively reasonable six-month period had not expired when they filed their petitions. *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021); *Garcon v. Warden, Irwin Cty. Det. Ctr.*, No. 7:16-CV-158-WLS-MSH, 2017 WL 9250368, at *2 (M.D. Ga. Aug. 30, 2017), *recommendation adopted*, 2018 WL 2056562 (M.D. Ga. Feb. 27, 2018); *Elieust 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.

Petitioner signed the Petition on December 2, 2025. Pet. 4. Because Petitioner is detained, the Petition is deemed filed on that date. *United States v. Glover*, 686 F.3d 1203, 1205 (11th Cir. 2012) (internal quotations and citation omitted). Thus, at the time the Petition was filed, the *Zadvydas* six-month presumptively reasonable detention period had not expired and will not expire until January 10, 2026. Thus, Petitioner cannot state a claim under *Zadvydas* because his detention is presumptively reasonable. *Akinwale*, 287 F.3d at 1052.

Petitioner may attempt to argue that his previous period of post-final order of removal detention—between September 12, 2023 and December 14, 2013—should be added to the current period of detention in calculating whether he has been detained beyond the six-month presumptively reasonable period. If made, this argument should be rejected. In *Meskini v. Attorney General of United States*, No. 4:14-CV-42, 2018 WL 1321576 (M.D. Ga. Mar. 14, 2018), this Court denied a petition raising a *Zadvydas* claim where the petitioner had been detained by ICE/ERO multiple times which collectively amounted to more than six months. The Court stated:

This Court does not read *Zadvydas* to be a permanent “Get Out of Jail Free Card” that may be redeemed at any time just because an alien was detained too long in the past. The Court’s focus is on *today* and whether Petitioner will likely be removed in the reasonably foreseeable future based on the facts available to the Court *today*. The Court acknowledges the Supreme Court’s observation that the length of prior detention is a factor that must be considered in deciding a reasonable length of time for future detention, but the Court does not understand that factor to necessarily be dispositive. Things do change. To ignore that change would be as judicially irresponsible as ignoring the events leading up to it.

Meskini, 2018 WL 1321576, at *3. Therefore, Petitioner should not be able to rely on his previous period of detention to satisfy the *Zadvydas* threshold. The circumstances surrounding his detention have unquestionably changed and the Court should look to the present and not his prior detention. The Petition should consequently be dismissed as premature.

II. In the alternative, Petitioner fails to show that he is entitled to relief under *Zadvydas*.

Even if the Court ignores that Petitioner’s *Zadvydas* claim is premature on its face—which it should not—Petitioner fails to show that he is entitled to release under *Zadvydas*.

Petitioner presents no evidence to show that he is not likely to be removed in the reasonably foreseeable future. In an attempt to meet his burden, he appears to rely on the mere passage of time without removal, stating that he “still has not been removed[.]” Pet. 3. But as other courts have recognized, 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)).

Apart from this unsubstantiated and insufficient assertion, Petitioner relies only on a conclusory statement that “Petitioner’s removal to Cuba or any other country is not significantly likely to occur in the reasonably foreseeable future.” Pet. 2. But a non-citizen’s conclusory statements that he is unlikely to be removed in the near future are 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 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). Because Petitioner provides none, he cannot meet his burden under *Zadvydas*.

Even assuming Petitioner offered evidence sufficient to shift the burden to Respondent to show a likelihood of removal—which he has not—Respondent meets his burden. On January 4, 2026, a new nomination for Petitioner to be repatriated to Cuba was issued. Scott Decl. ¶ 14. Additionally, and in the alternative, Petitioner was served with written notice of third country removal to Mexico. *Id.* ¶ 15. Mexico routinely accepts individuals in similar circumstances as Petitioner's. *Id.*

For these reasons, the evidence shows that there is a significant likelihood of removal in the reasonably foreseeable future, and the Petition should be dismissed because Petitioner fails to show that he is entitled to relief under *Zadvydas*.

CONCLUSION

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

This 7th day of January, 2026.

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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 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:

Amiris Medina Herrera
A# 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 7th day of January, 2026.

BY: s/ Travis D. Lynes
TRAVIS D. LYNES
Assistant United States Attorney