

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

ESTEBAN LORENZO TOMAS,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-513-CDL-ALS
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART	:	
DETENTION CENTER, ¹	:	
	:	
Respondent.	:	

RESPONDENT’S MOTION TO DISMISS

On December 30, 2025, the Court received Petitioner’s petition for a writ of habeas corpus (“Petition”). ECF No. 1. In his Petition, Petitioner asserts that his detention violates his Fifth Amendment due process rights pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001). ECF No. 1, Pet. 2. Petitioner also argues that his detention violates due process and that he has not been given sufficient notice to contest his removal to a third country. Pet. 5-7. He seeks an order prohibiting his transfer and release from custody on an order of supervision. Pet. 11. As explained below, the Petition should be dismissed or, alternatively, denied.

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 as the sole appropriately named respondent in this action.

BACKGROUND

Petitioner is a native and citizen of Guatemala who illegally entered the United States on May 24, 2018, near the San Luis, Arizona Port of Entry with his father. Declaration of Deportation Officer Charles Gillikin at ¶ 3 & Ex. A, Form I-213. On October 18, 2018, ICE/ERO issued Petitioner a Notice to Appear (NTA) charging Petitioner with inadmissibility pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA). *Id.* at ¶ 4 & Ex. B, Notice to Appear. On November 29, 2018, the Immigration Court issued Petitioner a Notice of Hearing, requiring Petitioner to appear in Miami, Florida on May 30, 2019. *Id.* at ¶ 5. On May 30, 2019, Petitioner appeared with a Friend of the Court for a master calendar hearing. *Id.* at ¶ 6. The Immigration Judge continued the case to January 30, 2020, after Petitioner requested time to secure an attorney. *Id.* On January 30, 2020, Petitioner appeared *pro se* for his master calendar hearing. *Id.* at ¶ 7. The Immigration Judge continued the case to give the Petitioner additional time to hire an attorney. *Id.*

On or about December 11, 2023, Petitioner was confirmed to be a class member of the *Ms. L. v. ICE*, Case No. 18-428 (S.D. Cal. Dec. 11, 2023), class action litigation. *Id.* at ¶ 8 & Ex. A. On July 18, 2024, Petitioner failed to appear for his master calendar hearing because a Notice of Hearing was not served on Petitioner for that hearing. *Id.* at ¶ 9. The Immigration Judge continued the case until February 25, 2027. *Id.*

On December 11, 2024, ICE/ERO encountered Petitioner at the Ben Hill County Jail after he was arrested for Enticing a Child of Indecent Purposes and Child Molestation. *Id.* at ¶ 10. On or about April 7, 2025, Petitioner entered ICE custody at the Stewart

Detention Center in Lumpkin, Georgia. *Id.* On April 8, 2025, DHS filed a motion to change venue in Petitioner's case from Miami to Stewart; an Immigration Judge granted the motion on April 11, 2025. *Id.* at ¶ 11. On June 11, 2025, Petitioner appeared *pro se* for a master calendar hearing at the Stewart Detention Center; he admitted the allegations and conceded the charge of removability contained in the NTA. *Id.* at ¶ 12. The Immigration Judge found that Petitioner had no relief from removal and entered an Order of Removal. *Id.* DHS and Petitioner waived appeal. *Id.* & Ex. C, Final Order of Removal.

On June 27, 2025, the U.S. District Court for the Southern District of California issued an order in *Ms. L. v. ICE*, prohibiting the removal of any class members. *Id.* at ¶ 13 & Ex. D, Order dated June 27, 2025. Removal can be effectuated, however, upon written approval from class counsel. *Id.* In late August 2025, ICE/ERO contacted the appropriate DHS points of contact to determine whether Petitioner could be removed from the United States. *Id.* at ¶ 14. On or about January 16, 2026, ICE reached out to the Department of Justice's Office of Immigration Litigation Division ("DOJ-OIL") to obtain the necessary approval from class counsel. *Id.* at ¶ 15. As of January 21, 2026, ICE has not received a response. *Id.* On previous occasions, it has typically taken class counsel one to two weeks to provide DOJ-OIL with a response. *Id.* at ¶ 16.

Petitioner is currently detained at Stewart Detention Center pursuant to INA § 241, 8 U.S.C. § 1231. *Id.* at ¶ 17. Upon notification that approval for removal has been received, ICE will proceed with Petitioner's removal. *Id.* at ¶ 18. Guatemala is open for international travel, and ICE/ERO routinely removes non-citizens to Guatemala. *Id.*

LEGAL FRAMEWORK

I. Jurisdiction Over Final Orders of Removal

In the immigration context, “[f]ollowing enactment of the REAL ID Act of 2005, district courts lack habeas jurisdiction to entertain challenges to final orders of removal.” *Themeus v. U.S. Dep’t of Justice*, 643 F. App’x 830, 832 (11th Cir. 2016) (per curiam) (citing 8 U.S.C. § 1252(a)(5), (b)(9)). “Instead, ‘a petition for review filed with the appropriate court is now an alien’s exclusive means of review of a removal order.’” *Id.* (quoting *Alexandre v. U.S. Att’y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006)). Section 1252(b)(9) provides in full:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under [subchapter II of chapter 12 (8 U.S.C. §§ 1151-1378)] shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9).

The Supreme Court has described § 1252(b)(9) as an “unmistakable zipper clause” that streamlines litigation by consolidating and channeling claims first to the agency and then to the circuit courts through petitions for review. *Reno v. American-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 483 (1999). In AADC, the Court elaborated on the breadth of section 1252(b)(9), explaining that it serves as a “general jurisdictional limitation” on challenges to actions arising from removal operations and proceedings. *Id.*

at 482. District courts are barred from reviewing removal proceedings regardless of how the non-citizen characterizes her claim. *Mata v. Sec’y of Dep’t of Homeland Sec.*, 426 F. App’x 698, 700 (11th Cir. 2011) (per curiam) (affirming district court’s dismissal of challenge to removal order brought pursuant to the federal question and mandamus statutes, Administrative Procedure Act, and the Declaratory Judgment Act).

Additionally, 8 U.S.C. § 1252(g) provides that

[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). “When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) applies “to three discrete actions that the Attorney General may take: [the] ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *AADC*, 525 U.S. at 482 (emphasis in original). Section 1252(g) operates as “a ‘discretion-protecting provision’ designed to prevent the ‘deconstruction, fragmentation, and hence prolongation of removal proceedings.’” *Camarena v. Director, Imm. & Customs Enft*, 988 F.3d 1268, 1272 (11th Cir. 2021) (quoting *AADC*, 525 U.S. at 487).

II. Post-Final Order Detention and *Zadvydas*

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).

III. Third Country Removals

The INA provides the Executive Branch with the authority to execute orders of removal and to ensure that aliens who have been ordered removed are in fact removed from the United States. This authority is broad. The United States may remove aliens to various countries including, where other options are unavailable, to any country willing and able to accept them. *See* 8 U.S.C. § 1231(b). Of course, under the statute and regulations implementing the Convention Against Torture (“CAT”), the United States will not remove any alien to a country where the United States has found he is likely to be tortured—*i.e.*, the extreme scenario where the alien is likely to face severe pain or suffering intentionally inflicted by the hand or with the consent of the public official. The standard for “torture” is a high bar and is plainly not easily met.

Although the INA authorizes removal of aliens who have received a final order of removal to a third country (*see*, 8 U.S.C. § 1231(b)(1)(E)), it does not provide any additional, specific process that aliens must receive under CAT after a final order of removal has been issued but prior to removal to a third country. Congress has delegated the decision regarding the appropriate process entirely to the Executive Branch. *See* 8 U.S.C. § 1231 note. On March 30, 2025, the Department of Homeland Security (“DHS”)

issued guidance detailing its policy in this context, following Executive Order 14165 regarding removal of aliens subject to final orders of removal. *See* March 30, 2025 Guidance and Executive Order 14165, 90 Fed. Reg. 8467.

The DHS Guidance establishes a two-track system to address aliens who have been ordered removed but for various reasons cannot be sent to a country specifically designated in their removal orders. First, where the United States has received a sufficient assurance from a third country that no aliens will be tortured upon removal there, the Executive may remove the alien to that country without any further process. A section applies for countries where the United States has not received such an assurance. In that case, the DHS policy provides that the alien is entitled to notice of the third country and an opportunity for a prompt screening of any asserted fear of being tortured there.

ARGUMENT

Petitioner asserts two main arguments: (1) that his detention violates due process under *Zadvydas* because he allegedly cannot be removed to Guatemala, and (2) that his continued detention violates due process. *See generally* ECF No. 1. The Petition should be dismissed for lack of jurisdiction, or alternatively, denied on the merits. *First*, the Court lacks jurisdiction to entertain challenges to ICE/ERO's decision or action to execute final orders of removal. *Second*, if the Court reaches Petitioner's argument regarding due process, it should find the claim is without merit. Because Petitioner's *Zadvydas* claim relies on the success of his argument that he cannot be removed, and because Petitioner can be removed to Guatemala in the reasonably foreseeable future, his claim fails.

I. The Court is without jurisdiction to intervene to prevent Petitioner's removal or stay his transfer.

Section 1252(b)(9) deprives the Court of jurisdiction over Petitioner's request that the Court stay his removal. By seeking a stay of removal, Petitioner plainly challenges ICE/ERO's decision to execute his removal from the United States. In doing so, he seeks "[j]udicial review of [a] question[] of law and fact . . . arising from an[] action taken or proceeding brought to remove [a non-citizen] from the United States[.]" 8 U.S.C. § 1252(b)(9). Accordingly, courts lack jurisdiction to stay removal in a habeas proceeding. *Id.* ("[N]o court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision . . . to review such an order or such questions of law or fact."). This Court has routinely denied requests for stays of removal during habeas proceedings. *See, e.g., C.R.L. v. Dickerson*, No. 4:25-cv-175-CDL, 2025 WL 1800209, at *3 (M.D. Ga. June 30, 2025) (recognizing "well-established precedent that this Court has no jurisdiction to interfere with the execution of a final order of removal"); *C.B.M. v. Warden, Stewart Det. Ctr.*, No. 4:19-cv-44-CDL, 2019 WL 5243067, at *1 (M.D. Ga. Aug. 30, 2019) ("The Court lacks jurisdiction to stay Petitioner's removal." (citation omitted)); *Watson v. Stone*, No. 4:13-cv-480-CDL, 2013 WL 6072894, at *2 (M.D. Ga. Nov. 18, 2013) (denying a non-citizen's motion to stay his removal and noting that § 1252(a)(5) "has consistently been interpreted by district courts faced with a motion to stay removal as stripping them of jurisdiction to provide such relief[]" (collecting cases)).

Further, § 1252(g) similarly bars jurisdiction. By requesting a stay of removal, Petitioner seeks to challenge "the decision or action by the Attorney General to . . . execute

[her] removal order[.]” 8 U.S.C. § 1252(g). The Eleventh Circuit has made clear that § 1252(g) deprives the Court of jurisdiction to stay removal. In *Camarena v. Director, Immigration and Customs Enforcement*, 988 F.3d 1268 (11th Cir. 2021), two non-citizens subject to final orders of removal “filed . . . habeas petition[s] and . . . emergency motion[s] to halt the execution of [their] removal order[s].” 988 F.3d at 1270-71. The district courts denied their requests for stays of removal, finding they lacked subject matter jurisdiction. *Id.* The Eleventh Circuit affirmed on appeal, holding that the non-citizens’ “claims [fell] squarely within § 1252(g)’s jurisdictional bar” because they challenged “the government’s execution of [their] removal orders.” *Id.* at 1272.

Like the non-citizens in *Camarena*, Petitioner is subject to a final order of removal and seeks a stay of his removal. In doing so, Petitioner challenges ICE/ERO’s action to “execute [his] removal order[.]” 8 U.S.C. § 1252(g). As the Eleventh Circuit recognized in *Camarena*, such a challenge “fall[s] squarely within § 1252(g)’s jurisdictional bar[.]” *Camarena*, 988 F.3d at 1272. The Court, therefore, lacks subject matter jurisdiction over Petitioner’s request that his removal be stayed, and his Petition should be denied to the extent he seeks a stay of his removal.

Similarly, to the extent that Petitioner requests that this Court enjoin his transfer, the Court should decline to make any such ruling. DHS is authorized to determine the “appropriate place[] of detention for [non-citizens] detained pending removal or a decision on removal.” 8 U.S.C. § 1231(g)(1). Multiple courts of appeals have held that this affords DHS the “discretionary power to transfer [non-citizens] from one locale to another, as [DHS] deems appropriate[.]” *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir.

1999) (citations omitted); *see also Calla-Collado v. Att’y Gen. of U.S.*, 663 F.3d 680, 685 (3d Cir. 2011); *Gandarillas-Zambrana v. Bd. of Imm. Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995); *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985). District courts in the Eleventh Circuit have recognized the same. *Golding v. DHS/ICE*, No. 4:19-cv-01160, 2019 WL 11720287, at *2 (N.D. Ala. Oct. 3, 2019); *Sasso v. Milhollan*, 735 F. Supp. 1045, 1048 (S.D. Fla. 1990).

Because any transfer of Petitioner is a discretionary decision by DHS, the Court lacks jurisdiction to enjoin any transfer under 8 U.S.C. § 1252(a)(2)(B)(ii), which provides that

Notwithstanding any other provision of law (statutory or nonstatutory), including [28 U.S.C. § 2241], or any other habeas corpus provision, . . . *no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security*[.]

(emphasis added). Multiple courts have concluded that § 1252(a)(2)(B) deprives district courts of jurisdiction to enjoin DHS’s discretionary transfer of a detained non-citizen. *Van Dinh*, 197 F.3d at 433; *Golding*, 2019 WL 11720287, at *2; *Lway Mu v. Whitaker*, No. 6:18-cv-06924, 2019 WL 2373883, at *5 (W.D.N.Y. June 4, 2019). The Court should deny Petitioner’s request for an order preventing his transfer.

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

ICE’s detention authority stems from 8 U.S.C. § 1231, which provides for the detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days, which is known as the “removal period.” During the removal period,

ICE must detain the alien. 8 U.S.C. § 1231(a)(2) (noting the mandatory language “shall detain”). If the removal period expires, ICE can either release an individual pursuant to an Order of Supervision as directed by § 1231(a)(3) or may continue detention under § 1231(a)(6). ICE may continue detention beyond the removal period for three categories of individuals: (i) those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182; (ii) those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or (iii) those whom immigration authorities have determined to be a risk to the community or “unlikely to comply with the order of removal.” 8 U.S.C. § 1231(a)(6)(A). Put another way, if ICE/ERO does not remove an alien within ninety days, detention may continue if it is “reasonably necessary” to effectuate removal for these categories of detainees. *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).

Here, Petitioner cannot carry his burden under *Zadvydas*. Petitioner argues that he is entitled to release under *Zadvydas* because he has been in detention for more than six months and he alleges that the Government has not shown removal to Guatemala is reasonably foreseeable. ECF No. 1, Pet. 5. But Petitioner misapprehends the relevant standard, which places the initial burden of production upon the petitioner to show that removal is not significantly likely in the reasonably foreseeable future. *Akinwale*, 287 F.3d at 1051-52. Petitioner cannot meet his *Zadvydas* burden by simply noting that his removal has not yet occurred. *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)). Petitioner’s summary statement that he cannot be removed to Guatemala in the future is insufficient.

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 Guatemala has denied any and all request for travel documents,” despite his cooperation. Pet. 3. 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*.

Petitioner is also wrong. 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 has taken significant steps to effectuate Petitioner’s removal to Guatemala. While that process has been delayed given Petitioner’s status as a Ms. L. class member, Petitioner’s removal is still likely to occur in the reasonably foreseeable future. In late August 2025, ICE/ERO contacted the appropriate DHS points of contact to determine

whether Petitioner could be removed from the United States. Gillikin Decl. at ¶ 14. On or about January 16, 2026, ICE reached out to DOJ-OIL to obtain the necessary approval from class counsel. *Id.* at ¶ 15. As of January 21, 2026, ICE has not received a response. *Id.* On previous occasions, it has typically taken class counsel one to two weeks to provide DOJ-OIL with a response. *Id.* at ¶ 16. Upon notification that approval for removal has been received, ICE will proceed with Petitioner's removal. *Id.* at ¶ 18. Guatemala is open for international travel, and ICE/ERO routinely removes non-citizens to Guatemala. *Id.*

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.

III. 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 Guatemala 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

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

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 Guatemala 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 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 deny the Petition.

Respectfully submitted this 21st day of January, 2026.

WILLIAM R. KEYES
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:

Esteban Lorenzo Tomas
A# 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

Respectfully submitted this 21st day of January, 2026.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

By: s/W. Taylor McNeill
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