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

VU HOANG NGUYEN,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-514-CDL-CHW**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On December 30, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition"). ECF No. 1. Petitioner argues that his detention has become unreasonably prolonged under *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). *Id.* On November 26, 2025, the Court ordered Respondent to respond to the Petition within twenty-one (21) days. ECF No. 3. For the reasons explained below, the Petition should be dismissed.

BACKGROUND

Petitioner is a native and citizen of Vietnam who has most recently been detained post-final order of removal pursuant to 8 U.S.C. § 1231(a) since September 16, 2025. Declaration of Jeffrey Knowles ("Knowles Decl.") ¶¶ 4, 7, 8 & Ex. A. On or about June 30, 1982, Petitioner was admitted to the United States as a lawful permanent resident. *Id.* ¶ 4 & Ex. A. On January 8, 2007, Immigration and Customs Enforcement ("ICE") / Enforcement and Removal Operations ("ERO") encountered Petitioner at the the Tehachapi State Prison in Tehachapi, California, after having been convicted on February 8, 2006, for the offenses of Receiving Stolen Property in violation of Section 496d(A) of the California Penal Code and Possession for Sale of a Controlled Substance,

Methamphetamine, in violation of Section 11378 of the California Health and Safety Code. *Id.* ¶ 5 & Ex. B. On the same day, Petitioner was served with a Notice to Appear ("NTA") charging him with inadmissibility pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA") (8 U.S.C. § 1227(a)(2)(A)(iii)). *Id.* ¶ 6 & Ex. C. Petitioner did not file any applications for relief from removal. *Id.* ¶ 6. On February 8, 2007, an Immigration Judge (IJ) ordered Petitioner removed to Vietnam. *Id.* ¶ 6 & Ex. D. Petitioner waived his right to appeal, and no appeal has ever been filed. *Id.* On May 15, 2007, Petitioner was released under an Order of Supervision. Knowles Decl. ¶ 8 & Ex. E.

On June 17, 2008, ICE/ERO encountered Petitioner at the San Bernardino County Jail. *Id.* ¶ 9 & Ex. F. On September 26, 2008, ICE/ERO assumed custody of the Petitioner and returned him to the San Bernardino County Jail under an Order of Supervision that same day. *Id.* ¶ 9 & Ex. G.

On September 16, 2025, Petitioner was brought into ICE custody pending removal after the Petitioner reported to the Atlanta Field Office for his scheduled reporting appointment. Knowles Decl. ¶ 10 & Ex. H. The same day, ICE/ERO presented the Petitioner with an application for a travel document (TD). *Id.* ¶ 11. That same day the Petitioner completed and signed the TD application. *Id.* ¶ 11. On December 1, 2025, ICE/ERO sent a travel document request (TDR) packet to ERO Headquarters Removal Integration Operations (RIO). *Id.* ¶ 12. On December 31, 2025, ICE/ERO requested an update from RIO on the status of the Petitioner's TDR. *Id.* ¶ 13. To date, Petitioner remains detained at Stewart Detention Center pursuant to INA § 241(a). *Id.* ¶ 14.

There is a significant likelihood of Petitioner's removal to Vietnam in the reasonably foreseeable future. Knowles Decl. ¶ 15. ICE/ERO is presently removing Vietnamese nationals subject to final orders of removal to Vietnam. *Id.* ¶ 15. Specifically, ICE/ERO removed 699

Vietnamese nationals to Vietnam in fiscal year 2025. *Id.* ¶ 15. In fiscal year 2025, 448 travel document requests were submitted to the government of Vietnam. Knowles Decl. ¶ 16. In fiscal year 2026, travel document have been issued within 30 days from presenting the request to the government of Vietnam. *Id.* ¶ 16. ICE/ERO intends to effectuate Petitioner's removal once travel documents are received. *Id.* ¶ 16.

On November 21, 2020, the Department of Homeland Security ("DHS") and the Ministry of Public Security of the Socialist Republic of Vietnam entered into a Memorandum of Understanding ("MOU") that provides for the removal of Vietnam citizens who entered the United States prior to July 12, 1995. *Id.* ¶ 17 & Ex. I.

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. 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 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) (internal quotations omitted).

ARGUMENT

Petitioner argues that his continued detention violates the INA and the Supreme Court's interpretation thereof in *Zadvydas*. Pet. 2-3. This claim should also be dismissed. Section 1231(a)(6)—as interpreted by *Zadvydas*—authorizes Petitioner's detention because (1) any challenge to his detention is premature because he has not been detained post-final order of removal for more than six months since he re-entered ICE/ERO custody, and (2) there is a significant likelihood of removal in the reasonably foreseeable future.

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

Petitioner claims his detention violates the Supreme Court's interpretation of the INA in

Zadvydas and its progeny. Pet. 2-3. The Court should dismiss this claim because 8 U.S.C. § 1231(a)(6)—as interpreted by *Zadvydas*—authorizes Petitioner's detention. Specifically, Petitioner fails to state a claim for relief under *Zadvydas* because (1) his claim is premature, and (2) in the alternative, there is a significant likelihood of removal in the reasonably foreseeable future.

A. Petitioner fails to state a claim because his *Zadvydas* claim is premature.

The Court should dismiss the Petition because Petitioner had not been detained post-final order of removal for more than six months since he last entered ICE/ERO custody at the time he filed his Petition. Accordingly, he cannot state a claim for relief under *Zadvydas* because his detention is presumptively reasonable, and 8 U.S.C. § 1231(a)(6) therefore continues to authorize his detention.

In *Zadvydas*, the Supreme Court held that six months of post-final order of removal detention under 8 U.S.C. § 1231(a)(6) is "a presumptively reasonable period of detention" from a due process standpoint. 533 U.S. at 701. Because six months of post-final order of removal detention is presumptively reasonable, the Eleventh Circuit has held that "in order to state a claim under *Zadvydas* the alien . . . must show post-removal order detention in excess of six months[.]" *Akinwale*, 287 F.3d at 1052. More specifically, 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*." *Id.*; *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, Petitioner was ordered removed on February 8, 2007. Knowles Decl. ¶ 6 & Ex. C. Because he waived appeal, his removal order became final the same day. *Id.* ¶ 6 & Ex. C; 8 C.F.R. § 1241.1(b). On September 16, 2025, Petitioner re-entered ICE/ERO custody. *Id.* ¶ 7. Since that

date, ICE/ERO has proceeded with efforts to obtain a travel document from Vietnam. *Id.* ¶¶ 8-10.

Petitioner filed his Petition on December 30, 2025, approximately three and a half months after his most recent detention began. ECF No. 1. Therefore, at the time the Petition was filed, Petitioner had not been detained beyond the *Zadvydas* presumptively reasonable six-month period since he re-entered ICE/ERO custody. Accordingly, he fails to state a claim under *Zadvydas*, and the Petition should be dismissed as premature. *See Akinwale*, 287 F.3d at 1052; *Themeus*, 643 F. App'x at 833; *Guo Xing Song*, 516 F. App'x at 899.

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. *J.A.S. v. Warden*, No. 4:25-cv-244-CDL-CHW, 2025 WL 3777151 (M.D. Ga. Oct. 14, 2025), *recommendation adopted*, 2025 WL 2776726 (M.D. Ga. Dec. 31, 2025); *L.A.A.C. v. Bondi*, No. 4:25-cv-199-CDL-ALS, 2025 WL 2490291, at *2 (M.D. Ga. June 26, 2025), *recommendation adopted*, 2025 WL 2484015 (M.D. Ga. Aug. 28, 2025); *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); *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 because Petitioner cannot show that the *Zadvydas* six-month presumptively reasonable detention period had "expired *at the time [Petitioner's] § 2241 petition was filed*[.]" *Akinwale*, 287 F.3d at 1052 (emphasis added).

Petitioner may argue that any previous periods of post-final order of removal detention should be added to the current period of detention in determining whether he satisfies the timing element of his *Zadyvdas* claim. This argument should be rejected. As this Court has recognized, *Zadvydas* is not "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." *Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018). Rather, the "focus [for *Zadvydas*] is on *today*[.]" *Id.* (emphasis in original) (denying *Zadvydas* claim where the non-citizen had multiple periods of post-final order of removal detention that collectively amounted to more than six months); *see also J.A.S.*, 2025 WL 3777151 at *3 (reaffirming *Meskini*). For this reason, the Court has held that the *Zadvydas* six-month presumptively reasonable detention period re-commences when a non-citizen is re-detained after previously spending time in ICE/ERO custody.

In *M.K. v. Warden, Stewart Det. Ctr.*, No. 4:23-cv-136 (M.D. Ga. Oct. 19, 2023), a non-citizen was detained post-final order of removal for approximately seven months before his release under an order of supervision. *M.K.*, No. 4:23-cv-136, R. & R. 2 (M.D. Ga. Oct. 19, 2023), ECF No. 12. ICE/ERO re-detained him approximately eleven years later, and the non-citizen sought habeas relief under *Zadvydas* approximately two months after his re-detention. *Id.* The Court held that the *Zadvydas* six-month period re-commenced when the non-citizen was most recently detained by ICE/ERO. *Id.* at 3-7. In reaching this conclusion, the Court reasoned that the *Zadvydas* six-month period was intended "to allow the Government to arrange for an alien's removal." *Id.* at 6 (citing *Zadvydas*, 533 U.S. at 700-01). If a non-citizen's prior periods of post-final order of removal detention were cumulated with his present period of detention, this "would effectively eviscerate § 1231(a)'s purpose of allowing the Government time to arrange for an alien's removal, including contacting foreign consulates and obtaining necessary travel documents." *Id.* at 6-7.

Because the non-citizen's most recent period of post-final order of removal detention had not exceeded six months, the Court dismissed his petition as premature. *Id.* This Court recently applied this same rule. *See J.A.S.*, 2025 WL 3777151 at *3 (reaffirming *Meskini* and dismissing a Cuban habeas petitioner's *Zadvydas* claim as premature where he had been detained post-final order of removal less for less than six months following re-arrest after a period of release).

The circumstances of this case demonstrate why prior periods of detention should not be cumulated in assessing whether a *Zadvydas* claim is premature. As this Court has recognized, in evaluating a *Zadvydas* claim, "the proper perspective is *today*. Not whether someone may subjectively believe that Petitioner's rights have been violated in the past[.]" *Meskini*, 2018 WL 1321576, at *4. "The question is, as of *this moment* and given the current circumstances, whether Petitioner is likely to be removed in the reasonably foreseeable future or whether he is not." *Id.*

"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. Here, the removability of Vietnamese nationals has changed fundamentally since Petitioner's most recent release from custody in 2008. Specifically, in 2020, the United States and Vietnam agreed to resume removals of Vietnamese nationals who arrived prior to 1995, and ICE/ERO has successfully executed removals in accordance with that change. Knowles Decl. ¶¶ 15-17 & Ex. I. The overall environment for Vietnamese repatriations has changed materially in 2025, as shown by the significant increase in both approved travel document requests and removals to Vietnam. *Id.* ¶¶ 15-17.

Although Petitioner was previously detained post-final order of removal, he filed the Petition less than six months after he was re-detained on September 16, 2025. ECF No. 1. Just like in *M.K.* and *J.A.S.*, his *Zadvydas* claim is therefore premature because he cannot show more than

six months of post-final order of removal detention since his most recent re-detention. Accordingly, Petitioner's *Zadvydas* challenge should be dismissed as premature.

B. In the alternative, there is a significant likelihood of removal in the reasonably foreseeable future.

Even if the Court ignores that Petitioner's challenge to his post-final order of removal detention is premature on its face—which it should not—the Petition should still be dismissed because Petitioner fails to show that he is entitled to release under *Zadvydas*. Specifically, he fails to meet his evidentiary burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. Further, even if the burden is shifted, Respondent meets his burden.

Petitioner argues in conclusory fashion that his removal is not significantly likely to occur in the reasonably foreseeable future. Pet. 3. But as courts in the Eleventh Circuit—including this Court—have recognized, such conclusory assertions 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-CDL-MSH, 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). Further, as this Court has repeatedly held, the "focus [for *Zadvydas*] is on *today*[.]" *Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018). Because Petitioner provides no *evidence* to show he cannot be removed under the current circumstances, he cannot meet his burden under *Zadvydas*.

Even if Petitioner had presented evidence sufficient to shift the burden to Respondent—

which he has not—Respondent meets his burden. While relations between the United States and Vietnam made removals prior to 2020 difficult, if not impossible, those circumstances have materially changed. Critically, in 2020, the United States and Vietnam signed a Memorandum of Understanding ("MOU") that "establish[es] procedures on the prompt and orderly acceptance of Vietnamese citizens who have been ordered removed . . . and who arrived in the United States *before July 12, 1995*[.]" Knowles Decl. Ex. I. This MOU specifically permits removals of certain Vietnamese nationals who, like Petitioner, entered the country before July 12, 1995. *Id.* As other courts have recognized, the 2020 MOU constitutes a fundamental change for Vietnamese nationals detained post-final order of removal and denied their *Zadvydas* claims accordingly. *See, e.g., Nguyen v. Noem*, -- F. Supp. 3d --, 2025 WL 2737803, at *2, 9 (N.D. Tex. Aug. 10, 2025); *Duong v. Tate*, No. H-24-4119, 2025 WL 933947, at *3-4 (S.D. Tex. Mar. 27, 2025). Petitioner provides no argument for why he cannot be removed in accordance with the MOU, and he fails to meet his *Zadvydas* burden accordingly.

In evaluating the present likelihood of removal, courts "must take appropriate account of the greater immigration-related expertise of the Executive Branch" and "listen with care [to] the Government's foreign policy judgments[.]" *Zadvydas*, 533 U.S. at 700. This is particularly true "for example, [when] the status of repatriation negotiations[] are at issue[.]" *Id.* In that case, courts must "grant the Government appropriate leeway when its judgments rest upon foreign policy expertise." *Id.*; *see also Meskini*, 2018 WL 1321576, at *3-4.

At most, ICE/ERO is simply awaiting final submission of a travel document request for Petitioner and a decision from the Vietnam government. District courts in the Eleventh Circuit have held that the mere delay in the procurement of a travel document is insufficient to warrant relief under *Zadvydas*. *See Novikov*, 2018 WL 4100694, at *2 (denying non-citizen's *Zadvydas*

claim where the non-citizen did "not explain how the past lack of progress in the issuance of his travel documents means that [his country of nationality] will not produce the documents in the foreseeable future"); *Linton v. Holder*, No. 10-20145-Civ-Lenard, 2010 WL 4810842, at *4 (S.D. Fla. Oct. 4, 2010) ("[A] delay in issuance of travel documents does not, without more, establish that a petitioner's removal will not occur in the reasonably foreseeable future, even where the detention extends beyond the presumptive 180 day (6 month) presumptively reasonable period." (citations omitted)); *accord. Alhousseini v. Whitaker*, No. 1:18-cv-848, 2019 WL 1439905, at *3 (S.D. Ohio Apr. 1, 2019), *recommendation adopted*, 2020 WL 728273 (S.D. Ohio Feb. 13, 2020) (collecting cases). The Court should reach the same conclusion here and find that Petitioner's current detention does not exceed the limitations set forth by *Zadvydas*.

Petitioner's continued detention pursuant to 8 U.S.C. § 1231(a)(6)—as interpreted by *Zadvydas*—satisfies due process because his detention is presumptively reasonable and because there is a significant likelihood of removal within the reasonably foreseeable future. Accordingly, the Petition should be dismissed.

CONCLUSION

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

Respectfully submitted, this 20th day of January, 2026.

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