

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

YIHUI XU,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-530-CDL-CHW
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER, ¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On December 30, 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 January 2, 2026, the Court ordered Respondent to respond to the Petition within three days. ECF No. 4. For the reasons explained below, the Petition should be dismissed.

BACKGROUND

Petitioner is a native and citizen of the People’s Republic of China. Declaration of Deportation Officer David Graumenz ¶ 4. On December 27, 2024, United States Border Patrol encountered Petitioner shortly after he entered the United States without permission. *Id.* ¶ 4. Petitioner was processed for expedited removal and ordered removed on the same day. *Id.* ¶ 5 &

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.

Ex. A. Petitioner made claims that required review from the United States Citizenship and Immigration Services (“USCIS”), which prevented his immediate removal from the United States. *Id.* ¶ 5. USCIS resolved its review and ultimately referred the claims to the Immigration Judge (“IJ”) for review. *Id.* ¶ 5. On March 28, 2025, the IJ affirmed USCIS’ negative determination. *Id.* ¶ 6 & Ex. B. Therefore, Petitioner remains properly detained by Immigration and Customs Enforcement/Enforcement and Removal Operations (“ICE/ERO”) pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

On April 23, 2025, ICE/ERO sent a travel document request (“TDR”) packet to ERO headquarters to seek a travel document from the Peoples Republic of China (“China”). Graumenz Decl. ¶ 7. On November 3, 2025, ERO headquarters advised local ICE/ERO of edits needed for the TDR packet. *Id.* ¶ 7. On November 10, 2025, the ERO attaché to China submitted Petitioner’s case to China’s National Immigration Administration to verify Petitioner’s identity. *Id.* ¶ 8. On December 2, 2025, the TDR packet was updated and resubmitted to ERO headquarters for review. *Id.* ¶ 9. On December 11, 2025, the complete TDR was sent to ERO headquarters for submission to China’s embassy upon verification of Petitioner’s identity. Graumenz Decl. ¶ 9. Petitioner remains detained pending China’s review of the TDR. *Id.* ¶ 10. Upon issuance of a travel document, there is a significant likelihood of Petitioner’s removal in the reasonably foreseeable future. In fiscal year 2025 (through September 13, 2025) ICE/ERO effectuated 2,138 removals to China; in fiscal year 2024 ICE/ERO effected 517 removals to China. *Id.* ¶ 11.

ARGUMENT

Petitioner raises one overarching claim: that his continued detention violates due process under *Zadvydas* because there is no significant likelihood of removal in the reasonably foreseeable

future. ECF No. 1-1 at 5-10.² But Petitioner is mandatorily detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), which requires detention of certain detainees 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 claim premised on *Zadvydas*, it is likewise meritless.

I. Petitioner is mandatorily detained under § 1225(b)(1)(B)(iii)(IV), and his due process rights are not violated by that detention.

Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(1) as an arriving alien. Therefore, he does not fall within the purview of *Zadvydas* because he is not detained pursuant to § 1226(a)(6), which is the statute that the Supreme Court construed in *Zadvydas*. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). 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 concluded its review without awarding any relief that would prevent Petitioner's removal. Graumenz Decl. ¶ 5. Subsequently, an IJ affirmed USCIS's determination. *Id.* ¶ 6; *see also* ECF No. 1-3 at 7-8.

Per the Immigration and Nationality Act ("INA"), non-citizens applying for credible fear under the expedited removal process "shall be detained pending a final determination of credible

² Petitioner also alleges that he has been subject to "physical violence" during his detention at the hands of another detainee. *See, e.g.*, ECF No. 1-1 at 4. To the extent Petitioner seeks to raise a conditions of confinement claim in this habeas action, that claim is not cognizable and should be rejected. Courts throughout the Eleventh Circuit have held that immigration detainees' claims concerning their conditions of confinement are not cognizable in habeas. *Benavides v. Gartland*, No. 5:20-cv-46, 2020 WL 3839938, at *4 (S.D. Ga. July 8, 2020); *Louis v. Martin*, No. 2:20-cv-349-FtM-60NPM, 2020 WL 3490179, at *7 (M.D. Fla. June 26, 2020); *A.S.M. v. Warden, Stewart Cnty. Det. Ctr.*, 467 F. Supp. 3d 1341, 1348-49 (M.D. Ga. 2020).

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. In the alternative, Petitioner’s *Zadvydas* claim lacks merit.

As stated above, Petitioner is not held under 8 U.S.C. § 1226(a)(6), which was the statute at issue in *Zadvydas*, and therefore, the Court should not consider his petition under that

framework. If, the Court nevertheless finds consideration of the *Zadvydas* claim appropriate, Petitioner has 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’s only bases for claiming that there is no significant likelihood of his removal in the reasonably foreseeable future is that “Petitioner’s embassy or consulate has not issued Petitioner travel documents,” and he has been in detention for nine months since the IJ’s order. ECF No. 1-1 at 3. As an initial matter, Petitioner’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).

Further, in his attempt to meet his evidentiary burden, Petitioner relies on the mere passage of time without removal since his removal order became final. ECF No. 1-1 at 3. As other courts have recognized, a non-citizen cannot meet his burden under *Zadvydas* on this basis. 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)). 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*, and the Petition should be denied.

Nevertheless, even accepting Petitioner’s conclusory statements, he still cannot satisfy his burden under *Zadvydas*. As explained above, ICE/ERO has submitted a travel document request to ERO headquarters and has submitted Petitioner’s case to China’s National Immigration Administration to verify his identity, which submission remains pending. Graumenz Decl. ¶ 8. Courts have recognized that non-citizens’ unsubstantiated speculations that consulates will not issue a travel document are insufficient to meet the evidentiary burden under *Zadvydas*. For example, in *Mirza v. Dep’t of Homeland Sec.*, No. 22-cv-02610, 2023 WL 2664860 (D. Colo. Jan. 10, 2023), a district court recently denied a habeas application under analogous circumstances. There, ICE/ERO submitted a travel document request to the foreign consulate, but nearly seven months after the request was originally submitted, the travel document request still remained pending as the consulate attempted to verify the non-citizen’s nationality. *Mirza*, 2023 WL 2664860, at *1-2. Yet, ICE/ERO asserted his removal was likely once a travel document was issued. *Id.* at *2. The non-citizen sought habeas relief under *Zadvydas*, arguing only that he had “been compliant in trying to obtain [his] travel document” but that a travel document had not been issued. *Id.* *3. The Court denied the habeas application, finding that respondent’s assertions

concerning the status of the travel document request and the likelihood of his removal after issuance of a travel document demonstrated a significant likelihood of removal in the reasonably foreseeable future. *Id.*

District courts in the Eleventh Circuit have similarly held that the mere delay in a consulate's issuance of a travel document is insufficient for a non-citizen to meet his evidentiary burden 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)); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002) ("The lack of visible progress since [ICE] requested travel documents from the [foreign] government does not in and of itself meet [the non-citizen's] burden of showing that there is no significant likelihood of removal." (citation omitted)).

Finally, Petitioner's *Zadvydas* claim lacks merit, ultimately, because there is a significant likelihood of his removal in the reasonably foreseeable future. ICE/ERO is effectuating removals to China. Gruamenz Decl. ¶ 11. ICE/ERO effectuated 2,138 removals to China in fiscal 2025, and 517 removals to China in fiscal 2024. *Id.* ¶ 11. If it reaches the *Zadvydas* framework at all, which it shouldn't, the Court should deny the Petition because Petitioner fails to meet his evidentiary burden under *Zadvydas* and because there is a significant likelihood of his removal to China in the reasonably foreseeable future.

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 5th day of January, 2026.

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