

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

MUSIA MICHAEL,	:	
	:	
Petitioner,	:	
	:	Case No. 4:26-CV-107-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On January 21, 2026, Petitioner filed an application for a writ of habeas corpus (“the Petition”). ECF No. 1. On January 21, 2026, Respondent was ordered to file a comprehensive response within twenty-one (21) days. ECF No. 3. Respondent now files this Motion to Dismiss in lieu of a comprehensive response and requests that the Petition be dismissed.

BACKGROUND

Petitioner is a native of Saudi Arabia and citizen of Eritrea who has been detained post-final order of removal since July 2, 2025, pursuant to 8 U.S.C. § 1231(a)(6). Declaration of Lukeisha Atkinson (“Atkinson Decl.”) ¶¶ 3, 18 & Ex. A.

On April 3, 2001, Petitioner was admitted into the United States as a Lawful Permanent Resident. *Id.* ¶ 4 & Ex. A. On October 21, 2008, Petitioner was convicted of two counts of armed robbery and one count of possession of a firearm during the commission of a felony. *Id.* ¶ 5 & Ex. B. Petitioner was sentenced to ten years in confinement and five years on probation. *Id.* ¶ 5 & Ex. B. Petitioner’s criminal history also includes a conviction for possession of a controlled substance in 2012. *Id.* ¶ 6.

On April 4, 2013, Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE/ERO”) encountered Petitioner at the Georgia Department of Corrections in Jackson, Georgia, while he was serving his prison sentence. Atkinson Decl. ¶ 7 & Ex. A. On July 22, 2013, ICE/ERO served Petitioner with a Notice to Appear charging him as removable under § 237(a)(2)(A)(iii) of the Immigration and Nationality Act (“INA”) as an alien who at the time after admission was convicted of two aggravated felonies as defined in INA § 101(a)(43)(F) and (G). *Id.* ¶ 8 & Ex. C. On September 12, 2013, Petitioner appeared for a master hearing from a Georgia Department of Corrections Facility, with his attorney for an initial master calendar hearing before an immigration judge (“IJ”). *Id.* ¶ 9. The IJ adjourned the hearing to March 6, 2014, for the parties to investigate potential derivation issues. *Id.* ¶ 9.

On March 6, 2014, the IJ took pleadings and sustained the charges in the NTA. *Id.* ¶ 10 & Ex. D. The IJ found that Petitioner had no relief from removal and entered an Order of Removal to Eritrea. *Id.* ¶ 10 & Ex. D. Both parties waived appeal. Atkinson Decl. ¶ 10 & Ex. D.

On October 22, 2018, Petitioner entered ICE/ERO’s custody after completing his prison sentence. *Id.* ¶ 11. On June 10, 2019, Petitioner was released from ICE custody on an Order of Supervision. *Id.* ¶ 12. On July 2, 2025, ICE/ERO arrested Petitioner following an encounter, as he had been identified as a possible subject in an ongoing investigation, and to execute the Order of Removal. *Id.* ¶ 13 & Ex. E. That same day, ICE/ERO revoked Petitioner’s OSUP. *Id.* ¶ 14 & Ex. F.

On or about July 18, 2025, ICE/ERO submitted a travel document request (TDR) to ERO Headquarters (“HQ”). Atkinson Decl. ¶ 15. On July 29, 2025, ERO HQ requested additional information from ICE/ERO. *Id.* ¶ 15. On August 21, 2025, ICE/ERO inquired with ERO HQ about the status of the TDR. *Id.* ¶ 15. On August 22, 2025, ERO HQ indicated that an identity document

and additional information were required. *Id.* ¶ 15. On September 29, 2025, ERO HQ submitted a TDR to the designated agencies. *Id.* ¶ 16. On or about January 27, 2026, ERO HQ began coordinating with the appropriate agency to obtain assistance with the TDR. *Id.* ¶ 17.

Petitioner is detained at the Stewart Detention Center pursuant to INA § 241(a)(6). Atkinson Decl. ¶ 18. ICE/ERO is currently working with the government of Eritrea to secure a travel document for Petitioner. *Id.* ¶ 19. ICE/ERO expects that a travel document will be issued in the reasonably foreseeable future. *Id.* ¶ 19. Upon receipt, there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* ¶ 19. Eritrea is open for international travel, and ICE/ERO is currently removing non-citizens to Eritrea. *Id.* ¶ 19. In the last calendar year, ICE/ERO has removed approximately twenty-one (21) Eritreans to Eritrea; the latest removals occurred on December 5, 2025, and January 28, 2026. *Id.* ¶ 19.

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

The Petition should be dismissed because Petitioner fails to show that he is entitled to release under *Zadvydas*. In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit 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*, 309 F. App'x at 346 (quoting *Akinwale*, 287 F.3d at 1051-52).

Petitioner presents no evidence to show that he is not likely to be removed in the reasonably foreseeable future. Petitioner states that ICE/ERO was unsuccessful in obtaining travel documents for Petitioner back in 2014. Pet. 2. He goes on to claim, without support, that “ERITREA, AFRICSA does not accept deportees nor is able to produce travel documents necessary for removal.” *Id.* This self-serving statement is not evidence sufficient to carry Petitioner’s burden to demonstrate “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 (quoting *Akinwale*, 287 F.3d at 1051-52). Further, Petitioner’s conclusory statements in his Petition 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).

Even if Petitioner’s statements were “evidence,” they are contradicted by the sworn declaration of Deportation Officer Atkinson, who states that, “Eritrea is open for international travel, and ICE/ERO is currently removing non-citizens to Eritrea. In the last calendar year, ICE/ERO has removed approximately twenty-one (21) Eritreans to Eritrea; the latest removals

occurred on December 5, 2025, and January 28, 2026.” Atkinson Decl. ¶ 19. Petitioner’s self-serving and unsupported statement to the contrary is insufficient to overcome this evidence.

Further, in his attempt to meet his evidentiary burden, Petitioner appears to rely on the mere passage of time without removal since his removal order became final. Pet. 2. 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)).

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. ICE/ERO submitted a travel document request to ERO HQ on or about July 18, 2025. Atkinson Decl. ¶ 15. On September 29, 2025, ERO HQ submitted the travel document request to the designated agencies to coordinate with and obtain a travel document from Eritrea. *Id.* ¶ 16. On or about January 27, 2026, ERO HQ began coordinating with the appropriate agency to obtain assistance with the travel document request. *Id.* ¶ 17. As these developments indicate, the process for obtaining a travel document from Eritrea for Petitioner is underway. ICE/ERO expects that this process will bear fruit in the reasonably foreseeable future.

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)). The Court should reach the same conclusion here and deny the Petition because Petitioner fails to meet his evidentiary burden under *Zadvydas*.

CONCLUSION

For the foregoing reasons, Respondent requests that the Petition be dismissed, or in the alternative, denied.

Respectfully submitted this 11th day of February, 2026.

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