

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

Hrithik Hrithik,	:	
	:	
Petitioner,	:	
	:	Case No. 4:26-cv-425-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION	:	
CENTER,	:	
	:	
Respondent	:	

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**MOTION TO DISMISS**

On March 19, 2026, Petitioner filed a petition for a writ of habeas corpus (“Petition”), claiming that he is entitled to a bond hearing pursuant to 8 U.S.C. § 1226(a). ECF No. 1. On March 20, 2026, in light of the Court’s rulings in *J.A.M. v. Streeval*, No. 4:25-cv-342-CDL-AGH (M.D. Ga. Nov. 1, 2025), and *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025), the Court ordered Respondents to provide Petitioner a bond hearing within seven days. ECF No. 3. The Court’s order further states that if “Respondents in good faith contend that the Court’s prior rulings in *J.A.M.* and *P.R.S.* do not apply here, Respondents should file an appropriate motion do not control the result in this case. If such a good faith motion is filed, then this order shall be stayed pending the resolution of that motion.” ECF No. 3. Respondent now files this good faith motion to dismiss the Petition, showing that *J.A.M.* and *P.R.S.* do not control the result in this case and that the order for a bond hearing should be stayed and the Petition should be dismissed.

**BACKGROUND**

Petitioner is a native and citizen of India who is currently detained under 8 U.S.C. 1231(a)

at the Stewart Detention Center in Lumpkin, Georgia. Declaration of Deportation Officer Jaryd Culler (“Culler Decl.”) ¶¶ 4, 13 & Ex. A. On or about April 22, 2023, Customs and Border Protection (“CBP”) encountered Petitioner at or near Lukeville, Arizona, after he entered the United States without having been admitted or paroled. *Id.* CBP issued Petitioner a Notice to Appear (“NTA”) charging him with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Culler Decl. ¶ 4 & Ex. B. On April 28, 2023, CBP released Petitioner from custody. Culler Decl. ¶ 5.

On November 18, 2025, ICE/ERO encountered Petitioner in Houston County, Georgia, after a traffic stop. *Id.* ¶ 6 & Ex. C. Following a brief interview where Petitioner admitted to being a citizen of India without any lawful status to be in the United States, Petitioner was taken into ICE custody and transferred to the Stewart Detention Center in Lumpkin, Georgia. *Id.* On January 23, 2026, Petitioner appeared before an Immigration Judge (“IJ”), withdrew his application for relief, and requested pre-conclusion voluntary departure pursuant to 8 U.S.C. § 1229c(a). Culler Decl. ¶ 7. The IJ granted Petitioner’s request for voluntary departure and imposed a condition that he remain in detention to ensure Petitioner’s timely departure from the United States. *Id.* & Ex. D.

On March 11, 2026, ICE/ERO extended Petitioner’s period to voluntary depart until May 27, 2026. Culler Decl. ¶ 8. On March 15, 2026, ICE/ERO requested Petitioner be scheduled for a flight to India to effectuate his voluntary departure from the United States. *Id.* ¶ 9. On March 17, 2026, Petitioner filed a Motion to Reopen his removal proceedings with the Immigration Court. *Id.* ¶ 10 & Ex. E. The Motion to Reopen automatically converted the voluntary departure order into an administrative final order of removal to India. *Id.* The Motion to Reopen remains pending with the Immigration Court. *Id.*

On March 17, 2026, ICE/ERO received notice that Petitioner is scheduled for a flight to India on or before March 31, 2026. Culler Decl. ¶¶ 11, 12. Since Petitioner has an administrative

final order of removal, Petitioner's flight automatically converted from a voluntary departure flight into a removal flight to India. *Id.* ¶ 11. As Petitioner is currently scheduled to be removed from the United States on or before March 31, 2026, there is a significant likelihood of Petitioner's departure to India in the reasonably foreseeable future. *Id.* ¶ 14.

### 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. 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) (internal quotations omitted).

#### ARGUMENT

Now that Petitioner is detained post-final order of removal, the Petition should be dismissed for three reasons. **First**, to the extent the Petition challenged Petitioner’s mandatory pre-final order of removal detention, that claim is now moot because Petitioner is no longer detained pursuant to that authority. **Second**, to the extent Petitioner challenges his post-final order of removal detention, that claim should be dismissed for failure to state a claim because it is premature under *Zadvydas*. **Third**, in the alternative, even assuming Petitioner could state a claim for relief under *Zadvydas*—which he cannot—he fails to show that he is entitled to relief.

#### **I. Petitioner’s claim challenging his pre-final order of removal detention is moot.**

To the extent Petitioner raised a claim challenging his pre-final order of removal detention, that claim is now moot and must be dismissed.

“Article III of the Constitution limits the jurisdiction of the federal courts to the consideration of ‘Cases’ and ‘Controversies.’” *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335 (11th

Cir. 2001) (quoting U.S. CONST. art. III, § 2). “The doctrine of mootness derives directly from the case-or-controversy limitation because an action that is moot cannot be characterized as an active case or controversy.” *Id.* (internal quotations and citation omitted).

“A cause of action becomes moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.” *Djadju v. Vega*, 32 F.4th 1102, 1106 (11th Cir. 2022) (internal quotations and citation omitted). “In considering mootness, [courts] look at the events at the present time, not at the time the complaint was filed[.]” *Id.* (citation omitted). “If the injury ceases, or is rendered unamenable to judicial relief, then the case becomes moot and thereby incapable of further Article III adjudication.” *Checker Cab Operators, Inc. v. Miami-Dade Cnty.*, 899 F.3d 908, 915 (11th Cir. 2018). Put another way, “[i]f events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed.” *Al Najjar*, 273 F.3d at 1336 (citation omitted). “Indeed, dismissal is required because mootness is jurisdictional.” *Id.* (citation omitted).

Here, when Petitioner filed the Petition, he was mandatorily detained pre-final order of removal pursuant to 8 U.S.C. § 1225(b), and he challenged his detention under that authority. *See* Resp. 3-6, ECF No. 1. However, as explained above, his voluntary departure order became a final order of removal when Petitioner filed a Motion to Reopen proceedings on March 17, 2026. Culler Decl. ¶ 10 & Ex. E. When an IJ grants voluntary departure, they must also issue an “alternate order of removal.” Under 8 C.F.R. § 1240.26(e)(1), filing a motion to reopen acts as a withdrawal of the request for voluntary departure. This causes the voluntary departure grant to vanish, leaving the alternate removal order as the final administrative order in the case. *See* 8 C.F.R. § 1240.26(e)(1). His present detention is therefore governed by 8 U.S.C. § 1231—not 8 U.S.C. § 1225(b).

Because 8 U.S.C. § 1225(b) no longer governs Petitioner's detention, "it is unnecessary and altogether inappropriate for [the Court] to take up the question [of] whether [Petitioner's] detention pursuant to that provision violates the Due Process Clause of the Fifth Amendment." *De La Teja v. United States*, 321 F.3d 1357, 1363 (11th Cir. 2003) (citation omitted). "Any opinion on the matter would be purely advisory in nature, and therefore this issue has become moot." *Id.* Both this Court and the Eleventh Circuit have held that claims challenging pre-final order of removal detention become moot upon the entry of a final order of removal and the concomitant shift of detention authority to 8 U.S.C. § 1231(a). *Id.* at 1362-63; *H.N. v. Warden, Stewart Det. Ctr.*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, at \*2 (M.D. Ga. Sept. 15, 2021); *Dixit v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:18-cv-157-HL, 2019 WL 12267340, at \*2 (M.D. Ga. Sept. 17, 2019). The Court should reach the same conclusion here and dismiss the Petition to the extent Petitioner challenges his pre-final order of removal detention.

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

To the extent Petitioner continues to challenge his post-final order of removal detention, his claim is governed by *Zadvydas*. But that claim should be dismissed because Petitioner cannot state a claim under *Zadvydas*.

In evaluating challenges to post-final order of removal detention, 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*." *Akinwale*, 287 F.3d at 1052; *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 became subject to an administrative final order of removal on March 17, 2026. Culler Decl. ¶ 10. Therefore, the 90-day removal period commenced on March 17, 2026,

and will not end until June 15, 2026. 8 U.S.C. § 1231(a)(1)(A), (a)(1)(B)(1). The six-month presumptively reasonable detention period under *Zadvydas* will not end until September 17, 2026. *Zadvydas*, 533 U.S. at 700.

The Court received the Petition on March 19, 2026. ECF No. 1. At the time, Petitioner was detained pursuant to 8 U.S.C. § 1225(b). Now, however, he is detained post-final order of removal pursuant to 8 U.S.C. § 1231(a). Since his removal order became final just a week ago, Petitioner remains mandatorily detained within the 90-day removal period under 8 U.S.C. § 1231(a)(2). Further, the *Zadvydas* six-month presumptively reasonable detention period will not expire for over five more months. Thus, Petitioner cannot state a claim under *Zadvydas* because his detention is presumptively reasonable. *Akinwale*, 287 F.3d at 1052.

Courts throughout the Eleventh Circuit—including this Court—have dismissed non-citizens’ habeas petitions raising *Zadvydas* claims where the presumptively reasonable six-month period had not expired when they filed their petitions. *S.H. v. Warden, Stewart Det. Ctr.*, No. 4:21-CV-185-CDL-MSH, 2022 WL 1280989, at \*2 (M.D. Ga. Feb. 15, 2022), *recommendation adopted*, 2022 WL 1274385 (M.D. Ga. Apr. 28, 2022); *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at \*2 (M.D. Fla. Apr. 16, 2021); *Elieenist 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.

**III. 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—which it should not—Petitioner fails to show that he is entitled to release under *Zadvydas*. Petitioner has the initial

burden to 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.

Petitioner presents no evidence to show that he is not likely to be removed in the reasonably foreseeable future. And he cannot state a claim under *Zadvydas* merely through the conclusory assertion that he is unlikely to be removed in the near future. *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. ICE/ERO is able to remove Indian nationals like Petitioner because India is open for international travel and is issuing travel documents to facilitate removals. Culler ¶ 14. Further, Petitioner is currently scheduled to be removed from the United States on or before March 31, 2026, there is a significant likelihood of the petitioner’s departure to India in the reasonably foreseeable future. *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.

Respectfully submitted, this 27th day of March, 2026.

WILLIAM R. KEYES  
UNITED STATES ATTORNEY

BY: s/ Andressa Bryant  
ANDRESSA BRYANT  
Special Assistant United States Attorney\*  
Virginia Bar No. 92384  
United States Attorney's Office  
Middle District of Georgia  
P.O. Box 1702  
Macon, Georgia 31202  
Telephone: (706) 577-2763  
E-mail: [Andressa.Bryant@usdoj.gov](mailto:Andressa.Bryant@usdoj.gov)  
\*Acting Under Authority Conferred by  
28 U.S.C. § 543