

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

MAYKEL CABALLERO LEEN,

Petitioner,

v.

WARDEN, STEWART DETENTION
CENTER,¹

Respondent.

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Case No. 4:26-cv-685-CDL-AGH
28 U.S.C. § 2241

MOTION TO DISMISS

On April 24, 2026, the Court received Petitioner’s petition for a writ of habeas corpus (“Petition”). ECF No. 1. Petitioner contends that his continued custody violates *Zadvydas v. Davis*, 533 U.S. 678 (2001), and that any attempt to remove him to Mexico or any other third country would violate the INA. Pet. 17-21. On April 28, 2026, the Court ordered Respondent to file a comprehensive response to the Petition within twenty-one (21) days. ECF No. 5. Respondent files this Motion to Dismiss the Petition.

The Court should dismiss the Petition for three reasons. **First**, Petitioner’s *Zadvydas* claim is premature on its face; as of the date of his Petition, he had been detained for only 62 days, well within the six-month presumptively reasonable period. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Because Petitioner cannot make out a *Zadvydas* claim, his due process challenge also fails. **Second**, Petitioner’s claim regarding his possible removal to a third country

¹ In addition to the Warden of Stewart Detention Center, Petitioner also names officials with the Department of Justice (“DOJ”), Department of Homeland Security (“DHS”), and Immigration and Customs Enforcement (“ICE”) 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.

is not ripe, and his challenge to the Government's authority to remove him to a third country is without merit. Because Petitioner's detention is both statutorily authorized and constitutionally permissible, the Petition must be dismissed.

BACKGROUND

Petitioner is a native and citizen of Cuba who is detained post-final order of removal pursuant to 8 U.S.C. § 1231(a). Declaration of Deportation Officer Charles Gillikin ("Gillikin Decl.") ¶¶ 4-5. On July 16, 2020, U.S. Border Patrol ("USBP") encountered Petitioner after he landed in Key West, Florida. *Id.* ¶ 5. Petitioner was processed for expedited removal under 8 U.S.C. § 1225(b)(1). *Id.* ¶ 5. At Petitioner's request, USBP referred Petitioner to U.S. Citizenship and Immigration Services ("USCIS"). *Id.* ¶ 5 & Ex. A. On August 17, 2020, USCIS placed Petitioner into removal proceedings by service of a Notice to Appear ("NTA") charging him as removable under 8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I). *Id.* ¶ 6 & Ex. B.

On September 10, 2020, Petitioner appeared before an Immigration Judge without counsel and admitted to the factual allegations contained in the NTA and conceded the charge of removability. Gillikin Decl. ¶ 7. On October 6, 2020, an Immigration Judge ordered Petitioner removed to Cuba and noted that he had failed to file for any relief from removal. *Id.* ¶ 8 & Ex. C. On November 2, 2020, ICE/ERO released the Petitioner on an Order of Supervision ("OSUP"). *Id.* ¶ 9.

On February 25, 2026, ICE/ERO encountered Petitioner during a scheduled check-in and took him into custody based on an arrest for Driving Under the Influence of Alcohol on August 10, 2025. *Id.* ¶ 10 & Ex. D. ICE/ERO served Petitioner with a Notice of Revocation of Release on the same day and subsequently informally interviewed him regarding that revocation. *Id.* ¶ 10 & Exs. E, F. Also on February 25, 2026, Petitioner filed a for I-246, Application for Stay of

Deportation or Removal, with ICE. Gillikin Decl. ¶ 11. ICE denied the Application on February 26, 2026. *Id.* On March 20, 2026, Petitioner again filed an I-246 Application with ICE. *Id.* ¶ 12. ICE denied the Application on March 26, 2026. *Id.*

On March 26, 2026, the Government of Cuba denied repatriation for Petitioner. *Id.* ¶ 13. ICE/ERO is processing the Petitioner for third country removal. *Id.* ¶ 14. There is a significant likelihood of the Petitioner's removal in the reasonably foreseeable future. Gillikin Decl. ¶ 14. Petitioner is currently detained by ICE/ERO in the Stewart Detention Center, under the authority of 8 U.S.C. § 1231(a).

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

Petitioner asserts that his continued detention violates due process and exceeds statutory authority under 8 U.S.C. § 1231. Specifically, he argues that: (1) his removal to Cuba is not significantly likely in the reasonably foreseeable future under *Zadvydas*; (2) his continued detention violates the Due Process Clause of the Fifth Amendment; and (3) that any future attempt to remove him to a third country would be unlawful. Pet. 17-21.

These claims fail and the Petition should be dismissed for two reasons. **First**, Petitioner’s *Zadvydas* claim is premature as he has not met the six-month presumptively reasonable period required to state a claim. Because a claim under *Zadvydas* is the appropriate mechanism to challenge prolonged post-final order detention, Petitioner’s due process claim

necessarily fails as well. **Second**, Petitioner’s challenge to any future removal to Mexico or another third country (i.e. a country other than Cuba) is not yet ripe as he has not received notice of such a planned removal, and in any event, the challenge is without merit as the Government is within its statutory authority to remove Petitioner to a third country that is willing to accept him given that Cuba has denied his repatriation.

I. Petitioner fails to state a claim because the Petition is premature under *Zadvydas* and the removal period has been extended pursuant to 8 U.S.C. § 1231(a)(1)(C).

Petitioner’s claim is premature on its face. The Eleventh Circuit has established that the “six-month period... must have expired at the time [Petitioner’s] § 2241 petition was filed in order to state a claim under *Zadvydas*.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002); *see also Themeus v. U.S. Dep’t of Justice*, 643 F. App’x 830, 833 (11th Cir. 2016). Here, the IJ ordered Petitioner removed on October 6, 2020, and the order became final no later than November 5, 2020. Gillikin Decl. ¶ 8 & Ex. C; *see also* 8 C.F.R. § 1241.1(c). Following a period of release, Petitioner re-entered ICE custody on February 25, 2026. *Id.* ¶ 10. Under this Court’s precedent, the 90-day removal period during which detention is mandatory will not expire until May 26, 2026, and the six-month presumptively reasonable detention period will not expire until August 25, 2026. 8 U.S.C. § 1231(a)(2); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *J.A.S. v. Warden*, No. 4:25-cv-244-CDL-CHW, 2025 WL 3777151 (M.D. Ga. Oct. 14, 2025).

Petitioner filed the Petition on April 24, 2026. ECF No. 1. Thus, at the time of filing, Petitioner remained mandatorily detained within the 90-day removal period under 8 U.S.C. § 1231(a)(2). Because the *Zadvydas* six-month period will not expire for approximately three more months, Petitioner cannot state a claim. *Akinwale*, 287 F.3d at 1052. Courts throughout the Eleventh Circuit—including this Court—routinely dismiss habeas petitions where the six-month period has not expired. *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); *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021).

Petitioner states that the relevant time period for this determination is ninety days from his final order of removal, but that is not the law in this District. 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).² Rather, the “focus [for *Zadvydas*] is on *today*[.]” *Id.* (emphasis in original). 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, Order 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

² And to be clear, unlike many others, Petitioner’s detention; even aggregated, has not exceeded the six-month presumptively reasonable time frame. Petitioner was detained for less than one month following his removal order (and given that the removal order does not explicitly state whether Petitioner retained or waived his right to appeal, his removal order may not have been legally “final” until after his release on November 2, 2020). See Gillikin Decl. ¶¶ 8-9 & Ex. C.

§ 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.*

Even if the Court ignores this prematurity, Petitioner has failed to show “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. Petitioner attempts to shift the burden to the Government by stating that “DHS has not produced, and cannot produce, concrete evidence that Cuba—or any other country—is likely to accept Petitioner within a reasonably foreseeable time frame.” Pet. ¶ 71. But Petitioner is putting the cart before the horse. In addition to failing to show that his detention has exceeded the “presumptively reasonable” six-month post-final order period, Petitioner has not provided evidence to shift the burden. While Petitioner argues that “DHS has had years to attempt to remove him to Cuba, yet it has never been able to secure travel documents or effectuate his removal,” this is not “evidence” regarding the likelihood of removal *today*. Pet. ¶ 69.³ 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).

³ Petitioner also states that he “has endured multiple periods of post-order detention,” but this is not supported by the record. Pet. ¶ 69.

A non-citizen cannot meet his burden under *Zadvydas* by merely pointing to the passage of time since his removal order became final. *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)).

Finally, even if the Court ignores the Petition’s prematurity and the fact that Petitioner has not carried his burden to show “evidence of a good reason to believe there is not a significant likelihood of removal in the reasonably foreseeable future,” Respondent has shown that removal is reasonably foreseeable. As discussed in more detail below, Respondent is authorized to remove Petitioner to a country other than his country of origin, and ICE/ERO is currently processing Petitioner for such third country removal. Gillikin Decl. ¶ 14. While ICE/ERO has not yet designated a country for Petitioner’s removal, he has been detained less than three months, and as this Court has stated, the purpose of the *Zadvydas* presumptively reasonable period is to give the Government time to execute the removal order. *M.K.*, No. 4:23-cv-136, ECF No. 12 at 6. Petitioner’s removal case is moving through the process and there is no reason to believe that his detention will be “indefinite” or that his removal is “impossible” such that the concern that

animated the *Zadvydas* court does not exist in this case. See *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).⁴

II. Petitioner's claim regarding possible third country removal is not yet ripe and is otherwise without merit.

Petitioner also argues that in the as-yet-to-be-determined third country removal of Petitioner, the Government would be without statutory authority to attempt to remove Petitioner to Mexico. Pet. ¶¶ 83-89. Petitioner refers to an “attempt to force Petitioner’s removal to Mexico” but there is no such attempt in the record. Pet. ¶ 86. As Respondent has not made an affirmative decision to remove Petitioner to any third country, let alone specifically to Mexico, Petitioner’s claim that doing so would be a statutory violation are speculative and unripe. The Court should not entertain such speculative claims as any ruling would be merely an improper advisory opinion.

Nevertheless, Petitioner is wrong on the merits regarding the Government’s authority to remove a non-citizen, such as Petitioner, to a third country, where the designated country of removal has refused to accept him. Under 8 U.S.C. § 1231(b)(2), the Government is authorized to arrange for removal of a non-citizen to a country other than the designated country of removal in the non-citizen’s removal order. While Cuba was designated as Petitioner’s country of removal under § 1231(b)(2)(A), Cuba has affirmatively stated that it is not willing to accept Petitioner. Therefore, under § 1231(b)(2)(C), the Government need not continue attempts to remove Petitioner to Cuba. Further, as Petitioner has not shown that he is a “subject, national, or citizen” of any country other than Cuba, §1231(b)(2)(D), the Government can then determine another alternate country for removal under §1231(b)(2)(E). As Petitioner has not shown any country

⁴ Given that the framework detailed in *Zadvydas* was the Supreme Court’s effort to read § 1231(a)(6) in a manner that avoids any constitutional concerns, the framework for a due process challenge to allegedly prolonged post-final order detention is coextensive with the *Zadvydas* framework. *Zadvydas*, 533 U.S. at 689.

meets any of the criteria for subsections (i)-(vi), the United States is required to remove Petitioner to “another country whose government will accept the [non-citizen] into that country.” 8U.S.C. § 1231(b)(2)(E)(vii). Thus, Petitioner’s contention that removal to Mexico or any other third country is unlawful, is belied by the statute.

Further, Petitioner’s claim that his detention is “an effort to compel his removal to a third country without judicial order,” is unsupported and inappropriate. Pet. ¶ 87. Petitioner was detained to effectuate his removal. Following his detention, the Government was notified that Cuba would not accept his repatriation. The Government is continuing in its obligation to remove Petitioner pursuant to his final order of removal and his detention is necessary to the timely and proper execution of that order. Unfounded accusations of bad faith are unnecessary and unwarranted.

CONCLUSION

In light of the foregoing, the Petition for Writ of Habeas Corpus should be dismissed. Petitioner fails to establish a violation of due process or statutory authority, as his detention remains within the presumptively reasonable period. Furthermore, the Government is within its statutory authority to remove Petitioner to a country other than Cuba and is in the process of taking steps to effectuate that removal. Accordingly, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted, this 19th day of May, 2026.

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