

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

YORDAN ROMAY VALDES,	:	
	:	
Petitioner,	:	
	:	Case No. 4:26 CV 780 CDL CHW
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER, ¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On May 5, 2026, Petitioner filed a petition for a writ of habeas corpus (“Petition”) challenging his post-final order of removal detention pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001). ECF No. 1. Because he has failed to comply with removal attempts, Petitioner fails to state a claim under *Zadvydas*, and the Petition should be dismissed.²

BACKGROUND

Petitioner is a native and citizen of Cuba. Declaration of Deportation Officer Yishmael Aguilar (“Aguilar Decl.”) ¶ 5 & Ex. A. On or about March 18, 2008, U.S. Customs and Border Protection (CBP) encountered Petitioner near Islamorada, Florida. *Id.* On March 18, 2008, CBP paroled Petitioner into the United States for two years. *Id.* ¶ 5 & Ex. A.

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. “[T]he default rule [28 U.S.C. § 2241 petitions] 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.

² This is Petitioner’s second habeas filing. His first case, No. 4:25-cv-333-CDL-CHW, was filed on October 20, 2025, and was dismissed as premature on April 20, 2026. *See* No. 4:25-cv-333, ECF Nos. 11, 13. Petitioner filed a Notice of Appeal on May 11, 2026. *See id.*, ECF No. 17.

On October 15, 2017, Immigration and Customs Enforcement (“ICE”)/Enforcement and Removal Operations (“ERO”) encountered Petitioner in Miami, Florida after local authorities arrested him for Driving Under the Influence and Careless Driving. *Id.* ¶ 6 & Ex. B. ICE/ERO lodged an immigration detainer. *Id.* ¶ 6. On January 04, 2018, ICE/ERO issued Petitioner a Notice to Appear (NTA) charging him as an arriving alien and as removable under section 8 U.S.C. § 1182(a)(7)(A)(i)(I) and placed him into ICE custody. Aguilar Decl. ¶ 7 & Ex. C.

On January 25, 2018, an Immigration Judge (IJ) ordered Petitioner removed from the United States to Cuba. *Id.* ¶ 8 & Ex. D. On April 26, 2018, Petitioner was released from ICE/ERO custody under an Order of Supervision. *Id.* ¶ 9 & Ex. E.

On July 12, 2024, Petitioner was encountered by the U.S. Coast Guard during a vessel interdiction near Islamorada, Florida. *Id.* ¶ 10. Petitioner was arrested for violations of 8 U.S.C. § 1324(a)(1)(A)(i), Bringing Aliens into the United States. *Id.* ¶ 10. On January 27, 2025, Petitioner was convicted of two violations of 8 U.S.C. § 1324(a)(1)(A)(i) in the U.S. District Court for the Southern District of Florida. *Id.* ¶ 11. Petitioner was sentenced to a term of incarceration of 12 months, a fine of \$200, and supervised probation for 3 years. Aguilar Decl. ¶ 11 & Ex. F.

On July 14, 2025, the Petitioner entered ICE/ERO custody. *Id.* ¶ 12 & Ex. G. On October 1, 2025, ICE/ERO served a Notice to Alien of File Custody Review on Petitioner. *Id.* ¶ 13 & Ex. H. On October 29, 2025, ICE/ERO decided to continue Petitioner’s detention. *Id.* ¶ 13 & Ex. I. On November 3, 2025, ICE/ERO served Petitioner with the Notice of Third Country Removal, which informed him that ICE/ERO intended to remove him to Mexico in compliance with the March 30, 2025, guidance regarding third country removals. *Id.* ¶ 14 & Ex. J. Petitioner was later transferred to the El Paso Camp East Montana in Texas to effectuate removal to Mexico. *Id.* ¶ 15.

On December 23, 2025, ICE/FRO attempted to remove Petitioner to Mexico, however, he refused to comply with removal by refusing to leave his detention cell. Aguilar Decl. ¶ 16. In response, on January 19, 2026, ICE/ERO spoke with Petitioner regarding third country removal to Mexico and Petitioner refused removal to Mexico. *Id.* ¶ 16 & Ex. K. Petitioner was transferred to the Stewart Detention Center on January 30, 2025. *Id.* ¶ 17. On March 25, 2026, ICE/ERO transferred the Petitioner back to the El Paso Camp East Montana for removal to Mexico. *Id.* ¶ 18. Petitioner refused to comply with removal on March 30, 2026, and was returned to the Stewart Detention Center on April 1, 2026. *Id.* ¶ 18.

There is a significant likelihood of the Petitioner's removal in the reasonably foreseeable future. Aguilar Decl. ¶ 19.

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).

ARGUMENT³

Petitioner seeks relief under *Zadvydas*, asserting that his post-final order of removal detention violates due process and violates 8 U.S.C. § 1231(a) because there is no significant likelihood of removal in the reasonably foreseeable future. Pet. 5-6, ECF No. 1.⁴ Lastly, Petitioner

³ Respondent addresses Petitioner’s claims for relief together because, in each claim, Petitioner seeks relief for alleged prolonged post-final order detention under *Zadvydas*. *See, e.g., Linares v. Dep’t of Homeland Sec.*, 598 F. App’x 885, 887 (11th Cir. 2015) (evaluating the petitioner’s claims together because the “procedural and substantive due process claims were both grounded in the government’s alleged violation under *Zadvydas*[.]”). To the extent that the Court interprets Petitioner’s claims for relief differently, Respondents respectfully request an opportunity to amend this Response.

⁴ Petitioner also raises a claim regarding not having a procedural mechanism to challenge his detention. Pet. 6. This is essentially a *Zadvydas* challenge by another name. Petitioner does not explain how this challenge

challenges the procedures provided to him with regard to the Government's intention to remove him to Mexico. The Petition should be dismissed for two reasons. *First*, Petitioner's *Zadvydas* claim is premature on its face because he failed to comply with two attempts at removing him to Mexico, and therefore, under § 1231(a)(1)(C), his removal period is tolled during the period in which he fails to comply with ERO. Further, even assuming Petitioner could state a claim for relief under *Zadvydas*—which he cannot—he fails to show that he is entitled to relief because absent his failure to comply, his removal is more than significantly likely, it is all but certain. *Second*, Petitioner makes various claims about the requisite notice he has received for removal to Mexico and asserts that his procedural due process rights have been violated, but (1) he is not entitled to more notice than he has received, and (2) although he states he “fears being sent to Mexico as he has been in the USA since 2008,” he did not make a claim of fear when removal attempts were made, but instead refused to comply. Petitioner is not entitled to habeas relief regarding his notice and fear of removal to Mexico claims.

I. Petitioner fails to state a claim under *Zadvydas* because he has failed to comply with removal efforts.

In his *Zadvydas* claims, Petitioner argues that his detention violates § 1231 and the Due Process Clause because his removal is not reasonably foreseeable. Pet. 5-6. This claim fails as a matter of law. Under *Zadvydas*, a post-final order detainee bears the initial burden to provide evidence demonstrating no significant likelihood of removal in the reasonably foreseeable future. *Id.* at 701; *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Petitioner relies on conclusory assertions regarding Cuban repatriation conditions and his subjective opinion that his removal is unlikely to occur. Pet. 5-6. These assertions are completely insufficient to meet his

is meaningfully different from his other *Zadvydas* challenges, and therefore Respondent will address it with the rest. To the extent he is claiming a right to

burden. *Akinwale*, 287 F.3d at 1052.

Petitioner solely references the ability of the United States to remove him to Cuba, but completely ignores that the Government is within its statutory rights to remove him to another country that is willing to accept him, and has made two attempts to do so. Each attempt was thwarted by Petitioner's own actions. Aguilar Decl. ¶¶ 16, 18. Because Petitioner actively thwarted his removal, his statutory removal period is extended and the *Zadvydas* clock is tolled by operation of law. 8 U.S.C. § 1231(a)(1)(C); *Johnson v. Guzman Chavez*, 594 U.S. 523, 530 (2021). Petitioner entered ICE custody on July 14, 2025. Aguilar Decl. ¶ 12 & Ex. G. On December 23, 2025, ICE/ERO was prepared to remove Petitioner to Mexico, but Petitioner refused to leave his detention cell. *Id.* ¶ 16. On March 30, 2026, ICE/ERO was, again, prepared to remove Petitioner to Mexico, but he, again, refused to comply with those removal efforts. *Id.* ¶ 18.

Petitioner's active obstruction tolled the removal period pursuant to 8 U.S.C. § 1231(a)(1)(C). *Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013). Further, the due process concerns that motivated *Zadvydas* are entirely inapplicable when a detainee causes his own continued confinement. *Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1314 (11th Cir. 2019). As the Eleventh Circuit noted in *Singh*, a non-citizen cannot convincingly argue that removal is unlikely when "the keys to [his] freedom are in his pocket" and cooperation would immediately effectuate departure. *Id.* Accordingly, courts within this Circuit routinely dismiss habeas petitions where the detainee blocks immigration enforcement. *See Flemming v. Laughlin*, No. 4:08-cv-20-CDL, 2008 WL 4811177, at *3 (M.D. Ga. Oct. 27, 2008).

Even assuming the *Zadvydas* clock was not tolled, Petitioner remains ineligible for relief. *Zadvydas* addresses situations where removal is impossible because a receiving country does not exist or refuses to accept the alien. 533 U.S. at 684, 686. Here, ICE/ERO is prepared to remove

Petitioner to Mexico and has attempted to do so, twice. Aguilar Decl. ¶¶ 16, 18. Because his own acts prevent his departure, Petitioner cannot establish that removal is unavailable in the reasonably foreseeable future if he chooses to cooperate. *Vaz v. Skinner*, 634 F. App'x 778, 782 (11th Cir. 2015). Under settled Eleventh Circuit precedent, a detainee responsible for delaying his own removal cannot leverage that self-created delay to secure release. *Id.*; see also *Linares v. Dep't of Homeland Sec.*, 598 F. App'x 885, 887 (11th Cir. 2015); *Oladokun v. U.S. Attorney Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012). The Court should deny the Petition.

II. Petitioner's claims regarding the procedures around third country removal are meritless.

In addition to the claims under *Zadvydas*, Petitioner argues that he has not received adequate notice of ERO's intent to remove him to Mexico. Pet. 7. He also states that he has not received an opportunity to raise a claim of fear of removal to Mexico. *Id.* Neither of these arguments states a claim in this habeas action.

First, Petitioner was given notice of the Government's intent to remove him to Mexico on November 3, 2025. See Aguilar Decl. ¶ 14 & Ex. J. Petitioner was then transferred to Texas and his first removal attempt was on December 23, 2025. *Id.* ¶¶ 15-16. Therefore, Petitioner was given nearly two months' notice of the Government's intent to remove him to Mexico. This completely undercuts his assertion that he has not received any notice, and to the extent he claims a right to the notice ordered in the *D.V.D.* class litigation—which for many reasons, he is not entitled to receive—this level of notice goes beyond even what was ordered in that case.

Second, as to Petitioner's suggestion that he would like to claim fear of removal to Mexico, this is not the proper forum to do so. Petitioner has had ample opportunity to properly raise such a claim in response to the Government's stated intention to remove him to Mexico, and he has not availed himself of those procedural protections. Despite discussing his purported fear of removal

to Mexico in his Petition, Petitioner fails to allege that he raised this fear to ERO during either of the prior removal attempts. Further, he does not contradict or explain the circumstances of his failures to comply with those removal attempts. Instead, he claims, without support, that Mexico did not accept him. Pet. 7. This is contradicted by Respondent's evidence. *See* Aguilar Decl. ¶¶ 14-19. ICE/ERO has stated that it will follow the March 30 Guidance regarding procedures for third country removals, *id.* ¶ 14 & Ex. J, and Petitioner has failed to show that there is a current controversy regarding his alleged fear claim because he has not made one.

CONCLUSION

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

Respectfully submitted this 27th day of May, 2026.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Respondent's Motion to Dismiss with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

Yordan Romay Valdes
A 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 12th day of November, 2025.

BY: s/ Michael P. Morrill
Michael P. Morrill, Esq.
Assistant United States Attorney