

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

LUIS ALBERTO ALVAREZ CUAN,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-266-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,¹	:	
	:	
Respondent.	:	

RESPONSE TO PETITION

On August 19, 2025, Petitioner filed an application for a writ of habeas corpus (“the Petition”). ECF No. 1. On August 25, 2025, the Court ordered Respondent to file a comprehensive response within twenty-one days from the date of filing. ECF No. 3. Respondent now files this comprehensive response and requests that the Petition be denied.

BACKGROUND

Petitioner is a native and citizen of Cuba who was paroled for prosecution into the United States on December 5, 2012. Declaration of Deportation Officer Tartanger L. Stephens (“Stephens Decl.”) ¶ 3 & Ex. A. On or about July 11, 2013, Petitioner was convicted in the U.S. District Court for the Middle District of Florida, Tampa Division, for the offense of Possession with the Intent to Distribute Five Kilograms or More of Cocaine While on Board a Vessel Subject to the Jurisdiction

¹ Petitioner names the Attorney General, the Secretary of the Department of Homeland Security, the Immigration and Customs Enforcement field office director, and the Warden of Stewart Detention Center 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.

of the United States in violation of 46 U.S.C. §§ 70503(a) and 70506(a), and 21 U.S.C. § 960(b)(1)(B)(ii). *Id.* ¶ 4 & Ex. B. He was sentenced to one-hundred eighty (180) months in prison. *Id.*

On November 14, 2024, Petitioner entered Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE/ERO”) custody. Stephens Decl. ¶ 5. On December 10, 2024, ICE/ERO served Petitioner was a Form I-862, Notice to Appear (“NTA”). *Id.* ¶ 6 & Ex. C. On January 12, 2025, Department of Homeland Security (“DHS”) counsel served a Form I-261 (Additional Charges of Inadmissibility/Deportability) on Petitioner charging him with inadmissibility under Immigration and Nationality Act (“INA”) § 212(a)(2)(A)(i)(II) and § 212(a)(7)(A)(i)(I). *Id.* ¶ 6 & Ex. D.

On January 15, 2025, at a master calendar, Petitioner did not file an application for relief from removal and was ordered removed to Cuba. Stephens Decl. ¶ 7. Travel documents were requested from Cuba on April 5, 2025. *Id.* ¶ 8. On or about April 15, 2025, ICE/ERO reviewed Petitioner’s custody status and determined to continue his detention. *Id.* ¶ 9 & Ex. F. On July 22, 2025, ICE/ERO reviewed Petitioner’s custody status and determined to continue his detention. *Id.* ¶ 10. On September 3, 2025, ERO requested a travel document for a third country removal where Petitioner has family ties. *Id.* ¶ 11. Petitioner is presently detained under the authority of INA § 241(a) (8 U.S.C. § 1231(a)). *Id.* ¶ 12.

LEGAL FRAMEWORK

Because 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).

ARGUMENT

Petitioner claims that his continued detention is 1) a statutory violation; 2) a substantive due process violation; and 3) a procedural due process violation. Pet. 9–12. The Petition should be dismissed because Petitioner fails to show that he is entitled to release under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

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. Instead, he asserts in conclusory fashion that there is no significant likelihood of removal in the reasonably foreseeable future because an unnamed “ICE officer” allegedly requested he be released because his “repatriation to Cuba had not been accepted.” Pet. 6. Petitioner further states that it is his understanding that there is no repatriation agreement between Cuba and the United States and therefore “Cuba will deny any and all requests for travel documents.” Pet 6. 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). Petitioner provides no evidentiary support for these statements and hearsay from an unnamed “ICE officer” is insufficient to carry Petitioner’s burden.

Even accepting Petitioner’s conclusory statements, he still cannot satisfy his burden under *Zadvydas*. 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 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 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, 1336 (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*.

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. On April 5, 2025, ICE requested travel documents from Cuba. Stephens Decl. ¶ 7. On September 3, 2025, ICE has also requested a travel document for a third country removal where Petitioner has family ties. *Id.* ¶ 11. These requests are pending and have not been denied. As stated above, the fact that a travel document request has not yet been approved does not evidence that removal is not likely in the near future. Additionally, the fact that there are two concurrent avenues for removal increase the likelihood of removal in the foreseeable future. Accordingly, there is a significant likelihood of removal in the reasonably foreseeable future and the Petition should be denied.

CONCLUSION

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

Respectfully submitted this 15th day of September, 2025.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Respondent's Response to Petition 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:

L
A  rez-Cuan
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 15th day of September, 2025.

BY: /s/ Michael P. Morrill
MICHAEL P. MORRILL
Assistant United States Attorney