

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

BANDA CHIFUNILO,	:	
	:	
Petitioner,	:	
	:	
v.	:	Case No. 4:25-CV-314-CDL-AGH
	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On October 8, 2025, the Court received Petitioner’s petition for a writ of habeas corpus (“Petition”). ECF No. 1. On the same day, the Court ordered Respondent to file a response within twenty-one days. ECF No. 3. On October 29, 2025, Respondent’s Response was filed. ECF No. 4. On January 13, 2026, the Court ordered Respondent to file a status report within fourteen (14) days explaining why Petitioner was not removed prior to expiration of his travel documents and what steps are now being taken regarding his removal. ECF No. 5. In lieu of a Status Update, Respondent moves to dismiss Petitioner’s claims.

BACKGROUND UPDATE

Petitioner is a native and citizen of Zambia, who remains detained by Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE/ERO”) at Stewart Detention Center under the authority of 8 U.S.C. § 1231. Scott Decl. ¶ 3. He has been detained in ICE/ERO custody since February 22, 2025. *Id.*

On September 29, 2025, the Republic of Zambia issued a travel document which expired on December 28, 2025. Scott Decl. ¶ 4. Petitioner was scheduled for removal on or about

November 14, 2025 via commercial airline. *Id.* ¶ 5. Petitioner failed to comply with removal and could not be removed at that time. *Id.* Although ICE/ERO records reflect the scheduled removal and the fact of the failure to comply, ICE/ERO does not have a record of service of a Notice of Failure to Comply. *Id.*

Petitioner was again scheduled for removal via commercial airline on or about December 12, 2025. Scott Decl. ¶ 6. Petitioner again failed to comply with removal by refusing to sign a document required to board the Ethiopian Airlines flight. *Id.* Petitioner was served with a Notice of Failure to Comply on December 22, 2025. *Id.* & Ex. A.

On January 23, 2026, ICE/ERO Removal and International Operations requested a new travel document from the Zambian Embassy. Scott Decl. ¶ 7. ICE/ERO is currently planning for the Petitioner's inclusion on a charter flight for removal. *Id.* Given the prior issuance of travel documents, ICE/ERO expects that a new travel document will be issued soon. *Id.* ¶ 8. Further, given that Zambia is open for international travel, receipt of the new travel document is anticipated to occur in the reasonably foreseeable future, and removal via charter flight is pending. *Id.* Repatriation is expected in the reasonably foreseeable future. *Id.*

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 alleged four claims for relief in his Petition. Pet. 6–7. Respondent realleges the arguments found in the Response (ECF No. 4) and also further supplements the Response with

one additional argument regarding the Petitioner's claims under *Zadvydas*. The Petition should be dismissed for the following reason. Petitioner is now mandatorily detained under 8 U.S.C. § 1231(a)(1)(C) based on his failure to comply with ICE/ERO's efforts to remove him, and he therefore is not entitled to relief under *Zadvydas*.

I. Petitioner is mandatorily detained based on his failure to comply with removal efforts.

Although Petitioner has been detained for more than six months since his removal order became final, he is mandatorily detained because he has failed to comply with removal efforts. Accordingly, his *Zadvydas* claim should be dismissed as premature.

The removal period of mandatory detention “shall be extended beyond a period of 90 days[,] and the alien may remain in detention[,] . . . if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure.” 8 U.S.C. § 1231(a)(1)(C); 8 C.F.R. § 241.4(g)(1)(ii), (g)(5); *see also Johnson v. Guzman Chavez*, 549 U.S. 523, 528 (2021) (“[T]he removal period may be extended if the alien fails to make a timely application for travel documents or acts to prevent his removal.” (citation omitted)).

Further, “[t]he risk of indefinite detention that motivated the Supreme Court's statutory interpretation in *Zadvydas* does not exist when an alien is the cause of his own detention.” *Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1314 (11th Cir. 2019) (internal quotations and citation omitted). Accordingly, a non-citizen is not entitled to relief under *Zadvydas* where the removal period has been extended pursuant to 8 U.S.C. § 1231(a)(1)(C) based on a non-citizen's failure to comply with efforts. *Id.* (“[I]f the removal period was extended by operation of § 1231(a)(1)(C), then ICE can continue to detain [a non-citizen] because the keys to [the non-citizen's] freedom are in his pocket and he could likely effectuate his removal by providing the information requested, so he

cannot convincingly argue that there is no significant likelihood of removal.” (internal quotations, alterations, and citation omitted)).

Here, an Immigration Judge (“IJ”) granted Petitioner’s request for voluntary departure on March 30, 2011. ECF No. 4 at 2. Petitioner was required to post a \$500 voluntary departure bond and to depart the United States on or before May 31, 2011. *Id.* Instead, Petitioner filed a motion to reopen on or about June 7, 2011. *Id.* On June 30, 2011, the IJ denied the motion to reopen. *Id.* On February 22, 2025, Petitioner entered ICE/ERO custody to effectuate his removal. *Id.* On September 29, 2025, the Republic of Zambia issued a travel document which expired on December 28, 2025. Scott Decl. ¶ 4. Petitioner was scheduled for removal on or about November 14, 2025 via a commercial airline. *Id.* ¶ 5. Petitioner failed to comply with removal and could not be removed at that time. *Id.* Petitioner was again scheduled for removal via commercial airline on or about December 12, 2025. *Id.* ¶ 6. Petitioner again failed to comply with removal by refusing to sign a document required to board the Ethiopian Airlines flight. *Id.* Petitioner was served with a Notice to Comply on December 22, 2025. *Id.* & Ex. A. On January 23, 2026, ICE/ERO’s Removal and International Operations requested a new travel document from the Zambian Embassy. *Id.* ¶ 7. ICE/ERO is currently planning for Petitioner’s inclusion on a charter flight for removal. *Id.*

Petitioner’s failure to comply in good faith with the attempt to finalize and effectuate his removal has extended the removal period under 8 U.S.C. § 1231(a)(1)(C). Were it not for Petitioner’s refusal to board his removal flight, he would have been removed—and out of ICE/ERO custody—nearly two months ago. *Id.* ¶ 5.

The Eleventh Circuit has routinely affirmed dismissals of *Zadvydas* claims where the petitioners acted to prevent their removals. *See, e.g., Vaz v. Skinner*, 634 F. App’x 778, 782 (11th Cir. 2015) (per curiam) (affirming dismissal of habeas petition where alien “refus[ed] to

voluntarily sign his travel document or inform [his home country] that he is willing to return”); *Linares v. Dep’t of Homeland Sec.*, 598 F. App’x 885, 887 (11th Cir. 2015) (per curiam) (explaining that petitioner’s “acts to prevent [his] removal . . . extended the removal period beyond the 90 days following the finalization of his removal order”). Indeed, the Eleventh Circuit has specifically held that a non-citizen’s refusal to board a removal flight constitutes a failure to comply that forecloses relief under *Zadvydas*. *Oladokun v. U.S. Attorney Gen.*, 479 F. App’x 895, 896-97 (11th Cir. 2012) (per curiam). This Court has recognized the same. *See G.M.N.G. v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:20-cv-184-WLS-MSH, 2021 WL 8268065, at *1-2 (M.D. Ga. Oct. 15, 2021).

The Court should reach the same conclusion here and find that Petitioner’s failure to comply with removal efforts extends the removal period.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court dismiss the Petition. In the alternative, the Petition should be denied.

Respectfully submitted this 27th day of January, 2026.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed the 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:

Banda Chifunilo
A# 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 27th day of January, 2026.

BY: s/ Travis D. Lynes
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Assistant United States Attorney