

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

LE TRAN,	:	
	:	
Petitioner,	:	
	:	Case No. 4:26-CV-125-CDL-ALS
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,¹	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On January 26, 2026, Petitioner filed a petition for a writ of habeas corpus (“Petition”). ECF No. 1. Petitioner argues that his detention has become unreasonably prolonged under *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). *Id.* On January 27, 2026, the Court ordered Respondent to respond to the Petition within twenty-one (21) days. ECF No. 3. For the reasons explained below, the Petition should be dismissed.

BACKGROUND

Petitioner is a native and citizen of Vietnam who was admitted into the United States on June 25, 1985, in Atlanta, Georgia. Declaration of Roddreck L. Kitchens (“Kitchens Decl.”) ¶ 4 & Ex. A. On July 25, 1986, Petitioner’s application for lawful permanent resident status was approved. *Id.* ¶ 5 & Ex. B. On August 5, 1997, Petitioner was convicted in the State Court of

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

Dekalb County, Georgia, for the offense of battery in violation of O.C.G.A. § 16-5-23.1 and sentenced to twelve months confinement, suspended for a period of twelve months' probation. *Id.* ¶ 6 & Ex. C.

On October 30, 2013, Immigration and Customs Enforcement (“ICE”) / Enforcement and Removal Operations (“ERO”) took Petitioner into custody and served him with a Notice to Appear (“NTA”) charging him with inadmissibility pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (“INA”) (8 U.S.C. § 1227(a)(2)(A)(iii)). *Id.* ¶ 7 & Ex. D. Petitioner did not file any applications for relief from removal. *Id.* ¶ 8. On December 9, 2013, an Immigration Judge (IJ) ordered Petitioner removed to Vietnam. *Id.* ¶ 8 & Ex. E.

On January 31, 2014, Petitioner was released under an Order of Supervision. Kitchens Decl. ¶ 9 & Ex. F. On November 6, 2019, Petitioner reported to ICE/ERO as required under the Order of Supervision. ICE/ERO then presented him with an application for a travel document (TD). *Id.* ¶ 10. On December 18, 2019, Petitioner reported to ICE/ERO as required under the Order of Supervision and provided a completed TD application. *Id.* ¶ 11.

On July 19, 2025, Petitioner was brought into ICE custody and his Order of Supervision was revoked. Kitchens Decl. ¶ 12 & Ex. G. Petitioner was transferred to Stewart Detention Center, where he remains detained pursuant to INA § 241(a). *Id.* ¶¶ 12-13. On February 14, 2026, ERO/ICE submitted immigration documents—including the Notice to Appear (NTA), Order of Judgment, and criminal history—to Lionbridge Translation Service for translation from English to Vietnamese. *Id.* ¶ 14. Translated documents are needed for TD submission. *Id.* ¶ 14. On or about February 15, 2026, ICE/ERO conducted a panel interview pursuant to 8 C.F.R. § 241.4(i). *Id.* ¶ 15. The final determination of this interview is pending. Kitchens Decl. ¶ 15.

There is a significant likelihood of Petitioner's removal to Vietnam in the reasonably

foreseeable future. *Id.* ¶ 16. ICE/ERO is presently removing Vietnamese nationals subject to final orders of removal to Vietnam. *Id.* ¶ 16. Specifically, ICE/ERO removed 699 Vietnamese nationals to Vietnam in fiscal year 2025. *Id.* ¶ 16. In fiscal year 2026, travel documents have been issued within 30 days from presenting the request to the government of Vietnam. *Id.* ¶ 17. ICE/ERO intends to effectuate Petitioner’s removal once travel documents are received. Kitchens Decl. ¶ 17.

On November 21, 2020, the Department of Homeland Security (“DHS”) and the Ministry of Public Security of the Socialist Republic of Vietnam entered into a Memorandum of Understanding (“MOU”) that provides for the removal of Vietnam citizens who entered the United States prior to July 12, 1995. *Id.* ¶ 18 & Ex. H.

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. at 689; 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 argues that his continued detention violates the INA and the Supreme Court’s interpretation thereof in *Zadvydas*. Pet. 2-3. This claim should be dismissed. Petitioner fails to show that he is entitled to release under *Zadvydas*. Section 1231(a)(6)—as interpreted by *Zadvydas*—authorizes Petitioner’s detention because there is a significant likelihood of removal in the reasonably foreseeable future. Specifically, Petitioner fails to meet his evidentiary burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. Further, even if the burden is shifted, Respondent meets his burden.

Petitioner merely states that he has “done everything to cooperate with ICE in obtaining

travel documents and has filed applications several times.” Pet. 5. Petitioner further claims in conclusory fashion that his “removal to Vietnam or any other country is not significantly likely to occur in the reasonably foreseeable future.” Pet. 7. But as courts in the Eleventh Circuit—including this Court—have recognized, such conclusory assertions 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-CDL-MSH, 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). Further, as this Court has repeatedly held, the “focus [for *Zadvydas*] is on *today*[.]” *Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018). Because Petitioner provides no *evidence* to show he cannot be removed under the current circumstances, he cannot meet his burden under *Zadvydas*.

Even if Petitioner had presented evidence sufficient to shift the burden to Respondent—which he has not—Respondent meets his burden. While relations between the United States and Vietnam made removals prior to 2020 difficult, if not impossible, those circumstances have materially changed. Critically, in 2020, the United States and Vietnam signed a Memorandum of Understanding (“MOU”) that “establish[es] procedures on the prompt and orderly acceptance of Vietnamese citizens who have been ordered removed . . . and who arrived in the United States *before July 12, 1995*[.]” Kitchens Decl. Ex. H. This MOU specifically permits removals of certain Vietnamese nationals who, like Petitioner, entered the country before July 12, 1995. *Id.* As other

courts have recognized, the 2020 MOU constitutes a fundamental change for Vietnamese nationals detained post-final order of removal and denied their *Zadvydas* claims accordingly. *See, e.g., Nguyen v. Noem*, -- F. Supp. 3d --, 2025 WL 2737803, at *2, 9 (N.D. Tex. Aug. 10, 2025); *Duong v. Tate*, No. H-24-4119, 2025 WL 933947, at *3-4 (S.D. Tex. Mar. 27, 2025). Petitioner provides no argument for why he cannot be removed in accordance with the MOU, and he fails to meet his *Zadvydas* burden accordingly.

In evaluating the present likelihood of removal, courts “must take appropriate account of the greater immigration-related expertise of the Executive Branch” and “listen with care [to] the Government’s foreign policy judgments[.]” *Zadvydas*, 533 U.S. at 700. This is particularly true “for example, [when] the status of repatriation negotiations[] are at issue[.]” *Id.* In that case, courts must “grant the Government appropriate leeway when its judgments rest upon foreign policy expertise.” *Id.*; *see also Meskini*, 2018 WL 1321576, at *3-4.

At most, ICE/ERO is simply awaiting final submission of a travel document request for Petitioner and a decision from the Vietnam government. District courts in the Eleventh Circuit have held that the mere delay in the procurement of a travel document is insufficient to warrant relief 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)); *accord. Alhousseini v. Whitaker*, No. 1:18-cv-848, 2019 WL 1439905, at *3

(S.D. Ohio Apr. 1, 2019), *recommendation adopted*, 2020 WL 728273 (S.D. Ohio Feb. 13, 2020) (collecting cases). The Court should reach the same conclusion here and find that Petitioner's current detention does not exceed the limitations set forth by *Zadvydas*.

Petitioner's continued detention pursuant to 8 U.S.C. § 1231(a)(6)—as interpreted by *Zadvydas*—satisfies due process because his detention is presumptively reasonable and because there is a significant likelihood of removal within the reasonably foreseeable future. Accordingly, the Petition should be dismissed.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted, this 17th day of February, 2026.

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