

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

FENIL NATVARBHAI PATEL,	:	
	:	
Petitioner,	:	
	:	
v.	:	Case No. 4:26-CV-619-CDL-ALS
	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,¹	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE

On April 15, 2026, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. Petitioner primarily asserts that his detention violates his Fifth Amendment due process rights pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001), and seeks release from custody. Pet. 6–8, ECF No. 1. As explained below, the Petition should be denied.

BACKGROUND

Petitioner is a native and citizen of India who is detained post-final order of removal pursuant to 8 U.S.C. § 1231(a). Jones Decl. ¶¶ 3, 16 & Ex. A.

Petitioner was apprehended upon entry by United States Border Patrol ("USBP") after illegally entering the United States without inspection or admission at or near Tecate, California on or about December 27, 2023. Jones Decl. ¶ 4 & Ex. B. On December 28, 2025, USBP issued

¹ In addition to the Warden of Stewart Detention Center, Petitioner also names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement 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.

and served Petitioner a Notice to Appear (“NTA”) charging him as inadmissible pursuant to Immigration and Nationality Act (“INA”) § 212(a)(6)(A)(I). *Id.* ¶ 5. Petitioner was released on an Order of Recognizance (“OREC”). *Id.* & Ex. C.

On July 30, 2024, Petitioner filed an application for relief from removal with the Immigration Court. Jones Decl. ¶ 6. On October 2, 2024, Immigration and Customs Enforcement, Enforcement and Removal Operations (“ICE/ERO”) encountered Petitioner at the Gordon County Jail in Georgia after he was arrested by the Calhoun Police Department for Battery – Family Violence in violation of G. Code § 16-5-23(f). *Id.* ¶ 7. ICE/ERO officers conducted a records check and determined that Petitioner was in removal proceedings. *Id.* On October 3, 2024, ICE/ERO took Petitioner into custody and detained him at Stewart Detention Center. *Id.* ¶ 8 & Ex. D.

On November 7, 2024, Petitioner appeared for a master calendar hearing at which he admitted the factual allegation in the NTA and conceded removability. Jones Decl. ¶ 9. On March 11, 2025, Petitioner appeared for an individual merits hearing for adjudication of his application for relief from removal. *Id.* ¶ 10. An Immigration Judge (“IJ”) denied Petitioner’s application and ordered him removed from the United States to India. *Id.* & E. Petitioner reserved his right to appeal to the Board of Immigration Appeals (“BIA”). *Id.*

On April 8, 2025, Petitioner filed a Notice of Appeal with the BIA. Jones Decl. ¶ 11 & Ex. F. On August 29, 2025, the BIA dismissed Petitioner’s appeal. *Id.* ¶ 12 & Ex. G. On September 25, 2025 Petitioner filed a pro se Petition for Review (“PFR”) of the BIA’s decision with the United States Court of Appeals for the Eleventh Circuit. *Id.* ¶ 13 & H. As of the date of this declaration, the PFR remains pending adjudication by the Eleventh Circuit. *Id.* Based on a review of the case, it appears that ICE/ERO operated with the understanding that the order of removal was not final given the filing of the PFR with the Eleventh Circuit. *Id.* ¶ 14. As a result, ICE/ERO did

not attempt to effectuate Petitioner's removal while the PFR remained pending. *Id.* Because the Eleventh Circuit has not issued a stay of removal in the case, ICE/ERO has now initiated steps to execute the removal order. *Id.*

There is a significant likelihood of removal in the reasonably foreseeable future. Jones Decl. ¶ 15. India is open for international travel, and ICE/ERO is currently removing aliens to India. *Id.* India is actively reviewing travel document applications and issuing travel documents in a relatively swift manner. *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 8 U.S.C. § 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 raises two claims for relief. He asserts that his detention violates 8 U.S.C. § 1231(a)(6) and that it also violates due process under *Zadvydas*. Pet. 6–7. The Petition should be denied for one reason. Petitioner is not entitled to relief under *Zadvydas* because he cannot meet his evidentiary burden and because there is a significant likelihood of removal in the reasonably foreseeable future.

I. Petitioner’s detention complies with due process, and he is not entitled to relief under *Zadvydas*.

Petitioner is not entitled to relief under *Zadvydas* because he fails to meet his burden to “provide 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.

At the outset, the government concedes that ICE/ERO operated under the mistaken understanding that the order of removal was not final given Petitioner's filing of the PFR with the Eleventh Circuit. Jones Decl. ¶ 14. Because of this misunderstanding, ICE/ERO did not attempt to effectuate Petitioner's removal while the PFR remained pending even though the Eleventh Circuit had not issued a stay or removal in this case.² *Id.* Under 8 C.F.R. 1241.1, "[a]n order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall become final. . . [u]pon dismissal of an appeal by the Board of Immigration Appeals. . . ." 8 C.F.R. 1241.1. As a result of realizing that the Eleventh Circuit did not enter a stay in this case, ICE/ERO has now initiated steps to execute the removal order. Jones Decl. ¶ 14.

Petitioner presents Respondents' lack of executing the removal order as evidence to meet his burden. However, now that Respondents have begun the process of executing the removal order, Petitioner's burden fails. 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). Because Petitioner's only evidence is Respondents' inaction which has since been remedied, he cannot meet his burden under *Zadvydas* as there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future.

Petitioner claims that he is entitled to relief under *Zadvydas* because he has not yet been removed after the six-month period expired since the time of his removal order. Pet. 6. But a non-citizen cannot meet his *Zadvydas* burden by simply noting that his removal has been delayed. *See Ortiz v. Barr*, No. 20-CV-22449, 2021 WL 6280186, at *5 (S.D. Fla. Feb. 1, 2021) ("[T]he mere

² Petitioner, in the alternative, requests discovery into ICE's determination to continue custody and into the likelihood of removal in the reasonably foreseeable future. Pet. 7. Because the delay in removal was the result of a misunderstanding that ICE/ERO believe Petitioner's case to be stayed while before the Eleventh Circuit, discovery is not warranted in this case and this request should also be denied.

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)). For these reasons, Petitioner fails to meet his burden to present evidence that there is no significant likelihood of removal in the reasonably foreseeable future, and the Petition should be denied.

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. India is open for international travel. Jones Decl. ¶ 15. ICE/ERO is currently removing aliens to India. *Id.* India is also actively reviewing travel document applications and issuing travel documents in a relatively swift manner. *Id.* Now that ICE/ERO has realized that the Eleventh Circuit has not stayed Petitioner's case, ICE/ERO has fully begun the process of executing the removal order. *See* Jones Decl. ¶ 14. For these reasons, the evidence establishes that there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future, and Petitioner therefore is not entitled to relief under *Zadvydas*.

CONCLUSION

The record is complete in this matter, and the case is ripe for adjudication on the merits. Petitioner fails to show that he is entitled to relief on either of his claims. Petitioner is not entitled

to relief under *Zadvydas* because (1) he fails to meet his evidentiary burden, and (2) alternatively, there is a significant likelihood of removal in the reasonably foreseeable future.

Respectfully submitted this 7th day of May, 2026.

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