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

FARIDULLAH LIWAN KHIL,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:26-cv-698-CDL-CHW**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On April 27, 2026, the Court received Petitioner's petition for a writ of habeas corpus ("Petition"). ECF No. 1. Petitioner contends that his continued custody violates *Zadvydas v. Davis*, 533 U.S. 678 (2001). Pet. 2-3. On April 28, 2026, the Court ordered Respondent to file a comprehensive response to the Petition within twenty-one (21) days. ECF No. 5. Respondent files this Motion to Dismiss the Petition.

The Court should dismiss the Petition because Petitioner has not shown that it is not significantly likely that he will be removed in the reasonably foreseeable future sufficient to shift the burden to the Government. Further, even if the burden is shifted, there is a significant likelihood of Petitioner's removal to Afghanistan in the reasonably foreseeable future.

BACKGROUND

Petitioner is a native and citizen of Afghanistan who is detained post-final order of removal pursuant to 8 U.S.C. § 1231(a). Declaration of Deportation Officer Yishmael Aguilar ("Aguilar Decl.") ¶¶ 4, 24. On February 18, 2024, Petitioner applied for admission into the United States via the San Ysidro Port of Entry with an appointment via the CBP One application. *Id.* ¶ 5. .U.S. Border Patrol ("USBP") found that Petitioner was inadmissible pursuant to 8 U.S.C.

§ 1182(a)(7)(A)(i)(I). *Id.* ¶ 6. Petitioner was processed for expedited removal under 8 U.S.C. § 1225(b)(1). *Id.* ¶ 6 & Ex. A. At Petitioner's request, USBP referred Petitioner to U.S. Citizenship and Immigration Services ("USCIS"). *Id.* ¶ 7. On March 4, 2024, USCIS placed Petitioner into removal proceedings by service of a Notice to Appear ("NTA") charging him as removable under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* ¶ 7 & Ex. B.

On July 14, 2024, Petitioner filed an application for relief from removal with the Immigration Court. Aguilar Decl. ¶ 8. On November 5, 2024, the Immigration Judge (IJ) denied Petitioner's applications for relief from removal and ordered him removed to Brazil, or in the alternative, Afghanistan. *Id.* ¶ 9 & Ex. C. On December 4, 2024, Petitioner filed an appeal of the IJ's decision to the Board of Immigration Appeals (BIA). *Id.* ¶ 10 & Ex. D.

On February 6, 2025, the BIA issued a Notice of Briefing Schedule, requiring briefs to be filed on or before February 27, 2025. *Id.* ¶ 11 & Ex. E. On February 27, 2025, Petitioner filed his legal brief with the BIA. *Id.* ¶ 12. On April 24, 2025, the BIA issued a decision dismissing Petitioner's appeal. *Id.* ¶ 13 & Ex. F.[1] On May 23, 2025, Petitioner filed a motion to reconsider with the BIA. Aguilar Decl. ¶ 14 & Ex. G. On August 20, 2025, the BIA denied Petitioner's motion to reconsider. *Id.* ¶ 16 & Ex. H. On or about May 22, 2025, and September 19, 2025, Petitioner filed petitions for review (PFR) with the Eleventh Circuit Court of Appeals. *Id.* ¶ 17.

On June 24, 2025, ICE/ERO contacted ERO HQ regarding available flights to effectuate Petitioner's removal. *Id.* ¶ 15. On or about July 3, 2025, ERO HQ indicated that there were no pending commercial flights at that time. *Id.* ¶ 15.[2] On December 23, 2025, ICE/ERO contacted

[1] Petitioner's removal order was therefore final as of April 24, 2025. *See* 8 C.F.R. § 1241.1(a).

[2] On December 10, 2025, the IJ held a bond redetermination hearing at Petitioner's request. Aguilar Decl. ¶ 18. The IJ denied Petitioner bond, finding that she had no jurisdiction to issue a bond because Petitioner was classified as an arriving alien and subject to a final order of removal. *Id.* ¶ 18.

ERO HQ to inquire about the status of the issuance of a travel document essential to facilitate Petitioner's removal via a commercial flight. *Id.* ¶ 19. On January 24, 2026, ICE/ERO contacted ERO HQ requesting information on possible charter flights to Afghanistan and the status of the travel document for a commercial flight. *Id.* ¶ 21. On January 25, 2026, ERO HQ indicated that the travel document was still pending and that there no current charter flights pending. *Id.* ¶ 21.

On January 12, 2026, the Eleventh Circuit Court of Appeals consolidated Petitioner's cases. *Id.* ¶ 20. On March 4, 2026, the Eleventh Circuit Court of Appeals denied Petitioner's PFRs. Aguilar Decl. ¶ 22. On April 28, 2026, the Eleventh Circuit Court of Appeals issued its mandate, effectuating the judgment of the Court. *Id.* ¶ 23.

Petitioner is currently detained by ICE/ERO in the Stewart Detention Center, under the authority of 8 U.S.C. § 1231(a). *Id.* ¶ 24.

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).

ARGUMENT

Petitioner contends that his continued detention violates *Zadvydas* because there is no significant likelihood of his removal in the reasonably foreseeable future. Pet. 2-3. Petitioner's claim is based on the historical inability to remove him in the past and his speculation that Afghanistan will not issue a travel document for his removal. *Id.* These bases are insufficient to state a claim under *Zadvydas*, and therefore Petitioner's claim should be dismissed.

Petitioner has failed to show "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. 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).

A non-citizen cannot meet his burden under *Zadvydas* by merely pointing to the passage of time since his removal order became final. *See Ortiz v. Barr*, No. 20-CV-22449, 2021 WL 6280186, at *5 (S.D. Fla. Feb. 1, 2021) ("[T]he mere 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)).

Further, Petitioner's speculation that his removal to Afghanistan is unlikely because it is "a country where removal is notoriously difficult, unpredictable, and dependent on unstable diplomatic conditions," is not evidence sufficient to shift the burden. Pet. 3. Afghanistan has not denied the request for a travel document at this time. Aguilar Decl. ¶ 21. The request remains

pending, and when a travel document is issued, there will be no specific impediment to Petitioner's removal to Afghanistan. *Id.*

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 recently 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 still 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, 1366 (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*.

CONCLUSION

For the foregoing reasons, Petitioner's claim under *Zadvydas* should be rejected and the Petition dismissed.

Respectfully submitted, this 19th day of May, 2026.

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BY: */s/ Michael P. Morrill*

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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:

FARIDULLAH LIWAN KHIL
A# [redacted]
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 19th day of May, 2026.

BY: */s/ Michael P. Morrill*
MICHAEL P. MORRILL
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