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

JOSE ANGEL BARRETO ALFONZO,	:	
	:	
Petitioner,	:	
	:	**Case No. 7:26-cv-176-WLS-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, IRWIN DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On June 8, 2026, the Court received Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2241. ECF No. 1. Petitioner claims that his post–final-order detention violates *Zadvydas v. Davis*, 533 U.S. 678 (2001), that ICE/ERO cannot remove him to Venezuela without terminating withholding of removal, that ICE/ERO is improperly pursuing third-country removal without necessary protections, and that his detention violates substantive and procedural due process. Pet. ¶¶ 59–76. As a threshold factual matter, Petitioner has *never* previously been detained by ICE/ERO following the issuance of his 2010 final order of removal.

The Petition must be dismissed. Petitioner was taken into ICE/ERO custody on May 26, 2026—meaning he filed this action after only two weeks of detention, squarely within the ninety-day mandatory removal period and far short of the six-month presumptively reasonable period required to state a claim under *Zadvydas*. *See Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). Because Petitioner cannot satisfy this threshold requirement, all of his claims—including those under the Immigration and Nationality Act (INA), the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), and the Fifth Amendment—are premature and must be dismissed.

BACKGROUND

For purposes of background, Respondent relies on the Declaration of Deportation Officer Chase Puckett ("Pucket Decl."), submitted with this filing. The declaration accurately summarizes the circumstances underlying Petitioner's custodial status and immigration history, and Respondent refers the Court to it for the factual record.

LEGAL FRAMEWORK

Because Petitioner is detained following a final order of removal, his detention is governed by 8 U.S.C. § 1231. Under § 1231(a)(1), ICE/ERO must remove a noncitizen within ninety days of the date the removal order becomes administratively final. *See* 8 U.S.C. § 1231(a)(1)(A)–(B). During this ninety-day "removal period," detention is mandatory. *See id.* § 1231(a)(2).

If removal is not completed 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). In *Zadvydas*, the Supreme Court held that the first six months of detention are "presumptively reasonable." 533 U.S. at 700. After six months, the burden shifts only if the detainee provides "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701; *see also* 8 C.F.R. § 241.13.

The Eleventh Circuit has made clear that a detainee cannot state a *Zadvydas* claim unless (1) he has been detained more than six months, and (2) he provides evidence establishing the absence of a reasonably foreseeable removal. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002). This threshold requirement is strict: the six-month period "must have expired at the time the § 2241 petition [is] filed." *Id.*; *see also Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009).

ARGUMENT

Petitioner asserts that his continued detention violates the INA, FARRA, and the Fifth Amendment. He argues that (1) he is being detained beyond the period allowed under *Zadvydas*, (2) ICE/ERO cannot remove him to Venezuela without first terminating withholding of removal, (3) ICE/ERO is pursuing third-country removal without providing required protections, and (4) his detention violates substantive and procedural due process.[1] Pet. ¶¶ 59–76. All of these claims fail for one dispositive reason: the Petition is premature. Petitioner has been detained only since May 26, 2026, and therefore cannot satisfy the six-month threshold necessary to state any prolonged-detention claim under *Zadvydas*.

Petitioner's claim fails at the outset. The Eleventh Circuit holds that the six-month *Zadvydas* period "must have expired at the time [a] § 2241 petition [is] filed." *Akinwale*, 287 F.3d at 1052. The Supreme Court likewise emphasized that the first six months of post-order detention are "presumptively reasonable." *Zadvydas*, 533 U.S. at 700–01. This mandatory prerequisite has been reaffirmed repeatedly. *See Gozo*, 309 F. App'x at 346; *see also Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 833 (11th Cir. 2016).

Here, ICE/ERO encountered Petitioner on May 26, 2026—marking the *first time* he has ever been detained under his 2010 final order of removal—and took him into custody pursuant to 8 U.S.C. § 1231(a). Puckett Decl. ¶ 7. Petitioner filed his habeas petition on June 8, 2026, only

[1] All of Petitioner's theories—under the INA, FARRA, and the Fifth Amendment—rest on his assertion that his post–final-order detention has become unreasonably prolonged. Courts in this Circuit treat such claims together because they are each grounded in the same *Zadvydas* framework and rise or fall on whether the petitioner satisfies the six-month threshold. *See*, e.g., *Linares v. Dep't of Homeland Sec.*, 598 F. App'x 885, 887 (11th Cir. 2015) (evaluating procedural and substantive due process claims together where both were "grounded in the government's alleged violation under Zadvydas[]"). Because Petitioner has been detained for only two weeks, none of his claims are ripe, and each is premature for the same reason. Respondents respectfully request the opportunity to amend their response if the Court interprets any claim differently.

two weeks later. His detention began on May 26, 2026, and no prior period of post-final-order immigration detention exists to extend or aggregate. He therefore remains well within the ninety-day removal period during which detention is mandatory. *See* 8 U.S.C. § 1231(a)(2). Because the six-month period will not expire until late November 2026, he cannot satisfy the threshold requirement to bring a prolonged-detention claim. *See Akinwale*, 287 F.3d at 1052.

Courts throughout the Eleventh Circuit—including this Court—routinely dismiss *Zadvydas* petitions filed before the six-month mark. *See S.H. v. Warden, Stewart Det. Ctr.*, No. 4:21-CV-185-CDL-MSH, 2022 WL 1280989, at *2 (M.D. Ga. Feb. 15, 2022); *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021); *Garcon v. Warden, Irwin Cty. Det. Ctr.*, No. 7:16-CV-158-WLS-MSH, 2017 WL 9250368, at *2 (M.D. Ga. Aug. 30, 2017), *recommendation adopted*, 2018 WL 2056562 (M.D. Ga. Feb. 27, 2018). This Court should do the same here.

To the extent Petitioner argues that withholding of removal to Venezuela bars ICE/ERO from effectuating removal, that argument is incorrect. Withholding "bars [removing] a[] [noncitizen] to a particular country," but it "does not disturb the final order of removal" or prevent ICE/ERO from removing him to another country. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999); *see also INS v. Cardoza-Fonseca*, 480 U.S. 421, 428 n.6 (1987); 8 C.F.R. § 1208.22.

Petitioner's claims regarding third-country removal are similarly unripe. The record reflects only that "ICE/ERO has initiated efforts to identify a third country of removal." Puckett Decl. ¶ 8. On June 27, 2026, Petitioner declined removal to Mexico. Puckett Decl. ¶ 8. That decision did not initiate or trigger any removal process to another country; instead, ICE/ERO simply requested that Petitioner be added to the list for potential third-country removals, consistent with routine procedures. Puckett Decl. ¶ 8. No country has been designated, no notice has issued,

and no removal has been attempted. Without a concrete removal action, no due-process or FARRA rights are implicated.

Finally, Petitioner cannot salvage his claims by referencing the sixteen years he was present in the United States after his 2010 order of removal. Petitioner was never detained by ICE/ERO during that time, and no portion of that period counts toward the *Zadvydas* six-month presumption. Courts in this district have emphasized that *Zadvydas* focuses on the *current* custodial period because it is intended to provide ICE/ERO with a reasonable window to arrange removal. *See Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42, 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018)** ("focus is on today"). Because Petitioner's first and only post-final-order detention began on May 26, 2026, he has been detained for only two weeks—far short of the six months required to state a viable claim under *Zadvydas*.

Here, Petitioner's *first* period of post-order detention began on May 26, 2026. Puckett Decl. ¶ 7. Because he has been detained only two weeks, he cannot meet the six-month prerequisite. His *Zadvydas* claim—and consequently all his derivative statutory and constitutional claims—are premature and must be dismissed.

CONCLUSION

Because Petitioner has been detained for only a brief period and cannot satisfy the mandatory six-month threshold required to state a claim under *Zadvydas*, all of his challenges to his post–final-order detention are premature. His statutory and constitutional claims therefore fail as a matter of law. Respondents respectfully request that the Court dismiss the Petition in its entirety.

Respectfully submitted, this 29th day of June, 2026.

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28 U.S.C. § 543