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

GALO ALEXANDER DERCE-PACHAY,	:	
Petitioner,	:	**Case No. 7:26-CV-206-WLS-CHW**
v.	:	**28 U.S.C. § 2241**
WARDEN, STEWART DETENTION CENTER,	:	
Respondent.	:	

MOTION TO DISMISS

On July 10, 2026, Petitioner filed a petition for a writ of habeas corpus ("Petition"), challenging his pre-final order of removal detention. ECF No. 1. On July 22, 2026, the Court issued an Order, ECF No. 3, directing Respondent to provide Petitioner with a bond hearing within seven days, or to show cause why the Court's rulings in *J.A.M. v. Streeval*, No. 4:25-CV-342-CDL, 2025 WL 3050094 (M.D. Ga. Nov. 1, 2025), and *P.R.S. v. Streeval*, No. 4:25-cv-330-CDL, 2025 WL 3269947 (M.D. Ga. Nov. 24, 2025), do not control the result in this case.

In lieu of responding to these motions, Respondent now files this Motion to Dismiss. Petitioner's removal order has become final, so Petitioner is now detained post-final order of removal pursuant to 8 U.S.C. § 1231(a). Accordingly, to the extent Petitioner continues to challenge his detention, his claim is governed by *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Court should dismiss the Petition because (1) any claim under *Zadvydas* is premature, and (2) in the alternative, Petitioner fails to show he is entitled to relief under *Zadvydas*.

BACKGROUND

For purposes of background, Respondent relies on the Declaration of Deportation Officer Thomas Hudgins ("Hudgins 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 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

Now that Petitioner is detained post-final order of removal, the Petition should be dismissed for three reasons. ***First***, to the extent the Petition challenged Petitioner's pre-final order of removal detention, that claim is now moot because Petitioner is no longer detained pursuant to that authority. ***Second***, to the extent Petitioner challenges his post-final order of removal detention, that claim should be dismissed for failure to state a claim because it is premature under *Zadvydas*. ***Third***, in the alternative, even assuming Petitioner could state a claim for relief under *Zadvydas*—which he cannot—he fails to show that he is entitled to relief.

I. Petitioner's claim challenging his pre-final order of removal detention is moot.

To the extent Petitioner raised a claim challenging his pre-final order of removal detention, that claim is now moot and must be dismissed.

"Article III of the Constitution limits the jurisdiction of the federal courts to the consideration of 'Cases' and 'Controversies.'" *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335 (11th

Cir. 2001) (quoting U.S. CONST. art. III, § 2). "The doctrine of mootness derives directly from the case-or-controversy limitation because an action that is moot cannot be characterized as an active case or controversy." *Id.* (internal quotations and citation omitted).

"A cause of action becomes moot when it no longer presents a live controversy with respect to which the court can give meaningful relief." *Djadju v. Vega*, 32 F.4th 1102, 1106 (11th Cir. 2022) (internal quotations and citation omitted). "In considering mootness, [courts] look at the events at the present time, not at the time the complaint was filed[.]" *Id.* (citation omitted). "If the injury ceases, or is rendered unamenable to judicial relief, then the case becomes moot and thereby incapable of further Article III adjudication." *Checker Cab Operators, Inc. v. Miami-Dade Cnty.*, 899 F.3d 908, 915 (11th Cir. 2018). Put another way, "[i]f events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed." *Al Najjar*, 273 F.3d at 1336 (citation omitted). "Indeed, dismissal is required because mootness is jurisdictional." *Id.* (citation omitted).

Here, when Petitioner filed the Petition, he was detained pre-final order of removal pursuant to 8 U.S.C. § 1225(b), and he challenged his detention under that authority. However, as explained above, an IJ has now ordered Petitioner removed. Hudgins Decl. ¶ 7 & Ex. B. Petitioner waived appeal. *Id.* His present detention is therefore governed by 8 U.S.C. § 1231—not 8 U.S.C. § 1225(b).

Because 8 U.S.C. § 1226(b) no longer governs Petitioner's detention, "it is unnecessary and altogether inappropriate for [the Court] to take up the question [of] whether [Petitioner's] detention pursuant to that provision violates the Due Process Clause of the Fifth Amendment." *De La Teja v. United States*, 321 F.3d 1357, 1363 (11th Cir. 2003) (citation omitted). "Any opinion

on the matter would be purely advisory in nature, and therefore this issue has become moot." *Id.* Both this Court and the Eleventh Circuit have held that claims challenging pre-final order of removal detention become moot upon the entry of a final order of removal and the concomitant shift of detention authority to 8 U.S.C. § 1231(a). *Id.* at 1362-63; *H.N. v. Warden, Stewart Det. Ctr.*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, at *2 (M.D. Ga. Sept. 15, 2021); *Dixit v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:18-cv-157-HL, 2019 WL 12267340, at *2 (M.D. Ga. Sept. 17, 2019). The Court should reach the same conclusion here and dismiss the Petition to the extent Petitioner challenges his pre-final order of removal detention.

II. Petitioner fails to state a claim because the Petition is premature under *Zadvydas*.

To the extent Petitioner continues to challenge his post-final order of removal detention, his claim is governed by *Zadvydas*. But that claim should be dismissed because Petitioner cannot state a claim under *Zadvydas*.

In evaluating challenges to post-final order of removal detention, the Eleventh Circuit has made clear that the "six-month period thus must have expired at the time [Petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*." *Akinwale*, 287 F.3d at 1052; *see also Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 833 (11th Cir. 2016); *Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013).

Here, the IJ ordered Petitioner removed on July 15, 2026. Hudgins Decl. ¶ 7 & Ex. B. Petitioner waived appeal. *Id.* Petitioner's final order of removal became final on that date. 8 C.F.R. § 1241.1(b). Therefore, the 90-day removal period commenced on July 15, 2026 and will not end until October 13, 2026. 8 U.S.C. § 1231(a)(1)(A), (a)(1)(B)(1). The six-month presumptively reasonable detention period under *Zadvydas* will not end until January 15, 2027. *Zadvydas*, 533 U.S. at 700.

The Court received the Petition on July 15, 2026. ECF No. 1. At the time Petitioner mailed his Petition, Petitioner was detained pursuant to 8 U.S.C. § 1225(b). Now, however, he is detained post-final order of removal pursuant to 8 U.S.C. § 1231(a). Because his removal order became final just two weeks ago, Petitioner remains mandatorily detained within the 90-day removal period under 8 U.S.C. § 1231(a)(2). Further, the *Zadvydas* six-month presumptively reasonable detention period will not expire for over five more months. Thus, Petitioner cannot state a claim under *Zadvydas* because his detention is presumptively reasonable. *Akinwale*, 287 F.3d at 1052.

Courts throughout the Eleventh Circuit—including this Court—have dismissed non-citizens' habeas petitions raising *Zadvydas* claims where the presumptively reasonable six-month period had not expired when they filed their petitions. *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), *recommendation adopted*, 2022 WL 1274385 (M.D. Ga. Apr. 28, 2022); *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021); *Elienist v. Mickelson*, No. 15-61701-Civ, 2015 WL 5316484, at *3 (S.D. Fla. Aug. 18, 2015), *recommendation adopted*, 2015 WL 5308882 (S.D. Fla. Sept. 11, 2015); *Maraj v. Dep't of Homeland Sec.*, No. CA 06-0580-CG-C, 2007 WL 748657, at *3 (S.D. Ala. Mar. 7, 2007); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1363-65 (N.D. Ga. 2002). The Court should similarly dismiss the Petition here.

III. In the alternative, Petitioner fails to show that he is entitled to relief under *Zadvydas*.

Even if the Court ignores that Petitioner's *Zadvydas* claim is premature—which it should not—Petitioner fails to show that he is entitled to release under *Zadvydas*. Petitioner has the initial burden to 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.

Petitioner presents no evidence to show that he is not likely to be removed in the reasonably foreseeable future. And he cannot state a claim under *Zadvydas* merely through the conclusory assertion that he is unlikely to be removed in the near future. *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). 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 provides none, he cannot meet his burden under *Zadvydas*.

For these reasons, the Petition should be dismissed because Petitioner fails to show that he is entitled to relief under *Zadvydas*.

CONCLUSION

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

Respectfully submitted, this 28th day of July, 2026.

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BY: *s/ Travis D. Lynes*

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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:

Galo Alexander Derce-Pachay
A# [redacted]
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This 28th day of July, 2026.

BY: *s/ Travis D. Lynes*
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