

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

AUGUSTO LAZA CUESTA,

Petitioner,

Case No. 2:26-cv-675-KCD-DNF

v.

WARDEN, ALLIGATOR ALCATRAZ
DETENTION FACILITY (OR CURRENT
ICE CUSTODIAN),

Respondents.

_____ /

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Augusto Laza Cuesta seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by U.S. Immigration and Customs Enforcement and seeking his immediate release from custody.¹ His petition should be denied. This case is distinct from recent immigration habeas cases filed in this district regarding the interplay of detention authorities under 8 U.S.C. §§ 1225 and 1226. **Here, this petitioner has a final order of removal, is subject to reinstatement of removal, and therefore is subject to mandatory detention under 8 U.S.C. § 1231.** This detention authority has already been decided by the Supreme Court in *Johnson v.*

¹ As noted in and attached to Laza-Cuesta's petition, he has previously filed another petition by a "next friend," Zunilda Perez, which was denied by U.S. District Judge John E. Steele on February 12, 2026, on the grounds that Perez had not met the standards of a "would-be next friend." *See Laza Cuesta v. Warden*, 2:26-cv-284-JES-DNF, ECF 2.

Guzman Chavez, 594 US 523 (2021). In *Johnson*, the Supreme Court held that §1231, not §1226, governs the detention of aliens subject to reinstated orders of removal, meaning those aliens are not entitled to a bond hearing while they pursue withholding of removal.

FACTS

Petitioner Augusto Laza Cuesta, a Cuban citizen, entered the United States in or around Key West, FL, on a raft, on or around April 17, 1991, and applied for admission as a parolee. Exhibit 1. Laza-Cuesta was issued parole and released from custody on or about April 22, 1991. Exhibit 2 (I-213).

On January 18, 1994, Laza-Cuesta, was convicted in Dade County, Florida for the felony criminal offense of possession of a weapon while engaged in the criminal offense of manslaughter and was sentenced to 12 years of imprisonment. Exhs. 1, 2. On February 17, 1995, an immigration judge ordered Laza-Cuesta removed from the United States. Exh. 2. According to ICE, on August 4, 1997, Laza-Cuesta was released to ICE custody and detained at the Bay County Jail in Panama City, FL. Exhibit 8 (detention history). On October 17, 2001, Laza-Cuesta was released on an Order of Supervision (OSUP). Exhibit 3 (Notice of Revocation).

According to ICE, on May 13, 2007, Laza-Cuesta filed an Application to Register Permanent Residence or to Adjust Status with USCIS, which ICE reports was denied on October 20, 2008. Also according to ICE, on February 1, 2025, Laza-Cuesta filed a Petition for Alien Relative with USCIS, which is still pending, but ICE

asserts that if it were approved, it would only acknowledge a family member relationship and not automatically grant Petitioner any legal status. The undersigned was not provided with records of these filings.

On October 20, 2025, Laza Cuesta was arrested at his scheduled ICE reporting appointment and detained him at Florida Soft Side Facility. Exh. 2, Exhibit 8 (detention history). His informal interview took place on March 21, 2026, after his OSUP revocation. *See* Exhibits 3, 4.

On January 26, 2026, ICE attempted to remove Laza Cuesta to Mexico but he failed to comply. Exhibit 5 (Declaration of Deportation Officer Dairon Hernandez). In February and March 2026, Laza-Cuesta had been issued two notices of "File Custody Review" in which ICE looked at various factors to consider potential release on an OSUP. Exhibit 6. On March 14, 2026, A warning for failure to depart was issued which Laza-Cuesta refused to sign. Exhibit 7.

On March 10, 2026, Laza Cuesta filed a *pro se* habeas petition claiming that his detention is "unlawful and prolonged" and that his removal is not reasonably foreseeable, violating the Due Process Clause of the Fifth Amendment, the INA and claiming that he has been retaliated against and physically abused by the ICE guards and faces a "substantial risk of torture if removed to Cuba or any third-world country." ECF 1.

ARGUMENT

I. 8 U.S.C. §§ 1252(g) Precludes Review of Petitioner's Claims

There is no jurisdiction to review “any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from “discrete acts of commencing proceedings, adjudicating cases, and executing removal orders.” *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (“*AADC*”) (cleaned up). These activities “represent the initiation or prosecution of various stages in the deportation process” that Congress had “good reason” to withhold from judicial review. *Id.*

This bar is subject to limitations and must be applied “to just those three specific actions” listed. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In doing so, “courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020). Here, Petitioner is subject to mandatory detention under 8 U.S.C. § 1231 based on the reinstatement of his removal order pursuant to 8 U.S.C. § 1231(a)(5). This matter thus falls squarely within the specific actions *Jennings* contemplated, namely the discrete action of executing a removal order, and this Court lacks jurisdiction to hear Petitioner’s claims. *See e.g., Rivera-Amador v. Rhoden*, No. 3:25-CV-1460-WWB-SJH, 2025 WL 3687452, at *2 (M.D. Fla. Dec. 19, 2025); *see also*

Barrios v. Ripa, No. 1:25-CV-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025) (finding 8 U.S.C. § 1252(g) to bar habeas petitioner’s claims that OSUP had been improperly revoked).

II. 8 U.S.C. § 1252(b)(9) Also Bars This Court’s Review

The Court also lacks jurisdiction on separate grounds. The INA precludes the Court’s review of “all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States” except when brought pursuant to judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9). This is known as the “zipper clause” and applies where a petitioner seeks “review of an order of removal [or] the decision to seek removal.” *Canal A*, 964 F.3d at 1257; *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—the subsection that provides the single, proper path for judicial review of removal orders—courts have concluded that petitioners must funnel all aspects of challenges to removal proceedings through the avenue set forth in Section 1252(a)(5), which takes place after a final order of removal has issued. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (“The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.”); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is “clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).”). The zipper clause’s

restrictions are broad, but not without limitation. *See, e.g., Canal A*, 964 F.3d at 1257. However, a claim that arises from actions or proceedings brought to remove an alien clearly falls within its parameters. *See Regents of Cal.*, 591 U.S. at 19 (finding the bar inapplicable where parties did not challenge removal proceedings).

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294–95. In this case, Petitioner challenges the government’s decision to detain him. *See generally* ECF 1. The fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention is an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner’s claims for lack of jurisdiction under 8 U.S.C. § 1252(b)(9).

III. The Petitioner’s Detention is Lawful.

Should the Court determine that it retains jurisdiction over Petitioner’s habeas claims—and it should not—he still cannot establish eligibility for habeas relief because his detention is lawful. Petitioner is subject to a final, executable order of removal and is subject to mandatory detention under 8 U.S.C. § 1231.

Federal immigration law contains various provisions authorizing the Government to detain aliens during the removal process, and detention of aliens subject to reinstated orders of removal is governed by 8 U.S.C. § 1231. *See Guzman Chavez*, 594 U.S. at 526. With respect to the length of his current detention, the petitioner was taken into ICE custody on October 20, 2025, and the habeas petition was filed on March 10, 2026—approximately 148 days later. Under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court construed § 1231(a)(6) to authorize detention for a period reasonably necessary to secure removal and adopted a six-month period as presumptively reasonable. After six months, if the alien provides good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, the burden shifts to the government to rebut that showing. *Id.* at 701–02.

Respondents submit that the present habeas challenge to his detention is premature under *Zadvydas* because the petitioner had been in ICE custody within the presumptively reasonable six-month period. Moreover, there is a significant likelihood of removal in the reasonably foreseeable future. ICE has continued to identify Mexico as a viable third-country option, despite Laza-Cuesta’s refusal to comply with ICE’s earlier attempts. *See* Exh. 5. Removal could be extended when acts

by a petitioner thwart removal.² Nevertheless, ICE maintains that it continues to actively pursue removal so there is no indication that removal is “no longer reasonably foreseeable” within the meaning of *Zadvydas*. Laza-Cuesta’s detention claim should be denied as premature. Laza-Cuesta is now being held pending execution of the final removal order, is subject to mandatory detention, and is not entitled to immediate release or bond proceedings per 8 U.S.C. § 1231.

IV. Petitioner’s conditions of confinement claims are not available through habeas relief.

Petitioner’s allegations that ICE officers physically assaulted him and mishandled his grievances are conditions-of-confinement claims that lack jurisdiction in a habeas petition as they do not attack the legal basis of his immigration detention. Even if those allegations were credited, the appropriate remedies would be improvements in conditions, potential damages, and/or internal corrective action against individual officers, not immediate release from detention. Likewise, the challenge to how his conviction is labeled in agency records concerns the description and internal risk classification of an existing state conviction and does not, by itself, invalidate the conviction, the exclusion order, or the statutory basis for detention.

²See *Singh v. U.S. Att’y Gen.*, 945 F.3d 1310, 1314 (11th Cir. 2019) (removal period can be extended by § 1231(a)(1)(c) if a petitioner “fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure” or (2) “conspires or acts to prevent the alien’s removal”). See also *Bernstein v. U.S. Att’y Gen.*, 2026 WL 352907 (M.D. Fla. Feb. 9, 2026) (J. Pratt) (finding that *Singh* did not apply to the facts at hand because there was no bad faith, and ordering petitioner’s release).

The Supreme Court has repeatedly emphasized that the “essence of habeas corpus is an attack by a person in custody upon the legality of that custody” and that the traditional function of the writ is to secure release from unlawful confinement. *See Preiser v. Rodriguez*, 411 U.S. 475, 484–90 (1973). In *Preiser*, the Court drew a clear line between challenges to the fact or duration of custody, which are the province of habeas, and challenges to the conditions of confinement, which are properly brought under civil rights statutes. *See also Muhammad v. Close*, 540 U.S. 749, 751–52 (2004) (when a claim seeks only relief regarding conditions and would not itself shorten custody, the claim lies outside core habeas).

In *Gomez v. United States*, the Eleventh Circuit stated that if conditions of confinement violate a prisoner’s constitutional rights, “[t]he appropriate Eleventh Circuit relief . . . is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment.” *Gomez v. United States*, 899 F.2d 1124, 1126-27 (11th Cir. 1990). The Eleventh Circuit has further indicated that its holding in *Gomez* applies to civil detainees in ICE custody. *Vaz v. Skinner*, 634 F. App’x 778, 781-82 (11th Cir. 2015 (per curiam) (noting that a detained alien could not obtain release based on his conditions of confinement claim); *see also Hidalgo v. Parra*, No. 2:25-cv-01214-SPC-NPM, 2026 WL 113587, at *1 (M.D. Fla. Jan. 15, 2026) (“Claims challenging the conditions of confinement, rather than the fact or duration of confinement, are not grounds for

habeas relief.”); *St. Louis v. Martin*, No. 2:20-cv-349-FTM-60-NPM, 2020 WL 3490179, at *7 (M.D. Fla. June 26, 2020) (“release under § 2241 unavailing when the alleged constitutional violation is predicated upon the conditions of a petitioner’s confinement.”).

Other circuits have adopted similar reasoning, for example the Ninth Circuit, sitting en banc, in *Nettles v. Grounds*, 830 F.3d 922, 934–35 (9th Cir. 2016), and the Sixth Circuit in *Luedtke v. Berkebile*, 704 F.3d 465, 466 (6th Cir. 2013), both concluding that claims which, if successful, would not necessarily result in earlier release must proceed, if at all, as civil rights actions rather than habeas petitions. Thus, because Eleventh Circuit precedent precludes the Court from ordering release from custody, Petitioner’s arguments on the basis of his conditions of confinement should be rejected because the district court lacks § 2241 jurisdiction over these claims as they fall outside the core of habeas relief.

CONCLUSION

The federal Respondents respectfully request that Laza Cuesta’s Petition for Writ of Habeas Corpus be denied based on the arguments set forth herein.

DATED this 31st day of March, 2026.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/Kelley C. Howard-Allen
KELLEY C. HOWARD-ALLEN
Assistant United States Attorney
Florida Bar No. 085464
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone No.: (813) 274-6000
Facsimile No.: (813) 274-6198
Email: kelley.howard@usdoj.gov
Lead Counsel for Federal Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 31, 2026, a true and correct copy of the foregoing application was sent by United States Mail to Petitioner at the address listed on the priority envelope (*see* ECF 1 at p. 18).

/s/Kelley C. Howard-Allen
Kelley C. Howard-Allen
Assistant United States Attorney