

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SHAIR ALI,

Petitioner,

v.

Case No. 2:26-cv-757-JES-DNF

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Shair Ali seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking his immediate release from immigration custody on the basis that the length of his detention is unlawful. *See generally* Pet., ECF No. 1. Federal Respondents argue his petition should be denied. In *Zadvydas v. Davis*, the Supreme Court held that detention following a final removal order is presumptively reasonable for six months. 533 U.S. 678 (2001). Shair Ali had been detained for 90 days when he filed the present petition. Federal Respondents argue his present detention is therefore lawful.

BACKGROUND

Shair Ali is a national and citizen of Pakistan who last entered the United States on or about November 1, 1990, as a temporary visitor for pleasure. Ex. 1 at 1-2 (2025 Form I-213). Petitioner remained in the United States beyond the time authorized by

the U.S. Department of Homeland Security. *Id.* at 2. On or about November 1, 1994, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal (“I-589”). *Id.*

On or about November 9, 1995, Petitioner was served with an Order to Show Cause and Notice of Hearing, placing him in removal proceedings and ordering him to appear before an immigration judge on March 6, 1996. *See* Ex. 2 (1995 NTA). On June 21, 1996, the immigration judge denied Petitioner’s I-589 and granted him voluntary departure in lieu of removal. *See* Ex. 3 (1996 Vol. Depart. Order). He was ordered to voluntarily depart on or before June 23, 1997. *Id.* at 1; *see also* Ex. 4 at 22 (2000 BIA Order). On July 5, 1996, Petitioner appealed the immigration judge’s denial of his I-589 to the Board of Immigration Appeals (BIA). Ex. 1 at 2¹; *see also* Ex. 4 at 1. On May 5, 2000, the BIA dismissed Petitioner’s appeal and allowed him 30 days to depart the United States. Ex. 4 at 1-3.

On October 23, 2001, ICE took Petitioner into custody until January 26, 2002, at which time ICE released him on an order of supervision. Ex. 5 (Detention History). On February 20, 2007, ICE took Petitioner into custody until May 17, 2007, at which

¹ Petitioner’s I-213 dated December 17, 2025, also states that Petitioner filed a motion to reopen his case with the BIA on January 25, 2002, and that the BIA ordered Petitioner removed on January 8, 2009. ICE’s Office of Principal Legal Advisor represents this information is incorrect. The attached declaration from Deportation Officer Diego I. Avila Hernandez also contains information about Petitioner’s unsuccessful attempts to reopen his case with the BIA on November 13, 2002, and April 23, 2007. *See* Ex. 6 ¶¶ 8-10. Ultimately, ICE represents Petitioner’s order of removal became final on May 5, 2000.

point he was released. *Id.*² On December 17, 2025, U.S. Customs and Border Protection arrested Shair Ali and placed him in immigration custody, where he remains today. Ex. 1 at 2. Petitioner is currently detained at Florida Soft Side South.³

On March 17, 2026, Shair Ali filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth Amendment. *See generally* Pet. He had been detained for 90 days when he filed the present petition.

CERTIFIED HABEAS RETURN

ICE is detaining Shair Ali pursuant to 8 U.S.C. § 1231. *See* 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Petitioner “has the burden of establishing his right to federal habeas relief and of proving all facts necessary to show a constitutional violation.” *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001).

ARGUMENT

I. Petitioner’s Detention is Lawful

On June 21, 1996, an immigration judge granted Petitioner voluntary departure in lieu of removal and ordered he depart by June 23, 1997. *See* Exs. 3, 4.

² Petitioner’s Detention History states he was removed on May 17, 2007. ICE’s Office of Principal Legal Advisor represents this information is incorrect and that Petitioner was released.

³ *See Online Detainee Locator System*, U.S. Immigr. & Customs Enft, <https://locator.ice.gov/odls/#/search> (last accessed April 6, 2026) (enter Petitioner’s A-Number and Pakistan as Country of Birth under “Search by A-Number”).

Petitioner appealed. *See* Ex. 4. On May 5, 2000, the BIA dismissed Petitioner's appeal and allowed him 30 days to depart the United States. Ex. 4 at 1-3.

Pursuant to the INA, except as otherwise provided and explained below, DHS initially has a 90-day "removal period" to remove Petitioner and is required to detain him during this time. 8 U.S.C. §§ 1231(a)(1)(A) ("[W]hen an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 day (in this section referred to as the 'removal period').") & (a)(2)(A) ("During the removal period, the Attorney General shall detain the alien."). The removal period begins, as relevant here, the date the order of removal becomes administratively final, *id.* § 1231(a)(1)(B)(i), which is May 5, 2000. Ex. 4. Although DHS initially has a 90-day removal period during which an individual with a final removal order must be detained, detention may extend into a "post-removal period." *Compare* 8 U.S.C. §§ 1231(a)(1)(A) & (a)(2)(A) *with id.* §§ 1231(a)(1)(C) (suspension of removal period in event of certain actions by an alien) & (a)(6) (certain categories of aliens may be detained beyond removal period or released); *see also Zadvydas*, 553 U.S. at 682-83 (referring to 8 U.S.C. § 1231(a)(6) as a "post-removal-period statute").

The INA does not explicitly define how long ICE can detain an alien subject to the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). However, due to constitutional concerns, including under the Due Process Clause of the Fifth Amendment, the Supreme Court has interpreted the post-removal

period to be limited to “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. A reasonable length of detention “is presumptively six months.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021); *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (six-month period is inclusive of 90-day removal period).

If the presumptively reasonable six-month period expires without removal, then a burden-shifting framework comes into play regarding the “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. But before that six-month period expires, a *Zadvydas* habeas challenge is premature. *See, e.g., id.* (the burden-shifting framework applies “[a]fter this 6-month period”) (emphasis added); *Akinwale*, 287 F.3d at 1052 (“This six-month period thus must have expired at the time [Petitioner’s] § 2241 petition was filed in order to state a claim under *Zadvydas*.”); *Farah v. U.S. Att’y Gen.*, 12 F.4th 1312, 1321 (11th Cir. 2021) (“Under Supreme Court precedent, detention under section 1231(a) is presumptively reasonable for six months, *after which* an alien may challenge his ongoing detention.”) (emphasis added). At bottom, “until the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any due process claim is not ripe.” *Al Ellary v. Noem*, No. 2:26-cv-112-KCD-DNF, 2026 WL 548048, at *1 (M.D. Fla. Feb. 27, 2026); *see also Texas v. United States*, 523 U.S. 296, 300 (1998) (“A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.”) (cleaned up).

Shair Ali filed the present petition at the exact expiration of the 90-day period, but well before the expiration of the six-month period. He was detained on December 17, 2025, and filed the present petition on March 17, 2026. *Compare* Ex. 5 *with* Pet. At that point, Petitioner had been detained for 90 days; to date, he has been in detention for 110 days. It is only after Petitioner has been detained for six months, if that occurs, that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701; *Al Ellary v. Noem*, 2026 WL 548048, at *2 (denying petition because due process claim under *Zadvydas* was unripe for petitioner detained less than six months); *Texas*, 523 U.S. at 300. Before that time limit runs, his *Zadvydas* habeas challenge should be dismissed.

Federal Respondents acknowledge this Court has previously disagreed. *See Rudenko v. Sec’y, Dep’t of Homeland Sec.*, No. 2:25-cv-1157-JES-NPM, 2026 WL 291012, at *3 (M.D. Fla. Feb. 4, 2026). ICE represents that Petitioner’s removal is reasonably foreseeable. According to Deportation Officer (DO) Diego I. Avila Hernandez, ICE took the following steps to effectuate Petitioner’s removal:

1. On December 19, 2025, Petitioner’s birth certificate was obtained.
2. On January 27, 2026, DO Cuevas sent a Travel Document Request (TDR) packet to RIO, James Dobson for approval before being sent to consulate.
3. On January 29, 2026, DO Cuevas mailed the Travel Document Request

(TDR) packet to Pakistan Consulate in Houston, still pending approval.

4. On April 06, 2026, ERO conducted a Post-Order Custody Review (POCR) and sent it out to SDDO.

Ex. 6 ¶¶ 11-13, 15-16 (Avila Decl.). ICE represents that, based on the aforementioned actions and their continued engagement to acquire a travel document, there is significant likelihood that Petitioner will be removed in the reasonably foreseeable future. *Id.* ¶ 17.

II. Petitioner's Challenges to Confinement Claim is Misplaced

Petitioner challenges his conditions of confinement because he alleges his medical needs are not being met in custody. *See* Pet. at 5-6. However, his claims are not cognizable in a habeas action. “Habeas is at its core a remedy for unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674, 128 (2008). “Claims so far outside the ‘core’ of habeas may not be pursued through habeas. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 119 (2020). Because Petitioner’s claim challenges conditions of confinement, rather than the fact or duration of his confinement, habeas relief—which is, ordinarily, release—is not available. *See 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.”); *see also Vaz v. Skinner*, 634 F.

App'x 778, 781 (11th Cir. 2015 (per curiam) (“[R]elease from imprisonment is not an available remedy for a conditions-of-confinement claim.”).

Indeed, 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.” 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. *See Vaz*, 634 F. App'x at 781-82 (noting that a detained alien could not obtain release based on his conditions of confinement claim). This district has also refused to permit any exception for civil detainees in ICE custody. In *St. Louis v. Martin*, the court found “release under § 2241 unavailing when the alleged constitutional violation is predicated upon the conditions of a petitioner's confinement.” No. 2:20-cv-349-FTM-60-NPM, 2020 WL 3490179, at *7 (M.D. Fla. June 26, 2020). Because Eleventh Circuit precedent precludes the Court from ordering release from custody, Petitioner's arguments on the basis of his conditions of confinement should also be rejected.

CONCLUSION

Federal Respondents argue Shair Ali's petition should be denied.

DATED this 6th day of April, 2026.

Respectfully submitted,

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