

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Luis De Jesus Fernandez Alamo,

Petitioner,

Case No. 2:26-cv-1687-KCD-KRH

v.

U.S. Dept. of Homeland Security, et al.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Luis De Jesus Fernandez Alamo, a native and citizen of Cuba, was first ordered removed in November 2007, but his case was later reopened in 2021, and voluntary departure was granted in April 2026, which became a final removal order on May 15, 2026 without departure or travel documents. Alamo was detained by ICE on October 29, 2025. Alamo alleges his continued detention violates due process because he has been in immigration detention for more than 180 days. Alamo's petition should be denied as premature as detailed below.

FACTUAL BACKGROUND

Luis De Jesus Fernandez Alamo is a national and citizen of Cuba who was paroled into the United States on November 28, 1995, and was charged about four months later with kidnapping and false imprisonment on March 22, 1996, receiving one year probation. Composite Exhibit 1 at 27, 29-34. Alamo reentered the United

States on May 28, 2007, near Laredo, Texas.¹ *Id.* at 27. On November 5, 2007, he was ordered removed, and released on an OSUP. *Id.* at 1-4, 18. On June 28, 2021, Alamo moved to reopen his case, which was granted on June 29, 2021 (which has the effect of vacating the final removal order and placing a petitioner back into active removal proceedings). *Id.* at 16, 20.

Luis De Jesus Fernandez Alamo was placed in immigration custody on October 29, 2025, after reporting to the ICE office in Miramar, Florida. *Id.* at 13-15, 18. On the same day, Alamo was served with a notice or revocation of his release. *Id.* at 5-6. Alamo was informally interviewed on June 9 and made no statement. *Id.* at 7. On April 15, 2026, the immigration judge (IJ) granted voluntary departure (VD), which became a became a final order of removal after thirty days without departure or travel documents required under 8 C.F.R. § 1240.26(b)(1)(iii) (May 15, 2026).² *Id.* at 20-21.

According to ICE, “[o]n March 2, 2026, ICE ERO attempted to remove the petitioner via Hidalgo, TX, Port of Entry to Mexico. The Petitioner failed to comply. Due to the petitioner’s refusal to comply, ICE officers were unable to safely and effectively proceed with the removal process as scheduled.” *Id.* at 35-37, ¶¶ 4-5

¹ Alamo reported going to Texas to meet with his daughter, and continued to look for her in Mexico, and then returned to the United States on the same day by crossing the Rio Grande after he could not find her. *Id.* at 27.

² The authority to detained is §240B of the INA under which a voluntary departure order automatically converts into a final order of removal the day after the allowed departure period expires. 8 C.F.R. § 1240.26 dictate the rules, and procedural requirements for an IJ to grant Voluntary Departure during removal proceedings.

(Declaration of Deportation Officer Juan Cuevas). In his petition, Alamo reports Mexico refused him “twice due to medical conditions,” and Cuba “does not want me.” ECF 1 at ¶ 13; *see* Comp. Exh. 24 (detention history). On June 9, 2026, Alamo was served with a notice for removal to Mexico, which he acknowledged and signed, which Deportation Officer Juan Cuevas attests that everything indicates that “he will be willing to comply with his removal in the reasonably foreseeable future.” *Id.* at 23, 35-37, ¶ 6

Luis De Jesus Fernandez Alamo is detained at Florida Soft Side South. After the date of his final removal order (May 15, 2026, which is thirty days after the April 15 VD was granted), Alamo had been detained for three days at the time he filed his petition, and 26 days to date.³ *Id.* at 24. On May 18, 2026, Alamo filed a pro se petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment, including the right to proper medical care. ECF 1 at ¶ 13.

³ Alamo’s detention history shows 223 days in ICE detention as of June 9, 2026 (*id.* at 24), but his detention is now mandatory under 8 U.S.C. § 1231(a)(2), as of the date of his final removal order (May 15, 2026). Otherwise, his detention time should be tolled for failure to comply. *See 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 Reyes-Aguilera v DHS Secretary, et al.*, 2:26-cv-1079-KCD-NPM, 2026 WL 1223571 (M.D. Fla. May 5, 2026) (petitioner was taken into ICE custody beyond six months but refused removal to Mexico on two occasions, which tolled the detention period), citing to *Akinwale*, 287 F.3d at 1052 n.4 and *Quo Zing Song v. U.S. Atty. Gen.*, 516 F. App’x 894, 899 (11th Cir. 2013).

ARGUMENT

Luis De Jesus Fernandez Alamo has failed to show that his detention is unlawful.

Following entry of an order of removal, immigration detention is governed by 8 U.S.C. § 1231. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 544 (2021) (“§ 1231 explains what to do if the alien is ordered removed.”); *see also Deshati v. Noem*, No. 25-CV-15940-ESK, 2025 WL 3204227, at *2 (D.N.J. Nov. 17, 2025) (“The statute governing post-final order of removal immigration detention is 8 U.S.C. § 1231.”). Pursuant to § 1231(a)(1)(A), “when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days.” Detention during the removal period is mandatory. 8 U.S.C. § 1231(a)(2)(A).

In *Zadvydas v. Davis*, the Supreme Court held that indefinite detention of aliens raises serious constitutional concerns. 533 U.S. 678, 690-99 (2001). Once an order of removal is final, the Government may continue to detain an alien only for a reasonable amount of time. *See id.* at 699-701. The reasonableness of the detention is to be measured “primarily in terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment of removal.” *Id.* at 699. The Supreme Court held that six months is a presumptively reasonable period to detain a removable alien awaiting deportation. *Id.* at 700-01. “Although not expressly stated, the Supreme Court appears to view the six-month period to include the 90-day removal period [from section 1231(a)(1)(A)] plus 90 days thereafter.” *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th

Cir. 2002).

After that six-month period has passed, if 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 1052 (quoting *Zadvydas*, 533 U.S. at 701). The presumptively reasonable six-month period established in *Zadvydas* “must have expired at the time of the filing of a petition.” *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009) (citing *Akinwale*, 287 F.3d at 1052). Thus, “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.” *Id.* If an alien makes these showings, then the burden shifts to the Government to rebut the presumption with sufficient evidence establishing that there is “a significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701; *see also Khalil Al Ellary v. Noem*, 2:26-cv-00112-KCD-DNF (M.D. Fla. Feb. 27, 2026) (denying petition when alien had not been detained for six months).

Thus, before that time limit runs, neither *Zadvydas* nor any other binding precedent permit a challenge based on reasonable foreseeability of removal. *See Akinwale*, 287 F.3d at 1051-52. *See Zadvydas*, 533 U.S. at 700 (stating judicial review in foreign policy matters “require courts to listen with care when the Government’s foreign policy judgments, including, for example, the status of repatriation

negotiations, are at issue, and to grant the Government appropriate leeway when its judgments rest upon foreign policy expertise”). Federal Respondents submit that Alamo attempts this burden shifting analysis prematurely, based on the date of his final removal order (May 15, 2026), at which time, ICE’s detention authority shifted to 8 U.S.C. § 1231(a)(2)(A) (mandatory detention during 90-day removal period). At the expiration of the 90-day removal period (August 15, 2026), ICE’s detention authority will shift to 8 U.S.C. § 1231(a)(6) for a presumptively reasonable additional 90 days. As such, federal Respondents submit that Alamo’s petition is premature—he filed this action on May 18, 2026, which is before the expiration of the 90-day removal period (during which time detention is mandatory), and before the presumptively reasonable 180-day period established in *Zadvydas* expired.

However, if the Court were to employ *Zavydas*’s burden shifting framework, federal Respondents submit that Alamo has failed to show there is good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future; namely, that Mexico twice refused him due to medical conditions (and Cuba will not accept him), especially in light of his receipt and acknowledgement of the June 9, 2026, notice of removal to Mexico. *See Jennings*, 583 U.S. at 299. *See Godinez Perez v. Noem*, No. 2:25-CV-00429-JES-NPM, 2025 WL 2806557, at **1, 3 (M.D. Fla. Oct. 2, 2025) (rejecting *Zadvydas* challenge even though ICE had made no attempt to remove the petitioner for 15 years).

Alamo also challenges his conditions of confinement in getting “proper medical care.” ECF 1 at ¶ 13, Ground Three. But to the extent Alamo is alleging his

conditions of confinement are unconstitutional, release from custody is not available in this action. “[R]elease from imprisonment is not an available remedy for a conditions-of-confinement claim.” *Vaz v. Skinner*, 634 F. App’x 778, 781 (11th Cir. 2015 (per curiam)); *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.”). 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.” *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. *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 further 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 submit that Luis De Jesus Fernandez Alamo's Petition for a Writ of Habeas Corpus should be denied based on the arguments set forth herein.

DATED this 10th day of June, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 10, 2026, a true and correct copy of the foregoing response was sent by United States Mail to Petitioner at the FSS address (the return address listed on the envelope at ECF 1 at 9).

/s/Kelley C. Howard-Allen
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