

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

AUGUSTO LAZA CUESTA,

Petitioner,

Case No. 2:26-cv-1677-KCD-NPM¹

v.

WARDEN, FLORIDA SOFT SIDE SOUTH
DETENTION FACILITY, ET AL.,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Augusto Laza Cuesta files a second writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by U.S. Immigration and Customs Enforcement (ICE) on many of the same grounds as his first habeas petition in Case No. 2:26-cv-675-KCD-DNF (2026 WL 1291907),² and seeking his immediate release from custody.

FACTS

Petitioner's immigration background was detailed in the federal Respondent's initial petition (ECF 8) to Petitioner's March 10, 2026 petition filed in Case No.

¹ Per the Court's Order, ECF 5, this case was reassigned to Judge Dudek, after the undersigned filed a Notice of Related Cases (ECF 3).

² Laza Cuesta, through a "next friend," filed a prior petition, 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, 2026 WL 396849.

2:26-cv-675-KCD-DNF, which response is incorporated herein, and as set forth by the Court in its May 21, 2026, Order in that case:

Cuesta illegally entered the United States in 1991 and was released on parole. (Docs. 8-1, 8-2.) Following a criminal conviction, an immigration judge ordered him removed from the United States. (Doc. 8-2.) In 2001, Cuesta was released on an order of supervision. (Doc. 8-3.)

On October 20, 2025, Cuesta was arrested at his scheduled ICE reporting appointment and detained at Alligator Alcatraz. (Docs. 8-2, 8-8.) His informal interview took place on March 21, 2026, after his supervision was revoked. (Doc. 8-3, 8-4.) According to the un rebutted records now before the Court, Cuesta was transported to the border for removal to Mexico on January 26, 2026, but failed to comply. (See Doc. 8-5 at 2; Doc. 1 at 8.)

On May 18, 2026, Laza Cuesta filed another *pro se* habeas petition claiming that his “Prolonged Post-Removal-Order Detention Violates Due Process under *Zadvydas v. Davis*,” and again, makes the same claims 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 at pp. 7-8.

The Court addressed these arguments, and denied his petition on May 12, 2026, finding that:

Cuesta’s due process claim under *Zadvydas* fails, so the habeas petition is DENIED WITHOUT PREJUDICE to him refiling a new petition should his current detention (which is not impeded) extend beyond the six-month mark, and he can demonstrate there is no significant likelihood of removal in the reasonably foreseeable future.

ARGUMENT

In the Court's May 12, 2026 Order, the Court acknowledged the March 26, 2026, declaration regarding Laza Cuesta's unwillingness to cooperate with being removed to Mexico, which was attached as an exhibit to the federal Respondents' initial response (ECF 8, 8-5):

True, ICE took him into custody on October 20, 2025, which is beyond six months. But on January 26, 2026, Cuesta refused removal to Mexico, which tolls the detention period. *See Akinwale*, 287 F.3d at 1052 n.4 (stating that the "removal period shall be extended ... if the alien ... acts to prevent [his] removal subject to an order of removal"); *Quo Zing Song v. U.S. Atty. Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013) ("The six-month period is tolled, however, if the alien acts to prevent his removal."). Thus, Cuesta's challenge to his continued detention fails. *Brown v. Gonzalez*, No. 4:06CV525-RH/WCS, 2007 WL 2790585, at *8 (N.D. Fla. Sept. 23, 2007).

Laza Cuesta's allegation in his current petition is that "[d]espite Petitioner's continued detention, removal has not occurred and there is no evidence that removal is likely to soon occur." ECF 1 at Ground One, p. 6.

With the Court's prior ruling and Petitioner's self-imposed impediment to removal, the question is how the *Zadvydas* time period and burden-shifting now applies to his detention and the law of the case.³ The Court ruled that the dismissal was without prejudice to Petitioner refiling a habeas petition "should his current detention

³ "Under the law of the case doctrine, both district courts and appellate courts are bound by prior appellate decisions in the same case." *United States v. Kaplan Univ.*, 2016 WL 3661483, at *1 (S.D. Fla. 2016) (*citing Alphamed, Inc. v. B. Braun Medical, Inc.*, 367 F.3d 1280, 1285-86 (11th Cir. 2004) (listing cases explaining the law of case doctrine)).

(which is not impeded) extend beyond the six-month mark.” As such, the federal Respondents’ position is that because the Court tolled the six-month *Zadvydras* period in its May 12, 2026 Order, taking into account the Petitioner’s refusal to be removed on January 26, 2026, Petitioner’s detention continues to be lawful.⁴ The federal Respondents submit that Petitioner’s allegation alone is does not provide a good reason to believe there is no SLRFF, given Petitioner previously thwarted ICE’s attempts to deport him. *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”); *but see Suarez-Rosabal v. Warden et al.*, Case No. 2:26-cv-1376-KCD-DNF, ECF 10, 2026 WL 1413161 (M.D. Fla. May 20, 2026) (petitioner, detained more than 180 days, with no affidavit or valid travel documents, was released due to lack of SLRFF); *Bernstein v. U.S. Att’y Gen.*, 2026 WL 352907 (M.D. Fla. Feb. 9, 2026) (J. Pratt) (finding that deportation is not likely and *Singh* did not apply to the facts at hand because there was no bad faith, petitioner was released). Thus, after Petitioner impeded removal to Mexico on January 26, 2026, the federal Respondent’s position is that Laza-Cuesta

⁴ The undersigned has requested updated information from ICE regarding SLRFF and no updates have been provided but the undersigned will supplement the record should such information become available.

continues to be detained pending execution of the final removal order and is not entitled to immediate release or bond proceedings under 8 U.S.C. § 1231.

III. Petitioner's conditions of confinement claims are not available through habeas relief.

Petitioner continues to allege the same conditions-of-confinement claims that he alleged in his first petition, ECF 1 at Grounds Two through Four, which the Court rejected in its May 12, 2026 Order:

Cuesta also seemingly brings a claim that he has been mistreated at Krome Detention Center. (Doc. 1 at 6.) To the extent this is an argument for habeas relief, it is summarily rejected. Challenges to conditions of confinement are not appropriately raised in the habeas context. *See Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015) ("Petitioner's § 2241 petition is not the appropriate vehicle for raising an inadequate medical care claim, as such a claim challenges the conditions of confinement, not the fact or duration of that confinement.").

Finally, Cuesta claims that his removal to Cuba (or any third-world country) would be contrary to the United Nations Convention Against Torture because he faces a substantial risk of torture and retaliation based on "criminal history and political conditions." (Doc. 1 at 8.) Because there is no evidence that Cuesta raised, let alone exhausted all available administrative remedies on such a claim, 8 U.S.C. § 1252(d) precludes this Court's consideration. *See De La Teja v. U.S.*, 321 F.3d 1357, 1366 (11th Cir. 2003); *Murray v. U.S. Att'y Gen.*, 853 F. App'x 336, 340 (11th Cir. 2021). Even though Cuesta was provided the opportunity, there is no evidence that he disputed his removal to Mexico before now. And since Cuesta failed to seek relief under the Convention Against Torture before an immigration judge, his argument is "unexhausted and unreviewable" here. *Murray*, 853 F. App'x at 340; *Julce v. Smith*, No. CV 18-10163-FDS, 2018 WL 1083734, at *4 (D. Mass. Feb. 27, 2018) ("[S]ection 1252 also provides that 'a petition for review with an appropriate court of appeals ... shall be the sole and exclusive means for judicial review of any ... claim under the United Nations Convention Against Torture.'").

CONCLUSION

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

DATED this 28th day of May, 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 May 28, 2026, a true and correct copy of the foregoing application was sent by United States Mail to Petitioner at the FSS address.

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