

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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AUGUSTO LAZA CUESTA,
Petitioner,

v. Case No. **2:26-cv-1677-SPC-NPM**

WARDEN, FLORIDA SOFT SIDE SOUTH, et al.,
Respondents.

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF
HABEAS CORPUS**

I. INTRODUCTION

Petitioner, Augusto Laza Cuesta, respectfully submits this Reply to Respondents' Response opposing his Petition for Writ of Habeas Corpus. Respondents' arguments fail to establish jurisdictional bars under 8 U.S.C. §§ 1252(g) or 1252(b)(9) and improperly rely on an unsupported assertion of "noncompliance" with removal to justify continued detention under 8 U.S.C. § 1231 and *Zadvydas v. Davis*, 533 U.S. 678 (2001).

At its core, this case presents a narrow but dispositive issue: whether Petitioner's continued detention is lawful where the Government's asserted tolling theory is based on a disputed factual characterization of events during a removal attempt.

**II. RESPONDENTS MISAPPLY JURISDICTIONAL BARS UNDER 8 U.S.C. §§ 1252(g) AND
1252(b)(9)**

Respondents argue that this Court lacks jurisdiction under §§ 1252(g) and 1252(b)(9). That argument misapplies both provisions.

Petitioner does not challenge the decision to commence removal proceedings, adjudicate his case, or execute a removal order in the abstract. Rather, Petitioner challenges the **lawfulness of his continued post-order detention under 8 U.S.C. § 1231**, which the

Supreme Court has repeatedly recognized as a distinct and reviewable habeas claim. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

Similarly, § 1252(b)(9) does not bar review where, as here, the petitioner challenges **detention itself rather than review of a removal order or removal proceeding decisions**. See *Jennings*, 583 U.S. at 294–95.

Accordingly, this Court retains jurisdiction over Petitioner’s constitutional challenge to prolonged detention.

III. RESPONDENTS FAIL TO ESTABLISH VALID AKINWALE TOLLING

Respondents assert that Petitioner “failed to comply” with removal on January 26, 2026 and that removal efforts were therefore extended or tolled.

That assertion is **disputed and unsupported as a matter of law and fact**.

Under *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), tolling requires **affirmative failure to cooperate or obstruction by the detainee**. It does not apply where removal is not completed due to external circumstances unrelated to petitioner misconduct.

Here, Petitioner has submitted sworn declaration evidence establishing that:

- He complied with instructions from immigration officers;
- He did not refuse removal; and
- He did not obstruct or delay the removal process.

IV. THE JANUARY 26, 2026 REMOVAL ATTEMPT DOES NOT SUPPORT TOLLING

With respect to the January 26, 2026 removal attempt, Petitioner states that he was transported for removal to Mexico and initially remained on the transport vehicle. He subsequently exited the vehicle following instructions from immigration officers during the removal process.

Upon arrival, Mexican authorities did not accept certain individuals, including persons presenting with medical conditions and those taking prescribed medication. The removal was not completed due to the receiving authorities’ decision not to accept custody.

These circumstances reflect a **failed removal attempt based on third-party and logistical factors**, not petitioner-caused delay as required under *Akinwale*.

Respondents' reliance on a conclusory "failed to comply" characterization does not resolve this factual dispute and cannot substitute for evidentiary proof where tolling is contested.

V. ZADVYDAS REQUIRES CONTINUED JUDICIAL REVIEW OF PROLONGED DETENTION

Even assuming lawful initial detention under 8 U.S.C. § 1231, continued detention must comply with constitutional limits under *Zadvydas v. Davis*.

Where removal is not reasonably foreseeable, the Government bears the burden of demonstrating continued lawful justification for detention.

Here, Respondents' position rests primarily on disputed allegations of noncompliance rather than competent proof of a significant likelihood of removal in the reasonably foreseeable future.

Absent valid tolling, continued detention raises serious due process concerns under *Zadvydas*.

VI. CONDITIONS OF CONFINEMENT ARE NOT THE BASIS OF RELIEF SOUGHT

To the extent Respondents characterize portions of the Petition as conditions-of-confinement claims, Petitioner clarifies that he seeks **release from unlawful detention**, not damages or injunctive relief concerning prison conditions.

Any references to treatment in custody are provided solely to contextualize the severity and circumstances of confinement, not as independent claims for relief.

VII. CONCLUSION

For the foregoing reasons, Respondents have not established a jurisdictional bar or lawful basis for continued detention. Petitioner respectfully requests that the Court:

1. Reject Respondents' jurisdictional arguments;
 2. Find that the Government has not established valid tolling under *Akinwale*; and
 3. Grant the Petition for Writ of Habeas Corpus or, alternatively, set the matter for an evidentiary hearing limited to the January 26, 2026 removal attempt.
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Respectfully submitted,

AUGUSTO LAZA CUESTA

Petitioner, Pro Se