IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

PILAR GONZALEZ *o/b/o* ANTONIO JOSE BRAVO VIZCAYA	:	
Petitioner,	:	
	:	**Case No. 4:26 cv 960 CDL AGH**
v.	:	**28 U.S.C. § 2241**
WARDEN, STEWART DETENTION CENTER,	:	
Respondent.	:	

MOTION TO DISMISS

On June 24, 2026, the Court received Pilar Gonzalez's Petition for a writ of habeas corpus ("Petition") on behalf of Antonio Jose Bravo Vizcaya ("Petitioner"). Dkt. No. 1, 5. On June 29, 2026, the Court ordered Respondent to respond to the Petition within 21 days. Dkt. No. 5. As explained below, the Court should dismiss the Petition.

BACKGROUND

Petitioner is a native and citizen of Venezuela. Declaration of Immigration and Customs Enforcement Officer Joseph Blair ("Blair Decl.") ¶ 4, Ex. A. On July 9, 2024, U.S. Customs and Border Protection ("CBP") encountered Petitioner at the Brownsville, Texas, Port of Entry after he arrived for his scheduled CBP One appointment and applied for admission. *Id.* CBP issued Petitioner a Notice to Appear ("NTA") that charged him with inadmissibility pursuant to the Immigration and Nationality Act ("INA") section 212 (a)(7)(A)(i)(I). *Id.* Petitioner was released on parole until April 18, 2025. *Id.*

On September 16, 2025, Petitioner filed an application for relief from removal with the Immigration Court. *Id.* ¶ 5.

On November 25, 2025, Petitioner was arrested by the Howell, New Jersey, Police Department for a Burglary offense. *Id.* ¶ 6. On December 5, 2025, Petitioner was encountered by the FBI Newark and ICE/ERO. *Id.* ¶ 7. He was taken into ICE/ERO custody and transported to the Stewart Detention Center in Lumpkin, Georgia. *Id.*

On February 9, 2026, Petitioner appeared for a mater hearing during which he admitted the allegations on the NTA and conceded removability as charged. *Id.* ¶ 8. On that same date, DHS filed a motion to pretermit Petitioner's application for relief from removal. *Id.* ¶ 9. On March 9, 2026, the Immigration Judge ("IJ") granted DHS's motion to pretermit and ordered Petitioner removed to Ecuador. *Id.* ¶ 10, Ex. B.

On March 17, 2026, Petitioner filed a custody redetermination request with the Immigration Court. *Id.* ¶ 11. On March 19, 2026, Petitioner appeared for a custody redetermination hearing. *Id.* ¶ 12. The IJ denied Petitioner's request, finding the court lacked jurisdiction to redetermine custody. *Id.*, Ex. C.

On March 30, 2026, Petitioner filed an appeal with the Board of Immigration Appeals ("BIA"). *Id.* ¶ 13. On April 3, 2026, the BIA rejected Petitioner's appeal for failure to provide a certificate of service to DHS. *Id.* ¶ 14, Ex. D.

On June 16, 2026, the BIA dismissed Petitioner's appeal. *Id.* ¶ 15, Ex. E.

Petitioner remains at the Stewart Detention Facility pursuant to INA Section 241(a)(6). *Id.* ¶ 16.

LEGAL FRAMEWORK

Because Petitioner is detained post-final order of removal, his detention is governed by 8 U.S.C. § 1231. Congress provided in 8 U.S.C. § 1231(a)(1)(A) that ICE/ERO shall remove an alien within ninety (90) days of the latest of: (1) the date the order of removal becomes

administratively final; (2) if a removal is stayed pending judicial review of the removal order, the date of the reviewing court's final order; or (3) the date the alien is released from criminal confinement. *See* 8 U.S.C. §§ 1231(a)(1)(A)-(B). During this ninety-day time frame, known as the "removal period," detention is mandatory. *See id.* at § 1231(a)(2).

If ICE/ERO does not remove an alien within ninety days, detention may continue if it is "reasonably necessary" to effectuate removal. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); 8 U.S.C. § 1231(a)(6) (providing that an alien who is subject to mandatory detention, inadmissible, or who has been determined to be a risk to the community or a flight risk, "may be detained beyond the removal period"). In *Zadvydas*, the Supreme Court determined that, under the Fifth Amendment to the United States Constitution, detention for six months is presumptively reasonable. *Zadvydas*, 533 U.S. at 680, 700-701. "After this 6-month period, once 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 701; *see also* 8 C.F.R. § 241.13. Where there is no significant likelihood of removal in the reasonably foreseeable future, the alien should be released from confinement. *Id.*

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit further elaborated on the framework announced by the Supreme Court in *Zadvydas*, stating that "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." *Akinwale*, 287 F.3d at 1052. Thus, the burden is on Petitioner to demonstrate: (1) post-removal order detention lasting more than six months; and (2) evidence of a good reason to believe that there is no significant

likelihood of removal in the reasonably foreseeable future. *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (per curiam) (quoting *Akinwale*, 287 F.3d at 1051-52).

ARGUMENT

The Court should dismiss the Petition for five reasons. First, to the extent the Petition challenges Petitioner's pre-final order of removal detention, that claim is now moot because Petitioner is no longer detained pursuant to that authority. Second, to the extent Petitioner challenges his post-final order of removal detention, that claim should be dismissed for failure to state a claim because it is premature under Zadvydas. Third, in the alternative, even assuming Petitioner could state a claim for relief under Zadvydas—which he cannot—he fails to show that he is entitled to relief. Fourth, to the extent Petitioner attempts to challenge ICE/ERO's decision to take him into custody, the Court lacks subject-matter jurisdiction over the claim.[1] Fifth, to the extent Petitioner seeks to challenge the conditions of his confinement,[2] that claim is not cognizable in a habeas corpus proceeding, and Petitioner is not entitled to release from custody on this basis.

I. Petitioner's claim challenging his pre-final order of removal detention is moot.

"Article III of the Constitution limits the jurisdiction of the federal courts to the consideration of 'Cases' and 'Controversies.'" *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335 (11th Cir. 2001) (quoting U.S. CONST. art. III, § 2). "The doctrine of mootness derives directly from the case-or-controversy limitation because an action that is moot cannot be characterized as an active case or controversy." *Id.* (internal quotations and citation omitted).

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[1] The Petition appears to challenge ICE/ERO's actions in taking him into custody. Dkt. No. 1 at 10–11. To the extent that the Court interprets Petitioner's claims for relief differently, Respondents respectfully request an opportunity to amend this Response.

[2] The Petition makes note of Petitioner's purported medical conditions, so Respondents address what appears to be a claim through the Eighth Amendment to the United States Constitution. Dkt. No. 1 at 11.

"A cause of action becomes moot when it no longer presents a live controversy with respect to which the court can give meaningful relief." *Djadju v. Vega*, 32 F.4th 1102, 1106 (11th Cir. 2022) (internal quotations and citation omitted). "In considering mootness, [courts] look at the events at the present time, not at the time the complaint was filed[.]" *Id.* (citation omitted). "If the injury ceases, or is rendered unamenable to judicial relief, then the case becomes moot and thereby incapable of further Article III adjudication." *Checker Cab Operators, Inc. v. Miami-Dade Cnty.*, 899 F.3d 908, 915 (11th Cir. 2018). Put another way, "[i]f events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed." *Al Najjar*, 273 F.3d at 1336 (citation omitted). "Indeed, dismissal is required because mootness is jurisdictional." *Id.* (citation omitted).

Here, when Petitioner filed the Petition, he was mandatorily detained pre-final order of removal pursuant to 8 U.S.C. § 1225(b), and he challenged his detention under that authority. *See* ECF No. 1. However, as explained above, on June 16, 2026, Petitioner became subject to a final administrative removal order when the BIA dismissed Petitioner's appeal. Blair Decl. ¶ 15, Ex. E. Petitioner's present detention is therefore governed by 8 U.S.C. § 1231.

Because 8 U.S.C. § 1231 no longer governs Petitioner's detention, "it is unnecessary and altogether inappropriate for [the Court] to take up the question [of] whether [Petitioner's] detention pursuant to [another] provision violates the Due Process Clause of the Fifth Amendment." *See De La Teja v. United States*, 321 F.3d 1357, 1363 (11th Cir. 2003) (citation omitted). "Any opinion on the matter would be purely advisory in nature, and therefore this issue has become moot." *Id.* Both this Court and the Eleventh Circuit have held that claims challenging pre-final order of removal detention become moot upon the entry of a final order of removal and the concomitant

shift of detention authority to 8 U.S.C. § 1231(a). *Id.* at 1362-63; *see also H.N. v. Warden, Stewart Det. Ctr.*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, at *2 (M.D. Ga. Sept. 15, 2021); *Dixit v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:18-cv-157-HL, 2019 WL 12267340, at *2 (M.D. Ga. Sept. 17, 2019).

The Court should reach the same conclusion here and dismiss the Petition to the extent Petitioner challenges his pre-final order of removal detention.

II. Petitioner fails to state a claim because the Petition is premature under *Zadvydas*.

To the extent Petitioner continues to challenge his post-final order of removal detention, his claim is governed by *Zadvydas*. The Court should dismiss that claim because Petitioner cannot state a claim pursuant to *Zadvydas*.

In evaluating challenges to post-final order of removal detention, the Eleventh Circuit has made clear that the "six-month period thus must have expired at the time [Petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*." *Akinwale*, 287 F.3d at 1052; *see also Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 833 (11th Cir. 2016); *Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013).

Here, on March 9, 2026, the Immigration Judge ("IJ") granted DHS's motion to pretermit and ordered Petitioner removed to Ecuador. Blair Decl. ¶ 10, Ex. B. On March 17, 2026, Petitioner filed a custody redetermination request with the Immigration Court. *Id.* ¶ 11. On March 19, 2026, Petitioner appeared for a custody redetermination hearing. *Id.* ¶ 12. The IJ denied Petitioner's request, finding the court lacked jurisdiction to redetermine custody. *Id.*, Ex. C. On March 30, 2026, Petitioner filed an appeal with the Board of Immigration Appeals ("BIA"). *Id.* ¶ 13. On April 3, 2026, the BIA rejected Petitioner's appeal for failure to provide a certificate of service to DHS. *Id.* ¶ 14, Ex. D. On June 16, 2026, the BIA dismissed Petitioner's appeal. *Id.* ¶ 15, Ex. E.

Therefore, the 90-day removal period commenced on June 16, 2026, and will not end until September 14, 2026. 8 U.S.C. § 1231(a)(1)(A), (a)(1)(B)(i). The six-month "presumptively reasonable" detention period under *Zadvydas* will not end until December 14, 2026. *See Zadvydas*, 533 U.S. at 701.

Petitioner remains mandatorily detained within the 90-day removal period under 8 U.S.C. § 1231(a)(2). Further, the *Zadvydas* six-month presumptively reasonable detention period will not expire for approximately five more months. Thus, Petitioner cannot state a claim under *Zadvydas* because his detention is presumptively reasonable. *See Akinwale*, 287 F.3d at 1051–52.

Courts throughout the Eleventh Circuit—including this Court—have dismissed non-citizens' habeas petitions raising *Zadvydas* claims where the presumptively reasonable six-month period had not expired when they filed their petitions. *See S.H. v. Warden, Stewart Det. Ctr.*, No. 4:21-CV-185-CDL-MSH, 2022 WL 1280989, at *2 (M.D. Ga. Feb. 15, 2022), *recommendation adopted*, 2022 WL 1274385 (M.D. Ga. Apr. 28, 2022); *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021); *Elienist v. Mickelson*, No. 15-61701-Civ, 2015 WL 5316484, at *3 (S.D. Fla. Aug. 18, 2015), *recommendation adopted*, 2015 WL 5308882 (S.D. Fla. Sept. 11, 2015); *Maraj v. Dep't of Homeland Sec.*, No. CA 06-0580-CG-C, 2007 WL 748657, at *3 (S.D. Ala. Mar. 7, 2007); *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1363-65 (N.D. Ga. 2002).

The Court should similarly dismiss the Petition here.

III. In the alternative, Petitioner fails to show that he is entitled to relief under *Zadvydas*.

Even if the Court ignores that Petitioner's *Zadvydas* claim is premature—which it should not—Petitioner fails to show that he is entitled to release under *Zadvydas*. Petitioner has the initial burden to provide "evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Gozo*, 309 F. App'x at 346.

Petitioner presents no evidence to show that he is not likely to be removed in the reasonably foreseeable future. And he cannot state a claim under *Zadvydas* merely through the conclusory assertion that he is unlikely to be removed in the near future. *See Novikov v. Gartland*, No. 5:17-cv-164, 2018 WL 4100694, at *2 (S.D. Ga. Aug. 28, 2018), *recommendation adopted*, 2018 WL 4688733 (S.D. Ga. Sept. 28, 2018); *Gueye v. Sessions*, No. 17-62232-Civ, 2018 WL 11447946, at *4 (S.D. Fla. Jan. 24, 2018); *Rosales-Rubio v. Att'y Gen. of United States*, No. 4:17-cv-83-MSH-CDL, 2018 WL 493295, at *3 (M.D. Ga. Jan. 19, 2018), *recommendation adopted*, 2018 WL 5290094 (M.D. Ga. Feb. 8, 2018). Rather, Petitioner must provide "*evidence* of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Gozo*, 309 F. App'x at 346 (internal quotations omitted) (emphasis added).

Because Petitioner provides none, he cannot meet his burden under *Zadvydas*.

IV. The Court lacks subject matter jurisdiction over ICE/ERO's decision to commence proceedings in this immigration context.

Petitioner appears to seek judicial review of ICE/ERO taking him into custody. *See* Dkt. No. 1, 10–11. The Court should dismiss this claim because ICE/ERO had discretionary authority to terminate Petitioner's parole and the Court lacks subject matter jurisdiction to judicially review ICE/ERO's decision or ICE/ERO's internal consideration of evidence in reaching that decision.

The Court lacks subject-matter jurisdiction over the claim. Eight U.S.C. § 1252(g) is a jurisdiction-stripping provision in the INA, which provides that

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). "When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964

F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

In the context of pre-final order of removal detention, the Eleventh Circuit has held that "securing a[] [non-citizen] while awaiting a removal determination constitutes an action taken to commence proceedings" within the purview of section 1252(g). *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013); *accord. Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order." (emphasis in original) (internal citations omitted). This Court has reached the same conclusion. *See Cho v. United States*, No. 5:13-cv-153-MTT, 2016 WL 1611476, at *7 (M.D. Ga. Apr. 21, 2016) ("Plaintiff's claims that she was falsely arrested when she was transferred into ICE custody . . . 'challenge[] the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts.'" (quoting *Gupta*, 709 F.3d at 1065 (alterations in original)).

Here, Petitioner challenges ICE/ERO's actions in taking him into federal custody. ICE/ERO's actions here "constitute[] an action taken to commence proceedings" within the meaning of section 1252(g). *See Gupta*, 709 F.3d at 1065. As this Court has previously held, district courts lack jurisdiction over such claims. *See Cho*, No. 5:13-cv-153-MTT, 2016 WL 1611476, at *7. This Court should dismiss the Petition.

V. Petitioner's conditions of confinement claims are not cognizable in habeas corpus.

In his habeas petition, Petitioner appears to challenge the conditions of his confinement in immigration custody. Dkt. No. 1, at 11. Petitioner's claim should be denied for two reasons. First, conditions of confinement claims are not cognizable in a habeas corpus proceeding. Second, allegations concerning conditions of confinement, even if proven, do not entitle Petitioner to release.

First, the Court should deny Petitioner's claim because it is not cognizable in habeas. "[T]he 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 illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "[W]here an inmate seeks injunctive relief challenging the fact of his conviction or the duration of his sentence . . . [s]uch claims fall within the 'core' of habeas corpus[.]" *Nelson v. Campbell*, 541 U.S. 637, 643 (2004). "By contrast, constitutional claims that merely challenge the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core[.]" *Id.* For these reasons, in the immigration context, the Eleventh Circuit has held that a "§ 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." *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015) (per curiam) (affirming dismissal of immigration detainee's habeas petition alleging the denial of inadequate medical care because the claim was not cognizable in habeas).

Petitioner similarly attempts to challenge his conditions of confinement in immigration custody through a habeas petition under § 2241. The Court should deny this claim because it is not cognizable in this habeas proceeding.

Second, the Court should deny Petitioner's claim because he is not entitled to release from custody to remedy any purportedly unlawful condition of confinement. "[E]ven if a prisoner proves an allegation of mistreatment in prison that amounts to cruel and unusual punishment, he is not entitled to release." *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990) (citing *Cook v. Hanberry*, 596 F.2d 658, 660 (5th Cir. 1979), *cert. denied*, 442 U.S. 932 (1979)). Rather, "[t]he appropriate Eleventh Circuit relief from prison conditions that violate the Eighth Amendment during legal incarceration is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment." *Id*

The Eleventh Circuit has held that "even if [an immigration detainee] established a constitutional violation [in a habeas proceeding], he would not be entitled to the relief he seeks because release from imprisonment is not an available remedy for a conditions-of-confinement claim." *Vaz*, 634 F. App'x at 781 (citing *Gomez*, 899 F.2d at 1126); *see also A.S.M. v. Warden, Stewart Detention Center*, 467 F. Supp. 3d 1341, 1348 (M.D. Ga. June 3, 2020) ("Release from detention is not available as a remedy for unconstitutional conditions of confinement claims." (citations omitted)).

Accordingly, even assuming Petitioner could establish an unlawful condition of confinement, his habeas claim should be denied because he is not entitled to release from custody as a remedy.

CONCLUSION

For the foregoing reasons, Respondents request the Court dismiss the Petition.

Respectfully submitted this 20th day of July, 2026.

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CERTIFICATE OF SERVICE

I, Richard M. Rettig, II, Assistant United States Attorney, hereby certify that I electronically filed the **United States's Response to the Petition** with the Clerk of the Court using the CM/ECF system and will mail a copy to Mr. Vizcaya and Mr. Gonzalez at the following addresses:

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Respectfully submitted this 20th day of July, 2026.

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