

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

EDUARDO TIMONEDA,

Petitioner,

Case No. 2:26-cv-705-KCD-DNF

v.

ALLIGATOR ALCATRAZ WARDEN,

Respondents.

**RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Eduardo Timoneda seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking his immediate release from immigration custody. Timoneda argues that the length of his detention is unlawful, ICE did not follow its regulations when revoking his order of supervision, and his detention at Alligator Alcatraz does not comport with the Immigration and Nationality Act. He also argues present removal a third country is unlawful. Timoneda's 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). Timoneda had been detained for 130 days when he filed the present petition. ICE afforded Timoneda proper notice of his revocation of his order of supervision and an informal interview. Timoneda's challenge to the legal authority for Alligator Alcatraz

is incongruous with his request for habeas relief. Finally, his arguments regarding third country are not properly before the Court.

BACKGROUND

Timoneda is a national and citizen of Cuba who was paroled into the United States on May 8, 1980. (Composite Exhibit, Ex. 1 at 1-2.) On March 25, 1985, he was convicted of sexual battery with weapon or force and burglary with a weapon. *Id.* at 2. He was ordered removed from the United States on July 25, 1991. *Id.* at 6.

On August 7, 2006, Timoneda was convicted of failing to register as a sexual offender. *Id.* On August 8, 2008, he was convicted of aggravated battery with a deadly weapon. *Id.*

Timoneda was placed on an order of supervision on February 3, 2005; January 24, 2007; and May 12, 2009. *Id.* at 2, 5, 10. Timoneda was most recently placed in immigration custody on November 2, 2025. *Id.* at 1.

On March 12, 2026, Timoneda filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and regulations governing immigration detention. (Doc. 1.)

On March 26, 2026, Timoneda was served with a notice of revocation of release. *Id.* at 25-26. The notice provides that Timoneda's release has been revoked pursuant to 8 C.F.R. § 241.13(i). *Id.* at 25. The notice indicates that circumstances have changed such that there is a significant likelihood of removal in the reasonably

foreseeable future. *Id.* The same day, Timoneda was provided an informal interview in which he was provided an opportunity to respond to the reasons for revocation. *Id.* at 27.

He is currently detained at Florida Soft Side South.

ARGUMENT

I. Timoneda's detention does not violate the Fifth Amendment's Due Process Clause.

After a final removal order, an alien must be removed within ninety days—i.e., the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). During the removal period, the alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. An alien, however, can be detained beyond that removal period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683. This is called a “post-removal” period. *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

There is no statutory limit on how long ICE can detain an alien during the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). Due to constitutional concerns, the U.S. Supreme Court has nevertheless interpreted the post-removal period to allow extended detention for “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689. In all, a reasonable length of detention “is presumptively six months.” *Guzman Chavez*, 594 U.S. at 529; *see also Akinwale*, 287 F.3d at 1052 (stating six-month period is inclusive of any ninety-day removal period).

If the presumptively reasonable 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 689. If an alien “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the government must either rebut that showing or release the alien. *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018). But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*, *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051-52 (11th Cir. 2002); *Guo Xing Song v. U.S. Attorney General*, 516 F. App’x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009). At bottom, “[U]ntil the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any due process claim is not ripe.” *E.g.*, *Khalil Al Ellary*, 2:26-cv-00112-KCD-DNF, Doc. 7 (M.D. Fla. Feb. 27, 2026); *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011).

Timoneda filed the present petition well before expiration of six months in detention. He was detained on November 2, 2025, and filed the present petition on March 12, 2026. At that point, Timoneda been detained for 130 days; to date, he has been in detention for 151 days.

As previously stated, it is only after six months that the parties can engage in *Zadvydas* burden-shifting related to the “significant likelihood of removal in the

reasonably foreseeable future.” *See Jennings*, 583 U.S. at 299 (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is “[a]fter this 6-month period”); *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). 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”).

II. The Mariel Cuban regulations contained in 8 C.F.R. § 212.12 do not apply to Timoneda.

Before turning to the normal regulatory issues, the Federal Respondents address those specific to the claim alleged: 8 C.F.R. § 212.12. Those provisions once applied to Cubans—like Timoneda—who arrived during the Mariel Boatlift. There are several reasons why these regulations are irrelevant here.

First, they do not apply to Timoneda. He was ordered removed and placed on an order of supervision, which was revoked for removal. These events put Timoneda squarely within § 241.13 rather than § 212.12. *Marquez-Coromina v. Hollingsworth*, 692 F. Supp. 2d 565, 571 (D. Md. 2010) (Section 212.12 “does not address continued

detention after the removal order has been issued.”).

This Court recently rejected application 8 C.F.R. § 212.12 in *Franco Rodriguez v. ICE*, No. 2:26-cv-2-KCD-DNF, 2026 WL 746563, at *5 n.2 (M.D. Fla. Mar. 17, 2026). There, the Court recognized that subsequent events like achieving legal status, revocation of the status, and placement on an order of supervision may pull a petitioner “completely out of § 212.12’s orbit.” *Id.* Likewise here, Timoneda was ordered removed and placed on an order of supervision. Revocation of an order of supervision, detention, and removal has nothing to do with the long-since lapsed Mariel regulations; rather, they relates to the scheme under which Timoneda and ICE have been proceeding for a decade.

Second, Judge Chappell’s decision does not change the outcome. *Perez v. Warden*, No. 2:26-cv-9-SPC-DNF, 2026 WL 131650, at *3 (M.D. Fla. Jan. 19, 2026). Due to incomplete briefing from ICE, the issue was never fully developed. *Id.* at *1. The Cuban Review Plan under § 212.12 was effectively abrogated when the Supreme Court eliminated the distinction between Mariel Cubans and other aliens. *Clark v. Martinez*, 543 U.S. 371, 386 (2005); *see also Marquez-Coromina*, 692 F. Supp. 2d at 572 (explaining “that *Clark* removed the distinctions among the three categories of aliens identified in 8 U.S.C. § 1231(a)(6),” which justified “separate treatment of Mariel Cubans under § 212.12”). Immediately after than decision—over twenty years ago—ICE issued interim guidance to end the Cuban Review Plan:

Effective immediately, all aliens detained post-final order for 180 days will receive custody reviews pursuant to the regulations under 8 CFR § 241.13. Custody reviews for Mariel Cubans under 8 CFR § 212.12 are no longer in effect, and therefore Cuban Review Plan (CRP) panels and procedures are to be discontinued, effective immediately. Any portion of previously issued guidance that otherwise limits § 241.13 custody reviews to certain classes of aliens is now superseded by this memorandum.

(Jan. 21, 2005, Memorandum, Ex. 2 at 2). At bottom, the Cuban Review Plan has not been in operation for over twenty years. Nor have Cuban Review Panels existed during that time.

Third, Timoneda fails to identify a single due process protection somehow offered him by § 212.12 that is not otherwise provided by § 241.13. Nearly the all of § 212.12 provided detailed procedures for making and granting initial parole decisions, along with revoking that initial parole. He raises no challenge to that process here. It is unclear what part of § 212.12 would even apply to someone like Timoneda—who had parole revoked long ago and has been out on supervision under an entirely different regulatory scheme. For instance, continued detention under the Cuban Review Plan was only assessed annually. 8 C.F.R. § 212.12(g)(2); *Sierra v. INS*, 258 F.3d 1213, 1216 (10th Cir. 2001) (“Mariel Cubans who are being detained have their cases reviewed every year to determine whether they should be paroled.”). And Timoneda has not been detained for anywhere near a year.

Due process and *Accardi* claims amount to what process is due under the law while properly following an agency’s regulations. Cuban Review Panels under § 212.12 have not been offered or available in the United States since 2005. (Jan. 21,

2005, Memorandum, Ex. 2). Relying on that scheme, Timoneda does not ask for the process due; he asks the Court to resurrect a regulatory framework jettisoned long ago after a Supreme Court decision changed the law. In that way, he apparently asks the Court to empanel the first Cuban Review Panel in two decades. Or Timoneda asks the Court to hold he can never be removed—despite his final order—because any procedure under the Cuban Review Plan cannot exist to review his detention anymore. In short, § 212.12 does not apply to the present case.

III. ICE has complied with its regulations regarding revocation of an order of supervision.

ICE complied with its regulations in revoking Timoneda's order of supervision under 8 C.F.R. § 241.13(i). Title 8 C.F.R. § 241.13(i)(3) provides,

Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Here, agency records show that on March 26 2026, Timoneda was provided a notice of revocation of release informing him ICE determined there is a significant likelihood of removal in reasonably foreseeable future. (Composite Exhibit, Ex. 1 at 26.) That same day, Timoneda was provided an informal interview and opportunity

to respond to the reasons for revocation of his order of supervision. *Id.* at 27. Even if there were an initial delay regarding notice of revocation and an informal interview, that delay would not compel Timoneda's release from custody. *See Tran v. Warden*, No. 2:25-CV-1224-KCD-NPM, 2026 WL 672969, at *10 (M.D. Fla. Mar. 10, 2026) ("Even if the agency's initial administrative process was somehow lacking, [the petitioner] can hardly complain that he is being denied a meaningful opportunity to be heard *now*.")

IV. Timoneda cannot bring a procedural challenge to third party removal in this Court.

To the extent Timoneda argues this case presents a violation of his Due Process rights to challenge a specific third country removal effort, he cannot do so before this Court. District courts are stripped of jurisdiction to restrain or prevent execution of a removal order. 8 U.S.C. § 1252(g). Here, Timoneda candidly asks this Court to "order the government to provide Petitioner with notice and a hearing where Petitioner can confront and oppose removal to any alternative third country that agrees to accept him, if one is identified[,] and "[e]njoin the Respondents from re-arresting or re-detaining Petitioner absent full and strict compliance with federal law" (Doc. 1 at 30-31.) As this Court recently observed, districts courts lack the power to block a petitioner's request for a preemptive injunction to block removal to third country. *Tran v. Warden*, No. 2:25-CV-1224-KCD-NPM, 2026 WL 672969, at *10 (M.D. Fla. Mar.

10, 2026). In sum, § 1252(g) strips this Court of jurisdiction to restrain Timoneda's removal to a third country.

V. Timoneda is lawfully detained under U.S. Immigration and Customs Enforcement authority.

Finally, Timoneda is lawfully detained at Florida Soft Side South, also known as Alligator Alcatraz. This Court recently denied a motion for a preliminary injunction seeking to prevent the State of Florida from holding immigration detainees at the facility. *M. A. v. Guthrie*, No. 2:25-CV-765-KCD-DNF, 2025 WL 3677008 (M.D. Fla. Dec. 18, 2025). The Court concluded plaintiff and the proposed class were unable to show an irreparable injury absent an injunction, because “he (and the proposed class) is subject to confinement by the Attorney General. *M. A. v. Guthrie*, No. 2:25-CV-765-KCD-DNF, 2025 WL 3677008, at *2 (M.D. Fla. Dec. 18, 2025).” As recognized by *M.A.*, individuals at Alligator Alcatraz—including Timoneda—are subject to the Attorney General's detention regardless of whether they are located at that facility or another location. Timoneda's requested release from custody is therefore incongruous with the nature of his complaint. *See also Franco Rodriguez v. Acting Director U.S. Immigration and Customs Enforcement, Miami Field Office*, No. 2:26-CV-2-KCD-DNF, 2026 WL 746563, at *7 (M.D. Fla. Mar. 17, 2026) (stating that a challenge to conditions of confinement do not invalidate the legal basis for the confinement).

CONCLUSION

Respondents respectfully request Timoneda's petition be denied.

DATED this 2nd day of April, 2026.

Respectfully submitted,

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