

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.

FEDERAL RESPONDENTS' RESPONSE TO MAY 5, 2026, ORDER

Petitioner Eduardo Timoneda has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, arguing, among other grounds, that there is not a significant likelihood of his removal in the foreseeable future. In their April 2, 2026, response Federal Respondents argued that Timoneda's petition was premature because he had not been detained for more than 180 days at the time he filed the present petition. (Doc. 6.) On May 5, 2026, the Court issued an order directing he government to show "to show, by May 12, 2026, that there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future. Failure to respond will result in Petitioner's release without further notice." (Doc. 13.)

FACTS

On or about March 16, 2026, ICE attempted to execute the removal of Timoneda to Mexico via the Hidalgo, Texas Port of Entry. (Rosser Decl., Ex. 1

¶ 8.) While removal efforts were being made, Timoneda refused to cooperate with removal to Mexico. *Id.* ¶ 9. Due to Timoneda's refusal to cooperate with removal, ICE officers were unable to effect Timoneda's removal to Mexico. *Id.* ¶ 10.

ICE intends to continue to pursue third country removal of Timoneda under 8 U.S.C. § 1231(b)(2)(E). *Id.* ¶¶ 7, 11. Each ICE field office along the southwest border that processes third-country removals to Mexico removes a varying amount each week. *Id.* ¶ 16. Removals take place from each corresponding office from once a week to several times a week. *Id.* ICE has therefore determined that there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* ¶ 17.

Timoneda is currently detained at Florida Soft-Sided South. *Id.* ¶ 4.

ARGUMENT

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

As an initial matter, Federal Respondents maintain their position the present petition should be denied because Timoneda filed it before the expiration of six months in detention. Timoneda was detained on November 2, 2025, and filed the present petition on March 12, 2026. At that point, Timoneda been detained for 130 days. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) ("This six-month period thus must have expired at the time [the petitioner's] § 2241 petition was filed

in order to state a claim under *Zadvydas*.”).¹

Even if the Court were to shift the burden to U.S. Immigration and Customs Enforcement to show a significant likelihood of removal in the foreseeable future, the record shows ICE has been actively seeking Timoneda’s third country removal to Mexico. As recently as March 2026, Timoneda impeded removal by refusing to cooperate. (Rosser Decl., Ex. 1 ¶¶ 8-10.) When ICE executes a removal order, an alien must comply and assist. Failure to do so results in detention and tolling any *Zadvydas* time. 8 U.S.C. § 1231(a)(1)(C). “*Zadvydas* does not save an alien who fails to provide requested documentation to effectuate his removal.” *Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003). “The reason is self-evident: the detainee cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock.” *Id.* In sum, a *Zadvydas* claim fails if petitioner holds the “keys to his freedom in his pocket and could likely effectuate his removal by providing the information requested by” ICE.

¹ See also *Mehighlovesky v. U.S. Dep't of Homeland Sec.*, No. CIV. 12-902 RHK/JJG, 2012 WL 6878901, at *2 (D. Minn. Dec. 7, 2012), *report and recommendation adopted*, No. CIV. 12-902 RHK/JJG, 2013 WL 187553 (D. Minn. Jan. 17, 2013) (“There is a good policy reason for dismissing premature *Zadvydas* actions, even when post-removal-order detention has exceeded six months by the time the case is decided. If the rule were otherwise, removable aliens would have no incentive to wait for their potential *Zadvydas* claims to ripen, and the federal courts might then be inundated with pre-emptive *Zadvydas* claims brought by aliens who are unwilling to give the Government six months to effect their removal.”)

Id. (cleaned up).

The Eleventh Circuit recognizes these commonsense principles. *Singh v. U.S. Att’y General*, 945 F.3d 1310, 1314 (11th Cir. 2019). Specifically, it reads the plain language of § 1231(a)(1)(C) for what it says—extending the detention period if the alien “fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure.” *Id.* (citation omitted). Likewise, detention may continue where an alien “conspires or acts to prevent the alien’s removal.” *Id.* (quoting 8 U.S.C. § 1231(a)(1)(C)).

As other courts note, failure to comply with ICE’s lawful removal efforts will extend the detention period even without an end date in sight:

[Petitioner] was not removed at those times solely because of his own refusal to cooperate. The government, therefore, could continue to have an interest in detaining [petitioner] to effect his removal, and the detention remained authorized by § 1231(a)(6). That the detention did not have a certain end date does not change the analysis.

Diouf v. Mukasey, 542 F.3d 1222, 1233 (9th Cir. 2008) (internal citations omitted); *see also Souleymane v. ICE*, No. 1:26-cv-00425-TWP-TAB, 2026 WL 785596, at *5 (S.D. Ind. Mar. 20, 2026) (Petitioner “obstructed his removal one time, on May 12, 2025, when he refused to board a plane.”).

This rule even applies where—as here—Timoneda refuses removal to a third country willing to accept the alien. *Laguardia v. ICE*, No. C26-4003-LTS-KEM, 2026 WL 440749, at *2 (N.D. Iowa Feb. 17, 2026) (applying when Cuba petitioner refused

removal to Mexico); *Rivero v. FNU LNU*, No. 2:26-cv-00349-KG-KRS, 2026 WL 607416, at *1 (D.N.M. Mar. 4, 2026) (same). Judge Chappell recently denied several habeas petitions on *Zadvydas* grounds for Cuban petitioners who refused to cooperate with removal to Mexico. *Jose Duque v. DHS*, No. 2:26-cv-884-SPC-NPM, 2026 WL 943774, at *1 (M.D. Fla. Apr. 8, 2026); *Ramiro-Montegudo v. DHS*, No. 2:26-cv-873-SPC-NPM, 2026 WL 937971, at *1 (M.D. Fla. Apr. 7, 2026); *Cabrera Prieto v. Bondi*, No. 2:26-cv-746-SPC-DNF, 2026 WL 872590, at *1 (M.D. Fla. Mar. 31, 2026); *Mayea v. ICE*, No. 2:26-cv-574-SPC-DNF, 2026 WL 770041, at *1-2 (M.D. Fla. Mar. 19, 2026).

As some courts have recognized, third-country removal to Mexico has been difficult recently for aliens—like Timoneda—who refuse departure to that nation. *Leyva Lambert v. ICE*, No. EP-26-CV-00427-DB, 2026 WL 926216, at *2 (W.D. Tex. Apr. 6, 2026); *Gustavo Delgado v. Bondi*, No. 2:26-cv-00649-GJL, 2026 WL 914806, at *4 (W.D. Wash. Apr. 3, 2026). But nothing about this is a get-out-of-removal-free-card. So the only thing stopping removal is Timoneda's refusal. Because the failure to remove is the result of Timoneda's conduct, detention is still permitted. 8 U.S.C. § 1231(a)(1)(C); *Pelich*, 329 F.3d at 1060.

Timoneda has no enforceable rights to prevent removal to an acceptable third country that ICE already provided. Or—at least—he cannot use that his refusal for leverage to effectively stay in this country on the off chance that maybe ICE finds a country Timoneda deems subjectively acceptable. After all, the statute on third-

country removal is plain: an alien does not get a trump card to pick his country of removal. 8 U.S.C. § 1231(b)(1)-(2). While an alien can designate a country, the Attorney General has express statutory power to disregard and remove elsewhere under many circumstances. *Id.* § 1231(b)(2)(A)-(E).

On these facts, Timoneda has no *Zadvydas* claim. ICE did its part to secure removal to Mexico and tried to remove him. If Timoneda wants release from detention, he holds the “keys to his freedom in his pocket” by complying with removal to Mexico. *Pelich*, 329 F.3d at 1060. As it stands now, however, Timoneda has refused removal to an acceptable third country that ICE attempted to provide. Until Timoneda complies with ICE’s removal efforts or removal to Mexico is otherwise not available, he has no *Zadvydas* claim. 8 U.S.C. § 1231(a)(1)(C).

CONCLUSION

Respondents respectfully request Timoneda’s petition be denied.

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DATED this 12th day of May, 2026.

Respectfully submitted,

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