

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

**Case No. 2:26-cv-00705-KCD-DNF**

**EDUARDO TIMONEDA,**  
Petitioner,

v.

**KELIE WALKER, et al.,**  
Respondents.

---

**PETITIONER'S TRAVERSE**

This case now concerns whether there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future following Respondent's revocation of Petitioner's long-standing Order of Supervision, which has resulted in more than 180 days of detention. Respondents erroneously argue that Petitioner's continued detention remains lawful and further attempt to shift the blame for the government's inability to execute the removal order onto Petitioner by alleging that his refusal to accept removal to Mexico establishes a significant likelihood of removal in the reasonably foreseeable future. [ECF No. 15]. Petitioner replies in turn.

**I. Petitioner Did Not Refuse to Comply with Removal Efforts to Third Country.**

The Respondent attempts to shift the blame of the government's inability to execute the removal order to the Petitioner by stating that he has refused to comply with ICE's removal effort [ECF No. 15, p. 2]. However, the sequence of events does not align with the government's narrative. According to conversations with Petitioner, ICE successfully transported him to Texas, and he was placed on a bus and driven to the Mexican-U.S. border. The Petitioner reports that he was brought to the border and initially disembarked the bus; however, he states that he subsequently re-boarded without being given any explanation and was then transported back. He

did not refuse removal at the border and indicates that he was cooperative and following instructions during the process. He further reports that he ultimately was returned to ICE custody, removed from the border area, and re-boarded the bus back to the United States. Notably, in compliance with migrant agreements that have never been published by Mexico,<sup>1</sup> Mexican border agents are barred from accepting deportees that decline to be deported. Given that these detainees have no ties to Mexico, are not afforded legal status in Mexico, and are not actively seeking asylum or other migrant protections in Mexico,<sup>2</sup> they have simply exercised their right to decline.

Respondent's assertion that "Timoneda refused to cooperate with removal to Mexico" and, "[d]ue to Timoneda's refusal to cooperate... ICE officers were unable to effect Timoneda's removal to Mexico" is entirely conclusory and circular. [ECF No. 15-1 at 2]. Respondents never identify what specific conduct allegedly constituted "refusal," or what action Petitioner failed to take that prevented execution of the removal order. Such generalized and self-referential assertions are insufficient to establish obstruction under § 1231(a)(1)(C).<sup>3</sup> To the contrary, the record reflects

---

<sup>1</sup> Refugees International, *Protection, Not Concession: Mexico's Responsibility to Third Country Nationals Deported by the United States* (Feb. 27, 2026) <https://www.refugeesinternational.org/reports-briefs/protection-not-concession-mexicos-responsibility-to-third-country-nationals-deported-by-the-united-states/> (last accessed Apr. 20, 2026).

<sup>2</sup> IMUMI, *Factsheet: Removal and Return of Non-Mexican Nationals from the United States to Mexico* (June 2024) available at <https://imumi.org/nuestras-publicaciones/removal-and-return-of-non-mexican-nationals-from-the-united-states-to-mexico/> (last accessed Apr. 20, 2026)/

<sup>3</sup> Nonetheless, federal regulations afford aliens the ability to decline a third-party country of removal and the factors that should be considered in evaluating the alien's deportation there. Section 1240.10 states:

With respect to an arriving alien covered by section 241(b)(1) of the Act, the country, or countries in the alternative, to which the alien may be removed will be determined pursuant to section 241(b)(1) of the Act. In any other case, the immigration judge shall notify the respondent that if he or she is finally ordered removed, **the country of removal will in the first instance be the country designated by the respondent**, except as otherwise provided under section 241(b)(2) of the Act, and shall afford him or her an opportunity then and there to make such designation. **The immigration judge shall also identify for the record a country, or countries in the alternative, to which the alien's removal may be made pursuant to section 241(b)(2) of the Act if the country of the alien's designation will not accept him or her into its territory, or fails to furnish timely notice of acceptance, or if the alien declines to designate a country.** In considering alternative countries of removal, acceptance or the existence of a functioning government is not required with respect to an alternative country described in section

that Petitioner boarded the aircraft arranged by ICE, complied with transport procedures, and did not resist removal efforts in any manner. Respondent's own declaration confirms that Mexico has not yet provided final acceptance of Petitioner for removal, and that removal may proceed only after notification to and acceptance by Mexican authorities. [ECF No. 15-1 at 3]. Accordingly, the inability to effect removal is not attributable to any identifiable act by Petitioner but instead reflects the absence of an executed or accepted third-country arrangement in the record.

Most importantly, Respondent's own declaration confirms that removal remains contingent upon future sovereign approval. ICE acknowledges that before removal may occur, the receiving ERO office must notify Mexico's Instituto Nacional de Migración ("INM"), and removal may proceed only following "INM's final acceptance." [ECF No. 15-1 at 3]. Thus, Respondent's own evidence establishes that removal remains speculative and dependent upon discretionary diplomatic approval outside Petitioner's control. Accordingly, Respondent cannot plausibly argue that Petitioner's conduct is the cause of continued detention where the record instead demonstrates that removal has not occurred due to the government's inability to secure a receiving country and effectuate the removal order.

Lastly, third-country removal procedures implicate significant statutory and constitutional protections. *See, e.g., Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) ("Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process."); *see also D.V.D. v. U.S. Dep't of Homeland Security*, --- F. Supp. 3d ---, 2026 WL 521557 (D. Mass. Feb. 25, 2026) (setting aside

---

241(b)(1)(C)(i)-(iii) of the Act or a removal country described in section 241(b)(2)(E)(i)-(iv) of the Act. *See* 8 CFR 241.15.  
8 C.F.R. § 1240.10(f) (emphasis added).

DHS's current third-country removal policy because it violates noncitizens' right to seek fear-based relief under the Convention Against Torture). Thus, the Petitioner has the right to decline a third-country of removal to which he has not ties and will suffer hardship if forcibly removed. *See Pierre v. Field Office Dir.*, Case No. 25-62475-CIV-Dimitrouleas, at \*12 (Jan. 29, 2026) ("The sum total of the Government's representations at this point is that they 'intend' to remove Ms. Pierre to Mexico, and that Mexico is accepting Haitian nationals without travel documents. No representation has been made that Mexico will accept Ms. Pierre specifically, who has a criminal history, no ties to Mexico, and does not speak Spanish. Nor the government provided any time frames as to when that information could be obtained.").

## II. Respondents' Authorities Are Factually Distinguishable.

First, Respondent's reliance on *Pelich v. INS*, 329 F.3d 1057 (9th Cir. 2003), is misplaced. In *Pelich*, the petitioner affirmatively obstructed removal by refusing to complete documentation necessary for Poland to issue travel papers, thereby preventing removal that otherwise would have occurred. *Pelich*, 329 F.3d at 1060. Here, by contrast, Petitioner has not concealed his identity, refused to execute nationality documents, or obstructed repatriation to a country willing to accept him. To the contrary, ICE explains that they still have not provided Mr. Timoneda with a Notice of Removal to Mexico, the ERO office has yet to notify Mexico's Instituto Nacional de Migracion, and ICE has not received Mexico's final acceptance. [ECF No. 15-1 at 3]. Under these circumstances, Petitioner is not "holding the keys" to his release within the meaning of *Pelich*. The government's inability to identify a country **presently** willing to accept Petitioner does not demonstrate a significant likelihood of removal in the reasonably foreseeable future.

Next, *Singh v. U.S. Att'y Gen.*, 945 F.3d 1310 (11th Cir. 2019), is inapplicable because it involved allegations that the petitioner was "evasive" and submitted incomplete travel document

applications in bad faith, thereby obstructing issuance of removal documents, and remanded for further evidentiary proceedings. Respondents do not allege, because the record would not support, that Petitioner was evasive or failed to provide information necessary for travel document processing. To the contrary, Petitioner has complied with all supervision requirements, including ICE check-ins, provision of identifying information, and full compliance with transport procedures while in custody and was returned to the bus from the Mexican border. More fundamentally, *Singh* concerns obstruction in the travel-document process and does not apply where removal is independently constrained by the absence of a willing receiving country. Here, those barriers stem from Cuba's longstanding refusal to repatriate Mariel Cubans such as Mr. Timoneda, not any conduct by Petitioner. See *Guzman Vila v. Field Office Director et al.*, 2:26-cv-01413-SPC-DNF (M.D. Fla. May 13, 2026); *Perez v. Warden*, No. 2:26-cv-9-SPC-DNF, 2026 WL 131650 (M.D. Fla. Jan. 19, 2026). Respondents still have not shown that Mexico, or any third country, has affirmatively agreed to accept Petitioner. Without such evidence, Respondents cannot attribute continued detention to Petitioner rather than the government's inability to secure a receiving country.

The additional authorities cited by Respondent likewise involved affirmative obstructive conduct absent here.<sup>4</sup> Then, Respondents' reliance on a recent line of district court decisions is unpersuasive both procedurally and substantively. First, a later proceeding involving the same

---

<sup>4</sup> In *Diouf v. Mukasey*, 542 F.3d 1222 (9th Cir. 2008), the petitioner failed to report for removal, required apprehension by ICE, refused departure after arrangements had been secured, and pursued serial litigation tactics that delayed execution of the removal order. Petitioner here did none of those things. Likewise, *Souleymane v. ICE*, No. 1:26-cv-00425-TWP-TAB, 2026 WL 785596 (S.D. Ind. Mar. 20, 2026), involved a petitioner who refused to board an aircraft. Here, Petitioner boarded the aircraft and submitted to transport without resistance. As such, it is unclear how Petitioner allegedly "refused" removal because Respondents rely on generalized and conclusory assertions of noncooperation. Lastly, *Laguardia v. ICE*, No. C26-4003-LTS-KEM, 2026 WL 440749 (N.D. Iowa Feb. 17, 2026), is distinguishable for the same reason. Respondent argues that detention remains justified where "Timoneda refuses removal to a third country willing to accept the alien." [ECF No. 15, p. 4]. But Respondent's own declaration establishes that Mexico has not yet accepted Petitioner and that any removal remains contingent upon future approval by Mexican authorities. [ECF No. 15-1 at 3]. Thus, the factual predicate underlying *Laguardia* is absent here.

petitioner reached the opposite result and granted habeas relief upon further review by this Honorable Court. *Cabrera Prieto v. Warden, Florida Soft Side South et al*, 2:26-cv-01253-KCD-NPM (M.D. Fla. May 13, 2026). In this decision, this Court emphasized the absence of “documents, diplomatic agreements, [or] concrete evidence that [the petitioner] will be removed in the near future,” and noted that the record reflected only generalized assertions regarding ICE’s removal efforts and requests for additional information. *Id.* That reasoning is directly applicable here. As in that case, Respondents have not identified any country that has affirmatively agreed to accept Mr. Timoneda, nor produced diplomatic acceptance, travel documents, or a concrete removal timeline. The same evidentiary deficiency compels the same result: immediate release under previous conditions of supervision.

Second, more recent decisions from the same courts have recognized that generalized assertions of refusal to accept removal to Mexico do not satisfy the government’s burden where the record lacks evidence of lawful and executable removal. *See Rives Hernandez v. U.S. Att’y Gen.*, 2:26-cv-01165-SPC-DNF (M.D. Fla. April 28, 2026). In *Rives Hernandez*, the court rejected ICE’s claim that alleged refusal to accept removal to Mexico established continued detention where “the evidence before the Court suggests that was an informal effort to compel voluntary departure, not an above-board removal attempt that complied with statutory and constitutional requirements.” *Id.* That reasoning is reinforced by additional authority recognizing that removal procedures must comply with statutory and constitutional requirements, including notice and access to relief, and that due process concerns arise where removal is premised on informal or incomplete procedures. *See, e.g., Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (“Failing to notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported

violates both INS regulations and the constitutional right to due process.”); *see also D.V.D. v. U.S. Dep’t of Homeland Security*, --- F. Supp. 3d ---, 2026 WL 521557 (D. Mass. Feb. 25, 2026) (setting aside DHS’s current third-country removal policy because it violates noncitizens’ right to seek fear-based relief under the Convention Against Torture).

### **III. Respondents Own Declaration Confirms Removal Remains Speculative.**

Taken together, these authorities demonstrate that generalized assertions of noncooperation and speculative references to Mexico are insufficient under *Zadvydas* where the government cannot identify a country that has affirmatively agreed to accept the detainee. Most critically, Respondents still have not established the central factual predicate underlying its argument or this Court’s inquiry: that a third country is presently willing to accept Petitioner. Respondent’s assertion that “the only thing stopping removal is Timoneda’s refusal” is contradicted by its own evidentiary submission. [ECF No. 15, p. 5]. The declaration makes clear that removal to Mexico is speculative and depends on a sequence of diplomatic and sovereign determinations outside Petitioner’s control. [ECF No. 15-1 at 3]. Also, Petitioner did not refuse removal at the border but rather he was cooperative and following instructions during the process wherein he ultimately was returned to ICE custody, removed from the border area, and re-boarded the bus back to the United States. Accordingly, the government’s own process reflects that removal depends on unresolved diplomatic steps and a discretionary acceptance decision by Mexico, confirming that removal remains speculative rather than reasonably foreseeable under *Zadvydas*.

WHEREFORE, Petitioner respectfully requests that the Court grant the writ and order his immediate release under the prior conditions of supervision.

Respectfully submitted,

Dated: May, 25, 2026

A handwritten signature in black ink, appearing to be 'A. Oliveros', is written over a horizontal line.

**Angel Alvarez Oliveros**  
**Attorney for Petitioner**  
**1010 Brickell Ave. Suite 1200**  
**Miami, FL 33131**  
**Phone: (786) 878-4057**  
**Email: angelalvarezoliveros@gmail.com**  
**Florida Bar Number: 1025807**