

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

AUGUSTO LAZA CUESTA,

Petitioner,

Case No. 2:26-cv-1677-KCD-NPM¹

v.

WARDEN, FLORIDA SOFT SIDE SOUTH
DETENTION FACILITY, ET AL.,

Respondents.

RESPONSE TO PETITIONER'S MOTION
RELATING TO JANUARY 26, 2026 REMOVAL ATTEMPT

Petitioner Augusto Laza Cuesta filed several pro se pleadings (ECF 9-11) after the Federal Respondents filed their response opposing his second pro se habeas corpus petition in Case No. 2:26-cv-675-KCD-DNF (2026 WL 1291907).

FACTS

In his “Emergency Motin to Preserve and Produce Video Evidence Relating to January 26, 2026 Removal Attempt” (ECF 11) (and in ECF 10, “Supplemental Memorandum in Support of Petition for Writ of Habeas Corpus” and his Reply at ECF 9 at 2) Petitioner disputes the federal Respondents’ characterization that he “failed to comply” with removal efforts, insisting that he “complied with

¹ Per the Court’s Order, ECF 5, this case was reassigned to Judge Dudek, after the undersigned filed a Notice of Related Cases (ECF 3).

instructions from immigration officers during transport; [h]e did not refuse removal; and the removal was not complete due to circumstances beyond his control, including actions by receiving authorities.” ECF 11 at 1-2. In the Court’s Order denying his first habeas petition without prejudice, the Court noted that “[a]ccording to the unrebutted records now before the Court, Cuesta was transported to the border for removal to Mexico on January 26, 2026, but failed to comply,” which was based on a declaration submitted with the federal Respondent’s response. In response to Laza Cuesta’s motion and as a supplement to the federal Respondent’s response opposing his second habeas petition, attached is a declaration from Deportation Officer James B. Atkinson, detailing Laza Cuesta’s refusal to “exit the bus in order to proceed with the removal process.” Exhibit 1.

ARGUMENT

As noted by the Court in its May 12, 2026 Order, the Court acknowledged the March 26, 2026, declaration attesting to Laza Cuesta’s unwillingness to cooperate with being removed to Mexico. The attached declaration further supports Laza Cuesta’s refusal to be removed to Mexico.²

² *But see Velazquez v. Facility Administrator, et al.*, 2:26-cv-1513 SPC-NPM, ECF 11 (M.D. Fla. May 21, 2026) (finding refusal to be removed to Mexico an “informal effort to compel voluntary departure, not an above-board removal attempt that complied with statutory and constitutional requirements”) (citations omitted).

In its Order, the Court ruled that Laza Cuesta's dismissal was without prejudice to Petitioner refiling a habeas petition "should his current detention (which is not impeded) extend beyond the six-month mark." As such, the attached declaration further supports the federal Respondents' position that because the Court tolled the six-month *Zadvydas* period in its May 12, 2026 Order, which took into account the Petitioner's refusal to be removed on January 26, 2026, Petitioner's detention continues to be lawful. *See Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1314 (11th Cir. 2019) (removal period can be extended by § 1231(a)(1)(c) if a petitioner "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure" or (2) "conspires or acts to prevent the alien's removal"); *but see Suarez-Rosabal v. Warden et al.*, Case No. 2:26-cv-1376-KCD-DNF, ECF 10, 2026 WL 1413161 (M.D. Fla. May 20, 2026) (petitioner, detained more than 180 days, with no affidavit or valid travel documents, was released due to lack of SLRFF). Thus, after Petitioner impeded removal to Mexico on January 26, 2026, the federal Respondent's position is that Laza-Cuesta continues to be detained pending execution of the final removal order and is not entitled to immediate release or bond proceedings under 8 U.S.C. § 1231.

CONCLUSION

The federal Respondents respectfully request that Laza Cuesta's Motion (ECF 11), and second habeas petition (ECF 1), be denied based on the arguments set forth herein.

DATED this 3rd day of June, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 3, 2026, a true and correct copy of the foregoing application was sent by United States Mail to Petitioner at the FSS address.

/s/Kelley C. Howard-Allen
Kelley C. Howard-Allen
Assistant United States Attorney