

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Maria Perez Caal,
Petitioner

AGENCY FILE No. A 

Case No. **3:25-cv-0153-LS**

v.

MARY ANDA-YBARRA, Field Office
Director, El Paso Field Office, Immigration
and Customs Enforcement, MARTIN
SARELLANO JR., Assistant Field Office
Director, El Paso Field Office, Immigration
and Customs Enforcement, TODD M.
LYONS, Acting Director, U.S. Immigration
and Customs Enforcement, KRISTI NOEM,
Secretary, U.S. Department of Homeland
Security, PAMELA JO BONDI, Attorney
General of the United States, *in their official
capacities.*

Respondents.

PETITIONER'S SUPPLEMENTAL BRIEFING CLARIFYING LEGAL CLAIMS

Respondents, despite knowing that Petitioner's removal is not possible, continue to detain Petitioner, since May 28, 2024, now over a year. Petitioner is the recipient of a bona fide determination from USCIS on her T-Visa application, that order of removal is currently stayed and cannot be executed during the pendency of the adjudication by USCIS of her T-Visa application. Accordingly, as of January

30, 2025, DHS is prevented from removing Petitioner due to the administrative stay provided under 8 C.F.R. § 214.204(b)(1)(ii).¹

Moreover, USCIS approval of Petitioner's T-Visa will result in the cancellation of Petitioner's removal order. 8 C.F.R. § 214.204(o)(1), and, as such, Petitioner will no longer be subject to removal. Petitioner's release is warranted. After over 12 months of detention, which has obstructed law enforcement investigations into her claims, her continued detention is no longer justifiable, and this Court should order her release.

Petitioner is subject to a final order of removal. Petitioner was denied asylum from the immigration judge on December 5, 2024. She appealed that decision, and the BIA dismissed her appeal on April 18, 2025 resulting in a final order of removal. However, ICE's own internal policies—including its 2004, 2012, and 2021 memoranda—support the release of individuals with pending humanitarian relief unless mandatory detention or exceptional risk factors exist. The August 2021 ICE Guidance specifically encourages discretionary release for individuals with T visa bona fide determinations, particularly when they are not flight risks or dangers.²

If removal is not reasonably foreseeable, continued detention violates constitutional due process. *Zadvydas v. Davis*, 533 U.S. 678 (2001), governs when the government may subject a non-citizen to prolonged detention. In *Zadvydas*, the Court ruled that to continue detention after the initial 90-day period, DHS must

¹ See USCIS Notice at exhibit A

² See exhibit B.

demonstrate a “significant likelihood of removal in the reasonably foreseeable future.” *Id.*, at 699–701.

Accordingly, under *Zadvydas*, DHS’s authority to detain individuals is constitutionally limited to those cases where removal is reasonably foreseeable. In this case, DHS cannot demonstrate a significant likelihood of removal in the reasonably foreseeable future, particularly considering the pending T-Visa application, and the administrative stay of removal. Nevertheless, DHS continues to detain Petitioner even though she presents no flight risk or danger to the community. She has not been charged with or convicted of any crime in the United States.

8 C.F.R. § 241.13 further provides that if there is not a “significant likelihood that the [noncitizen] will be removed in the reasonably foreseeable future,” the Service must order the release of the noncitizen unless there are “special circumstances” that justify continued detention. 8 C.F.R. § 241.13(g)(1). DHS has failed to provide any special circumstances to justify Petitioner’s continued detention. For these reasons, Petitioner’s detention violates 8 U.S.C. § 1231(a) and 8 C.F.R. § 241.13. There is no likelihood—let alone a significant one—that Petitioner may be removed in the reasonably foreseeable future. Accordingly, this Court should order her release.

one—that Petitioner may be removed in the reasonably foreseeable future.
Accordingly, this Court should order her release.

Respectfully submitted,

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/s/ Omar Carmona
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Texas State Bar No.: 24059543

/s/ Constance R. Wannamaker
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