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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Andrea Jiminez Tepeque,

Petitioner,

v.

Fred Figueroa, Warden, Eloy Detention
Center, et al.,

Respondents.

No. 25-cv-01687-PHX-DJH (CDB)

**ANSWER TO PETITION FOR A
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

Respondents, Fred Figueroa, Warden, Eloy Detention Center, John Cantu, Arizona Field Office Director, U.S. Immigration and Customs Enforcement (“ICE”), Todd M. Lyons, Director, ICE, Kristi Noem, Secretary of the Department of Homeland Security, and Pamela J. Bondi, Attorney General of the United States, by and through counsel, hereby answer the Petition for Writ of Habeas Corpus (Doc. 1). Petitioner is a violent convicted criminal subject to a valid final removal order who nevertheless seeks immediate release from ICE custody. Due to Petitioner’s numerous criminal convictions and because her removal is likely in the reasonably foreseeable future, the Court should deny her habeas petition. This Response is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND.

Petitioner, Andrea Jimenez Tepeque's legal birth name is  Jimenez Tepeque.¹ Petitioner is a native and citizen of Guatemala born on January 14, 1994, in Cuilapa, Guatemala. *See* Exhibit A (Declaration of Deportation Officer, Ema Peru). Petitioner unlawfully crossed into the United States through Mexico on January 19, 2015. *Id.* at ¶ 6. Petitioner was apprehended by U.S. Border Patrol and charged as being removable pursuant to Immigration and Nationality Act ("INA") § 212(a)(7)(A)(i)(I) as an illegal entrant not in possession of a valid entry document. *Id.* On January 22, 2015, Petitioner was removed to Guatemala. *Id.* at ¶ 7.

After being removed, Petitioner unlawfully re-entered the United States at an unknown date and time and without admission or parole. Ex. A ¶ 8. On August 29, 2022, Petitioner was arrested for the crime of battery in Broward County, Florida. *Id.* at ¶ 10. On November 3, 2022, Petitioner was convicted in Palm Beach County of throwing a deadly missile into a building and criminal mischief for which Petitioner was sentenced to two years of probation. *Id.* at ¶ 13. On October 23, 2023, Petitioner was encountered by ICE Enforcement and Removal Operations ("ERO") in Palm Beach County Jail following an arrest for probation violation. *Id.* at ¶ 11.

On July 29, 2024, Petitioner was convicted of fifteen counts of animal cruelty in Palm Beach County. Ex. A at ¶ 20. On August 23, 2024, Petitioner was released from Palm Beach County Jail into the custody of ICE ERO in Miami. *Id.* at ¶¶ 15, 21. Petitioner was detained at Krome Service Processing Center pursuant to her reinstated final removal order under 8 U.S.C. § 1231(a)(5). *Id.* at ¶ 21. On August 26, 2024, filed a Form I-589, Application for Asylum, Withholding of Removal with United States Citizenship and Immigration Services ("USCIS"). *Id.* at ¶ 16. USCIS accepted the application on October 18, 2024. *Id.* at ¶ 17. On October 31, 2024, USCIS found Petitioner had established a

¹ In ICE's declaration setting forth Petitioner's criminal and immigration history, Petitioner is referred to by her legal name Kevin Jimenez-Tepeque.

1 positive reasonable fear claim and referred Petitioner’s case to the immigration judge (IJ)
 2 for withholding-only proceedings. *Id.* at ¶ 23. On February 4, 2025, the IJ granted
 3 Petitioner withholding of removal to Guatemala. *Id.* at ¶ 25.

4 On March 28, 2025, the U.S. Marshall Services turned over custody of Petitioner to
 5 ICE officers at the Eloy Detention Center in Eloy, Arizona. Ex. A at ¶ 26. On May 17,
 6 2025, Petitioner filed this petition for writ of habeas corpus. Doc. 1. On June 9, 2025, ICE
 7 served Petitioner with a notice of removal to Mexico. *Id.* at ¶ 27. On that same day,
 8 Petitioner claimed a fear of being removed to Mexico. *Id.* On June 11, 2025, consistent
 9 with the pending class action litigation and nationwide injunction issued in *D.V.D. v. U.S.*
 10 *Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1142968, at *3 (D. Mass. Apr.
 11 18, 2025)—which enjoined third country removals without an opportunity to be heard on
 12 a fear claim to each specific country—Petitioner’s case was referred to the Asylum
 13 Pre-Screening Officer (APSO) to determine whether Petitioner had a reasonable fear of
 14 removal to Mexico. *Id.* at ¶ 28.

15 **II. ARGUMENT**

16 **A. Reinstated Removal Orders and Withholding Only Proceedings.**

17 Congress has created an expedited process for aliens, like Petitioner, who
 18 unlawfully re-enter the United States, having already been removed after lengthy removal
 19 proceedings. The relevant statutory provision states:

20 “If the Attorney General finds that an alien has reentered the United States illegally
 21 after having been removed or having departed voluntarily, under an order of
 22 removal, the prior order of removal is reinstated from its original date and is not
 23 subject to being reopened or reviewed, the alien is not eligible and may not apply
 24 for any relief under this chapter, and the alien shall be removed under the prior order
 25 at any time after the reentry.”

26 8 U.S.C. § 1231(a)(5); *Johnson v. Guzman Chavez*, 594 U.S. 523, 529–30 (2021).

27 Section 1231(a)(5) applies to “all illegal re-entrants,” and it “explicitly insulates the
 28 removal orders from review,” while also “generally foreclos[ing] discretionary relief from

1 the terms of the reinstated order.” *Id.* (internal citations omitted). It does not, however,
2 preclude an alien from pursuing withholding-only relief to prevent DHS from executing
3 his removal to the particular country designated in his reinstated removal order. *Id.*
4 (internal citations omitted); *see also* § 1231(b)(3)(A).

5 “There are two paths for seeking withholding of removal. First, the alien may seek
6 statutory withholding under § 1231(b)(3)(A), which provides that “the Attorney General
7 may not remove an alien to a country if the Attorney General decides that the alien’s life
8 or freedom would be threatened in that country because of the alien’s race, religion,
9 nationality, membership in a particular social group, or political opinion.” Second, the alien
10 may seek withholding under regulations implementing the Convention Against Torture and
11 Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, S.
12 Treaty Doc. No. 100–20, 1465 U. N. T. S. 113, which prohibits removal of an alien to a
13 country where the alien is likely to be tortured.” *Guzman Chavez*, 594 U.S. at 530–31
14 (citing 8 CFR §§ 208.16–208.17, 1208.16–1208.17.)

15 The process for applying for withholding of removal depends on whether the alien
16 is subject to standard removal proceedings or a reinstated order of removal. An alien
17 subject to the standard removal process typically applies for withholding during the course
18 of his regular removal proceedings. But because an alien subject to a reinstated order of
19 removal does not have any removal proceedings, the process begins only if the individual
20 expresses a fear to DHS of returning to the country of removal specified in the reinstated
21 removal order. *Guzman Chavez*, 594 U.S. at 531 (citing §§ 208.31(a), 1208.31(a)). At that
22 point, DHS will refer the individual to an asylum officer for a reasonable fear
23 determination, which will normally be conducted within 10 days of the referral. *Id.* (citing
24 §§ 208.31(b), 1208.31(b)). If the asylum officer concludes that the alien has a reasonable
25 fear, he will refer the matter to an IJ for initiation of withholding-only proceedings. *Id.*
26 (citing §§ 208.31(e), 1208.31(e)). Those proceedings are “limited to a determination of
27 whether the alien is eligible for withholding or deferral of removal,” and as such, “all
28 parties are prohibited from raising or considering any other issues, including but not limited

1 to issues of admissibility, deportability, eligibility for waivers, and eligibility for any other
 2 form of relief.” *Id.* (citing §§ 208.2(c)(3)(i), 1208.2(c)(3)(i)). The IJ’s final decision as to
 3 withholding can be appealed to the BIA. *Id.* (citing §§ 208.31(e), 1208.31(e)).

4 If an alien is granted withholding-only relief, DHS may not remove the alien to the
 5 country designated in the removal order unless the order of withholding is terminated.
 6 *Guzman Chavez*, 594 U.S. at 531–32 (citing §§ 208.22, 1208.22. But because withholding
 7 of removal is a form of “country specific” relief, *INS v. Cardoza-Fonseca*, 480 U.S. 421,
 8 428, n. 6 (1987), nothing prevents DHS “from removing [the] alien to a third country other
 9 than the country to which removal has been withheld or deferred.” *Id.* (citing §§ 208.16(f),
 10 1208.16(f); *see also* §§ 208.17(b)(2), 1208.17(b)(2)).

11 In this case, Petitioner is subject to a reinstated final removal order—that is a
 12 removal order that is a result of the conclusion of removal proceedings where Petitioner
 13 had the opportunity to be heard on any claim to relief from removal anywhere in the world.
 14 In the case of reinstated removal orders, like the one in this case, because they are final
 15 orders under which much process was previously afforded during the full course of removal
 16 proceedings, there is limited process available for country specific relief from removal
 17 under a reinstated final order. Indeed, withholding of removal is a country specific relief.
 18 Here, Plaintiff has only requested, and been granted, withholding of removal to Guatemala.
 19 She is therefore currently removable to Mexico. As the Court held in *Guzman-Chavez*,
 20 “nothing prevents DHS “from removing [the] alien to a third country other than the country
 21 to which removal has been withheld or deferred.”” *Guzman Chavez*, 594 U.S. at 531–32
 22 (citing §§ 208.16(f), 1208.16(f); *see also* §§ 208.17(b)(2), 1208.17(b)(2)).

23 **B. The Nationwide Injunction in D.V.D. and the Supreme Court’s Stay.**

24 In *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL
 25 1142968, at *4 (D. Mass. Apr. 18, 2025), opinion clarified, No. CV 25-10676-BEM, 2025
 26 WL 1323697 (D. Mass. May 7, 2025), and opinion clarified, No. CV 25-10676-BEM, 2025
 27 WL 1453640 (D. Mass. May 21, 2025), reconsideration denied sub nom. *D.V.D v. U.S.*
 28 *Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26,

1 2025), the District Court enjoined third country removals without notice and an opportunity
2 to be heard on any reasonable fear claim with respect to a third country removal even if
3 relief from removal to that country had never been sought during the pendency of removal
4 proceedings or in the context of withholding-only proceedings. On June 23, 2025, the
5 Supreme Court stayed the injunction. *Department of Homeland Security, et al., v. D.V.D.,*
6 *et al.*, 606 U.S.—(2025).

7 **C. Standard Governing Detention of Aliens with Final Removal Orders.**

8 The detention, release, and removal of aliens subject to a final order of removal is
9 governed by § 241 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231.
10 Pursuant to INA § 241(a), the Attorney General has 90 days to remove an alien from the
11 United States after an order of removal becomes final. During this “removal period,”
12 detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been
13 removed and remains in the United States, his detention may be continued, or he may be
14 released under the supervision of the Attorney General. INA § 241, 8 U.S.C. § 1231(a)(3)
15 and (a)(6). Under this section, ICE may detain an alien for a “reasonable time” necessary
16 to effectuate the alien’s removal. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite
17 detention is not authorized by the statute. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).
18 In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable period
19 of detention for aliens, like petitioner, detained under section 1231(a). *See Zadvydas*, 533
20 U.S. at 701-702. *Zadvydas* places the burden on the alien to show, after a detention period
21 of six months, that there is “good reason to believe that there is no significant likelihood of
22 removal in the reasonably foreseeable future.” *Id.* at 701. If the alien makes that showing,
23 the Government must then introduce evidence to refute that assertion to keep the alien in
24 custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40 (9th Cir. 2002). The court
25 must “ask whether the detention in question exceeds a period reasonably necessary to
26 secure removal. It should measure reasonableness primarily in terms of the statute’s basic
27 purpose, namely, assuring the alien’s presence at the moment of removal. Thus, if removal
28

1 is not reasonably foreseeable, the court should hold continued detention unreasonable and
2 no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

3 **D. Petitioner’s Detention is Lawful and Constitutionally Permitted.**

4 To be entitled to release from detention, Petitioner has the burden to show that her
5 removal is not likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Only
6 then does the burden shift to the Government to show that removal is significantly likely
7 in the reasonably foreseeable future. *Id.*

8 Although in *Zadvydas*, the Supreme Court designated six months as a presumptively
9 reasonable period of time to allow the government to remove an alien detained under
10 8 U.S.C. § 1231(a), an alien is not automatically entitled to release after six months of
11 detention. *Id.* at 701 (“This 6-month presumption, of course, does not mean that every
12 alien not removed must be released after six months. To the contrary, an alien may be held
13 in confinement until it has been determined that there is no significant likelihood of
14 removal in the reasonably foreseeable future.”) (emphasis added). The passage of time
15 alone is insufficient to establish that no significant likelihood of removal exists in the
16 reasonably foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash.
17 2002). In *Lema*, where the petitioner had been detained for more than a year, the district
18 court held that the passage of time was only the first step in the analysis, and that the
19 petitioner must then provide good reason to believe that no significant likelihood of
20 removal exists in the reasonably foreseeable future. *Id.*

21 Petitioner’s ten-month detention, which is not prolonged, is governed by 8 U.S.C. §
22 1231 and *Zadvydas*. Petitioner was taken into ICE custody on August 23, 2024, in Miami,
23 Florida, Krome Service Processing Center following arrests and convictions for several
24 violent crimes to include, throwing a deadly missile into a building, criminal mischief,
25 fifteen counts of animal cruelty, and battery. Petitioner’s prior final removal order was
26 reinstated pursuant to 8 U.S.C. § 1231(a)(5). The only relief from removal available for
27 those subject to reinstated final removal orders is withholding of removal to the country
28 specified in the reinstated removal order. 8 U.S.C. § 1231(b)(3)(A).

1 Petitioner has applied for and received the only relief she was statutorily eligible
2 for—withholding of removal to Guatemala. 8 U.S.C. § 1231(b)(3)(A). She remains
3 removable however, to any country from which she did not claim a fear of return in her
4 prior removal proceedings. *Guzman Chavez*, 594 U.S. at 531–32 (holding that “nothing
5 prevents DHS “from removing [the] alien to a third country other than the country to which
6 removal has been withheld or deferred.”).

7 A District Court in Massachusetts briefly enjoined third country removals, requiring
8 the United States to provide notice and credible fear processes to those who claimed fear
9 of return to third countries, despite never having claimed that fear in their removal
10 proceedings which are now administratively final. *D.V.D.*, No. CV 25-10676-BEM, 2025
11 WL 1142968, at *4. This would allow aliens endless bites at the apple and the opportunity
12 to delay removal in perpetuity while simultaneously challenging their detention as
13 indefinite thereby requiring release of individuals like Petitioner, who has been convicted
14 of numerous violent crimes. Due to this injunction, ICE referred Petitioner to an asylum
15 officer to assess her fear of return to Mexico. Ex. A ¶ 28. However, on today’s date, June
16 23, 2025, the Supreme Court stayed the injunction issued in *D.V.D.*

17 What this means for Petitioner is that there is simply no impediment to her removal
18 at this time. She has a valid final executable order of removal, that only withholds removal
19 to Guatemala, because that is all she is eligible for pursuant to a reinstated final removal
20 order. Petitioner has received notice that she is removable to Mexico. The United States
21 is no longer enjoined from removing her to Mexico pending the full assessment of a
22 credible fear claim as to Mexico, which she did not raise in her original removal
23 proceedings—though she had an opportunity to do so. She therefore cannot establish that
24 there is no likelihood of her removal in the reasonably foreseeable future as required to
25 prevail under *Zadvydas*. 533 U.S. at 701. Even if the *D.V.D.* injunction were to remain in
26 place and Petitioner were to be evaluated for a claimed fear of return to Mexico, her
27 removal is *still* likely in the reasonably foreseeable future because there is an end-date in
28 sight. Therefore, her removal is not indefinite as contemplated in *Zadvydas*.

1 Put simply, Plaintiff has received all the process to which she is due—first in her
2 lengthy full course regular removal proceedings which ended in a valid final removal
3 order—and second with respect to her reinstated removal proceedings which resulted in
4 her gaining the only relief she was eligible for—withholding of removal to Guatemala.
5 Therefore, Petitioner’s removal order is administratively final and executable to any
6 country but Guatemala. There are no impediments to her removal, which is even more
7 likely in the reasonably foreseeable future now that the *D.V.D.* injunction has been stayed
8 and the Government can proceed with removal to Mexico. Because, Petitioner cannot
9 establish that her removal is not significantly likely in the reasonably foreseeable future,
10 her habeas petition should be denied.

11 Respectfully submitted this 23rd day of June, 2025.

12 TIMOTHY COURCHINE
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15 *s/Theo Nickerson*
16 THEO NICKERSON
17 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing to the following ECF registered user:

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