

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

ANDREA JIMINEZ TEPEQUE,

PETITIONER,

v.

FRED FIGUEROA, in his official
capacity as warden of Eloy
Detention Center, Eloy, Arizona;
JOHN E. CANTÚ, in his official
capacity as Field Office Director
of the U.S. Immigration and
Customs Enforcement Arizona
Field Office; TODD M. LYONS,
in his official capacity as Director
of U.S. Immigration and Customs
Enforcement; KRISTI NOEM, in
her official capacity as the
Secretary of the U.S. Department
of Homeland Security; PAMELA
JO BONDI, in her official
capacity as Attorney General of
the United States;

Respondents.

Case No. 25-cv-01687-PHX-DJH

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

INTRODUCTION

Petitioner Ms. Andrea Jimenez Tepeque (“Petitioner” or “Ms. Tepeque”) has been in U.S. Immigration and Customs Enforcement (“ICE”) detention with a final order of removal for over eleven months. Even after securing permanent protection in her withholding-only proceedings, her detention has no end in sight. Despite Respondents’ claims of their right to remove Ms. Tepeque to Mexico, her due process rights to challenge such a removal remain. Ms. Tepeque’s detention has become indefinite—a violation of the U.S. Constitution and the Immigration and Nationality Act—as there is no significant likelihood of her removal to any country in the reasonably foreseeable future. To justify her continued detention, Respondents attempt to cast Ms. Tepeque in the worst light possible, despite evidence to the contrary. We ask the Court to intervene.

I. BACKGROUND

Ms. Tepeque has been in ICE custody with a final order of removal for nearly a full year. Her detention commenced on or about August 21, 2024, which corresponds with the date of her final order of removal. Ms. Tepeque is a transgender woman who has experienced threats, harassment, and sexual assault while in detention. On February 20, 2025, the immigration court granted her withholding of removal due to severe past persecution and the threat of future persecution based on her identity as a transgender woman and sexual minority in Guatemala. Despite this, from that date until the present, over seven months later, Respondents continue to detain Ms. Tepeque.

On June 9, 2025, Respondents threatened Ms. Tepeque with deportation to Mexico. Through counsel, she expressed a fear of deportation to Mexico based on her

mental health, transgender status, and identity as a foreign national with a criminal history. On June 13, 2025, Matthew P. Hanson with the Deputy Chief Counsel with the Office of the Principal Legal Advisor, Phoenix, confirmed that Ms. Tepeque's case "was referred to the APSO [Asylum Pre-Screening Officer] on 6/11. However, they had a question about the referral. We have now answered their question, and they should process the referral and schedule an interview soon." Exhibit A at 26. Ms. Tepeque is still awaiting this interview to assert her due process rights against deportation to Mexico, along with any confirmation from Respondents that such deportation is happening or even likely in the foreseeable future. She now seeks relief from this Court under 28 U.S.C. § 2241 to challenge her indefinite detention.

II. ARGUMENT

Despite her indefinite detention, Respondents claim they have the right to continue to detain Ms. Tepeque and effectuate an unconfirmed deportation to Mexico at any time convenient to them. *See generally* Answer to Petition for a Writ of Habeas Corpus ("Answer"). The Constitution says differently. Respondents claim that due process was satisfied, as Ms. Tepeque had sufficient opportunity to object to any country they may designate for her removal during her initial hearing. *Id.* at 5. This is simply untrue. No third country was identified for removal at any time during Petitioner's hearing. Respondents further attempt to justify her unlawful detention by recasting Ms. Tepeque's criminal history in a prejudicial and inaccurate light.

A. Respondents Have Failed to Rebut that Ms. Tepeque's Detention is Unlawful and Unconstitutional.

The Supreme Court has established that detention post-removal order becomes a violation of an individual's due process rights once the individual "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Then, "the Government must respond with evidence sufficient to rebut that showing." *Id.* In this case, Ms. Tepeque has fulfilled her obligation. She has presented objective studies, ICE data, and ICE emails demonstrating the overwhelming historical rarity of third country removals to this Court as "good reason to believe" removal is not likely in the reasonably foreseeable future. *See* Petition for a Writ of Habeas Corpus ("Petition") ¶¶ 47-50.

Not only have Respondents failed to provide a rebuttal, as required by *Zadvydas*, Respondents have failed to meaningfully address Ms. Tepeque's evidence at all. *See* Answer at 6-8. Instead, Respondents only refer to *Zadvydas* for the proposition that the six-month presumption of reasonableness "does not mean that every alien not removed must be released after six months." 533 U.S. at 701. Respondents also cite *Lema v. INS* to argue that detention for longer than six months does not automatically confer unreasonableness, but "[r]ather the passage of time is simply the first step in the analysis." 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002). Neither of these premises are contested by Ms. Tepeque.

These undisputed citations do not remedy Respondents' failure to engage with the burden shifting framework required by *Zadvydas* and, consequently, *Lema*: "[O]nce an alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient

to rebut the showing.” *Lema v. INS*, 341 F.3d 853, 856 n.6 (9th Cir. 2003) (affirming and clarifying the lower court decision cited above); *Zadvydas*, 533 U.S. at 701.

Furthermore, both the *Lema* appellate court and *Zadvydas* Court made clear that “for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Zadvydas*, 533 U.S. at 682; *Lema*, 341 F.3d at 856 n.6. This contravenes the Government’s unsupported claim that Ms. Tepeque’s detention is not prolonged. As of this filing, Ms. Tepeque has been incarcerated for more than eleven months, and to justify her continued detention as reasonable, the Government must present evidence of a correspondingly imminent removal. As Respondents note, the passage of time is only the first part of the over-detention analysis, but they fail to offer any rebuttal evidence to Ms. Tepeque’s claims and supporting evidence and case law. *See, e.g., Lema*, 341 F.3d at 856 (providing evidence that the prolonged detention was caused by the noncitizen’s bad faith failure to provide accurate nationality information); *Bah v. Cangemi*, 489 F. Supp. 2d 905, 923 (D. Minn. 2007) (providing evidence of bureaucratic delays on the part of the receiving country, which the court found did not warrant continued detention).

In sum, Ms. Tepeque is the exact example of a petitioner whom the *Zadvydas* standard was formulated to protect: She is lawfully protected by Withholding of Removal under Immigration and Nationality Act § 241(b)(3), poses no danger to the public, and—as has been previously submitted—would in no way prejudice the Government by waiting for a third country of removal to be identified outside of detention. Rather than providing rebuttal evidence, as required by Supreme Court precedent, the Government

accuses Ms. Tepeque of taking “endless bites at the apple” by delaying her “removal in perpetuity.” Answer at 8. This is contrary to fact and law. The Government has an obligation to identify a third country to which it intends to remove her and allow her to present any reasonable fears about such removal, as laid out in 8 C.F.R. §§ 208.31, 1208.31. Under Respondents’ theory of this case, however, the Government may simply propose countries of removal where Ms. Tepeque would face torture or death “in perpetuity,”¹ with no definitive confirmation of acceptance and removal to such third countries, while keeping her in detention with no reasonably foreseeable end-date.

The Government’s failure to provide rebuttal evidence, alone, is sufficient to warrant a grant of Ms. Tepeque’s petition. However, even without the Government’s failure to meet its burden under *Zadvydas*, Respondents’ arguments set forth in their Answer are still without merit.

B. Respondents Do Not Have the Right to Indefinitely Attempt Third Country Deportation.

Respondents argue that “nothing prevents DHS ‘from removing [the] alien to a third country other than the country to which removal has been withheld or deferred.’” *Johnson v. Guzman Chavez*, 594 U.S. 523, 531–32 (2021). This of course is true, for a time. But that time has passed. Respondents do not have the right to indefinitely detain individuals to effectuate unconfirmed third country removals, especially those going

¹ The court in *D.V.D. v. United States Department of Homeland Security*, for example, identified sixty-four countries in which it is illegal to be homosexual, which would require “a person with a same-sex sexual orientation to list, at least, all 64 countries where such an orientation is illegal such that the individual fears torture.” Civil Action No. 25-10676-BEM, 2025 U.S. Dist. LEXIS 74197, at *48 (D. Mass. Apr. 18, 2025), citing *Homosexuality: The countries where it is illegal to be gay*, BBC (Mar. 31, 2023).

through the credible fear interview process (“CFI”). Respondents rely heavily on *Guzman Chavez* but fail to acknowledge two key points.

First, the *Guzman Chavez* Court expressly affirmed access to process if the individual “expresses a fear to DHS of returning to the country of removal.” 594 U.S. at 531; citing 8 C.F.R. §§208.31(a), 1208.31(a). Thus, the procedural “reasonable fear determination” provides a right to due process that Respondents do not have the right to set aside. *See id.* at 531; *see also Romero v. Evans*, 280 F. Supp. 3d 835, 848 n.24 (E.D. Va. 2017) (“DHS could not immediately remove petitioners to a third country, as DHS would first need to give petitioners notice and the opportunity to raise any reasonable fear claims.”).

As set forth in 8 CFR § 208.1, the Convention Against Torture Act (“CAT”) and Withholding of Removal under Immigration and Nationality Act were enacted and passed by Congress on humanitarian grounds, to protect noncitizens who were ineligible for other avenues of immigration relief from being removed to a country where they were at imminent risk of life and liberty. *See e.g.*, 8 U.S.C. § 1231(b)(3)(a) (the government “may not remove an alien to a country” in which “the alien’s life or freedom would be threatened . . . because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.”); *see also* INA § 241(b)(3).

Such relief specifically does not limit the restriction to the country in which the alien is a citizen, the country in which the alien was born, or as Respondents seem to claim here, the country named in the initial withholding petition; rather, the statute restricts removal to “a country,” including a third country, in which that non-citizen’s

“life or freedom would be threatened.” *Id.*; *see also Aden v. Nielsen*, 409 F. Supp. 3d 998, 1007-09 (W.D. Wash. 2019) (finding that the designation of a third country for removal after removal proceedings are closed requires due process notice and opportunity to raise and pursue a claim for withholding) (citing *Jama v. Immigration & Customs Enf’t*, 543 U.S. 335, 348 (2005) and *Oshodi v. Holder*, 729 F.3d 883, 889 (9th Cir. 2013)); *Guzman Chavez*, 594 U.S. at 530-31; *see also* 8 C.F.R. § 208.17(b)(2) (the immigration judge in the initial hearing “shall . . . inform the alien that removal has been deferred only to the country in which it has been determined that the alien is likely to be tortured, and that the alien may be removed at any time to another country *where he or she is not likely to be tortured*” (emphasis added)).

In the instant case, Respondents’ argument that there are no impediments to Ms. Tepeque’s removal willfully ignores the reality of her case. On the same day that ICE served Ms. Tepeque with notice of removal to Mexico, she claimed fear of being removed to Mexico, and her case was subsequently referred to an Asylum Pre-Screening Officer (“APSO”) to determine the credibility of that fear. Ex. A at 26-28. Respondents have further failed to present any evidence that Petitioner’s deportation to Mexico is imminent, or has even been accepted by Mexican authorities. This lack of evidence is telling.

Second, the plain language of the writ of habeas corpus and Supreme Court precedent set forth a limit on indefinite detention. Respondents refer multiple times to 8 C.F.R. § 208.16(f), which states that “[n]othing in this section or §208.17 shall prevent the Service from removing an alien to a third country other than the country to which

removal has been withheld or deferred” but fail to contextualize this clause in relation to the requirements of 28 U.S.C. § 2241. *Zadvydas* reconciles any incongruity by interpreting the governing statute, 8 U.S.C. § 1231, “to avoid a serious constitutional threat,” concluding that, “once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” 533 U.S. at 699; *see also id.* at 689 (“In our view, the statute, read in light of the Constitution’s demands, limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States. It does not permit indefinite detention.”).

C. Respondents’ Claims to Justify the Continued Detention of Ms. Tepeque Mischaracterizes the Law.

On April 18, 2025 the District Court of Massachusetts issued a preliminary injunction requiring DHS to provide recipients of withholding protection with notice and opportunity to assert fear-based objections before removal to third country sites. *D.V.D. v. United States Dep’t of Homeland Sec.*, No. 25-10676-BEM, 2025 U.S. Dist. LEXIS 74197, at *57 (D. Mass. Apr. 18, 2025). As Respondents note, on June 23, the Supreme Court stayed the preliminary injunction, “pending the disposition of the appeal in the United States Court of Appeals for the First Circuit and disposition of a petition for a writ of certiorari.” *Dep’t of Homeland Sec. v. D.V.D.*, 31 Fla. L. Weekly Fed. S. 204 (U.S. 2025). The Court did not offer reasoning to justify its decision to stay the injunction. *Id.*; *see also Dep’t of Homeland Sec. v. D.V.D.*, No. 24A1153, 2025 U.S. LEXIS 2666, *2-3 (July 3, 2025).

Respondents claim that because the formal injunction has been temporarily stayed, DHS may now freely remove those granted permanent withholding protection to third countries irrespective of any fear-based objections, and that therefore, Ms. Tepeque is unable to show her removal is not reasonably foreseeable and may be detained indefinitely. The temporary stay, however, applies only to the injunction and the Supreme Court did not dispute the reasoning or interpretation of precedent and statute that the *D.V.D.* court used to substantiate its finding for the plaintiffs' likelihood of success on the merits. *D.V.D.*, 31 Fla. L. Weekly Fed. S. 204 (U.S. 2025). Therefore, the controlling case law regarding due process rights under the Immigration and Nationality Act § 241(b)(3) remains intact, granting noncitizens the due process right to contest their removal.

Just as precedent endures on the existence of due process rights for withholding of removal recipients, *Zadvydas* continues to set the due process standard for the length of their permissible detention. If anything, the temporary stay in the *D.V.D.* case urges more expeditious deliberation on the *Zadvydas* timetable in Ms. Tepeque's habeas claim. Ms. Tepeque has now been in detention for more than five months longer than the presumptively reasonable six months. Her detention should be measured "primarily in terms of the statute's basic purpose, that is, to insure the alien's presence at the time removal is to be effected." *Zadvydas*, 533 U.S. at 699. This is not at issue in her case and she should be released.

Respondents likewise mischaracterize Petitioner's right to contest her removal to a third country. The Government repeatedly claims that Ms. Tepeque's initial removal proceedings offered her sole opportunity to raise a credible fear claim "to relief from

removal anywhere in the world,” and that with no further process due, she cannot object to removal to any country DHS may designate. Answer at 5, 8. However, “the government has an obligation not to remove persons who may be subject to persecution or torture,” and therefore has “set forth streamlined procedures outlining the process for reasonable fear proceedings.” *Bartolome v. Sessions*, 904 F.3d 803, 812 (9th Cir. 2018). Respondents’ assertion wholly disregards “Congress’s carefully calibrated scheme of immigration laws.” *D.V.D.*, 31 Fla. L. Weekly Fed. S. 204 (U.S. 2025) (citing 8 U.S.C. §§1228(b)(1)-(3), 1229(a)(1); 8 C.F.R. §§238.1(b)(2), 1240.10(f)). In Respondents’ view, a petitioner must identify and specifically object prophylactically to any country in which she may some day have a credible fear during her initial withholding proceeding. Multiple courts have agreed that a detainee applying for withholding of removal *may not* object to prospective unnamed countries of removal. *See, e.g., Altony v. Garland*, No. 22-393, 2023 U.S. App. LEXIS 14437, at *2 (9th Cir. June 8, 2023); *Silva-Pereira v. Lynch*, 827 F.3d 1176, 1191 (9th Cir. 2016); *Su Hwa She v. Holder*, 629 F.3d 958, 965 (9th Cir. 2010). Respondents’ claim that Ms. Tepeque has exhausted her opportunity to object to any country of removal they may propose is undermined by both statute and caselaw. She retains such rights, and indeed, has asserted them. They cannot be so easily stripped from her

D. Respondent’s Incorrect and Prejudicial Description of Ms. Tepeque’s Criminal History is Harmful and Provides No Grounds for Her Continued Detention.

Much is made of Ms. Tepeque’s criminal convictions. However, while these charges demonstrate lapses in judgment, there is a reason the Government did not deny

Ms. Tepeque her Withholding of Removal based on the criminal exclusions found in 8 U.S.C. § 241(b)(3)(B). The Respondents' paint Ms. Tepeque as a violent criminal for "throwing a deadly missile into a building." This is an exaggeration at best. Ms. Tepeque received a misdemeanor charge for throwing a rock at a building in panicked fear of sexual assault after being drugged in a bar without her consent. No one was harmed and there was no significant property damage.

The animal cruelty charge—failing to properly trim her dogs' nails—was, and is, vehemently contested, despite a frustrated acceptance of an offered plea bargain after having to spend months in captivity—once again in constant fear of sexual assault—for violating her parole in the previous case. Ms. Tepeque has well and fully served her time for all of her transgressions.

The mischaracterizations of Ms. Tepeque's past are prejudicial attempts to justify her indefinite detention. Any such argument is baseless. Ms. Tepeque has no criminal history barring her from relief, she has presented strong evidence of her moral character, including testifying in a murder trial in which she was shot and almost killed, and she has presented significant and compelling evidence as to why her indefinite detention must come to an end.

III. CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that the Court grant her petition for relief.

Respectfully submitted,

/s/ Katherine H. Blankenship

Katherine H. Blankenship (Fl Bar 1031234)

Sanctuary of the South, PLLC

251 Valencia Avenue, #140121

Coral Gables, Florida 33134

786-671-8133

katie@sanctuaryofthesouth.com

CERTIFICATE OF SERVICE

I hereby certify that on July 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: Theo Nickerson and Mary Simeonoff with the United States Attorneys Office.

/s/ Katherine H. Blankenship

Katherine H. Blankenship