UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

ARICELMA DE OLIVEIRA, *Petitioner*, v. IMMIGRATION CUSTOMS ENFORCEMENT AND DEPARTMENT OF HOMELAND SECURITY, *Respondents*.	§ § § § § § § § § § §	CIVIL ACTION NO. 5:25-CV-097

RESPONDENTS' MOTION TO DISMISS
PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Respondents, Immigration Customs Enforcement ("ICE") and Department of Homeland Security ("DHS"), by and through the United States Attorney for the Southern District of Texas and hereby file their Motion to Dismiss Petitioner Aricelma De Oliveira's Petition for Writ of Habeas Corpus ("Petition") pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

FACTUAL & PROCEDURAL BACKGROUND

Petitioner Aricelma De Oliveira ("De Oliveira") is a native and citizen of Brazil who was initially encountered by Border Patrol Agents in San Ysidro, California on February 5, 2003. *See* Exhibit A – Copy of Form I-867A Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act dated February 5, 2003. On February 5, 2003, Petitioner was found inadmissible to the United States of America ("United States") pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA"), and De Oliveira was served with an I-860 and was taken into custody to await return to Brazil. *See* Exhibit B – Copy of I-213

Record of Deportable/Inadmissible Alien; *See* Exhibit C – Form I-860 Determination of Inadmissibility. On February 5, 2003, De Oliveira was ordered removed from the United States to Brazil because she was found to be inadmissible to the United States under the provisions of section 212(a) of the INA or deportable under the provisions of section 237 of the INA as a Visa Waiver Pilot Program violation. *Id.* In accordance with the provisions of section 212(a)(9), De Oliveira was prohibited from entering, attempting to enter, or being in the United States for a period of five years from the date of her departure. *See* Exhibit D – Form I-296 Notice to Alien Ordered Removed/Departure Verification.

On an unknown date, De Oliveira entered the United States at an unknown place without inspection or admission by an immigration official. *See* Exhibit F – EARM Encounter Summary. On May 27, 2025, De Oliveira was arrested without incident pursuant to a vehicle stop after ICE/Enforcement Removal Operations ("ERO") identified Oliveira as a non-target of the operation via ICE systems checks and field interview. *Id.* De Oliveira was processed for a reinstatement of her prior removal order. *Id.*

STANDARD OF REVIEW

Rule 12(b)(6) allows dismissal if a plaintiff fails "to state a claim upon which relief may be granted." Fed. R. Civ. P. 12(b)(6). In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), the Supreme Court confirmed that Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). *Twombly* overruled the Supreme Court's prior statement in *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." See *Twombly*, 550 U.S. at 562-63 ("*Conley's* 'no set of

facts' language ... is best forgotten as an incomplete, negative gloss on an accepted pleading standard ...."). To withstand a Rule 12(b)(6) motion, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570.

In *Ashcroft v. Iqbal*, --- U.S. ----, 129 S.Ct. 1937 (2009), the Supreme Court elaborated on the pleading standards discussed in *Twombly*. The Court set out the following procedure for evaluating whether a complaint should be dismissed: (1) identify allegations that are conclusory, and disregard them for purposes of determining whether the complaint states a claim for relief; and (2) determine whether the remaining allegations, accepted as true, plausibly suggest an entitlement to relief. *Iqbal*, 129 S.Ct. at 1949-50.

With respect to the "plausibility" prong of the dismissal analysis, *Iqbal* explained that "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). The *Iqbal* Court further noted that "[t]he plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citing *Twombly*, 550 U.S. at 556). Finally, the Supreme Court has made clear that "'when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, 'this basic deficiency should ... be exposed at the point of minimum expenditure of time and money by the parties and the court.'" *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007)(quoting *Twombly*, 550 U.S. 544).

ALLEGATIONS CONTAINED IN HABEAS PETITION

Through her petition, De Oliveira, who has a reinstated prior removal order, and who was in withholding of removal proceedings in immigration court when she filed the petition, seeks to be given an opportunity to be heard by an Immigration Judge ("IJ"), and present her defense for

relief before being deported. She contends that she has been in continued detention since May 27, 2025. Petition at page 7. In the grounds for relief contained in her petition, De Oliveira asserts that her continued detention in unlawful under final order without bond or access to relief, her detention is a due process violation, and that humanitarian and equitable consideration support her release. *Id.*

APPLICABLE LEGAL PROVISIONS

I. Habeas Corpus.

The only function of habeas corpus is to inquire into the legality of the detention of one in detention. *Heflin v. United States*, 358 U.S. 415, 421 (1959). Habeas exists "to enforce the right of personal liberty; when that right is denied and a person confined, the federal court has the power to release him. Indeed, it has no other power; it can only act on the body of the petitioner." *Fay v. Noia*, 372 U.S. 391, 430-31(1963). "This means that, unlike direct review where the correctness of a court or agency order is comprehensively and directly before the court, a habeas court reviews the correctness of such an order only insofar as it related to 'detention simpliciter.' Moreover, habeas is not shorthand for direct review, and unlike direct review where courts have 'broad authority' to grant relief, habeas is not 'a generally available federal remedy for every violation of federal rights,' nor can it 'be utilized to review a refusal to grant collateral administrative relief, unrelated to the legality of custody.'" [1] *Zalawadia v. Ashcroft*, 371 F.3d 292, 299-300 (5th Cir. 2004).

II. Detention Authority under the Immigration and Nationality Act.

While 8 U.S.C. § 1226(a) governs detention "pending a decision on whether the alien is to

[1] The Supreme Court has determined that 28 U.S.C. § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention. *Zadvydas*, 533 U.S.at 688.

be removed from the United States," Section 1231(a) of Title 8 governs detention "when an alien is ordered removed". *See* 8 U.S.C. §§ 1226(a), 1231(a)(1)(A). *See also Zadvydas v. Davis*, 533 U.S. 678, 683 (2001); *Andrade v. Gonzales*, 459 F.3d 538, 542-43 (5th Cir. 2006). The latter statute provides in part that the government "shall remove the alien from the United States within a period of 90 days" beginning after one of three possible events, and that "[d]uring the removal period, the [government] shall detain the alien." 8 U.S.C. §§ 1231(a)(1)(A), 1231(B), 1231(a)(2).[2] A "removal period" commences on the latest of the following dates:

> (i) The date the order of removal becomes administratively final.
>
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B). The purpose of the 90-day removal period is to "afford the government a reasonable amount of time within which to make the travel, consular, and various other administrative arrangements that are necessary to secure removal." *Diouf v. Mukasey*, 542 F.3d 1222, 1231 (9th Cir. 2008).

If removal is not effected during a "removal period," continued detention is authorized in certain cases:

> An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6). In *Zadvydas*, the Supreme Court determined that Section 1231(a)(6)

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[2] Like many provisions in the Immigration and Nationality Act ("INA"), as amended, Section 1231(a)(2) refers to the "Attorney General," but the Homeland Security Act of 2002, Pub. L. No. 107-296, § 471, 116 Stat. 2135 (2002), transferred most immigration enforcement functions from the Department of Justice to the Department of Homeland Security. Statutory references to the Attorney General thus often instead mean the Secretary of Homeland Security. *See* 6 U.S.C. §§ 202(3), 557.

authorizes detention for a period that is "reasonably necessary" to accomplish the alien's removal from the United States. *See Zadvydas*, 533 U.S. at 699-700. The Court recognized six months as a presumptively reasonable period of time to allow the government to accomplish an alien's removal. *Id.* at 701. To prevent "indefinite" detention, the *Zadvydas* Court held that after the 6-month period has elapsed, an alien may seek his release by demonstrating that his removal is not likely to occur in the reasonably foreseeable future. *Id.* at 699. "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months[;] [t]o the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

An alien detained under post-removal-order custody authority is not entitled to a bond hearing before an Immigration Judge. *See* 8 C.F.R. § 1003.19 (providing only for Immigration Judge jurisdiction to review custody determinations under 8 U.S.C. § 1226; 8 C.F.R. §§ 236, 1236); *see* also *Matter of A-W-*, 25 I. & N. Dec. 45, 46-47 (BIA 2009) ("Immigration Judges have only been granted authority to redetermine the conditions of custody of aliens who have been issued and served with a Notice to Appear in relation to removal proceedings pursuant to 8 C.F.R. Part 1240."). However, an alien subject to detention under 8 U.S.C. § 1231(a)(6) is entitled to review of his custody status by DHS officials prior to the expiration of the removal period, and at annual intervals thereafter, with the alien having a right to request interim reviews every three months. *See* 8 C.F.R. §§ 241.4(k)(1), 241.4(k)(2)(iii).

III. The Reinstatement Process under 8 U.S.C. § 1231(a)(5).

Under the reinstatement statute, DHS may remove an alien "'under [a] prior [removal] order at any time after the [alien's] reentry,'" but only if an authorized official "'finds that [the] alien has reentered the United States illegally after having been removed.'" *Anderson v.*

Napolitano, 611 F.3d 275, 277 (5th Cir. 2010) (quoting 8 U.S.C. § 1231(a)(5)). "The implementing regulation for the statute indicates that before reinstating a removal order an immigration officer must determine that: (1) 'the alien has been subject to a prior order of removal'; (2) 'the alien is in fact an alien who was previously removed . . .'; and (3) 'the alien unlawfully reentered the United States.'" *Anderson*, 611 F.3d at 277 (quoting 8 C.F.R. § 241.8(a)). "[T]he prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed." 8 U.S.C. § 1231(a)(5). In addition, an alien subject to reinstatement "is not eligible and may not apply for any relief under [Chapter 12 of Title 8 of the United States Code, 8 U.S.C. §§ 1101-1537]." 8 U.S.C. § 1231(a)(5). There is no recourse by which an alien can seek administrative review of reinstatement. *See* 8 C.F.R. § 241.8(c); cf. 8 C.F.R. §§ 208.2(c)(2)(ii), (3)(i), 1208.2(c)(2)(ii), (3)(i) (limiting scope of review in withholding-only proceedings).

While reinstatement bars an alien from seeking relief, including asylum, it remains possible to apply for withholding of removal and Convention Against Torture ("CAT") protection. *See Ramirez-Mejia v. Lynch*, 794 F.3d 485, 489-91 (5th Cir. 2015), reh'g en banc denied, 813 F.3d 240 (5th Cir. 2016). If an alien subject to reinstatement expresses a fear of returning to the country of removal, the alien is referred to an asylum officer for a reasonable fear determination pursuant to 8 C.F.R. § 208.31, as described further below. Meanwhile, "[e]xecution of the reinstated order of removal and detention of the alien shall be administered in accordance with this part [*i.e.*, part 241 of Title 8, Code of Federal Regulations, 8 C.F.R. §§ 241.1-.33]." 8 C.F.R. § 241.8(f) (emphasis added). Part 241 governs the "Apprehension and Detention of Aliens Ordered Removed."

LEGAL ANALYSIS

As discussed below, the post-removal order provisions under 8 U.S.C. § 1231 govern De Oliveira's continuing detention, because her current removal order is administratively final for purposes of that statute. Under Section 1231, detention without bond is authorized unless it contravenes the prohibition against indefinite detention described in *Zadvydas*. The Court should dismiss the habeas petition because De Oliveira fails to show that her removal is not reasonably foreseeable, and that the constraints imposed by *Zadvydas* are applicable in this case. In the alternative, the Court should dismiss the habeas petition because the six-month presumptively reasonable period under *Zadvydas* has not been met.

I. De Oliveira is Lawfully Detained under 8 U.S.C. § 1231(a)(6) as an Alien Subject to a Reinstated Order of Removal.

As set forth above, Section 1231 specifies that a "removal period" for which detention is initially mandatory (for 90 days), and thereafter remains authorized, begins with the latest of three possible events. *See* 8 U.S.C. § 1231(a)(1)(A), (B), (2), (6). The relevant event here is "[t]he date the order of removal becomes administratively final." *Id.* § 1231(a)(1)(B)(i). Specifically, DHS reinstated a prior order of removal against De Oliveira pursuant to 8 U.S.C. § 1231(a)(5) on May 27, 2025. The administratively final nature of the reinstatement is apparent from the statutory definition of when an "order of deportation" becomes "final," which refers to "the earlier of" two events:

> (i) a determination by the Board of Immigration Appeals affirming such order; or
>
> (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

8 U.S.C. § 1101(a)(47)(B). When DHS issues a reinstatement, there is no recourse at all to the BIA regarding that determination. *See* 8 C.F.R. § 241.8(c); cf. 8 C.F.R. §§ 208.2(c)(2)(ii), (3)(i), 208.31(e), (g)(1), (2)(ii), 1208.2(c)(2)(ii), (3)(i), .31(e), (g)(1), (2)(ii) (limiting scope of administrative review in reasonable fear and withholding-only proceedings). Reinstatements are

therefore administratively final upon their issuance by DHS. This conclusion is bolstered by the fact that the reinstatement regulation, 8 C.F.R. § 241.8, is included within part 241 of Title 8 of the Code of Federal Regulations, which is concerned with "post-order" proceedings, and also by the fact that the reinstatement regulation specifically calls for the execution of reinstated orders, and the detention of an alien subject to reinstatement, to be "administered in accordance with this part," 8 C.F.R. § 241.8(f).

It thus follows that De Oliveira's reinstatement was administratively final upon its May 27, 2025 issuance for purposes of beginning a "removal period" under 8 U.S.C. § 1231(a)(1)(B)(i). At that point, therefore, De Oliveira was initially subject to a 90-day period of mandatory detention under 8 U.S.C. § 1231(a)(2), which concluded on or about August 25, 2025. Thereafter, detention has been authorized under 8 U.S.C. § 1231(a)(6), which specifically provides for detention "beyond the removal period" for, among others, aliens such as De Oliveira who are inadmissible under 8 U.S.C. § 1182. While De Oliveira's detention is authorized under 8 U.S.C. § 1231, there are nonetheless limitations on that authority as set out in *Zadvydas*. As set out below, those limits have not been reached here.

II. De Oliveira's Detention under 8 U.S.C. § 1231(a)(6) Comports with Limitations Imposed in *Zadvyas*.

Upon the issuance of a reinstatement against De Oliveira on May 27, 2025, a 90-day "removal period" began to run which concluded on or about August 25, 2025. *See* 8 U.S.C. § 1231(a)(1)(A), (B)(i). While De Oliveira's detention was authorized during the 90-day period under Section 1231(a)(2), thereafter it has been authorized under 8 U.S.C. § 1231(a)(6). Post-removal-order detention for up to six months under 8 U.S.C. § 1231 is presumptively reasonable and does not violate due process. *See Zadvydas*, 533 U.S. at 701. In the present case, De Oliveira's detention has not reached nor exceeded six months. Beyond six months, detention can still

continue so long as removal remains reasonably foreseeable. *See id.* at 699. Under *Zadvydas*, an alien detained for more than six months must provide in a habeas corpus petition good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future before the government must respond with evidence to rebut that showing. *See id.* at 701; *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) ("alien bears the initial burden in showing that no [significant] likelihood of removal exists").

Because De Oliveira's current detention has not surpassed the six-month "presumptively reasonable period of detention," the Court still must examine whether a "significant likelihood of removal" exists. *See id.* Petitioner is not stuck in a "removable-but-unremovable limbo," as were the petitioners in *Zadvydas*. *See Jama v. Immigration & Customs Enforcement*, 543 U.S. 335, 347 (2005) (describing the class of aliens presumptively requiring release under case law). De Oliveira makes no allegations that Brazil will not issue a travel document for her or otherwise accept her removal to that country. Certainly, De Oliveira's withholding proceedings do not preclude removal within a reasonably foreseeable time. Thus, nothing indicates that Petitioner's removal is not reasonably foreseeable.

Accordingly, there is no evidence in this case that De Oliveira is "unremovable." Cf. *Zadvydas*, 533 U.S. at 697. Instead, De Oliveira remains foreseeably capable of being removed, and so the government retains an interest in "assuring [his] presence at removal." *Id.* at 699. Because her continued detention is not indefinite, it remains authorized by 8 U.S.C. § 1231(a)(6). *Zadvydas* requires that the alien bear the burden of showing that removal is not likely in the reasonably foreseeable future. *See* 533 U.S. at 701. Argueta has not provided any reason to believe her removal is unlikely, rendering her constitutional claims meritless. See also *Andrade*, 459 F.3d at 543-44. Because De Oliveira has not and cannot show that removal is unlikely in the reasonably

foreseeable future, the Court should deny her claims and dismiss the petition for a writ of habeas corpus.

CONCLUSION

As an alien with an administratively final removal order, De Oliveira is detained under 8 U.S.C. § 1231(a)(6), and she has failed to show that her removal is not significantly likely in the reasonably foreseeable future. Because the allegations contained in De Oliveira's Petition for Writ of Habeas Corpus do not raise a claim to entitlement for relief, her petition must be dismissed with prejudice pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONDENTS' MOTION TO DISMISS PETITIONERS' PETITION FOR WRIT OF HABEAS CORPUS** in the case of ARICELMA DE OLIVEIRA v. IMMIGRATION CUSTOMS ENFORCEMENT AND DEPARTMENT OF HOMELAND SECURITY, Civil Action Number 5:25-CV-097, was sent to Ari Castel, CASTEL & HALL LLP, 100 Tradecenter, Suite 715, Woburn, MA 01801 on this the 14th day of October, 2025.

"S/" Barbara Falcon
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