

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NUVIA YESSENIA MARTINEZ-
VENTURA,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

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CIVIL NO. 4:25-CV-03118

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION
FOR SUMMARY JUDGMENT**

The Government¹ files this response to the Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Dkt. 1) and moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. As explained below, Petitioner’s claim for habeas relief should be denied because Petitioner’s detention is lawful and there is a significant likelihood of removal in the reasonably foreseeable future.

I. SUMMARY OF THE ARGUMENT

The Petitioner is lawfully detained under a removal order and pursuant to Presidential Executive Orders “Protecting the American People Against Invasion” and “Securing Our Borders.” Petitioner is exercising her due process rights as evidenced by the Board of Immigration Appeals stay of the Petitioner’s removal order pending resolution of her motion

¹ As the Court has noted, the proper respondent in a habeas petition is the person with custody over the petitioner. Dkt. 9 at 1; 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). However, it is the named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody. As the Court previously noted, the proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004).

to reopen the immigration case. While the Petitioner has the right to exercise her due process rights, such exercise of her rights and challenge to her removal order tolls the removal period. Since the Petitioner is challenging her removal order, the Court lacks jurisdiction because the issue is not ripe for review. There is no evidence that there is any impediment to Petitioner's removal upon conclusion of the BIA's consideration of Petitioner's MTR. The Petitioner is receiving constitutionally adequate medical care.

II. BACKGROUND FACTS

On July 14, 2016, Petitioner entered the United States at or near the Rio Grande Valley, Texas without inspection or parole and was arrested by United States Border Patrol (USBP) agents and charged with "Entry without Inspection or Parole" pursuant to section 212(a)(6)(A)(i)(I) of the Immigration and Nationality Act (INA). Government Exhibit 1, Akinyemi Declaration. The same day, USBP issued and served Plaintiff a Notice to Appear (NTA). *Id.*; Government Exhibit 2, Notice to Appear. On July 16, 2016, ICE approved Petitioner for enrollment into the Southwest Border Enrollment Initiative (SBEI) at McAllen, Texas S-site with a GPS monitor and released her from custody as an alternative to detention (ATD) with instructions to report to the ICE New York office on July 26, 2016. Gov't Ex. 1. On August 8, 2017, Petitioner gave birth to a United States Citizen (USC) child. *Id.*

On December 1, 2017, an Immigration Judge (IJ) ordered Petitioner removed from the U.S. to El Salvador. *Id.*; Government Exhibit 3, Oral Decision of the Immigration Judge. Petitioner reserved an appeal of the IJ order to the Board of Immigration Appeals (BIA). *Id.* On December 18, 2018, BIA dismissed Petitioner's appeal of the IJ's decision and returned

the case to ICE for removal. *Id.*; Government Exhibit 4, December 18, 2018, BIA Decision. On December 3, 2024, removal checks were completed by ICE. *Id.*

On January 24, 2025, Petitioner violated her conditions of release by missing her check-in call (Violation–012025-645179). *Id.* On February 7, 2025, Petitioner violated her condition of release (Voice during check-in call did not match the original voice template, Violation – 022025-679385). *Id.* On April 18, 2025, Petitioner violated her condition of release by missing her check-in call (Violation–042025-836906). *Id.* On May 23, 2025, Petitioner violated her condition of release by missing her check-in call (Violation–052025-904391). *Id.* On June 11, 2025, Petitioner reported to 26 Federal Plaza, New York, NY10278, and was arrested by ICE and processed as a final order of removal (Bag and Baggage). *Id.* Petitioner is considered a flight risk because she has violated the conditions of her release on at least four (4) occasions. *Id.* Petitioner will remain in custody pursuant to the Presidential Executive Orders “Protecting the American People Against Invasion” and “Securing Our Borders.” *Id.*

Based on information received from the medical team at the facility where the Petitioner is being held, the Petitioner is receiving constitutionally adequate medical treatment. Gov’t Ex. 1; Government Exhibit 5, Medical Summary. On July 9, 2025, the Houston Field Office received the Petitioner’s motion to reopen and stay the immigration case. On July 21, 2025, the Government confirmed that the BIA did grant a stay, pursuant to the Petitioner’s Motion to Reopen (MTR). Gov’t Ex. 1; Government Exhibit 6, Automated Case Information. As of September 4, 2025, the MTR filed by the Petitioner remains pending with the BIA. Petitioner has not exhausted all administrative remedies due to the pending BIA decision on Petitioner’s motion to reopen. *Id.* Petitioner is detained at the Houston Contract Detention

Facility pending the adjudication of her MTR by the BIA and/or removal. The removal of Petitioner is reasonably foreseeable within days of the final adjudication by the BIA, should the decision be to continue with removal. Petitioner is currently not under consideration for parole pursuant to the two executive orders previously cited.

III. NATURE AND STAGE OF THE PROCEEDINGS

Petitioner, Nuvia Yessenia Martinez-Ventura, is a native and citizen of El Salvador. Dkt. 1 at 3. On August 21, 2025, Petitioner filed the pending Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Dkt. 1), contesting her continued detention pending resolution of the Petitioner's Motion to Reopen (MTR) her immigration case and the accompanying stay of removal order issued by the Board of Immigration Appeals (BIA). Petitioner claims that her detention violates the Due Process Clause of the U.S. Constitution and the Immigration and Nationality Act (INA) at 8 U.S.C. § 1231(a) because her removal is not reasonably foreseeable.

IV. STATEMENT OF ISSUES

1. Whether the Petitioner is lawfully detained.

V. STANDARD OF REVIEW

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only if the pleadings, along with evidence, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also* Fed. R. Civ. P. 56(c). Once a motion has been made, the nonmoving party may not rest upon mere allegations or denials in the pleadings but must present affirmative evidence, setting forth specific facts, to show the

existence of a genuine issue for trial. *Celotex Corp.*, 477 U.S. at 322-23. If the moving party meets its burden, the non-moving party must show a genuine issue of material fact exists. *Id.* at 322. Furthermore, “only reasonable inferences can be drawn from the evidence in favor of the nonmoving party.” *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 469 n.14 (1992) (emphasis in original) (quoting *H.L. Hayden Co. of N.Y., Inc. v. Siemens Med. Sys., Inc.*, 879 F.2d 1005, 1012 (2d Cir. 1989)).

VI. ARGUMENT

A. The Petitioner is Lawfully Detained

Petitioner has an order of removal that is currently subject to a stay pending resolution of Petitioner’s MTR. Dkt. 1 at 5. Therefore, as an initial matter, Petitioner has not exhausted her administrative remedies, and the habeas petition is not ripe for the Court’s consideration. Accordingly, the Court should dismiss the habeas petition for lack of jurisdiction. *See Zadvydas v. Davis*, 533 U.S. 678, 700 (2001); *Contender Farms L.L.P. v. U.S. Dep’t of Agric.*, 779 F.3d 258, 267 (5th Cir. 2015); *see also Chance v. Napolitano*, 453 F. App’x 535, 536 (5th Cir. 2011) (per curiam) (“Chance had not been in post-removal-order detention longer than the presumptively reasonable six-month period[.] Consequently, the district court did not err in finding that his challenge to his continued post removal detention was premature.”). Even if the Court considers the merits of Petitioner’s claims, Petitioner is lawfully detained as a flight risk due to her previously having violated the conditions of her supervised release on at least four different occasions. Petitioner will remain in custody pursuant to the Presidential Executive Orders “Protecting the American People Against Invasion” and “Securing Our Borders.” Because the Petitioner is lawfully detained, the Court should deny Petitioner’s habeas petition.

1. *Petitioner is Receiving Due Process*

Petitioner alleges that her due process rights are being violated. However, Petitioner is being permitted to exercise her due process rights in that the BIA has issued a stay of her removal order pending resolution of her motion to reopen. Such exercise of Petitioner's due process rights does not amount to a constitutional violation.

2. *The Petitioner's Exercise of Her Due Process Rights Tolls the Removal Period*

Petitioner's exercise of her due process equitably tolls the removal period. *Balogun v. I.N.S.*, 9 F.3d 347, 350-52 (5th Cir. 1993); *Lawal v. Lynch*, 156 F. Supp. 3d 846, 850 (S.D. Tex. 2016) (Rosenthal, J.) (dismissing petitioner's *Zadvydas* claims, in part, because the petitioner's asylum application "prolonged his detention and delayed his removal, equitably tolling the six-month detention period.") *Id.* at 854. ICE has the discretion to continue the detention of certain aliens under 8 U.S.C. § 1231 even after the initial 90-day removal period has expired. The Petitioner falls within the class of aliens properly detained even after the initial 90-day removal period has expired for two reasons. First, the Petitioner is a flight risk based on her past violations of supervised release. Further, the removal period is tolled if the petitioner has caused the delay in removal. *See Lawal v. Lynch*, 156 F. Supp. 3d 846, 854 (S.D. Tex. 2016). "Cases in other circuits that have considered the question recognize equitable tolling to extend the six-month period to detain an alien who has been ordered removed and who files litigation challenging the validity of the removal order." *Id.* (collecting cases). By exercising her legal right to seek relief through a motion to reopen her immigration case, Petitioner has prolonged her detention. That was her right, but she cannot dispute that the delay in her removal, at least in part, has been caused by her own actions. *Okechukwu Mummee Amadi v. Young*, No.

2:06CV1138, 2007 WL 855358, at *4 (W.D. La. Feb. 12, 2007) (“[T]he court finds that because petitioner’s continuing litigation is the cause of his continued detention, he cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future.”).

3. There is a Significant Likelihood of Petitioner’s Removal in the Reasonably Foreseeable Future

There is no impediment to Petitioner’s removal once she has exhausted her administrative remedies and her motion to reopen has been concluded. Therefore, there is a significant likelihood of Petitioner’s removal in the reasonably foreseeable future. Accordingly, Petitioner’s detention is in accordance with constitutional requirements and *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (requiring that petitioner provide good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future).

B. There is No Reckless Disregard of Petitioner’s Healthcare

Petitioner is receiving constitutionally sufficient medical care. “Although the Eighth Amendment ‘does not, by its precise words, mandate a certain level of medical care for prisoners[,]’ the Supreme Court has interpreted it as imposing a duty on prison officials to ‘ensure that inmates receive adequate... medical care.’” *Easter v. Powell*, 467 F.3d 459, 463 (5th Cir. 2006), *quoting Farmer v. Brennan*, 511 U.S. 825, 832 (1994). “A prison official violates the Eighth Amendment’s prohibition against cruel and unusual punishment when his conduct demonstrates deliberate indifference to a prisoner’s serious medical needs, constituting an ‘unnecessary and wanton infliction of pain.’” *Easter*, 467 F.3d at 463, *citing Wilson v. Seiter*, 501 U.S. 294, 297 (1991), *quoting Estelle v. Gamble*, 429 U.S. 97 (1976)); *see also Jackson v. Cain*, 864 F.2d 1235, 1244 (5th Cir. 1989). Petitioner alleges that she has not received treatment for her

Type II diabetes. However, according to information obtained from the facility where Petitioner is being detained, she has in fact been treated for Type II diabetes. Government Ex. 1; Government Exhibit 5, medical summary. When, as here, medical records reflect assessment and treatment of an inmate's medical complaints, there is no deliberate indifference. *See McCord v. Maggio*, 910 F.2d 1248, 1251 (5th Cir. 1990).

Therefore, Petitioner's claims fail for that additional reason.

VII. CONCLUSION

For the reasons stated above, the Court should dismiss the Petitioner's petition for writ of habeas corpus.

Dated: September 22, 2025

Respectfully submitted,

NICHOLAS J. GANJEI
United States Attorney

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CERTIFICATE OF CONFERENCE

Counsel for Defendant conferred with counsel for Plaintiff about the relief requested in this motion. Plaintiff opposes this motion.

/s/ Catina Haynes Perry
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Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that on September 22, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

/s/ Catina Haynes Perry
Catina Haynes Perry
Assistant United States Attorney