

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

NUVIA YESSENIA MARTINEZ-VENTURA

Plaintiff,

v.

KRISTI NOEM, et al,

Respondents.

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Civil No. 4:25-CV-03118

**Plaintiff's Reply to Respondents' Response to Petition for Writ of Habeas
Corpus and Motion for Summary Judgment**

Petitioner, by and through counsel, submits this Reply to Respondents' Response to her Petition for Writ of Habeas Corpus and Motion for Summary Judgment. Dkt. No. 16. The government's motion should be denied because this habeas petition presents a ripe, justiciable controversy challenging the legality of Petitioner's continued detention under 8 U.S.C. §1231(a)(6) and the record does not support Respondents' assertion that Petitioner poses a flight risk or that there is a significant likelihood of removal in the reasonably foreseeable future.

Petitioner remains detained while her motion to reopen remains pending before the Board of Immigration Appeals (BIA). At a minimum, genuine issues of material fact preclude summary judgment under Federal Rule of Civil Procedure 56.

Background

Petitioner has been detained under 8 U.S.C. § 1231(a)(6) following the issuance of a final order of removal. Petitioner filed a motion to reopen with the BIA pursuant to *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), asserting ineffective assistance of prior counsel. The BIA issued an emergency Stay Order of her removal on June 20, 2025, while her motion remains pending. Dkt. No. 2, Exhibit 2. Despite the unresolved motion and the absence of any scheduled removal, the government continues to detain Petitioner.

Argument

I. This Court has jurisdiction to review Petitioner's claims

Respondents' assertion that this Court is without jurisdiction and the petition is "not ripe" misconstrues the nature of a habeas challenge. The petition contests current unlawful detention, not the potential order's future validity. A habeas petition under 28 U.S.C. § 2241 is ripe when it contests ongoing custody in violation of federal law. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001). Petitioner's motion to reopen remains pending before the BIA, so removal is legally and practically impossible at this time. Thus, this Court has jurisdiction and the controversy is ripe.

II. Petitioner is not lawfully detained as removal is not reasonably foreseeable

Under *Zadvydas*, "once removal is no longer reasonably foreseeable, continued detention is not authorized by 8 U.S.C. § 1231(a)(6). *Zadvydas* at 689.

Petitioner is being held pursuant to an emergency stay order that was issued so that the BIA can consider her pending Motion to Reopen. While there is no timeline available for determining how long it will take to adjudicate her pending motion, some basic statistics from the Executive office for immigration Review (EOIR) show that as of July 31, 2025, it is on track to see almost double the number of appeals filed versus last year (72,200 filed as of the third quarter of 2025 versus 50,419 filed in 2024). *See* Exhibit A – EOIR Adjudication Statistics.¹ As of that published report, the BIA currently has 186,473 appeals pending. A pending motion to reopen precludes removal until adjudicated – the DHS’ speculation about possible future removal does not satisfy the due process concerns raised by *Zadvydas*’s reasonably foreseeable removal language.

Respondent’s contention that Petitioner is a flight risk is both factually and legally unsupported. *Matter of Guerra* sets forth the factors that are used to determine whether someone is a flight risk. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Those factors include: whether she has a fixed address in the United States; the length of residence in the United States; family ties; employment history; record of appearance in court; criminal record; history of immigration violations; attempts to flee prosecution, and manner of entry to the United States. *Id.* The

¹ Found at www.justice.gov/eoir/media/1344986/dl?inline

government points only to isolated instances when Petitioner allegedly missed check-ins. Yet Petitioner's sworn statement confirms that she did not miss any calls or check-ins. *See Exhibit B – Petitioner's sworn statement.*

Moreover, Petitioner's community ties are strong – she has five (5) children, two of whom are severely autistic and one of whom has very complicated diabetes and requires around the clock monitoring and care. Petitioner is the main caregiver and is the one who transports her children to their appointments. Petitioner's child's diabetes is so difficult to monitor, that he was hospitalized for a week following her detention because there were no other adults who were trained to care for him. She is intimately tied to community services for her children, and these ties are a strong indicator that she clearly is not a flight risk.

Further, Respondents' argument she is a "flight risk" does not justify indefinite detention under § 1231(a)(6). The statute and *Zadvydas* focus on the foreseeability of removal not generalized risk factors. The government cannot rely on conjecture to override the constitutional limits on detention. *Zadvydas* at 690-701.

CONCLUSION

Because removal is not reasonably foreseeable, summary judgment must be denied. At a minimum, material factual disputes exist concerning Petitioner's compliance history and the foreseeability of removal, precluding summary

judgment. This Court should order a bond hearing or grant the writ directing Petitioner's release under appropriate supervision.

Dated this 13th day of October, 2025

Respectfully submitted,

GONZALEZ OLIVIERI, LLC
s/ Raed Gonzalez

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CERTIFICATE OF SERVICE

I certify that on October 13, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system. Exhibit B, which was filed under seal as it contains personally identifying information of minor children pursuant to Federal Rule of Civil Procedure 5.2(a) and SDTX Local Rule 12(D)(2), was served via email to Catina Haynes Perry, counsel for Federal Respondents, and Daniel P. Struck, counsel for Warden Frink.

s/ Raed Gonzalez

Raed Gonzalez, Esq.