

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

DEVORA B.¹,
Petitioner,

v.

KRISTI NOEM, *et. al.*,
In their official capacities,
Respondents.

Case No. 1:25-cv-174

**PETITIONER'S SUPPLEMENTAL BRIEF ON JURISDICTION
AND MOTION FOR MANDAMUS RELIEF UNDER 28 U.S.C. §1361**

TO THE HONORABLE JUDGE PRESIDING:

Petitioner, Devora EVORA BAEZ, A#  by and through her attorney, ANNE E. KENNEDY, respectfully submits this brief in response to the Court's order of August 12, 2025. She also moves this Court to grant mandamus relief under the Mandamus Act, 28 U.S.C. § 1361 and order the Government to return Petitioner to the United States.

In support, she would show:

Jurisdiction

In its Order of August 12, 2025, the Court correctly identifies that it retains jurisdiction over a case when the Government moves a habeas petitioner after she has properly filed a habeas petition naming her immediate custodian. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004). Petitioner filed her habeas writ on August 6, 2025. At that time, Petitioner had been granted relief from removal by the Immigration Judge Palmer, presiding over EOIR matters in Port Isabel, Texas,

¹ Pursuant to the Order of the Court, Petitioner is referred to by first name and last initial.

(Dkt. 1-1), yet she was still (wrongfully) in the custody of ICE. Dkt No. 1-3.

Habeas relief is presently available to an immigrant challenging her detention or physical custody.² A petitioner may seek habeas relief under § 2241 if she is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c). This holding has been relied upon by the United States Fifth Circuit Court of Appeals and is still available post Real ID Act. *See e.g., W.M.M. v. Trump, No. 25-10534, 2025 U.S. App. LEXIS 22605 (5th Cir. 2025).*

On September 2, 2025, in *W.M.M., supra*, the Fifth Circuit relied upon rationale from the United States Supreme Court that, "In order to 'actually seek habeas relief,' a detainee must have sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief." *See id.*, at 75, quoting, *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006, 221 L. Ed. 2d 529 (2025). Petitioner made efforts to avail herself of administrative remedies, but initiated habeas when informed that the Government intended to violate 28 U.S.C. §§1231 and refuse to release her from detention but remove to a country she had no ties to nor any notice or hearing as to harm she faced there. Given Petitioner's grant of relief from removal, her continued detention and the stated intent of the Government to deny her due process was a proper invocation of this Court's habeas jurisdiction. Once properly invoked under 28 U.S.C. §2241 on August 6, 2025, this Court's jurisdiction would remain with this Court and continue throughout her habeas proceedings.

² Several courts have so held. See, e.g., *Kellici v. Gonzales*, 472 F.3d 416, 41920 (6th Cir. 2006) (finding that when petitioner challenges only his detention in a habeas petition, rather than his removal, the case cannot be transferred to the court of appeals); *Bonhometre v. Gonzales*, 414 F.3d 442, 446 n.4 (3d Cir. 2005) ("An alien challenging the legality of his detention still may petition for habeas corpus [post-REAL ID].") (emphasis in the original); *Hernandez v. Gonzales*, 424 F.3d 42 (1st Cir. 2005) (transferring case back to district court for habeas review where only issue was detention); *Channer v. DHS*, 406 F. Supp. 2d 204 (D. Conn. 2005) (finding habeas review over detention). Accord *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006) (jurisdiction-stripping provision of REAL ID Act applies only to habeas corpus petitions that challenge a final order and is inapplicable where petitioner granted CAT relief in removal proceeding because there is no final order of removal); *Ali v. Gonzales*, 421 F.3d 795, 797 n.1 (9th Cir. 2005) (in habeas corpus action seeking an injunction preventing removal to Somalia, "[t]he Real ID Act of 2005, . . . , does not apply to this case because petitioners do not challenge or seek review of any removal order"). See also Joint Explanatory Statement of the Committee of Conference, H.R. Cong. Rep. No 109-72 at 175, 151 Cong. Rec. H2836, 2873 (2005) ("[REAL ID Act] section 106 will not preclude habeas review over challenges to detention that are independent of challenges to removal orders.")

Motion for Mandamus Relief

On August 26, 2025, the Government filed a notice to the Court that Petitioner has, in fact, been removed from the United States and is no longer in custody in the United States. Petitioner was in the process of filing a TRO to prevent her removal, but the more appropriate procedure upon her actual removal is mandamus relief under the Mandamus Act in 28 U.S.C. § 1361.

The Government's action is in violation of 28 U.S.C. §1231 in that Petitioner has been removed to a country that she has no ties and only to be used after the Government has made a showing of removing her to a country of her choice. Federal law generally permits the Government to deport noncitizens found to be unlawfully in the United States only to countries with which they have a meaningful connection. 8 U. S. C. §1231(b). Recently, in *DHS v. D.V.D.*, 606 U. S. ___ (2025), Justice Sotomayor commented in her dissent:

To that end, Congress specified two default options: noncitizens arrested while entering the country must be returned to the country from which they arrived, and nearly everyone else may designate a country of choice. §§1231(b)(1)(A), (b)(2)(A). If these options prove infeasible, Congress specified which possibilities the Executive should attempt next. These alternatives include the noncitizen's country of citizenship or her former country of residence. §§1231(b)(1)(C), (2)(E). This case concerns the Government's ability to conduct what is known as a "third country removal," meaning a removal to any "country with a government that will accept the alien." §1231(b)(1)(C)(iv); see §1231(b)(2)(E)(vii). Third-country removals are burdensome for the affected noncitizen, so Congress has sharply limited their use. They are permissible only after the Government tries each and every alternative noted in the statute, and determines they are all "impracticable, inadvisable, or impossible." §§1231(b)(1)(C)(iv), (2)(E)(vii).

Upon a final hearing, the evidence will show that the Government's actions violated the above directives of 28 U.S.C. §1231(b). In addition, the Government's actions raise issues concerning

the mootness doctrine that continue the standing of Petitioner and preserve both jurisdiction for this Court and grant Petitioner a remedy from this Court in the form of mandamus relief under 28 U.S.C. § 1361 because this is a situation that is capable of repetition but evasion of review. *See e.g., W. Virginia v. Env't Prot. Agency*, 597 U.S. 697, 719, 142 S. Ct. 2587, 213 L. Ed. 2d 896 (2022); as relied upon in *Martinez v. Baumann*, No. 5:24-CV-0894-JKP, 2025 U.S. Dist. LEXIS 143430 (W.D. Tex. 2025).

Succinctly put, the Government has wrongfully removed an alien in violation of federal law and the US Constitutional safeguards of due process in the 5th and 14th Amendments and would avoid any review of its conduct by simply doing what it has done here: put Petitioner on a plane as quickly as possible with no notice and after Petitioner has done what she could to initiate review of Governmental conduct.

Petitioner respectfully requests this Court grant her mandamus relief and order the Government to facilitate her return to the United States. Mandamus is an extraordinary remedy, but warranted in this case. It requires the party seeking it to "establish (1) a clear right to the relief, (2) a clear duty by the respondent to do the act requested, and (3) the lack of any other adequate remedy." *Davis v. Fechtel*, 150 F.3d 486, 487 (5th Cir. 1998). For one "to have standing under the Mandamus Act, he must not only satisfy the constitutional requirements of injury, causation, and redressability, but must also establish that a duty is owed to him." *Giddings v. Chandler*, 979 F.2d 1104, 1108 (5th Cir. 1992). The United States Constitution or a federal statute—other than the Mandamus Act—must provide a duty owed to the plaintiff. *Id.* A binding regulation can also provide such a duty. *Norton*, 542 U.S. at 65; *Fort Bend Cnty. v. U.S. Army Corps of Eng'rs*, 59 F.4th 180, 197 (5th Cir. 2023).

Petitioner falls within the “zone of interest” test identified in *Giddings, supra*, which is not meant to be “especially demanding.” *Id.* at 225 (quoting *Clarke v. Secs. Indus. Assn.*, 479 U.S. 388, 399, 107 S. Ct. 750, 93 L. Ed. 2d 757 (1987)). Prudential standing (also known as statutory standing) is a “merits question of whether the asserted cause of action is a proper vehicle for the claimed injury” and “has nothing to do with whether there is a case or controversy under Article III.” *Reed v. Marshall*, 142 F.4th 338, , No. 24-20198, 2025 WL 1822673, at *3 (5th Cir. July 2, 2025) (citations and internal quotation marks omitted). *accord Texas v. United States*, 126 F.4th 392, 415 (5th Cir. 2025) (applying zone of interest test in a mandamus and APA context).

Upon information and belief, Petitioner has recently been granted a right to pursue an appeal from the denial of her asylum claim to the Board of Immigration Appeals. On this point, in removal proceedings before the EOIR, Petitioner made two claims: an asylum claim under Section 208 of the Immigration & Nationality Act and withholding of removal. Her asylum claim was denied by the Immigration Judge without explanation but withholding was granted. Petitioner waived her right to appeal, but did not do so with the knowledge that the result would be her removal to Mexico without notice or a chance to present evidence of danger to her in Mexico. Accordingly, upon information and belief, Petitioner moved to withdraw her waiver of appeal, and that motion was granted by the IJ. The undersigned counsel is waiting on documentation evidencing this from Petitioner’s immigration trial counsel, but verifies the facts as has been relayed to her, and submits that it brings Petitioner’s case within the continued jurisdiction of the Court for both habeas and mandamus relief.

PRAYER

For the foregoing reasons, Petitioner, DEVORA EVORA BAEZ, prays that this Court find it has continued jurisdiction over this case and also moves the Court to grant her mandamus relief,

instructing the Government to facilitate her return to the United States to pursue her case before the Board of Immigration Appeals and make appropriate orders for her to be out of the custody of ICE during that process.

Respectfully Submitted,

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/s/ Anne E. Kennedy

By: _____
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Attorney for DEVORA B.

PRAYER

I hereby certify that on September 10, 2025, a copy of the foregoing Petitioner's Supplemental Brief on Jurisdiction was sent pursuant to the Federal Rules of Civil Procedure via email to the following: Lance Duke, Assistant United States Attorney

Respectfully Submitted,

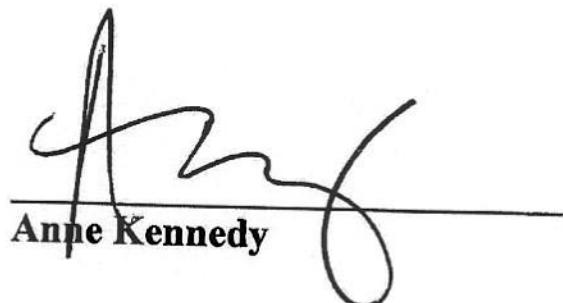
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VERIFICATION

I swear and affirm that the foregoing factual statements have been relayed to me by immigration trial counsel, Dalyla Santos, including the fact that on September 2, 2025, the Immigration Judge Palmer granted a motion to withdraw waiver of appeal, authorizing Petitioner to pursue an appeal to the Board of Immigration Appeals of her denied application for asylum. I have requested a copy of that order and filing, but have not received at the time of this brief and will supplement as it comes in.

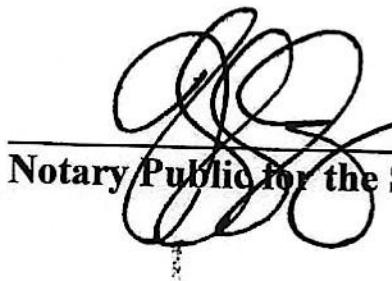


Anne Kennedy

State of Texas

County of Harris

Sworn to and subscribed before me on the 10th of September 2025, by Anne Kennedy.



Notary Public for the State of Texas

