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**

AMENDED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND SUIT FOR DECLARATORY AND INJUNCTIVE RELIEF AND WRIT OF MANDAMUS UNDER 28 U.S.C. § 1361

TO THE HONORABLE JUDGE PRESIDING:

Petitioner, Devora B., A# [redacted] by and through her attorney, ANNE E. KENNEDY, respectfully applies to this Honorable Court for a Writ of Habeas Corpus pursuant 28 U.S.C. §2241. Petitioner also makes a claim under 28 U.S.C. §1361 for a writ of mandamus and seeks a judicial declaration and injunctive relief under 28 U.S.C. §2201.

In addition, there is an independent federal question in this case pursuant 28 U.S.C. § 1331, being the constitutionality of Petitioner's continued restraint on her liberty. As explained in the paragraphs below, the Petitioner, a non-citizen of the United States was granted relief from removal in the form of Withholding of Removal under INA § 241(b)(3) by the Immigration Judge in Los Fresnos, Texas. Her claim for asylum was denied without explanation by the Immigration Judge. An appeal is pending on this basis with the BIA. Therefore, her order of removal is not yet final, and the physical removal of Petitioner from the United States is a violation of her right

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

to due process and warrants relief from this Court.

RELEVANT FACTS

Petitioner, Devora B., was born in Cuba on [redacted] 1997. Ms. Devora B. entered the country on or about December 20, 2024, without inspection through Brownsville, Texas. She was apprehended immediately upon entering by Immigration and Customs Enforcement ("ICE") and was taken into custody. At the time of the original filing of this Petition, Ms. Devora B. was detained at the El Valle Detention Center in Raymondville, TX. She is now outside the United States. To-wit:

On January 12, 2025, Ms. Devora B. was given a credible fear interview by CBP. She was found to have credible fear of persecution and torture if returned to Cuba. Petitioner was issued a Notice to Appear ("NTA") by Department of Homeland Security on January 15, 2025, and placed in removal proceedings under Section 240 of the INA, where she was entitled to a trial before the Immigration Judge ("IJ") and present Application for Asylum and Withholding of Removal.

On August 5, 2025, the IJ conducted a trial. He found Petitioner to have a well founded fear of persecution in Cuba based on her political opinion. The IJ denied her claim for asylum without explanation. He granted her application for Withholding of Removal under INA § 241(b)(3). A copy of the Order of the Immigration Judge is attached as **Exhibit A.**

Following the grant of Withholding of Removal, Ms. Devora B. requested her release on parole on August 6, 2025. She had previously requested parole from ICE on April 16, 2025. A copy of the requests is included as **Exhibit B and Exhibit C.** No response was made to those requests by ICE. Rather, Petitioner was detained for over 229 days at the El Valle Detention Center. Petitioner's trial counsel in Immigration, Dalyla Santos, made contact with ICE on August

6, 2025, and was informed that she would summarily removed to Mexico – a country that Petitioner has no affiliation with and would face persecution if removed there. Petitioner was, in fact, removed to Mexico on August 8, 2025.

On August 22, 2025, Petitioner was affirmatively granted the right to appeal her removal to the Board of Immigration Appeals and granted until September 22, 2025, to file her appeal. An appeal was then filed on September 12, 2025. It is pending before the BIA. The practical reality is that Petitioner has been removed without a final order of removal and is danger as a result of the actions of the Government. Accordingly, Petitioner requests relief from this Court.

SUMMARY OF THE ARGUMENT

This case addresses constitutional due process and actions of the Government that are wrongful in relation to an impermissible decision to detain Petitioner and then summarily remove her and deny her the ability to be in the United States while her deportation proceedings are still pending. Petitioner originally sought a writ of habeas corpus while she was physically detained at El Valle Detention Center located at 1800 Industrial Drive, Raymondville, TX 78580. A habeas writ is still appropriate given that the Government's removal is and was 1) an unconstitutional restraint on her liberty, and 2) a situation that capable of repetition yet evasion of review. The Government's actions violate the due process under the 5th and 14th Amendments of the US Constitution in violation of the Supreme Court's holding in *Zadvydas v. Davis,* 533 U.S. 678 (2001) and its progeny.

Further, the Government's actions in this case are a violation of due process warranting mandamus relief 28 U.S.C. §1231 and a declaration from the Court that Petitioner was wrongfully removed and injunctive relief to enjoin the Government from obstructing any efforts for her to

return. Petitioner does not have a final order of deportation. She has a valid basis for appeal and a meritorious asylum claim that has, twice, been found to be a credible fear of persecution on a protected ground. Petitioner has been removed to a country that she has no ties and is in jeopardy via a means that is only to be used after the Government has made a showing of removing her to a country of her choice and/or an inquiry as to harm she may suffer. Thus, Petitioner requests this Court grant her mandamus relief and issue declaratory and injunctive relief under 28 U.S.C. §2201.

JURISDICTION & VENUE

This district court has jurisdiction to hear this Petition for Writ of Habeas Corpus under 28 U.S.C. §2241. Petitioner satisfies the "custody" requirement of federal habeas jurisdiction in that her liberty has and continues to be unconstitutionally violated by United States Government. She was in actual physical custody of the US, thus triggering jurisdiction for *habeas* relief when she was unconstitutionally detained by the Department of Homeland Security, Immigration and Customs Enforcement at its detention facility at the El Valle Detention Center located at 1800 Industrial Drive, Raymondville, Texas 78580. When wrongfully removed by the US, this Court's jurisdiction still continues over her case. Petitioner remains in constructive custody and entitled to *habeas* relief because the United States continues to restrain her in denying her the ability to be present in the US when her immigration removal proceedings are not yet final.

This Court has jurisdiction over Kristi Noem, Secretary of the Department of Homeland Security; Charles Wall, Principal Legal Advisor, U.S. Department of Homeland Security/Immigration and Customs Enforcement; Francisco Venegas, Warden at El Valle Detention Center; and Miguel Vergara – Field Office Director Office of Detention of Removal, U.S. Immigration and Customs Enforcement. Accordingly, for the reasons stated above, and

because this is a challenge to Petitioner's unlawful detention, this Court has jurisdiction to rule on this Petition for Writ of Habeas Corpus.

This Court has jurisdiction over a mandamus claim under 28 U.S.C. § 1361, giving the United States district court jurisdiction of "an action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." The Court also has jurisdiction to issue declaratory relief and injunctive relief requested in this matter under 28 U.S.C. §2201.

Venue lies in the Brownsville Division of the United States District Court for the Southern District of Texas, as one or more Respondents resides in the Southern District of Texas, and Petitioner is presently detained at the El Valle Detention Center in Willacy County, Texas.

NO EXHAUSTION OF ADMINISTRATIVE REMEDIES REQUIRED

Petitioner has a final order granting her Withholding of Removal. She made a request for her release from ICE on two occasions from ERO Headquarters. This satisfied any administrative remedies available to her, permitting constitutional challenges to her actual or constructive custody to proceed. In such case, there is no requirement to exhaust of administrative remedies. *See Mathews v. Eldridge,* 424 US 319 (1976).

In addition, when Congress fails to specifically mandate that exhaustion is required before a party may seek judicial review, the need for exhaustion is left to the sound discretion of the Court. *McCarthy v. Madigan,* 503 U.S. 140, 144-45, 112 S.Ct. 1081, 117 L.Ed.2d 291 (1992). The Fifth Circuit Court of Appeals has specifically stated that administrative remedies are not to be exhausted where they would be futile. *See Arce-Vences v. Mukasey,* 512 F.3d 167, 172-173 (5th Cir. 2007). In this case, ICE has specifically been informed of the intent to seek federal relief, and has informed the undersigned counsel that any further administrative plea would be futile and

Petitioner was removed to a third country where she has no ties or citizenship - solely to frustrate the judicial process and prevent a habeas action from being prosecuted on her behalf.

ARGUMENT

Habeas relief is, at its core, a remedy for unlawful executive detention. *See Hamdi* v. *Rumsfeld*, 542 U. S. 507 (2004) at 536. A habeas petitioner does not need to be physically restrained in order to seek habeas relief. See *Rumsfeld v. Padilla*, 542 U.S. 426, 437 ("[O]ur understanding of custody has broadened to include restraints short of physical confinement . . . ."); *Jones v. Cunningham*, 371 U.S. 236, 240 (1963) (individuals not physically confined are still in custody where there are "other restraints on [their] liberty, restraints not shared by the public generally," including individuals on parole from criminal custody).

Petitioner was first physically detained by ICE in violation of her right to due process under the 5th and 14th Amendments of the United States Constitution. Her habeas petition was properly filed while she was in physical custody in the US. She was then removed to Mexico with no inquiry or review in an effort to frustrate her habeas claim in this Court. It is a case that is capable of repetition yet evading review. Thus, it should fall within the continued purview of habeas relief for this Court. It has long been held, for example, that individuals subject to final removal orders are "in custody" for purposes of 28 U.S.C. § 2241, even where they are not "in custody" after having been physically removed from the United States. *See e.g., I.M. v. CBP, 67 F.4th 436, 444 (D.C. Cir. 2023); Kumasrasamy v. Att'y Gen.., 453 F.3d 169, 173 (3d Cir. 2006)* (citing Ninth and Eleventh Circuit cases*); Samirah v. O'Connell, 335 F.3d 545, 549-51 (7th Cir. 2003). Compare Ortiz-Mondragon v. Symdon, No. 15-CV-1412, 2019 WL 330528 (E.D. Wis. Jan. 25, 2019)* (holding "custody" to apply because "absence from the United States does not alone prevent the terms of a probation from continuing to apply. . . . Similarly, several cases have held that a person

detained abroad may nevertheless be 'in custody' of the United States for purposes of the habeas statute.").

Further, in *Munaf v. Geren,* 553 U.S. 674 (2008), the United States Supreme Court recognized the power of the federal district courts to exercise *habeas* relief to petitioners held overseas by foreign governments either in partnership or in a multinational task force. That is similar to the case here, where Petitioner was removed to a foreign land pursuant to an agreement by a third country. Thus, she would still fall under this Court's *habeas* jurisdiction where the US Government continued her detention after a grant of withholding of removal, and now continues it by preventing her return during a pending appeal of her removal to the BIA.

A. Withholding of Removal and Relief under the Convention Against Torture

Non-citizens in immigration removal proceedings can seek three main forms of relief based on their fear of returning to their home country: asylum, withholding of removal, and CAT relief. Non-citizens may be ineligible for asylum for several reasons, including failure to apply within one year of entering the United States. See 8 U.S.C. § 1158(a)(2). There are fewer restrictions on eligibility for withholding of removal, id. § 1231(b)(3)(B)(iii), and no restrictions on eligibility for CAT deferral of removal. 8 C.F.R. § 1208.16.

To be granted CAT relief, a non-citizen must show that "it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). An applicant for CAT relief must show a higher likelihood of torture than the likelihood of persecution an asylum applicant must demonstrate. See id.

When an IJ grants a non-citizen withholding or CAT relief, the IJ issues a removal order and simultaneously withholds or defers that order with respect to the country or countries for which the non-citizen demonstrated a sufficient risk of persecution or torture. *See Johnson v. Guzman*

Chavez, 141 S. Ct. 2271, 2283 (2021). Once withholding or CAT relief is granted, either party has the right to appeal that decision to the BIA within 30 days. See 8 C.F.R. § 1003.38(b). If both parties waive appeal or neither party appeals within the 30-day period, the withholding or CAT relief grant and the accompanying removal order become administratively final. See id. § 1241.1.

When a non-citizen has a final withholding or CAT relief grant, they cannot be removed to the country or countries for which they demonstrated a sufficient likelihood of persecution or torture. See 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.17(b)(2). While ICE is authorized to remove non-citizens who were granted withholding or CAT relief to alternative countries, see 8 U.S.C. § 1231(b); 8 C.F.R. § 1208.16(f), the removal statute specifies restrictive criteria for identifying appropriate countries. Non-citizens can be removed, for instance, to the country "of which the [non-citizen] is a citizen, subject, or national," the country "in which the [non-citizen] was born," or the country "in which the [non-citizen] resided" immediately before entering the United States. 8 U.S.C. § 1231(b)(2)(D)-(E).

If ICE identifies an appropriate alternative country of removal, ICE must undergo further proceedings in immigration court to effectuate removal to that country.1 See Jama v. ICE, 543 U.S. 335, 348 (2005) ("If [non-citizens] would face persecution or other mistreatment in the country designated under § 1231(b)(2), they have a number of available remedies: asylum, § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); [and] relief under an international agreement prohibiting torture, see 8 CFR §§ 208.16(c)(4), 208.17(a) (2004) . . ."); 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."), rev'd on other grounds, Guzman Chavez, 141 S. Ct. 2271.

B. The 14th Amendment Requires Petitioner's Release

In the Petitioner's case, ICE conducted no review of potential harm to her if she was to be removed to Mexico. Doing so subjected her to continued constructive custody as it was under the auspices of the US Government. Federal court intervention is warranted here on due process grounds because there was no legal basis for the government to have continued her detention and removed her without any due diligence as to potential harm. It is wrongful for the US Government to continue her removal with a pending appeal to the BIA. Petitioner has been twice found to have a prima facie eligibility for relief from removal, twice been found to meet the criteria of a refugee under the Immigration & Nationality Act and even had that finding accepted by the Government as final. This court should grant her petition and afford her relief under the US Constitution as a matter of due process.

CLAIMS DECLARATORY AND INJUNCTIVE RELIEF UNDER 28 U.S.C. §2241 AND WRIT OF MANDAMUS UNDER 28 U.S.C. § 1361

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 therefore amends her petition to add a claim for mandamus relief under the Mandamus Act in 28 U.S.C. § 1361 and also declaratory and injunctive relief under 28 U.S.C. §2241.

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).

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).

Petitioner has a clear right to the relief by virtue of the fact that, at present, she does not have a final order of removal. She is actively pursuing an appeal of the IJ's decision to deny her asylum claim. Therefore, she has right to be present and this Court should enjoin the US Government from failing to permit her to return to the US and be free from physical detention while she pursues her relief from deportation. There is a clear duty of the US Government to grant

due process to the Petitioner and there is a lack of any other adequate remedy given the US Government's complete refusal and actual efforts to deny Petitioner her due process in this matter.

Petitioner was given no notice of her possible removal to Mexico, nor was she given the chance to present evidence of the danger to her in Mexico. This was found to be true by the IJ, who then granted her a right to appeal her case. As argued in the paragraphs above, these facts continue jurisdiction of the Court for both habeas and mandamus relief and declaratory relief. Because this is such an instance that is capable of being repeated but consistently avoiding judicial review, this Court should find that the constitutional requirements in *Giddings, supra,* are met.

PRAYER

For the foregoing reasons, Petitioner, DEVORA B., prays, pursuant to 28 U.S.C. §§ 2241 and 2243, that the Court award her the Writ or issue an order directing the Respondents to show cause why the writ should not be granted. Petitioner further requests that this Court grant her request and order that the Respondents enjoined from taking action to prevent her return to the US and release her from any physical custody.

Petitioner further prays that the Court grant her general relief and attorneys fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) & 5 U.S.C. § 504 et seq.

Respectfully Submitted,

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/s/ Anne E. Kennedy
By: _____
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VERIFICATION

ANNE E. KENNEDY appeared in person before me today and stated under oath that she is the attorney for DEVORA B. in this case and, as such, have authority to make this verification; that they have read the above PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241, and SUIT FOR DECLARATORY AND INJUNCTIVE RELIEF AND WRIT OF MANDAMUS UNDER 28 U.S.C. § 1361 and that every statement regarding the facts contained in it are true and correct to the best of their personal knowledge and as relayed to me by my client, DEVORA B.

Affiant

SIGNED under oath before me on Octoper 15, 2025.

JASMIN S LOPEZ MATA
Notary Public, State of Texas
Comm. Expires 04-08-2029
Notary ID 129359941

Notary Public, State of Texas