

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Katy Jhoriela PAGOAGA-MURILO *

Petitioner *

v. *

Kristi Noem, et. al *

Respondents *

Case Number: 8:25-cv-03656

**PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITIONER'S
MOTION FOR TEMPORARY RESTRAINING ORDER**

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I. INTRODUCTION

Petitioner has a valid CAT-based Withholding of Removal, has fully complied with ICE, has no criminal history, and was nevertheless detained and issued a Notice of Intent to Remove her to Mexico, a third country, without providing the individualized process DHS's policy requires.

Respondents rely primarily on jurisdiction-stripping arguments and the Supreme Court's stay in *Department of Homeland Security v. D.V.D.*, 145 S. Ct. 2153 (2025), but they do not dispute that (1) no third-country CAT screening has occurred, (2) no new country-specific adjudication has been made, and (3) whether removal to Mexico expose Petitioner to grave danger and torture.

II. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

First, Petitioner's request for emergency relief is fully supported not only by the record in this case but also by the U.S. District of Maryland's recent decision in *Zavvar v. Scott*, Civ. No. 25-2104-TDC (D. Md. Sept. 8, 2025), which squarely rejects Respondents' primary arguments. In *Zavvar*, as here, a noncitizen who had been granted protection from removal was suddenly detained after years of compliance, without individualized explanation, and informed that DHS intended to remove him to countries where he had no ties and no prior connection. The Court held, inter alia, that habeas jurisdiction exists under 28 U.S.C. § 2241, even when DHS invokes 8 U.S.C. § 1252(g), because the Petitioner challenged the legality of detention and the manner in which DHS intended to execute a removal order, which is precisely the posture of this case. We encourage this Court to follow the reasoning and analysis in *Zavvar*, which forecloses Respondents' jurisdictional arguments here.

Just as important, *Zavvar* emphasized that the Government may not detain an individual on the basis of speculative and unsupported third-country removal efforts. The Honorable Judge

Chuang, in the *Zavvar* case, found that detention was unlawful where DHS sought to remove a CAT-protected individual to countries that had not agreed to accept him and where nothing suggested removal was reasonably foreseeable. That Court underscored that a grant of withholding of removal “substantially increases the difficulty of removal” and is strong evidence that DHS cannot lawfully effectuate removal in the near term. Additionally, the Honorable Judge Boardman in Case No. 1:25-cv-03612-DLB, in her ruling yesterday, adopted and followed the reasoning and analysis of Judge Chuang in the *Zavvar* case and granted the Petition for Habeas Corpus. The facts in that case are very similar to this case. That petitioner is also from Honduras and had been granted withholding of removal, and Respondents had not made any effective efforts to obtain acceptance from Mexico for Petitioner’s removal there.

Here, Petitioner’s CAT-based withholding makes removal to Honduras legally impossible, and removal to Mexico, a country where she faces grave danger and torture, has no ties, and would be particularly vulnerable as a single mother, rests on even shakier ground than the U.S. government’s speculative placements in *Zavvar*. In the present case, Respondents have provided no evidence that Mexico has agreed to accept Petitioner, and in their reply, confirm that no legally adequate fear-screening process has occurred (although she requested one), or that any individualized assessment has been made. Their own representations show only a cursory issuance of a Notice of Intent, unaccompanied by the mandatory procedural protections required before any third-country removal. Under *Zavvar*, such thin, undeveloped “plans” cannot justify detention and certainly cannot justify removal.

Moreover, *Zavvar* confirms that a petitioner need not wait for six months of detention before a Federal court intervenes. The *Zavvar* Court, in its analysis of the *Zavydas* case, rejected the idea that the six-month presumption is a rigid bar to judicial review and held that detention

becomes unlawful **whenever removal is not reasonably foreseeable**. The Government had the burden in *Zavvar* to produce evidence that removal was actually feasible, and it failed to do so. Respondents fail here for the same reason. They offer no evidence that removal to Mexico is likely, imminent, or procedurally lawful. To the contrary, they sidestep the core problem that Petitioner has CAT protection, has no criminal history, has complied with reporting requirements, and has an eight-year-old child suffering significant harm from her sudden arrest and detention (without a warrant) and potential removal.

Finally, *Zavvar* reinforces that due process prohibits DHS from attempting to execute a third-country removal without providing meaningful notice and a realistic opportunity to assert fear-based claims. The Court stayed the third-country-procedure claim in that case only because the petitioner was already a D.V.D. class member receiving the benefit of those protections. Here, DHS has not provided those protections at all. Petitioner has not received a credible, individualized fear screening, an adjudication before an immigration judge, or an opportunity to contest the choice of Mexico as a removal country. *Zavvar*'s reasoning makes clear that removing her without these safeguards would violate due process, CAT, FARRA, APA, and the INA.

Respondents argue that the APA is inapplicable, but Petitioner's TRO does not depend solely on the APA. Her habeas, constitutional, and CAT/FARRA claims independently support relief. Respondents provide no lawful explanation for detaining and attempting to remove a CAT-protected mother with no change in circumstances, no safety concerns, and a criminal record. That abrupt shift, without individualized reasoning, is arbitrary, violates due process, and contradicts the purpose of CAT's mandatory protection.

Moreover, under DHS's own Third-Country Removal Guidance, Petitioner's expressed fear required a protection screening before any steps toward third-country removal. The agency's

failure to provide that process violates its own policy, the INA, and due process. Respondents cannot rely on the Guidance while ignoring its central safeguard.

The government's reliance on the Supreme Court's stay in *D.V.D.* is also misplaced. The stay is not a merits decision. It does not resolve the legality of the Guidance, nor does it bar individualized judicial review. Petitioner is not seeking to reinstate the nationwide injunction vacated in *D.V.D.* She seeks only case-specific relief: release from detention, protection from transfer outside this District, and an order preventing removal to Mexico or any third country unless and until she receives the process that due process and DHS's own rules require. *D.V.D.* does not strip this Court of its traditional habeas authority.

III. IRREPARABLE HARM

Respondents do not meaningfully dispute that Petitioner and her daughter face irreparable harm upon removal to Mexico. Removal to Mexico or transfer away from Maryland would separate a mother from her eight-year-old child or force the child into dangerous conditions, expose both to cartel, gang, police, and gender-based violence, eliminate Petitioner's ability to litigate her habeas case, and uproot her from employment and community support. Such harms, family separation, risk of torture, and due process violations are classic bases for injunctive relief.

IV. EQUITIES AND PUBLIC INTEREST

A TRO preserves the status quo, imposes minimal burden on DHS, and protects a compliant, non-dangerous, CAT-protected mother and child from unlawful removal. The public interest always favors protection of constitutional rights and adherence to CAT and FARRA. Respondents identify no concrete harm from briefly halting removal and releasing Petitioner from detention while this Court considers Petitioner's claims.

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