IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)

DAMARI CHAVEZ DE VASQUEZ, *

Petitioner, *

Case No. 8:25-cv-03657-SAG

v. *

KRISTI NOEM, *et al.*, *

Respondents. *

* * * * * * * * * * * * *

REPLY IN SUPPORT OF RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS

Respondents, United States Department of Homeland Security ("DHS") Secretary Kristi Noem, United States Immigration and Customs Enforcement ("ICE") Acting Director Todd Lyons, and ICE Baltimore Field Office Acting Director Jeremy Bacon[1] (collectively, "Respondents"), by and through undersigned counsel, Kelly O. Hayes, United States Attorney for the District of Maryland, and Megan L. Micco, Assistant United States Attorney for that District, submit this Reply in support of their Response to Amended Petition for Writ of Habeas Corpus and Motion to Dismiss (the "Motion") (ECF No. 14) and in response to Petitioner Damari Chavez de Vasquez's "Reply to Respondents' Response to Amended Petition for a Writ of Habeas Corpus and Motion to Dismiss" (the "Opposition") (ECF No. 15).

[1] Pursuant to Federal Rule of Civil Procedure 25(d), upon the departure of a public officer sued in their official capacity, "[t]he officer's successor is automatically substituted as a party." FED. R. CIV. P. 25(d). Jeremy Bacon has recently been named Acting Field Office Director for the ICE Baltimore Field Office. Thus, he is automatically substituted as the respondent for former-Acting Field Office Director Nikita Baker.

I. ARGUMENT

A. Petitioner Asks This Court to Substitute Its Judgment For That of the Immigration Judge's as to Release, But 8 U.S.C. § 1226(e), 8 U.S.C. § 1252(b)(9), and Numerous Immigration Regulations Prohibit This Court From Doing So.

As discussed in the Motion, Petitioner asks this Court to release her from ICE custody even though an Immigration Judge already denied her request for release at a November 14, 2025 bond hearing due to her numerous Alternatives to Detention ("ATD") violations. *See* ECF No. 14-1 at 2, 9–11; *see also* ECF No. 10-1 (November 14, 2025 Order of the Immigration Judge denying Petitioner bond due to her twelve ATD violations and finding her to be a flight risk). In the Opposition, Petitioner argues that she "does not ask this Court to reweigh bond factors or to substitute its judgment for that of the immigration court on the appropriate amount of bond." ECF No. 15 at 2; *see also id.* at 3–4. While that may be true, Petitioner overlooks the fact that, at base, she asks this Court to substitute its judgment for that of the Immigration Judge's as to *release*.[2] That is, if this Court were to grant Petitioner habeas relief by ordering her release, that decision would effectively undermine and set aside the Immigration Judge's bond decision, which is impermissible under 8 U.S.C. § 1226(e), as explained in the Motion. *See* ECF No. 14-1 at 9–11. Such decision of this Court would also improperly allow Petitioner to leapfrog the appropriate avenue for review of the Immigration Judge's bond decision, *i.e.*, appeal to the Board of Immigration Appeals, as outlined in 8 U.S.C. § 1252(b)(9) and 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, and 1236.1(d)(3). *See id.* at 11–13.

Even if 8 U.S.C. § 1226(e), 8 U.S.C. § 1252(b)(9), and 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, and 1236.1(d)(3) did not prohibit this Court from substituting its judgment for that of the

[2] Petitioner also overlooks the plain language of her own Petition, which directly challenges the Immigration Judge's bond decision, including the Immigration Judge's reliance upon and crediting of information concerning Petitioner's numerous ATD violations. *See* ECF No. 13 at ¶¶ 16, 25.

Immigration Judge's as to release, and they do, Petitioner's Opposition is devoid of *any* authority demonstrating that a federal District Judge may order the release of an individual detained by ICE for ATD violations where an Immigration Judge has already denied bond for said violations. *See generally* ECF No. 15.

B. Petitioner Is Properly Detained Under 8 U.S.C. § 1226(b), 8 C.F.R. § 236.1(c)(9), and *Demore v. Kim*, 538 U.S. 510 (2003), and Her Fifth Amendment Due Process Arguments Fail.

In addition to the jurisdictional arguments premised on 8 U.S.C. § 1226(e), 8 U.S.C. § 1252(b)(9), and 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, and 1236.1(d)(3), Respondents also contend in the Motion that their detention of Petitioner is lawful under 8 U.S.C. § 1226(b), 8 C.F.R. § 236.1(c)(9), and *Demore v. Kim*, 538 U.S. 510 (2003). *See* ECF No. 14-1 at 13–14. Petitioner fails to address these arguments in the Opposition or otherwise dispute that ICE has clear statutory authority and discretion to revoke release under 8 U.S.C. § 1226(b) and 8 C.F.R. § 236.1(c)(9). *See generally* ECF No. 15. Petitioner also fails to dispute that the Supreme Court determined that detention during removal proceedings is constitutional in *Demore*. *See id.*

Rather than acknowledge that her own actions resulted in ICE's revocation of her release and the Immigration Judge's decision to deny her bond, Petitioner instead contends that the revocation of her release and the Immigration Judge's bond decision lacked due process. ECF No. 15 at 5–7. As explained in the Motion, multiple courts have concluded that the Fifth Amendment Due Process Clause does *not* require ICE to provide a pre-arrest hearing or notice to an alien. *See* ECF No. 14-1 at 14 (citing *Reyes v. King*, No. 19 CIV. 8674 (KPF), 2021 WL 3727614, at *10–11 (S.D.N.Y. Aug. 20, 2021); *Abreu v. Rivera*, No. 25-20821-CIV, 2025 WL 2163051, at *8 (S.D. Fla. May 12, 2025)). Petitioner's Opposition fails to address these cases. *See* ECF No. 15 at 5–7. The Opposition also fails to cite any relevant legal authority to support the due process arguments.

See generally id. It cites only a general statement from *Zadvydas v. Davis*, 533 U.S. 678 (2001), which case addressed post-removal order detention, not detention during removal proceedings or revocation of release due to ATD violations like at issue here. *Id.* at 6. Moreover, Petitioner's alleged due process concerns arising from the bond hearing and decision can and must be challenged through an appeal to the Board of Immigration Appeals. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

Finally, to the extent Petitioner contends that her detention is unlawful because she has a pending asylum application, such argument lacks authority and merit. Petitioner fails to cite any authority for such contention, *see* ECF No. 15 at 5–7, and, in any event, Petitioner's asylum application can and will be adjudicated by an Immigration Judge during her removal proceedings, during which she can be detained. *See Demore*, 538 U.S. at 523; 8 C.F.R. §§ 208.2, 1208.2 (explaining that Immigration Judges have exclusive jurisdiction over asylum applications filed by aliens who have been served, *inter alia*, a Notice to Appear, Form I-862, after the charging document has been filed with the Immigration Court); *see also Dzheligov v. U.S. Dep't of Homeland Security*, No. TDC-23-0985, 2024 WL 51280, at *3–4 (D. Md. Jan 4, 2024).

C. <u>Petitioner's Fourth Amendment Claim Lacks Merit and Legal Support.</u>

Notwithstanding the fact that ICE arrested Petitioner pursuant to a signed Warrant for Arrest of Alien, Form I-200, *see* ECF No. 14-4, Petitioner continues to assert in the Opposition that her arrest violated the Fourth Amendment. According to Petitioner, the Form I-200 is not sufficient to serve as a warrant because it is "an administrative form generated and signed by the enforcement agency," rather than a judicial warrant issued by a judge. *See* ECF No. 15 at 7–8. Not only does Petitioner fail to cite any authority for her proposition that a Form I-200 cannot

serve as the basis for ICE to arrest an individual, *see id.*, but such proposition is contrary to the governing immigration regulation and case law.

8 C.F.R. § 287.5(e)(2) affords certain immigration officers, including Supervisory Detention and Deportation Officers, the power to issue arrest warrants for immigration violations. *See* 8 C.F.R. § 287.5(e)(2), (e)(2)(xxxii); *see also, e.g.*, *Rodrigues De Oliveira v. Joyce*, No. 2:25-cv-00291-LEW, 2025 WL 1826118, at *4 (D. Me. July 2, 2025). "Once issued, ICE officers may detain noncitizens pending removal proceedings." *Rodrigues De Oliveira*, 2025 WL 1826118, at *4 (citing 8 C.F.R. § 236.1(b); 8 U.S.C. § 1226(a)). "I-200 warrants attest to probable cause that the arrestee is removable." *Id.* (citing *Abriq v. Nashville*, 333 F. Supp. 3d 783, 787 n.3 (M.D. Tenn. 2018)). Here, as reflected in the Warrant for Arrest of Alien served upon Petitioner on the date she was detained, ICE Supervisory Detention and Deportation Officer Vrouletis (DO6834) issued the warrant after determining that there is probable cause to believe Petitioner is removable from the United States based upon the execution of a charging document to initiate removal proceedings against Petitioner, biometric confirmation of Petitioner's identity and a records check of federal databases that affirmatively indicate that Petitioner lacks immigration status, and statements made voluntarily by Petitioner or other reliable evidence that affirmatively indicate that Petitioner lacks immigration status. ECF No. 14-4. Accordingly, Petitioner's contention concerning the I-200 warrant is meritless.

Lastly, Petitioner argues that ICE's arrest of her at a "routine, non-exigent check-in" violates the Fourth Amendment. ECF No. 15 at 8. This argument is, again, devoid of citation to any authority, *see id.*, and is belied by 8 U.S.C. § 1226(b) and 8 C.F.R. § 236.1(c)(9), which plainly afford ICE discretion to revoke an individual's release "at any time" and do not place any

limitations on ICE as to when or where a revocation and re-arrest may occur. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).[3]

II. CONCLUSION

For all the reasons stated above and in Respondents' Motion (ECF No. 14) and the accompanying memorandum of law (ECF No. 14-1), the Court should dismiss the Amended Petition for a Writ of Habeas Corpus (ECF No. 13).

Dated: December 16, 2025

Respectfully submitted,

Kelly O. Hayes
United States Attorney

By: */s/ Megan L. Micco*
Megan L. Micco (Bar No. 20936)
Assistant United States Attorney
U.S. Attorney's Office, District of Maryland
36 S. Charles Street, Suite 400
Baltimore, Maryland 21201
Telephone: (410) 209-4800
Megan.Micco@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of December, 2025, a copy of the foregoing Reply in Support of Response to Amended Petition for Writ of Habeas Corpus and Motion to Dismiss was served via CM/ECF on all parties and counsel receiving electronic notice in this case.

/s/ Megan L. Micco
Megan L. Micco (Bar No. 20936)
Assistant United States Attorney

[3] As explained above and in the Motion, ICE was also not required to provide a pre-arrest hearing or notice to Petitioner before she was re-detained due to her ATD violations.