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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ONORES DE JESUS MEJIA IRIARTE,

Petitioner,

v.

CHRISTOPHER J. LAROSE, et al,

Respondents.

Case No.: 25-cv-03138-BAS-AHG

PETITIONER'S TRAVERSE SUPPORTING PETITION FOR WRIT OF HABEAS CORPUS AND APPLICATION FOR TEMPORARY RESTRAINING ORDER

Date: December 5, 2025
Time: 2:30 p.m.
Courtroom: 12B (Carter Keep)

Hon. Cynthia A. Bashant

Petitioner, Onores De Jesus Mejia Iriarte, replies to Respondents' Response in Opposition to Petition for Writ of Habeas Corpus and Application for Temporary Restraining Order, stating as follows:

A. U.S. Immigration and Customs Enforcement's Re-Detention of Petitioner Violated the Due Process Clause and the Agency's Own Post-Order Custody Regulations.

ICE's decision to re-detain Petitioner without notice, explanation, or compliance with mandatory custody regulations was a lawless deprivation of liberty that violated the Fifth Amendment, and the principles laid out in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). The governing regulations—8 C.F.R. §§ 241.4 and 241.13—impose explicit, step-by-step procedures before revoking supervision or re-detaining someone ICE has already determined cannot be removed in the reasonably foreseeable future. By ignoring those procedures entirely, then refusing to address these violations in their Response, Respondents have confirmed that Petitioner's detention is arbitrary detention, not lawful custody.

These regulations are not empty formalities. Respondents must: designate authorized decision-makers; write custody decisions stating adequate reasons; provide notice to the noncitizen; and provide a prompt informal interview before revocation. 8 C.F.R. §§ 241.4(d), (l)(1)-(2); 241.13(i)(1)-(3). These provisions "plainly provide due process protections" because re-detention "necessarily" strips a person of core their liberty. *Orellana v. Baker*, Civil Action No. 25-1788-TDC, 2025 U.S. Dist. LEXIS 164986, at *18 (D. Md. Aug. 25, 2025) (*citing Mathews v. Eldridge*, 424 U.S. 319, 348 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)); *see also Accardi*, 347 U.S. at 266-68.

Nothing about the likelihood of removal has changed since Petitioner's release, making her re-detention unlawful under *Zadvydas*, discussed *infra* at 2-5, which prohibits

continued detention absent an individualized basis to believe removal has become reasonably foreseeable. 533 U.S. at 690.

Here, ICE concedes it released Petitioner under 8 U.S.C. § 1231(a)(6), triggering 8 C.F.R. §§ 241.4 and 241.13. ECF No. 1-2 at 9. Yet when agents re-detained her on January 28, 2025, they provided no notice of reasons, no prompt informal interview, and no evidence that any authorized official (other than line officers acting ad hoc) made the revocation decision. ECF No. 1 at 2. Federal courts have repeatedly applied *Accardi* to invalidate such custody determinations. *See Rombot v. Souza*, 296 F. Supp. 3d 383, 385, 387–88 (D. Mass. 2017) (rejecting ICE's claim of "unfettered discretion" and holding that even broad detention authority must comply with the agency's own regulations; *Zadvydas* permits re-detention for supervision violations only through lawful, procedurally sound process, not "carte blanche" reincarceration); *Sering Ceesay v. Kurzdorfer*, Civil Action No. 25-CV-267-LJV, 2025 U.S. Dist. LEXIS 84258 (W.D.N.Y. May 2, 2025). Despite bearing the burden to justify confinement, Respondents produced no evidence of regulatory compliance and failed to address these violations in their Response. *See* ECF No. 7. The government stripped Petitioner of her liberty through a process that flouts its own mandatory safeguards, then failed to defend that process.

B. Presumption of Reasonableness Falls Away Where Petitioner Shows Good Reason that Removal Is Not Reasonably Foreseeable, and the Government Fails to Carry Its Burden.

ICE's reliance on a "presumption of reasonableness" ignores both the facts of this case and *Zadvydas*'s core holding. ECF No. 7 at 4. The six-month benchmark under 8 U.S.C. § 1231(a)(6) is only a starting point; it does not justify prolonged detention where removal is not reasonably foreseeable. *Zadvydas* makes clear that once the six-month period has elapsed, detention is lawful only if the government can show a significant likelihood of removal in the reasonably foreseeable future—not simply invoke

a blanket presumption. 533 U.S. at 699–701. Petitioner's 90-day removal period expired more than two years ago, and she was re-detained after six years of supervision. ECF No. 1 at 2. On these facts, her present post-removal-order detention is no longer presumed reasonable, and continued confinement is ultra vires and unconstitutional under. *Zadvydas*, 533 U.S. at 699–701.

Respondents' assertion that removal is reasonably foreseeable because ICE is "actively" seeking a third country only underscores how speculative their position is. ECF Nos. 7 at 6; 7-1 at 3. *Zadvydas* instructs that the central question for a habeas court is whether detention "exceeds a period reasonably necessary to secure removal" and that, once removal is no longer reasonably foreseeable, detention is no longer authorized by statute. 533 U.S. at 699–700. Here, Mexico has already refused Petitioner's entry. ECF No. 7-1 at 2. This Court has enjoined Petitioner's transfer out of the district without notice and an opportunity to be heard and has barred removal absent such process. ECF No. 6 at 2. In their November 21, 2025, Response, Respondents effectively concede that only after Mexico rejected Petitioner are they just now beginning to identify alternate countries. ECF No. 7 at 6. At the same time, Petitioner has sought Immigration Judge review of the Asylum Officer's negative reasonable-fear determination regarding Mexico (a decision never properly noticed to her) which could provide relief that itself would bar removal to that country. Ex. B; *see also* 8 C.F.R. § 208.31; *Escalante v. Noem*, Civil Action No. 9:25-CV-00182-MJT, 2025 U.S. Dist. LEXIS 148899, at *10 (E.D. Tex. Aug. 2, 2025).

The government's vague promises that it is working "as expeditiously as possible" to locate a third country do not come close to showing a significant likelihood of removal in the reasonably foreseeable future. ECF Nos. 7 at 6; 7-1 at 3. Courts have rejected such threadbare assertions, holding that a mere possibility of eventual removal is not enough;

there must be concrete evidence that removal is significantly likely within a reasonably foreseeable time. *See Phouvieng K. v. Andrews*, Civil Action No. 1:25-cv-01512-KES-SAB (HC), 2025 U.S. Dist. LEXIS 564132, at *16 (E.D. Cal. Nov. 24, 2025) (granting preliminary injunction) (*citing Nguyen v. Scott*, Civil Action No. 2:25-CV-01398, 2025 WL 2419288, at *16 (W.D. Wash. Aug. 21, 2025)). The record here contains no such evidence. Respondents have offered no confirmation of any specific third country willing to accept Petitioner, any steps taken with any such government, and no timeline for removal. The only concrete developments are (1) Mexico's refusal; (2) this Court's injunction; and (3) Petitioner's pending, timely-requested fear review, all of which make removal less—not more—foreseeable. ECF Nos. 7 at 6; 7-1 at 3; Ex. B.

And the exhibits Respondents submitted do not cure this defect. The Immigration Judge's order withholding removal to Honduras, the denial of reopening of withholding-only proceedings, Officer Martinez's declaration, and the unsigned Notice of Removal to Mexico (now moot because Mexico refused entry) say nothing about any realistic, near-term path of removal to any other country. ECF No. 7-1; ECF No. 7-3. They therefore do not rebut Petitioner's "good reason" showing under *Zadvydas* that there is no significant likelihood of removal in the reasonably foreseeable future. 533 U.S. at 701.

Finally, even assuming that Respondents could identify one or more potential third countries, Petitioner is entitled to notice and a meaningful opportunity to be heard on her reasonable fear of persecution or torture in each such country, and success on those claims could remove those countries from consideration altogether. *See* 8 C.F.R. § 208.31; *Escalante*, 2025 U.S. Dist. LEXIS 148899, at *10. Until the government identifies a willing country and navigates the required protections, there is no "significant likelihood" of removal—only speculation—so the statutory presumption of reasonableness has fallen away, and continued detention is unlawful.

In short, Petitioner remains confined at Otay Mesa Detention Center with no lawful destination in sight, while the government clings to a presumption that *Zadvydas* has long since stripped away. Under the controlling law, her continued confinement is unlawful and constitutes prolonged detention that the statute does not authorize.

C. District Court Retains Jurisdiction Because 8 U.S.C. § 1252(g)'s Bar on Reviewing Execution of Removal Orders Does Not Include Petitioner's Challenge to the Lawfulness of Her Post-Removal-Order Detention.

Respondents are wrong about jurisdiction. ECF No. 7 at 7. Section 1252(g) bars review of only three discretionary acts: (1) commencing proceedings, (2) adjudicating cases, and (3) executing removal orders—not statutory and constitutional challenges to post-removal-order detention. 8 U.S.C. § 1252(g). The Supreme Court has made clear that habeas remains available for such detention challenges, and this case fits squarely within that allowance. *Zadvydas*, 533 U.S. at 688. Petitioner is not attacking the discretionary decision to select Mexico as a country of removal; she challenges the legality of her ongoing custody and the government's failure to comply with mandatory protections that bar removal to a country where she would face persecution or torture. ECF No. 4 at 8–10; *see* 8 C.F.R. §§ 208.13(e), 208.16.

The Ninth Circuit's recent decision in *Ibarra-Perez* confirms that § 1252(g) does not shield the government when a noncitizen contests legal authority, rather than timing or manner, of removal. *Ibarra-Perez v. United States*, 2025 U.S. Dist. LEXIS 327226, at *20–24 (9th Cir. Aug. 27, 2025). There, as here, the petitioner did not challenge the discretionary "execution" of a removal order but ICE's attempt to remove him to a country not designated in that order and without proper process; the court held § 1252(g) did not apply. *Id.* Petitioner likewise does not ask this Court to take over the reasonable-fear review process. She seeks only that the Court compel Respondents to adhere to the procedures the law already contemplates: a written decision, Immigration

Judge review within the existing 10-day framework, and the opportunity to pursue withholding and CAT protection as to any proposed third country, all without disturbing the validity of her underlying removal order. *See* Immigration Court Practice Manual § 7.4(e)(4) (2025); *Riley v. Bondi*, 145 S. Ct. 2190, 2199 (2025).

Respondents' reliance on *D.V.D. v. United States Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 2025 U.S. Dist. LEXIS 74197 (D. Mass. 2025), and the Supreme Court's stay in *D.V.D. v. D.H.S.*, 145 S. Ct. 2153 (2025), (ECF No. 7 at 7) is misplaced: the stay order contains no merits reasoning, and district courts—including this Court (ECF No. 6 at 2)—have correctly refused to treat it as a blanket endorsement of DHS's procedures or a bar to individualized relief. *See Cruz-Medina v. Noem*, 2025 U.S. Dist. LEXIS 197946, at *8 (D. Md. Oct. 7, 2025); *Sanchez v. Noem*, Civil Action No. 5:25-CV-00104, 2025 U.S. Dist. LEXIS 205572, at *36 (S.D. Tex. Oct. 2, 2025).

D. Petitioner Suffers Irreparable Harm from Respondents' Ongoing Medical Neglect, Abuse, and Procedural Due Process Violations.

Petitioner does not contend that "detention alone" is irreparable harm. ECF No. 7 at 8-9. Her declaration shows ongoing, individualized injuries: (1) serious but inadequately treated medical and mental health conditions (Exhs. C-D); (2) continuing verbal, physical, and sexual abuse by a pod-mate that detention center staff have failed to stop (Ex. A); (3) separation from her U.S. citizen husband (Ex. E); and (4) two predawn, clandestine attempts to remove her to Mexico during which ICE officers refused to let her contact counsel or family and dismissed proof of representation as "worthless." Ex. A. These present threats to her health, safety, and ability to protect her legal rights easily satisfy *Winter*'s requirement of a likely—not merely possible—irreparable injury. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 22 (2008); *accord Nken v. Holder*, 556 U.S. 418, 426 (2009). Respondents' assertion that Petitioner's loss of liberty is not

"extraordinary" because all detainees lose liberty (ECF No. 7 at 8-9) ignores how this convergence of harms makes her situation anything but ordinary. Unlike the petitioners in *Reyes v. Bonnar*, Civil Action No. 18-cv-07429-SK, 2018 U.S. Dist. LEXIS 222013 at *30 (N.D. Cal. Dec. 24, 2018), *Cortez v. Nielsen*, Civil Action No. 19-cv-00754-PJH, 2019 U.S. Dist. LEXIS 59351 (N.D. Cal. Apr. 5, 2019), or *Resendiz v. Holder*, Civil Action No. C 12-04850 WHA, 2012 U.S. Dist. LEXIS 160553 at *15 (N.D. Cal. Nov. 7, 2012)—where courts addressed generic detention or bond-review frameworks—Petitioner is detained despite a prior grant of withholding to her home country while facing covert removal attempts to Mexico following an undisclosed negative reasonable-fear finding and with no opportunity to seek Immigration Judge review. Exhs. F, G. That combination is precisely the extraordinary constellation of circumstances that courts distinguish from ordinary detention.

In sum, Petitioner has demonstrated that her current detention is unlawful, unconstitutional, and unsupported by any valid statutory or regulatory authority. ICE ignored mandatory custody procedures when it re-detained her, failed to provide basic due process protections, and has not shown any significant likelihood of removal in the reasonably foreseeable future, as *Zadvydas* requires. The government's vague assurances that it is seeking a third country, without identifying any willing nation or concrete steps toward removal, do not satisfy its burden and instead confirm that continued detention serves no lawful removal purpose. At the same time, Petitioner faces serious and ongoing harms in custody—injuries that easily meet the standard for likely irreparable harm under *Winter*. Because ICE is detaining Petitioner in violation of its own binding rules and the Due Process Clause, and because the government has failed to justify that detention under

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Zadvydas or any other authority, this Court should grant the requested habeas and injunctive relief to end her unlawful confinement and prevent further irreparable injury.

Dated: November 28, 2025

Respectfully submitted,

/s/ Arwa J.Z. Kakavand
Arwa J.Z. Kakavand

Pro Bono Attorney for Petitioner

TABLE OF EXHIBITS

Exhibit A: Declaration of Petitioner, Onores De Jesus Mejia Iriarte

Exhibit B: Counsel's Correspondence with the Assistant United States Attorney, dated Nov. 21, 2025

Exhibit C: Copy of Ms. Mejia Iriarte's Medical Records, with Translation, and Certificate of Translation

Exhibit D: Sprenger, Andrea, LMFT, Psychological Evaluation of Onores De Jesus Mejia Iriarte (Sept. 16, 2025), with Ms. Sprenger's Curriculum Vitae

Exhibit E: Marriage Certificate of Onores De Jesus Mejia Iriarte and David Battle, dated Dec. 5, 2022

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2025, I electronically filed the foregoing and all attachments with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record at the following email addresses:

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Dated: November 28, 2025

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