

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MARIA DE LOURDES GOMEZ,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 25-cv-5491
)	
WARDEN RANDALL TATE ¹ ,)	
)	
Respondent.)	
)	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

The United States of America² files this response to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Dkt. 1). As explained below, Petitioner’s claim for habeas relief should be denied because she is lawfully detained subject to a final removal order, and the government intends to remove her in the foreseeable future.

SUMMARY OF THE ARGUMENT

Petitioner is an immigration detainee in the custody of Immigration and Customs Enforcement (ICE) at the Montgomery Processing Center in Conroe, Texas. Declaration, attached as Exhibit 1. Petitioner is a native and citizen of Mexico awaiting removal from the

¹ Warden Randall Tate is not a federal employee; he is a private contractor. The United States Attorney’s Office cannot represent private contractors without specific authorization from Department of Justice, Civil Division. Because the United States of America does not represent Warden Randall Tate, it cannot respond to the Writ of Habeas Corpus on his behalf. No attorneys have entered their appearance on behalf of Warden Randall Tate.

² The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711 (2004). That said, it is the United States of America, not the named warden in this case, who makes the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

United States pursuant to an order of removal that became final in August 2011. Exhibit 1, ¶ 7, 13; Dkt. 1 at ¶ 2. Petitioner filed the pending Petition for Writ of Habeas Corpus on November 17, 2025. She has been held in custody since November 12, 2025, for 31 days. Dkt. 1. She alleges that her current detention is in violation of her due process rights and the federal regulations governing the revocation of Orders of Supervision. Dkt. 1 at ¶¶ 36-47. Petitioner further claims that her detention is in violation of her due process rights because “her 90-day removal period ended on November 2, 2011” and she seeks to enjoin the government from removing her to a third country. Dkt. 1 at ¶¶ 48-65. There is no basis for these arguments. Petitioner does not provide an actionable challenge to her detention. Thus, the Court should dismiss the Petition.

THE NATURE AND STAGE OF THE PROCEEDING

On November 17, 2025, Maria De Lourdes Gomez filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (the “Petition”), contesting her continued detention pending the execution of her final removal order. She claims that her continued detention violates the Due Process Clause of the U.S. Constitution and the *Zadvydas* standard. Dkt. 1. The Court ordered a response explaining why the habeas corpus should not issue. Dkt. 5.

STATEMENT OF THE ISSUES

1. Whether Petitioner’s claim for habeas relief should be denied because she is lawfully detained for less than six months pursuant to a final order of removal, and the government intends to remove her in the foreseeable future.

FACTUAL SUMMARY

Petitioner entered the United States without inspection on a date after December 6, 2006. Ex. 1, at ¶ 10. She was subsequently arrested for driving without a driver's license on November 22, 2008 and ultimately transferred into ICE custody on November 24, 2008. Ex. 1, at ¶ 10. Petitioner was released from custody on a bond on December 2, 2008. Ex. 1, at ¶ 12. On August 2, 2011, an Immigration Judge entered an Order of Removal as to Petitioner, but also granted her withholding of removal to Mexico. Ex. 1, at ¶ 13. The Order of Removal was not appealed and became final. *Id.* On October 29, 2015, Petitioner was placed on an Order of Supervision (O/S) due to humanitarian reasons. Ex. 1, at ¶ 14. Petitioner's Order of Supervision was revoked and she was arrested on November 12, 2025. Ex. 1, at ¶ 14.

Since her arrest on November 12, 2025, ICE Enforcement and Removal Operations (ERO) has attempted to effectuate a third country removal of the Petitioner. Ex. 1, at ¶ 15. They have requested third country acceptance of Petitioner to Guatemala, Honduras, El Salvador, Belize, Peru, and Costa Rica. Ex. 1, at ¶ 16. ERO took these steps on December 2, 2025 and has not yet received a determination regarding these requests. *Id.* ERO is continuing to request Petitioner be removed to a third country. *Id.*

AUTHORITY BY WHICH PETITIONER IS HELD

In the instant case, Petitioner is being detained pursuant to a final removal order. Exhibit 1. Detention pursuant to a final order of removal is proper under 8 U. S. C. § 1231.

ARGUMENT

A. The Petitioner is Lawfully Detained and the Removal Period has Been Lawfully Extended

The Petitioner is in immigration custody subject to a removal order that became final in 2011. The Petitioner was previously detained for 10 days prior to being released on bond and then ultimately issued an OSUP on October 29, 2015. Ex. 1 at ¶¶ 11, 12. The Petitioner was recently arrested, subject to the removal order on November 12, 2025. Ex. 1 at ¶ 16. She has thus, cumulatively, been in custody pursuant to her order of removal only 38 days. Under *Zadvydas v. Davis*, it was presumptively constitutionally reasonable for the petitioner to be detained for six months after the final order of removal was entered. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Petitioner's removal period has been lawfully extended for a reasonable time in order to effectuate her removal, as permitted under *Zadvydas. Id.*

The Petitioner makes conclusory claims without evidence that her detention is indefinite. Dkt. 1 at ¶ 56. Evidence shows that on December 2, 2025, ERO Houston requested third country acceptance to 6 separate countries. The third country removal requests have not been declined, to date, and are still pending determinations. Removal is not "reasonably foreseeable" in cases "where no country would accept the detainee, the country of origin refused to issue the proper travel documents, the United States and the country of origin did not have a removal agreement in place, or the country to which the deportee was going to be removed was unresponsive for a significant period of time." *Alam v. Nielsen*, 312 F. Supp. 3d 574, 581 (S.D. Tex. 2018) (J. Ellison) (citation omitted). The Petitioner cannot meet the standard to show that any such barriers currently bar her removal. There is no evidence that currently, no country would accept the Petitioner. Additionally, there is no evidence that the country to which the Petitioner will be deported has been unresponsive for a significant period of time given that the most recent request for third country acceptance was sent just last week.

The Petitioner's conclusory claims, without supporting evidence, are insufficient to show entitlement to habeas relief.

B. The Petitioner Has No Due Process Right to Release from Detention

The Petitioner was recently arrested, subject to a removal order on November 12, 2025. Ex. 1 at ¶ 16. The Government is legally permitted to re-detain the Petitioner when, in ICE's discretion, "it is appropriate to enforce a removal order." *See Alam v. Nielsen*, 312 F.Supp.3d at 582 (quoting 8 C.F.R. § 241.4(l)(2)(iii)). The Petitioner asserts, in a conclusory fashion that due process requires her release. Dkt. 1 at ¶¶ 36-37. There is no due process right that she articulates that requires ICE to release her prior to the execution of her removal order. *See Doe v. Smith*, No. 1:18-CV-11363, 2018 WL 4696748, at *10 (D. Mass. Oct. 1, 2018) (observing that "there is no statute or regulation requiring ICE to provide [an orderly departure]"). Therefore, the Petitioner cannot show she is entitled to the habeas relief she seeks. Accordingly, the Court should dismiss the instant habeas petition.

C. The Court Lacks Jurisdiction to Enjoin Removal

To the extent the Petitioner seeks to enjoin execution of her removal order, the Court lacks jurisdiction to consider such request, as it would relate to a decision or action by the Attorney General to execute a removal order against an alien. *See Alam*, 312 F.Supp.3d at 580 (citing 8 U.S.C. § 1252(g)); *Alvidres-Reyes v. Reno*, 180 F.3d 199, 206 (5th Cir. 1999) (Section 1252(g) removed jurisdiction to consider a "challenge to the Attorney General's decision to decline to commence proceedings or to adjudicate deportations, or to bear the plaintiffs' claim for suspension of their deportations which concomitantly arises therefrom."); *Fabuluje v. Immigr. & Naturalization Agency*, 244 F.3d 133 (5th Cir. 2000). Relatedly, to the extent the Petitioner raises

due process claims to challenge execution of her removal order, such claims are also barred by Section 1252(g). *Foster v. Townsley*, 243 F.3d 210 (5th Cir. 2001); *see also, Chen v. Escareno*, No. 4:09-CV-00270, 2009 WL 3073928, at *2, 6 (S.D. Tex. Sept. 18, 2009) (rejecting petitioner’s claim that she faced removal “without due process,” as “all of the plaintiffs’ claims are connected directly and immediately with a decision or action by the Attorney General to execute the [removal order],” and thus were unreviewable under Section 1252(g)).

CONCLUSION

For the reasons stated above, the Court should grant judgment as a matter of law in the Government’s favor and dismiss the instant petition for writ of habeas corpus.

Dated: December 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 10, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

/s/ Christina Cullom
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Assistant United States Attorney