UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

MARIA DE LOURDES GOMEZ,	§	
	§	Case No. 4:25-cv-5491
Petitioner,	§	
	§	
v.	§	
	§	
RANDALL TATE Warden, *et al.*,	§	
	§	
Respondents.	§	
	§	

RESPONSE IN OPPOSITION TO MOTION FOR DISMISSAL

Petitioner, Maria De Lourdes Gomez, submits this response in opposition to the Government's Response to the Petition for Habeas Corpus ("Response.") Respondents' motion, and the declaration filed in support of said motion, establish that they are currently detaining Petitioner with no cause and in violation of her due process rights. Petitioner was granted withholding of removal to Mexico on August 2, 2011. The Department of Homeland Security ("DHS") did not appeal that decision nor have they since sought to reopen it. Unable to legally remove Petitioner to Mexico, she was placed on an order of supervision on September 29, 2015. (Dkt.1 at Exh.2). Petitioner had been under an order of supervision, with no violations for over ten (10) years. While Respondents arrested Petitioner at her ICE reporting date on November 12, 2025, there is no mention of an official revocation of her order of supervision in the Declaration of Charles E. Scroggins. (Dkt.8 at 3).

Respondents claim that they are actively working to remove Petitioner to a third country but provide no evidence that removal is likely in the foreseeable future. In sum, Respondents have yet to identify any factual basis for Petitioner's arrest and detention. Nearly a month after arresting Petitioner, they are still in the process of determining whether she might be removable to a third country—a determination they were required to make before arbitrarily arresting her, separating her from her family, and keeping her behind bars. Petitioner's detention violates the law, and this Court should deny the Government's Response to the Writ of Habeas Corpus requesting dismissal and that the Writ of Habeas Corpus should issue.

I. Petitioner's Detention is Unlawful

Respondents posit that Petitioner is lawfully detained pursuant to 8 U.S.C. § 1231 and that her Habeas petition is essentially premature as it has been "cumulatively" less than six months since her *re-detention*. (Dkt. 8 at 3-4). Further, they cite to *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), for the presumption that post-removal-period detention of six months is reasonable to allow the United States to effectuate removal. Thus, they allege, the Petitioner's detainment since November 12, 2025, is well within that time frame as she has been "cumulatively" detained for "only 38 days." (Dkt. 8 at 4). However, they cite to no authority that Petitioner *must* be detained for six months before her detention is unreasonable or unlawful.

Here, the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A) expired on November 2, 2011, or over fourteen (14) years ago. Petitioner was placed on an Order of Supervision on September 29, 2015. (Dkt.1 at Exh.2). Respondents' contention that Petitioner's habeas claim is essentially premature because she has not spent 90-180 days in detention since she was re-detained misreads *Zadvydas*. As *Zadvydas* explained, after the 90-day removal period ends, the government "may" continue to detain a noncitizen or release them under supervision. 533 U.S. at 683. The Supreme Court's decision put limits on the option of continuing to detain—the detention could only *continue* for "a period reasonably necessary to bring about that alien's removal from the United States." *Id.* at 689. But the decision does not curtail the rights of those already previously subjected to the latter option, having been released under supervision. In fact, in cases of re-detention, numerous courts have held that such re-detention did not fall under *Zadvydas* nor did they give the government the benefit of a six-month presumption. *See Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025) (finding *Zadvydas* 6-month presumption not applicable where alien is "re-detained" after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501 (D. N.J. June 13, 2025) (finding 6-month presumption had long lapsed while petitioner was on supervised release and it is

respondent's burden to show removal is now likely in the reasonably foreseeable future).

The basic responsibility of the habeas court is to "ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. In so doing, the habeas court "should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the noncitizen's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699-700. Here, it is immediately evident that removal is not reasonably foreseeable. Respondents' own evidence is as good an indicator as one might hope for as it memorializes unsuccessful efforts to obtain third country travel documents over the past month. (Dkt. 8 at Exh.1 ¶ 4). By their own admission, they have "not received any determination regarding the third country removal request." *Id.* The Government assures the Court that they will keep sending requests. *Id.* There is simply no way that removal is reasonably foreseeable under the circumstances.

Moreover, there is no authority for the proposition that the Government may only work to remove Petitioner while she is detained. This may well be current DHS *practice,* thus explaining why Respondents arrested Petitioner *before* determining that removal to a third country was likely, but it is not the law. It was her re-detention that was premature, not the pending petition for habeas

relief. Her detention is unlawful because the removal period has long run and removal is not likely in the foreseeable future. "A remote possibility of an eventual removal is not analogous to a significant likelihood that removal will occur in the reasonably foreseeable future." *Kane v. Mukasey*, No. CV B-08-037, 2008 WL 11393137, at *5 (S.D. Tex. Aug. 21, 2008), *superseded by*, 2008 WL 11393094 (S.D. Tex. Sept. 12, 2008) (a new report and recommendation was entered denying the petition as moot because petitioner was deported prior to the order adopting), *R & R adopted*, 2008 WL 11393148 (S.D. Tex. Oct. 7, 2008). Respondents have made no showing that their continued detention of Petitioner is justified.

In short, over a month after detaining her, Respondents have no idea if or when a third country might agree to accept Petitioner; they don't have any specific reason to believe they will be able to remove her, but they haven't given up hope that they might one day be able to. Notably, they have provided no documents to the Court, absent the statements in the declaration by Charles E Scroggins attached to their motion, regarding any of their efforts to effectuate removal. This does not suffice to meet the government's burden to "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701.

II. Respondents Deprived Petitioner of Due Process

Respondents do not point to any facts and have not submitted any evidence of or the reasons for the revocation of Petitioner's order of supervision. However, the regulations provide specific factors to be considered when revoking an order of supervision and there is no evidence that those factors were considered prior to purportedly revoking Petitioner's Order of Supervision.

A determination of re-detainment focuses on the following factors: 1) history of the noncitizen's efforts to comply with removal order; 2) history of the Service's efforts to remove noncitizens to the country in question; 3) ongoing nature of the Service's efforts to remove this noncitizen and the noncitizen's assistance; 4) reasonably foreseeable results of those efforts; and 5) the views of the Department of State regarding the prospects for removal of noncitizens to the country in question. 8 C.F.R. § 241.13(f). Here, factors 2 and 5 cannot possibly have been considered as no allowable country of removal was even identified at the time of re-detention. Factors 1, 3, and 4 clearly weigh in favor of Petitioner as she has always been in compliance with all directives of DHS, there is no indication at all that she has ever been uncooperative. Additionally, the prospects for the timeliness of removal must be reasonable under the circumstances and it is clear that the prospects here are quite dim. *Id.* DHS did not follow their own regulations in making the purported revocation decision.

The regulations also provide that upon revocation of an order of supervision, the noncitizen is afforded an "initial informal interview promptly after his or her return to Service custody to afford the noncitizen an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(l). Thereafter, a records review is done, and an interview is scheduled "within approximately three months after release is revoked." *Id.* Petitioner has never been served with a notice of termination nor was she afforded the informal interview required by law. The failure to provide Petitioner with even the meager procedural protections provided by regulation is further evidence that Respondents violated the law in purportedly revoking the order of supervision and deprived Petitioner of due process.

Under the *Accardi* doctrine, "when an agency fails to follow its own procedures or regulations, that agency's actions are generally invalid." *United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260, 268 (1954). The Fifth Circuit has likewise recognized that an agency's violation of its regulations may support a procedural due process claim. *Ayala Chapa v. Bondi*, 132 F.4th 796, 799 (5th Cir. 2025) (citing *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). Here, Respondents violated regulations that were clearly put in place to protect the due process rights of individuals like Petitioner, and this violation prejudiced Petitioner as set forth herein. The *ultra vires* re-arrest of Petitioner violated her due process rights and must be set aside under *Accardi.*

Several federal district courts have held that where ICE revokes an order of supervision without following the procedures set forth in these regulations, such revocation violates due process and the post-removal-period statute. *See Ceesay v. Kurzdorfer,* 2025 WL 1284720, at *20-*21 (W.D.N.Y. May 2, 2025); *Rombot v. Souza,* 296 F. Supp. 3d 383, 388 (D. Mass. 2017). In *Ceesay,* the court explained, "This case raises the question of whether a noncitizen subject to a final order of removal and released on an order of supervision is entitled to due process when the government decides—in its discretion—to revoke that release. The Court answers that question simply and forcefully: Yes." 2025 WL 1284720, at * 1. This Court should find similarly that Petitioner was deprived of due process and her arrest and re-detention are unlawful.

III. Jurisdiction is Clear

Respondents argue that this Court does not have jurisdiction to hear Petitioner's claims because she seeks to enjoin the execution of her removal order. (Dkt. 8 at 5-6). This argument fails to address clear precedent that negates the Government's contentions. The United States Supreme Court has specifically held that 28 U.S.C. § 2241 confers jurisdiction to challenge detention that is without statutory authority, as well as constitutional challenges to post-removal-period detention. *Zadvydas v. Davis,* 533 U.S. 678, 687- 88 (2001); *see also Virani v. Huron,* No. SA-19-CV-00499-ESC, 2020 WL 1333172, at *1

(W.D. Tex. Mar. 23, 2020) ("Federal courts have jurisdiction, however, to adjudicate claims challenging the constitutionality of an alien's continued detention.") (citing *Gul v. Rozos*, 163 F. App'x 317, 2006 WL 140540, at *1 (5th Cir. 2006)).

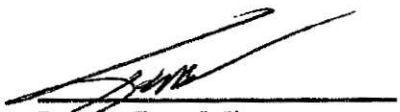
Petitioner's challenge as to the unreasonableness of her current detention as well as the due process violations created by the Respondents failing to follow the law are both clearly within this Court's jurisdiction. Petitioner is not challenging her removal order, which is already stayed by virtue of her being granted withholding of removal, or the specific discretionary decision which was apparently made to revoke her order of supervision—a decision she has never received notice of or an opportunity to challenge—but rather the due process violations committed in revoking the order and the resulting unlawful detention.

IV. Conclusion

Based on the foregoing, Petitioner asks this Court to deny the Respondents' Response to the Writ of Habeas Corpus and issue an order for her release from detention or, alternatively, schedule a hearing on this matter.

Respectfully submitted,

Date: December 10, 2025



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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing RESPONSE IN OPPOSITION TO MOTION FOR DISMISSAL with the Court and on Defendants via the Court's electronic filing system and via electronic mail on December 10, 2025.

Imran Beg Mirza
Attorney for Petitioner