

BACKGROUND

Because Respondents could not obtain the complete A file within the deadline to file this response, Respondents state the following factual background, when not supported by Exhibits, based on information² and belief.

Petitioner entered the United States on or about September 9, 2025. **Gov't Ex. 1.** Petitioner was not then admitted or paroled after inspection by an immigration officer. *Id.* Petitioner was apprehended by immigration officials as she was arriving in the United States. On August 21, 2025, Petitioner was served with a notice to appear and charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien who is present in the United States without being admitted or paroled, and 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulation issued by the Attorney General under section 211(a) of the Act. *Id.*

On October 31, 2025, Petitioner was ordered removed to Honduras, pursuant to Section 208(a)(2)(A) of the Immigration and Nationality Act, based on the Asylum Cooperative Agreement (“ACA”) with Honduras. **Gov't Ex. 2** at 2. Petitioner reserved her right to appeal the decision of the Immigration Judge, and any appeal was due to the Board of Immigration Appeals (“BIA”) by December 1, 2025. *Id.* at 3. Petitioner did not file an appeal of the Immigration Judge’s decision. As such, Petitioner’s order of removal is final. 8 C.F.R. § 1241.1(c).

² The information gathered is from ICE sources. Copies of these documents are not attached because Respondents could not obtain the full A file in the deadline allowed for a response.

APPLICABLE LAW

In a petition for a writ of habeas corpus, the petitioner challenges the legality of the restraint or imprisonment. See 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. See, e.g., *Walker v. Johnston*, 312 U.S. 275, 286, 61 S.Ct. 574, 85 L.Ed. 830 (1941). As set forth in the INA, an alien must be held in custody after entry of a final removal order and during the 90-day removal period. 8 U.S.C. § 1231(a)(2). After this period, the INA nevertheless contemplates continued detention. *Id.* § 1231(a)(6). In *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001), the Supreme Court addressed “whether aliens that the Government finds itself unable to remove are to be condemned to an indefinite term of imprisonment within the United States.” *Id.* at 695. It held that post-removal detention is presumptively lawful up to six months, after which the detention may still be reasonable and lawful until “the alien provides good reason” to “determine that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

ARGUMENT

A. PETITIONER IS SUBJECT TO MANDATORY DETENTION.

Petitioner’s habeas Petition should be denied because Petitioner is subject to mandatory detention under 8 U.S.C. § 1231(a)(2). Petitioner’s order of removal became final on December 1, 2025, when she failed to appeal the Immigration Judge’s decision to the BIA. 8 C.F.R. § 1241.1(c). As of the date of this response, Petitioner has only been detained for 36 days since her order of removal became final. Because Petitioner is being held in detention within the 90-day removal period, Petitioner has failed to show that her confinement is unlawful. As such, the Court should enter summary judgment in favor of Respondents, finding that Petitioner is lawfully detained under 8 U.S.C. § 1231(a)(2).

B. Petitioner’s Due Process claim is unsupported.

Failing to show an unlawful detention under the statutory and *Zadvydas* frameworks, the Petition further fails to otherwise show any Due Process violation. Procedural due process protects an individual's right to be heard prior to deprivation of life, liberty or property. *See Matthews v. Eldridge*, 424 U.S. 319, 332-333 (1976). In the instant case, Petitioner's detention is within the lawful removal period. *See* 8 U.S.C. § 1231(a)(2). There is no showing that procedural due process rights have been violated. *See* Dkt. No. 1 at 5 (alleging that ICE violated her due process rights before refusing to accept a Form I-246, Stay of Removal). Even assuming this factual contention is true, Petitioner has not shown that ERO officers have a duty to accept a Form I-246, or that this would have any legal effect. Had Petitioner filed a timely appeal, her removal would be stayed during the BIA's adjudication of the appeal. *See* 8 C.F.R. § 1003.6(a). However, this was not done. Further, the threshold question in assessing substantive due process is "whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n. 8 (1998). The Petition does not suggest that any immigration officer involved in this case acted in such a manner that could be characterized as egregious or that would shock the conscience.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court deny Petitioner's request for habeas relief and grant the instant motion. The Court should enter judgment as a matter of law finding that Petitioner is lawfully subject to mandatory detention pursuant to 8 U.S.C. § 1231(a)(2).

Dated: January 7, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 7, 2026, the foregoing was filed and served through the Court's CM/ECF system.

s/ Alexander McDonough
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