United States District Court
Western District of Texas
El Paso Division

Thelma Elizabeth Sierra Poz, Petitioner, v. Kristi Noem, Secretary U.S. Department of Homeland Security, *et al*, Respondents.	No. 3:26-CV-00029-LS

Federal[1] Respondents' Response to Petition

Federal Respondents provide this response to Petitioner's petition or in the alternative complaint for injunctive relief and declaratory judgment. ECF No. 1. The petition should be denied.

Petitioner generally alleges she was wrongfully removed and seeks this Court via a § 2241 habeas petition to order ICE to facilitate her return. *See* ECF No. 1. Importantly, the Agency actions Petitioner alleges were wrongful occurred outside the Western District of Texas by parties located outside this District. Petitioner cannot extend the writ of habeas corpus to order Respondents to return Petitioner because she does not challenge the *custody* or *detention* of Petitioner. Her claims are not cognizable under the plain language of 28 U.S.C. § 2241 and this petition should be denied.

I. Relevant Facts

Petitioner alleges she was living in Hyattsville, Maryland when she was detained in May 2025. *See* ECF No. 1 at 2, 5. She was detained in ICE custody at the South Louisiana Processing Center in Basile, Louisiana starting May 29, 2026, when she filed a motion to reopen her *in*

[1] The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action.

absentia removal order with the El Paso immigration court on May 30, 2025. *Id* at 5–6. On May 31, 2025, Petitioner alleges she was wrongfully removed by the ICE New Orleans Field Office. *See id* at 6. Thereafter, Petitioner's motion to reopen removal proceedings were granted and her removal proceedings are pending before the El Paso immigration court. *See* Automated Case Information System (last accessed Feb. 2, 2026).

II. Argument

First, this petition should be denied because Petitioner is not in custody or detained by Respondents located within the Western District of Texas. It is axiomatic that, to state a cognizable claim for relief under 28 U.S.C. § 2241, a petitioner "must challenge the 'fact or duration' of their confinement and seek relief in the form of immediate release." *Seth v. McDonough*, 461 F. Supp. 3d 242, 256 (D. Md. 2020) (quoting *Vazquez Barerra v. Wolf*, 455 F. Supp. 3d 330, 336–38 (S.D. Tex. 2020); see also, e.g., *Rowsey v. Warden, FCI Cumberland*, No. BAH-24-2989, 2025 WL 1797935, at *3 (D. Md. June 30, 2025). The habeas statute straightforwardly provides that the proper respondent to a habeas petition is "the person who has custody over [the petitioner]." *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004); 28 U.S.C. § 2242, 2243. Longstanding practice confirms that in habeas challenges the default rule is that the proper respondent is the warden of the facility where the prisoner is held, not the Attorney General or some other remote supervisory official. *Id* at 435.

Even if physical custody is not dispositive of the analysis, Petitioner fails to articulate how Respondents in the Western District arrested, detained or allegedly wrongfully removed Petitioner. *See Jones v. Conningham*, 371 U.S. 236, 239 (1963). Furthermore, Petitioner fails to sufficiently establish how Respondents in the Western District of Texas exercise "legal reality of control" over Petitioner. *See Padilla, supra* at 439 (articulating the identification of the party exercising legal

control only comes into play when there is no immediate physical custodian with respect to the challenged 'custody'); *see* ECF No. 1 at 3 (listing Melissa Harper, Field Office Director for the ICE *New Orleans, Louisiana* office as Petitioner's constructive custodian) (emphasis added). Petitioner alleges venue is proper in this District because substantial actions giving rise to her claim occurred in the Western District, but this is insufficient to establish that Respondents in the Western District exercised legal control over Petitioner. For these reasons, the petition should be denied.

Additionally, habeas relief in the immigration context is narrowed in the Fifth Circuit and supports Respondents position Petitioner cannot extend habeas to obtain the relief she seeks. *See Bacilio-Sabastian v. Barr*, 980 F.3d 480 (2020) (citing *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020)) ("the Supreme Court has taken a narrow view of habeas relief in the immigration context, which supports [the Fifth Circuit's] reluctance to extend habeas relief to aliens who are released from detention.").

Finally, Petitioner raised claims under the Administrative Procedure Act but failed to pay the filing fee. *See* ECF No. 1 at 9. *See Ndudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)). "When a filing contains both habeas and on-habeas claims, 'the district court should separate the claims and decide the [non-habeas] claims' separately from the habeas ones given the differences between the two types of claims. *Id* (collecting cases and further noting the "vast procedural differences between the two types of actions"). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3.

As the Petition should be denied, Petitioner's request for fees under the Equal Access to Justice Act should similarly be denied. *See Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

III. Petitioner's Request for a Preliminary Injunction and Temporary Restraining Order Should be Denied.

Petitioner did not file a separate Rule 65 motion for TRO, and these claims for injunctive relief should be denied on that basis alone. Respondents additionally oppose this requested relief as part of their general response in opposition to the petition and show herein that Petitioner is unlikely to succeed on the merits of his claims. As argued *supra*, Petitioner is not in Respondents' custody, constructive or physical, and Petitioner cannot extend the writ of habeas to obtain the relief Petitioner seeks.

A preliminary injunction is an "extraordinary and drastic remedy." *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As such, it is "not to be granted routinely, but only when the movant, by a clear showing, carries [the] burden of persuasion." *Black Fire Fighters Ass'n v. City of Dallas*, 905 F.2d 63, 65 (5th Cir. 1990) (quoting *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985)). Importantly, temporary restraining orders are ordinarily aimed at temporarily preserving the status quo. *Foreman v. Dallas Cty.*, 193 F.3d 314, 323 (5th Cir. 1999), *abrogated on other grounds by Davis v. Abbott*, 781 F.3d 207 (5th Cir. 2015). "The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest." *Canal Auth.*, 489 F.2d at 572. A preliminary injunction should be granted only if the movant has "clearly" carried the burden of persuasion on all four of these prerequisites. *Id.* at 573.

With respect to the balancing of the equities and public interest, it cannot be disputed that Petitioner was arrested and detained outside the Western District of Texas. The Court should therefore deny the requests for injunctive relief and dismiss this case in its entirety.

IV. Conclusion

Petitioner cannot extend habeas in the fashion she now seeks. This Court should deny the petition.

Respectfully submitted,

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