IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JELLDIS ODILI GOMEZ ZEPEDA, Petitioner, v. KRISTI NOEM, *et al.*, Respondents.	Civ. A. No. 1:26-cv-178-DLB

RESPONSE IN OPPOSITION TO PETITIONER'S SUPPLEMENTAL BRIEF

Respondents, by and through undersigned counsel, Kelly O. Hayes, United States Attorney for the District of Maryland, and Thomas F. Corcoran and Michael J. Wilson, Assistant United States Attorneys for said District, and pursuant to Your Honor's paperless Order of February 4, 2026 (ECF No. 12), hereby submit their Response in Opposition to Petitioner's Supplemental Brief (ECF No. 15 and hereinafter the "Brief") and state as follows:

I. FACTUAL BACKGROUND

The Court is familiar with the factual and procedural history of this case, and so Respondents provide only a truncated response to the facts set forth in the Brief to correct one critical inaccuracy. Petitioner is not subject to a "reinstated removal order." Br. at 2; *see also Nolasco Renderos v. Baker*, Civ. A. No. 25-cv-3087-ABA, ---- F. Supp. 3d ----, 2026 WL 40061, at *3 (D. Md. Jan. 7, 2026) ("If a noncitizen 'reenter[s] the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date.'" (quoting 8 U.S.C. § 1231(a)(5))). Rather, and critical here, Petitioner is subject to the original final order of removal entered on April 2, 2018. *See* ECF No. 1-3 at 2.

II. ARGUMENT

A. Cases Involving Habeas Petitions Brought Pursuant to 8 U.S.C. §§ 1225 and 1226 Are Inapposite to Petitioner's Request for Injunctive Relief.

Petitioner cites three cases in support of her contention that "courts may, and do, enjoin ICE from re-detaining a successful habeas petitioner except under specified conditions." Br. at 3–4. Each of the cited cases, however, involved a petitioner detained pending the outcome of removal proceedings and concerned the issue of whether mandatory detention under 8 U.S.C. § 1225 applied, or if a petitioner was entitled to a bond review under § 1226(a). *See Ortega Miranda v. Bondi*, Civ. No. 3:25cv769 (DJN), 2026 WL 287179, at *3 (E.D. Va. Feb. 3, 2025) ("Petitioner seeks a bond hearing under 8 U.S.C. § 1226, which provides immigration officials with discretion to conduct such hearings. Respondents insist that Petitioner is properly detained subject to the mandatory detention provisions of 8 U.S.C. § 1225, which do not grant detainees a bond hearing."); *Segundo G.U.O. v. Bondi*, Civ. No. 26-830 (DWF/LIB), 2026 WL 266562, at *2 (D. Minn. Feb. 2, 2026)[1] (releasing petitioner because he was not served with a warrant before being detained pursuant to § 1226(a) and enjoining ICE from "re-detaining Petitioner under this same statutory theory, absent materially changed circumstances"); *Said v. Noem*, No. 3:25-cv-938-MOC, 2025 WL 3657217, at *6 (W.D.N.C. Dec. 17, 2025) (similar).

But here, Petitioner is subject to a final order of removal (ECF No. 1-3) and was therefore detained—and is subject to future detention—pursuant to 8 U.S.C. § 1231, as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001). *Cf. Maldonado de Leon v. Baker*, Civ. A. No. 25-3084-TDC, 2025 WL 2968042, at *10 (D. Md. Oct. 21, 2025) ("Where Maldonado is not subject to a removal order, and his detention is not governed by [8 U.S.C.] § 1231, the

[1] This case is cited in the Brief at page 4 as *Uzhca Ortega v. Bondi*, No. 26-830 (WDF/LIB), 2026 U.S. Dist. _____ (D. Minn. Feb. 2, 2026).

presumptively reasonable six-month period of *Zadvydas* is inapplicable to Maldonado's Petition."). Petitioner implicitly recognizes this distinction in her Brief. For example, in discussing *Said*, Petitioner states that the injunctive relief ordered by the Court precluded ICE "from re-arresting the petitioner unless he committed a new violation of law, failed to attend a properly notice hearing, or became subject to detention pursuant to a final order of removal." Br. at 3 (emphasis added). Likewise, Petitioner describes the injunctive relief entered in *Ortega Miranda* as precluding ICE, "in the event of [petitioner's release on bond], from re-arresting the petitioner absent a new violation of law, failure to appear, or detention under a final order or removal." *Id.* at 4 (emphasis added).

In other words, because Petitioner is subject to a final order of removal, cases involving 8 U.S.C. §§ 1225–26 have no relevance to her arguments. The Supreme Court made this clear in *Jennings v. Rodriguez*, noting that it had previously "distinguished § 1226(c) from the statutory provision in *Zadvydas* [*i.e.*, 8 U.S.C. § 1231] by pointing out that detention under § 1226(c) has 'a definite termination point': the conclusion of removal proceedings," as opposed to "some arbitrary time limit devised by courts." 583 U.S. 281, 304 (2018) (quoting *Demore v. Kim*, 538 U.S. 510, 529 (2003)); *accord Maldonado*, 2025 WL 2968042, at *10. Accordingly, the cases cited by Petitioner have no bearing on the Court's jurisdiction to enjoin Respondents from re-detaining Petitioner in furtherance of effecting her final order of removal.

B. Petitioner's Claims Regarding a Reasonable Fear of Removal to Mexico Are Premature and Do Not Support Injunctive Relief.

As a threshold matter, Petitioner did not raise concerns in her Petition that she would be removed to Mexico without the opportunity to raise a reasonable fear of facing torture or persecution. *See generally* ECF No. 1. Nor were such concerns raised in her Motion for Temporary Restraining Order. *See generally* ECF No. 6. In the Brief however, Petitioner relies on the specter

of not being afforded these rights in the future as a basis for this Court to entangle itself in the process of Petitioner's removal to Mexico. This argument lacks merit for several reasons.

First, the cases and regulations Petitioner cites in the Brief (Br. at 4–5) apply when a non-citizen is being removed pursuant to a reinstated order of removal or for committing an aggravated felony. *See Portela-Hernandez v. Trump*, Civ. No. 25-cv-1633-BAH, 2026 WL 74042, at *6 (D. Md. Jan. 9, 2026) (noting that 8 C.F.R. §§ 208.31 and 1208.31 "apply to 'aliens ordered removed under [8 U.S.C. § 1228(b), which governs expedited removal of aliens convicted of committing aggravated felonies] and aliens whose removal is reinstated under [8 U.S.C. § 1231(a)(5)]." (alterations in original)); *Nolasco Renderos*, 2026 WL 40061, at *3–4 (similar). As noted, Petitioner is not subject to a reinstated order of removal and is not charged with an aggravated felony, and her case therefore does not fit "squarely within" this "line of cases" or the cited C.F.R. provisions. *See* Br. at 4.

To the contrary, there is no federal regulation that requires a "reasonable fear interview," or a near equivalent, in the context of a third country removal. The only authority regarding the process(es) to be afforded to non-citizens being removed to third countries is set forth in *D.V.D. v. U.S. Department of Homeland Security*, as follows:

> . . . prior to removing any alien to a third country, *i.e.*, any country not explicitly provided for on the alien's order of removal, Defendants must: (1) provide written notice to the alien—and the alien's immigration counsel, if any—of the third country to which the alien may be removed, in a language the alien can understand; (2) provide meaningful opportunity for the alien to raise a fear of return for eligibility for CAT protections; (3) move to reopen the proceedings if the alien demonstrates "reasonable fear"; and (4) if the alien is not found to have demonstrated "reasonable fear," provide meaningful opportunity, and a minimum of 15 days, for that alien to seek to move to reopen immigration proceedings to challenge the potential third-country removal.

778 F. Supp. 3d 355, 392–93 (D. Mass. 2025) (cleaned up). While Petitioner alleges that she requested a reasonable fear interview on November 14, 2025 by sending a request to USCIS (Br. at 2), the record does not establish that she notified ICE during either of her detentions as would appear to be contemplated by *D.V.D. See id.* And, even if she were to receive such a screening there is no indication that since the filing of her petition for writ of habeas corpus in November 2025 she has availed herself of the opportunity to reopen her Immigration Court proceedings, which is the ultimate result provided for by *D.V.D. See id.* Moreover, as Chief Judge Russell held in *Nolasco v. Noem*, claims regarding "removal to a third country without 'an individualized determination as to whether [a petitioner] will be persecuted or tortured' in that country and without IJ review of a negative fear finding violates due process" are "more appropriately addressed in" *D.V.D.*, "a class action suit that is currently on appeal in the Court of Appeals for the First Circuit." Civ. A. No. GLR-25-3847, 2026 WL 40061, at *6 (D. Md. Jan. 6, 2026).

Second, Petitioner does not cite a single case where a federal court has exercised jurisdiction to prohibit future detention of a non-citizen subject to a final order of removal. In fact, the cases involving reinstated orders of removal that Petitioner cites (*supra*) do not even demonstrate that the Court has jurisdiction to enjoin her future detention. For example, in *Nolasco Renderos*, Judge Abelson found that the petitioner was "entitled to the reasonable fear procedure outlined in 8 C.F.R. §§ 208.31 and 1208.31, but that she [had] not shown an entitlement to release from detention" under *Zadvydas* at that time. *Nolasco Renderos*, 2026 WL 40061, at *3. Judge Abelson thus recognized in *Nolasco Renderos* that the propriety of a non-citizen's detention during enforcement of a reinstated order of removal—as governed by *Zadvydas*—and the non-citizen's right to a reasonable fear interview prior to removal, are distinct legal issues. *See id.*

That is not to say, however, that the issues are not sometimes closely related. Judge Hurson recognized as much in *Portela-Hernandez*, holding that because petitioner was entitled to "immigration judge review of [a] negative fear finding," the petitioner's "removal [could not] be reasonably foreseeable" until petitioner was provided "procedures that [were] constitutionally due." 2026 WL 74042, at *14. However, the appropriate remedy in *Portela-Hernandez* was the petitioner's immediate release with the proviso that the "[t]he Government [was], of course, free to pursue [petitioner's] removal to Mexico (or another third country) while he is released, but only after affording him constitutionally required due process." *Id.* at *14 n.14. But again, Petitioner is not subject to a reinstated order of removal.

Finally, even assuming it were available to Petitioner, injunctive relief is not necessary considering the testimony of ICE officials at the evidentiary hearing on February 4, 2026. One or both witnesses[2] testified that where a federal court has granted habeas relief to a non-citizen with a final order of removal, ICE attempts to work with the non-citizen to secure his/her voluntary departure from the country. The witness(es) confirmed that ICE will proceed in this fashion moving forward. Further, following the evidentiary hearing, Respondents proposed language for inclusion in the Court's Order—consistent with the testimony of Respondents' witnesses regarding how habeas cases and Court Orders are tracked in the ENFORCE Alien Removal Module ("EARM") system—to create a safeguard against future detention of Petitioner absent a change in circumstances.

[2] Respondents do not yet have a transcript of the hearing and are summarizing the testimony based on undersigned counsel's notes and recollections of the hearing testimony.

III. CONCLUSION

For the foregoing reasons, the injunctive relief sought by Petitioner is inappropriate and Petitioner's request for same should be denied.

Dated: February 13, 2026

Respectfully submitted,

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By: */s/ Michael J. Wilson*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 13, 2026, I filed and served the foregoing and any supporting exhibits via CM/ECF.

/s/
Michael J. Wilson