

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 26-CV-21018-MOORE**

**ALEJANDRA SALAZAR-ARIAS,**

**Petitioner,**

**v.**

**FIELD OFFICE DIRECTOR, Miami Field  
Office, U.S. Immigration and Customs  
Enforcement,**

**Respondent.**

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**RESPONDENTS' RETURN TO EMERGENCY VERIFIED PETITION  
FOR WRIT OF HABEAS CORPUS**

Field Office Director, Miami Field Office, U.S. Immigration and Customs Enforcement (“Respondent”) through the undersigned counsel, maintains that Alejandra Salazar-Arias’s (“Petitioner”) Emergency Verified Petition for Writ of Habeas Corpus (“Petition”) should be denied because Petitioner is not in post-removal detention under 8 U.S.C. § 1231 but instead in removal proceedings, where she is eligible for bond, under 8 U.S.C. § 1226a. Further, any attacks on Respondent’s decision to commence removal proceedings is barred under 8 U.S.C. § 1252(g).

**I. BACKGROUND**

Petitioner is a Colombian national that overstayed her B2 tourist visa. *See* Exhibit A, Notice to Appear (“NTA”), at 1.

On September 7, 2004, the immigration judge issued an order granting Petitioner’s application for withholding of removal under 8 U.S.C. § 1231(b)(3), which precludes removal if that individual’s “life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.” Section

1231(b)(3). *See* Exhibit 1-1 at 7. Concurrently, the Immigration Judge terminated proceedings without issuing an order of removal. (*Id.*, ECF No. 1 at ¶¶ 32-33).

On January 29, 2026, Immigration and Customs Enforcement (“ICE”) detained her. *See* ECF No. 1 at ¶ 4.

On February 19, 2026, the immigration judge conducted a bond hearing and granted Petitioner bond in the amount of \$10,000. *See* Exhibit B, February IJ Order, at 1. The U.S. Department of Homeland Security (“DHS”) reserved the right to appeal this order. (*Id.* at 2).

On February 20, 2026, a Notice to Appear (“NTA”) was filed commencing removal proceedings and charging Petitioner with removability under 8 U.S.C. § 1227(a)(1)(B). *See* Exhibit A.

On March 2, 2026, Petitioner filed a motion to terminate removal proceedings, arguing DHS improperly issued a new NTA because Petitioner was previously granted withholding of removal. *See* Exhibit C, Declaration Deportation Officer Beltre, at ¶ 13.

On March 3, 2026, Petitioner underwent a bond hearing. *See* Exhibit D, March IJ Order, at 1. At the March 3, 2026 hearing, DHS advised that Petitioner was eligible for bond as per the NTA filed on February 20, 2026. *See* Exhibit C at ¶ 14. Petitioner argued that the prior bond order should remain effective regardless of the issuance of the new NTA. (*Id.*). The Immigration Judge requested briefing and issued an order noting that Petitioner’s request for custody redetermination had been withdrawn for the “parties to brief issues on bond eligibility”. *See* Exhibit D at 1.

Another bond hearing is currently scheduled for March 10, 2026. *See* Exhibit C at ¶ 14. Petitioner remains detained. (*Id.* at ¶ 15).

## II. ARGUMENT

Petitioner raises three claims. First, her detention is not authorized by statute because she is not subject to an administrative final order of removal. (ECF No. 1 at ¶ 59). Second, that she is entitled to a “full reasonable fear and withholding-only proceeding process used in reinstatement of removal cases with regard to any third country of removal.” (*Id.* at ¶ 84). Third, there is no significant likelihood of removal in the reasonably foreseeable future. (*Id.* at ¶ 87).

Her claims fail because they are premised upon Petitioner being detained post-final order of removal under § 1231 (discussing the detention and removal of aliens ordered removed). This case’s procedural posture has changed since the filing of the Petition. Although Petitioner was originally detained under § 1231 under the belief that she was subject to an administrative final order of removal, Respondent now agrees with Petitioner that she is not subject to a final order of removal because the Immigration Judge never issued one during her 2004 removal proceeding. The Immigration Judge, instead, granted withholding of removal and terminated proceedings. Since Petitioner is not subject to an order of removal, Respondent initiated removal proceedings via an NTA. She is now detained under § 1226a (“On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.”).

Petitioner being granted withholding of removal without a removal order is a scenario that was addressed by the Board of Immigration Appeals (“BIA”) in the seminal case of *Matter of I-S- & C-S-*, 24 I. & N. Dec. 432, 433-34 (B.I.A. 2008).

Similar Petitioner’s case, in *Matter of I-S- & C-S-*, the Immigration Judge granted withholding of removal but did not issue a removal order. The BIA found:

Although entering an order of removal prior to granting withholding may appear to be a technicality, it is not an insignificant one. It is axiomatic that in order to withhold removal there must first be an order of removal that can be withheld.... We find that the proceedings in this case are *unresolved and incomplete* because the Immigration Judge found the respondents removable and granted their application for withholding of removal but failed to order them removed....We note in this regard that a grant of withholding of removal is not discretionary and does not afford the respondents any permanent right to remain in the United States.

*Matter of I-S- & C-S-*, 24 I&N at 433 (emphasis added).

Significantly, the BIA found the removal proceeding was “unresolved and incomplete” because a removal order was not issued. As in this case, Respondent issued an NTA commencing removal proceedings against Petitioner because her removal proceeding is also incomplete, and she is not subject to an administratively final order of removal.<sup>1</sup>

In light of the above, the claims alleged in the Petition should be denied as Petitioner is not post-removal detention under § 1231, since she is not subject to an administratively final order of removal.

Moreover, to the extent Petitioner challenges Respondent’s decision to issue a NTA commencing removal proceedings, that decision is unreviewable under § 1252(g).

In relevant part, § 1252(g) provides that

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence proceedings*, adjudicate cases, or execute removal orders against any alien under this chapter.

§ 1252(g) (emphasis added).

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<sup>1</sup> Consequently, the BIA remanded the case to the Immigration Judge requiring that an order of removal be entered. *Matter of I-S- & C-S-*, 24 I&N at 435. Unlike *Matter of I-S- & C-S-*, where removal proceedings were ongoing, Petitioner’s proceedings were terminated in 2004. *See* (ECF No. 1 at ¶¶ 32-33; ECF No. 1-1 at 7).

In *Reno v. American-Arab Anti-Discrimination Comm*, the Supreme Court found that § 1252(g) deprived a district court of jurisdiction over three discrete challenges: the “‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis omitted). When applying *Reno*, the Eleventh Circuit Court of Appeals has found that § 1252(g) strips the district court of a challenge to the commence of removal proceedings. *Wallace v. Sec’y, U.S. Dep’t of Homeland Sec.*, 616 F. App’x 958, 961 (11th Cir. 2015) (“federal courts lack jurisdiction to hear plaintiffs-aliens’ challenge to the Attorney General’s decision to decline to commence [deportation] proceedings”).

Accordingly, the Petition should be denied.

Respectfully submitted,

**JASON REDING-QUIÑONES**  
**UNITED STATES ATTORNEY**

By: **Natalie Diaz**  
NATALIE DIAZ  
ASSISTANT U.S. ATTORNEY  
Florida Bar No. 85834  
E-mail: [Natalie.Diaz@usdoj.gov](mailto:Natalie.Diaz@usdoj.gov)  
99 N.E. 4th Street, Suite 300  
Miami, Florida 33132  
Telephone: (305) 961-9306