

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Elizabeth Garcia Fernandez,

Petitioner,

v.

Karnes County Immigration
Processing Center, *et al.*

Respondents.

Civil Action No. 5:26-cv-00912-JKP

RESPONSE TO PETITION

Federal Respondents note that **Petitioner appears to be subject to mandatory detention under 8 U.S.C. § 1231 because she has a final order of removal.** Because Petitioner is subject to mandatory detention under § 1231, the Court should deny the petition.

INTRODUCTION

This is not the common habeas action in which a petitioner is challenging his detention under Section 1225(b) and seeking a bond hearing under Section 1226(a) or release. Rather, this is a habeas action in which Petitioner, Ms. Garcia Fernandez, an immigration detainee of the United States Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), who is subject to a final order of removal and is being detained pending her removal, seeks release from custody. She has been detained for less than 90 days from the date that her removal order became administratively final, and is therefore subject to mandatory detention under 8 U.S.C. § 1231(a)(2)(A). Thus, this Court should deny the habeas petition because the duration of Petitioner's detention pursuant to § 1231 remains reasonable and her request for release is premature.

BACKGROUND

Petitioner, a citizen of Colombia, entered the United States without inspection, admission, or parole in November 2022. Ex. A, I-213. She was detained by immigration but was eventually released with instructions to report to ICE-ERO. *Id.* However, Petitioner failed to report. *Id.* When Petitioner reported to ICE in October 2025, she was taken into custody. *Id.* On December 3, 2025, an immigration judge denied Petitioner's application for asylum and ordered Petitioner removed. Ex. B, Removal Order. Petitioner reserved her right to appeal, and that appeal was due on January 2, 2026. *Id.* According to ICE's records, Petitioner did not file an appeal, and Petitioner does not claim to have filed an appeal in her petition.

PETITIONER IS SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1231

Petitioner has a final order of removal. *See* Ex. B. As a result, the "post-order" detention provisions of 8 U.S.C. § 1231 govern. ICE's detention authority stems from 8 U.S.C. § 1231, which provides for the detention and removal of aliens with final orders of removal. Those provisions require a 90-day mandatory removal period during which immigration officials must detain the alien while attempting to secure his or her removal. *See* 8 U.S.C. §§ 1231(a)(1), (2); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001) ("After entry of a final removal order and during the 90-day removal period quo . . . aliens must be held in custody." (internal citation omitted)). The 90-day removal period begins on the latest of three dates: the date (1) the order becomes "administratively final," (2) a court issues a final order in a stay of removal, or (3) the alien is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B).

Petitioner's removal order became "administratively final" on January 2, 2026, the deadline for Petitioner to appeal from the immigration judge's removal order. *Johnson v. Guzman Chavez*, 594 U.S. 523, 534–35 (2021) (stating that an order is "administratively final" "once the

BIA has reviewed the order (or the time for seeking the BIA's review has expired)."). 90 days after January 2, 2026 is April 2, 2026. Thus, Petitioner is still within the 90-day mandatory detention period and may not be released . 8 U.S.C. § 1231(a)(2)(A).

Even if Petitioner is detained beyond the removal period, ICE can either release Petitioner pursuant to an Order of Supervision as directed by § 1231(a)(3) or may continue detention under § 1231(a)(6). ICE may continue detention beyond the removal period for three categories of individuals: (i) those like Petitioner who are inadmissible to the United States pursuant to 8 U.S.C. § 1182; (ii) those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or (iii) those whom immigration authorities have determined to be a risk to the community or "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6)(A). Indeed, an alien may be held in confinement until there is "no significant likelihood of removal in a reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 680 (2001). Petitioner has not shown that her removal is not significantly likely in the reasonably foreseeable future.

**THE COURT LACKS JURISDICTION TO REVIEW PETITIONER'S CHALLENGE
TO HER POST-ORDER DETENTION**

This Court lacks jurisdiction to grant the Petition and release Petitioner when ICE is authorized to detain her pending her removal to a third country. Section 1252(g) provides that "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." 8 U.S.C. §1252(g). That bar applies "notwithstanding any other provision of law, including [the habeas statute.]" *Id.* This provision strips jurisdiction to adjudicate Petitioner's claims challenging her detention pending her removal.

Here, Petitioner is seeking her release while ICE attempts to remove her. Those challenges fall squarely within Section 1252(g)'s bar on judicial review of "any cause or claim ... arising from the decision or action ... execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). A contrary holding as to Petitioner's statutory and constitutional claims would enable aliens to freely circumvent § 1252(g)'s jurisdictional bar. Section 1252(g)'s prohibition applies regardless of whether noncitizen styles his challenge as being a violation of due process, equal protection, the Administrative Procedure Act, or some other federal law. *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (recognizing that aliens may not "make an end-run around the terms of [§1252(g)] by simply characterizing their complaint"). "If a plaintiff is, at bottom, challenging [an action covered by §1252(g)], then regardless of how she technically pleads her claim, it's a challenge to [such action]. And district courts lack jurisdiction over such claims." *Duarte v. Mayorkas*, 27 F.4th 1044, 1063 (5th Cir. 2022) (Willett, J, concurring in part and dissenting in part). That is the case here. The Court therefore must deny the Petition.

STAYS AND ORDERS NOT TO TRANSFER

The Court in this case entered an order staying removal. That order should be vacated. The Fifth Circuit recently stated in an unpublished decision that district courts lack jurisdiction to enter stays of removal. *Imran v. Harper*, No. 25-30370, 2026 WL 93131 (5th Cir. 2026).

Dated: March 25, 2026

Respectfully submitted,

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Certificate of Service

I hereby certify that on March 25, 2026, I sent this document to the following by
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