IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

INGRIS CORNEJO CASTRO, Petitioner, v. KRISTI NOEM, et al., Respondents.	Civil Action No. 8:26-cv-00985-PX

RESPONDENT'S ANSWER/MOTION TO DISMISS AMENDED PETITION FOR WRIT OF HABEAS AND RESPONSE IN OPPOSITION FOR TEMPORARY RESTRAINING ORDER

Respondents, by and through undersigned counsel, Kelley O. Hayes, United States Attorney for the District of Maryland, and Ivory Macklin, Special Assistant United States Attorney for that district, move to dismiss the Amended Petition for Writ of Habeas Corpus, ECF 9, and oppose the Motion for a Temporary Restraining Order attorney, ECF 10, and states as follows:

I. INTRODUCTION

Petitioner is a citizen and native of Honduras who has previously been removed to Honduras pursuant to an order of removal, *See* Exhibit 1, and then re-entered the United States illegally on June 13, 2018. ECF 9 at ¶ 1, 12. She was rearrested at the border and Petitioner was issued an order reinstating her final order of removal. *Id.* However, she was released on an Order of Supervision. *Id.* On March 6, 2026, Petitioner was issued a Warrant of Removal/Deportation, Notice of Revocation of Release, and Notice of Intent/Decision to Reinstate Prior Order. Exhibits 2-4. Petitioner's detention is authorized by 8 U.S.C. § 1231(a)(6). Petitioner has an I-589 Application for Asylum pending with the United States Customs and Immigration Service

(USCIS). ECF 9 ¶ 12. However, because it is not before EOIR, it does not preclude the Reinstatement of an Order of removal. Also, Petitioner indicates that she may be eligible for a U Visa Petition, but has not even filed for the petition, let alone have been granted one. Having nothing to show pursuit or eligibility, the issue of U-Visa possibility is too far in the future and too speculative to be considered in this Habeas action.

Petitioner claims a due a Fifth Amendment's Due Process Clause, Fourth Amendment warrantless seizure claim, violation of a writ of mandamus, and violation of the Administrative Procedures Act (APA), resulting in the conclusion that she must be released. ECF 1, ¶¶ 23, 35, 38, and 40. Petitioner's detention, however, remains fully authorized by statute and the Constitution according to precedential decisions from the Supreme Court. She cannot establish a likelihood of success on the merits because her detention is lawful pursuant to 8 U.S.C. § 1231(a)(6) and *Castaneda v. Perry*, 95 F.4th 750 (4th Cir. 2024).

The Supreme Court, in *Johnson v. Arteaga-Martinez*, addressed "whether the text of § 1231(a)(6) requires the Government to offer detained noncitizens bond hearings after six months of detention in which the Government bears the burden of proving by clear and convincing evidence that a noncitizen poses a flight risk or a danger to the community." 596 U.S. 573, 574 (2022). The Court answered that question definitively, holding that Section 1231(a)(6)'s plain text, which "says nothing about bond hearings before immigration judges or burdens of proof" … "directs that we answer this question in the negative." *Id.* at 581. As such, Petitioner's claim that she is statutorily entitled to release or a bond hearing is foreclosed by statute and Supreme Court precedent.

As to her Due Process claim of entitlement to release or a bond hearing, the Supreme Court also set forth a framework for analyzing the Constitutionality of post-final order detention

under Section 1231(a)(6) in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In *Zadvydas*, the Court held that post-final order detention under Section 1231 is presumptively reasonable for six months. *Id.* at 701. An individual seeking release after six-months of post-final order detention can file a habeas petition and must first "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Id.* Only after meeting this initial burden is the government required to "respond with evidence sufficient to rebut that showing." *Id.*

The Fourth Circuit fleshed out the application of this standard in *Castaneda v. Perry*, 95 F.4th 750 (4th Cir. 2024); in that case, the petitioner challenged her continued post-removal-period detention during the pendency of withholding-only proceedings, which spanned several years. *Id.* at 755-56. She argued that the "uncertain future" of the withholding-only proceedings combined "with the amount of time she ha[d] already been detained" demonstrated that "her removal from the United States [wa]s not significantly likely to occur in the reasonably foreseeable future, thus entitling her to immediate release under *Zadvydas*." *Id.* at 756. The Fourth Circuit disagreed and observed that the proceedings in *Casteneda* were finite and would end when either withholding was granted, in which case the government could remove the detainee to another country, or if withholding was denied and the alien was removed to their home country. "In either case...[the] proceedings *end*... then so too must the detention *pending* the resolution of those proceedings." *Id.* Given the finite nature of the proceedings, the Fourth Circuit concluded that ongoing proceedings related to removal "even lengthy ones, simply do not present the same risk of 'indefinite and potentially permanent' detention at issue in *Zadvydas*" and therefore, "simply do not, standing alone, cast doubt on the foreseeability of an alien's removal in the future. *Id.* at 757–58 (emphases in original).

Under this rubric, ICE's current detention of the Petitioner is lawful under 8 U.S.C. § 1231(a)(6) given that: (1) Petitioner has a final order of removal against her as a reinstated order of removal, Exhibit 1; and (2) and she is being detained for purposes of effecting her removal pursuant to that order of removal. Exhibit 2, 4.

STAUTORY AND REGULATORY FRAMEWORK

A. 8 U.S.C. § 1231 and *Zadvydas*

An individual who has been removed from the United States pursuant to a final order of removal, and who thereafter re-enters the United States illegally, is subject to a statutory provision that allows immigration authorities to reinstate the original removal order and proceed with removal again. 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8; *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

Removal, however, cannot immediately proceed if the individual expresses a fear of return to her home country. *Id.* at 530-531; 8 C.F.R. § 241.8(e). And, if her fear is deemed reasonable by an asylum official, the individual is entitled to file an application for withholding of removal and protection under the Convention against Torture in Immigration Court. 8 C.F.R. § 208.31. Such an individual would be in withholding-only proceedings before an Immigration Judge (IJ) and can appeal the IJ's decision to the Board of Immigration Appeals (BIA) if her protection application is denied. *Id.* § 208.31(e). Even if an IJ grants an individual protection from removal, such individual nonetheless remains subject to a final order of removal and ICE can seek to execute the removal order to a third country. 8 U.S.C. § 1231(b); *Guzman Chavez*, 594 U.S. at 531-32.

The Supreme Court, in *Guzman Chavez*, held that the statutory authority to detain and remove an individual with a reinstated final order of removal is found within 8 U.S.C. § 1231. *Id.*

at 533. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days—this is known as the "removal period." During the removal period, § 1231(a)(2) commands that ICE "shall detain" the final order alien.

If, however, the removal period has expired, ICE can either release an individual pursuant to an Order of Supervision as directed by Section 1231(a)(3) or may continue detention under Section 1231(a)(6). Per Section 1231(a)(6), ICE may continue detention beyond the removal period for three categories of individuals:

- Those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182;
- Those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or
- Those whom immigration authorities have determined to be a risk to the community or "unlikely to comply with the order of removal."

See Guzman Chavez, 594 U.S. at 528-29.

In *Zadvydas v. Davis*, the Supreme Court held that the government cannot detain an alien "indefinitely" beyond the 90-day removal period. 533 U.S. at 682. The Supreme Court "read an implicit limitation into the statute ... in light of the Constitution's demands" and held that Section 1231(a)(6), "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States." *Id.* at 689. The *Zadvydas* Court held that post-removal detention for six months is "presumptively reasonable." *Id.* at 701. Beyond six months, the Supreme Court explained, an individual could file a habeas petition seeking release. *Id.* at 700-01. In such petition, the individual must show there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Id.* at 701. If the individual does so, the burden would then shift to the government to produce "evidence sufficient to rebut that showing." *Id.*

B. Temporary Restraining Order

A temporary restraining order is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). To obtain a temporary restraining order, the movant must show that (1) "she is likely to succeed on the merits"[1]; (2) "she is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in her favor"; and (4) "an injunction is in the public interest." *Id.* at 20. The latter two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner filed this Amended Petition and Motion for Temporary Restraining Order and Memorandum in Support thereof on March 12, 2026. ECF 9 and 10. Petitioner explains that she is a Honduran citizen who was ordered removed from the United States on September 11, 2015, pursuant to a final order of removal. ECF 9 ¶ 12. Petitioner admits that she illegally re-entered the United States on July 13, 2018. *Id.* Petitioner was arrested at the border the order was reinstated. *Id.* Petitioner was then released on her own recognizance and not placed on Alternatives to detention until December 7, 2025. *See* Exhibit 3. ICE conducted the regulatory required Informal Interview for Petitioner to maintain Petitioner in custody. Exhibit 5.

Petitioner asserts that her detention violates the Fifth Amendment of the United States Constitution, ECF 9 ¶23, the Fourth Amended and 8U.S.C. § 1357(a)(2), ECF 9 ¶ 36. Petitioner also ICE's detention violates 28 U.S.C. § 1361, *Id.* at ¶38, because of alleged abuse of discretion, and 5 U.S.C. § 706(2)(A) as arbitrary and capricious actions. Petitioner requests immediate release as the relief. ECF 9 at pg. 12 and ECF 10 at pg. 10.

[1] The Amended Petition should be dismissed for failure to state a claim under Rule 12(b)(6) for the same reasons Plaintiff is unlikely to succeed on the merits.

ARGUMENT

ICE's detention of Petitioner is authorized by statute and regulation and does not offend the Constitution—as such, this Court must deny the Petition.

A. Petitioner is Lawfully Detained Pursuant to 8 U.S.C. § 1231(a)(6)

Petitioner's detention is permissible pursuant to Section 1231(a)(6) and her claim that detention is unlawful is without merit as the Supreme Court clearly explained that this statute does not require a bond hearing or release to continue detention. *Arteaga-Martinez*, 596 U.S. at 580-81. Section 1231(a)(6) allows for continued detention beyond the removal period for the following categories of individuals:

- Those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182;
- Those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or
- Those whom immigration authorities have determined to be a risk to the community or "unlikely to comply with the order of removal".

Petitioner falls within the scope of Section 1231(a)(6) because she is inadmissible to the United States under at least two provisions of the INA. First, Section 1182(a)(6)(A)(i) applies to individuals, such as Petitioner, "present in the United States without being admitted or paroled." Second, Section 1182(a)(9)(C) renders individuals, such as Petitioner, who have been ordered removed from the United States, and who then re-enter without being admitted, inadmissible. Petitioner was also served with the Warrant of Removal/Deportation, Notice of Revocation of Release, Notice of Intent/Decision to Reinstate Prior Order, and given an Informal Interview. See Exhibits 2-5. As such, Petitioner is legally mistaken in her contention that her Fourth and Fifth amendment rights were violated based on lack of due process, and warrantless arrest.

As noted earlier, the Supreme Court, in *Johnson v. Arteaga-Martinez*, squarely held that § 1231(a)(6) allows for detention at ICE's discretion and does not contemplate bond hearings or

release for individuals covered by this provision. 596 U.S. at 580-81. The Supreme Court explained that Section 1231(a)(6)'s plain text "says nothing about bond hearings before immigration judges or burdens of proof" and therefore held no such statutory requirement to conduct bond hearings existed. *Id.* at 581. Another session of this Court recently analyzed a habeas claim from an individual, like Petitioner, whose removal order had been reinstated and was pursuing withholding-only proceedings and concluded that her "detention is authorized by § 1231(a)(6)" as such "finding comports with the text of the statute as well as with recent Supreme Court precedent." *Quezada-Martinez v. Moniz*, 722 F. Supp. 3d 7, 11 (D. Mass. 2024).

As such, Petitioner's claim that her detention violates Section 1231(a)(6) and that she should be ordered released or that a bond hearing must be conducted is foreclosed by the plain language of the statute and Supreme Court precedent.

B. Petitioner's Statutorily Authorized Detention is Constitutional.

Petitioner's argument that her detention violates the Fifth Amendment's Due Process Clause fails as she cannot establish a constitutional violation under the Supreme Court's *Zadvydas* framework through which a due process challenge to post-final order detention must be analyzed. Per Supreme Court and Fourth Circuit precedent, Petitioner cannot demonstrate that her detention is unconstitutional as she does not face indefinite detention and will be released upon removal upon the conclusion of this habeas action.

Petitioner has also received the appropriate custody reviews required by regulation—reviews that courts within this District and across the country consistently deem appropriate to protect constitutional interests. As such, Petitioner's claim that the Fifth Amendment's Due Process Clause requires that she be immediate released fail and she is unlikely to win on the merits.

1. Petitioner's Detention Remains Constitutional as it Serves a Legitimate Purpose.

As recognized by the Supreme Court, "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). The flight risk of an alien, such as Petitioner, with a final order of removal and a history of prior removals and illegal re-entries is apparent as such individuals "who reentered the country illegally after removal have demonstrated a willingness to violate the terms of a removal order, and they therefore may be less likely to comply with the reinstated order." *Guzman Chavez*, 594 U.S. at 544. Petitioner's detention remains constitutional as it serves a legitimate purpose—to ensure her presence for removal upon the conclusion of her withholding-only proceedings.

The Supreme Court in *Zadvydas* acknowledged that a "statute permitting indefinite detention of an alien would raise a serious constitutional problem." 533 U.S. at 690. As such, the *Zadvydas* Court held that post-removal detention for six months is "presumptively reasonable." *Id.* at 701. Beyond six months, an alien must provide "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" before the burden shifts to the government to demonstrate removal is likely. *Id.* at 701.

As such, to set forth a Constitutional violation for Section 1231 detention, an individual must satisfy the *Zadvydas* test. The Supreme Court held, in effect, that an alien's right to substantive due process could be violated by prolonged detention even if the alien's right to procedural due process had been satisfied");*Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (Explaining that "*Zadvydas*, largely, if not entirely forecloses due process challenges to § 1231 detention apart from the framework it established."); *Martinez v. Larose*, 968 F.3d 555, 566 (6th Cir. 2020) (The Supreme Court "offered us a standard through which to judge indefinite-detention cases—the *Zadvydas* standard .... We see no cause to question the wisdom of that decision.");

Wang v. Ashcroft, 320 F.3d 130, 146 (2d Cir. 2003) (The *Zadvydas* "test articulates the outer bounds of the Government's ability to detain aliens ... without jeopardizing their due process rights.").

Here, it is undisputed that there is a final order of removal against Petitioner. However, Petitioner indicates because of her community ties, pending asylum application, and potential U-Visa that her detention is unconstitutional and that she should be released. However, petitioner does not at all say that she is detained under Section 1231 requiring her detention pursuant to effectuating the reinstated order of removal. Petitioner's claim that she has a pending application with USCIS does not stop her removal process. In fact, the proper process with a reinstated removal order is in 8 C.F.R. § 208.31, that if Petitioner claims fear, it is for stating fear is with a reasonable fear interview with an asylum officer at USCIS that would be end with either a positive decision allowing for withholding only proceedings adjudicated by an IJ, 8 C.F.R. § 208.31(e), or a negative finding in which Petitioner is either removed, or requests a review of the negative finding with an IJ 8 C.F.R. § 208.31(f) and (g). Petitioner has refused to speak without her attorney, *see* Exhibit 5., and not allowing the interview without her attorney who also filed this Petition and Motion. A reinstated order of removal precludes Petitioner from seeking asylum from the removal country and may only allow for Withholding of that removal as stated above. *See* 8 C.F.R § 241.8(e).

As for the Claim of a U-Visa eligibility, the only exceptions from reinstated orders of removal for those without any status are applicants for benefits under the Haitian Refugee Immigrant Fairness Act of 1998, or the Nicaraguan Adjustment and Central American Relief Act until either of those applications have been denied. 8 C.F.R § 241.8(d). A U-Visa application is not under either of those Acts, and even if it was, Petitioner is not currently an applicant. ECF 9 ¶

1, 12. U-visas are available only to aliens who are admissible to the United States or who have been granted a waiver of inadmissibility by the USCIS. 8 C.F.R. §§ 212.17(a), 214.1(a)(3)(f) (2012). Petitioner does not allege that she fits either category. Petitioner is unlikely to succeed on her first cause of action. Her Motion should be denied, and her Petition should be dismissed.

As such, Petitioner's claims that the decisions are arbitrary and capricious fail and she is unlikely to win on the merits.

2. The Due Process Clause does not Require Additional Procedural Requirements to Continue Petitioner's Detention.

Petitioner's claim that her detention violates the Fifth Amendment because ICE did not give notice of the revocation, or an opportunity to be heard is without merit. ECF 9 ¶30. Petitioner was provided the Revocation of Release that indicated she would be given an informal interview to respond to the reasons for the revocation including providing evidence. Exhibit 3 at pg. 2. She was then given the informal interview where she only stated that she did not want to answer the questions without her attorney. Exhibit 5.

Because Petitioner does allege that ICE violated due process by not providing process it actually did, her petition should be denied. Because she is unlikely to win on the merits, her Motion for Temporary Restraining Order should be denied.

C. Petitioner is Unlikely to Succeed on her APA Claims

Petitioner's "Fourth Cause of Action," which purports to arise under the APA, ECF No. 9, ¶¶ 43-46, is likewise unlikely to succeed because the APA only extends judicial review to final agency action for which "there is no other adequate remedy in court." 5 U.S.C. § 704. Claims that "necessarily imply the invalidity of [] confinement" fall "within the core of the writ of habeas corpus and thus must be brought in habeas." Trump v. J. G. G., 604 U.S. 670, 672 (2025) (internal citations omitted); see also id. at 674 ("given 5 U.S.C. § 704, which states that

claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here") (Kavanaugh, J. concurring); Garibay-Robledo v. Noem, 2026 WL 81679, at *10 (N.D. Tex. Jan. 9, 2026) ("Because [Petitioner] requests habeas relief as the remedy for her APA claim, she unwittingly admits that there is, in fact, an adequate remedy outside of the APA"). Petitioner is unlikely to succeed on her fourth claim, and the same should be dismissed.

D. The Remaining TRO Factors.

Respondents will provide additional briefing on the remaining TRO Factors upon request from the Court.

CONCLUSION

For the above reasons, Petitioner's assertion of unlawful detention in violation of statute, regulation, and the Constitution fails. As such, this Court should deny her request for immediate release in both the Petition for Habeas and Motion for Temporary Restraining Order.

Dated: March 23, 2026

Respectfully submitted,

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Counsel for Respondents

Number	Date & Description
1.	2015-08-15 Notice and Order of Expedited Removal
2.	2026-03-06 Warrant of Removal/Deportation
3.	2023-03-06 Notice of Revocation of Release
4.	2026-03-06 Notice of Intent/Decision to Reinstate Prior Order
5.	2026-03-06 Informal Interview

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of March, 2026, a copy of the foregoing Joint Status Report and Proposed Briefing Schedule was served electronically on all parties receiving service via CM/ECF in this case.

/s/ Ivory Macklin
Ivory L. Macklin
Special Assistant United States Attorney