

The Honorable David G. Estudillo

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LILIA ALVARADO,

Petitioner,

v.

JULIO HERNANDEZ, *et al.*,¹

Respondents.

Case No. 2:26-cv-01148-DGE

FEDERAL RESPONDENTS'²
RETURN MEMORANDUM

Noted for Consideration:
April 27, 2026

I. INTRODUCTION

This Court should deny Petitioner Lilia Alvarado's Petition for Writ of Habeas Corpus; Motion for Bond Hearing. *See* Dkt. 1 ("Pet."). Petitioner challenges her post-order detention at the Northwest ICE Processing Center ("NWIPC") while she awaits removal from the United States. She requests this Court to order a bond hearing where the Government bears the burden of proof. Pet., Request for Relief. No valid, legal authority requires Federal Respondents to provide Petitioner with a bond hearing while she is in post-order detention. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner pursuant to 8 U.S.C. § 1231(a)(6). Accordingly, Federal Respondents respectfully request that the Court deny the Petition.

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Julio Hernandez for Cammila Wamsley.

² Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Detention Authorities and Removal Procedures

The Immigration and Nationality Act (“INA”) governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general detention periods are generally referred to as “pre-order” (meaning before the entry of a final order of removal) and, relevant here, “post-order” (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

This includes an expedited process for noncitizens who reenter the United States without authorization after having already been removed. *See* 8 U.S.C. § 1231(a)(5) (reinstatement of removal orders).

If the Attorney General finds that an alien has reentered 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 and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

Id.; *see also* 8 C.F.R. §§ 241.8, 1241.8 (procedures for reinstating removal order).

A noncitizen may not seek most discretionary relief from the terms of a reinstated order, but if they express fear of persecution or torture in their country of removal, they are placed in reasonable fear screening proceedings. *Bartolome v. Sessions*, 904 F.3d 803, 808-09 (9th Cir. 2018) (describing the reasonable fear screening and referral process and concluding that Bartolome’s due process allegations lacked merit). The noncitizen is first referred to an asylum officer, who determines whether the noncitizen has a reasonable fear of persecution or torture.³

³ Reasonable Fear Screenings, U.S. Citizenship & Immigr. Servs., <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/reasonable-fear-screenings> (last visited Apr. 16, 2026) (“Those who are found to have a reasonable fear of persecution or torture are then given an opportunity to seek withholding of removal or deferral of removal before an Immigration Judge.”).

1 *Id.* at 808. “A noncitizen who receives an adverse determination from the asylum officer is
2 entitled to seek *de novo* review of that determination before an immigration judge, and an adverse
3 decision by the immigration judge is subject to an additional layer of review in the court of
4 appeals.” *Alvarado-Herrera v. Garland*, 993 F.3d 1187, 1197 (9th Cir. 2021) (citations omitted).
5 These procedures reduce the risk of erroneous denials of meritorious claims at the screening stage.
6 *Id.* A reinstated order of removal cannot be executed during the pendency of reasonable fear or
7 withholding-only proceedings. *See Padilla-Ramirez v. Bible*, 882 F.3d 826, 832 (9th Cir. 2017)
8 (citations omitted).

9 Detention during this process is pursuant to 8 U.S.C. § 1231(a)(6). *Id.* Section 1231(a)(6)
10 authorizes ICE to continue detention of noncitizens after the expiration of the 90-day removal
11 period if necessary to effectuate removal. Unlike Section 1231(a)(2), Section 1231(a)(6) does not
12 mandate detention and does not place any temporal limit on the length of detention under that
13 provision. 8 U.S.C. § 1231(a)(6).

14 Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the
15 Supreme Court has construed this provision to authorize detention only “for a period reasonably
16 necessary to bring about that [noncitizen’s] removal from the United States.” *Zadvydas v. Davis*,
17 533 U.S. 678, 689 (2001). The Supreme Court has identified six months as a presumptively
18 reasonable time to bring about a noncitizen’s removal. *Id.* at 701. The *Zadvydas* Court recognized
19 that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing
20 lawfulness of a noncitizen’s post-order detention. *Id.* (stating that “for detention to remain
21 reasonable, as the period of post-removal confinement grows, what counts as the ‘reasonably
22 foreseeable future’ conversely would have to shrink”). Thus, the Supreme Court implicitly
23 recognized that six months is the *earliest* point at which a noncitizen’s post-order detention could
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1 raise constitutional issues. *Id.* Beyond six months, continued detention is permissible so long as
2 there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* at 701.

3 **B. Petitioner Lilia Alvarado⁴**

4 This is Petitioner's second habeas litigation. In her first habeas action, this Court found
5 that she was detained under a reinstated removal order pursuant to 8 U.S.C. § 1231(a)(5), granted
6 her petition, and ordered the Government to provide her with a reasonable fear determination.
7 *Lilia Alvarado v. Wamsley*, No. 2:25-cv-02374-DGE, Dkt. No. 27, Order (W.D. Wash. Feb. 18,
8 2026). The Government complied with the Order. *Id.* Dkt. No. 29. Petitioner currently has a
9 Petition for Review pending with the Ninth Circuit with a temporary stay of removal in place.
10 *Alvarado v. Blanche*, No. 26-1256 (9th Cir.).

11 ICE has detained Petitioner in immigration detention since September 5, 2025. Order, at
12 3. An immigration judge denied Petitioner's request for a bond hearing on March 26, 2026, citing
13 to 8 C.F.R. § 1003.19(e). Dkt. No. 1-2, Pet., Ex. 2.

14 **III. LEGAL STANDARD**

15 "The district courts of the United States ... are courts of limited jurisdiction. They possess
16 only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopach Servs.,*
17 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been
18 tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland*
19 *Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district
20 courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the
21 burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws,
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24 ⁴ Federal Respondents respectfully refer this Court to its Order in Petitioner's first habeas case for further background.
Lilia Alvarado v. Wamsley, No. 2:25-cv-02374-DGE, Dkt. No. 27, Order (W.D. Wash. Feb. 18, 2026).

1 or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943,
2 969 n.16 (9th Cir. 2004).

3 IV. ARGUMENT

4 Petitioner is not entitled to a post-order bond hearing. Petitioner's detention is governed
5 by 8 U.S.C. § 1231(a)(6). *See Padilla-Ramirez*, 882 F.3d at 830-33 (finding that detention
6 following the reinstatement of a prior removal order is governed by § 1231 and not § 1226); *see*
7 *also Guzman Chavez*, 594 U.S. at 526 (holding that 28 U.S.C. § 1231, not 28 U.S.C. § 1226,
8 applies to detention during the reinstated removal process); *Johnson v. Arteaga-Martinez*, 596
9 U.S. 573, 575--76 (2022).

10 Petitioner incorrectly asserts that noncitizens detained for six months or longer in post-
11 order detention "are entitled to bond hearings, and the government must provide clear and
12 convincing evidence to justify continued detention." Pet., at 6. In support of her request for a bond
13 hearing, Petitioner's reliance on *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011), *Casas-*
14 *Castrillon v. Dep't of Homeland Sec.*, 535 F.3d 942 (9th Cir. 2008), and *Flores Tejada v. Godfrey*,
15 954 F.3d 1245 (9th Cir. 2020) is misplaced. Pet., at 3-6. In 2022, the Supreme Court held that
16 Section 1231(a)(6) does not require the Government to provide bond hearings after six months of
17 detention. *Arteaga-Martinez*, 596 U.S. at 581-82. The Supreme Court also reversed and remanded
18 *Flores Tejada*. *Garland v. Aleman Gonzalez*, 596 U.S. 543, 556 (2022). The Ninth Circuit later
19 recognized that the Supreme Court has abrogated *Casas-Castrillon* and *Diouf*. *Rodriguez Diaz v.*
20 *Garland*, 53 F.4th 1189, 1201-02 (9th Cir. 2022). Thus, Petitioner fails to provide valid legal
21 support for her request for a bond hearing.

22 Release is also not warranted here. Petitioner's detention has not become "indefinite" due
23 to her Petition for Review and the Ninth Circuit's temporary stay of removal. A temporary stay
24 of removal is inherently momentary; it does not render Petitioner's detention impermissibly

1 “indefinite” as defined by *Zadvydas*. 533 U.S. at 699 (observing that a statute authorizing
2 “indefinite, *perhaps permanent*, detention,” posed a “serious constitutional threat”) (emphasis
3 added)). Here, the temporary stay will only last until the Ninth Circuit rules on her stay motion
4 or decides her petition, whichever comes first. *De Leon v. INS*, 115 F.3d 643, 644 (9th Cir. 1997)
5 (“The filing of a motion for stay or a request for a stay contained in a petition for review will stay
6 a petitioner’s deportation temporarily until the court rules on the stay motion.”); *see also Rivera*
7 *v. Mukasey*, 508 F.3d 1271, 1277-78 (9th Cir. 2007); Ninth Circuit General Order 6.4(c) (setting
8 forth procedures for stays of deportation or removal).

9 Petitioner has been detained since September 5, 2025. Assuming that Petitioner’s prior
10 order of removal was reinstated at the time of her detention, then the “presumptively reasonable”
11 six-month period of post-order detention expired on March 6, 2026. However, the Supreme Court
12 has stated the six-month presumption does not mean that every noncitizen not removed within
13 that period “*must* be released after six months.” *Zadvydas*, 533 U.S. at 701 (emphasis added). As
14 the Court explained, a noncitizen “may be held in confinement until it has been determined that
15 there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* The
16 *Zadvydas* framework requires Petitioner to first provide “good reason” to believe removal is
17 unlikely. *Id.* Only then does the burden shift to the Government to demonstrate that removal
18 remains reasonably foreseeable. *Id.*

19 Petitioner cannot meet this burden based solely on her pending Petition for Review and
20 the Ninth Circuit’s temporary stay of removal. As noted before, a temporary stay of removal is
21 inherently momentary; it does not render Petitioner’s detention impermissibly “indefinite” as
22 defined by *Zadvydas*. It will only last until the Ninth Circuit rules on her stay motion or decides
23 her petition, whichever comes first. *Zadvydas*, 533 U.S. at 699 (observing that a statute
24

1 authorizing “indefinite, *perhaps permanent*, detention,” posed a “serious constitutional threat”
2 (emphasis added)).

3 Meanwhile, “reasonable fear review proceedings are intended to be expedited and
4 efficient.” *Bartolome*, 904 F.3d at 813. While collateral review typically entails a lengthy legal
5 battle, reasonable fear proceedings are by design “streamlined” and conclude far more rapidly, as
6 they are “abbreviated proceedings” to ensure that a noncitizen “does not have a reasonable fear
7 of returning to his or her country of origin.” *Id.* at 812, 814 (citations omitted).

8 Accordingly, this Court should deny Petitioner’s request for a bond hearing or release.

9 **V. CONCLUSION**

10 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
11 the Petition.

12 DATED this 20th day of April, 2026.

13 Respectfully submitted,

14 s/ Michelle R. Lambert

MICHELLE R. LAMBERT, NY# 4666657

15 s/ James C. Strong

16 JAMES C. STRONG, WSBA # 59151

17 Assistant United States Attorneys

United States Attorney’s Office

1201 Pacific Avenue, Suite 1201

18 Tacoma, Washington 98402

Phone: 253-428-3824

19 Email: michelle.lambert@usdoj.gov

james.strong@usdoj.gov

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21 *I certify that this memorandum contains 1,748
words, in compliance with the Local Civil Rules.*

22 *Attorneys for Federal Respondents*