

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CHRISTINE MARTINEZ,

Petitioner,

v.

BUTLER COUNTY SHERIFF, *et al.*,

Respondents.

Case No. 1:25-cv-00943

District Judge Douglas R. Cole

Magistrate Judge Caroline H. Gentry

**MOTION TO VACATE COURT'S NOTATION ORDER NOT TO
MOVE PETITIONER TO A DIFFERENT DETENTION
FACILITY, NOR REMOVE HER FROM THE COUNTRY**

Respondents respectfully move this Court to Vacate its December 29, 2025, Notation Order "...pending further order of this Court, Respondents shall not move Petitioner to a different detention facility, nor remove her from the country." (December 29, 2025, ECF Notation Order.)

This Court's Notation Order is preventing Respondents from executing Petitioner's removal order, and this Court is without jurisdiction to prevent the execution of Petitioner's removal. Further, this Court's Notation Order not to remove Petitioner "to a different detention facility, nor remove her from the country" is not necessary given that this Court retains jurisdiction over the Petition *even if* Petitioner is transferred to another district.

Finally, Respondents herein dispense with Petitioner's anticipated amended habeas petition¹, to which this Court distinguished from the Petitioner's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254,² (ECF No. 1), and Petitioner's oral alterations amidst telephone conference. (January 2, 2026, Min. Entry.)

Respondents incorporate by reference the entirety of their Return of Writ, in particular the "Factual Background" therein, repeating only facts relevant to this motion, supplemented by entries in the electronic docket report of this habeas action. (Resp'ts Return of Writ, ECF No. 16, PageID #: 61-62, Exhibits A-E.)

On August 13, 2025, Petitioner was arrested in Miamisburg, Ohio for Obstructing Official Business. (*Id.*, DHS Evidence, I-213, ECF No. 16-2, at PageID #: 85.) Those charges were dismissed on September 17, 2025. (*Id.*) After her release from the Montgomery County, Ohio Jail, on September 18, 2025, U.S. Immigration and Customs Enforcement ("ICE") issued and executed a "U.S. Department of Homeland Security, Warrant for Arrest of Alien" whereupon Petitioner was taken into and remains in the custody of ICE at the Butler County Correctional Complex. (*Id.*, I-200 Warrant for Arrest of Alien, ECF No. 16-3; *see also* Petition, ECF No. 1.)

On November 25, 2025, Petitioner was ordered removed from the United States to Canada. (Resp'ts Return of Writ, ECF No. 16, Removal Order, ECF No. 16-

¹ In Order, ECF No. 19, dated and filed February 2, 2026, this Court "DIRECTS Petitioner Martinez to file her amended petition on the Court's docket." As of the date of filing Respondents' Motion to Vacate Court's Notation Order, Friday, February 6, 2026, Petitioner has not filed "her amended petition."

² The Petition is incorrectly filed under 28 U.S.C. § 2254. It should have been filed under § 2241.

5, at PageID #: 92.) The appeal deadline for the removal order was December 26, 2025. (*Id.* at PageID #: 93.)

Other than Petitioner's own unsubstantiated verbal representation to this Court pursuant to the parties' January 2, 2026, telephone conference, there is no evidence that Petitioner appealed either the bond order or her removal order. The U.S. Mail at Butler County Correctional Complex is not tracked or recorded in the ordinary course of business. (Status Rep. RE: Outgoing Mail Process at Butler Co. Corr. Complex, "Letter and Affidavit," ECF No. 10, PageID #: 44-46.) Significantly, Petitioner offers neither evidence, much less rebuttal to Respondents' evidenced statement of fact that appeal deadlines have long expired and Petitioner filed no appeals. (Pet'r's Reply Resp'ts Return of Writ, ECF No. 18, PageID #: 99-103.)

This Petition was filed on December 17, 2025. (Petition, ECF No. 1.) By Order of this Court, on December 18, 2025, the Clerk of Court was directed to make service upon "the two federal official Respondents" via this office of the United States Attorney for the Southern District of Ohio, and for [c]ounsel for Respondents [to] promptly enter a notice of appearance." (Order, ECF No. 4) Upon counsels' notices of appearance – December 22, and 23 – (ECF Nos. 5, 6), this Court made the following notation to the electronic docket report, in total:

NOTATION ORDER: The Court ORDERS that, pending further order of this Court, Respondents shall not move Petitioner to a different detention facility, nor remove her from the country. This Order shall not, however, prevent Respondents from moving Petitioner to a health care facility for required medical treatment. The Court further DIRECTS the U.S. Attorney's Office to arrange a conference call with all parties, including the Petitioner, either by video or telephone this Friday, January 2, 2026 at 10:00 a.m. and provide all with the call-in information.

SO ORDERED. Signed by Judge Douglas R. Cole on 12/29/25. (mas) (This document has been sent by regular mail to the party(ies) listed in the NEF that did not receive electronic notification.) (Entered: 12/29/2025) (December 29, 2025, ECF Notation Order.)

On January 22, 2026, Respondents filed their Return of Writ. (ECF No. 16.)
On January 30, 2026, Petitioner filed a “Motion to Amend Petition for Writ of Habeas Corpus,” (ECF No. 17), wherein she makes the new argument, verbatim:

C. ICE Lacked a Valid or Timely Warrant

ICE may not rely on civil detainers or post-hoc administrative paperwork to justify warrantless detention.

- An ICE Form I-200 or I-205 is **not a judicial warrant**
Morales v. Chadbourne, 793 F.3d 208,217 (1st Cir. 2015)
- Warrantless immigration arrests must comply with **Fourth Amendment timing and probable-cause requirements**
Gonzalez v. ICE, 975 F.3d 788, 807 (9th Cir. 2020)

Petitioner was already restrained when ICE documents were produced, rendering custody unconstitutional. (Mot. Am. Pet. Writ Habeas Corpus, ECF No. 17, PageID #: 96, emphasis in original.)

Again, on January 30, 2026, Petitioner makes her Reply to Respondents’ Return of Writ, and again materially restates her new claim from the foregoing quote from the Motion to Amend Petition:

V. ICE LACKED A VALID OR TIMELY WARRANT

A. ICE Administrative Warrants Are Not Judicial Warrants

ICE relies on administrative paperwork issued **after** Petitioner was already restrained.

Courts have repeatedly held:

- ICE Forms I-200 /I-205 are **not judicial warrants**

- **They do not satisfy Fourth Amendment requirements**

"An ICE detainer alone does not provide probable cause for detention."

— *Morales v. Chadbourne*, 793 F.3d 208, 217 (1st Cir. 2015)

"Civil immigration detainers are requests, not commands."

— *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014)

Ohio courts agree that **continued detention without judicial authority is unlawful:**

"Absent a valid warrant or probable cause, continued detention violates the Fourth Amendment."

— *State v. Brown*, 99 Ohio St 3d 323, 2003-Ohio-3931 (Pet'r's Reply Resp'ts Return of Writ, ECF No. 18, PageID #: 101, emphasis in original.)

Pursuant to Order granting Petitioner leave to so amend this Court distinguished Petitioner's new claim from the Petitioner's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254, (ECF No. 1), and Petitioner's oral alterations amidst telephone conference, (January 2, 2026, Min. Entry.):

In the Motion to Amend, Martinez seeks to "[e]xclude all medical-care allegations" and "[c]larify that the petition challenges only the legality of her arrest and detention." But Martinez does not only drop a claim; she also bolsters her remaining unlawful-detention claim by making a new argument that ICE lacked a valid warrant when it detained her. (Order, ECF No. 19, PageID #: 104-105, citing Mot. Am. Pet. Writ Habeas Corpus, ECF No. 17, PageID #: 94, 96.)

A travel document was issued for Petitioner on May 31, 2024, and expires five years later, to the date. ("Ontario, Canada, Photo Card, Martinez, Christina, Carolyn Maria," Travel Document, Ex. F.) Enforcement and Removal Operations ("ERO"), the operational directorate of ICE responsible for the civil enforcement of immigration laws, asserts in this case, once the Notation Order is lifted, they will have the ability to coordinate Petitioner's removal in fact within one calendar week.

I. 8 U.S.C. § 1252(g) Bars This Court From Preventing Petitioner's Removal.

This Court is without jurisdiction to prevent the execution of Petitioner's removal order. Section 1252(g) categorically bars jurisdiction over “*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien.” 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security's decision to *execute removal orders*, including the decision to detain an alien pending such removal, squarely falls within this jurisdictional bar. *See Hamama v. Adducci*, 912 F.3d 869, 876 (6th Cir. 2018).

In other words, Petitioner's detention clearly “aris[es] from” the decision to execute his removal order. *See Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) (“The text of § 1252(g)... strips us of jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.”) (cleaned up). Put in the Supreme Court's words, detention pending removal is a “specification” of the decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 485 n.9 (1999) (“§ 1252(g) covers” a “specification of the decision to ‘commence proceedings’”).

Significantly, Petitioner is not without a remedy. As the Sixth Circuit explained in *Hamama v. Adducci*, “[w]hen Congress stripped the courts of jurisdiction

to grant habeas relief in § 1252(g), it provided an alien with an alternative method to challenge the legality an alien's detention . . ." 912 F.3d at 876. Moreover, the Suspension Clause is not violated when courts are stripped of "habeas jurisdiction so long as it provides a substitute that is adequate and effective to test the legality of a person's detention. *Id.*; see also *Karki v. Jones*, No. 1:25-cv-281, 2025 WL 1638070 (S.D. Ohio June 9, 2025); *Bartolon v. Bondi*, No. 1:25-cv-747, 2025 WL 3674604, at *4-*5 (S.D. Ohio Dec. 18, 2025) (same).

For these reasons, this Court is without jurisdiction to prevent the execution of Petitioner's removal order.

II. The District Court's Order is Not Necessary.

This Court made a Notation Order "...pending further order of this Court, Respondents shall not move Petitioner to a different detention facility, nor remove her from the country." (December 29, 2025, ECF Notation Order.) Yet, this Notation Order is unnecessary.

In *Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 445 (3d Cir. 2021), the following question was considered: "what happens to a district court's jurisdiction when the § 2241 petitioner, . . . is transferred out of the court's territorial jurisdiction *after* the proper filing of the petition?" The Third Circuit Court of Appeals explained that,

The Supreme Court addressed this question in *Padilla*: "[w]hen the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release.

Anariba v. Dir. Hudson Cnty. Corr. Ctr., 17 F.4th 434, 445 (3d Cir. 2021) (quoting

Rumsfeld v. Padilla, 542 U.S. 426, 441 (2004)) (reaffirming its “important but limited” holding in *Ex parte Endo*, 323 U.S. 283, 306-07 (1944), “concerning post-filing transfer of a § 2241 petitioner”); *see also White v. Lamanna*, 42 F. App’x 670, 671 (6th Cir. 2002).

On January 15, 2026, this holding was reaffirmed in *Khalil v. President, United States*, No. 2:25-cv-01963, 2026 WL 111933, *6 (3d Cir. Jan. 15, 2026) (“[T]he District Court [of New Jersey] had jurisdiction as the district of confinement when the petition was filed. And . . . later transfer to Louisiana did not divest the District Court [of New Jersey] of jurisdiction.”).

In *White v. Lamanna*, the Sixth Circuit recognized that, “A district court’s jurisdiction generally is not defeated when a prisoner who has filed a § 2241 petition while present in the district is involuntarily removed from the district while the case is pending. 42 F. App’x at 671 (citing *United States ex rel. Snyder v. State of Illinois*, 442 F. Supp. 75, 76 n.2 (N.D. Ill. 1977); *see, e.g., Gonzalez v. Noem*, 1:25-cv-150, 2025 WL 3140802 (N.D. Ohio Nov. 10, 2025); *Martinez v. Healy*, No. 4:24-cv-00833, 2025 WL 2021533, at *1 n.2 (N.D. Ohio July 18, 2025); *Wright v. Hemingway*, No. 1:21-cv-11043, 2025 WL 4311642, at *1 n.1 (E.D. Mich. Sept. 26, 2024). As a result, this Court’s Notation Order that “Respondents shall not move Petitioner to a different detention facility, nor remove her from the country,” is not necessary to aid its jurisdiction. Respondents respectfully request this Court vacate its December 29, 2025, Notation Order. (December 29, 2025, ECF Notation Order.)

III. Any Potential Claim Under *Zadvydas* Fails.

The Petitioner has not provided a good reason to believe there is not a significant likelihood of removal in the reasonably foreseeable future. The Supreme Court does not require that “every alien not removed must be released after six months.” *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In fact, the Court explained that an “alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701.

The Ninth Circuit has held that uncertainty as to when removal will occur does not establish that detention is indefinite. *Diouf v. Mukasey* (“Diouf I”), 542 F.3d 1222, 1233 (9th Cir. 2008); *see also Atikurraheman v. Garland*, No. C24-262, 2024 WL 2819242, at *4 (W.D. Wash. May 10, 2024), *R&R adopted*, No. C24-00262, 2024 WL 2818574 (W.D. Wash. June 3, 2024). Indeed, a date certain is not required. (*Id.*)

Here, Petitioner’s travel document to Canada was issued on May 31, 2024, and expires five years later, to the date. (Travel Document, Ex. F.) Critically, ERO, the operational directorate of ICE responsible for the civil enforcement of immigration laws, indicates in this case they will have the ability to coordinate Petitioner’s removal in fact within one calendar week of this Court’s agreement to lift the Notation Order.

IV. ICE’s Arrest of Petitioner is Pursuant to Valid Warrant, Timely Issued and Executed.

By conflating her arrest by Montgomery County authorities on August 13, 2025, on a local criminal charge of “Obstructing Official Business,” with the September 18, 2025, issuance and execution of the “U.S. Department of Homeland

Security, Warrant for Arrest of Alien” for immigration violations, Petitioner declares Respondents’ warrant invalid and thus her September 18, 2005, detention unlawful. (Petition, ECF No. 1, PageID #: 3, “STATEMENT OF FACTS, August 13, 2025: Petitioner arrested as a passenger. 34 days in Montgomery County Jail under poor conditions. September 17, 2025: All charges dismissed. Transferred to Butler County Jail instead of being released.”; *see also* Resp’ts Return of Writ, ECF No. 16, DHS Evidence, I-213, ECF No. 16-2, at PageID #: 85.)

Quoting Petitioner, she asserts “ICE relies on administrative paperwork issued after Petitioner was already restrained.” (Pet’r’s Reply Resp’ts Return of Writ, ECF No. 18, PageID #: 101.) Yet that very same “administrative paperwork,” more accurately identified as “U.S. Department of Homeland Security, Warrant for Arrest of Alien,” (Resp’ts Return of Writ, ECF No. 16, I-200 Warrant for Arrest of Alien, ECF No. 16-3), was issued and executed on September 18, 2025, after “September 17, 2025: All charges dismissed,” whereupon ICE, for the first time, commenced its detention of Petitioner.

The “U.S. Department of Homeland Security, Warrant for Arrest of Alien” makes no mention whatsoever of Petitioner’s arrest, detention, or dismissal by Montgomery County, (*see id.*, DHS Evidence, I-213, ECF No. 16-2, at PageID #: 85), in fact on its face it empowers “any immigration officer” with the very narrow authority “...to serve warrants of arrest for immigration violations.” (*Id.*, I-200 Warrant for Arrest of Alien, ECF No. 16-3, emphasis added.). Petitioner’s “immigration violations” are very plainly stated as “either lack[ing] immigration

status or notwithstanding such status is removable under U.S. immigration law.” (*Id.*) To be sure, Petitioner remained in the United States without authorization well beyond the September 29, 2024, expiration of her nonimmigrant Visitor For Pleasure, and thus “lacked immigration status.” (*Id.*, NTA, ECF No. 16-1.)

Also, as stated in Respondents’ Return of Writ, [i]t is well established that “[t]he ‘body’ or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest.” *JNS v. Lepez-Mendoza*, 468 U.S. 1032, 1039 (1984). This is true even where, unlike here, the government has effected an unlawful arrest. *Id.*; see also *United States v. Del Toro Gudino*, 376 F.3d 997, 1001 (9th Cir. 2004) (“[w]e continue to hold today that the simple fact of who a defendant is cannot be excluded, regardless of the nature of the violation leading to his identity”); *United States v. Garcia-Beltran*, 389 F.3d 864, 867 (9th Cir. 2004) (fingerprints taken for the purpose of identification, rather than to establish criminal activity, are not subject to suppression); *United States v. Guzman-Bruno*, 27 F.3d 420,422 (9th Cir. 1994) (neither identity nor records of criminal and immigration history may be suppressed based on an illegal arrest).

Since identity is never suppressible as the fruit of an unlawful arrest, the exclusionary claim that ICE could not arrest her after she was released from the Montgomery County Jail is without merit. She was lawfully arrested pursuant to a Warrant for Arrest of Alien and placed in removal proceedings because her authorization to be in the United States as a nonimmigrant Visitor for Pleasure expired in September 2024. Now, because an Immigration Judge ordered her removed

from the United States to Canada, she is lawfully detained pending removal pursuant to 8 U.S.C. § 1231(a). (Resp'ts Return of Writ, ECF No. 16, PageID #: 71-72, internal citations omitted.)

CONCLUSION

Respondents respectfully request this Court vacate its December 29, 2025, Notation Order "...pending further order of this Court, Respondents shall not move Petitioner to a different detention facility, nor remove her from the country," because this Court cannot interfere with Petitioner's removal order, and it is not necessary. Indeed, Petitioner's removal is imminent.

Respectfully submitted,

DOMINICK S. GERACE II
United States Attorney

s/Christopher R. Yates
CHRISTOPHER R. YATES (0064776)
Assistant United States Attorney
303 Marconi Boulevard, Suite 200
Columbus, Ohio 45215
(614) 469-5715
christopher.yates@usdoj.gov

s/William B. King II
WILLIAM B. KING II (0094046)
Assistant United States Attorney
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
(513) 684-3711
Bill.King@usdoj.gov

Attorneys for Respondents