

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
LOUISIANA, MONROE DIVISION

Lilian Munoz Alvarez v. U.S. Immigration & Customs Enforcement,
et al.

Munoz Alvarez · No. Civil Action No. 26-1053; 3:26-cv-01053 · Decided April 9, 2026

SUMMARY

This Report and Recommendation addresses a 28 U.S.C. § 2241 habeas petition by an Ecuadorian detainee challenging her continued immigration detention under *Zadvydas v. Davis*. The court concludes that the claim is premature because less than six months had elapsed after the removal order became final. It recommends dismissal without prejudice, subject to the petitioner's right to refile if her continued confinement later becomes unconstitutional.

CASE DETAILS

COURT	United States District Court for the Western District of Louisiana, Monroe Division
WRITING FOR THE COURT	Kayla Dye McClusky
JURISDICTION	United States District Court for the Western District of Louisiana, Monroe Division
DECIDED	April 9, 2026
DOCKET	Civil Action No. 26-1053; 3:26-cv-01053
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petition for a writ of habeas corpus under 28 U.S.C. § 2241 challenging continued immigration detention and seeking release on bond or parole; magistrate judge issued a report and recommendation that the petition be dismissed without prejudice as premature.
STANDARD OF REVIEW	The court assessed subject-matter jurisdiction under 28 U.S.C. § 2241 and applied the presumptively reasonable six-month post-removal-order detention period under <i>Zadvydas v. Davis</i> .
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Lilian Munoz Alvarez v. U.S. Immigration & Customs Enforcement, et al.

TOPICS

immigration detention removal proceedings subject matter jurisdiction judicial review of agency action
procedural due process

PRACTICE AREAS

immigration law habeas corpus federal courts administrative law constitutional law

QUESTIONS PRESENTED

1. Whether the federal district court had jurisdiction under 28 U.S.C. § 2241 to consider Petitioner's constitutional challenge to her immigration detention.
2. Whether Petitioner's Zadvydas-based challenge to her continued post-removal-order detention was premature because she had not been detained for six months after the removal order became final.

HOLDINGS

1. Federal courts retain jurisdiction under § 2241 to review constitutional or statutory challenges to immigration detention that do not challenge a final order of removal, although the REAL ID Act and related statutes restrict review of final removal orders and discretionary detention, bond, or parole decisions.
2. A Zadvydas-based challenge to post-removal-order detention was premature because Petitioner had not been detained for six months after her removal order became final.

KEY QUOTATIONS

“if an alien is detained for six months after a final order of removal and if the alien petitioning for habeas corpus “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” (533 U.S. 701)

“IT IS RECOMMENDED that Petitioner Lilian Munoz Alvarez’s petition for release under Zadvydas be DISMISSED WITHOUT PREJUDICE to her right to re-file the claim should her confinement become unconstitutional.” (Recommendation)

FACTUAL BACKGROUND

Petitioner, an Ecuadorian citizen, entered the United States on December 26, 2025, and was taken into immigration custody the same day. She was ordered removed to Guatemala on February 2 or 17, 2026, and did not appeal the order to the Board of Immigration Appeals. She alleged that ICE was unlikely to remove her in the reasonably foreseeable future and sought release from detention on bond or parole, but she filed her petition before six months had elapsed after the removal order became final.

PROCEDURAL HISTORY

Petitioner filed the § 2241 petition on March 28, 2026. The matter was referred to the magistrate judge for review, report, and recommendation. The magistrate judge recommended dismissal without prejudice because the petition was filed less than six months after the removal order became final.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The petition should be dismissed without prejudice to Petitioner's right to re-file the claim should her confinement become unconstitutional.

CASES CITED

- *Zadvydas v. Davis*, 533 U.S. 678 (2001)
- *Moreira v. Mukasey*, 509 F.3d 709, 712 (5th Cir. 2007)
- *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018)
- *Demore v. Kim*, 538 U.S. 510, 516 (2003)
- *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 135 (D.D.C. 2018)
- *Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005)
- *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 903 (S.D. Tex. 2007)
- *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015)
- *Chance v. Napolitano*, 453 F. App'x 535 (5th Cir. 2011) (per curiam)
- *Okpoju v. Ridge*, 115 F. App'x 302 (5th Cir. 2004) (per curiam), cert. denied, 544 U.S. 1066 (2005)
- *Riley v. Bondi*, 606 U.S. 259, 267 (2025)
- *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996)

OPINION

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF LOUISIANA MONROE DIVISION LILIAN MUNOZ ALVAREZ CIVIL ACTION NO. 26-1053 SECTION P VS. JUDGE S. MAURICE HICKS, JR. U.S. IMMIGRATION & CUSTOMS MAG. JUDGE KAYLA D. MCCLUSKY ENFORCEMENT, ET AL. REPORT AND RECOMMENDATION Petitioner Lilian Munoz Alvarez,¹ a detainee at Richwood Correctional Center in the custody of the Department of Homeland Security (“DHS”) and the Bureau of Immigration and Customs Enforcement (“ICE”), petitions for a writ of habeas corpus under 28 U.S.C. § 2241.2 [doc. # 1].

For reasons that follow, the Court should deny the petition as premature. Background Petitioner is a citizen of Ecuador. She entered the United States of America on December 26, 2025. [doc. # 1-2, p. 3]. She was taken into immigration custody the same day. [doc. # 1, p. 4]. She was ordered

removed from the United States to Guatemala, a “third country,” on February 2 or 17, 2026. [doc. #s 1, p. 4; 1-2, p. 3].

The immigration judge “gave [her] voluntary departure to Guatemala[,]” but she does not know anyone in Guatemala. [doc. # 1-3, p. 5]. She did not appeal the order to the Board of Immigration Appeals. *Id.* 1 Petitioner’s ‘A-Number’ is 220-904-468. 2 This matter has been referred to the undersigned for review, report, and recommendation under 28 U.S.C. § 636, and the standing orders of the Court.

Petitioner filed this proceeding on March 28, 2026. [doc. # 1, p. 8]. Citing *Zadvydas v. Davis*, 533 U.S. 678 (2001), she claims that she has been detained for over three months, that ICE is not likely to remove her in the near future, and that ICE is thereby violating her right to due process. [doc. #s 1, p. 6; 1-2, p. 4]. She states that she has fully cooperated with ICE in its efforts to remove her. [doc. # 1-2, p. 3].

ICE is allegedly “still working on [her] case.” *Id.* at 4. She does not know when ICE will finish. *Id.* Petitioner seeks release from detention on bond or on parole. [doc. # 1, p. 7]. Jurisdiction Under 28 U.S.C. § 2241(c)(3), the Court has federal subject-matter jurisdiction over habeas petitions filed by aliens claiming they are being detained “in violation of the Constitution or laws or treaties of the United States.” See *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

However, the ‘REAL ID Act’ of 2005 divests federal courts of jurisdiction over several categories of immigration proceedings. See Pub. L. No. 109-13, Div. B, 119 Stat. 231 (2005). District courts may not review challenges to final orders of removal. 8 U.S.C. § 1252(a)(5); *Moreira v. Mukasey*, 509 F.3d 709, 712 (5th Cir. 2007). And no federal court may review any action that is committed to the discretion of the Attorney General or the DHS Secretary, 8 U.S.C. § 1252(a)(2)(B)(ii), including decisions “regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole,” 8 U.S.C. § 1226(e).

The Supreme Court recognized a distinction between challenges to individual, discretionary detention decisions—which are prohibited—and “challenges to the statutory framework that permits [an] alien’s detention without bail”—which remain cognizable under the habeas statute. *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018) (internal alterations omitted) (citing *Demore v. Kim*, 538 U.S. 510, 516 (2003)); see *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 135 (D.D.C.

2018) (“While § 1252(a)(2)(B)(ii) undoubtedly bars judicial review of individual parole decisions, courts have declined to apply it to claims challenging the legality of policies and processes governing discretionary decisions under the INA.”). Despite any statutory limitations on judicial review, federal courts retain “jurisdiction to review [an alien’s] detention insofar as that detention presents constitutional issues,” *Oyelude v. Chertoff*, 125 F. App’x 543, 546 (5th Cir.

2005), such as “questions of law regarding the AG’s statutory authority or the regulatory framework” governing immigration detention, *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 903 (S.D. Tex. 2007); see also *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015) (“[E]ven after the passage of the REAL ID Act, district courts retain the power to hear statutory and constitutional challenges to civil immigration detention under § 2241 when those claims do not challenge a final order of removal, but instead challenge the detention itself.”).

Law and Analysis In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court held that if an alien is detained for six months after a final order of removal and if the alien petitioning for habeas corpus “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” “[A]n 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.* Here, however, Petitioner’s claim is premature because she has not been detained more than six months following the date her order of removal became final.

At the earliest, she was ordered removed on February 2, 2026. Under 8 U.S.C. § 1101(47)(B), an order of removal “shall become final upon the earlier of--(i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.”³ An alien ordered removed has thirty days to appeal that decision to the Board of Immigration Appeals.

8 C.F.R. § 1003.38(b). Here, Petitioner did not file an appeal with the Board of Immigration Appeals. Thus, her order of removal became final thirty days after she was ordered removed, or on March 4, 2026. Petitioner filed this proceeding on March 28, 2026, less than six months after her order of removal became final (six months after March 4, 2026, is September 4, 2026).

See *Chance v. Napolitano*, 453 F. App’x 535 (5th Cir. 2011) (per curiam) (concluding that the district court did not err in finding that the “challenge to [petitioner’s] continued post removal detention was premature” when the petitioner “had not been in post-removal-order detention longer than the presumptively reasonable six-month period” authorized by *Zadvydas*); *Okpoju v. Ridge*, 115 F. App’x 302 (5th Cir.

2004) (per curiam) (finding that a continued detention claim was “premature” because the petitioner “had not yet been in custody longer than the presumptively reasonable six-month post removal order period”), cert. denied, 544 U.S. 1066 (2005).

The Court should deny this claim as premature. Recommendation For the reasons above, IT IS RECOMMENDED that Petitioner Lilian Munoz Alvarez’s petition for release under *Zadvydas* be DISMISSED WITHOUT PREJUDICE to her right to re-file the claim should her confinement become unconstitutional.

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Rule 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this Report and Recommendation 3 See also *Riley v. Bondi*, 606 U.S. 259, 267 (2025). to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy of any objections or response to the district judge at the time of filing.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed. R. Civ. P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error.

See *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (Sth Cir. 1996). In *Chambers, Monroe, Louisiana*, this 9" day of April, 2026. Kayla Dye McClusky United States Magistrate Judge