

**Matter of W-F-D-, Respondent**

*Decided August 25, 2026*

U.S. Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

Immigration Judges generally lack jurisdiction to redetermine custody conditions once an alien becomes subject to an administratively final removal order.

FOR THE RESPONDENT: Pro se

FOR THE DEPARTMENT OF HOMELAND SECURITY: Christina Rosado, Counsel

BEFORE: Board Panel: GORMAN, Deputy Chief Appellate Immigration Judge; CHABAN, Appellate Immigration Judge; TERRIEN, Temporary Appellate Immigration Judge.

GORMAN, Deputy Chief Appellate Immigration Judge:

The Department of Homeland Security (“DHS”) appeals from an Immigration Judge’s bond order dated March 24, 2026, granting the respondent’s release from custody upon payment of a \$1,500 bond. The Immigration Judge issued a memorandum setting forth the reasons for the bond decision on April 7, 2026. The appeal will be sustained, and the Immigration Judge’s bond decision will be vacated.

The respondent, a native and citizen of the Democratic Republic of the Congo, entered the United States without inspection or admission on January 13, 2025. The respondent was arrested by United States Border Patrol, detained, and issued a notice to appear charging her with removability under sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1182(a)(6)(A)(i), (a)(7)(A)(i)(I) (2024).

On June 23, 2025, an Immigration Judge sustained the removability charges and ordered the respondent removed to the Democratic Republic of the Congo. The Immigration Judge denied the respondent’s applications for asylum under section 208 of the INA, 8 U.S.C. § 1158 (2024), and withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. § 1231(b)(3) (2024). The Immigration Judge granted the respondent’s application for withholding of removal to the Democratic Republic of the Congo pursuant to the regulations implementing the Convention Against

Torture (“CAT”).<sup>1</sup> The removal order became administratively final upon the expiration of the time allotted for an appeal. 8 C.F.R. § 1241.1(c) (2026).

As an alien subject to a final removal order, the respondent’s detention is governed by section 241(a) of the INA, 8 U.S.C. § 1231(a) (2024). An alien subject to that statute “shall” be detained during an initial 90-day removal period. INA § 241(a)(1), (2), 8 U.S.C. § 1231(a)(1), (2). After the 90-day removal period expires, an inadmissible alien such as the respondent “may be detained beyond the removal period” or released from custody under supervision pursuant to section 241(a)(3) of the INA, 8 U.S.C. § 1231(a)(3). INA § 241(a)(6), 8 U.S.C. § 1231(a)(6).<sup>2</sup>

DHS conducts custody determinations for aliens subject to post-removal-period detention under the procedures set forth at 8 C.F.R. § 241.4 (2026). The Supreme Court of the United States has construed section 241(a)(6) of the INA, 8 U.S.C. § 1231(a)(6), “to contain an implicit ‘reasonable time’ limitation.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). After detention of 6 months, “once the alien 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.” *Id.* at 701. In accordance with *Zadvydas*, the regulations implementing DHS’ custody review process were amended to establish additional review procedures for aliens subject to post-removal-period detention. Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56967 (Nov. 14, 2001) (codified at 8 C.F.R. pts. 241.13, 241.14). The amendments created procedures pursuant to which an alien subject to post-removal-period detention may petition DHS for release by showing good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.13 (2026). The amendments further afforded DHS discretion to determine whether special circumstances (such as serious adverse foreign policy consequences or security or terrorism concerns) warrant continued detention even if there is no significant

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<sup>1</sup> The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c), 1208.17 (2026); 8 C.F.R. § 1208.18(a) (2020).

<sup>2</sup> The same is true for aliens removable under sections 237(a)(1)(C), 237(a)(2), or 237(a)(4) of the INA, 8 U.S.C. § 1227(a)(1)(C), (a)(2), (a)(4) (2024), and those determined by the Attorney General “to be a risk to the community or unlikely to comply with the order of removal.” INA § 241(a)(6), 8 U.S.C. § 1231(a)(6).

likelihood of removal in the reasonably foreseeable future. 8 C.F.R. § 241.14 (2026).

On March 16, 2026, the respondent filed a request for custody redetermination with the Immigration Court. The respondent asserted that her release on bond was warranted under 8 C.F.R. § 1003.19 (2026) because her continued detention was adversely affecting her health and she had been detained for over a year, was granted CAT protection, posed no danger to the community or flight risk, and had a financial sponsor and fixed residence.

The Immigration Judge held a custody redetermination hearing on March 24, 2026. The Immigration Judge concluded that she could adjudicate the respondent's custody redetermination request because the Executive Office for Immigration Review acts under the authority of the Attorney General. The Immigration Judge further noted that Executive Branch agencies are bound by their governing regulations, and "[i]t is a denial of due process for any government agency to fail to follow its own regulations providing for procedural safeguards to persons involved in adjudicative processes before it."<sup>3</sup> The Immigration Judge noted the Supreme Court's finding of no "clear indication of congressional intent to grant the Attorney General the power to hold indefinitely in confinement an alien ordered removed." *Zadvydas*, 533 U.S. at 697. The Immigration Judge declined to accept DHS' documentation concerning its review process under 8 C.F.R. § 241.13 and faulted DHS for not providing witnesses who could testify concerning the steps that had been taken to remove the respondent to a third country.<sup>4</sup> The Immigration Judge ultimately granted the respondent's request for custody redetermination under *Zadvydas* and unspecified "time-related regulations."

Whether the Immigration Judge had jurisdiction to adjudicate the respondent's request for custody redetermination is a legal question that the Board reviews de novo. 8 C.F.R. § 1003.1(d)(3)(ii) (2026). It is well-established that "the jurisdiction of this Board, and of the Immigration Judge,

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<sup>3</sup> The Immigration Judge also stated in the bond memorandum that she issued "no findings as to whether the respondent has made her bond request to the appropriate authority."

<sup>4</sup> Withholding of removal is a "country specific" form of protection and "nothing prevents DHS from removing the alien to a third country other than the country to which removal has been withheld or deferred." *Johnson v. Guzman Chavez*, 594 U.S. 523, 531–32 (2021) (citation modified). Thus, the respondent is subject to removal to any country except the Democratic Republic of the Congo.

is limited by statute and regulation to that which has been delegated by the Attorney General.” *Matter of H-M-V-*, 22 I&N Dec. 256, 258 (BIA 1998). Like an exterior gate or entryway to a home, jurisdiction is a threshold issue that may not be bypassed before an adjudicator issues a dispositive legal ruling like the one currently under review, which resulted in an alien subject to a final removal order being released from detention. We reiterate that an adjudicator may not cross the jurisdictional threshold gate absent an explicit grant of authority in the INA or its implementing regulations.

Immigration Judges generally lack jurisdiction to redetermine custody conditions once an alien becomes subject to an administratively final removal order. *Cf.* 8 C.F.R. § 1236.1(d)(1) (2026) (authorizing Immigration Judges to detain or release aliens, who have had an initial custody determination by the district director, prior to a final order under section 240 of the INA, 8 U.S.C. § 1229a (2024)). The Supreme Court did not rule in *Zadvydas* that Immigration Judges have jurisdiction to conduct bond hearings for aliens in post-removal-period detention. In this regard, the Court later clarified that section 241(a)(6) of the INA, 8 U.S.C. § 1231(a)(6), does not require bond hearings before Immigration Judges for aliens detained by DHS beyond the initial 90-day removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580–82 (2022). The amendments to the regulations following *Zadvydas* likewise do not afford Immigration Judges jurisdiction to conduct bond hearings for aliens in post-removal-period detention. Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. at 56967–56982. The only exception to this jurisdictional prohibition is DHS’ referral of a matter to an Immigration Judge pursuant to 8 C.F.R. § 241.14(g) after DHS has determined that special circumstances warrant continued detention of an alien for whom the removal period has expired. *Matter of A-W-*, 25 I&N Dec. 45, 47 n.3 (BIA 2009). The Attorney General has not delegated any further authority to Immigration Judges or the Board to compel DHS to initiate a custody review under 8 C.F.R. § 241.13.

In the instant matter, DHS did not refer the respondent’s case to the Immigration Judge under 8 C.F.R. § 241.14(g). No other jurisdictional basis existed for the Immigration Judge to adjudicate the respondent’s request for custody redetermination while she was in post-removal-period detention. We therefore reverse the Immigration Judge’s conclusion that she had jurisdiction to adjudicate the respondent’s bond motion.

Finally, a Notice to EOIR: Alien Address (Form I-830) shows that DHS released the respondent from custody on April 2, 2026, upon her payment of a \$1,500 bond. We note that if DHS were to re-detain the respondent, she would not be without administrative or judicial remedies. The respondent

may initiate a custody review by submitting a written request to DHS pursuant to 8 C.F.R. § 241.13(d)(1) or she may commence a habeas corpus action in federal district court. *See Zadvydas*, 533 U.S. at 688 (“We conclude that [28 U.S.C.] § 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.”). However, an Immigration Court is not the proper forum for an alien detained under section 241(a)(6) of the INA, 8 U.S.C. § 1231(a)(6), to argue that release on bond is warranted due to the absence of a significant likelihood of removal in the reasonably foreseeable future.

Accordingly, we will sustain DHS’ appeal and vacate the Immigration Judge’s bond order.<sup>5</sup>

**ORDER:** DHS’ appeal is sustained, and the Immigration Judge’s March 24, 2026, bond order is vacated.

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<sup>5</sup> Consequently, we need not determine whether a \$1,500 bond was sufficient to ensure the respondent’s appearance for the execution of her final removal order. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (“As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.”); *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal regarding ineligibility for relief where an applicant is otherwise statutorily ineligible for such relief).