IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

DAREJAN MENTESHASHVILI,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-105-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

RESPONSE TO MOTION TO SUBMIT NEW EVIDENCE

On March 25, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition"). ECF No. 1. On April 16, 2025, Respondent filed his response to the Petition ("Response"), showing why the petition should be denied. ECF No. 5. On April 22, 2025, Petitioner filed the instant motion to submit new evidence ("Motion"), seeking to add documents, photos, and screenshots of text message conversations to the record. ECF No. 6. Because the Court lacks jurisdiction over any claim arising from the evidence proffered, the Petition should be denied even if the Court allows the supplementation.

BACKGROUND[1]

Petitioner is native and citizen of Georgia who is mandatorily detained as an arriving alien pursuant to 8 U.S.C. § 1225(b). ECF Nos. 5-1 ¶ 3 & 5-2. On May 1, 2024, Petitioner entered the United States without inspection near San Ysidro, California and was taken into immigration custody. *Id.* On May 23, 2024, Petitioner was served with a Notice to Appear ("NTA") charging

[1] Respondent summarizes Petitioner's immigration proceedings here to the extent those facts are relevant to the Court's consideration of Petitioner's pending Motion. Other facts underlying the Petition are set forth in Respondent's Response. Resp. 1-2, ECF No. 5. To the extent necessary, Respondent incorporates those herein by reference.

her with inadmissibility pursuant to Immigration and Nationality Act ("INA") § 212(a)(7)(A)(i)(I) and 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(7)(A)(i)(I) and 1182(a)(6)(A)(i), based on her application for admission without a valid entry document and presence in the United States without being admitted or paroled. ECF Nos. 5-1 ¶ 6 & 5-4. On December 3, 2024, the IJ heard the merits of Petitioner's applications for relief from removal, denied the same, and ordered her removed to Georgia. ECF Nos. 5-1 ¶ 9 & 5-7. On December 20, 2024, Petitioner appealed the removal order to the Board of Immigration Appeals ("BIA"), which appeal remains pending. ECF Nos. 5-1 ¶ 10 & 5-8.

In her Motion, Petitioner seeks to submit 10 attachments for the record. These are:

1. Passport
2. Screenshots of WhatsApp conversations
3. The law "On Family Values and Protection of Minors" (Georgian and English versions)
4. Interview transcript
5. Correspondence between [Petitioner] and [Immigration and Customs Enforcement ("ICE") Officer] Muhammad Umar
6. Changes in LGBTQ law in Georgia's media
7. "United National Novment (opposse political party)"
8. Sponsor Letter and ID
9. Besic Eriashvili (Besik Figueroa) statement and ID
10. Pictures

ECF Nos. 6 through 6-10. Petitioner states that "[s]ince filing [her] appeal, [she] ha[s] obtained new evidence that legally strengthens [her] position and confirms significant factual circumstances. Specifically, it proves that [she is] unwelcome in [her] country-even by [her] own

family-and that they pose the greatest threat to [her]." ECF No. 6 at 1. According to Petitioner, the Court should accept and consider this evidence for two reasons: (1) it establishes she is entitled to relief from removal, and (2) it shows she is entitled to release from custody on parole. *Id.* at 1-3.

ARGUMENT

Notwithstanding any probative value that the documents Petitioner seeks to add to her Petition may or may not have to her underlying immigration proceedings or to her request for parole, the supplements are futile—even if the Court considers them—because the Court lacks jurisdiction to review Petitioner's removal order or ICE/ERO's denial of parole. Accordingly, the Petition should be denied despite any supplementation.

Petitioner's "new evidence" consists of two categories of documents: (1) those describing the treatment of LGBTQ persons in Georgia, generally, and detailing Petitioner's personal experience with discrimination and/or persecution by her family in Georgia due to her self-identified LGBTQ status; and (2) those in support of Petitioner's request for parole from ICE custody. *See* ECF Nos. 6-1 through 6-10. Neither of these issues go to the question presented by her petition: whether Petitioner's continued detention violates her procedural due process rights. *See* Resp. 4, ECF No. 5. As explained in the Response, Petitioner's continued detention remains mandatory during her ongoing immigration proceedings, and she cannot establish a due process violation because her due process rights are limited to those provided by statute. *Id.* at 5-9. For two reasons, the Court lacks jurisdiction over Petitioner's attempts to use the supplemental evidence to challenge her removal order or denial of parole.

First, to the extent Petitioner claims the supplemental evidence shows the IJ erred by denying her application for relief from removal and ordering her removed, the Court lacks jurisdiction to judicially review her removal proceedings pursuant to 8 U.S.C. § 1252(b)(9). A

claim may proceed in this Court only if federal subject matter jurisdiction exists. *Lifestar Ambulance Serv., Inc. v. United States*, 365 F.3d 1293, 1295 (11th Cir. 2004). This is because "[f]ederal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (citation omitted). "The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). Additionally, "[a] petitioner may not create the jurisdiction that Congress chose to remove simply by cloaking an . . . argument in constitutional garb." *Arias v. U.S. Att'y Gen.*, 482 F.3d 1281, 1284 (11th Cir. 2007) (internal quotations and citations omitted).

In the immigration context, "[f]ollowing enactment of the REAL ID Act of 2005, district courts lack habeas jurisdiction to entertain challenges to final orders of removal." *Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 832 (11th Cir. 2016) (per curiam) (citing 8 U.S.C. § 1252(a)(5), (b)(9)). "Instead, 'a petition for review filed with the appropriate court is now an alien's exclusive means of review of a removal order.'" *Id.* (quoting *Alexandre v. U.S. Att'y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006)). Section 1252(b)(9) provides in full:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under [subchapter II of chapter 12 (8 U.S.C. §§ 1151-1378)] shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9).

The Supreme Court has described section 1252(b)(9) as an "unmistakable zipper clause" that streamlines litigation by consolidating and channeling claims first to the agency and then to the circuit courts through petitions for review. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). In *AADC*, the Court elaborated on the breadth of section 1252(b)(9), explaining that it serves as a "general jurisdictional limitation" on challenges to actions arising from removal operations and proceedings. *Id.* at 482. District courts are barred from reviewing removal proceedings regardless of how the non-citizen characterizes his claim. *Mata v. Sec'y of Dep't of Homeland Sec.*, 426 F. App'x 698, 700 (11th Cir. 2011) (per curiam) (affirming district court's dismissal of challenge to removal order brought pursuant to the federal question and mandamus statutes, Administrative Procedure Act, and the Declaratory Judgment Act).

Here, Petitioner claims that her supplemental evidence "strengthens [her] position" and "serve[s] as the basis for obtaining asylum[.]" ECF No. 6 at 1. But the IJ denied Petitioner's application for relief from removal during her removal proceedings. ECF Nos. 5-1 ¶ 9 & 5-7. Thus, Petitioner's claim and her supplemental evidence directly challenge a "question[] of law and fact" raised in a removal proceeding. 8 U.S.C. § 1252(b)(9). Section 1252(b)(9) deprives the Court of jurisdiction over this claim. Indeed, the Eleventh Circuit has specifically held that courts lack jurisdiction to judicially review a claim that a non-citizen is entitled to fear-based relief from removal when that claim is raised in a habeas proceeding. *Linares v. Dep't of Homeland Sec.*, 529 F. App'x 983, 983-85 (11th Cir. 2013) (per curiam). Petitioner's claim is no different, and the Court should find that it lacks subject matter jurisdiction.

Second, to the extent Petitioner claims that the supplemental evidence shows she is entitled to parole from ICE/ERO custody, the Court also lacks jurisdiction over this claim.[2] 8 U.S.C. §

[2] Respondent previously raised this same argument in the Response to the Petition. ECF No. 4 at 9-11. Respondent incorporates those arguments herein by reference.

1252(a)(2)(B)(ii)—promulgated as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA")—limits federal courts' jurisdiction to review discretionary determinations made by ICE/ERO as follows:

> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security[.]

"[*M*]*any* provisions of IIRIRA are aimed at protecting the Executive's discretion from the courts—indeed, that can fairly be said to be the theme of the legislation. *AADC*, 525 U.S. at 486 (emphasis in original) (citations omitted). In promulgating section 1252(a)(2)(B)(ii) specifically, "Congress barred court review of discretionary decisions only when Congress itself set out [ICE/ERO's] discretionary authority in the statute." *Kucana v. Holder*, 558 U.S. 233, 247 (2010). This applies to parole determinations as 8 U.S.C. § 1182(d)(5)(A) explicitly commits parole decisions to ICE/ERO's discretion: "The Attorney General may . . . *in his discretion* parole into the United States . . . any alien applying for admission[.]" (emphasis added); *see also Pouzo v. U.S. Citizenship & Immigr. Servs.*, 516 F. App'x 731, 731 (11th Cir. 2013) (per curiam) ("The decision whether to parole an alien into the United States rests within [ICE/ERO's] discretion . . . .").

Petitioner's "evidence" includes statements and information regarding her proposed sponsor in the United States and how and where she would live if she were to be released from custody on parole. *See* ECF Nos. 6-1 through 6-10. Petitioner asserts that the Court should consider this evidence in judicially reviewing whether ICE/ERO erred in denying her parole. ECF No. 6 at 1-3. But because ICE/ERO's parole determination is committed to its discretion, 8 U.S.C. § 1182(d)(5)(A), section 1252(a)(2)(B)(ii) deprives this Court of jurisdiction to review ICE/ERO's parole decisions or any other decision committed to the discretion of the Attorney General or the

Secretary of Homeland Security. The evidence presented by Petitioner does not aid in the Court's review of the only question to which it has jurisdiction: whether Petitioner's continued detention violates due process. Under the relevant statutes and case law, it is clear that it does not.

Thus, for the reasons discussed herein and those described in Respondent's Response, ECF No. 5, the Petition should be denied, and the additional "evidence" presented by Petitioner does not change that determination.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that the Court deny the Petition.

Respectfully submitted, this 13th day of May, 2025.

C. SHANELLE BOOKER
ACTING UNITED STATES ATTORNEY

BY: *s/ Michael P. Morrill*
MICHAEL P. MORRILL
Assistant United States Attorney
Georgia Bar No. 545410
United States Attorney's Office
Middle District of Georgia
P. O. Box 2568
Columbus, Georgia 31902
Phone: (706) 649-7728
Michael.Morrill@usdoj.gov

CERTIFICATE OF SERVICE

This is to certify that I have this date filed this Response with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

DAREJAN MENTESHASHVILI
A# [redacted]
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

This 13th day of May, 2025.

BY: *s/ Michael P. Morrill*
MICHAEL P. MORRILL
Assistant United States Attorney