UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

TINATIN KURDOBADZE, *Petitioner,*	§	
v.	§	CIVIL ACTION NO. 1:25-cv-00157
FRANCISCO VENEGAS, Warden of El Valle Detention Facility, *Respondent.*	§	

RESPONDENT'S RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR A PRELIMINARY INJUNCTION

Respondent[1] files this response in opposition to Petitioner, Tinatin Kurdobadze's Motion for a Preliminary Injunction and Supporting Memorandum (hereafter "Motion for Injunctive Relief") (Dkt. No. 27). As provided below, Petitioner has failed to satisfy the heavy burden of proof to show a clear entitlement to the extraordinary relief seeks in the Motion for Injunctive Relief under Federal Rule of Civil Procedure 65. Accordingly, the Court should deny Petitioner's Motion for Injunctive Relief.

STANDARD OF REVIEW

A petitioner seeking a temporary restraining order or preliminary injunction typically must establishthat he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20

[1] As the Court previously noted, the proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). Since the filing of this Petition, Petitioner has remained in the U.S. Immigration and Customs Enforcement ("ICE") federal facility in Raymondville, Willacy County, Texas. Dkt. No. 1 at 1; **Gov't Ex. 1**, ¶¶ 1-2 (Updated Unsworn Declaration of ICE Deportation Officer Ramon Mendez, Jr.); *see also* Dkt. No. 9 at 2- 3. The warden of that facility is Francisco Venegas. That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

(2008). The Fifth Circuit has "cautioned repeatedly that a preliminary injunction is an extraordinary remedy which should not be granted unless the party seeking it has clearly carried the burden of persuasion on all four requirements." *Bluefield Water Ass'n, Inc. v. City of Starkville*, 577 F.3d 250, 253 (5th Cir. 2009) (internal quotation marks omitted). Moreover, here, the Petitioner's burden is even heavier because he seeks a mandatory injunction. The standard TRO merely preserves the status quo. *E.g., Wenner v. Tex. Lottery Comm'n*, 123 F.3d 321, 326 (5th Cir. 1997). A mandatory injunction, in contrast, "seeks to alter the status quo" and "mandates that defendants take some action inconsistent with the status quo." *Texas v. Ysleta del Sur Pueblo*, No. 3:17-CV-00179, 2018 WL 1566866, at *9 (W.D. Tex. Mar. 29, 2018). A party seeking a mandatory injunction "bears the burden of showing a clear entitlement to the relief under the facts and the law." *Justin Indus., Inc. v. Choctaw Sec., L.P.*, 920 F.2d 262, 268 n.7 (5th Cir. 1990) (emphasis added). As such, mandatory preliminary relief "is particularly disfavored." *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976). Here, the status quo is detention, which Petitioner seeks to alter by obtaining, as preliminary relief, a directive for DHS to perform the express act of releasing him. He therefore must show a clear entitlement to relief under the facts and law.

RELEVANT BACKGROUND[2]

Petitioner remains detained at the El Valle Detention Facility in Raymondville, Willacy County, Texas, awaiting removal from the United States after having been detained by ICE since June 2024. Petitioner is a native and citizen of Georgia. Dkt. No. 1 at 7; **Bates 0018, 0091**.

[2] As ordered by the Court, the Government filed a Bates-stamped copy of Petitioner's A-File (**Kurdobadze A-File Bates 0001-0108**) under seal contemporaneously with Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus. *See* Dkt. No. 9 at 1; Dkt. No. 18. Respondent's Relevant Background is taken from Petitioner's Petition (Dkt. No. 1), Petitioner's A-File 0001-0108, and updated Unsworn Declaration of ICE Deportation Officer Ramon Mendez, Jr. **(Gov't Ex. 1)**

Petitioner is also a citizen of Poland and held a valid visa from Poland that expired on April 17, 2025. Dkt. No. 1 at 7; **Bates 0059, 0092**. On June 7, 2024, Petitioner illegally entered the United States at or near San Diego, California, was not inspected by an Immigration Officer at the time of entry, and was found without valid documentation. Dkt. No. 1 at 1; **Bates 0018, 0071-0077**. Petitioner was processed for expedited removal pursuant to 8 U.S.C. § 1225(b)(1) and requested a credible fear interview. **Bates 0018-0049**.

Petitioner was transferred and placed into ICE custody at Denver Contract Detention Facility in Aurora, Colorado; because Petitioner expressed a fear of returning to Georgia, Petitioner was referred to an asylum officer for a credible fear interview on July 11, 2024, which was translated to Petitioner in Georgian by a certified translator. **Bates 0019-0042**. On July 15, 2024, the asylum officer determined that Petitioner had established a credible fear of return to Georgia. **Bates 0019-0025**.

On July 18, 2024, a notice and order of expedited removal was issued by immigration officers after determining Petitioner inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and served on Petitioner. **Bates 0043-0049**. On August 13, 2024, ICE decided not to parole Petitioner from detention because Petitioner's sponsor did not meet ICE policy standard. **Bates 0006-0013**. On December 16, 2024, an Immigration Judge denied Petitioner asylum but granted Petitioner withholding of removal to Georgia under Section 241(b)(3) of the Immigration and Nationality Act ("INA") (8 U.S.C. § 1231(b)(3)). Dkt. No. 1 at 3-8; **Bates 0001-0004**. Alternatively, the Immigration ordered Petitioner removed to Poland, where Petitioner also holds citizenship and a visa. Dkt. No. 1 at 7; **Bates 0003, 0059, 0092**. As provided in the Petition, the Government did not appeal the Order of the Immigration Judge by the appeal deadline of January 15, 2025, therefore, the Order of December 16, 2024 became final on that date. *See* Dkt. No. 1 at 1-2, 8; **Bates 0004**.

On February 3, 2025, ICE made a Request for Travel Documents from Poland for Petitioner to the Consulate General of the Republic of Poland in Los Angeles, California; the Polish Government denied acceptance of Petitioner on March 4, 2025. **Bates 0050-0084**; Gov't Ex. 1, ¶ 8. Petitioner was subsequently personally served Form I-229(a) (Warning for Failure to Depart) on April 14, 2025, informing Petitioner of his obligations to assist ICE in good faith with travel applications or other documents necessary to the Petitioner's departure; the Petitioner refused to sign the Warning for Failure to Depart. **Bates 0089-0090**. Despite an initial email by ICE Denver Field Office Deportation Officer to Petitioner's counsel concerning Petitioner's release from ICE custody (Dkt. No. 1 at 10), ICE issued a subsequent decision on Petitioner's continued detention pursuant to 8 C.F.R. § 241.4 on April 21, 2025, stating that ICE would maintain custody of Petitioner based upon: "The Significant Likelihood of Removal in the Reasonably Foreseeable Future." **Bates 0085**.

In addition to requesting Travel Documents from Poland, ICE requested Travel Documents from Costa Rica, Dominican Republic, and Panama embassies on March 4, 2025. **Gov't Ex. 1**, ¶ 8. The Costa Rican government denied acceptance of Petitioner on March 4, 2025; ICE has requested assistance from Department of State as of August 27, 2025, with removal to the remaining the two remaining third countries where the applications remain pending. *Id.* Thus, on August 27, 2025, after the filing of the Petition, ICE issued a second decision to continue detention on August 27, 2025 (Dkt. No. 22 at 15-17) indicating that ICE "continues to seek a third country alternative" for Petitioner for removal from the United States. Dkt. No. 22 at 15-17. Moreover, the decision provides that "ICE is unable to conclude that the factors set forth at 8 C.F.R. § 241.4(e) have been satisfied." *Id.* Petitioner, however, is not precluded "from bringing forth evidence in the future to demonstrate a good reason why [Petitioner's] removal is unlikely. *Id.*

On October 11, 2025, ICE submitted Form I-241 requests to the Embassies of Canada, Costa Rica, and Panama. **Gov't Ex. 1**, ¶ 9. However, on October 24, 2025, the governments of Canada and Costa Rica denied acceptance of the Petitioner and to date, ICE awaits a response from the government of the Dominican Republic and Panama on acceptance of removal of Petitioner. *Id.*

ARGUMENT

I. Petitioner has no likelihood of success on the merits because Petitioner's continued detention pending removal to a third country is lawful and the order of removal to a third country would not violate Petitioner's substantive due process rights.

A. Petitioner cannot succeed on the merits of the habeas petition because the continued detention does not violate *Zadvydas*.

Petitioner's continued detention by the Government pending removal to a third world country does not violate *Zadvydas v. Davis,* 533 U.S. 678 (2001). In *Zadvydas v. Davis*, the Supreme Court recognized that "[the] 6-month presumption [ ] does not mean that every alien not removed must be released after six months. To the contrary, 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." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

In *Zadvydas*, the Supreme Court also recognized that the alien bears the initial burden to demonstrate the lack of likelihood of removal. *Id.*; *see Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) ("[I]n order to state a claim under *Zadvydas* the alien not only must show post-removal order of detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future."). In the case before the Court, Petitioner has failed to meet this burden. While it has been demonstrated that Petitioner remained in the custody of the Government since the removal order of December 16, 2024, became final on that date (Dkt. No. 1 at 1-2, 8; **Bates 0004)**, Petitioner has

not demonstrated that the removal to a third country is unlikely. Instead, Petitioner argues, that because "two countries decline[d] to take Petitioner" and from two others, the Government has received "no response," there is no significant likelihood of removal in the reasonably foreseeable future. *See* Dkt. No. 27 at 12. "[U]nsupported arguments and speculation" regarding the foreseeable likelihood of removal will not suffice to carry Petitioners' initial burden. *James v. Lowe*, No. 23-1862, 2024 WL 1837216, at *3 (M.D. Pa. Apr. 26, 2024). Accordingly, where a Petitioner "has not made the required showing of good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the petitioner's claim fails and we proceed no further." *Id.* (internal quotations and citations omitted).

Even assuming Petitioner had carried the burden to show that Petitioner is unlikely to be removed in the foreseeable future, which Petitioner did not, the Government has rebutted that showing. As described more fully above, the Enforcement and Removal Operations Office ("ERO") is actively taking steps to remove Petitioner by seeking third country removal to the Dominican Republic and Panama, and has reason to believe Petitioner will be remove to Dominican Republic or Panama after unsuccessful attempts in October 2025 to have the governments of Canada and Costa Rica accept the third country removal of Petitioner. **Gov't Ex. 1**, ¶ 9. Therefore, on this basis, Petitioner will likely not succeed on the merits because the ongoing detention pending the Government's active attempts to remove Petitioner to a third country does not violate *Zadvydas*.

B. Petitioner cannot succeed on the merits of the habeas petition because Petitioner's order of removal, if any, to a third country would not violate Petitioner's substantive due process rights and this Court lacks authority to review such removal.

Furthermore, Petitioner's due process claim against the Government will not succeed on the merits. Specifically, this Court lacks jurisdiction to review Petitioner's due process claims

because they are inextricably intertwined with ICE's unreviewable authority to execute a final order of removal. *See, e.g., C.R.L. v. Dickerson, et al*, 4:25-CV-175-DL-AGH, 2025 WL 1800209 at *2-3 (M.D. Ga. June 30, 2025) (denying habeas petition for lack of jurisdiction where alien sought review of ICE's decision to execute his final removal order to a third country, noting that ICE agreed to provide him with notice and opportunity to contest the removal); *Diaz Turcios v. Oddo*, No. 3:25-CVC-0083, 2025 WL 1904384 at *5 (W.D. Pa. July 10, 2025) (removal to a third country is closely "bound up with" the removal order such that the court lacks jurisdiction over the TRO motion seeking to enjoin the removal). As such, Petitioner is unlikely to succeed on the merits of the due process claims.

On June 23, 2025, the U.S. Supreme Court granted the Government's application to stay the nationwide preliminary injunction in *D.V.D. v. Dep't. of Homeland Sec.*, No. 25-10676, 2025 WL 1142968 (D. Mass. Apr. 18, 2025), which required ICE to comply with certain procedures before initiating removal to a third country. On July 9, 2025, the ICE Director issued written guidance to all ICE employees that explicitly rescinded all prior guidance implementing the previously issued preliminary injunction. **Gov't Ex. 2** at 1 (July 9, 2025, ICE Guidance on March 30, 2025 Memorandum). The July 9, 2025 Guidance ordered ICE, effective immediately, to adhere to the Secretary of Homeland Security, Kristi Noem's, March 30, 2025, memorandum, *Guidance Regarding Third Country Removals*. **Gov't Ex. 3**, at 1 (Kristi Noem's March 30, 2025 Guidance Regarding Third Country Removals). The March Guidance provides that aliens may be removed to a "country [that] has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured." *Id.* If the State Department finds the representations credible, the "alien may be removed without the need for any further procedures." *Id.*

The process provided in the March Guidance satisfies all Constitutional requirements. The Supreme Court has held that when an Executive determines a country will not torture a person upon removal, that is conclusive. *Munaf v. Geren*, 553 U.S. 674, 702–03 (2008); *see also Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) (federal courts "may not question the Government's determination that a potential recipient country is not likely to torture a detainee"), *cert. denied*, 559 U.S. 1005 (2010). As now-Justice Kavanaugh explained in concurrence in *Kiyemba*, the "*Munaf* decision applies here a fortiori: That case involved the transfer of *American Citizens*, whereas this case involves the transfer of alien detainees with no constitutional or statutory right to enter the United States." *Kiyemba*, 561 F.3d at 517–18 (Kavanaugh, J., concurring). These cases stand for the proposition that when the Executive decides an alien will not be tortured abroad, courts may not "second guess [that] assessment," unless Congress has specifically authorized judicial review of that decision. *Id.* at 517 (citations omitted); *Munaf*, 553 U.S. at 703 n.6. This framework also requires rejection of any argument of entitlement to an individualized determination under the Convention Against Torture ("CAT") regulations. The law provides for assurances that an alien would not be tortured if removed to a "specific country," but once the Attorney General and the Secretary of State deem those assurances "sufficiently reliable," that is the end of the inquiry. *See* 8 C.F.R. § 1208.18(c)(1)-(3); *see also Munaf*, 553 U.S. at 703 n.6.

If removal is to a third country not covered by adequate assurances, the March Guidance makes clear that DHS will first inform the alien of the intent to remove the alien to that country and then give the alien an opportunity to establish that the alien fears removal there. *See* **Gov't Ex. 3** at 1-2. If the alien affirmatively states a fear, immigration officials from U.S. Citizenship and Immigration Services ("USCIS") will screen the alien, generally within 24 hours, to determine whether the alien "would more likely than not" be persecuted on a statutorily protected ground or

tortured in the country of removal. *Id.* at 2. If USCIS determines that the alien has not met this standard, the alien will be removed. *Id.* If the alien does meet the standard, the alien will be referred to the immigration judge in the first instance, or if previously in proceedings before an immigration judge, USCIS will notify ICE to file a motion to reopen those proceedings, as appropriate, for the sole purpose of determining eligibility for protection under INA § 241(b)(3) and CAT, specifically to the newly designated country of removal. *Id.* Alternatively, ICE may choose another country for removal, subject to the same processes. *Id.*

The March Guidance affords sufficient process to aliens subject to final orders of removal. It confirms that Petitioner will be notified of a third country removal and afforded an opportunity to assert a fear claim. The Motion for Injunctive Relief does not show a likelihood that Petitioner will be erroneously deprived of Petitioner's rights under the March Guidance, such that Petitioner is entitled to any additional or substitute procedural safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 355 (1976) (no due process concerns where there is low risk of an erroneous deprivation through the procedures used). As such, it is unlikely that Petitioner will succeed on the merits of the due process claims. Given the fact the March Guidance affords Petitioner an opportunity to present a fear claim prior to removal to any third country, Petitioner is not deprived of due process and this claim will likely fail on the merits.

II. Petitioner has not shown irreparable harm and the balance of equities and public interest favor the government.

Petitioner cannot demonstrate irreparable harm. The Government continues to engage with third countries on the removal of Petitioner in conformity with the final removal order and guidance received as to third country removals. *See* **Gov't Exs. 2, 3**. Petitioner's continued detention in the custody of the Government ensures Petitioner's continued procedural safeguards pending the removal from the United States. The balance of equities and public interest factors

"merge when the Government is the opposing party." *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioner bears the burden of demonstrating that the balance tips in Petitioner's favor. Here, the balance of equities favor the Government and its interest in detaining an alien subject to removal to a third country in compliance with CAT and United States immigration laws and policies. Congress vested significant authority and discretion in the Secretary of Homeland Security to administer the immigration laws. Thus, granting Petitioner the relief sought would likely only cause further complications in obtaining the removal to third country in compliance with CAT and this nation's laws.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court deny Petitioner's Motion for a Preliminary Injunction (Dkt. No. 27) as Petitioner has not satisfied the heavy burden to warrant relief under Federal Rule of Civil Procedure 65.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Baltazar Salazar, do hereby certify that on this 14th day of November, 2025, a copy of the foregoing was served on counsel for Petitioner via CM/ECF email notification.

By: *s/Baltazar Salazar*
BALTAZAR SALAZAR
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