IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LYDIENNE YONDO ESSIBENG,

Petitioner,

v.

KRISTI NOEM, *et al.*

Respondents.

Case No. 8:25-cv-03690-SAG

RESPONSE TO FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY RELIEF AND MOTION TO DISMISS

Respondents, United States Department of Homeland Security ("DHS") Secretary Kristi Noem, United States Immigration and Customs Enforcement ("ICE") Acting Director Todd M. Lyons, ICE Baltimore Field Office Director Nikita Baker, and United States Attorney General Pamela Bondi (collectively, "Respondents"), by and through undersigned counsel, hereby respond to the First Amended Petition for Writ of Habeas Corpus and Complaint for Declaratory Relief (ECF No. 7) (the "Amended Petition" or "Am. Pet.") filed by Petitioner Lydienne Yondo Essibeng and further move this Court to dismiss the Amended Petition in its entirety.

INTRODUCTION

The Amended Petition is premised on inapplicable law. Petitioner alleges that "All Respondents consider that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2). ECF No. 7 ("Amended Petition") ¶ 44. Not so. Rather, Petitioner's detention, which follows her numerous violations of the terms of her prior Alternatives to Detention ("ATD") agreement, is under 8 U.S.C. § 1226.

This Court cannot extend the writ of habeas corpus unless an individual demonstrates she "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). ICE's arrest and detention of Petitioner is lawful as ICE had authority pursuant to 8 U.S.C. § 1226(b) and 8 C.F.R. § 236.1(c)(9) to revoke Petitioner's prior release and return her to custody on account of her ATD violations. The Court also lacks jurisdiction to review ICE's decision to re-detain Petitioner under 8 U.S.C. § 1226(e). *Pisciotta v. Ashcroft*, 311 F. Supp. 2d 445, 453 (D.N.J. 2004) ("[T]o the extent the [p]etitioner's complaint seeks relief from [ ]ICE's determination . . . to revoke his prior custody status . . . , this Court must dismiss this request for relief for lack of jurisdiction."). For these reasons, Petitioner's request for release from detention should be denied and the Amended Petition should be dismissed.

BACKGROUND

A. Factual and Procedural History

Petitioner is a citizen of Cameroon who entered the United States without being inspected, admitted, or paroled, *i.e.*, she entered this country illegally, on September 11, 2024. Am. Pet. ¶ 38. Shortly after entering, she was encountered by a Border Patrol Agent, deemed inadmissible, and arrested. *Id.* Petitioner was subsequently released on ATD[1]. *See* Declaration of Jose Guererro ("Guerrero Decl.") ¶ 5.

Petitioner filed an asylum application, which remains pending. Am. Pet. ¶ 39. Petitioner avers that she "complied fully with the terms of her release on recognizance: She submitted to GPS

[1] ICE's ATD program was created "to ensure compliance with release conditions and provides important case management services for non-detained aliens. . . . ATD-ISAP enables aliens to remain in their communities—contributing to their families and community organizations and, as appropriate, concluding their affairs in the U.S.—as they move through immigration proceedings or prepare for departure." *Alternatives to Detention*, IMMIGR. & CUSTOMS ENFORCEMENT, https://www.ice.gov/features/atd (last visited Dec. 2, 2025).

tracking on her phone, and was regularly appearing for check-in appointments as part of the Intensive Supervision Appearance Program ('ISAP')." Am. Pet. ¶ 40. However, between her 2024 release under ISAP and her November 6, 2025 arrest, Petitioner violated the terms of her ATD fifteen times. Guererro Decl. ¶ 6; Guererro Decl. Ex. 1. Petitioner's fifteen ATD violations include instances of each of the following violation types: Missed Biometric Check-In, Residence Verification Failed, Missed Office Visit, and Home Visit Failed. *Id.* On November 6, 2025, given Petitioner's ATD violation, ICE exercised its authority pursuant to 8 U.S.C. § 1226(b) and 8 C.F.R. § 236.1(c)(9) to revoke Petitioner's prior release and return her to custody. Guererro Decl. Ex. 3 (Warrant for Arrest of Alien).

Petitioner is presently in Immigration and Nationality Act ("INA") 240 (8 U.S.C. § 1229a) removal proceedings. Guererro Decl. ¶ 7. As indicated on Petitioner's Notice to Appear, Form I-862 ("NTA"), Petitioner is charged under Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i) (8 U.S.C. § 1182(a)(6)(A)(i)). Guererro Decl. ¶ 7; Guererro Decl. Ex. 2 (NTA).

B. Relevant Statutory and Regulatory Framework

For more than a century, the immigration laws have authorized immigration officials to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). The INA provides a statutory scheme for the civil detention of aliens pending a decision during removal proceedings as well as once a final order of removal has been entered. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where an alien falls within this scheme and whether detention of the alien is discretionary or mandatory.

8 U.S.C. § 1226 provides for arrest and detention with a warrant "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during her removal proceedings, release her on bond, or release her on conditional parole.[2] By regulation, immigration officers can release aliens if the alien demonstrates that she "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination by an Immigration Judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). If, after the bond hearing, either party disagrees with the decision of the IJ, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

ICE has broad statutory and regulatory authority to revoke release and return an individual to detention. Pursuant to 8 U.S.C. § 1226(b), ICE "at any time may revoke a bond or parole authorized under [8 U.S.C. § 1226(a)], rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b). The relevant regulation, 8 C.F.R. § 236.1(c)(9), explains that when an alien is released by ICE, "such release may be revoked at any time in the discretion of [certain

[2] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

immigration officers], in which event the alien may be taken into physical custody and detained." 8 C.F.R. § 236.1(c)(9).

STANDARD OF REVIEW

A. Habeas Corpus

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions unless Congress had separately stripped the court of jurisdiction to hear the claim.

To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that her custody is in violation of the Constitution, laws, or treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009) ("The burden of proof of showing deprivation of rights leading to an unlawful detention is on the petitioner.").

B. Motion to Dismiss for Failure to State a Claim – Federal Rule of Civil Procedure 12(b)(6)

A challenge under Federal Rule of Civil Procedure 12(b)(6) requires dismissal of a complaint if it fails to state a claim upon which relief can be granted. In ruling on such a motion, although a court must accept as true all the factual allegations in the complaint, legal conclusions drawn from those facts are not afforded deference. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to plead a claim). In addition, the Court "may properly take judicial notice of matters of public record . . . [and] consider documents attached . . . to the motion to dismiss, so long as they are integral to the complaint and authentic." *Philips v. Pitt Cty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009).

Within this framework, a complaint must allege "a plausible claim for relief." *Iqbal*, 556 U.S. at 679. Under the plausibility standard, a complaint must contain "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although the plausibility requirement does not impose a "probability requirement," *id.* at 556, "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," *Iqbal*, 556 U.S. at 663.

ARGUMENT

A. 8 U.S.C. § 1225 Does Not Apply to This Case.

Petitioner was previously released from custody per ICE's discretion in 8 U.S.C. § 1226(a) under the ATD program. Guerrero Decl. ¶ 5. While released, Petitioner violated the ATD terms fifteen times. Guerrero Decl. ¶ 6; Guerrero Decl. Ex. 1. Having demonstrated an inability to comply with the ATD terms, Petitioner is now being detained. As reflected in the NTA, Petitioner has been charged with violating INA § 212(a)(6)(A)(i) (8 U.S.C. § 1182(a)(6)(A)(i)), which corresponds to discretionary detention under 8 U.S.C. § 1226. Guerrero Decl. Ex. 2. Petitioner is *not* charged under INA § 212(a)(7) (8 U.S.C. § 1182(a)(7)), which would invoke mandatory detention under 8 U.S.C. § 1225.

Thus, Petitioner is not being detained under 8 U.S.C. § 1225, nor has she been charged under INA § 212(a)(7). Rather, Petitioner was charged under INA § 212(a)(6)(A)(i), was released on ATD, violated the ATD terms, and was subsequently detained under 8 U.S.C. § 1226(b). An IJ has never ordered Petitioner's release on bond, nor has an IJ needed to order such release because Petitioner was on release until she violated the ATD terms. Because Petitioner cannot establish that her detention is unlawful under her actual circumstances—*i.e.*, following multiple ATD

violations—the Petition should be denied. Nor does Petitioner's pending asylum claim foreclose her detention, as that claim should be resolved in the context of her immigration proceedings.

B. Petitioner's Detention is Authorized by Statute and Regulation.

ICE has clear statutory authority under 8 U.S.C. § 1226(b) to revoke Petitioner's release "at any time" and to arrest her thereafter. *See, e.g.*, *Bermudez Paiz v. Decker*, No. 18-CV-4759 (GHW) (BCM), 2018 WL 6928794, at *17 (S.D.N.Y. Dec. 27, 2018) ("[T]here is no plausible interpretation of § 1226(b) that would transform it from a statute granting the Secretary uncabined revocation authority into a laundry list of restrictions on that authority."); *Salvador F.-G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 WL 1669356, at *8–9 (N.D. Okla. June 12, 2025) (rejecting "claim that [ ] DHS has no authority to revoke a bond issued by an immigration judge" as the "plain language of § 1226(b) provides DHS broad authority" and that there is "nothing in the plain language of [§ 1226](b) imposing a requirement of changed or materially changed circumstances"); *Tomlinson v. Swartz*, No. 24-24844-CV, 2025 WL 1568213, at *3 n.4 (S.D. Fla. Jan. 31, 2025) (explaining that "whether Petitioner was previously released on bond does not preclude revocation of his bond at a later date").

ICE's ample authority to revoke a prior release is reiterated by regulation which does not require additional procedures or a finding of changed circumstances prior to re-arrest. 8 C.F.R. § 236.1(c)(9) ("[S]uch release may be revoked at any time in the discretion of [immigration officials] in which event the alien may be taken into physical custody and detained."); *see also Salvador F.-G.*, 2025 WL 1669356, at *9 (explaining that the "implementing regulation is likewise broad [and] nothing in the statute or the regulation even hints at a change in circumstances requirement").

Here, even if there was a requirement for changed circumstances prior to ICE detaining Petitioner last month, and there was not, such requirement would be met by Petitioner's ATD

violations. As such, ICE had authority to revoke Petitioner's release and return her to custody. Therefore, her arrest and detention are lawful.

C. **Petitioner's Detention Does Not Violate the Constitution.**

To the extent Petitioner claims her detention is unconstitutional, this claim fails as the constitutionality of detention while in removal proceedings has been consistently upheld by the Supreme Court. *See Demore v. Kim*, 538 U.S. 510, 523 (2003) ("[T]his Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process."). In *Demore,* the Court explained that "when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Id.* Instead, the Court recognized as to due process concerns that it "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Id.* at 522 (citations omitted).

Additionally, multiple courts have concluded that the Fifth Amendment's Due Process Clause does not require a pre-arrest hearing or notice to an alien prior to re-arrest under ICE's authority set forth in 8 U.S.C. § 1226(b). For example, in *Reyes v. King*, the court explained that it was "not persuaded that it should find a due process right to a pre-detention hearing where a noncitizen, subject to pending removal proceedings . . . is at risk of being re-detained after being at liberty for more than two years." No. 19 CIV. 8674 (KPF), 2021 WL 3727614, at *10 (S.D.N.Y. Aug. 20, 2021). In *Reyes*, the court explained that this was not a case where the petitioner, "if re-detained, stands to be held indefinitely, or contemplates that he will not receive any further process as to his entitlement to release on bond." *Id.* at *11; *see also Abreu v. Rivera*, No. 25-20821-CIV, 2025 WL 2163051, at *8 (S.D. Fla. May 12, 2025) ("Petitioner's argument that his detention

violates due process, because he was previously given a bond – so, his detention does not serve any legitimate statutory purpose – is also unpersuasive.").

Here, Petitioner's detention by ICE following her ATD violations serves the legitimate purpose of ensuring Petitioner's presence for her ongoing removal proceedings. As such, Petitioner's detention comports with the Constitution.

D. <u>This Court Lacks Jurisdiction to Review ICE's Decision to Revoke Release.</u>

To the extent Petitioner challenges ICE's decision to return Petitioner to custody, this Court lacks jurisdiction to review such decision as 8 U.S.C. § 1226(e) states that "[n]o court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole." 8 U.S.C. § 1226(e). As the Supreme Court explained in *Demore*, 538 U.S. at 516–17, this provision blocks judicial review of discretionary judgments and decisions by immigration officials regarding the arrest, detention, and bond of aliens subject to 8 U.S.C. § 1226. *See also Jennings*, 583 U.S. 281, 295–96 (2018) (8 U.S.C. "§ 1226(e) precludes an alien from challenging a discretionary judgment by the [Secretary] or a decision that the [Secretary] has made regarding his detention or release."); *Pisciotta*, 311 F. Supp. 2d at 453 ("Under Sections 1226(a) and (b), the Attorney General has the discretionary authority to arrest and detain, or release, or revoke the bond or parole status of an alien. Under Section 1226(e), no court has jurisdiction to set aside these discretionary determinations by the Attorney General. Therefore, to the extent the Petitioner's complaint seeks relief from [ ]ICE's determination to detain him upon the reopening of his removal proceedings or to revoke his prior custody status as determined in 1996, this Court must dismiss this request for relief for lack of jurisdiction."); *Salvador F.-G.*, 2025 WL 1669356, at *5 n.9 (dismissing for lack of jurisdiction any claim "that could be understood as seeking habeas review of discretionary

decisions made by DHS to revoke petitioner's bond and to detain him pending conclusion of his removal proceedings").

CONCLUSION

For these reasons, the Court should dismiss the Amended Petition.

Respectfully submitted,

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