

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

DIANE EKEMBE,

Petitioner

v.

ORLANDO PEREZ, in his official capacity as
Warden of the Laredo Processing Center,

MIGUEL VERGARA, in his official capacity as
Field Office Director of the Harlingen Field Office,
Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary
of the United States Department of Homeland
Security, and

PAMELA BONDI, in her official capacity as
Attorney General of the United States Department of
Justice;

Respondents.

**EMERGENCY MOTION TO
AWARD THE WRIT OR ISSUE
AN ORDER TO SHOW CAUSE**

Case No.: 5:25-cv-00225

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INTRODUCTION

Petitioner Diane Ekembe (“Ms. Ekembe”) files this Emergency Motion to Award the Writ or Issue an Order to Show Cause because she has been detained at the Laredo Processing Center for over eleven months. More than six months ago, an Immigration Judge granted her withholding of removal under Section 241(b)(3) of the Immigration and Nationality Act (“INA”), prohibiting her removal to her home country of Cameroon. Meanwhile, there is no indication that her removal from the United States is reasonably foreseeable. Ms. Ekembe’s continued detention therefore is unreasonable under both statutory and constitutional law, and she has filed a challenge to her continued detention as a violation of the INA and the Due Process Clause of the Fifth Amendment to the U.S. Constitution. *See* Emergency Petition for Writ of Habeas Corpus (the “Petition”), ECF 1; U.S. Const. art. V. Under Supreme Court precedent, there is “no sufficiently strong special justification” for indefinite detention of immigration detainees under the Fifth Amendment, and post-removal detention under the INA loses its presumption of reasonableness when it exceeds six months and there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future”—as Ms. Ekembe has shown in her Petition. *Zadvydas v. Davis*, 533 U.S. 678, 690, 701 (2001).¹

Ms. Ekembe requests that the Court immediately grant the writ because her continued detention is unreasonable under both statutory and constitutional law. In the alternative, she requests that the Court:

- (1) Serve a copy of her Emergency Petition, its accompanying exhibits, this Emergency Motion, and its accompanying Proposed Order upon the Respondents;²

¹ This petition is being filed on an emergency basis due to the length of Ms. Ekembe’s post-order detention and given the unknown but irreparable risk of removal to a third country without adequate notice from the government.

² *Cf. Sagastizado Sanchez v. Noem*, No. 5:25-cv-00104, Dkt. No. 3 (S.D. Tex. Jun 26, 2025) (dos Santos, J.) (ordering respondents to respond to petition, and ordering the Clerk of Court to serve respondents via certified mail).

- (2) Issue an order directing Respondents to show cause, within three days, why the writ should not be granted under 28 U.S.C. § 2243;
- (3) Under the jurisdiction granted to this Court under the All Writs Act, 28 U.S.C. § 1651, enjoin Respondents from transferring Ms. Ekembe outside this Court's jurisdiction; and
- (4) Require Respondents to provide to Ms. Ekembe, her undersigned counsel, and this Court written notice stating the name of the proposed country of removal and confirmation that the proposed country will accept Ms. Ekembe, with such notice provided at least 10 days before any removal of Ms. Ekembe is initiated.³

BACKGROUND

In December 2024, Ms. Ekembe entered the United States and was detained by U.S. immigration authorities. ECF 1-1 (Declaration) ¶ 5. After she filed for asylum, withholding of removal, and protection under CAT, an Immigration Judge (“IJ”) in Laredo, Texas on May 15, 2025, ordered Ms. Ekembe removed but prohibited her removal to Cameroon by granting her withholding of removal.⁴ *Id.* at ¶¶ 6–7. Ms. Ekembe has remained in the custody of the Department of Homeland Security for more than 180 days since her order of removal. *Id.* at ¶ 14. Ms. Ekembe has repeatedly contacted her deportation officers regarding her release and potential removal, but the government did not then—and has not since—identified a country willing to accept Ms. Ekembe nor provided notice of any intent to remove her from the United States to a specific third country. *Id.* at ¶¶ 9–11.

³ *Cf. Padron Covarrubias v. Vergara et al.*, No. 5:25-cv-00112, Dkt. No. 23 (S.D. Tex. Sept. 25, 2025) (Kazen, J.) (ordering respondents to notify petitioner’s counsel of any planned removal of petitioner outside of the United States at least five days before such removal).

⁴ The IJ Order itself does not designate any country of removal. ECF 1-2 at 3. The Notice to Appear issued to Ms. Ekembe lists Cameroon as her country of citizenship. ECF 1-7.

Despite the government's silence to date, Ms. Ekembe is concerned that, after filing her Petition, the government may be prompted to hastily remove her from the United States without the due process to which she is entitled. *See A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (“[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.” (internal quotation marks omitted) (citations omitted)); Mem. Op. and Order at 5, *D.A. v. Noem*, No. 1:25-cv-03135, ECF No. 41 (D.D.C. Sep 15, 2025) (“Here, Defendants transported Plaintiffs to Ghana with no notice or opportunity to challenge that removal, under what appears to be a hasty and unwritten agreement with Ghana, which has indicated its intention to return Plaintiffs to their home countries where Defendants agree they will almost certainly be persecuted.”). Several news outlets report that after the U.S. government recently removed noncitizens to third countries, those third countries then deported them to their home countries, despite the U.S. having granted withholding of removal to their home countries. *See, e.g.*, Nicholas Riccardi, Chinedu Asadu and Edward Acquah, *Ghana says all immigrants deported by the US have been sent home, contradicting lawyers*, ASSOCIATED PRESS (Sept. 16, 2025), <https://apnews.com/article/us-ghana-deportations-trump-third-countries-africa-efbec16e3725e3065b2578ccc7a175a2>; *West Africans sent by US to Ghana have been deported, lawyer says*, REUTERS (Sept. 23, 2025), <https://www.reuters.com/world/africa/west-africans-sent-by-us-ghana-have-been-deported-lawyer-says-2025-09-23/>.

Accordingly, in addition to asking the Court to act on her Petition and order her released, Ms. Ekembe also hereby seeks emergency relief to prevent such efforts and ensure she receives due process.

ARGUMENT

I. THIS COURT SHOULD EITHER GRANT THE WRIT OR ORDER RESPONDENTS TO SHOW CAUSE WHY MS. EKEMBE’S HABEAS PETITION SHOULD NOT BE GRANTED.

This Court should grant Ms. Ekembe’s Emergency Petition for Writ of Habeas Corpus and order Ms. Ekembe released because her continued detention violates her statutory rights under the INA and constitutional rights under the Fifth Amendment’s Due Process Clause.

Continuing to keep Ms. Ekembe in detention violates the INA. Under the INA, the government may detain a noncitizen for 90 days after an Immigration Court enters a final order of removal. 8 U.S.C. § 1231(a). Detention beyond that removal period is permissible only “for so long as is reasonably necessary to achieve removal.” *Clark v. Martinez*, 543 U.S. 371, 371 (2005). Detention for up to six months is presumed reasonable; beyond that, if the noncitizen “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” *Zadvydas*, 533 U.S. at 701, the government must demonstrate that continued detention remains “reasonably necessary.” *Clark*, 543 U.S. at 371; *see also Zadvydas*, 533 U.S. at 701.

Continuing to keep Ms. Ekembe in detention also violates the U.S. Constitution. The Fifth Amendment’s Due Process Clause prohibits the civil detention of a noncitizen absent a reasonable relation to a legitimate governmental purpose. *See Zadvydas*, 533 U.S. at 690. Although the “basic purpose [of] effectuating an alien’s removal” is a legitimate governmental purpose, *Zadvydas*, 533 U.S. at 697, that interest justifies detention only for a limited time. Courts in this district recognize that “in cases involving removable aliens, ... unjustified, *indefinite* detention violates due process.” *N.Z.M. v. Wolf*, No. 5:20-CV-24, 2020 WL 2813557, at *2 (S.D. Tex. May 28, 2020) (Marmolejo, J.) (citing *Zadvydas*, 533 U.S. at 692-93) (emphasis added).

Neither the INA nor the U.S. Constitution permits Ms. Ekembe's continued detention. Ms. Ekembe's over six months in detention exceeds both the statutory 90-day removal period and the presumptively reasonable six-month period permitted to achieve removal. And there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future": over the past six months, the government has not identified a country willing to accept Ms. Ekembe, nor provided notice of any intent to remove her from the United States, nor initiated removal efforts. *See Zadvydas*, 533 U.S. at 701; ECF 1 at ¶¶ 26, 49; *see also Sagastizado Sanchez v. Noem*, No. 5:25-cv-00104, Dkt. No. 29, at 18–19 (S.D. Tex. Nov. 14, 2025) (finding no significant likelihood of removal in the reasonably foreseeable future where the government identified a third country for removal but did not take steps to lawfully effectuate that removal). Ms. Ekembe's continued detention is no longer "reasonably necessary to achieve removal" and therefore violates the INA. *See Clark*, 543 U.S. at 371. Likewise, her continued detention is also unconstitutional because the government's inaction for six-plus months demonstrates that her detention is not reasonably related to the stated purpose of "effectuating an alien's removal." *See Zadvydas*, 533 U.S. at 690, 697.

This Court has recently found due process violations in similar circumstances. Less than a month ago, this Court granted a habeas petition in favor of a noncitizen previously granted withholding of removal after the government detained the petitioner for nine consecutive months following the IJ's removal order. *Misirbekov v. Venegas*, No. 1:25-CV-00168, 2025 WL 3033732, at *2 (S.D. Tex. Oct. 29, 2025) (Olvera, J.). Among other deficiencies, the government's apparent "lack of progress" in identifying a third country led this Court to find the petitioner's release "proper under both *Zadvydas* and the Fifth Amendment." *Id.* That decision comes alongside a wave of recent successful habeas petitions presenting facts similar to Ms. Ekembe's in other courts.

See Gomez v. Mattos, No. 2:25-CV-00975-GMN-BNW, 2025 WL 3101994, at *5 (D. Nev. Nov. 6, 2025) (granting habeas petition in favor of Chilean noncitizen granted withholding of removal after government detained him nearly eight months post-removal because petitioner “identified a barrier preventing him from being repatriated to Chile, has demonstrated that he is not a citizen of any other country, and that ICE has not identified a third country that will accept him”); *Murica v. Douglass*, No. 1:25-CV-01825-TWP-TAB, 2025 WL 3080427, at *2 (S.D. Ind. Nov. 4, 2025) (granting habeas petition in favor of noncitizen detained for eight months after removal order entered where government did not tender any evidence of plans to remove petitioner); *Trejo v. Warden of ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187, at *6 (W.D. Tex. Oct. 24, 2025) (granting in part habeas petition in favor of noncitizen granted CAT protection after government detained him for seven months while seeking third country removal but failed to show third country removal was “likely to occur in the reasonably in the reasonably foreseeable future”); *Sagastizado Sanchez*, No. 5:25-cv-00104, Dkt. No. 29, at 16–20 (granting habeas petition in favor of noncitizen and ordering his release where the presumptively reasonable period for detention had expired and the government failed to present sufficient evidence of progress in effectuating the petitioner’s removal to a third country).

Because of these violations of the INA and Due Process Clause, this Court should, at minimum, order Respondents to show cause why Ms. Ekembe’s requested writ should not be granted. The federal habeas corpus statute provides that a court “entertaining an application for writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. In particular, the Court should order a response within three days. *See id.* (When a court “direct[s] the respondent to show

cause why the writ should not be granted,” the respondent shall do so “within three days unless for good cause additional time, not exceeding twenty days, is allowed.”).

Courts in this District frequently issue such show cause orders when noncitizens in immigration detention seek a writ based on unconstitutionally prolonged detention. *See Padron Covarrubias*, No. 5:25-cv-00112, Dkt. No. 6; *Sagastizado Sanchez*, No. 5:25-cv-00104, Dkt. No. 3; *Chen v. Noem et al.*, No. 5:25-cv-00150, Dkt. No. 5 (S.D. Tex. Sept. 16, 2025) (dos Santos, J.); *Bichara v. Vasquez et al.*, No. 5:25-cv-00126, Dkt. No. 3 (S.D. Tex. Sept. 22, 2025) (dos Santos, J.); *Platas Acros v. Noem et al.*, No. 4:25-cv-04599, Dkt. No. 3 (S.D. Tex. Sept. 29, 2025); *Vargas Istamo v. Perez et al.*, No. 5:25-cv-00186, Dkt. No. 5 (S.D. Tex. Oct. 21, 2025). And it is similarly proper for this Court to do so here.

II. THIS COURT SHOULD ENJOIN RESPONDENTS FROM TRANSFERRING MS. EKEMBE OUTSIDE THIS COURT’S JURISDICTION AND SHOULD REQUIRE ADEQUATE NOTICE BEFORE ANY ATTEMPTED REMOVAL.

To protect Ms. Ekembe’s due process rights, and maintain the status quo, the Court should enjoin Respondents from transferring Ms. Ekembe outside this Court’s jurisdiction and should require Respondents to provide at least 10 days’ written notice, before initiating removal, stating the name of the proposed country of removal and confirmation that the proposed country will accept Ms. Ekembe. Under the All Writs Act, 28 U.S.C. § 1651, a court may enjoin conduct “which left unchecked, would have . . . the practical effect of diminishing the court’s power to bring the litigation to a natural conclusion.” *M.A.P.S. v. Garite*, 786 F. Supp. 3d 1026, 1061 (W.D. Tex. 2025) (internal quotation marks omitted). That applies here. The requested relief is necessary for due process, to maintain the status quo, and to preserve this Court’s jurisdiction while the Court considers Ms. Ekembe’s petition.

The All Writs Act permits courts to enjoin the government from transferring noncitizen petitioners outside of the United States during the pendency of their habeas proceedings, and courts

both in and outside this District apply the All Writs Act to grant injunctions in similar situations to Ms. Ekembe's here. *Padron Covarrubias*, No. 5:25-cv-00112, Dkt. No. 23 (ordering respondents to notify petitioner's counsel of any planned removal of petitioner "[t]o preserve the status quo while the Court considers this matter"); *see also J.A.V. v. Trump*, 780 F. Supp. 3d 705, 708 (S.D. Tex. 2025); *Alves v. U.S. Dep't of Just.*, No. EP-25-CV-306-KC, 2025 WL 2629763, at *5 (W.D. Tex. Sept. 12, 2025) (enjoining the government from removing petitioner from the country "during the pendency of this [habeas] Petition" and collecting cases where other courts held similarly). Courts enter injunctions like Ms. Ekembe requests here because, if a petitioner is removed from the United States, a court would lose jurisdiction over the petitioner's claims, and the petitioner "would be unable to seek habeas relief." *J.A.V.*, 780 F. Supp. at 708; *cf. Nieto-Ramirez v. Holder*, 583 F. App'x 330, 331 (5th Cir. 2014) (finding petitioner's habeas petition mooted by the petitioner's removal); *see also Correia v. U.S. Immigr. & Customs Enf't*, No. 3:24-CV-3105-N-BW, 2025 WL 2957806, at *1 (N.D. Tex. Oct. 9, 2025), *R&R adopted*, 2025 WL 2962569 (N.D. Tex. Oct. 20, 2025) (same).

Ms. Ekembe faces a palpable threat of removal from the United States at any time. Although the government has not shared any removal plans with Ms. Ekembe, she is currently in government custody in immigration detention. ECF 1-1 (Declaration) ¶ 5. Courts have recognized that other detained noncitizens are being removed without notice. *See, e.g.*, Mem. Op. and Order at 1–2, *D.A. v. Noem*, No. 25-cv-3135 (TSC), ECF No. 41 (D.D.C. Sept. 15, 2025) ("In recent months, the government has embarked upon a series of deportations which signal a drastic change of course. In several cases, authorities have rounded up—often at night and with little or no notice—men, women, and children being held in detention facilities, hastily put them on planes and transferred them to other countries, where they have no connections, do not speak the

language, and are unable to contact family or counsel.”). And should the government remove her, this Court would lose the ability to adjudicate Ms. Ekembe’s habeas claim. To ensure this Court retains jurisdiction and that Ms. Ekembe can be heard on the merits of her claim, this Court should use its power under the All Writs Act to enjoin Respondents from removing Ms. Ekembe outside of this Court’s jurisdiction and further order Respondents to provide Ms. Ekembe, this Court, and her undersigned counsel with written notice, at least 10 days before initiating her proposed removal, stating the name of the proposed country of removal and confirmation that the proposed country will accept Ms. Ekembe.

CONCLUSION

Ms. Ekembe respectfully requests that the Court promptly grant this motion.

Dated: November 18, 2025

/s/ Micah Doak

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Pro Bono Counsel for Petitioner

CERTIFICATE OF CONFERENCE

Pursuant to 3.A.1., 6.A.1. and 6.A.2. of this Judge's Court Procedures in Civil Cases, undersigned counsel states that Petitioner's habeas petition was filed today, and service of process is pending in that the undersigned has mailed the habeas petition to the U.S. Attorney's Office and the other entities required under Fed. R. Civ. P. 4(i) on the same day the habeas petition was filed. Thus, the undersigned has not had an opportunity to know who the government will assign to this matter, and consequently has not been able to confer with opposing counsel about this motion.

Date: November 18, 2025

/s/ Micah Doak

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Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of November 2025, I electronically filed the foregoing Emergency Motion to Award the Writ or Issue an Order to Show Cause with the Clerk of the Court using the CM/ECF system, and served a copy of such filing via mail and/or electronic mail upon:

Attorney General of the United States (via mail)
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Civil Process Clerk (via mail and electronic mail)
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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

DIANE EKEMBE,

Petitioner

v.

ORLANDO PEREZ, in his official capacity as
Warden of the Laredo Processing Center,

MIGUEL VERGARA, in his official capacity as
Field Office Director of the Harlingen Field Office,
Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary
of the United States Department of Homeland
Security, and

PAMELA BONDI, in her official capacity as
Attorney General of the United States Department of
Justice;

Respondents.

**[PROPOSED] ORDER TO SHOW
CAUSE**

Case No.:

THIS CAUSE comes before the Court upon review of Petitioner's Emergency Motion to Award the Writ or Issue an Order to Show Cause. This Court has considered the Motion, the pertinent portion of the record, and being otherwise fully advised of the premises, it is:

ORDERED that the Motion shall be granted. The Clerk is directed to serve Petitioner's Emergency Petition for a Writ of Habeas Corpus (ECF 1), the Emergency Petition's accompanying Exhibits (ECF 1-1, ECF 1-2, ECF 1-3, ECF 1-4, ECF 1-5, ECF 1-6, ECF 1-7), Petitioner's Emergency Motion, and a copy of this Order upon the Respondents.

IT IS FURTHER ORDERED that, following service, Respondents shall submit a response to Petitioner's Emergency Petition and serve it on Petitioner on or before _____, which is between the three-to-twenty day time period contemplated by 28 U.S.C. § 2243.

IT IS FURTHER ORDERED that, to maintain the status quo while the Court considers Petitioner's habeas petition and to preserve this Court's jurisdiction, Respondents may not transfer Petitioner outside of this Court's jurisdiction, and Respondents must provide written notice to Petitioner, her undersigned counsel, and this Court, at least 10 days before initiating her proposed removal, stating the name of the proposed country of removal and confirmation that the proposed country will accept Ms. Ekembe.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE