UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

DIANE EKEMBE, *Petitioner*,	§	
v.	§	CIVIL ACTION NO. 5:25-cv-00225
ORLANDO PEREZ, in his official capacity as Warden of the Laredo Processing Center, MIGUEL VERGARA, in his official capacity as Warden of the Laredo Processing Center, KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security, PAMELA BONDI, in her official capacity as Attorney General of the United States Department of Justice *Respondents*.	§	

MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

Respondents, ORLANDO PEREZ,[1] *et. al*., (hereafter "Respondents"), file this Motion to Dismiss the Petition for a Writ of Habeas Corpus of Petitioner DIANE EKEMBE (Dkt. No. 1), pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).[2]

[1] 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). It is the named federal respondents, not the named warden in this case, who makes the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

[2] Respondents file this Rule 12 motion in lieu of an answer and preserve all affirmative defenses for inclusion in an answer in the event the instant motion is denied.

I. NATURE AND STAGE OF PROCEEDING

1. Petitioner, Diane Ekembe (hereafter "Petitioner"), is a native and citizen of Cameroon, who is awaiting removal from the United States, following an Order of the Immigration Judge, entered on May 15, 2025, which Petitioner did not appeal. Ex. 3 at 4.

2. Petitioner is an immigration detainee in the custody of the Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE) and is currently detained at the Laredo Detention Processing Center, located at 4702 East Saunders Street, Laredo, Texas 78041. Ex. 2, ¶ 3.

3. On November 18, 2025, Petitioner filed the instant habeas petition, alleging that she is being held in violation of the Constitution, laws, or treaties of the United States, on the following grounds: unlawful detention; no significant likelihood of removal in the foreseeable future; removal to an undisclosed third country would violate Due Process and unreasonable prolonged incarceration. Dkt. No.1. The Petitioner's request for relief includes being released immediately, declaring that Petitioner's continued detention violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. *Id.*

II. STANDARD OF REVIEW

A. Federal Rule of Civil Procedure 12(b)(1)

1. Federal courts are courts of limited jurisdiction. *See Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001), cert. denied, 534 U.S. 993 (2001); *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). A court must dismiss an action when it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1); *see also* Fed. R. Civ. P. 12(h)(3)("If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.") "A case is

properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Krim v. pcOrder.com, Inc*., 402 F.3d 489, 494 (5th Cir. 2005) (quotations omitted); Fed. R. Civ. P. 12(h)(3).

2. In ruling on a motion to dismiss for lack of subject matter jurisdiction, courts may evaluate: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *See Den Norske Stats Oljeselskap As v. HeereMac Vof*, 241 F.3d 420, 424 (5th Cir. 2001) (citing *Barrera–Montenegro v. United States*, 74 F.3d 657, 659 (5th Cir. 1996)). The burden of establishing subject matter jurisdiction in federal court is on the party seeking to invoke it. *Hartford Ins. Group v. Lou–Con Inc.*, 293 F.3d 908, 910 (5th Cir. 2002). Accordingly, plaintiff must prove that jurisdiction does in fact exist. *See Menchaca v. Chrysler Credit Corp*., 613 F.2d 507, 511 (5th Cir. 1980).

B. Federal Rule of Civil Procedure 12(b)(6)

3. To survive a 12(b)(6) motion, a petitioner must frame a complaint with enough factual matter, taken as true, to suggest entitlement to relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)). "Factual allegations must raise a right to relief above the speculative level" and complaints that are no more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action will not do." *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009). A court may consider documents attached or referred to in the complaint without converting a 12(b)(6) motion into one for summary judgment. *Tellabs, Inc. v. Makor Issued & Rights*, 551 U.S. 308 (2007).

III. FACTUAL SUMMARY

1. On December 12, 2024, Petitioner entered the United States, without inspection, admission, or parole, and DHS apprehended her on the same day. Ex. 2, ¶ 4.

2. On February 4, 2025, Petitioner was served a Notice to Appear ("NTA"). Ex. 1 at 2.

3. On April 11, 2025, Petitioner filed an application for asylum and withholding of removal. Ex. 2, ¶ 9.

4. On May 15, 2025, an Immigration Judge found the Petitioner inadmissible under the Immigration and Nationality Act 212(a)(7)(A)(i)(I) and denied Petitioner's applications for asylum. Withholding of Removal under INA § 241(b)(3) was granted. Petitioner waived his right to appeal the decision to the Board of Immigration Appeals ("BIA"), which rendered his May 15, 2025, order final. Ex. 2, ¶ 10.

5. On October 1, 2025, ICE-ERO contacted its headquarters for assistance with removal of Petitioner to a third country. *Id*. at ¶ 12.

6. On November 19, 2025, ICE-ERO, submitted third country Form I-241 Requests for Acceptance of Alien to Costa Rica, Honduras, and Belize. *Id*. at ¶ 20.

7. On November 26, 2025, ICE-ERO completed the 90-day Post Order Custody Review ("POCR"). ERO determined that Petitioner would remain detained because she has a final order of removal and was pending removal to a third country. *Id*. at ¶ 22. On the same date, ERO conducted the 180-day POCR and determined Petitioner would remain in custody pending acceptance by a third country. *Id*. at ¶ 23.

IV. ISSUE PRESENTED

1. Whether Petitioner's detention is lawful.

V. ARGUMENT

A. Petitioner's Detention is lawful.

1. Petitioner claims that her detention is unlawful. Respondents respectfully disagree. Petitioner is not being detained without a purpose; she is being detained to effectuate her removal to a third country. *See* Ex. 1. As this Court is aware, this Court's review in a § 2241 habeas proceeding is limited to determining whether Petitioner's detention violates the law or the Constitution.

2. Here, Petitioner is being detained under a May 15, 2025, Final Order of Removal. The IJ's Order directed that she be removed to Cameroon; however, Petitioner was granted withholding of removal to Cameroon under the Immigration and Nationality Act ("INA") § 241(b)(3).

3. Courts have recognized that continued detention pursuant to 8 U.S.C. § 1231(a)(6) is lawful when removal is reasonably foreseeable or if the Petitioner poses a risk of flight or a danger to the community. *See Zadvydas v. Davis*, 533 U.S. 678 (2001) In the context of a habeas proceeding, the Supreme Court 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."). *Andrade v. Gonzalez*, 459 F.3d 538 (5th Cir. 2006), cert. denied, 549 U.S. 1132 (2007) (acknowledging the alien's initial burden of proof where claim under *Zadvydas* was without merit because it offered "nothing beyond [alien's] conclusory statements" suggesting that removal was not foreseeable).

4. In this case, Petitioner has failed to meet her burden. Rather, Petitioner has merely suggested that she is unlikely to be removed. "[U]nsupported arguments and speculation"

regarding the foreseeable likelihood of removal will not suffice to carry Petitioner's 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).

5. Contrary to Petitioner's allegations, there is a significant likelihood of her removal, as ERO is actively working to identify and secure acceptance from a third country for her removal. ERO has submitted Requests for Acceptance of Alien to three separate countries. *See* Ex. 2, ¶ 20. On November 20, 2025, one of those three countries, Costa Rica, declined. *Id*. at ¶ 21. However, a response is still pending from the remaining two countries, Honduras and Belize. *Id*.

6. In *Alam*, the Court emphasized that "removal is not "reasonably foreseeable" in cases "where no country would accept the detainee, the country of origin refused to issue the proper travel documents, the United States and the country of origin did not have a removal agreement in place, or the country to which the deportee was going to be removed was unresponsive for a significant period of time." *Alam v. Nielsen, et al.*, 312 F. Supp.3d 574, (S.D. Texas, Houston Division – May 9, 2018). Petitioner has not offered any evidence demonstrating that she meets any of the examples outlined in *Alam* or any evidence altogether to indicate that she will not be deported in the reasonably foreseeable future. Thus, her habeas claim should be dismissed.

B. Petitioner's detention does not violate her right to Due Process under the Fifth Amendment

1. Additionally, Petitioner argues that she should be released because her detention violates her right to Due Process under the Fifth Amendment. To the extent that Petitioner is arguing that the Government is violating due process by detaining her during her removal proceedings, such an argument is contrary to the INA and has been rejected by the Supreme Court. *See* U.S.C. § 1226(a)

(Stating that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States."); *see also Denmore v. Kim*, 538 U.S. 510, 123 S.Ct. 1708, 155 L.Ed. d724(2003) (holding that "detention during [deportation] proceedings is a constitutionally valid aspect of the process"); *Wong Wing v. United States,* 163 U.S. 228, 16 S.Ct. 977, 41 L.Ed. 140 (1896) (explaining that "[p]roceedings to exclude or expel would be vain if those accused could not be held in custody…while arrangements were being made for their deportation."). Accordingly, this Petition warrants dismissal.

2. In addition, 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-CVCCase 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 her due process claims.

3. 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.

4. 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.

Ex. B *("July 9 Guidance")*. The July 9 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.* Ex. C ("March Guidance").

5. 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*.

6. 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 on his 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.

7. This framework also requires rejection of any argument of entitlement to an individualized determination under the 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.

8. 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 him to that country and then give him an opportunity to establish that he fears removal there. Ex. C (March Guidance) 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 he "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, to the newly designated country of removal. *Id*. Alternatively, ICE may choose another country for removal, subject to the same processes. *Id*.

9. 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. Petitioner has not shown a likelihood that she will be erroneously deprived of her rights under the March Guidance, such that she 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 her due process claims.

VI. CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court grant its motion and dismiss Petitioner's petition for writ of habeas corpus.

Dated: December 1, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2025, a true and correct copy of the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

By: ***s/Gabriel Abebe***
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