



<b>RESPONDENTS' EXHIBIT 2</b>	Declaration of Juan M. Garza dated December 9, 2025, Supervisory Detention and Deportation Officer, "SDDO" for the Laredo Field Office of Enforcement and Removal Operations ("ERO"), U.S. Immigration and Customs Enforcement ("ICE"), U.S. Department of Homeland Security ("DHS").
-------------------------------	---

## I. NATURE AND STAGE OF PROCEEDING

1. Petitioner, Qiurong Zhu (hereafter "Petitioner"), is a native and citizen of China, who is awaiting removal from the United States, following an Order of the Immigration Judge, entered on October 9, 2008, which Petitioner did not appeal. Ex. 1 at 9.
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 Processing Center, located at 4702 E. Saunders St., Laredo, TX 78041, where she has been detained since October 6, 2025. Ex. 2 ¶ 3
3. On September 15, 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; and unreasonable prolonged incarceration. Dkt. No. 1. The Petitioner's request for relief includes releasing Petitioner from custody and restoring Petitioner to her prior Order of Supervision. *Id.* at 12.

## II. STANDARD OF REVIEW

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

4. 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).

5. 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)**

6. 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**

7. Petitioner entered the United States without inspection, admission, or parole around

February 2001. Dkt No. 1 ¶ 22; Ex. 1 at 7.

8. On June 7, 2007, Petitioner filed an application for asylum. Ex. 1 at 8.

9. On October 9, 2008, the Immigration Judge found the Petitioner inadmissible under the Immigration and Nationality Act 212(a)(6)(A)(i) and denied Petitioner's applications for asylum. Ex. 1 at 9. Withholding of Removal to China under INA § 241(b)(3) was granted. Petitioner waived her right to appeal the decision, which rendered her October 9, 2008, order final. *Id.*

10. On April 16, 2009, Petitioner was placed on Order of Supervision. *Id.* at 8.

11. On October 2, 2025, Petitioner was detained by ICE-ERO at the ERO ISAP building located at 1 N. Charles St. Ste. 2000, Baltimore, MD 21201. *Id.*

12. On November 12, 2025, ICE-ERO submitted a citizen acceptance request to Belize, Costa Rica and Panama. Ex. 2 ¶ 5. On the same date, Panama and Belize denied the acceptance request. *Id.* Costa Rica denied the request on November 17, 2025. *Id.* ¶ 7.

13. On December 4, 2025, the 90-Day Post Order Custody Review ("POCR") Notice was served on Petitioner, notifying her that her custody status will be reviewed on or about December 16, 2025. Ex. 1 at 3.

#### IV. ISSUE PRESENTED

14. Whether Petitioner's detention is lawful.

#### IV. ARGUMENT

##### A. Petitioner's Detention is lawful.

15. Petitioner challenges ICE's continued custody, asserting that her prolonged detention is unreasonable. Dkt. No. 1 ¶ 38.

16. Under 8 U.S.C. § 1231, the Attorney General has an initial period of 90 days (known as the removal period) to remove an alien who is subject to a removal order, during which time the

alien “shall” be detained. 8 U.S.C. § 1231(a)(1)(A) and (a)(2). If not removed within the initial 90-day removal period, it is presumptively constitutional for an alien to be detained for six months after a final order of removal is entered. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

17. To prevail under *Zadvydas*, the alien must make a two-part showing. First, he must establish that he has been detained beyond the six-month period set forth in *Zadvydas*. *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002). Second, he must provide “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701; *Akinwale*, 287 F. 3d at 1052. Petitioner fails to satisfy *Zadvydas*. First, Petitioner has not exceeded the six-month presumptively reasonable period following the issuance of her removal order on October 9, 2008, which became final without appeal. Second, Petitioner provides no good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. Because Petitioner cannot prevail under the *Zadvydas* standard, Petitioner is lawfully detained, and the Court should dismiss her Petition for writ of habeas corpus.

18. In *Zadvydas v. Davis*, the Supreme Court considered a challenge to 8 U.S.C. § 1231(a) and was asked to decide whether the statute authorized indefinite detention of a removable alien. 533 U.S. 678. The Court held that the continued detention of removable aliens beyond the mandated 90-day removal period was permissible under the Constitution, but only for as long as was “reasonably necessary to bring about the alien’s removal from the United States.” *Id.* at 689. To that end, the Court announced that post-removal detention for six months is presumptively reasonable. *Zadvydas*, 533 U.S. at 701. After the expiration of the six-month period, an alien is eligible for release, only if he or she shows “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* The Government thereafter can respond with evidence sufficient to rebut the showing. *Zadvydas*, 533 U.S. at 701.

19. In light of the Supreme Court’s decision in *Zadvydas*, the Attorney General promulgated regulations to establish and implement a formal administrative process to review the custody of aliens, like Petitioner, who are being detained subject to a final order of removal, deportation, or exclusion. 8 U.S.C. § 1231, C.F.R. § 241 *et seq.* Under the regulatory provisions, post-order aliens who remain detained beyond the removal period may present to ICE their claims that they should be released from detention because there is no significant likelihood that they will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(d). Upon a written claim, ICE will analyze the likelihood of removal under the circumstances and information available. 8 C.F.R. § 241.13(f). Unless and until ICE determines that there is no significant likelihood of removal in the foreseeable future, the alien will continue to be detained, and her detention will continue to be governed by the post-order detention standards. 8 C.F.R. § 241.13(g)(2).

20. For an alien to establish a prima facie claim for relief under the *Zadvydas* rationale, he must not only show post-removal detention in excess of six months, but he must also provide evidence of good reason to believe that there is no significant likelihood of removal in the foreseeable future. 8 C.F.R. § 241.13(d). Where the alien fails to come forward with an initial offer of proof, the petition is ripe for dismissal. *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).

21. Here, Petitioner has made conclusory allegations that her removal is not reasonably foreseeable because there is “no factual basis to believe that removal to a third country will ever become practicable and legally permissible.” Dkt. No 1 ¶ 41. These conclusory allegations, however, are insufficient grounds to state or support a claim that Petitioner’s detention is unlawful.

Petitioner has failed to make an initial showing that she has been detained for more than six months since the issuance of her final order. Moreover, ERO is actively working to identify a third country to which Petitioner may be removed. Ex. 2 ¶ 5.

**B. Petitioner has failed to establish that she has been detained beyond the six-month presumptively reasonable period**

22. It is presumptively constitutional for an alien to be detained for six months after a final order of removal is entered. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In the present case, Petitioner’s final order of removal was issued on October 9, 2008. Even though Petitioner’s final order of removal was issued on October 9, 2008, she was only recently detained on October 2, 2025. Nothing in Petitioner’s Writ of Habeas Corpus indicates that she was detained in 2008 or at any time between 2008 and 2025. Dkt. No 1. In fact, Petitioner was placed on Order of Supervision on April 16, 2009. Ex. 1 at 8. Because Petitioner was not taken into DHS custody until October 2, 2025, the six-month presumptively reasonable period recognized in *Zadvydas* has not yet elapsed.

**C. There is a significant likelihood of Petitioner’s removal to a third country in the reasonably foreseeable future.**

23. Under *Zadvydas*, it is the petitioner’s initial burden to provide “a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. Once that initial burden is met, the burden then shifts to the government to respond with sufficient evidence to rebut the presumption of reasonableness. Petitioner asserts there is no significant likelihood of her removal because there’s no factual basis to believe that third country removal will ever become practicable. Dkt. No. 1 ¶ 41. However, contrary to Petitioner’s allegations, there is a significant likelihood of her removal, as ERO is actively working with other agencies to identify and secure acceptance from a third country for her removal. Ex.2 ¶ 6.

24. 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 he meets any of the examples outlined in *Alam* or any evidence altogether to indicate that he will not be deported in the reasonably foreseeable future. Thus, her habeas claim should be dismissed.

**D. Petitioner’s detention does not violate her right to Due Process under the Fifth Amendment**

25. Petitioner’s other argument for why she should be released is that 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.

26. 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.

27. 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.

28. 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*”).

29. 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.*

30. 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.

31. 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.

32. 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.*

33. 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.

#### V. CONCLUSION

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

Dated: December 10, 2025

Respectfully submitted,

**NICHOLAS J. GANJEI**  
United States Attorney  
Southern District of Texas

By: *s/ Gabriel Abebe*  
**GABRIEL ABEBE**  
Assistant United States Attorney  
Southern District of Texas No.: 3938186  
California No.: 325376  
United States Attorney's Office  
Southern District of Texas  
1701 W. Bus. Highway 83, Suite 600  
McAllen, Texas 78501  
Telephone: (956) 992-9422  
Facsimile: (956) 618-8016  
Email: Gabriel.Abebe@usdoj.gov

Attorney for Respondents

**CERTIFICATE OF SERVICE**

I hereby certify that on December 10, 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*  
**GABRIEL ABEBE**  
Assistant United States Attorney