

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

AIDA IUSUBOVA,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-91-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

RESPONSE TO PETITIONER’S BRIEF

On March 14, 2025, the Court received Petitioner’s petition for a writ of habeas corpus (“Petition”). ECF No. 1. On April 17, 2025, Respondent filed a response to the Petition. ECF No. 4. Three days earlier, on April 14, 2025, the Court received another filing from Petitioner, which was initially docketed as a new habeas petition. *See A.I. v. Warden, Stewart Det. Ctr.*, No. 4:25-cv-122-CDL-AGH, Pet. (M.D. Ga. Apr. 14, 2025), ECF No. 1. On April 23, 2025, the Court consolidated the two cases, characterized Petitioner’s April 14, 2025 filing as a Brief in Support of her Petition, and ordered Respondent file any response within 21 days. ECF No. 5. With some exceptions discussed below, Petitioner’s assertions in her Brief largely track arguments she previously raised in the Petition. *Compare* Pet. 2-5, ECF No. 1 *with* Pet’r’s Br. 5-8.¹ For the hereinbelow reasons, the Petition should be denied.

¹ Petitioner’s Brief has not been docketed in this case. In responding to that Brief, Respondent refers to the document that was previously docketed as a new habeas petition in *A.I. v. Warden, Stewart Det. Ctr.*, No. 4:25-cv-122-CDL-AGH, Pet. (M.D. Ga. Apr. 14, 2025), ECF No. 1. That case has been administratively closed.

BACKGROUND

Respondent set forth the facts concerning Petitioner's immigration history and claims in the Response to the Petition. *See* Resp. 1-2, ECF No. 4. To the extent necessary, Respondent incorporates those portions of the Response herein by reference. Respondent has summarized some of the relevant facts below and incorporated additional allegations from Petitioner's Brief and supporting exhibits.

Petitioner is a native of Azerbaijan and a citizen of Russia who is detained pre-final order of removal as an arriving alien pursuant to 8 U.S.C. § 1225(b). Askew Decl. ¶¶ 4, 10, ECF No. 4-1; Askew Decl. Ex. A, ECF No. 4-2. On April 1, 2024, Petitioner entered immigration custody after applying for admission without a document permitting her lawful entry into the United States. Askew Decl. ¶ 4; Askew Decl. Ex. A. Petitioner "requested political asylum" and "underwent a [c]redible [f]ear [i]nterview and received a positive determination." Pet'r's Br. 3.

On June 27, 2024, Petitioner was charged with inadmissibility pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) based on her lack of a valid entry document at the time she applied for admission. Askew Decl. ¶ 6; Askew Decl. Ex. B, ECF No. 4-3. Petitioner filed applications for relief in her removal proceedings, and on January 2, 2025, an immigration judge ("IJ") denied those applications and ordered Petitioner removed to Russia and to Azerbaijan in the alternative. Askew Decl. ¶¶ 7-8; Askew Decl. Ex. C, ECF No. 4-4; Pet'r's Br. Ex. 4, ECF No. 1-4; Pet'r's Br. 4 ("[T]he immigration court denied asylum."). Petitioner appealed the IJ's removal order to the Board of Immigration Appeals ("BIA"), and that appeal remains pending. Askew Decl. ¶ 9; Askew Decl. Ex. D, ECF No. 4-5; Pet'r's Br. 4 ("Petitioner . . . filed an appeal with the [BIA], which is currently under review.").

On January 17, 2025, ICE/ERO served Petitioner with parole advisals and parole interview scheduling notification. Askew Decl. ¶ 11. On or about January 22, 2025, Petitioner, through counsel, requested parole. *Id.*; *see also* Pet'r's Br. 5 (stating that Petitioner's "lawyers appealed to the ICE officers of the Lapkin [sic] detention center to release her under a Parole"). On January 28, 2025, ICE/ERO conducted an interview as part of its parole assessment. Askew Decl. ¶ 11; *see also* Ex. A² ("As part of its determination whether to parole you, on [January 28, 2025], ICE conducted an initial interview with you."). On January 30, 2025, after conducting an individualized determination, ICE/ERO denied Petitioner's request for parole and served Petitioner's counsel with the decision on the same day. Askew Decl. ¶ 11; Ex. A; *see also* Pet'r's Br. 4 (acknowledging that ICE/ERO "den[ied] release under Parole"). There is a significant likelihood of Petitioner's removal in the reasonably foreseeable future should she become subject to a final order of removal. Askew Decl. ¶ 12. ICE/ERO is currently removing non-citizens to Russia. *Id.*

ARGUMENT

The arguments raised in Petitioner's Brief largely track those raised in the Petition. To the extent Petitioner challenges her ongoing detention on due process grounds, that claim should be denied because Petitioner is mandatorily detained as an arriving alien. Her due process rights are therefore limited to the procedures provided by the Immigration and Nationality Act ("INA"). Because the INA mandates detention of arriving aliens and does not permit their release on bond, Petitioner cannot establish any violation of due process arising from her detention. *See* Resp. 5-9, ECF No. 4.³

² Respondent previously filed a partially redacted copy of the Notification Declining to Grant Parole as an exhibit in support of the Response to the Petition. *See* Askew Decl. Ex. E, ECF No. 4-6. Here, Respondent has attached an unredacted version of that same document as Exhibit A.

³ To the extent necessary, Respondent incorporates its due process and other arguments raised in the Response herein by reference. *See* Resp. 4-11, ECF No. 4.

Apart from her due process claim challenging the length of her detention, Petitioner also appears to assert (1) ICE/ERO erred by denying her parole, Pet'r's Br. 4-5; (2) she is entitled to relief from removal, *id.* at 4, 7; and (3) she is entitled to release based on the conditions of her confinement, *id.* at 4-5, 7.⁴ Petitioner's first two claims should be denied because the Court lacks jurisdiction over the claims. Petitioner's third claim should be denied because it is not cognizable in habeas.

I. The Court lacks jurisdiction to review ICE/ERO's discretionary parole decision.

In Petitioner's Brief, she argues that she is entitled to parole pursuant to 8 U.S.C. § 1182(d)(5)(A) because she is neither a flight risk nor a danger to the community and because she suffers from multiple medical conditions. Pet'r's Br. 4-5. Petitioner briefly raised this same argument in the Petition. Pet. 2. As set forth in the Response, the Court lacks subject matter jurisdiction over this claim under 8 U.S.C. § 1252(a)(2)(B)(ii) because parole determinations are committed to ICE/ERO's discretion by statute. Resp. 9-11. Respondent incorporates those arguments herein by reference.

Petitioner's Brief offers no basis to avoid this jurisdictional bar. In fact, Petitioner concedes that she requested parole and that ICE/ERO issued a decision denying her request. Pet'r's Br. 4-5; *see also* Ex. A. Rather, Petitioner claims that ICE/ERO erred in reaching its parole decision because she has demonstrated that she is entitled to parole based on the evidence submitted, including letters of support and evidence of her medical conditions. Pet'r's Br. 4-5. However, as explained in the Response, 8 U.S.C. § 1182(d)(5)(A) commits parole determinations to ICE/ERO's

⁴ Petitioner appeared to briefly challenge ICE/ERO's parole determination in the Petition, Pet. 2, and Respondent addressed that apparent claim in the Response, Resp. 9-11. Petitioner's Brief, however, expounds upon that claim, and Respondent re-addresses the claim here for that reason. Petitioner did not appear to raise claims challenging her removal order or her conditions of confinement in the Petition. Thus, Respondent fully addresses those arguments for the first time here.

discretion by statute. *Pouzo v. U.S. Citizenship & Immigr. Servs.*, 516 F. App'x 731, 731 (11th Cir. 2013) (per curiam); Resp. 10-11. Accordingly, pursuant to section 1252(a)(2)(B)(ii), the Court lacks jurisdiction to judicially review ICE/ERO's parole determination. *Id.*; *Alonso-Escobar v. USCIS Field Off. Dir. Miami, Fla.*, 462 F. App'x 933, 935 (11th Cir. 2012) (per curiam).

Even if Petitioner challenges ICE/ERO's consideration of her evidence during its decision-making process on parole—as opposed to the ultimate parole decision—the Court still lacks jurisdiction over this claim. See *Kanapuram v. Dir., U.S. Citizenship & Immigr. Servs.*, 131 F.4th 1302, 1307 (11th Cir. 2025) (holding that section 1252(a)(2)(B)(ii) bars judicial review of “not only the ultimate decision to approve or deny [a discretionary form of relief], but also *actions taken in the course of the decision-making process*[.]” (emphasis added)). And Petitioner's unparticularized citation to the Due Process Clause and the Eighth Amendment do not change the result. While Petitioner cites these authorities, her claim centers on ICE/ERO's discretionary parole decision, and she argues that ICE/ERO should have exercised that discretion to grant her parole. Pet'r's Br. 4-5. But the Eleventh Circuit has held that the mere citation of a constitutional provision is insufficient to avoid the section 1252(a)(2)(B)(ii) jurisdictional bar where the claim still seeks review of a discretionary determination. *Arias v. United States Att'y Gen.*, 482 F.3d 1281, 1283-84 (11th Cir. 2007). That is exactly what Petitioner seeks to do here, and for these reasons, the Court lacks jurisdiction over Petitioner's attempts to challenge ICE/ERO's discretionary parole determination. That claim should be denied.

II. The Court lacks jurisdiction to judicially review Petitioner's removal order.⁵

Petitioner also appears to seek judicial review of her removal order—specifically, the IJ's decision to deny her applications for relief from removal. She asserts that the IJ's "decision [is] unjustified," Pet'r's Br. 4, because she "has demonstrated a threat of persecution in Russia," *id.* at 7. To the extent Petitioner requests that the Court judicially review her removal order, the Court lacks jurisdiction over this claim, and it should be denied.

"Following enactment of the REAL ID Act of 2005, district courts lack habeas jurisdiction to entertain challenges to final orders of removal." *Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 832 (11th Cir. 2016) (per curiam) (citing 8 U.S.C. § 1252(a)(5), (b)(9)). "Instead, 'a petition for review filed with the appropriate court is now an alien's exclusive means of review of a removal order.'" *Id.* (quoting *Alexandre v. U.S. Att'y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006)). Section 1252(b)(9) provides in full:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under [subchapter II of chapter 12 (8 U.S.C. §§ 1151-1378)] shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9).

Indeed, the Supreme Court has described section 1252(b)(9) as an "unmistakable zipper clause" that streamlines litigation by consolidating and channeling claims first to the agency and then to the circuit courts through petitions for review. *Reno v. American-Arab Anti-Discrimination*

⁵ Due the Petition's sweeping citation to various inapplicable immigration authorities and the resulting difficulty in discerning Petitioner's claims, Respondent briefly raised this same argument in the Response. *See* Resp. 4 n.3. To the extent necessary, Respondent incorporates that portion of the Response herein by reference.

Comm. (“AADC”), 525 U.S. 471, 483 (1999). In AADC, the Court elaborated on the breadth of section 1252(b)(9), explaining that it serves as a “general jurisdictional limitation” on challenges to actions arising from removal operations and proceedings. Id. at 482. District courts are barred from reviewing removal proceedings regardless of how the non-citizen characterizes his claim. Mata v. Sec’y of Dep’t of Homeland Sec., 426 F. App’x 698, 700 (11th Cir. 2011) (per curiam) (affirming district court’s dismissal of challenge to removal order brought pursuant to the federal question and mandamus statutes, Administrative Procedure Act, and the Declaratory Judgment Act).

Here, Petitioner filed an application for relief from removal during her immigration proceedings. Askew Decl. ¶¶ 7-8; Askew Decl. Ex. C. The IJ considered Petitioner’s application and issued a lengthy decision denying relief and ordering her removed. Askew Decl. Ex. C; Pet’r’s Br. Ex. 4. Petitioner acknowledges that the IJ denied her application for relief. Pet’r’s Br. 4 (“[T]he immigration court denied asylum.”). Thus, to the extent Petitioner claims she is nevertheless entitled to relief, her claim plainly seeks judicial review of a “question[] of law or fact” that arose in an “action taken or proceeding brought to remove an alien from the United States” within the meaning of 8 U.S.C. § 1252(b)(9). Indeed, the Eleventh Circuit has specifically held that section 1252(b)(9) deprives courts of habeas jurisdiction over claims challenging an IJ’s denial of fear-based relief from removal. *Linares v. Dep’t of Homeland Sec.*, 529 F. App’x 983, 983-84 (11th Cir. 2013) (per curiam). Petitioner’s claim is no different, and the Court should deny the claim for lack of subject matter jurisdiction.

III. Petitioner’s conditions of confinement claim is not cognizable in habeas.

Petitioner alleges that she suffers from multiple medical conditions and claims that she has not received adequate treatment for those conditions while in immigration custody. Pet’r’s Br. 4

(“In the conditions of Stewart Detention Center, [Petitioner] is denied adequate medical care.”); *see also id.* at 5. She also asserts that she has received inadequate nutrition and that she has difficulty sleeping. *Id.* at 4. Citing the Eighth Amendment, Petitioner claims the conditions of her confinement render her detention unlawful and requests release from custody. *Id.* at 7. Petitioner’s conditions of confinement claim should be denied for two reasons. First, conditions of confinement claims are not cognizable in a habeas corpus proceeding. Second, allegations concerning conditions of confinement, even if proven, do not entitle Petitioner to release.

First, Petitioner’s claim should be denied because it is not cognizable in habeas. “[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). “[W]here an inmate seeks injunctive relief challenging the fact of his conviction or the duration of his sentence . . . [s]uch claims fall within the ‘core’ of habeas corpus[.]” *Nelson v. Campbell*, 541 U.S. 637, 643 (2004). “By contrast, constitutional claims that merely challenge the conditions of a prisoner’s confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core[.]” *Id.* For these reasons, in the immigration context, the Eleventh Circuit has held that a “§ 2241 petition is not the appropriate vehicle for raising . . . a claim challeng[ing] the conditions of confinement, not the fact or duration of that confinement.” *Vaz v. Skinner*, 634 F. App’x 778, 781 (11th Cir. 2015) (per curiam) (affirming dismissal of immigration detainee’s habeas petition alleging the denial of inadequate medical care because the claim was not cognizable in habeas).

In reliance on these principles, courts throughout the Eleventh Circuit have held that immigration detainees’ claims concerning their conditions of confinement are not cognizable in habeas. *Benavides v. Gartland*, No. 5:20-cv-46, 2020 WL 3839938, at *4 (S.D. Ga. July 8, 2020);

Louis v. Martin, No. 2:20-cv-349-FtM-60NPM, 2020 WL 3490179, at *7 (M.D. Fla. June 26, 2020); *A.S.M. v. Warden, Stewart Cnty. Det. Ctr.*, 467 F. Supp. 3d 1341, 1348-49 (M.D. Ga. 2020); *Archilla v. Witte*, No. 4:20-cv-00596-RDP-JHE, 2020 WL 2513648, at *12 (N.D. Ala. May 15, 2020); *Matos v. Lopez Vega*, 614 F. Supp. 3d 1158, 1167-68 (S.D. Fla. 2020). Petitioner similarly attempts to challenge her conditions of confinement in immigration custody through a habeas petition under section 2241. The Court should deny this claim because it is not cognizable in this habeas proceeding.

Second, Petitioner's claim should be denied because she is not entitled to release from custody to remedy any purportedly unlawful condition of confinement. "[E]ven if a prisoner proves an allegation of mistreatment in prison that amounts to cruel and unusual punishment, he is not entitled to release." *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990) (citing *Cook v. Hanberry*, 596 F.2d 658, 660 (5th Cir. 1979), *cert. denied*, 442 U.S. 932 (1979)). Rather, "[t]he appropriate Eleventh Circuit relief from prison conditions that violate the Eighth Amendment during legal incarceration is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment." *Id.*

The Eleventh Circuit has specifically held that "even if [an immigration detainee] established a constitutional violation [in a habeas proceeding], he would not be entitled to the relief he seeks because release from imprisonment is not an available remedy for a conditions-of-confinement claim." *Vaz*, 634 F. App'x at 781 (citing *Gomez*, 899 F.2d at 1126); *see also A.S.M.*, 467 F. Supp. 3d at 1348 ("Release from detention is not available as a remedy for unconstitutional conditions of confinement claims." (citations omitted)). Accordingly, even assuming Petitioner could establish an unlawful condition of confinement arising from the treatment of her medical

condition, her habeas claim should be denied because she is not entitled to release from custody as a remedy.

CONCLUSION

For the reasons set forth herein and in the Response to the Petition (ECF No. 4), Petitioner fails to show that she is entitled to relief on any of her claims. Respondent respectfully requests that the Petition be denied.

Respectfully submitted this 14th day of May, 2025.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Response to Petitioner's Brief with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

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A# 
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This 14th day of May, 2025.

BY: s/ Roger C. Grantham, Jr.
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