

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

BERTILLA NCHUO KUM

CASE NO. 6:25CV451

VERSUS

JUDGE JOSEPH

ALLEN ROSS, ET AL

MAGISTRATE JUDGE WHITEHURST

ANSWER TO PETITION FOR WRIT OF *HABEAS CORPUS*

NOW INTO COURT comes the United States of America (herein referred to as “Respondent”), through Alexander C. Van Hook, Acting United States Attorney for the Western District of Louisiana, and Amy J. Miller, Assistant United States Attorney, who on behalf of the named Respondent and in response to the Petition for Writ of *Habeas Corpus* (Doc. 1) (herein referred to as “Petition”) filed by the Petitioner, Bertilla Nchuo Kum (herein referred to as “Petitioner”), do hereby allege and aver as follows:

The arguments set forth within the Memorandum of Law, filed contemporaneously with this Answer, are incorporated and alleged herein by reference.

FIRST DEFENSE

The jurisdiction of this Court extends solely to Petitioner’s pure claim relating to his continued detention by the United States Immigration and Customs Enforcement.

SECOND DEFENSE

Petitioner fails to state a claim upon which relief can be granted because she is an applicant for admission lawfully detained under INA § 235(b), 8 U.S.C. § 1225(b).

THIRD DEFENSE

The continued detention of Petitioner pending her removal comports with all statutory and regulatory provisions related to the detention of aliens pending removal from the United States.

FOURTH DEFENSE

All allegations of fact not otherwise admitted to or conceded within this answer or the attached Memorandum of Law in support of this answer are denied.

WHEREFORE, it is prayed that this answer and accompanying Memorandum of Law be deemed sufficient and, after due proceedings are had, the Petition be denied and dismissed with prejudice, and for all other legal and equitable relief.

Respectfully submitted,

ALEXANDER C. VAN HOOK
ACTING UNITED STATES ATTORNEY

By: /s/ Amy J. Miller
AMY J. MILLER (BAR NO. 35150)
Assistant United States Attorney
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of August, 2025, a copy of the foregoing Answer to Petition for a Writ of *Habeas Corpus* and supporting Memorandum of Law were electronically filed with the Clerk of Court using the CM/ECF system. I also certify that a copy of this Answer to Petition and accompanying Memorandum of Law were mailed the same day by United States Postal Service to Petitioner at the following address provided to the Court:

Bertilla Nchuo Kum (A 
South Louisiana Ice Processing Center
3843 Stagg Ave
Basile, LA 70515

s/ Amy J. Miller
AMY J. MILLER (#35150)
Assistant United States Attorney

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INDEX OF ATTACHMENTS TO ANSWER

Memorandum of Law 1-6

Exhibit A – Declaration of Assistant Field Office Director Charles G. Ward

*Five (5) pages attached to Memorandum of Law including Ex. 1 (Notice to Appear)
attached to Declaration*

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MEMORANDUM OF LAW

The United States of America, through Alexander C. Van Hook, Acting United States Attorney for the Western District of Louisiana, and Amy J. Miller, Assistant United States Attorney, submits its Memorandum of Law related to the Petition for *Habeas Corpus* (Doc. 1) (herein referred to as “Petition”) filed by the Petitioner, Bertilla Nchuo Kum (herein referred to as “Petitioner”), as follows:

BACKGROUND

On April 7, 2025, Petitioner filed a petition with this Court for the issuance of a writ of habeas corpus to be released from the South Louisiana ICE Processing Center in Basile, Louisiana.¹ Petitioner alleges that she is a citizen of Cameroon and has been detained at Basile since August 10, 2023.² She alleges that she has pending applications for asylum and “Temporary Protective Status (TPS).”³ Petitioner further alleges that a “motion for Administrative Closure” was granted by an Immigration Judge in May 2024 and that a “motion to re-calendar [her] case” was denied in November 2024.⁴ She alleges that there is an appeal related to the denial to re-calendar still pending with Board of Immigration Appeals (BIA).⁵ Petitioner claims that “the

¹ Doc. 1.

² *Id.* at p. 9.

³ *Id.* at pp. 9-10.

⁴ *Id.* at pp. 10-12.

⁵ *Id.* at p. 12, ¶ 21.

[Immigration Judge] had no jurisdiction to grant [her] a Bond” and that she has “never received a custody review.”⁶ She argues that she is being detained “even though it is now clear that [she] cannot be removed to Cameroon.”⁷

On July 18, 2023, Petitioner was issued a Notice and Order of Expedited Removal pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(7)(A)(i)(I), after she illegally entered the United States from Mexico at the Port of Entry in Yuma, Arizona.⁸ On August 4, 2023, U.S. Citizenship and Immigration Services (USCIS) found Petitioner to have a credible fear of persecution or torture if removed to Cameroon and issued her a Notice to Appear pursuant to INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), and INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), which placed her in removal proceedings under INA § 240, 8 U.S.C. § 1229a.⁹ Petitioner was detained pursuant to INA § 235(b), 8 U.S.C. § 1225(b), pending removal proceedings.¹⁰

Since Petitioner filed this petition for habeas in April 2025, BIA sustained the Department of Homeland Security’s appeal and reinstated removal proceedings on June 6, 2025. On June 27, 2025, DHS filed a Motion to Re-Calendar, and an Individual Hearing was then set for August 20, 2025. Therefore, Petitioner remains detained pursuant to INA § 235(b), 8 U.S.C. § 1225(b), pending removal proceedings.

LAW AND ARGUMENT

Under the Immigration and Nationality Act, the detention of noncitizens who are “applicants for admission” is governed by INA § 235(b), 8 U.S.C. § 1225(b). A noncitizen is an

⁶ *Id.* at ¶¶ 16, 18.

⁷ *Id.* at ¶ 22.

⁸ Exhibit “A” – Declaration of Assistant Field Office Director Charles G. Ward at ¶ 4.

⁹ *Id.* at ¶ 5.

¹⁰ *Id.* at ¶ 6.

“applicant for admission” if she is present in the United States without having been admitted or paroled, or if she is encountered at or near the border without valid entry documents.¹¹ Therefore, Petitioner, who is charged under INA §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) in her Notice to Appear, is an applicant for admission.¹²

INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), provides, in mandatory terms, that if an immigration officer determines an applicant for admission is not “clearly and beyond a doubt entitled to be admitted,” “the alien shall be detained” for removal proceedings under INA § 240, 8 U.S.C. § 1229a. The Supreme Court held that detention under INA § 235(b), 8 U.S.C. § 1225(b), is mandatory for the duration of the removal proceedings and does not entitle the alien to a bond hearing.¹³ Since Petitioner is detained as an applicant for admission under INA § 235(b), 8 U.S.C. § 1225(b), there is no statutory entitlement to release on bond or to a bond hearing.¹⁴ The pendency of applications for asylum or TPS does not alter the mandatory nature of detention under INA § 235(b), 8 U.S.C. § 1225(b), as neither form of relief confers lawful status or independently stays removal absent a grant or a specific stay order from the immigration court, the BIA, or a federal court.¹⁵

¹¹ INA § 235(a)(1), 8 U.S.C. § 1225(a)(1).

¹² INA § 212(a)(6)(A)(i) (8 U.S.C. § 1182(a)(6)(A)(i)) renders inadmissible any alien present in the United States without being admitted or paroled, or who arrives at a time or place other than as designated by the Attorney General. INA § 212(a)(7)(A)(i)(I) (8 U.S.C. § 1182(a)(7)(A)(i)(I)) renders inadmissible any immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa or other required entry document, and a valid unexpired passport or other suitable travel document.

¹³ *Jennings v. Rodriguez*, 583 U.S. 281, 301–06 (2018).

¹⁴ *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 111 (“Applicants ‘shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.’ § 1225(b)(1)(B)(iii)(IV). Applicants who are found to have a credible fear may also be detained pending further consideration of their asylum applications. § 1225(b)(1)(B)(ii).”) (citing *Jennings*, 583 U.S. 281).

¹⁵ *See* 8 C.F.R. § 208.3(c)(3) (filing asylum application does not confer lawful status or automatically halt proceedings); 8 C.F.R. § 244.10(e) (TPS benefits, including stay of removal,

When an Immigration Judge administratively closes a case, the case is removed from the active calendar but remains legally pending, and administrative closure does not end DHS's authority to detain the noncitizen or change the governing custody statute.¹⁶ Detention authority and bond eligibility remain the same during any appeals to the BIA from the closure itself or from a denial of a motion to re-calendar, and custody continues until the proceedings are terminated or final relief is granted. Therefore, Petitioner remained lawfully detained throughout her proceeding, including the administrative closure, appeals related to same, and ultimate re-calendaring to her next hearing date of August 20, 2025.

Petitioner's contention that "Respondents continue to detain [her] even though it is now clear that [she] cannot be removed to Cameroon"¹⁷ does not affect the lawfulness of her current detention. The foreseeability of removable standard in *Zadvydas v. Davis*, 533 U.S. 678 (2001) applies only to aliens detained under INA § 241, 8 U.S.C. § 1231, after a final order of removal has been issued. Petitioner remains in ongoing removal proceedings under INA § 240, 8 U.S.C. § 1229a, and is detained under INA § 235(b), 8 U.S.C. § 1225(b), pending completion of those proceedings.

Finally, Petitioner also alleges that her "continued detention violates [her] right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution."¹⁸ However, such due process allegations provide no basis for relief where her

may be granted while application is pending, but only upon approval is removal barred).

¹⁶ See *Matter of B-N-K-*, 29 I. & N. Dec. 96, 97 (BIA 2025) ("Administrative closure is intended to be a docket management tool 'used to temporarily remove a case from an Immigration Judge's active calendar or from the Board's docket.' ... It is not a form of relief from removal, does not provide an alien with any immigration status, and is not intended to be used to delay proceedings indefinitely.") (citing *Matter of W-Y-U-*, 27 I&N Dec. 17, 17-18 (BIA 2017); *Matter of Avetisyan*, 25 I&N Dec. 688, 692 (BIA 2012)).

¹⁷ Doc. 1 at p.12, ¶ 22.

¹⁸ *Id.* at ¶ 28.

detention is lawful under the INA as set forth herein and her pending removal proceeding under INA § 240, 8 U.S.C. § 1229a, continues to satisfy due process at this time

CONCLUSION

Petitioner is an applicant for admission lawfully detained under INA § 235(b), 8 U.S.C. § 1225(b), throughout the pendency of her removal proceedings; therefore, none of her asserted grounds for release, including the pendency of applications for relief, administrative closure and re-calendaring, alleged inability to be removed, or constitutional claims, undermine the legality of that detention. Accordingly, her petition should be denied.

Respectfully submitted,

ALEXANDER C. VAN HOOK
ACTING UNITED STATES ATTORNEY

By: /s/ Amy J. Miller
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Bertilla Nchuo Kum (A )
South Louisiana Ice Processing Center
3843 Stagg Ave
Basile, LA 70515

s/ Amy J. Miller
AMY J. MILLER (#35150)
Assistant United States Attorney

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

DECLARATION OF ASSISTANT FIELD OFFICE DIRECTOR

CHARLES G. WARD

I, Charles G. Ward, hereby, declare as follows:

1. I am employed by U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), and currently serve as Assistant Field Office Director in Oakdale, Louisiana. I have held this position since July 13, 2025. I have been employed by ICE since 2009.
2. In my current position, I manage several aspects of the immigration enforcement process, including the identification and arrest, transportation, detention, case management, and removal of noncitizens. In this capacity, I manage ERO personnel and provide oversight over a number of detention facilities within the New Orleans Field Office, including the South Louisiana ICE Processing Center.
3. I have reviewed the official immigration file for Bertilla Kum, XXX-XXX-179, and unless otherwise stated, this declaration is based on my review of administrative file (Alien File).
4. Petitioner is a native and citizen of Cameroon. On July 18, 2023, petitioner issued a Notice and Order of Expedited Removal pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA) after she illegally entered the United States from Mexico at the Yuma, Arizona Port of Entry.
5. On August 4, 2023, U.S. Citizenship and Immigration Services (USCIS) found Kum to have a credible fear of persecution or torture if removed to Cameroon and issued KUM a Notice to Appear pursuant to Sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the INA. A true and correct copy of the Notice to Appear is maintained in the petitioner's official immigration file and attached hereto as Ex. 1.
6. On November 23, 2023, ICE reviewed Plaintiff's file and declined to parole her from custody pursuant to INA § 212(d)(5) because she was determined to be a security risk.

Exhibit "A"

Petitioner Bertilla Kum remains detained pursuant to INA § 235(b) pending removal proceedings.

7. On May 6, 2024, the petitioner filed a written Motion Administrative Closure for her removal proceedings based on her pending application for Temporary Protected Status (TPS).
8. On May 7, 2024, the immigration judge (IJ) granted the written motion.
9. On May 24, 2024, DHS filed an interlocutory appeal with the Board of Immigration Appeals (BIA) of the Immigration Judge's decision.
10. On October 21, 2024, the BIA declined to accept jurisdiction of the interlocutory appeal.
11. On November 13, 2024, DHS filed a Motion to Re-Calendar with the IJ.
12. On November 19, 2024, the IJ denied DHS's Motion to Re-Calendar.
13. On, December 10, 2024, DHS filed an interlocutory appeal.
14. On June 6, 2025, the BIA sustained DHS's interlocutory appeal, vacated the IJ's decision and reinstated removal proceedings.
15. On June 27, 2025, DHS filed a Motion Re-Calendar with the IJ.
16. Petitioner has an Individual Hearing scheduled for August 20, 2025.

Pursuant to Title 28, U.S.C. § 1746, I declare that the foregoing is true and correct to the best of my knowledge and belief, the 14th day of August 2025.

**CHARLES
G WARD**

Digitally signed by
CHARLES G WARD
Date: 2025.08.14
10:57:00 -05'00'

Charles G. Ward
Assistant Field Office Director (AFOD)
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
Oakdale, Louisiana