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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AYBUKE BORA,

Petitioner,

v.

WARDEN, Otay Mesa Detention Center, *et al.*,

Respondents.

Case No.: 26-cv-03115-JES-DEB

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

I. Introduction

Petitioner has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. ¶ 2241. ECF No. 1. This is Petitioner's second such Petition. The Court denied her first Petition, finding that Petitioner was improperly seeking to overturn her asylum claim "under the guise of habeas relief." *See* Exhibit 4 at 5 (Order Denying Petition). Now, Petitioner states "[t]his petition challenges only [her] continued detention by ICE as unlawful, unreasonably prolonged, and in violation of the Due Process Clause of the Fifth Amendment." ECF No. 1-3 at ¶ 5. However, Petitioner also acknowledges that ICE has already attempted to remove her, continues to attempt to remove her, and that "ICE may characterize [her past conduct] as noncompliance with removal procedures." *Id.* at ¶¶

13-15. She is correct. Because Petitioner has prolonged her own immigration detention by approximately six months while refusing to comply with removal efforts, the Court should deny the Petition.

II. Factual Background

Petitioner is a native and citizen of Turkiye. On October 21, 2025, Petitioner unlawfully entered the United States and was apprehended by Border Patrol 200 yards north of the U.S./Mexico border near Tecate, California. *See* Exhibit 1 (Form I-213) at 2. Petitioner was charged with inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I), detained, and processed for expedited removal under 8 U.S.C. § 1225(b)(1). *See* Exhibit 3 at 1-2 (ER Order). Petitioner expressed a fear of a return to Turkiye and, upon interviewing Petitioner, an asylum officer issued a negative credible fear determination. *Id.* at 3. On November 10, 2025, an immigration judge (IJ) affirmed the negative credible fear finding and returned the case to the Department of Homeland Security (DHS) to remove Petitioner to Turkiye. *See* Exhibit 2 (IJ Order).

After the IJ's affirmance, DHS promptly secured a commercial flight for Petitioner and attempted to remove her to Turkiye on December 18, 2025, at the Los Angeles International Airport. *See* Declaration of Christian Castellanos (Castellanos Decl.) at ¶¶ 4-5; ECF No. 1-3 at ¶ 13. Petitioner refused to be removed and was noncompliant with immigration officers at the airport and she was ultimately transported back to the Otay Mesa Detention Center. Castellanos Decl. at ¶ 5. On March 17, 2026, ERO reached out to HQ seeking to remove Petitioner via a private charter flight and was advised to continue with commercial removal. Castellanos Decl. at ¶ 6. However, on March 24, 2026, Petitioner advised ERO that she would not go back to the Republic of Turkiye. *Id.* at ¶ 7.

The only thing stopping Respondents from effectuating Petitioner's removal to Turkiye, is Petitioner herself. *Id.* at ¶ 8; ECF No. 1-3 at ¶¶ 13-15.

III. Argument

In her second Petition for Writ of Habeas Corpus, Petitioner appears to concede that she is removable subject to an Expedited Removal Order and she does not contest that she is subject to mandatory detention under 8 U.S.C. § 1225(b)(1). Instead, Petitioner states "[t]his petition challenges only [her] continued detention by ICE as unlawful, unreasonably prolonged, and in violation of the Due Process Clause of the Fifth Amendment." ECF No. 1-3 at ¶ 5. For this reason, and because the Court previously addressed her inability to challenge the Expedited Removal Order or Credible Fear Determination under the guise of habeas relief, Respondents focus solely on Petitioner's arguments that her detention has become unreasonably prolonged.[1]

The Court has already found that the facts of Petitioner's case closely resemble those present in *Thuraissigiam*, where the Supreme Court once again addressed the due process rights of inadmissible arriving noncitizens and stated that such individuals have no due process rights "other than those afforded by statute." *Id.* at 107; *id.* at 140 ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."); Exhibit 4 at 4 ("the Court cannot meaningfully distinguish Petitioner from the *Thuraissigiam* Petitioner."*)*. Though Respondents argue Petitioner has no due process right against prolonged detention while subject to an Expedited Removal Order[2], Petitioner's due process claims must fail in this case given her refusal to comply with removal efforts.

The Ninth Circuit's decision in *Pelich v. INS*, 329 F.3d 1057 (9th Cir. 2003) is instructive here. There, the court concluded that a petitioner "cannot simultaneously take steps to prevent his removal while seeking a writ of habeas corpus on the basis that

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[1] However, should the Court feel that jurisdiction or DHS's statutory authority to detain Petitioner has not been sufficiently addressed, Respondents would respectfully request the opportunity to provide additional briefing.

[2] *See Thuraissigiam*, 591 U.S. at 107, 140; *Mezei*, 345 U.S. at 212; *Guerrier*, 18 F.4th at 310.

he has not yet been removed." *Id.* at 1060. Indeed, according to the Ninth Circuit, "[t]he risk of indefinite detention that motivated the Supreme Court's statutory interpretation in *Zadvydas* does not exist when an alien is the cause of his own detention." *Pelich*, 392 F.3d at 1060.

This reasoning applies with equal force here. The only reason Petitioner has remained in ICE custody beyond December 18, 2025 (and her first 58 days in custody) is because she refused to comply with her removal flight and has since indicated she would not go back to the Republic of Turkiye. Castellanos Decl. at ¶ 7. Furthermore, this is now the second time Petitioner has sought habeas relief before this Court and successfully stayed ICE's ability to effectuate her removal. ECF No. 6 ("Petitioner shall not be removed from the United States or this District unless and until the Court orders otherwise."). Now that Petitioner has prolonged her own detention for approximately six months, while simultaneously claiming that her detention has been unreasonably prolonged by the government, Respondents respectfully request that the Court deny the Petition *with prejudice. See Alfaro-Mejia v. Holder*, No. 13-795-JAK (AJW), 2013 WL 599876, at *1 (C.D. California Feb. 15, 2013) ("Petitioner cannot simultaneously thwart [his] removal and seek a writ of habeas corpus on the ground that [he] has not yet been removed.").

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petition with prejudice.

DATED: June 18, 2026

Respectfully submitted,

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