UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Ovbokhan Adun Odiase, *Petitioner*, v. RON CHARLES, *et al.* *Respondents.*	Civil Action No. 25-2262 (SDW)

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR TEMPORARY RESTRAINING ORDER

For over fourteen months, Petitioner Ovbokhan Adun Odiase ("Ms. Odiase") has been separated from her two minor children and held in the custody of Immigration and Customs Enforcement ("ICE"), despite having won protection from removal earlier this year and despite serious medical and mental health challenges that ICE has failed to properly address. Last month, ICE allowed Ms. Odiase to be temporarily transported to the Essex County Correctional Facility ("Essex") so that she could in appear in New Jersey state court to resolve a "violation of monitoring conditions" – an alleged violation that ICE caused by detaining Ms. Odiase after the same New Jersey state court released her on non-monetary conditions upon deeming that she was neither a flight risk nor a danger to the community. After Ms. Odiase appeared in court and resolved the alleged monitoring violation, ICE allowed her to languish at Essex for weeks before abruptly transferring her back to an ICE detention facility in Pennsylvania shortly after she filed the instant Petition for Writ of Habeas Corpus, Dkt. No. 1.

In their response, Respondents argue that ICE's transfer of Ms. Odiase away from Essex and back to Pennsylvania somehow moots her petition. This is nonsense, and this Court can and should rule expeditiously on at least Counts I and II of Ms. Odiase's petition, which bear directly on ICE's purported authority to continue detaining her. Respondents also argue that Ms. Odiase's habeas petition is premature because, under 8 U.S.C. § 1231(a)(2)(A), ICE purportedly must continue to detain her until the conclusion of the 90-day removal period on April 10, 2025. Putting aside the fact that April 10 is only two days away, this is inaccurate and contradicts ICE's own guidance. Finally, Respondents only indirectly addressed one factor relevant to Petitioner's request for preliminary relief in the form of a Temporary Restraining Order (TRO) or Preliminary Injunction (PI) – likelihood of success on the merits – and therefore have effectively conceded that the remaining three factors, most relevantly irreparable harm, weigh in favor of preliminary relief. This Court should order Ms. Odiase's immediate release from ICE custody so that she may finally return home to her children and reside lawfully in the United States.

I. MS. ODIASE'S CLAIMS AGAINST ICE ARE CLEARLY NOT MOOT BECAUSE ICE CONTINUES TO DETAIN HER UNLAWFULLY.

In their response, Respondents claim that Ms. Odiase's habeas petition is moot because, when she "returned to ICE custody, the ICE detainer – and her custody [at Essex] pursuant to that detainer – extinguished." ECF 9 at 7. They support this contention with a smattering of non-binding decisions from other courts holding that certain habeas petitions were mooted by the petitioner's transfer from one authority's custody to another authority's custody (for example, from state custody to ICE custody) pursuant to a detainer lodged by the latter authority. *Id.* at 6-7. However, these arguments ignore two key factors that distinguish Ms. Odiase's petition from those cases: (1) Ms. Odiase has continuously been in various forms of ICE custody since February 2024, even once she was transferred to Essex on a state court writ/Order to Produce, and (2) Ms. Odiase's

petition includes two claims challenging ICE's purported authority to detain her, which clearly are not moot because Respondents continue to inexplicably detain her, now in Pennsylvania instead of at Essex.[1]

In her petition, Ms. Odiase brought one claim against Essex (Count III) and two claims against ICE (Counts I and II). As Respondents appear to recognize, once the "monitoring violation" matter had concluded in Essex County Superior Court on March 17, 2025, Essex no longer had any independent authority to detain her under the state court Order to Produce. Dkt. No. 1-9 (Order to Produce) at 2 ("Upon completion of the Essex County matter and at the request of ICE, . . . it will be determined if [Petitioner] is to be released on Order of Supervision or be returned to ICE custody."). Thus, even if Ms. Odiase's transfer from Essex back to an ICE detention facility in Pennsylvania moots Count III against Essex, the transfer does not moot Counts I and II arguing that ICE is violating 8 U.S.C. § 1231(a) and Ms. Odiase's due process rights. Those violations were happening while Ms. Odiase was held at Essex at ICE's behest and continue to occur at this very moment. *See* Dkt. No. 1 at ¶ 10 ("ICE's insistence on continuing Ms. Odiase's custody, which is the sole reason she is still detained at all, violates 8 U.S.C. § 1231(a) as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), as well as Ms. Odiase's due process rights under the Fourteenth and Fifth Amendments.").

Moreover, Ms. Odiase has been in ICE's legal custody since February 2024, even while she was at Essex for three weeks pursuant to a writ. "The sovereign which first arrests a defendant has primary jurisdiction over him . . . [and] retains custody of the defendant, even though the defendant was temporarily transferred to the requesting sovereign's Prison pursuant to the writ."

---

[1] Notably, Respondents have not moved to transfer venue to a different court, a motion for which they would bear the burden and which would be meritless. 28 U.S.C. § 1404(a).

Joseph v. Betti, No. 1:23-cv-0061, 2024 WL 3362270, at *3 (M.D. Pa. July 9, 2024) (citing *Chambers v. Holland*, 920 F. Supp. 618, 622 (M.D. Pa. Apr. 4, 1996)). This principle is reflected in the terms of the state court Order to Produce and the Essex County Prosecutor's Office's writ request. *See* Dkt. No. 1-9 at 3 (Essex County "agree[s] not to release said inmate on bail or bond[.]"). Although these documents reference a "return" to ICE custody, in context this refers to returning Ms. Odiase to ICE's *physical* custody, while ICE's continuing *legal* custody over Ms. Odiase was seemingly never questioned by the New Jersey state authorities.

Finally, as Respondents recognize, "a party's claims become moot when the party obtains all the relief that it sought in litigation." Dkt. No. 1-9 at 4 (citing *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 698-99 (3d Cir. 1996)). Ms. Odiase requests relief from this Court in the form of "immediate release from custody," not just release from Essex's custody. Dkt. No. 1 at 26. Had ICE released, or if ICE were to release, Ms. Odiase on an Order of Supervision, then Ms. Odiase's petition would be moot. *See, e.g.*, *Singh v. Aviles*, No. 15-cv-0778, 2015 WL 4162433, at *2 (D.N.J. July 9, 2015). Unfortunately, ICE has not yet done so, and therefore Ms. Odiase's claims against ICE remain ripe for adjudication.

II. MS. ODIASE HAS MET HER BURDEN TO SHOW THAT HER REMOVAL IS NOT LIKELY TO OCCUR IN THE REASONABLY FORESEEABLE FUTURE, AND SHE SHOULD THEREFORE BE IMMEDIATELY RELEASED FROM ICE CUSTODY.

In their response, Respondents mistakenly argue that Ms. Odiase "is mandatorily detained" pursuant to 8 U.S.C. § 1231(a) and that her habeas petition is premature because she is still within the 90-day removal period following the Immigration Judge's (IJ) decision granting her protection from removal. Dkt. No. 9 at 8. However, ICE itself says it has the discretion to release noncitizens like Ms. Odiase during the 90-day removal period yet has arbitrarily refused to do so here. Additionally, Ms. Odiase has met her burden to rebut the "presumptively reasonable" post-removal

order detention period of six months recognized by the Supreme Court in *Zadvydas* by providing uncontested evidence that ICE will very likely never find a third country willing to accept her, to the extent ICE has even taken steps to look for such a country.

The statute states that, "[d]uring the removal period, the Attorney General shall detain the [noncitizen]." 8 U.S.C. § 1231(a)(2)(A). However, this apparently mandatory duty is then qualified by the following sentence in the statute: "Under no circumstance during the removal period shall the Attorney General release [a noncitizen] who has been found inadmissible under [8 U.S.C. §] 1182(a)(2) or 1182(a)(3)(B) . . . or deportable under [8 U.S.C. §] 1227(a)(2) or 1227(a)(4)(B) . . . ." *Id.* By implication, since there are "no circumstance[s]" in which those noncitizens referenced in the second sentence may be released (noncitizens charged as removable based on criminal or terrorism-related grounds), there must be *some* circumstances in which the Attorney General (whose detention authority over noncitizens is shared with ICE following the creation of the Department of Homeland Security) may release noncitizens during the 90-day removal period. Indeed, ICE (and its predecessor agency, INS) have long interpreted 8 U.S.C. § 1231(a)(2)(A) as providing discretion to the agency to release noncitizens during the removal period. *See* Ex. 12, ICE Post Order Custody Review & Removal Process Training, at 2 ("Generally, DHS has discretion to detain or release 'final order' noncitizens during the 90-day removal period. However, the categories of noncitizens enumerated in the statute must be detained during that period.") (citing Bo Cooper, General Counsel, *Detention and Release of Aliens with Final Orders of Removal* (Mar. 16, 2000)).[2]

[2] Petitioner's counsel obtained a copy of this recent ICE presentation through the Freedom of Information Act (FOIA). A copy of Bo Cooper memo cited in the presentation is available at: https://www.lexisnexis.com/practiceareas/immigration/pdfs/web53.pdf.

In this case, ICE has not charged Ms. Odiase with any criminal-related or terrorism-related removability grounds, but rather merely for overstaying her visa under 8 U.S.C. § 1227(a)(1)(B). *See* Dkt. No. 1-7, IJ Decision. Thus, there is no legal barrier preventing ICE from releasing Ms. Odiase during the 90-day removal period, nor is there any barrier to this Court ordering ICE to do so. In any case, the 90-day removal period ends in *two days,* on April 10.

The primary basis for this Court to order Ms. Odiase's immediate release is the Supreme Court's decision in *Zadvydas,* which held that 8 U.S.C. § 1231 authorizes detention only for "a period *reasonably necessary to bring about the [non-citizen]'s removal from the United States*." 533 U.S. at 689 (emphasis added). Six months of post-removal order detention is considered "presumptively reasonable" when ICE is continuing to make good faith efforts to remove a noncitizen from the United State. *Id.* at 701. But the "*Zadvydas* Court did not say that the presumption is rebuttable, and there is nothing inherent in the operation of the presumption itself that requires it to be irrebuttable." *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wis. 2008). Rather, "the presumption scheme merely suggests that the burden the detainee must carry within the first six months of postorder detention is a heavier one than after six months has elapsed." *Id.*; *see also Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("*Zadvydas* established a 'guide' for approaching detention challenges, not a categorical prohibition on claims challenging detention less than six months."); *Ali v. DHS*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) ("Whereas the *Zadvydas* Court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional.").

Here, Ms. Odiase has met her burden to rebut any presumption of reasonableness for continued detention in ICE custody. It is undisputed that she cannot be removed to Nigeria due to the IJ's grant of protection, which ICE did not appeal. Dkt. No. 1-7. And she has provided evidence demonstrating how exceedingly rare it is for ICE to locate a third country willing to receive someone who has been granted withholding of removal with respect to their country of citizenship. *See* Dkt. No. 1-11 (publicly available ICE data showing that ICE removed only *three* noncitizens granted withholding of removal to alternative countries in a four-year span from FY 2020 to FY 2023). In their response, Respondents do not contest or even acknowledge this data. Nor do they even allege that they are currently seeking to remove Ms. Odiase to a country other than Nigeria, her sole country of citizenship, let alone whether those efforts are remotely feasible.

Rather than argue that Ms. Odiase's removal is reasonably foreseeable, Respondents merely argue that the three weeks Ms. Odiase spent languishing at Essex should not count as part of the 90-day removal period, and thus that her habeas petition under *Zadvydas* is premature. Dkt. No. 9 at 9 (citing *Joseph*, 2024 WL 3362270, at *3).[3] But first, the exact number of days that have elapsed in Ms. Odiase's removal period is essentially beside the point, since ICE has authority to release her during the removal period and has no lawful basis to continue detaining her during the removal period if they are not actively and feasibly attempting to remove her from the United States. Second, Ms. Odiase's case is distinguishable from *Joseph* because her time in state court custody has since come to an end. Finally, parts of *Joseph*'s logic are flawed and should not be followed by this Court, which is certainly not bound by the unpublished decisions of other courts.

[3] As noted above in Section I, the *Joseph* decision cuts against Respondents' contention that Ms. Odiase's habeas petition is moot, since the district court in that case held that Mr. Joseph was still in ICE's legal custody even after he had been transferred to a state correctional facility. 2024 WL 3362270, at *3.

In *Joseph*, the petitioner had received a final removal order, he was subsequently transferred to state custody to face state criminal charges, and he remained detention in state custody after pleading guilty to those charges, up until and including the date of the adjudication of his habeas petition. The district court, relying on a prior decision from the Middle District of Pennsylvania, interpreted this transfer to state custody as a "superseding event" that effectively meant that the petitioner's removal period *had not even started to run.* 2024 WL 3362270, at *3 (citing *Michel v. INS*, 119 F.Supp.2d 485, 498 (M.D. Pa. 2000)). This is an extreme and illogical reading of 8 U.S.C. § 1231(a)(1)(B) that this Court should not adopt. At most, the Court could discount Ms. Odiase's removal period only by the number of days she was at Essex before the resolution of her state court matter: March 12 to March 17, 2025, or five days. This would mean her 90-day removal period expires on April 15, 2025, instead of April 10, 2025. But again, because ICE does not appear to even be making efforts to remove Ms. Odiase from the United States, they have no lawful basis to continue detaining her. Respondents' quibbling over dates distracts from this central issue.

In sum, Respondents do not dispute that there is no significant likelihood of ICE removing Ms. Odiase from the United States in the reasonably foreseeable future, and there is therefore no lawful basis for ICE to continue detaining her. Indeed, because Ms. Odiase is seeking preliminary relief in the form of a TRO or PI, she only needs to show at this stage a *reasonable likelihood* of success on her *Zadvydas* argument or, in other words, a reasonable likelihood that her removal is not reasonably foreseeable. *See Reilly v. City of Harrisburg*, 858 F.3d 173, 176, 179 (3d Cir. 2017) (holding that movant for preliminary relief must make "[p]rima facie case showing a reasonable probability that it will prevail"). Ms. Odiase has clearly met that burden, at minimum.

III. RESPONDENTS DO NOT CONTEST, AND HAVE THEREFORE WAIVED, ANY ARGUMENT ON IRREPARABLE HARM, THE BALANCE OF EQUITIES, AND THE PUBLIC INTEREST.

Given the urgency of this case, this Court ordered Respondents, *inter alia*, to promptly show cause why "a temporary restraining order or preliminary injunction pursuant to Rule 65, requiring the immediate release of Petitioner . . ." should not issue. Respondents failed to do so comprehensively. Respondents did respond to the habeas petition, arguing that it was moot or premature. But they did not respond to most of the prongs of Petitioner's request for a TRO or PI. Respondents did not contest that, absent immediate relief, Ms. Odiase will likely suffer irreparable harm in the form of continued violation of her constitutional rights, degradation of her physical and mental health, and continued separation from her children from whom she has never previously been separated. *See* Dkt. No. 2-1 at 7-9. Nor have Respondents argued that they would suffer any harm if Ms. Odiase were ordered release through a TRO or PI, let alone whether that harm would outweigh the harm to her. *Id.* at 10. Finally, Respondents do not appear to disagree that Ms. Odiase's release would be in the public interest. *Id.* at 11. Respondents have waived argument on all these prongs. Thus, if this Court concludes that Ms. Odiase is reasonably likely to prevail on her legal claims, it should grant the TRO or PI.

Alternatively, since the Respondents have already responded substantively to the habeas petition, this Court can proceed to adjudication of the petition itself. Regardless of which mechanism it employs, this Court should order Ms. Odiase's immediate release from ICE custody with any reasonable conditions. She has been separated from her children and put through emotional and physical turmoil for far too long.

Dated: April 8, 2025

Respectfully submitted,

/s/ Shira Wisotsky
Shira Wisotsky, Esq.
NJ #243172017
Peter Crossley, Esq.
NJ # 244182017
Raquiba Huq, Esq.
NJ #030952007
LEGAL SERVICES OF NEW JERSEY
100 Metroplex Drive, Suite 402
Edison, New Jersey 08817
Tel: (908) 882-2665
SWisotsky@lsnj.org

/s/ Ian Austin Rose
Ian Austin Rose
MD Bar # 2112140043
Amica Center for Immigrant Rights
1025 Connecticut Ave NW, Ste. 701
Washington, DC 20036
Tel: (202) 788-2509
Austin.rose@amicacenter.org
Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petitioner's Reply to Respondents' Response to Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system.

Dated: April 8, 2025

Respectfully submitted,

/s/ Peter Crossley
Peter Crossley, Esq.
Pro Bono Counsel for Petitioner