UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

NANCY MARTINEZ ZARCO;

Petitioner,

v.

MICHAEL NESSINGER, Warden of the Donald W. Wyatt Detention Facility, Central Falls, R.I; PATRICIA H. HYDE, Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Boston Field Office.

Respondents.

Case No. 25-cv-00297-JJM-AEM

PETITIONER'S RESPONSE TO RESPONDENT'S NOTICE OF INTENT TO TRANSFER

INTRODUCTION

On June 27, 2025, the Respondent United States Immigration and Customs Enforcement ("ICE") provided notice to the Court that it intends to transfer the Petitioner, Nancy Martinez Zarco, from the District of Rhode Island in order to remove her from the United States on July 5, 2025. It asserts that removal is appropriate pursuant to the recent reinstatement of a removal order allegedly issued by the United States Border Patrol ("USBP"). ECF No. 4-1 at 1. Removal at this time would be premature, however, because ICE has so far failed to produce the alleged 2010 removal order upon which it based its efforts to reinstate Ms. Martinez Zarco – the very removal order first requested by the Petitioner in this action.

ARGUMENT

Neither Ms. Martinez Zarco or her attorneys have been provided with a copy of any removal order that justifies her continued detention. ECF No. 1-1 at 2. The only basis for removal cited by ICE in its Form I-229(a) is inconsistent with petitioner's known immigration history. ECF No. 1-1 at 2, 6. ICE has still failed to provide a legitimate justification for petitioner's detention.

The Respondent asserts that Ms. Martinez Zarco was encountered by USBP "on or about September 26, 2010," issued an expedited removal order, and then removed from the United States on September 26, 2010, pursuant to 8 U.S.C. § 1225(b)(1)(A)(i). ECF No. 4-1 at 1-2. As evidence, the Respondent points to page 2 of its Exhibit A, which it alleges to be the underlying expedited removal order, as well as a declaration submitted on behalf of ICE. ECF No. 4-1 at 2.

But, Exhibit A of the Respondent's submission does not contain a removal order.

The Respondent has provided only a copy of Form I-871, which is the "Notice of Intent / Decision to Reinstate Prior Order" and a copy of Form I-296, a "Notice to Alien Ordered Removed / Departure Verification." ECF No. 4-2.

For comparison, a copy of a removal order is provided herewith. These are not the same documents. *Compare* Ex. A, Sample Form I-860, "Notice and Order of Expedited Removal." Rather, both of the documents produced by the respondent are contingent on the initial removal order being provided.

While the documents provided by the Respondent are evidence that ICE believes in the existence of a prior removal order, Ms. Martinez Zarco does not (and has not) conceded that a valid order of removal exists.

As stated in her petition, the only ground of inadmissibility offered by ICE in support of her alleged 2010 removal is 8 U.S.C. § 1182(a)(9)(A)(ii). This statute renders inadmissible noncitizens who have previously been ordered removed (or departed under an order of removal) and then seek readmission to the United States again within a certain amount of time. *See* ECF No. 1-2 (Form I-229(a)). That ground of inadmissibility is inconsistent with Ms. Martinez Zarco's immigration history. ECF No. 1-1 at 2

The documents provided by the Respondent suggest simultaneously that petitioner had a prior expedited removal order; *see* ECF No. 4-1 at 2; while at the same time stating that the Petitioner was subjected to grounds of inadmissibility that simply do not apply in expedited removal proceedings. ECF No. 1-2 (I-229(a)) (citing 8 U.S.C. § 1182(a)(9)(A)(ii)).

In order to reinstate a prior order of removal, ICE is required follow a small number of relatively straightforward steps: (1) determine whether the noncitizen is the subject of a prior order of removal; (2) establish the identity of the noncitizen; and (3) determine that the noncitizen unlawfully reentered the United States. *See* 8 CFR § 241.8(a). The regulations indicate that, as part of that process, "The immigration officer must obtain the prior order of exclusion, deportation, or removal relating to the [noncitizen]." 8 CFR § 241.8(a)(1). The officer has not done so.

To the extent that the Respondent has not provided a valid expedited removal order, it has not provided a valid basis for its reinstatement decision. Without a valid reinstatement, it cannot say that it has explained the basis for Ms. Martinez Zarco's detention, much less its ability to remove her without bringing her before an Immigration Judge.

AUTHORITY TO KEEP PETTIIONER IN THE DISTRICT OF RHODE ISLAND.

Without a valid reason to detain the petitioner, the respondent has no valid reason to move her from this district.

As such, her detention violates her rights to due process.

There are two traditional requirements for a federal court to entertain a habeas petition: that the petition be filed in the district of confinement and that it name the petitioner's immediate custodian. See Rumsfeld v. Padilla, 542 U.S. 426, 438, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004); see also 28 U.S.C. § 2242. Generally, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States," he must file the petition in the district of confinement and name his immediate custodian as the respondent. Padilla, 542 U.S. at 447, 124 S.Ct. 2711. Plaintiff has done both here.

Moving the petitioner out of Rhode Island does not deprive this court of jurisdiction. In Ex parte Endo, 323 U.S. 283, 65 S.Ct. 208, 89 L.Ed. 243 (1944), "stands for the important but limited proposition that when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." Padilla, 542 U.S. at 441, 124 S.Ct. 2711.

The district court has power to order that the Petitioner stay in Rhode Island because of the "equitable and flexible nature of habeas relief" and its authority under the All Writs Act: Ozturk, —— F.Supp.3d at ——, 2025 WL 1145250, at *23 (quotation marks omitted). This district court undeniably has an "inherent authority to protect [its] proceedings," Degen v. United States, 517 U.S. 820, 823, 116 S.Ct. 1777, 135 L.Ed.2d 102 (1996), and to "meet new situations which demand equitable intervention, and to accord all the relief necessary to correct the

particular injustices involved in these situations," Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 248, 64 S.Ct. 997, 88 L.Ed. 1250 (1944).

The Petitioners presence in this district will facilitate her ability to work with her attorney's both in this matter, in any potential immigration matter, address witnesses to her presence in the United States who are located nearby in Connecticut and provide her with the ability to testify live in this Court with respect to the alleged final order of removal the respondent claims was issued. The petitioner should be allowed to challenge her unlawful continued confinement with these advantages and an order that she stay in Rhode Island would serve those ends. Particularly given that her detention is unlawful as no removal order has been provided.

The Court has the inherent authority and responsibility to protect the integrity of its proceedings which will be undoubtably impacted when Petitioner is moved out of this jurisdiction. See Degen v. United States, 517 U.S. 820, 823, 116 S.Ct. 1777, 135 L.Ed.2d 102 (1996) ("Courts invested with the judicial power of the United States have certain inherent authority to protect their proceedings and judgments in the course of discharging their traditional responsibilities."). Accordingly, Petitioner request that she remain in this district.

CONCLUSION

In short, Ms. Martinez Zarco remains in the same position as when she filed the present action: although ICE is purporting to detain her under 8 U.S.C. § 1231 on account of a prior removal, the Respondent has yet to provide a valid removal order. As such, Ms. Martinez Zarco's removal is premature and, as far as the evidence before this Court indicates, even the basis for her current detention remains uncertain.

Respectfully submitted,

Plaintiff, by her Attorneys,

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CERTIFICATION

I, hereby certify that on this 1st Day of July 2025, that the above was filed and served via ECF on all parties of record.

/s/ Sonja L. Deyoe

EXHIBIT

A

U.S. Department of Homeland Security

Notice and Order of Expedited Removal

DETERMINATION OF INADMISSIBILITY

Event Number:

File No: _____

Date: _____

In the Matter of: _____

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U.S.C. 1225(b)(1)), the Department of Homeland Security has determined that you are inadmissible to the United States under section(s) 212(a) ☐ (6)(C)(i); ☐ (6)(C)(ii); ☐ (7)(A)(i)(I); ☐ (7)(A)(i)(II); ☐ (7)(B)(i)(I); and/or ☐ (7)(B)(i)(II) of the Act, as amended, and therefore are subject to removal, in that:

Name and title of immigration officer (Print) | Signature of immigration officer

ORDER OF REMOVAL
UNDER SECTION 235(b)(1) OF THE ACT

Based upon the determination set forth above and evidence presented during inspection or examination pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

Name and title of immigration officer (Print) | Signature of immigration officer

Name and title of supervisor (Print) | Signature of supervisor, if available

☐ Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty).

CERTIFICATE OF SERVICE

I personally served the original of this notice upon the above-named person on _____ (Date)

Signature of immigration officer

Form I-860 (Rev. 08/01/07)