UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-62475-CIV-DIMITROULEAS

GUERLIE PIERRE,

Petitioner,

vs.

FIELD OFFICE DIRECTOR for the Miami Field Office, U.S. Immigration and Customs Enforcement,

Respondent.
_____/

RESPONDENT'S RESPONSE IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT [DE 1]

Respondent, by and through the undersigned Assistant United States Attorney hereby files its Response in Opposition to Petitioner, Guerlie Pierre's ("Petitioner") Petition for Writ of Habeas Corpus and Complaint [DE 1] ("Petition") and request that it be denied stating in support thereof as follows:

I. INTRODUCTION

Petitioner's re-detention is lawful and commenced on December 3, 2025 or for a period of seven days as of the date of this response. *See* [DE 1, ¶ 36]. Even if, as Petitioner argues, the "total period of detention should be considered in the aggregate for purposes of the six-month threshold" under 8 U.S.C. § 1231(a)(6), in the aggregate, Petitioner has been detained pursuant to an administratively final removal order for a total of 53 days. *See Farah v. U.S. Att'y Gen.*, 12 F.4th 1312 (11th Cir. 2021); *Hechavarria v. Sessions*, 891 F.3d 49, 56 (2d Cir. 2018), *as amended* (May

22, 2018).[1] Thus, whether in isolation or in the aggregate, any claim under *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001), is premature as the length of Petitioner's detention does not exceed the presumptively reasonable detention period of six months. While Petitioner asserts that *Zadvydas* is also applicable because removal is not reasonably foreseeable in violation of 8 U.S.C. § 1231, this question is not reached when detention is less than a six-month period. *See* [DE 1, ¶¶ 42, 46, 80].

Petitioner alleges that Respondent's revocation of her Order of Supervision ("OSUP") followed by re-detention without notice and an informal interview violates the Administrative Procedure Act ("APA"). [DE 1, ¶¶ 57-59, 66]. However, Petitioner was served with a Notice of Revocation of Release pursuant to 8 C.F.R. § 241.4(*l*)(2) and an informal interview was conducted. Therefore, Petitioner's specific arguments that Respondent has violated the APA[2] by (1) failing to abide by its own procedures concerning OSUP revocation and (2) acting arbitrary and capricious due to allowing the prior release of Petitioner, do not pass muster. *See* [DE 1 9, 12].

Lastly, Petitioner argues that under these facts, violations of her Fifth Amendment right to due process and the Convention Against Torture ("CAT") have occurred. [DE 1, p. 13, 15, 16, 18]. As stated, Petitioner was given notice and an informal interview after her detention, hence due process was afforded to her. Petitioner is incorrect that deportation to a third country is a violation of CAT when DHS has established procedures to ensure that Petitioner would be able to challenge

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[1] Although Petitioner is now detained in the Eleventh Circuit, she was initially detained in Dartmouth, Massachusetts and had her immigration case heard out of the Immigration Court in Hartford, Connecticut, in the Second District.

[2] Of note, the APA does not provide jurisdiction to review where there is an alternative statutory remedy. The APA only permits judicial review of an adverse agency decision where no other adequate remedy is available." *Hogan v. Kerry*, 208 F. Supp. 3d 1288, 1290 (S.D. Fla. 2016); *see* 5 U.S.C. § 704 ("Agency action made reviewable by statute and final agency action *for which there is no other adequate remedy in a court* are subject to judicial review." (emphasis added))

such removal based upon fear of persecution or torture, which will be discussed further below. Accordingly, the Petition should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Haiti. *See* Ex. 1, Record of Deportable/Inadmissible Alien (Form I-213). Petitioner adjusted her status to that of a lawful permanent resident on March 26, 2001, retroactive to January 10, 2001. *See* Ex. 2, Notice to Appear (NTA). On or about November 2, 2004, Customs and Border Protection ("CBP") found Petitioner was attempting to smuggle cocaine into the United States. *Id.* CBP arrested and paroled Petitioner into the United States. *See* Ex. 1, Form I-213. On April 14, 2005, Petitioner was convicted in the United States District Court for the Southern District of Florida, of importing cocaine in the amount of at least 5 kilograms in violation of 21 U.S.C. §§ 952(a) and 960(b)(1). [redacted] *See* Ex. 3, Judgment in Criminal Case. The Petitioner was sentenced to 121 months imprisonment. *Id.* During her confinement, on October 4, 2011, the Department of Homeland Security ("DHS") personally served the Petitioner with a Notice to Appear ("NTA"). *See* Ex. 2, NTA. The NTA charged the Petitioner with removability pursuant to INA § 212(a)(2)(A)(i)(II) and § 212(a)(2)(C). *Id.*

2012 Removal Proceedings

On December 6, 2012, Petitioner provided testimony and evidence in support of her request for relief from removal. *See* Ex. 4, Declaration of Deportation Officer, Felix Garcia Ortega ("Declaration"), ¶ 9. The immigration judge continued the case multiple times to allow the Petitioner time to substantiate her claim for relief. *Id.* On March 28, 2013, Petitioner provided additional testimony. *Id.* On July 22, 2013, in a written decision, the immigration court denied all relief and ordered Petitioner removed from the United States to Haiti. *Id.* at ¶ 10.

On August 11, 2013, Petitioner appealed to the Board of Immigration Appeals ("BIA"). *Id.* at ¶ 11. The BIA affirmed the immigration judge's decision and dismissed Petitioner's appeal. *Id.; See* Ex. 5, BIA 2013 Decision. Subsequently, on or about January 15, 2014, the Petitioner filed a Petition for Review ("PFR") in the Second Circuit Court of Appeals ("Second Circuit"). *See Pierre v. Lynch*, 639 F. App'x 707 (2d Cir. 2016); *see also Ex. 4,* Declaration, ¶ 12. The Petitioner also filed a Motion for Emergency Stay of Removal with the Second Circuit Court of Appeals, pending a decision on her PFR. *See* Ex. 4, Declaration, ¶ 13. On February 14, 2014, the Petitioner's motion for a stay was granted. *Id.* at ¶ 13. On June 30, 2014, pursuant to *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016), the Petitioner requested that the Boston Immigration Court redetermine her custody status. *Id.* at ¶ 14; *see* Ex. 6, Immigration Judge Bond Memo. An immigration judge granted release upon posting of a $15,000 bond. *Id.* Petitioner was released on April 7, 2015. *See* Ex. 4, Declaration, ¶ 15; *see also* Ex. 7, Immigration Judge Bond Order. On May 4, 2015, ICE Enforcement and Removal Operations ("ERO") served Petitioner with an Order of Supervision on Form, I-220B, requiring her to report to Miramar, Florida on May 2, 2016. *See* Ex. 8, Order of Supervision.

2016 Remanded Proceeding

On or about February 16, 2016, the Second Circuit remanded the Petitioner's case to the BIA for further fact-finding regarding Petitioner's request for relief. *See* Ex. 4, Declaration, ¶ 17. On September 9, 2016, the BIA remanded the case to the Hartford Immigration Court in order to conduct additional fact finding and enter a new decision in accordance with the Second Circuit's decision. *See* Ex. 9, BIA 2016 decision. On November 18, 2016, Petitioner filed a motion to change venue, requesting that the location of her removal proceedings be transferred to the Miami Immigration Court. *See* Ex. 4, Declaration, ¶ 19. On November 22, 2016, Boston Immigration Court granted the change of venue. *Id.* at ¶ 20.

On or about April 13, 2023, the Miami Immigration Court held a hearing on the BIA remand. *Id.* at ¶ 21. On February 6, 2024, by way of a written decision, the immigration judge ordered Petitioner removed from the United States to Haiti and granted her application for deferral from removal under the Convention Against Torture (CAT), pursuant to 8 C.F.R. §§ 12.08.16-12.08.18. *See* Ex. 10, Immigration Judge Order. Neither party appealed, rendering the order administratively final. *See* Ex. 4, Declaration, ¶ 22.

On December 4, 2024, the Petitioner was issued an Order of Release on Recognizance ("OREC") on Form I-220A and was scheduled to report on December 3, 2025. *See* Ex. 11, Form I-220A. On December 4, 2025, ICE ERO served Petitioner a Notice of Revocation of Release advising that ICE revoked her OSUP pursuant to 8 C.F.R. § 241.4(*l*)(2). *See* Ex. 12, Notice of Revocation of Release. On the same date, ICE ERO conducted an informal interview with Petitioner. *See* Ex. 4, Declaration, ¶ 24.

To date, Petitioner remains in ICE custody at Martin County Jail in Stuart, Florida. *See* Ex. 13, Detention History. The Petitioner is detained pursuant to INA § 241 and 8 CFR § 241.4(*l*).

III. ARGUMENT

A. Respondent's Revocation of Petitioner's OSUP for purposes of Effectuating Removal Cannot be Reviewed by the Court.

As a threshold matter, "the decision to revoke Petitioner's OSUP, for the stated purpose of executing [her] removal order, clearly falls under the purview of § 1252(g)." *Barrios v. Ripa et al.*, No. 25-cv-22644-Gayles, 2025 U.S. Dist. LEXIS 153228, at *11 (S.D. Fla. Aug. 8, 2025). Section 1252(g) explicitly states that "no court shall have jurisdiction to hear *any* cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." (emphasis added). § 1252(g). *See Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274

(11th Cir. 2021) ("the statute's words make that clear. One word in particular stands out: 'any.' Section 1252(g) bars review over 'any' challenge to the execution of a removal order—and makes no exception for those claiming to challenge the government's 'authority' to execute their removal orders.").

The Court also lacks jurisdiction under § 1252(a)(2)(B)(ii) to review Respondent's discretionary decision to revoke the OSUP. Section 1252(a)(2)(B) states that "no court shall have jurisdiction to review any action of the Attorney General the authority for which is specified under this subchapter to be in the discretion of the Attorney General." § 1252(a)(2)(B)(ii). The decision to revoke an OSUP is a discretionary one by Respondent. *See* 8 C.F.R. § 241.4(l)(2) ("The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section."). The court also found in *Barrios*, that "because the Attorney General has the discretion to revoke an OSUP, section 1252(a)(2)(B)(ii) also bars review." 2025 U.S. Dist. LEXIS 153228, at *11.

Beyond the issue of notice and an informal interview, Petitioner asserts that she did not violate any terms of the OSUP and circumstances have not changed in any way suggesting that she would now present a flight risk or danger to the community[3], or that her removal order could be effectuated. [DE 1, ¶ 60]. To the extent these assertions are meant to challenge the decision to detain Petitioner in furtherance of the execution of her removal order—review is barred under § 1252(g).

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[3] Petitioner focuses on two of several bases upon which ERO can revoke an OSUP, yet fails to discuss the basis at issue here: 8 C.F.R. § 241.4(*l*)(2)(jjj) – to effect removal.

B. Petitioner is Detained pursuant to 8 U.S.C. § 1231 as there is a Final Order of Removal, thus the Revocation of the OSUP and Re-Detention for Purposes of Effectuating such Removal is Lawful.

The Department of Homeland Security ("DHS") has the authority to grant an OSUP for an alien subject to a final order of removal who has not been removed within the 90-day removal period. 8 U.S.C. § 1231(a)(3). Regulations also allow the government to terminate an order of supervision if the ICE District Director chooses to do so in his discretion. 8 C.F.R. § 241.4(*l*)(2). "A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

> (i) The purposes of release have been served;
> (ii) The alien violates any condition of release;
> (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
> (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

Id. Here, Petitioner's Notice of Revocation of Release was issued pursuant to 8 C.F.R. § 241.(*l*)(2)(iii) as it was determined appropriate to enforce Petitioner's removal order. *See* Ex. 12, Notice of Revocation of Release. Not only was notice provided but also an informal interview was conducted after Petitioner was detained. *See* Ex. 4, Declaration, ¶ 24. Under these facts, any claim that Respondent violated the APA or due process clause of the Fifth Amendment do not stand. Additionally, the Supreme Court has emphasized that "detention during deportation proceedings [remains] a *constitutionally valid* aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (emphasis added). The Supreme Court has never held that aliens have a constitutional right to be released from custody during the pendency of removal proceedings, and, in fact, has held precisely the opposite. *See id.* at 530; *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952)

("Detention is necessarily a part of this deportation procedure.").

C. Petitioner's detention as of December 3, 2025 makes any analysis under Zadvydas's Six month presumption wholly Premature.

Petitioner argues that her detention should be counted in the aggregate based upon a prior detention exceeding six months for purposes of the *Zadvydas* analysis [DE 1, ¶ 81], but this approach should not be entertained. In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit held that in order to state a claim under *Zadvydas*, "the [alien] not only must show post removal order detention in excess of six months, but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 287 F.3d at 1052. Where an alien cannot meet his burden of establishing that the evidence shows that there is not a substantial likelihood of removal in the reasonably foreseeable future, a petition for habeas corpus should be dismissed. *See, e.g., Oladokun v. U.S. Atty. Gen.*, 479 F. App'x 895, 897 (11th Cir. 2012); *Akinwale*, 287 F.3d at 1052.

The presumptively reasonable detention period under *Zadvydas* restarts when a Petitioner is released for a lengthy period and then re-detained. *See Meskini v. Att'y Gen. of United States*, No. 4:14-CV-42-CDL, 2018 WL 1321576, at *4 (M.D. Ga. Mar. 14, 2018)(noting "a strong argument exists" the removal period did not begin until the petitioner, who had previously been in ICE custody before serving a prison sentence, was returned to ICE custody). The Court in *Meskini* stated it did "not read *Zadvydas* to be a permanent 'Get Out of Jail Free Card' that may be redeemed at any time just because an alien was detained too long in the past." *Id.* at 3. "Further, it is important to note the Supreme Court in *Zadvydas* recognized six months as a presumptively reasonable detention period to allow the Government to arrange for an alien's removal." *M.K. V. Stewart Detention Center*, Case No. 23-cv-136-CDL-MSH, at ECF No. 12 (M.D. Ga. Oct. 19, 2023) (citing

Zadvydas, 533 U.S. at 700-01)). Therefore, Respondent should be given the opportunity to arrange for Petitioner's removal.

Even assuming, arguendo, that Petitioner's reading is correct – that this Court should count the "total period of detention . . . in the aggregate" – it leads this Court to the same conclusion: a premature Petition. Petitioner was in ICE custody pursuant to section 1231, based on an administratively final removal order, for a total of 53 days. That is, from December 27, 2013, when the Board of Immigration Appeals dismissed Petitioner's appeal of the Immigration Judge's removal order, until February 14, 2014, when the Second Circuit issued a stay of removal in conjunction with Petitioner's petition for review. On February 14, 2014, Petitioner's detention reverted to section 1226. *See Hechavarria*, 891 F.3d at 56 ("Section 1231 does not govern the detention of immigrants whose removal has been stayed pending judicial review."). Petitioner remained detained pursuant to section 1226 until she was released after an Immigration Judge granted her bond on April 7, 2015. Since then, Petitioner did not return to ICE custody until December 3, 2025, when she was re-detained. In the aggregate, Petitioner then has been detained for 53 days. Therefore, Petitioner's argument fails.

D. Petitioner's Removal to a Third Country does Not Violate the CAT as Procedures are in Place by which Petitioner may Challenge Removal to such a Third Country on the Basis of Fear of Persecution or Torture.

Petitioner states that it is a violation of the CAT for Respondent to deport people to places where they will likely be tortured. [DE 1, ¶ 77]. Respondent agrees that absent an Immigration Judge reopening the grant of deferral of removal under CAT, Petitioner cannot be deported to her home country, Haiti. However, third country removal is not precluded or unlawful, as an Immigration Judge ordered removal from the United States, and ICE follows the DHS' "Guidance Regarding Third Country Removals." ("Guidance"). *See* Ex. 14, Guidance. DHS explains in this

memorandum that before an alien is removed to a country not previously designated as a country of removal, DHS must determine whether the country has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured. *Id.* at 1.

If the United States has received such assurances, and if the U.S. Department of State ("DOS") finds those assurances credible, the alien may be removed without the need for further procedures. *Id.* at 1-2. If the United States has not received those assurances, or if the DOS does not find them credible, DHS will provide the alien with notice of the third country and an opportunity to assert a fear of return to that third country. If an alien asserts a fear of return to that third country, U.S. Citizenship and Immigration Services ("USCIS") will screen the alien for eligibility for protection under 8 U.S.C. § 1231(b)(3) and the CAT for the country of removal. *Id.* at 2. Then, USCIS will determine whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal. *Id.* If USCIS determines that the alien has met this standard and the alien was not previously in proceedings before the Immigration Court, USCIS will refer the matter to the Immigration Court in the first instance." *Id.* In cases where the alien was previously in proceedings before the Immigration Court, the ICE Office of the Principal Legal Advisor may file a motion to reopen with the Immigration Court or Board of Immigration Appeals, as appropriate, for further proceedings to solely determine eligibility for protection under [8 U.S.C. § 1231(b)(3)] and CAT for the country of removal. Alternatively, ICE may choose to designate another country for removal. *Id.*

DHS' Guidance is consistent with Congress's intent to channel all claims related to removal through the administrative process, preserving DHS's discretion as to the removal process and implementation of CAT, all while satisfying any due process concerns. *See* 8 U.S.C. §§ 1231(h), 1252(a)(4), (a)(5), (b)(9).

IV. CONCLUSION

Based upon the foregoing, Petitioner has been lawfully detained and the revocation of her OSUP was to effectuate a final order of removal, a discretionary act for which notice and an informal interview were provided. Petitioner's re-detention is not unreasonable under *Zadvydas* and any analysis under same is premature considering both the current length of detention and aggregate total days of detention. In sum, any third country removal is significantly likely to occur in the foreseeable future and upon the designation of such a country, DHS will comply with all necessary procedures as described in the Guidance issued.

Dated: December 10, 2025

Respectfully submitted,

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