UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 25-62475-CIV-WPD

Guerlie PIERRE,

Petitioner/Plaintiff,

v.

Field Office Director for the Miami Field Office, U.S. Immigration and Customs Enforcement,

Respondent/Defendant.
_____/

REPLY TO RESPONDENT'S RESPONSE IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT

Petitioner Guerlie Pierre hereby replies to Respondent's response in opposition to Petitioner's petition for writ of habeas corpus and complaint. Ms. Pierre is a decades-long resident of the United States for more than thirty years, primary caretaker of her U.S. citizen daughter's autistic U.S. citizen son, active member of her church choir, and [redacted] She has attempted to gather removal documents to eleven different safe third countries after an Immigration Judge granted her protection under the Convention Against Torture (CAT) following a Second Circuit remand. She now challenges her unlawful detention and unlawful revocation of her OSUP. ICE has shown nothing to rebut the presumption that her removal is not in the reasonably foreseeable future and their papers are wholly inadequate to show either that removal efforts have been made at all or that she will not be removed to a country that will in turn jet her to Haiti where she will be tortured [redacted]

I. Contrary to ICE's Contention, Ms. Pierre Has Had a Final Order of Removal That Could be Executed to a Safe Third Country Since December 27, 2013.

ICE argues that "Petitioner has been detained pursuant to an administratively final removal order for a total of [56] days," suggesting that ICE has only had this period of time to deport Ms. Pierre. DE 7 at 1; DE 8. This is incorrect. Ms. Pierre has had a final administrative order of removal since December 27, 2013, when the Board of Immigration Appeals (BIA) upheld the immigration judge order's stripping her of her lawful permanent resident status and ordering her removed. Since that date, the removal order against Ms. Pierre has been final. Ms. Pierre did not challenge the legality of her removal order to the Second Circuit. *Pierre v. Lynch*, 639 F. App'x 707, 708 (2d Cir. 2016) ("Pierre challenges only the denial of CAT relief"). The only legal question that was pending after the BIA's decision was whether Ms. Pierre was entitled to country-specific CAT protection called deferral of removal. 8 C.F.R. § 1208.17.

An application for CAT protection is not a challenge to a final order (or considered "relief" from removal, DE 7-4 at 3, para. 17, because a grant of protection does not disturb the underlying removal order. "An order granting CAT relief means only that, *notwithstanding the order of removal*, the noncitizen may not be removed to the designated country of removal, at least until conditions change in that country." *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). Further, "a CAT order does not affect the validity of a final order of removal" and "the noncitizen still 'may be removed at any time to another country where he or she is not likely to be tortured.'" *Id.* When CAT protection is granted, the agency defers the removal order. 8 C.F.R. § 1208.17(b)(1) ("After an immigration judge *orders* an alien [...] *removed*, the immigration judge shall inform the alien that his or her removal to the country where he or she is more likely than not to be tortured shall be *deferred*") (emphasis added). As ICE recognizes in its return, the Immigration and Nationality Act permits the deportation of a person with a removal order to a safe third country under 8 U.S.C.

§ 1231(b). DE 7 at 9-10. ICE therefore could have "arranged for Petitioner's removal," DE 7 at 9, to a safe third country. Ms. Pierre was in the physical custody of ICE for almost two years (until April 7, 2015). DE 7-13 (detention history). Moreover, ICE can seek approval from foreign countries for third country removal "even while the noncitizen is on release." *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025).

In arguing that Ms. Pierre's challenge to whether her removal is reasonably foreseeable is premature, ICE argues Ms. Pierre's post-order removal period has only just begun and that it has only had a short amount of time to try and execute the order against Ms. Pierre. DE 7 at 9. This is incorrect, as Ms. Pierre's post-removal removal period began on December 27, 2013, and all of her detention after that date has been under the post-order detention statute, 8 U.S.C. § 1231, not the pre-order detention statute cited by ICE. DE 7 at 9 ("On February 14, 2014, Petitioner's detention reverted to section 1226"). Under 8 U.S.C. § 1231(a)(1)(B), the post-order removal period "begins on the latest of the following: (i) The date the order of removal becomes administratively final; (ii) If the *removal order is judicially reviewed* and if a court orders a stay of the removal of the alien, the date of the court's final order; (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." (emphasis added). Only the first clause applies to Ms. Pierre, as her "removal order" was never "judicially reviewed." As explained above, she did not seek judicial review of her removal order, which was therefore final as of December 27, 2013. *Pierre v. Lynch*, 639 F. App'x 707, 708 (2d Cir. 2016) ("Pierre challenges only the denial of CAT relief"). She has only ever sought judicial review of the deferral of that order under the CAT, which is different. *See Riley v. Bondi*, 606 U.S. 259, 267-72 (2025) (order denying CAT relief is not "final order of removal"); 8

U.S.C. § 1252(a)(4) (providing for judicial review of CAT protection claims independent of review of a final order of removal).

The two cases cited by ICE support Ms. Pierre's position. DE 7 at 1-2. In *Farah*, the petitioner, like Ms. Pierre, challenged his detention on the grounds that his removal was not reasonably foreseeable. *Farah v. U.S. Atty Gen.*, 12 F.4th 1312, 1331-32 (11th Cir. 2021). Unlike Ms. Pierre, however, Farah sought judicial review of his removal order, not just review of deferral of that order under CAT. *Id.* at 1322-25 (challenging his removal order as based on a defective notice to appear and criminal convictions that did not make him removable). The district court had held that the 90-day removal period continued to run, even after the court had issued a stay of his order of removal. *Id.* at 1332. The Eleventh Circuit disagreed, holding that the "text of section 1231(a) does not support the interpretation of the statute by the district court." *Id.* at 1331. The "'removal period' begins on the latest of three dates," the second of which is the date of a reviewing court's final order "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien." *Id.* at 1332 (citing 8 U.S.C. § 1231(a)(1)(B)). Because Farah's "removal order [was] subject to judicial review" *and* the court had issued a stay of his removal, the court held that "Farah's removal period has not yet begun." *Id.* In contrast, Ms. Pierre never had a "judicially reviewed" removal order. 8 U.S.C. § 1231(a)(1)(B). She has only ever had judicial review of the deferral of that order under the CAT, which is different. *Riley v. Bondi*, 606 U.S. 259, 267-72 (2025) (order denying CAT relief is not "final order of removal"); 8 U.S.C. § 1252(a)(4) (providing for judicial review of CAT protection claims independent of review of a final order of removal).

Similarly, the Second Circuit's decision in *Hechavarria* supports Ms. Pierre's position. DE 7 at 1-2. In that case, the petitioner had sought judicial review of his removal order, arguing that

he was not removable for an aggravated felony, as charged by ICE. *Hechavarria v. Sessions*, 891 F.3d 49, 52 (2d Cir. 2018). The court had issued a stay of removal. *Id.* at 54. Because Hechavarria had received a stay of removal *and* was pending review of his judicial challenge to his removal order, the court held that he was not being held under the post-removal order detention statute. *Id.* at 58. In so holding, the court affirmed the plain language of 8 U.S.C. § 1231(a)(1)(A)(ii), which requires both a stay of removal *and* that the "*removal order* is judicially reviewed." *Id.* at 55 (emphasis added). Because Ms. Pierre has only ever challenged the CAT denial and not her order of removal, she falls outside of that provision. Under the plain terms of the statute, Ms. Pierre's removal period started on December 27, 2013. Since that date, she has spent almost two years in post-final order detention under 8 U.S.C. § 1231, well beyond the six-month mark.

II. In Any Event, Ms. Pierre Can Today Make a *Zadvydas* Claim.

Even if the court agrees with ICE that Ms. Pierre has not spent more than six months in post-removal order detention, Ms. Pierre can today raise a claim under *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *4 (D. Md. Sept. 8, 2025) (granting *Zadvydas* habeas petition based on facts similar to Ms. Pierre's and collecting cases). Ms. Pierre has met her initial burden of showing that her deportation is not reasonably foreseeable based on the following facts: 1) ICE was unable to deport Ms. Pierre to a safe third country when she was previously in detention for almost two years; 2) ICE informed undersigned counsel on December 3 when detaining Ms. Pierre that ICE had no country in mind; 3) ICE has been on notice that it cannot deport Ms. Pierre to Haiti since February 6, 2024 and yet has not identified a safe third country; 4) ICE has not given a reason to suggest circumstances have changed; 5) in its filing with this court, ICE does not state they have foreign travel documents or even a third country in mind. There have been no interviews with foreign embassies. In fact, most

of the efforts at removal have been through Ms. Pierre, herself, as she has reached out to multiple nations that have declined to accept her; and 6) the written decision to revoke Ms. Pierre's OSUP is boilerplate and states only that ICE is enforcing her removal order. It does not identify a potential country of removal or any facts that make removal likely, especially in light of the fact that ICE cannot send her to Haiti. The burden is now on ICE to show imminent removal. *Zadvydas*, 533 U.S. at 701 ("[O]nce the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.").

ICE's bare assertion that it can deport Ms. Pierre to some unspecified country does not meet its burden to show her removal is reasonably likely. *Id.* ICE incorrectly argues Ms. Pierre must languish in detention for another six months while the agency decides how to effectuate removal. DE 7 at 8-9 ("[ICE] should be given the opportunity to arrange for Petitioner's removal"). ICE's position is a misstatement of Supreme Court precedent and *Zadvydas*' presumption rule. *Zadvydas* does not prohibit the filing of a habeas petition before 180 days; it merely provides a *presumption* that 180 days of detention is reasonable. *Zadvydas*, 533 U.S. at 701 (recognizing a "presumptively reasonable period of detention"). As courts have held, this presumption does not prohibit an individual like Ms. Pierre from challenging the reasonableness of her detention before 180 days, based on the specific facts of her case. *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *5 (D. Md. Sept. 8, 2025) (granting habeas petition before six months of re-detention based on facts similar to Ms. Pierre's); *see also Nhuan Cam Lu v. Genalo*, 2025 WL 3512244 (S.D.N.Y. Dec. 8, 2025) (same); *Gomez-Simeon v. Bondi*, 2025 WL 3470872 (W.D.Tex. Nov. 24, 2025) (same); *Puertas-Mendoza v. Bondi*, 2025 WL 3142089 (W.D.Tex. Oct. 22, 2025) (same); *Villanueva v. Tate*, 2025 WL 2774610 (S.D.Tex. Sept. 26, 2025) (same); *Munoz-Saucedo v.*

Pittman, 2025 WL 1750346 (D.N.J. June 24, 2025) (same); *id.* at *6 ("In practical terms, before the six-month period elapses, the government bears no burden to justify detention, and the petitioner must claim and prove, that his removal is not reasonably foreseeable."); *Ali v. DHS*, 451 F. Supp. 3d 703, 706-07 (S.D. Tex. 2020) ("This six-month presumption is not a bright line, . . . and *Zadvydas* did not automatically authorize all detention until it reaches constitutional limits."); *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) ("The six-month *Zadvydas* presumption is just that—a presumption . . . not a prohibition on claims challenging detention less than six months."); *Cesar v. Achim*, 542 F. Supp. 2d 897, 903 (E.D. Wisc. 2008) ("The *Zadvydas* Court did not say that the presumption is irrebuttable."); *Roble v. Bondi*, No. 25-CV-3196 (LMP/LIB), 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) ("[T]he regulations ... place the burden on ICE to first establish changed circumstances that make removal significantly likely in the reasonably foreseeable future."); *J.L.R.P. v. Wofford*, No. 1:25-CV-01464-KES-SKO (HC), 2025 WL 3190589, at *4 (E.D. Cal. Nov. 14, 2025) ("[W]hen ICE revokes the [OSUP] of a noncitizen who has been ordered removed to effectuate that noncitizen's removal, it is [ICE's] burden to show a significant likelihood that the alien may be removed.") (citation modified).

Moreover, the petitioners in *Zadvydas*, unlike Ms. Pierre, had not been granted CAT deferral or withholding of removal. Such a grant "substantially increases the difficulty of removing" an individual. *Munoz-Saucedo*, 2025 WL 1750346, at *6; *cf. Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006) (a grant of CAT withholding of removal "is a powerful indication of the improbability of [a noncitizen's] foreseeable removal, by any objective measure"); *Puertas-Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *4 (W.D. Tex. Oct. 22, 2025) (nothing the rarity and difficulty of removing a noncitizen to a third country where ICE

"threaten[ed]" removing a Mexican national to Syria for Third Country removal and ordering release). Under ICE's understanding of *Zadvydas*, a detained person would not be able to challenge their detention for six months regardless of the specific facts of their case. It would not matter if the person showed letters from every country in the world refusing their entry. Under ICE's logic, a petitioner would have no opportunity to challenge their release before six months have elapsed, even if all parties agreed that removal was not reasonably foreseeable. Contrary to ICE's contention, the *Zadvydas* allows challenges before six months. *See Zadvydas*, 533 U.S. at 690 (holding that "where detention's goal is no longer practically attainable, detention no longer bears reasonable relation to the purpose for which the individual was committed") (internal citations and quotations omitted).

ICE claims that the inability to name a third country is not a "good reason" to believe there is a reasonable likelihood of removal, citing *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002). DE 7 at 8. In *Akinwale*, the petitioner had not been granted withholding of removal and was taken into ICE custody following his release from incarceration. *Id.* at 1051. ICE did not have an extended period of time to arrange for a country of removal. *Id.* Only four months into his first detention by ICE, Akinwale filed his petition. *Id.* Here, in contrast, Ms. Pierre has had an administratively final order of removal since December 27, 2013 and has spent almost two years since that time in immigration detention. ICE has had a lengthy period of time to pursue her removal to a safe third country. Unlike the petitioner in *Akinwale*, Ms. Pierre has been granted CAT protection, which reduces the likelihood that her deportation will be executed. Ms. Pierre also has affirmative evidence to rebut the presumption that removal to a third country is not foreseeable: she has tried to self-deport to eleven different countries, none of which have accepted her. *See* DE 1-5. In *Tadros v. Noem,* the court rejected a similar argument by ICE, stating

"Respondents have not identified any country that has been willing to accept Tadros. Therefore, there are no travel or other documents to prepare for his departure." 2025 WL 1678501 at *3. "Respondents' sole statement that 'ICE has been making efforts to facilitate Petitioner's removal to a country other than Egypt' is insufficient to rebut the presumption established by [the petitioner.]" *Id.*

ICE claims Ms. Pierre's re-detention is necessary to "give[]" ICE "the opportunity to arrange for Petitioner's removal." DE 7 at 1. However, there is no evidence that removal is even remotely in the works. *See Garcia Aleman v. Warden*, No. SA-25-CV-886-OLG (HJB), 2025 WL 3534806 (W.D. Tex. Nov. 24, 2025), *reconsideration denied sub nom. Garcia-Aleman, v. Warden*, No. SA-25-CV-00886-OLG, 2025 WL 3532179 (W.D. Tex. Dec. 9, 2025) (ordering immediate release after OSUP revocation for withholding grant where ICE failed to demonstrate any potential third country is likely to accept for removal); *Medellin Martinez v. Bondi*, No. SA:25-CV-1319-OLG, at 5 (W.D. Tex. Nov. 21, 2025) ("[E]ven if ICE had outstanding requests with such countries, which they do not, that fact alone would be insufficient to show that his removal is likely to occur in the reasonably foreseeable future."); *Puertas-Mendoza v. Bondi*, No. SA-25-CA-00890-XR, 2025 WL 3142089, at *4 (W.D. Tex. Oct. 22, 2025) ("The lack of likely removal is also shown by the absence of any "indication that the Government attempted to remove Petitioner during the [twelve] years between his [reinstated] order of removal and his detention in 2025."). ICE points to nothing to support its claim that it can deport Ms. Pierre in the reasonably foreseeable future. She herself has made more efforts to effectuate safe third country removal than ICE.

III. This Court Has Jurisdiction Over Whether ICE Complied with Due Process and the OSUP Procedures in Revoking Her OSUP.

In arguing that there is no jurisdiction over Ms. Pierre's challenge to her OSUP revocation, ICE mischaracterizes her claim. ICE argues that Ms. Pierre is asking the Court to review the

reasoning for the OSUP revocation. DE 7 at 5-6. This is incorrect. Ms. Pierre instead asks the Court to consider whether ICE violated procedural due process and its own regulations in revoking the OSUP. The case cited by ICE, *Barrios v. Ripa*, supports jurisdiction over her challenge. In that case, the court held that it had jurisdiction "to adjudicate whether Respondents complied with their own OSUP revocation procedures." *Barrios v. Ripa*, Case No. 25-cv-22644-Gayles, 2025 WL 2280485, at *9.

The *Barrios* decision is consistent with other courts that have also "distinguished between challenges to ICE's *discretion* to execute a removal order, which are barred [under 1252(g)], and challenges to the *manner* in which ICE executes the removal order, which are not." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 151 (W.D.N.Y. May 2, 2025) (citing *Torres-Jurado v. Biden*, 2023 WL 7130898 (S.D.N.Y. Oct. 29, 2023) at *2 (collecting cases)) (emphasis added). In *Zavvar v. Scott*, No. CV 25-2104-TDC, 2025 WL 2592543, at *3 (D. Md. Sept. 8, 2025), a case with facts similar to Ms. Pierre's, the court exercised jurisdiction because the habeas petition "d[id] not seek a stay of the execution of Zavvar's removal but rather challenge[d] the legality of Zavvar's detention pending the execution of his removal order." *See also Villanueva v. Tate*, 2025 WL 2774610 at *5 (S.D.Tex. Sept. 26, 2025) (same). As in *Ceesay* and *Zavvar* Ms. Pierre does not challenge anything related to the legality of her removal order, including ICE's authority to execute it. Instead, she challenges her re-detention, arguing her detention is "unlawful because the government improperly revoked the order of supervision under which [she] had been released." *Ceesay*, 781 F. Supp. 3d at 153-54; *see also Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *4 (S.D. Fla. Sep. 9, 2025) (§ 1252(g) left intact the Court's authority to review whether ICE followed required procedures in revoking an order of supervision); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *7, 9 (S.D.N.Y. Aug. 26, 2025) (collecting

cases) (finding, in part, ICE violated due process clause in failing to follow its own procedures for OSUP revocation); *K.E.O. v. Woosley*, No. 4:25-CV-74-RGJ, 2025 WL 2553394, at *7 (W.D. Ky. Sept. 4, 2025) (finding ICE's failure to follow their own regulations violates the *Accardi* doctrine and procedural due process rights); *K.E.O.* at * 7 ("The Court acknowledges that the United States has broad discretion to enforce immigration laws and, possibly, to revoke Petitioner's [OSUP]. But it must follow the law and give every word in the applicable statutes and regulations their full meaning."). ICE argues that it re-detained Ms. Pierre to effectuate removal, but this statement of purpose does not forgive violation of the mandatory regulatory procedures for effectuating removal. The regulatory and statutory scheme is not written such that ICE may evade accountability from a reviewing court each time they violate their own rules.

IV. ICE's Revocation of Ms. Pierre's OSUP Was Unlawful.

Courts have ordered noncitizens released after ICE unlawfully revoked an OSUP. *See, e.g.*, *Villanueva v. Tate*, 2025 WL 2774610 (S.D.Tex. Sept. 26, 2025) (ordering release after ICE violated its own regulations); *Ceesay v. Kurzdofer*, 781 F. Supp. 3d 137, 154 (W.D.N.Y. 2025) (same). "Due process and the rule of law require more than a 'detain now, figure it out later' approach." *Albolhassan Hassanzadeh v. Warden*, No. ED CV 25-2113-DMG (MAAX), 2025 WL 3306272, at *5 (C.D. Cal. Nov. 25, 2025) (ordering immediate release and return to previous OSUP terms after ICE did not engage in the informal interview shortly after apprehension).

ICE's revocation of Ms. Pierre's OSUP was unlawful. The regulation requires that ICE "afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 CFR § 241.4(l)(1). This opportunity must be meaningful. As stated in Ms. Pierre's habeas petition, undersigned counsel was present when ICE detained Ms. Pierre and spoke with the deportation officer who took Ms. Pierre into custody. The deportation officer informed

undersigned counsel that nothing could be done to reverse the decision to re-detain Ms. Pierre and refused to take the letter brief and supporting documentation she presented to him. DE 1-5 at 1-8 (brief) and 13-213 (evidence). She was forced to leave it on the table. The officer's statement to undersigned counsel illustrates that any subsequent informal interview was not meaningful.

The fact that undersigned counsel was not informed of the interview or allowed to participate is further evidence that the interview was not meaningful. The officer was aware that undersigned counsel was representing Ms. Pierre by both her presence and also her notice of entry of appearance, which was contained in the letter brief and packet of evidence supporting Ms. Pierre. DE 1-5 at 1-8 (brief) and 13-213 (evidence). Yet the officer did not serve the notice of the OSUP revocation/informal interview on undersigned counsel. As the form itself shows, the notification of counsel box is not checked. DE 7-12. Moreover, ICE did not otherwise make undersigned counsel aware of the interview so that counsel could participate.

Officer Garcia Ortega's declaration gives no details whatsoever about the interview that was supposed to have taken place, raising the question of whether it was meaningful in any way. DE 7-4. Nor is there any indication that ICE considered, or was even aware of, the cover brief and packet submitted by undersigned counsel when Ms. Pierre was detained. The time that the notice of revocation was supposedly served is also missing, raising the question of whether it was served. DE 7-12. Also, the revocation of the OSUP makes reference to an informal interview to be scheduled in the future, presumably so that Ms. Pierre could prepare for the interview. *Id.* However, the declaration from ICE officer Felix Garcia Ortega, DE 7-4, does not state when the interview occurred, presumably because it would show that Mr. Pierre was not given time to prepare. The letter itself also has no details or any level of specificity. *See Roble v. Bondi,* 2025 WL 2443453

at *3-4 (D. Minn. Aug. 25, 2025) (finding a generalized written notice insufficient for purposes of § 241.13(i)(3)).

Because Ms. Pierre reported to the Field Office early in the morning on Wednesday, December 3, 2025, the revocation, apprehension, purported interview, and her opportunity to respond without prior notice to counsel all took place in the span of less than 12 hours, all supposedly on December 3, 2025. This timing casts doubt on whether ICE properly and meaningfully adhered to the mandated procedures. 8 CFR § 241.4(l)(1), (3); *see also Funes v. Francis*, No. 25 CIV. 7429 (PAE), 2025 WL 3263896, at *23 (S.D.N.Y. Nov. 24, 2025) (casting doubt on whether ICE had considered materials offered to ICE at the informal interview stage, including a stay of removal and evidence of U.S. citizen children to refrain from re-detention and OSUP revocation and finding ICE "disabled" petitioner from presenting arguments against revocation and re-detention).

An additional event in the recent months casts further doubt on whether ICE complied with its regulations and procedural due process when revoking Ms. Pierre's OSUP. On September 15, 2025, Deportation Officer Michele Sincere emailed counsel Andrea Jacoski about Ms. Pierre, stating "She is no longer required to participate [in SmartLINK surveillance]. Being said that, she needs to report to the Miramar window on a yearly basis." Exhibit 1 (email from Michele Sincere to Andrea Jacoski). These very recent statements demonstrate that ICE affirmatively placed Ms. Pierre on a lower grade of supervision—taking her off SmartLINK surveillance—and stating that she only needed to report once a year to ICE. ICE has given no explanation for its complete reversal in its assessment of Ms. Pierre's case, indicating that its decision to take her into custody was arbitrary and capricious and in violation of its regulations.

Given that ICE was in email communication with Ms. Pierre's counsel, ICE could have easily given Ms. Pierre notice of the revocation and an opportunity to be heard. At a minimum, ICE could have permitted Ms. Pierre to prepare for deportation in an orderly manner. Instead, Ms. Pierre was abruptly detained, despite the fact that she is the primary caregiver to her autistic, five-year-old grandson and a caregiver to her daughter, who was injured in a car accident and cannot walk unassisted. DE 1-5. As a result of ICE's actions, her grandson and daughter are left without her financial and emotional support and essential care.

ICE reads its regulation as justifying Ms. Pierre's re-detention because "[i]t is appropriate to enforce [her] removal order" because "revocation is in the public interest." DE 7 at 7. But given 1) the compelling personal facts of Ms. Pierre's case; 2) ICE's recent downgrading of her supervised status; 3) the complete lack of a safe third country of removal; 4) ICE's statements to undersigned counsel that the revocation could not be reconsidered; 5) the failure to accept undersigned counsel's letter brief, evidence; and 6) ICE's failure to advise undersigned counsel of the supposed informal interview, the court should find that ICE did not abide by its regulations or due process by giving Ms. Pierre notice and a meaningful opportunity to be heard or by engaging in an actual analysis of whether re-detention was appropriate under the regulation.

V. ICE's Claim That It Can Lawfully Deport Ms. Pierre to a Third Country Based on Diplomatic Assurances Alone or a Brief Procedure Not Involving a Judge is Incorrect.

As argued above, ICE is unable to deport Ms. Pierre to a true safe third country in the reasonably foreseeable future. However, undersigned counsel is concerned that ICE will unlawfully deport Ms. Pierre to a third country that is *not* safe under a process that is not procedurally adequate. ICE's attempt to dispel any statutory or due process concerns in the context of third country removal are unpersuasive. Absent intervention from this Court, ICE may remove

Ms. Pierre to a country where she fears persecution or torture, even to Haiti – a country where her removal is prohibited by law.

As ICE points out, the Memo issued March 30, 2025, permits removal of individuals to a third country "without the need for further assurances," so long as the U.S. government "believes those assurances to be credible." DE 7-14. These diplomatic assurances are wholly inadequate. ICE is removing people to countries where they will be detained and imprisoned or disappeared. *See Nguyen v. Scott*, 796 F. Supp. 3d 703, 734 (W.D. Wash. 2025) (citing *Artiga-Morales v. Bondi*, No. 24-2519, 2025 WL 2305405, at *1 (9th Cir. Aug. 11, 2025) ("The evidence also establishes that there have been instances of torture in Salvadoran prisons [.]")); *see also Thach Wana v. Bondi*, No. 2:25-CV-02321-RSL, 2025 WL 3628634, at *6 (W.D. Wash. Dec. 15, 2025) ("[finding] that the government is intentionally removing noncitizens to countries with which they have no connection, often in contravention of the governing statute and regulations, and knowing that they will be subject to imprisonment or other punishment."). ICE is deporting people to a third country—a country never designated or identified for removal by an immigration judge—without notice or opportunity to contest removal based on a fear of persecution, torture, or even death in that country. *See Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2153 (2025) (Sotomayor, J., dissenting). Only an order by an immigration judge could adequately prevent against dangerous third country removals, given the minimalist or practically (and in some contexts literally) nonexistent notice procedures.

Further, the so-called diplomatic assurances do not even require confirmation from the receiving country that the individual will not be later removed a country where they fear persecution or torture, essentially sanctioning layovers for removals in contravention of immigration judges' orders. DE 7-14. Already in some circumstances, individuals are removed to

countries that intend to repatriate them to countries in violation of U.S. immigration judge orders. *Id.* at 2153 (explaining that "[ICE] wrongfully deported one plaintiff to Guatemala, even though an Immigration Judge found he was likely to face torture there. Then, in clear violation of a court order, it deported six more to South Sudan, a nation the State Department considers too unsafe for all but its most critical personnel. An attentive District Court's timely intervention only narrowly prevented a third set of unlawful removals to Libya.").

Under the ICE Memo, should ICE designate a third country for removal, which they do not appear to be doing or to ever have done in Ms. Pierre's case, Ms. Pierre faces removal to a third country with no meaningful opportunity to challenge that decision or reach an immigration judge. *See Nguyen v. Scott*, 796 F. Supp. 3d 703, 737 (W.D. Wash. 2025); *see* DE 7-14 (ICE Memo). Where an individual expresses fear of removal of the designated third country, the ICE Memo does not lead to review of that claim before an immigration judge. Instead, the Memo states ICE should refer the person to U.S. Citizenship and Immigration Services for screening. DE 7-14 at 2. To even access the U.S.C.I.S. fear screening process, the individual must affirmatively express a fear of return. The Memo expressly prohibits immigration officers from asking whether an individual fears removal to the designated third country. DE 7-14 at 2 ("Immigration officers will not affirmatively ask whether the alien is afraid of being removed to that country" because "[it] is not unreasonable for an alien in that circumstance to be expected to affirmatively express a fear of persecution or torture."). Neither the diplomatic assurances procedure nor the U.S.C.I.S. referral procedure comport with the statutory and regulatory protections for people who have a fear of return or procedural due process. Ms. Pierre is at grave risk of being deported to a country that is not actually safe. Nothing in ICE's return of her habeas petition allays these fears.

Respectfully submitted,

s/ Rebecca Sharpless
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Guerlie Pierre, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Reply to Respondent's Response in Opposition to Petitioner's Petition for Writ of Habeas Corpus and Complaint are true and correct to the best of my knowledge.

Dated this 16th day of December 2025.

s/ Rebecca Sharpless
Rebecca Sharpless