UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

RUMEYSA OZTURK,

Petitioner,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, PATRICIA HYDE, Field Office Director, MICHAEL KROL, HSI New England Special Agent in Charge, TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement, and KRISTI NOEM, Secretary of Homeland Security; and MARCO RUBIO, in his official capacity as Secretary of State

Respondents.

No. 2:25-cv-374

RESPONDENTS' RESPONSE TO PETITIONER'S SUBMISSION REGARDING FURTHER PROCEEDINGS

Petitioner's Submission Confirms This Court Is Not the Proper Forum for Consideration of Her Claims.

Petitioner's Submission Regarding Further Proceedings (ECF No. 99) states "the importance of the remedies [Petitioner] seeks from this Court is only underscored by developments in immigration court," specifically the immigration judge's denial of her request for release on bond. *Id.* at 1. The Submission also informs the Court of the arguments and evidence presented to the IJ on the issue of release, explains why Petitioner believes the IJ's decision was unsupported by the record, and suggests the IJ's decision was neither serious nor made in good faith. *Id.* at 1-2. Petitioner has also filed for this Court's review a copy of the immigration judge's order denying her request for release. ECF No. 101.

These Submissions demonstrate that the essence of this proceeding is an effort to obtain interlocutory and collateral district court review of issues that are inextricably connected to the administration of Petitioner's removal proceedings,[1] including her detention at the discretion of the Attorney General pursuant to 8 U.S.C. § 1226(a). *Velasco Lopez v. Decker,* 978 F.3d 842, 849 (2d Cir. 20202) ("Under § 1226(a), Congress has delegated to the Attorney General the discretion to detain noncitizens during the pendency of their removal proceedings.")

But, as previously noted the "discretionary judgment . . . regarding the detention or release of any [alien] or the grant, revocation, or denial of bond or parole" is not reviewable by the courts. 8 U.S.C. § 1226(e). As the Supreme Court has explained, that statute precludes an alien from "challeng[ing] a 'discretionary judgment' by the Attorney General or a 'decision' that the Attorney General has made regarding his detention or release." *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018) (quoting *Demore v. Kim*, 538 U.S. 510, 516 (2003); *see also Hechavarria v. Whitaker,* 358 F.Supp.3d 227, 235 (W.D.N.Y. 2019) ("This provision 'precludes an alien from "challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding his detention or release."'") (quoting *Jennings*); *Negusie v. Holder*, 555 U.S. 511, 517 (2009) (acknowledging that "[j]udicial deference" "is of special importance" where Congress has provided the Attorney General with discretion in making immigration decisions).

[1] Furthermore, as explained in Respondent's Supplemental briefing relating to bail, ECF No. 84, Petitioner may seek further administrative review of the denial of her request for bond before the BIA at any time before a final order of removal. 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). She may also request a second bond redetermination hearing before the IJ, based on a showing that her circumstances have materially changed since the first hearing. See 8 C.F.R. § 1003.19(e).

As previously briefed, ECF Nos. 19, 83 & 84, and argued earlier this week, this Court is not the forum for such review because Congress has stripped district courts to review such exercises of discretion related to removal proceedings and has clearly placed judicial review in the appropriate court of appeals. *See* 8 U.S.C. §§ 1252(a)(2)(B), 1252(b)(9), 1252(g). The Supreme Court made this clear in *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999) ("*AADC*"). In that case, like in this case, noncitizens accused the INS of "selectively enforcing the immigration laws against them in violation of their First and Fifth Amendment rights." 525 U.S. at 473-74. Further in *AADC* the government admitted "that the alleged First Amendment activity was the basis for selecting the individuals for adverse action." *Id.* at 488 n.10. The noncitizens also argued to the Supreme Court, as Petitioner argues here, that a lack of immediate review would have a "chilling effect" on their First Amendment rights. *Id.* at 488. Nonetheless, the Supreme Court held that the "challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within § 1252(g)." *Id.* at 487; *see also Cooper Butt ex rel Q.T.R. v. Barr*, 954 F.3d 901, 908–09 (6th Cir. 2020) (holding that the district court did not have jurisdiction to review a claim that the plaintiffs' father "was removed 'based upon ethnic, religious and racial bias' in violation of the Equal Protection Clause of the Fifth Amendment"). In *AADC,* as in this case, Congress channeled into the statutorily prescribed removal process all legal and factual questions—including constitutional issues—that may arise from the removal of an alien, with judicial review of those decisions vested exclusively in the courts of appeals. *See AADC*, 525 at 483.

Despite these rules, Petitioner asks this Court to cure the IJ's denial of her request for release in the immigration court, and reiterates her request for a release order from *this* Court pending the outcome of this habeas case pursuant to *Mapp v. Reno,* 241 F.3d 221, 230 (2d Cir.

2011), or, in the alternative under the All Writs Act. ECF No. 99, at 2-3. As demonstrated in the Opposition to the Amended Petition and Supplemental briefing, ECF Nos. 19, 83 & 84, and above, because this court lacks habeas jurisdiction, it is without authority to issue release under *Mapp,* and the All Writs Act, is inapposite.

Response to Motion for Production of Additional Memoranda

Petitioner's Submission also moves for an order directing the production of the memoranda described in a recent Washington Post article pertaining to the decision to revoke her visa. ECF No. 99, at 5. The court should deny that request for several reasons. First, Petitioner asserts these documents "go to the government's asserted motives for [her] arrest and detention[.]" ECF No 99, at 5. That argument confirms – contrary to her previous claim that she was not challenging the revocation of her visa, ECF No. 26, at 25 – that her Petition's core challenge is based on the reasons underlying the revocation of her temporary student visa. Critically, the Second Circuit in *Ragbir v. Homan,* 923 F.3d 53 (2d Cir. 2019), specifically admonished that when DHS had the "statutory authority" to perform the action alleged to have been in retaliation for protected speech, action (in that case the execution of an order of removal, in this case the revocation and commencement of removal proceedings and associated detention), such a challenge is subject to the jurisdiction stripping provision of 8 U.S.C. § 1252(g). *See* 923 F.3d at 64[2] ("[t]o remove [the challenged] decision from the scope of section 1252(g) *because it was allegedly made based on unlawful considerations* would allow plaintiff to bypass § 1252 (g) through mere styling of their claims." (emphasis added)). And, as previously noted, *Ragbir* premised its conclusion that there could be

[2] The decision was subsequently vacated by *Pham v. Ragbir*, 141 S. Ct. 227 (2020) for further consideration in light of *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020).

habeas jurisdiction in that case on the unavailability of a petition for review pursuant to § 1252. *See Ragbir,* 923 F.3d at 73. Because Petitioner may still pursue relief in a petition for review to the appropriate court of appeals, § 1252 strips this court of authority to engage in a review of matters pending before the immigration court.

Second, the records described in the Washington Post article,[3] are subject to the confidentiality provisions of 8 U.S.C. § 1202(f), which provides in pertinent part:

> The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that—
>
> (1) in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

In *Spadaro v. United States Customs and Border Protection,* 978 F.3d 34 (2d Cir. 2020), the Plaintiff sought records under the Freedom of Information Act relating to the prudential revocation of his visa. The Second Circuit held that such records were subject to both the deliberative process privilege and the confidentiality provision of § 1202(f), *Spadaro,* 978 F.3d at 38-39, 42-43; *see also Spadaro v. United States Customs and Border Protection,* 826 Fed. Appx. 112, 113 (2d Cir. 2020) (records related to prudential revocation of visa are subject to deliberative process FOIA exemption).

Finally, the evidence that is in the record demonstrates that Petitioner's visa was revoked by the State Department based on an information provided from "DHS/ICE" that she "had been involved in associations that 'may undermine U.S. foreign policy by creating a hostile environment

[3] For purposes of this pleading, respondents assume the article is accurate.

for Jewish students and indicating support for a designated terrorist organization' including co-authoring an op-ed that found common cause with an organization that was later temporarily banned from campus[.]" ECF No. 91-1. There is no dispute, therefore, that the op-ed was a material consideration underlying the visa revocation. And Petitioner does not explain why she needs additional documentation to pursue her petition – if the Court asserts jurisdiction despite 8 U.S.C. § 1201(i)'s requirement that any such challenge occur only "in the context of a removal proceeding if such revocation provides the sole grounds for removal[.]"

Removing Limitations on Public Access to the Docket

Respondents do not object to Petitioner's request that the Court "remove the limitations on remote electronic access to the docket." ECF No. 99, at 6.

Respectfully submitted,

Dated: April 18, 2025

By: */s/ Michael P. Drescher*
Michael P. Drescher
Assistant United States Attorney
District of Vermont