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' MOTION FOR CONTINUED STAY PENDING APPEAL

INTRODUCTION

The Court stayed its April 18, 2025 Order "for four days to allow either party to appeal . . . ." ECF No. 104, at 74. Respondents have filed a Notice of Appeal (ECF No. 105), which "confers jurisdiction on the court of appeals and divests [this Court] of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). But to the extent it is necessary, Respondents move this Court, under Federal Rule of Civil Procedure 62, to continue its stay pending disposition of the appeal by the United States Court of Appeals for the Second Circuit. Respondents respectfully request that this Court rule on this motion no later than 3:00 p.m. EDT on April 24, 2025; after that time,

Respondents intend to seek emergency relief from the Second Circuit. Fed. R. App. P. 8(a)(2); Fed. R. Civ. P. 62(g)(1).

LEGAL STANDARD

To evaluate whether to issue a stay pending appeal, courts consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quotation omitted). The first two factors "are the most critical[,]" and the final factors merge where, as here, the government is a party. *Id*. at 434-35.

ARGUMENT

The Court has already stayed its Order to allow either party to appeal. ECF No. 104, at 74. Respondents are taking advantage of the opportunity afforded by the Court and pursuing expeditious review by the Court of Appeals of the complex, important legal issues presented in this case. To effectuate that review, Respondents ask the Court to continue the stay currently in place pending final disposition of the appeal.

I. Respondents are likely to succeed on the merits.

A continued stay pending appeal is warranted because Respondents raise important potentially dispositive challenges to the Court's authority to exercise habeas jurisdiction under *Rumsfeld v. Padilla*, 542 U.S. 426 (2004) and the Immigration and Nationality Act. Further, Respondents are likely to succeed on the merits that the Court lacks authority to order Petitioner's transfer to the District of Vermont.

A. The Court lacks jurisdiction.

a. The Court lacks jurisdiction under *Padilla*.

As previously argued, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement." *Padilla*, 542 U.S. at 447. That rule derives from the habeas statutes themselves, which require a petition to allege "the name of the person who has custody over" a petitioner. 28 U.S.C. § 2242; *see also* 28 U.S.C. § 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained."). Indeed, "jurisdiction lies in only one district: the district of confinement." *Trump v. J.G.G.*, 2025 WL 1024097, at *1 (U.S. Apr. 7, 2025). Here, Petitioner's district of confinement is the Western District of Louisiana, and that is where jurisdiction lies. *See id.*

Padilla stands as a reproach of the Second Circuit's historically relaxed approach to the "immediate custodian rule." *Padilla*, 542 U.S. at 437-38. Because the petition did not name Petitioner's immediate custodian when it was originally filed in the District of Massachusetts (and because Petitioner's current immediate custodian is not located in the District of Vermont), this Court lacks jurisdiction. For the reasons articulated in Respondents' Supplemental Opposition, neither the transfer statute nor the Supreme Court's decision in *Ex parte Endo*, 323 U.S. 283 (1944), cure that defect. *See* ECF No. 83, at 7-14.

Also as previously argued, 28 U.S.C. § 1631 should not retroactively cure the original Petition's non-compliance with *Padilla.* Indeed if § 1631 can so cure, the Supreme Court's analysis in *Padilla* is potentially nullified.

b. The Court lacks jurisdiction under the INA.

Aside from *Padilla*, this Court also lacks jurisdiction under the Immigration and Nationality Act. Under section 1252(g), "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 . . . against any alien under this chapter." 8 U.S.C. § 1252(g). The "decision to commence proceedings," which is the genesis of Petitioner's detention, "falls squarely within § 1252(g)." *Reno v. American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 487 (1999) (cleaned up).

Petitioner's claims regarding detention stem from the method by which the removal proceedings against her were commenced; they are not "unrelated to any removal action or proceeding." *Cf. Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009). And the decision as to the method by which removal proceedings are commenced is a discretionary one that is not reviewable by a district court under section 1252(g). *See* ECF No. 83, at 19-20.

Instead, the INA makes "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings" "the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. §§ 1252(a)(5), (b)(2). Thus, this Court lacks jurisdiction to review "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter . . . ." 8 U.S.C. § 1252(b)(9). In short, Petitioner's claims regarding her arrest and detention, including her constitutional claims, must be heard by the court of appeals sitting "in judicial review of a final order under this section." *Id.*

The merits of these arguments weigh in favor of granting the requested stay.

B. The Court lacks authority to order Petitioner's transfer.

"A principal feature of the removal system is the broad discretion exercised by immigration officials." *Arizona v. United States*, 567 U.S. 387, 396 (2012). That broad discretion extends to the "authority to determine the location of detention of an alien in deportation proceedings," including whether to change that location during the pendency of proceedings. *Gandarillas-Zambrana v. Bd. of Immigration Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995). Congress vested the Executive Branch with that substantial discretion in the INA itself. *See* 8 U.S.C. § 1231(g)(1) ("The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal."). And Congress stripped the courts of jurisdiction to review such exercises of discretion. *See* 8 U.S.C. § 1251(a)(2)(B)(ii) (barring district courts form exercising subject matter jurisdiction of "any . . . decision or action of the Attorney General . . . the authority for which is specified under this subchapter [8 U.S.C. § 1151-1381] to be in the discretion of the Attorney General . . . .").

Courts across the country, including the Second Circuit, have recognized as much. *See, e.g.*, *Wood v. United States*, 175 F. App'x 419, 420 (2d Cir. 2006) (holding that the Secretary "was not required to detain [Plaintiff] in a particular state" given the Secretary's "statutory discretion" under § 1231(g)); ECF No. 83, at 17-18 (collecting cases). Respondents are thus likely to succeed on the merits of an appeal challenging this Court's transfer order.

II. The balance of harm favors a stay.

The Government "suffers a form of irreparable injury" "[a]ny time [it] is enjoined by a court form effectuating statutes enacted by representatives of its people." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citation omitted). That is particularly true here because rules governing immigration "implement[ ] an inherent executive power." *United*

States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 542 (1950) ("it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien").

Moreover, Petitioner does not challenge the revocation of her visa. *See* ECF No. 26, at 25 ("Ms. Ozturk does not challenge the revocation of her visa."). And with her visa revoked, Petitioner lacks status and is subject to detention under 8 U.S.C. § 1226 for the duration of removal proceedings. Even under the terms of the Court's April 18 Order, Petitioner would remain in custody, *see* ECF No. 104, at 66, so she would not be substantially harmed by continuing the stay pending resolution of Respondents' appeal.

Respectfully submitted,

Dated: April 22, 2025

By: */s/ Michael P. Drescher*
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District of Vermont