UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 25-60242-CV-MIDDLEBROOKS

HURIYAT MAMAJONOVA,

Petitioner,

v.

GARRETT RIPA, et al.,

Respondents.

_______________________________________/

RESPONDENT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S EXPEDITED MOTION FOR SUMMARY JUDGMENT OR EVIDENTIARY HEARING

Respondents[1], by and through the undersigned Assistant U.S. Attorney, hereby respond to the Petitioner's Expedited Motion for Summary Judgment [ECF 16], and Petitioner's Emergency Motion for Summary Judgment or Evidentiary Hearing [ECF No. 18] as directed by the Court [ECF Nos. 17, 19]. As set forth below, the Court should deny both Motions for Summary Judgment.

I. BACKGROUND

The petitioner, Huryiat Mamajonova (Petitioner) is a native and citizen of Uzbekistan, and entered the United States without inspection, admission, or parole at or near Charlotte Amalie, U.S. Virgin Islands (USVI) on or about November 13, 2024. [ECF No. 12] at 1. The Petitioner acknowledges that she did not enter the United States through a port of entry, rather she entered

1 A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Broward Transitional Center, an ICE detention facility in Pompano Beach, Florida. Her immediate custodian is Juan F. Gonzalez, Assistant Field Office Director. The proper Respondent in the instant case is Mr. Gonzalez in his official capacity.

the country by landing "at a Private Boat Pier located near a United States Customs and Border Protection ("CBP") facility in Cruz Bay, US Virgin Islands." Expedited MSJ [ECF No. 16] at 8. Petitioner appeared at the St. John, VI, at the CBP office on November 13, 2024, through a side gate not intended to be used by passengers. *See* Talavera Dec., attached hereto as **Exhibit A**, at 1.

The St. John port of entry is a facility that processes individuals including foreign nationals arriving on St. John by private boat or charter vessel. *See* Talavera Dec. at 2. There is a secure dock connected to the facility which is secured and isolated by fences. *Id.* Individuals that disembark from those vessels are required to be brought from the arriving vessel for inspection. *Id.* The standard procedure at the CBP office is to inspect and admit persons entering the USVI from these vessels from the secure dock. *See id.* The CBP office does not have facilities for detention of arriving aliens. *See* Brady Dec. [ECF No. 12-7] at 2-3.

After entering the United States by disembarking at a private pier on St. John, the Petitioner appeared at The Creek a/k/a St. John, VI, a CBP Office. Resp. Return [ECF No. 12], Exhibit G. The Petitioner did not present any documents issued by the United States which would permit entry. *Id.* Due to operational constraints, including lack of detention capability, detainee necessities, and the ability to transport detainees from St. John, VI, United States Immigration and Customs Enforcement – Enforcement and Removal Operations ("ICE ERO") was contacted. *Id.* ICE ERO recommended that Petitioner appear at the United States Citizenship and Immigration Services ("USCIS") office on St. Thomas the next morning to be processed. *See id.* The Petitioner was advised that she was not admitted or paroled at the St. John, VI CBP Office on November 13, 2025. *See id.*; Talavera Dec. at 2.

Petitioner was processed for expedited removal under section 235(b)(1) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(1) on November 16, 2024. *See* Resp. Return

[ECF No. 12] Exhibit A, I-213; Exhibit B, Notice and Order of Expedited Removal. Petitioner conceded that she entered the United States without inspection and did not possess a valid visa. *See* Resp. Return [ECF No. 12-1] Exhibit A. Petitioner also stated that she sought to live and reside in the United States. *Id.*

Petitioner was placed in removal proceedings via the issuance of a Notice to Appear dated January 2, 2025. *See* Resp. Return [ECF No. 12] Exhibit E, Notice to Appear dated 1/2/25. A superseding Notice to Appear was issued February 6, 2025. *See* Resp. Return [ECF No. 12] Exhibit F, Superseding Notice to Appear dated 2/6/25. On March 4, 2025, the Immigration Judge issued an order finding that Petitioner was subject to mandatory detention and not eligible for bond.[2] *See* Resp. Return [ECF No. 12] Exhibit G, Bond Order.

On March 28, 2025, the Petitioner appeared before the Immigration Court in her immigration proceeding and admitted to all allegations contained in the government's Superseding Notice to Appear.[3] *See* Resp. Return [ECF No. 12-6] at 2; Ord. of Immigration J. [ECF No. 15] at 2. The Notice to Appear provided that the Petitioner is an alien present in the United States who has not been admitted or paroled, that she is not a citizen of the United States, and is an immigrant not in possession of a valid entry document as required by the INA. *Id.* Based upon these admissions and the charges set forth in the Notice to Appear, the Immigration Court determined that the Petitioner is removable from the United States, and granted her request for voluntary departure. Ord. of Immigration J. [ECF No. 15] at 2. That Order further provides that in the event

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[2] To date, Petitioner has not appealed the decision of the immigration judge to the Board, the appellate administrative body having jurisdiction to review the decision. *See 8* C.F.R. § 1003.19.

[3] Given the limited to time granted to the government to respond to the Petitioner's Expedited Motion for Summary Judgment, a transcript of the proceedings concerning the award of voluntary removal is not yet available. The undersigned understands an audio recording may be available within 48 hours, and a transcript in approximately five business days. A copy of the audio recording will be provided at the Court's request. A copy of the transcript will be filed to supplement this response when it is available.

the Petitioner fails to depart as required, the grant of voluntary departure is withdrawn and Petitioner shall be removed to Uzbekistan on the charges set forth in the Notice to Appear. *Id.* The Petitioner made her application solely for voluntary departure in lieu of removal and waived appeal of all issues. *Id.* at 3.

For the reasons stated below, Petitioner's custody is lawful, and the Motion for Summary Judgment should be denied.

II. ARGUMENT

a. The Petitioner has admitted the allegations of the government's Superseding Notice to Appear and was granted voluntary departure from the United States.

The Petitioner has admitted that she is an alien present in the United States who has not been admitted or paroled and has no legal basis to enter the United States. Ord. of Immigration J. [ECF No. 15] at 2. A concession to removability must be made as a matter of law prior to an award of voluntary departure. 8 C.F.R. § 1240.26(b)(i)(C). Even had the Petitioner retained the right to appeal the order of voluntary departure, which she did not[4], such an appeal would be considered by the Board of Immigration Appeals (the "Board"), not a district court. 8 CFR 1003.1(b)(3) ("Appeals may be filed with the Board of Immigration Appeals from the following: Decisions of immigration judges in removal proceedings…."). If the Petitioner were to challenge the Order permitting voluntary departure by motion to reopen or to reconsider, the grant of voluntary departure would automatically terminate, and the removal order would take effect. *See* Ord. of Immigration J. [ECF No. 15] at 2; 8 C.F.R. § 1240.26(e)(1). Similarly, if the Petitioner were to file a petition for review, the Order granting voluntary departure would terminate and the alternate order of removal would take effect. 8 CFR § 1240.16(i).

4 8 C.F.R. § 1240.26(b)(i)(D) requires the waiver of appeal to be granted voluntary departure.

This Court lacks subject matter jurisdiction over any claim to modify the Orders entered in the Petitioner's removal proceeding.

Title 8, Section 1252 provides as follows:

(g) Exclusive jurisdiction

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), ***including section 2241 of title 28, United States Code, or any other habeas corpus provision***, and sections 1361 and 1651 of such title, 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.***

8 U.S.C. § 1252(g) (emphasis added). In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), the Supreme Court observed 1252(g) applies to three discrete actions that the Attorney General may take: "her decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Id.* at 482 (emphasis in original). As to its purpose, the Court found that § 1252(g) "performs the function of categorically excluding from non-final order judicial review ... certain specified decisions and actions of the INS." *Id.* at 483.

Further, Title 8, United States Code, § 1252(b)(9) provides:

> Judicial review of 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 shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28, or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

In *Ivantchouk v. U.S. Attorney General*, 417 F.App'x 918 (11th Cir. 2011), the Eleventh Circuit observed, "the REAL ID Act expanded appellate courts' jurisdiction to consider constitutional and legal questions in a petition for review of the immigration proceedings, and it rendered a petition for review the alien's exclusive means for review of the removal order." *Id.* at 921. The REAL ID Act's amendment to § 1252(b)(9) categorically excludes 28 U.S.C. § 2241 as a basis for a district court to review an alien's order of removal and questions of law and fact arising from removal proceedings.

Moreover, "the Eleventh Circuit has held that, regardless of how an alien characterizes his or her claims, district courts lack jurisdiction over challenges to the commencement of removal proceedings." *De Vera v. U.S. Immigration and Customs Enforcement*, 2018 WL 1441344, at *2 (S.D. Fla. Mar. 21, 2018) (citing *Alvarez v. U.S. Immigration and Customs Enforcement*, 818 F.3d 1194, 1203 (11th Cir. 2016) (holding that 8 U.S.C. § 1252(g) bars courts from questioning ICE's "discretionary decision to commence removal ..."); *Mata v. Sec'y of Homeland Sec.*, 426 F. App'x 698, 700 (11th Cir. 2011) (rejecting plaintiffs "attempts to evade the bars in 8 U.S.C. § 1252 by characterizing his claim as a challenge not to his removal but rather the Immigration and Naturalization Services' rescission decision"). Further, the Eleventh Circuit has recognized that § 1252(g) forecloses "the methods ICE used to detain [a Petitioner] prior to his removal hearing." *Alvarez*, 818 F.3d at 1203-04.

Thus, any challenge to the determination that the Petitioner is subject to voluntary departure, or failing to voluntarily depart, constitutes challenges to the commencement and adjudication of the removal proceedings. As such, there is no subject matter jurisdiction over Petitioner's claims and the Motions for Summary Judgment should be denied.

Had she not waived appeal in the Order, Petitioner could have pursued an administrative appeal and potentially obtained judicial review of any voluntary departure order or any alleged errors related thereto through a petition for review filed with the Court of Appeals with jurisdiction over the state in which her removal proceeding was conducted. *See* 8 U.S.C. § 1252(a)(5); *Balogun v. U.S. Attorney General*, 425 F.3d 1356, 1360 (11th Cir. 2005) (holding that "a criminal alien must now petition the court of appeals for review of all claimed legal errors relating to the BIA's final order of removal" and that "the provisions of 28 U.S.C. § 2241 no longer play any role in immigration cases"). As a jurisdictional prerequisite to obtaining judicial review at the Court of Appeals, Petitioner must first exhaust the administrative remedies available to her. *See, e.g., Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1297 (11th Cir. 2015) (recognizing that the Eleventh Circuit lacks jurisdiction to review final orders in immigration cases unless 'the alien has exhausted all administrative remedies available to the alien as of right").

Accordingly, this Court lacks jurisdiction to review the Order of Voluntary Departure in habeas proceeding, and any relief from the Order of Voluntary Departure sought by the Petitioner's Habeas Petition and Motion for Summary Judgment should be denied.[5]

b. The Petitioner is an applicant for admission and subject to mandatory detention.

The Respondents addressed the Petitioner's status as a "applicant for admission" under § 1225(a)(1), and the fact that detention is mandatory absent urgent humanitarian reasons in its Return and Memorandum of Law. *See generally* [ECF No. 12]. The Respondents incorporate the arguments made in that Return and Memorandum as if fully restated herein. The Respondents, as suggested by the Court, will now turn to the arguments advanced by the Petitioner in her Motion

5 Also, to the extent that Petitioner challenges conditions of confinement to include access to medical care, DHS asserts that she must exhaust her administrative remedies by seeking medical care through Sick Call. *See* 2000 National Detention Standards for Non-Dedicated Facilities, Medical Care. Regardless, a habeas corpus is not the proper avenue to address conditions of confinement. *See Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990) ("The appropriate Eleventh Circuit relief from prison conditions ... is to require the discontinuation of any improper practices ... [it] does not include release from confinement.").

to Terminate the Removal Proceedings ("MTT")[6] filed in her immigration proceeding.

As an initial matter, all of Petitioner's arguments in the MTT rely upon the proposition that she was "admitted" when she encountered CBP officers on September 13, 2024. *See generally* MTT at 7, 9, 10, 13, 16. However, the Petitioner conceded in her removal proceedings that she is "an alien present in the United States who has not been admitted or paroled." *See* Notice to Appear, [ECF No. 12-6] at 2. The Petitioner cannot both concede that she was not admitted for purposes of seeking the benefit of voluntary departure, and also assert in this proceeding that she was admitted for purposes of her Petition for Writ of Habeas Corpus. *See RJ's International Trading, LLC v. Crown Castle South LLC*, Case No. 20-25162-CIV-ALTONAGA/Torres, 2021 WL 12323951, at *4 (S.D. Fla. Nov. 15, 2021) ("Factual assertions in pleadings, including an answer, 'are considered judicial admissions conclusively binding on the party who made them.'").[7]

Furthermore, the circumstances surrounding the Petitioner's arrival into the United States make clear that she was not "admitted." "[A]n 'admission' is defined as 'the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Sanchez v. Mayorkas*, 593 U.S. 409, 411 (2021) (citing 8 U.S.C. § 1101(a)(13)(A)). Courts interpreting this section have found that admission does not require substantively valid and legal admission, but rather a procedurally proper entry. *Johnson v. District Director of U.S. Citizenship*, Case No. 15-cv-62420-BLOOM/Valle, 2016 WL 5390572, at *3 (S.D. Fla. Sept. 27, 2016) (citing *Matter of Quilantan,* 25 I&N Dec. 285, 293 (BIA 2010); *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980)) (omitting additional citations).

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[6] Petitioner was designated as the respondent in her removal proceedings.

[7] As discussed *supra* at n. 3 Petitioner verbally admitted the allegations of the government's Notice to Appear in her immigration proceeding. Unequivocal and unambiguous oral statements and admissions to a court may be treated as binding judicial admissions. *See Crowe v. Coleman*, 113 F.3d 1536, 1542 (11th Cir. 1997).

There is no question that the Petitioner's entry into the United States was substantively unlawful and procedurally irregular. As stated in her Motion for Summary Judgment, the Petitioner did not arrive at the Port of Entry, but rather arrived at a "Private Boat Pier" located near a CBP facility without inspection or authorization from an immigration officer. MSJ [ECF No. 16] at 8. Had the Petitioner arrived at the port of entry on the private vessel, per standard procedure, with no legal basis for entry into the United States, she could have been returned to the arriving vessel. *See* Dec. of Talavera at 2. The Petitioner does not allege that any legal basis for admission existed at the time of her entry and she was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document. *See* Resp. Return [ECF No. 12-1] Exhibit A.

Despite her illegal entry, the Petitioner claims that her interactions with CBP following her entry constitute being "waved through" and admitted into the United States. *See* MTT [ECF No. 1-1] at 4. But this argument stretches the plain meaning of "procedural regularity" and "authorization by an immigration officer" beyond any reasonable limit.

The central cases cited by the Petitioner involve persons presenting themselves for admission in the procedurally required manner and being granted explicit permission to enter the United States by an immigration officer. *See Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980); *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010). Here the Petitioner presented herself in a procedurally irregular way, having already illegally entered the country before traveling to the port of entry, and was told explicitly that she was not being admitted. *See* Dec. of Brady [ECF No. 12-7] at 3, Dec. of Talavera at 2.

In *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980), while the facts of entry are not described in great detail, the Board considered the possible admission of an immigrant claiming that "she was a passenger in a car permitted to proceed into the United States after the driver alone had been questioned." *Areguillin* does not address whether an immigrant is admitted where an applicant was told they are being denied entry, or a situation where an alien approached an immigration officer after having entered the country illegally. Presumably, traveling through the checkpoint by car was the standard way to enter the port of entry in *Areguillin*.

Likewise, in *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010), the individual claiming admission into the United States was "a passenger in a car being driven by her United States citizen friend … [T]he immigration inspector asked her friend whether he was an American citizen but did not ask [Quilantan] anything. The officer then waved the car through the port of entry." *Id.* at 286. Again, like *Areguillin*, the immigration officer interacting with the applicant explicitly granted admission by waving the car through. This fact is significant, as the definition of admission under the INA requires both "inspection" and "authorization by any immigration officer." 8 U.S.C. § 1101(a)(13)(A). Authorization to enter was explicitly given in both *Areguillin* and *Quilantan*.

The Petitioner's request is distinguishable from an individual being "waved in." The Petitioner was dropped off at an unknown dock, not the dock designated for port of entry. The Petitioner then entered the CBP office through a side gate not intended for use by arriving passengers. It was only at this point that the Petitioner encountered immigration officers, who then explicitly refused to authorize entry and directed the Petitioner to appear at a different location. *See* Resp. Return [ECF No. 12-7] Exhibit G; Talavera Dec. at 2. The "admission" allowed in *Areguillin* and *Quilantan* was unconditional and explicit. Here, the Petitioner was denied entry based upon the immigration officer's knowledge, as conceded by the Petitioner, that no legal basis existed to grant admission.

Accepting the Petitioner's argument would expand the holdings in *Areguillin* and

Quilantan. If the Petitioner's circumstances constitute "authorization" by an immigration officer, agents at any port of entry, however an alien chooses to present herself, would need to either immediately detain an applicant for admission or be found to have "admitted" the applicant, even where it is clear that the alien entered the United States illegally and that there is no present legal basis for the individual to enter. Furthermore, "authorization by an immigration officer" cannot reasonably be interpreted to mean that even where an applicant for admission is told admission is not being authorized by an immigration officer, and that further processing will be necessary, entry has nonetheless been authorized under 8 U.S.C. § 1101(a)(13)(A). The Court should not expand the holdings in *Areguillin* and *Quilantan* and find that aliens that fail to follow the standard protocol at a port of entry, and who are explicitly denied admittance, are *still* admitted under the INA because the alien disembarked elsewhere and denied CBP a readily available means of removal by denial of physical entry. The agency lacked the resources to detain the Petitioner on site, and so permitted the Petitioner to remain free of restraint on St. John with instructions to report to a different facility on St. Thomas.

To the extent that the Petitioner requested termination of the removal proceedings by the immigration court in her MTT, for reasons discussed *supra*, this Court is without jurisdiction to enter any relief with respect to the Order for Voluntary Departure or any subsequent Order of Removal that may issue as the result of non-compliance with voluntary departure.

c. The Petitioner's Motions for Summary Judgment do not comply with the local rules.

The Petitioner in this case was previously ordered to comply with the Rules Governing Section 2254 Cases, the Federal Rules of Civil Procedure, and the Local Rules for the Southern District of Florida. [ECF No. 3] at 1. S.D. Fla. Loc. R. 56.1(a)(1) requires that a motion for summary judgment be accompanied by a *separate* and contemporaneously filed Statement of

Material Facts. The Petitioner has not filed a separate Statement of Material facts in support of either of her Motions. Instead, the Petitioner has inserted a "Statement of Facts" [ECF No. 16, at 2-4], a "Statement of Undisputed Facts" [ECF No. 16, at 8-12], and a "Statement of Supplemental Facts" [ECF No. 16, at 16-17] in the body of her Expedited Motion for Summary Judgment and a "Statement of Facts" [ECF No. 18, at 3-5], a "Statement of Undisputed Facts" [ECF No. 18, at 9-13], and a "Statement of Supplemental Facts" [ECF No. 18, at 13-14] in the body of her Emergency Motion for Summary Judgment. This method of pleading does not comport with the Local Rule, and accordingly, to the extent that the Motions are not denied outright, the Motions should be stricken and the Petitioner directed to refile in the proper form. *See* S.D. Fla. Loc. R. 56.1(d) ("If a party files and serves a Statement of Material facts that does not comply with this rule, then the Court may strike the Statement, require immediate compliance, grant relief to any opposing party for any prejudice arising from a non-compliant statement or response, or enter other sanctions that the Court deems appropriate.").

Furthermore, the Petitioner did not seek or receive leave of this Court to file multiple motions for summary judgment, which is also required by the Local Rules. S.D. Fla. Loc. R. 56.1(e). Accordingly, to the extent the motions are not denied outright, the Court should strike the Motions for Summary Judgment, and direct the Petitioner to refile one comprehensive Motion, and separately file a Statement of Material facts in support.

d. The Petitioner is not entitled to discovery in a habeas proceeding absent leave of Court.

The Petitioner argues in her Emergency Motion that the Respondents failed to comply with her request for discovery. [ECF No. 18] at 18. "Unlike ordinary civil litigants, habeas petitioners are not entitled to discovery as a matter of course." *Annamalai v. Warden*, 750 Fed. App'x. 843, 849 (11th Cir. 2019) (citing *Bracy v. Gramley*, 520 U.S. 899, 904 (1997)). "Proceedings in § 2241 are governed by the Rules Governing Section 2254 Cases in the United States District Courts." *Id.* (citing Habeas R. 1(b)). "Under the Rules, a petitioner may only conduct discovery by leave of the district court." *Id.* at 850 (citing Habeas R. 6(a)). Accordingly, as in *Annamalai*, the Petitioners unanswered Request for Production of Documents in this case "have no legal effect." *Id.*

Accordingly, the Respondents request that the Court deny the Petitioner's Expedited Motion for Summary Judgment and the Emergency Motion for Summary Judgment in their entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 21, 2025, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, giving notice to all those registered to receive the same. I also certify that the foregoing document will be served April 22, 2025, on all counsel of record or pro se parties identified on the attached Service List in the manner specified.

BRETT R. GEIGER
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