APPENDIX

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 20-60067

United States Court of Appeals
Fifth Circuit
FILED
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Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

MELECIA BALTAZAR-SEBASTIAN,

Defendant-Appellee,

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:19-CR-173-1

Before BARKSDALE, SOUTHWICK, and GRAVES, *Circuit Judges.*

RHESA HAWKINS BARKSDALE, *Circuit Judge*:

Primarily at issue is whether the United States Department of Homeland Security's Immigration and Customs Enforcement Agency (ICE) may, under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, civilly detain a criminal defendant after she has been

granted pretrial release pursuant to the Bail Reform Act, 18 U.S.C. § 3141 *et seq*. We hold there is no conflict between the statutes preventing defendant's detainment. VACATED.

I.

Melecia Baltazar-Sebastian is a Guatemalan citizen residing in the Southern District of Mississippi. In August 2019, she was arrested at her place of employment during an ICE worksite enforcement action. After Baltazar admitted she was not in possession of proper immigration documents, ICE took her into custody. She was civilly charged with being inadmissible under the INA and was booked into an ICE processing center in Jena, Louisiana (there are no ICE facilities in Mississippi dedicated to more than 72-hours' detention). *See* 8 U.S.C. § 1226(a).

Later that month, a grand jury in Mississippi indicted Baltazar for misusing a social-security number, in violation of 42 U.S.C. § 408(a)(7)(B). A warrant was issued for her arrest; and, in response, ICE transferred her to the United States Marshal for the Southern District of Mississippi for her initial appearance on her indictment. Before she was transferred, however, ICE lodged a detainer, which advised the Marshal that it sought custody of Baltazar in the event of her release (ICE detention). *See* 8 C.F.R. § 287.7(a).

In September, after Baltazar pleaded not guilty to her criminal charges, the magistrate judge held a hearing in Jackson, Mississippi, to determine Baltazar's eligibility for pretrial release under the Bail Reform Act (BRA). Concluding she was not a flight risk or danger to the community, the magistrate judge ordered her released on bond subject to conditions (September release order). *See* 18 U.S.C. § 3142(b). The conditions required, *inter alia*, that she "remain in the Southern District of Mississippi at all times during the pendency of these proceedings unless

special permission is obtained from the Court". The Government did not then challenge the September release order. *See* 18 U.S.C. § 3145(a).

Notwithstanding the September release order, ICE retook custody of Baltazar based on its prior detainer and returned her to its detention facility in Jena, Louisiana (almost 200 miles away). In late September, while she remained in ICE detention, a magistrate judge granted the United States' motion for writ of *habeas corpus ad prosequendum* to facilitate Baltazar's appearance at a pretrial hearing in Jackson, Mississippi, for her criminal case. Baltazar then requested a hearing in that case to clarify her status under the September release order, maintaining her civil ICE detention was unlawful because of the September release order.

After an October hearing in Mississippi, the district court granted Baltazar's request to enforce the September release order, precluding ICE detention (October enforcement order). In that regard, the court stated: "Once the criminal matter is concluded the Executive Branch may continue its immigration proceedings". In December, the court denied the Government's motion for reconsideration of the October enforcement order (December order). The court reasoned ICE's detainment would "circumvent" the September release order. The Government appealed the December order. On the Government's motion, the district court stayed Baltazar's criminal trial pending this appeal.

II.

First at issue is our jurisdiction *vel non* to consider the Government's appeal. If jurisdiction exists, we review the Government's contesting the court's precluding ICE from detaining Baltazar during the pendency of her criminal proceedings; and, along that line, Baltazar's separation-of-powers and right-to-fair-trial contentions.

A.

As discussed above, in October, subsequent to ICE's resuming detention of Baltazar, the district court ordered her release from that detention pursuant to the September release order, promising a "more thorough written [o]rder" would follow. The Government timely moved to reconsider that October enforcement order, extending the Government's time in which to appeal until after the motion was denied. *See United States v. Brewer*, 60 F.3d 1142, 1143 (5th Cir. 1995) (holding motion for reconsideration tolls time to appeal under Federal Rule of Appellate Procedure 4); *United States v. Rainey*, 757 F.3d 234, 239 (5th Cir. 2014) ("[Under 18 U.S.C. § 3731,] the Government continues to be bound by the thirty-day requirement, but the judgment becomes final, and the clock begins to run, only after the disposition of a timely filed motion to reconsider".). After the court, in its December order, denied the motion to reconsider, the Government timely appealed.

In maintaining we have jurisdiction over its appeal of the court's December order, the Government relies on the BRA:

> An appeal by the United States shall lie to a court of appeals from a decision or order, entered by a district court of the United States, granting the release of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order granting release.

18 U.S.C. § 3731 (paragraph three).

1.

Interestingly, our jurisdiction is challenged not by Baltazar, but by an *amicus curiae*. The *amicus* maintains, *inter alia*: for purposes of appellate jurisdiction, the Government should have challenged the magistrate judge's

September release order, as opposed to appealing the district court's *enforcement* of that order (the December order). Although appellate jurisdiction *vel non* is not mentioned in the parties' opening briefs (the Government's reply brief responds to the jurisdictional issue presented by the *amicus*), we must, of course, consider the question *sua sponte*. *See Christopher M. by Laveta McA. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 1292 (5th Cir. 1991) ("[A]micus curiae . . . cannot raise an issue raised by neither of the parties absent exceptional circumstances".); *Giannakos v. M/V Bravo Trader*, 762 F.2d 1295, 1297 (5th Cir. 1985) ("Courts of Appeals have the responsibility to consider the question of subject matter jurisdiction *sua sponte* if it is not raised by the parties and to dismiss any action if such jurisdiction is lacking.").

2.

Under the BRA, we have jurisdiction over "[a]n appeal from a release or detention order, or from a decision denying revocation or amendment of such an order". 18 U.S.C. § 3145(c). In that regard, and as referenced *supra*, jurisdiction exists for the Government's appeal from "a decision or order, entered by a district court of the United States, granting the release of a person charged with . . . an offense". 18 U.S.C. § 3731 (paragraph three). Importantly, the provisions of this statute should be "liberally construed to effectuate its purposes", which undoubtedly include the expansion of appellate jurisdiction. *Id.* (paragraph five); *see United States v. Wilson*, 420 U.S. 332, 337 (1975) (concluding the passage of the Criminal Appeals Act of 1970 showed "Congress intended to remove all statutory barriers to Government appeals and to allow appeals whenever the Constitution would permit"); *United States v. Jefferson*, 623 F.3d 227, 230 (5th Cir. 2010) ("We have interpreted § 3731 as providing the government with as broad a right to appeal as the

Constitution will permit.") (internal quotation marks and citation omitted).

The September release order released Baltazar from criminal detention under the BRA. Considered by itself, we would lack jurisdiction over the September release order because it was issued by a magistrate judge and not a district court. 18 U.S.C. § 3145(a); *see, e.g., United States v. Harrison*, 396 F.3d 1280, 1281 (2d Cir. 2005). The December order, however, was the district court's affirmation of the September release order in response to defendant's motion to clarify her release status. The December order is therefore appealable under §§ 3145 and 3731. *See United States v. Soriano Nunez*, 928 F.3d 240, 244 (3d Cir. 2019) ("[Defendant] essentially challenges the [District] Court's decision to deny her request to enforce its BRA order. . . . To the extent [defendant] challenges the enforcement of a BRA order, we have jurisdiction over this appeal."); *United States v. Lett*, 944 F.3d 467, 469 (2d Cir. 2019) (reviewing district court's enforcement of prior release order).

B.

Accordingly, we consider the Government's challenge to the district court's interpretation of the interplay of the BRA and INA. Its rulings on questions of law are, of course, reviewed *de novo*. *See United States v. Orellana*, 405 F.3d 360, 365 (5th Cir. 2005); *see also United States v. Vasquez-Benitez*, 919 F.3d 546, 552 (D.C. Cir. 2019) (analyzing *de novo* all legal conclusions related to release orders under the BRA and ICE detentions under the INA).

1.

The Government contends, in passing, that the district court violated the INA in its enforcement of the September release order. As stated in 8 U.S.C. § 1226(e), "[n]o court may set aside any action or decision by the

Attorney General . . . regarding the detention or release of any alien". *See also* 8 U.S.C. § 1252(g) (in relation to removal proceedings, "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").

In its October and December orders for Baltazar's release, the district court expressly prohibited ICE from retaking custody. According to the Government, the court thereby set aside a decision regarding an alien's detention.

The court correctly rejected the applicability of §§ 1226(e) and 1252(g) in its December order, explaining it was "not attempting to review or set aside any decision or action to commence removal proceedings" but was instead "attempting to enforce the Magistrate Judge's [September release] Order".

2.

More substantively, the Government maintains the court erred in concluding there is an order of precedence between the BRA and INA, by deciding that, once the Government began criminal proceedings against Baltazar, the BRA superseded the INA. The court relied on two textual grounds.

First, the court concluded: the BRA mandates defendant's release whereas the INA grants only discretionary authority to detain. *See* 18 U.S.C. § 3142(b) ("The judicial officer *shall* order the pretrial release of the person" unless the person is a flight risk or danger to the community) (emphasis added); 8 U.S.C. § 1226(a) ("[A]n alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States".) (emphasis added). Second, the court read the BRA to prescribe the exclusive means for pretrial

detention of alien-defendants. *See* 18 U.S.C. § 3142(d) (stating: if an alien is a flight risk or danger to the community, then the judicial officer "shall order the detention of such person, for a period of not more than ten days, . . . and direct the attorney for the Government to notify . . . the appropriate official of the Immigration and Naturalization Service"). Given § 3142(d) expressly references pretrial detention for alien-defendants, the court concluded it follows that the usual provisions of the BRA apply to an alien-defendant if he or she is not a flight risk or danger to the community. Therefore, because Baltazar was not deemed a flight risk or danger to the community, the court concluded the ordinary mandate of release applied.

Whether the BRA and INA conflict is of first impression in our circuit. We therefore consider the decisions by the six other circuits which have addressed the issue. *See United States v. Barrera-Landa*, 964 F.3d 912 (10th Cir. 2020); *United States v. Pacheco-Poo*, 952 F.3d 950 (8th Cir. 2020); *United States v. Lett*, 944 F.3d 467 (2d Cir. 2019); *United States v. Soriano Nunez*, 928 F.3d 240 (3d Cir. 2019); *United States v. Vasquez-Benitez*, 919 F.3d 546 (D.C. Cir. 2019); *United States v. Veloz-Alonso*, 910 F.3d 266 (6th Cir. 2018). All of these circuits hold the statutes do not conflict: pretrial release under the BRA does not preclude pre-removal detention under the INA. Of course, our court is at liberty to create a circuit split, *see Matter of Benjamin*, 932 F.3d 293, 298 (5th Cir. 2019) (recognizing its holding conflicts with the "majority of our sister circuits"); but, for the reasons that follow, we do not do so in this instance. Instead, we agree with the well-reasoned holdings of our fellow circuits.

Fundamentally, the BRA and INA concern separate grants of Executive authority and govern independent criminal and civil proceedings. *See, e.g.*, *Soriano Nunez*, 928 F.3d at 245 ("[W]hile the BRA aims to ensure a

defendant's presence at trial, the INA uses detention to ensure an alien's presence at removal proceedings".); *Barrera-Landa*, 964 F.3d at 918 ("[T]he BRA does not give the district court authority to interrupt ICE's independent statutory obligations to take custody of [an alien-defendant] once he is released."); *Vasquez-Benitez*, 919 F.3d at 553 ("ICE's authority to facilitate an illegal alien's removal from the country does not disappear merely because the U.S. Marshal cannot detain him under the BRA pending his criminal trial."). Nothing in the text of the BRA or INA evinces any order of precedence between the statutes.

In addition, their silence, opposite the district court's interpretation, shows the statutes' working together, not in conflict. *See Pacheco-Poo*, 952 F.3d at 953 ("Other provisions of the BRA do not preclude removal under the INA."); *Vasquez-Benitez*, 919 F.3d at 553 ("Congress has never indicated that the BRA is intended to displace the INA."). Accordingly, the use of "shall" in the BRA and "may" in the INA must be interpreted in the light of their separate and independent statutory grants of authority.

Furthermore, the court's reading of § 3142(d) as the exclusive means for pretrial detention of alien-defendants inappropriately imports an exclusivity clause into the text. *See Pacheco-Poo*, 952 F.3d at 953 (holding § 3142(d) "does not mandate that immigration officials detain then and only then"). Section 3142(d) is a limitation on the district court's authority to release an alien-defendant pursuant to the BRA, not on ICE's authority pursuant to the INA. *See Soriano Nunez*, 928 F.3d at 246 ("By providing these other agencies an opportunity to take custody of such persons, [§ 3142(d)] effectively gives respect to pending cases and allows those officials to act before bail is set in the federal case. . . . The BRA's temporary detention scheme thus reflects Congress' recognition that immigration authorities . . . have separate interests."). Moreover,

§ 3142(d) only applies to defendant-aliens who might flee or pose a danger, a scenario found inapplicable to Baltzar by the magistrate judge in the September release order. Allowing detentions under the INA outside of § 3142(d) in no way disregards this process; it leaves it entirely intact and concerns a different class of defendants.

3.

Lastly, the Government contests the district court's conclusion that ICE violated INA regulations by detaining Baltazar. Under 8 C.F.R. § 215.2(a), an alien shall not depart the United States "if [her] departure would be prejudicial to the interests of the United States". As a party to a pending criminal case, an alien's departure is deemed prejudicial. 8 C.F.R. § 215.3(g). The departure is not prejudicial, however, if the "appropriate prosecuting authority" provides consent. *Id*. The court reasoned that, because consent was not provided for Baltazar's departure, removing her from the country would be prejudicial to the United States. And, according to the court, "if ICE cannot remove her, it cannot detain her for removal purposes".

Sections 215.2 and 215.3, however, do not relate to removal. Instead, they "merely prohibit aliens who are parties to a criminal case from departing from the United States *voluntarily*". *Lett*, 944 F.3d at 472 (emphasis in original). In other words, the regulations pertain to actions by an alien, not the Government. Reading "departure" in this manner follows from the text of § 215.2(a):

> Any departure-control officer who knows or has reason to believe that the case of an alien in the United States comes within the provisions of § 215.3 shall temporarily prevent the departure of such alien from the United States and shall serve him with a written temporary order *directing him not to depart, or*

> *attempt to depart*, from the United States until notified of the revocation of the order.

8 C.F.R. § 215.2(a) (emphasis added). This interpretation is further confirmed by other provisions in the INA. *See, e.g.*, 8 C.F.R. § 215.4(a) (allowing alien to contest prevention of his departure). Again, every circuit to consider the issue agrees the regulations concern an alien's own actions, not those of ICE. *See Barrera-Landa*, 964 F.3d at 923; *Lett*, 944 F.3d at 472–73; *Pacheco-Poo*, 952 F.3d at 953; *cf. Lopez-Angel v. Barr*, 952 F.3d 1045, 1050 (9th Cir. 2019) (Lee, J., concurring) ("The ordinary meaning of the word 'departure' refers to a volitional act. It would be quite strange to say, for example, 'the suspect departed the crime scene when police took him into custody.'").

C.

In addition to her statutory interpretation (which mirrors the district court's above-discussed position), Baltazar contends: the Executive Branch violated the separation of powers through ICE's detention of her; and the court's enforcement of the September release order protected her constitutional right to a fair trial under the Fifth and Sixth Amendments. As discussed *infra*, because neither issue has merit, we need not decide whether either was preserved in district court.

1.

Regarding separation of powers, Baltazar maintains: ICE, *inter alia*, "arrogated to itself the authority to disregard the legal effect of an Article III court's judgment"; therefore, even if there were statutory authority for ICE's actions under the INA, such authority would not nullify a court's valid release order. The Government counters, *inter alia*: the separation-of-powers issue was not properly preserved for appeal because Baltazar did not pursue this issue in district court.

Again, because her contention lacks merit, we need not decide whether Baltazar's separation-of-powers issue falls within an exception to unpreserved issues' being either waived or subject only to plain-error review. In short, we consider, and reject, the assertion that ICE's pre-removal detention of Baltazar violates the separation of powers. *See Vasquez-Benitez*, 919 F.3d at 552 ("ICE's detention does not offend separation-of-powers principles simply because a federal court, acting pursuant to the BRA, has ordered that same alien released pending his criminal trial."); *Veloz-Alonso*, 910 F.3d at 268.

2.

Concerning the Fifth and Sixth Amendments, the court in its December order observed that ICE's detention facilities in Louisiana are more than 200 miles away from Baltazar's criminal proceedings in Jackson, Mississippi—requiring court-appointed defense attorneys to travel a full day to see their clients. Similar to her separation-of-powers issue, the Government maintains Baltazar waived her Fifth and Sixth Amendment fair-trial issue by failing to raise it in district court.

Once again, we need not decide whether the issue is waived or subject only to plain-error review; the issue is meritless. In referencing the distance between Jackson, Mississippi, and ICE's detention facilities in Louisiana, the court did not explain the import of its observation, or even to what degree, if any, it was making a factual finding. Moreover, while the commute is undoubtedly burdensome, the court did not conclude that ICE's detention of Baltazar violated her constitutional right to a fair trial, which would include assistance of counsel. There are, therefore, no reviewable findings or conclusions on any purported violations of the Fifth and Sixth Amendments.

III.

For the foregoing reasons, the district court's December 2019 order precluding ICE from detaining Baltazar pending completion of her criminal proceedings is VACATED.

APPENDIX B

No. 3:19-CR-173-CWR-FKB

UNITED STATES OF AMERICA,

Plaintiff,

v.

MELECIA BALTAZAR-SEBASTIAN,

Defendant,

MEMORANDUM OPINION AND ORDER

Before CARLTON W. REEVES, *District Judge.*

The United States has charged Melecia Baltazar-Sebastian with one count of misusing a Social Security number. It arrested her and promptly brought her before a United States Magistrate Judge for a detention hearing. After considering the parties' evidence, their arguments, and the applicable law, the Magistrate Judge ordered Baltazar-Sebastian to be released until her trial. The Order required Baltazar-Sebastian to remain in the Southern District of Mississippi.

No one appealed the Magistrate Judge's Order. That would normally be the end of the matter. Here, however, an agency within the United States Department of Homeland Security—Immigration and Customs Enforcement (ICE)—decided that the Order does not apply to it. ICE took custody of Baltazar-Sebastian and transported her to a detention facility in Louisiana for deportation proceedings.

Baltazar-Sebastian, through her attorney, filed a series of motions in this Court objecting to the government's circumvention of the Magistrate Judge's Order. Two hearings followed. All of the briefs and arguments concern the same question: does federal law permit ICE to override the Magistrate Judge's Order releasing Baltazar-Sebastian on bond?

For the reasons discussed below, the answer is "no." In the absence of a statute indicating that Congress authorized ICE to circumvent the Magistrate Judge's Order, and without appealing that Order, ICE was not permitted to move Baltazar-Sebastian to Louisiana. While ICE may continue removal proceedings, the defendant is required to remain in this Judicial District under bond conditions where she and her attorney can prepare for trial.

Accordingly, the Court affirms once more the pretrial release of Baltazar-Sebastian subject to conditions determined by the Magistrate Judge. Once the criminal proceedings regarding this defendant are finished, this Court's role in the matter is complete, and the Executive Branch will then be free to detain her for removal proceedings.

I. Factual Background

Melecia Baltazar-Sebastian was born in Guatemala in 1979. The facts behind her relocation to Mississippi are

not known at this time, but it is clear that she made a home in this state. She lived in Morton, Mississippi, raised a family, and found a faith community at the Catholic Church of Saint Martin of Porres.

Baltazar-Sebastian also goes by "Amparo Sanchez." In Spanish, "amparo" means "refuge" or "protection." *United States v. Fowlie*, 24 F.3d 1059, 1064 (9th Cir. 1994); *A. S. (Widow) v. Advance Am. Diving*, No. 2007-LHC-505, 2008 WL 10656987, at *4 n.2 (Dep't of Labor Apr. 11, 2008).[1] The record does not explain the origin of Baltazar-Sebastian's use of this name. Future proceedings may resolve whether that was the name she gave to the chicken processing plant that employed her, whether it is her nickname, or something else.

In 2017, the Division of Children Services of the U.S. Department of Health and Human Services Office of Refugee Settlement released Baltazar-Sebastian's then 17-year-old daughter, also named Melecia, into her mother's care under the Homeland Security Act of 2002 and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. Beyond raising and educating her daughter, Baltazar-Sebastian was required to ensure that her daughter appeared at all immigration proceedings. There is no evidence of non-compliance in the record. Baltazar-Sebastian bought a car in 2018, secured a job, and had no criminal history to speak of until August 7, 2019.

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[1] One remedy in the Mexican legal system is the "writ of amparo," *In re Extradition of Vargas*, 978 F. Supp. 2d 734, 741 n.3 (S.D. Tex. 2013), which is "a federal proceeding which may be brought by any person who believes that his constitutional rights are being violated by a public official, even when the official is acting within the scope of authority conferred by statute or regulation," Robert S. Barker, *Constitutionalism in the Americas: A Bi-centennial Perspective*, 49 U. PITT. L. REV. 891, 906 (1988).

That day, more than 600 federal agents conducted immigration enforcement actions at six chicken processing plants in central Mississippi. Baltazar-Sebastian was one of 680 persons taken into custody.[2] Two weeks later, a federal grand jury in the Southern District of Mississippi indicted her for one count of misusing a Social Security number. There have been 118 other indictments filed in this District as a result of the August 7 enforcement actions.[3]

On September 3, 2019, a detention hearing was held before Magistrate Judge Linda R. Anderson. As in each detention hearing in this District, the government was represented by the United States Attorney's Office. Counsel for Baltazar-Sebastian provided evidence through documents and the testimony of three witnesses regarding her client's residence, church fellowship, commitment to care for her daughter, and daughter's school records. Judge Anderson concluded that Baltazar-Sebastian was not a danger to the community or a flight risk. Accordingly, Judge Anderson issued an Order releasing Baltazar-Sebastian on bond subject to specific conditions, including that she "remain in the Southern District of Mississippi at all times during the pendency of these proceedings unless special permission is obtained from the

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[2] Vandana Rambaran, *ICE raids on Mississippi food processing plants result in 680 arrests*, FOX NEWS (Aug. 7, 2019), https://www.foxnews.com/us/ice-raids-on-mississippi-food-processing-plants-result-in-680-arrests.

[3] United States Attorney's Office: Southern District of Mississippi, *119 Il-legal Aliens Prosecuted For Stealing Identities of Americans, Falsifying Immigration Documents, Fraudulently Claiming to be U.S. Citizens, Other Crimes*, UNITED STATES DEP'T OF JUSTICE (Nov. 7, 2019), https://www.jus-tice.gov/usao-sdms/pr/119-illegal-aliens-prosecuted-stealing-identities-americans-falsifying-immigration.

Court." Docket No. 14 at 2. The government did not appeal Judge Anderson's Order.

Baltazar-Sebastian was not released. ICE immediately took her into custody and transferred her to a holding center in Louisiana. For an extended period of time, Baltazar-Sebastian's whereabouts were unknown to her daughter and her attorney. Baltazar-Sebastian was not able to communicate with her attorney about her case.[4] On September 13, 2019, she appeared before an Immigration Judge in Louisiana. The hearing was continued to give her time to find an immigration attorney.

On September 25, 2019, in this criminal case, the United States filed a Motion for Writ of Habeas Corpus Ad Prosequendum to ensure that Baltazar-Sebastian would be present at a hearing before this Court. The motion was granted by Magistrate Judge F. Keith Ball. Counsel for Baltazar-Sebastian then filed two motions of her own: (1) to set aside the Writ, and (2) to clarify her client's conditions of release. Counsel argued that because Baltazar-Sebastian had been released on bond by the Magistrate Judge, her continued detention by ICE was unlawful.

A hearing was held on October 15, 2019. Baltazar-Sebastian asked the Court to enforce Judge Anderson's Order of Release. This Court granted Baltazar-Sebastian's request and promised a detailed written order. The United States' motion for reconsideration followed shortly thereafter. Another hearing was held on November 18, 2019, this time with representatives from the United States Attorney's Office, the Department of

[4] It was not just that Baltazar-Sebastian could not visit with her counsel. Baltazar-Sebastian literally could not communicate with her counsel because she speaks an indigenous language, Akateco. There are very few Akateco interpreters, which magnifies the difficulty for her to communicate with her attorney.

Justice (Main Justice), and ICE.[5] The Court's full ruling follows.

A. Relevant Law

This case requires the Court to analyze the Bail Reform Act of 1984 (BRA), 18 U.S.C. § 3141 *et seq.*, and the Immigration and Nationality Act of 1965 (INA), 8 U.S.C. § 1101 *et seq.*

1. The Bail Reform Act

"In our society liberty is the norm, and detention prior to trial or without a trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Congress understood this when it enacted the BRA, which provides that a "judicial officer shall order the pretrial release" of a person charged with a federal crime, "unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community."[6] 18 U.S.C. § 3142(b). "The word 'shall' is mandatory in meaning." *United States v. Graves*, 908 F.3d 137, 141 (5th Cir. 2018), *as revised* (Nov. 27, 2018) (citing *Valdez v. Cockrell*, 274 F.3d 941, 950 (5th Cir. 2001)). Pursuant to this language, "the presumption is release absent a demonstration that the defendant is likely to flee or is a danger to the community." *United States v. Espinoza-Ochoa*, 371 F. Supp. 3d 1018, 1020 (M.D. Ala. 2019) (citation omitted).

The BRA expressly contemplates pretrial release for aliens. *See United States v. Adomako*, 150 F. Supp. 2d

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[5] The Court did not consider Baltazar-Sebastian's supplemental brief as it was untimely and submitted without leave of Court.

[6] "A determination that an individual is a flight risk must be supported by a preponderance of the evidence." *United States v. Vasquez-Benitez*, 919 F.3d 546, 551 (D.C. Cir. 2019) (citation omitted). On appeal, the factual finding is reviewed for clear error. *Id.*

1302, 1304 (M.D. Fla. 2001). Section 3142(d) of the Act provides that if a judicial officer determines that an alien "may flee or pose a danger to any other person or the community, then the judicial officer shall order the temporary detention of such person in order for the attorney for the government to notify the appropriate official of the Immigration and Naturalization Service." *United States v. Trujillo-Alvarez*, 900 F. Supp. 2d 1167, 1174 (D. Or. 2012) (citing 18 U.S.C. § 3142(d)) (quotation marks and emphasis omitted). This temporary detention may not exceed 10 days. 18 U.S.C. § 3142(d). The statute continues, "[i]f the official fails or declines to take such person into custody during that period, such person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings." *Id.* "The ordinary meaning of notwithstanding is in spite of, or without prevention or obstruction from or by." *N.L.R.B. v. SW General, Inc.*, 137 S. Ct. 929, 939 (2017) (quotation marks and citations omitted). The use of "notwithstanding" in a statute "shows which provision prevails in the event of a clash." *Id.* (citing ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 126-27 (2012)).

No other section in the BRA addresses aliens, nor are there special or additional conditions placed on such persons. Congress chose not to make any other distinction between citizens and aliens. Outside of § 3142(d), Congress required that detainees be treated alike.

2. The Immigration and Nationality Act

"An illegal alien is detained under the INA to facilitate his removal from the country." *United States v. Vasquez-Benitez*, 919 F.3d 546, 553 (D.C. Cir. 2019) (citing 8 U.S.C. § 1231(a)(2)).

Section 1226(a) of the INA states that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Though § 1226(a) generally makes an alien's detention permissive, § 1226(c) provides specific instances when continued physical custody of an alien is mandated. *Id.* § 1226(a), (c). For example, if an alien has been convicted of committing an aggravated felony within the United States, then § 1226(c) requires detention. *Id.* § 1226(c)(1)(B).

In the INA, Congress instructed the Executive Branch to remove an alien from the United States within 90 days from when the alien is subject to a removal order. *Id.* § 1231(a)(1)(A). This 90-day period is known as the "removal period." The removal period begins to run 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.*

Id. § 1231(a)(1)(B) (emphasis added).

A defendant released on conditions of pretrial supervision is deemed "confined" because she is subject to restraints not shared by the general public. *See Hensley v. Mun. Ct.*, 411 U.S. 345, 351 (1973). It follows that because an alien released on pretrial bond is still technically "confined," the 90-day removal period for such a defendant has yet to begin. While an Article III criminal proceeding is ongoing, therefore, ICE is under no time constraint to deport the alien-defendant.

The INA also authorizes the Executive Branch to establish regulations to enforce the statute and "all other laws relating to the immigration and naturalization of aliens . . . ." 8 U.S.C. § 1103(a)(1), (3). Under this authority, the Executive Branch has issued several regulations, including one commonly known as the "ICE detainer." The "detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien." 8 C.F.R. § 287.7(a). The purpose of an ICE detainer, then, is to secure and remove an alien.

ICE does not, however, have authority to sidestep the BRA and detain a defendant "for the sole purpose of ensuring [the alien's] presence for criminal prosecution." *United States v. Soriano Nunez*, 928 F.3d 240, 245 (3d Cir. 2019); *see also Vazquez-Benitez*, 919 F.3d at 552.

Two further INA regulations are pertinent to our case. First, 8 C.F.R. § 215.2(a) provides that "[n]o alien shall depart, or attempt to depart, from the United States if his departure would be prejudicial to the interests of the United States under the provisions of § 215.3." Section 215.3, in turn, provides that departure from the United States of "any alien who is needed in the United States . . . as a party to[] any criminal case under investigation or pending in a court in the United States" is deemed prejudicial. 8 C.F.R. § 215.3(g). This regulation then clarifies that an alien who is party to a pending criminal case "may be permitted to depart from the United States with the consent of the appropriate prosecuting authority, unless such alien is otherwise prohibited from departing under the provisions of this part." *Id.*; *see also Trujillo-Alvarez*, 900 F. Supp. 2d at 1178-79.

Reading these regulations together indicates that by pursuing a criminal case against an alien, the Executive

Branch itself has determined that an ongoing criminal proceeding takes priority over removal. Once a criminal proceeding is complete, removal is no longer prejudicial to the United States' interests and the Department of Homeland Security is free to deport the individual subject to a final removal order.

3. Court Orders

"When the district court enters an order in a case, we expect the affected persons to abide by the order," United States Attorney Robert K. Hur said a few weeks ago.[7]

"[A]n order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings." *Matter of Jones*, 966 F.2d 169, 173 (5th Cir. 1992) (citing *Maness v. Meyers*, 419 U.S. 449, 459 (1975)). "Trial judges and opposing litigants have a right to expect that the court's orders will be carefully followed in order that the business of the court may be handled expeditiously and fairly." *Woods v. Burlington N.R. Co.*, 768 F.2d 1287, 1290 (11th Cir. 1985), *rev'd on other grounds*, 480 U.S. 1 (1987). When a party believes an order is incorrect, its remedy is to appeal, "but, absent a stay, [it] must comply promptly with the order pending appeal." *Matter of Jones*, 966 F.2d at 173 (citation omitted).

District courts have inherent power to enforce "their lawful mandates." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (citations omitted). These powers are "governed not by rule or statute but by the control necessarily vested

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[7] United States Attorney's Office: District of Maryland, *Wife of Ponzi Scheme Perpetrator Pleads Guilty to Federal Charge for Conspiring to Remove and Conceal Assets in Violation of Court Orders*, UNITED STATES DEP'T OF JUSTICE (Oct. 9, 2019), https://www.justice.gov/usao-md/pr/wife-ponzi-scheme-perpetrator-pleads-guilty-federal-charge-conspiring-remove-and-conceal.

in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Id.* (citation omitted). A noncompliant party risks fines, sanctions, or even incarceration until compliance is achieved. *See, e.g.*, *Nelson v. United States*, 201 U.S. 92, 96–97 (1906). Willful disobedience of a court order can justify dismissal with prejudice. *See, e.g.*, *In re Deepwater Horizon*, 922 F.3d 660, 666 (5th Cir. 2019).

II. Discussion

A. Textual Analysis

1. Interpreting the BRA, the INA, and the INA Regulations

The parties have devoted considerable attention to whether the BRA and the INA conflict in this case. "Because this is a question of statutory interpretation, we begin with the text of the statute[s]." *United States v. Nature's Way Marine, L.L.C.*, 904 F.3d 416, 420 (5th Cir. 2018) (citation omitted).

"The preeminent canon of statutory interpretation requires us to presume that the legislature says in a statute what it means and means in a statute what it says there." *Christiana Tr. v. Riddle*, 911 F.3d 799, 806 (5th Cir. 2018) (citation omitted); *see generally* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012) [hereinafter SCALIA & GARNER]. "[W]e assume that the legislative purpose is expressed by the ordinary meaning of the words used." *Custom Rail Emp'r Welfare Tr. Fund v. Geeslin*, 491 F.3d 233, 236 (5th Cir. 2007) (citation omitted). Another well-established canon of statutory interpretation instructs that "when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari*, 417 U.S. 535, 551

(1974). "[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012) (citation omitted).

"In determining whether Congress has specifically addressed the question at issue, a reviewing court should not confine itself to examining a particular statutory provision in isolation." *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000). "[T]he meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand." *Id.* at 133 (citations omitted). "[W]e presume that Congress is aware of existing law when it passes legislation." *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 169 (2014) (quotation marks and citation omitted).

Congress created a comprehensive statutory scheme with the BRA. It knew that aliens were bound to be arrested and charged with federal crimes. So Congress set out a specific avenue for judicial officers to follow when faced with an alien-defendant's motion for pretrial release.

If an alien-defendant is a flight risk or danger to the community, § 3142(d) of the BRA requires the court to notify all agencies – federal, state, and local – who may have an interest in the alien-defendant. The court must then hold the alien-defendant for 10 days. If no agency picks up the alien-defendant within that time, then "such person shall be treated in accordance with the other provisions of this section . . . ." 18 U.S.C. § 3142(d).

Section 3142(d) is the only part of the BRA that distinguishes aliens from citizens. This drafting decision is entitled to deference, under the principle that "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it

is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (citations omitted); *see also AU Optronics Corp.*, 571 U.S. at 169 (citing *Dean v. United States*, 556 U.S. 568, 573 (2009)).

Given that Congress singled out aliens in only one portion of the entire statutory scheme of the BRA, it logically follows that, in the rest of the BRA, Congress intended aliens and citizens to be treated alike. Thus, if an alien-defendant is *not* a flight risk or a danger, then the usual provisions of the BRA apply.

Baltazar-Sebastian's case is one in which the BRA and the INA are capable of peaceful coexistence. She is a pre-trial defendant—meaning she is subject to § 3142 of the BRA. In § 3142(b), Congress requires a judicial officer to release a defendant on bond unless the judicial officer "determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community." 18 U.S.C. § 3142(b). Judge Anderson applied the BRA to the evidence before her and concluded that Baltazar-Sebastian was neither a flight risk nor a danger to the community. Based on these findings, Judge Anderson followed Congress' instructions and ordered Baltazar-Sebastian's release on bond subject to conditions.

ICE nevertheless immediately took custody of Baltazar- Sebastian and transported her to Louisiana. Rather than appeal the Magistrate Judge's Order, ICE violated the conditions Judge Anderson set forth: 1) that Baltazar-Sebastian be released to her home, and 2) that she remain within the Southern District of Mississippi.

ICE and DOJ argue that a Magistrate Judge's order is irrelevant when it comes to ICE's power to detain an alien-defendant. They contend that the classification of immigration as a civil issue coupled with the issuance of

an ICE detainer requires courts to make an exception to the detention plan Congress set forth in the BRA. In short, they argue that anyone with an ICE detainer may be detained notwithstanding a Magistrate Judge's Order of Release. Respectfully, this Court disagrees.

First, the plain language of the statutes suggests an order of precedence. On one hand, the INA states that the Secretary of Homeland Security *may* detain an alien like Baltazar-Sebastian during removal proceedings, but it does not mandate such detention. 8 U.S.C. § 1226(a). On the other hand, the BRA *does* mandate that alien-defendants like Baltazar-Sebastian be released on bond while awaiting trial. 18 U.S.C. § 3142(b).

Next, in § 3142(d), Congress contemplated the situation in which multiple agencies would have an interest in the same alien-defendant, and it laid out a specific framework to be followed in such circumstances. To read an "ICE detainer" exception into the statute would disregard this process. It would also render a court order meaningless. If Congress had intended that, surely it would have said so.

Finally, the straightforward text of the relevant INA regulations reveals the logical fallacy at the heart of ICE's action in this case. ICE has the authority to detain an alien solely for the purpose of removing and deporting the alien. *See Vasquez-Benitez*, 919 F.3d at 552. Under 8 C.F.R. §§ 215.2(a) and 215.3(g), however, removing an alien-defendant is prejudicial to the United States without the prosecutor's permission.[8] No such permission has been granted in this case. It follows that removing Baltazar-Sebastian from the country would be prejudicial to the

[8] There is no evidence that ICE has obtained "the consent of the appropriate prosecuting authority" necessary to remove Baltazar-Sebastian from the United States. 8 C.F.R. § 215.3(g).

United States. And if ICE cannot remove her, it cannot detain her *for removal purposes*.[9]

2. ICE's Interpretation of its Regulations

During the hearing on its Motion for Reconsideration, the government argued that courts have misinterpreted 8 C.F.R. §§ 215.2(a) and 215.3(g). It asserts that the term "departure" in § 215.2(a) refers solely to an alien's *voluntary* departure. In other words, ICE contends that it can remove an alien-defendant even if—under its own regulations—departure of the alien would be prejudicial to the United States.

This Court has difficulty understanding how the government reads "voluntary" into the section. The word is not there. As Justice Scalia and Professor Garner remind us, a court cannot "enlarge or improve or change the law . . . . The absent provision cannot be supplied by the courts." SCALIA & GARNER at 93-94 (quotation marks and citations omitted). If ICE wishes to add the word voluntary, it must go through the process necessary to amend a federal regulation.

Other regulations within the same section and chapter of the Code of Federal Regulations specifically use the term voluntary as it relates to departure. *See* 8 C.F.R. § 215.3(j); *see also* 8 C.F.R. §§ 236.15 and 240.25. The term's inclusion in some sections and exclusion in others indicates that the exclusion of "voluntary" in § 215.2(a) was intentional. *See Russello*, 464 U.S. at 23.

The government likely believes that its reading of the regulations is reasonable and entitled to deference. *See Auer v. Robbins*, 519 U.S. 452, 457 (1997). *Auer* deference

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[9] This is not to say that any detention of an alien-defendant during criminal proceedings is prohibited. Again, the BRA permits continued detention of an alien-defendant if a judicial officer finds that the defendant is a flight risk or poses a danger to the community.

to an agency's reading of an ambiguous regulation continues to play an important role in construing agency regulations. When *Auer* deference is applicable, it "gives an agency significant leeway to say what its own rules mean." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2418 (2019). By doing so, "the doctrine enables the agency to fill out the regulatory scheme Congress has placed under its supervision." *Id.* However, *Auer* deference is warranted "only if a regulation is genuinely ambiguous." *Id.* at 2414. A court must have exhausted "all the traditional tools of construction" and concluded that the "question still has no single right answer . . . ." *Id.* at 2415 (quotation marks and citations omitted).

Here, the regulations at issue are not ambiguous, and the government has not argued that such ambiguity exists. Application of basic statutory tools renders the plain meaning of the regulations clear. Therefore, *Auer* deference to ICE's interpretation is inappropriate in this situation.

3. Jurisdiction

The government also implies that this Court lacks jurisdiction because it does not have the power to review immigration decisions of the Secretary of Homeland Security. Specifically, the government notes that in relation to removal proceedings, "[n]o court may set aside any action . . . or the grant, revocation, or denial of bond or parole." 8 U.S.C. § 1226(e). Furthermore, "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 [Secretary] to commence proceedings . . . ." *Id.* § 1252(g).

This jurisdictional argument is puzzling. The INA makes clear that district courts cannot set aside immigration decisions or entertain causes of action stemming from Homeland Security's decision to proceed with removal. However, this Court is not attempting to review or set

aside any decision or action to commence removal proceedings. The Court is simply attempting to enforce the Magistrate Judge's Order – an action well within this Court's jurisdiction. When it comes to a district court enforcing its own (or adopted) orders, §§ 1226(e) and 1252(g) of the INA are simply irrelevant.

B. The Government's Extra-Textual Arguments

The government argues that the Court's reading of the BRA, the INA, and the INA regulations is wrong. As mentioned above, in earlier cases it has argued for an "ICE detainer" exception to the BRA – specifically asserting that any defendant with an ICE detainer must be held during the pendency of a federal criminal case no matter how a Magistrate Judge has ruled.

A number of District Courts have been unconvinced. *See United States v. Boutin*, 269 F. Supp. 3d 24, 26 (E.D.N.Y. 2017) ("When an Article III court has ordered a defendant released, the retention of a defendant in ICE custody contravenes a determination made pursuant to the Bail Reform Act."); *Trujillo-Alvarez*, 900 F. Supp. 2d at 1177; *United States v. Barrera-Omana*, 638 F. Supp. 2d 1108, 1111 (D. Minn. 2009) ("In fine, the government argues that any defendant encumbered by an ICE detainer must be detained pending trial or sentence. This cannot be."); *see also United States v. Ventura*, No. 17-CR-418 (DLI), 2017 WL 5129012, at *3 (E.D.N.Y. Nov. 3, 2017) ("[O]nce prosecution is the Government's chosen course of action, the Executive may not attempt to obviate the bond determination of this Court by enforcing the ICE detainer."); *United States v. Brown*, No. 4-15-CR-102, 2017 WL 3310689, at *5 (D.N.D. July 31, 2017) ("the Government's ICE-detainer argument is at odds with the plain text of the Bail Reform Act"); *United States v. Blas*, No. CRIM. 13-0178-WS-C, 2013 WL 5317228, at *6 (S.D. Ala. Sept. 30, 2013); *United States v. Montoya-Vasquez*,

No. 4:08-CR-3174, 2009 WL 103596, at *5 (D. Neb. Jan. 13, 2009) ("Such a harsh result is nowhere expressed or even implied in the Bail Reform Act."). These courts have generally refused to let Congress' specific detention plan in the BRA "simply be overruled by an ICE detainer. No other factor [would] matter[]; neither danger to the community nor risk of flight, nor any kind of individualized consideration of a person before the Court. Each, according to the government, [would be] swallowed by an ICE detainer." *Barrera-Omana*, 638 F. Supp. 2d at 1111.

The government nonetheless has been successful in the Courts of Appeals. In recent published opinions, the Third Circuit, Sixth Circuit, and D.C. Circuit held that ICE may override a Magistrate Judge's Order of Release.[10]

The Fifth Circuit may agree with its colleagues; it is "always chary to create a circuit split." *Gahagan v. United States Citizenship & Immigration Servs.*, 911 F.3d 298, 304 (5th Cir. 2018) (quotation marks and citation omitted). At the same time, the Fifth Circuit has been more than willing to break with "the majority of [its] sister circuits" when it concludes that those circuits have misread the text and plain meaning of federal statutes. *Matter of Benjamin*, 932 F.3d 293, 298 (5th Cir. 2019) (citing SCALIA & GARNER). Until the appellate court speaks, all this Court can do is summarize the other circuits' decisions and explain why it finds them unpersuasive.

We begin with the government's best case.

1. Third Circuit

The facts of *United States v. Soriano Nunez*, 928 F.3d 240 (3d Cir. 2019), are almost identical to our case.

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[10] Late last week, the Second Circuit released an opinion agreeing with its sister circuits. *See United States v. Lett*, No. 18-749-CR, 2019 WL 6752763 (2d Cir. Dec. 12, 2019).

There, an alien was charged with using a false Social Security number, was ordered released by the Magistrate Judge and the District Judge, was taken into custody by ICE for removal proceedings, and challenged her detention in a second round of motion practice before the District Court. *Id.* at 243. The District Court denied her motion. It reasoned that "the INA, 8 U.S.C. § 1226(a)(1), allowed ICE to detain Soriano Nunez during the pendency of removal proceedings notwithstanding the parallel criminal action . . . ." *Id.*

The text of 8 U.S.C. § 1226 is not so definitive. As mentioned earlier, it begins by providing that upon a warrant issued by the Secretary of Homeland Security, "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The Secretary "may continue to detain the arrested alien," or instead may release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2). If, however, the alien is a convicted criminal or has been removed previously, this discretion evaporates: the Secretary "shall" detain the alien immediately. *Id.* § 1226(c)(1).

Nothing in § 1226(a)(1) states that it supersedes the BRA. Nothing in the statute gives ICE permission to circumvent a Magistrate Judge's detention order. As it applied to Soriano Nunez's situation, the statute did not require ICE to detain Soriano Nunez.

The Third Circuit nevertheless permitted ICE's action. It gave four reasons.

First, it held that "nothing in the BRA gives a district court the authority to compel another sovereign or judge in federal administrative proceedings to release or detain a defendant." 928 F.3d at 246. But that is not the issue here. There is no other sovereign in these cases; both the U.S. Attorney's Office and ICE represent the Executive Branch and ultimately report to the President of the

United States. Defendants like Baltazar-Sebastian are also not asking a Magistrate Judge to override an Immigration Judge. Their sole request is that the Magistrate Judge's pretrial release order control during the pendency of the criminal case. The Immigration Judge can consider detention at the conclusion of the criminal matter.

Second, the Third Circuit held that the 10-day notice provision in 18 U.S.C. § 3142(d) revealed "Congress' recognition that immigration authorities and state sovereigns have separate interests." *Id.* As a general principle, the point is not controversial. But it is not a very compelling textual argument in these cases since, as the attorney from Main Justice conceded at our hearing on reconsideration, § 3142(d) "does not apply in this case." Transcript of Hearing at 70: 11-12 (Nov. 18, 2019).

She is correct. Section 3142(d) applies only to persons who may flee or pose a danger. The Magistrate Judges who considered Soriano Nunez and Baltazar-Sebastian's motions for pretrial release never reached this part of the statute because the defendants were not dangerous or flight risks. And it is strange to look at the BRA, a statute which expressly subjects non-dangerous aliens to the same bond eligibility as citizens, thereby authorizing their pretrial release, and conclude from it that all aliens may be detained.

Third, the appellate court made a factual finding that "detention for removal purposes does not infringe on an Article III court's role in criminal proceedings." 928 F.3d at 246. Perhaps that is true in the Third Circuit. It is not true here.

One set of problems arises from the defense team's impaired ability to prepare for trial. ICE has been detaining Mississippi's alien-defendants at facilities in Jena and Basile, Louisiana, which are 163 and 262 miles away from

Jackson, Mississippi, respectively.[11] Court-appointed defense attorneys require a full day to travel there and back—all the while charging the federal government—and Baltazar-Sebastian's counsel suggested at the hearing that her client's detention center has no rooms for attorney-client discussion.[12]

Another set of problems arises from the fact that ICE has broken its promise to work with Court staff on facilitating criminal hearings. Incredibly, the Court learned at the hearing that it is not uncommon for ICE to deport defendants while their criminal cases are pending. Tr. at 59: 16-19.

In *United States v. Agustin-Gabriel*, for example, the court issued a Writ of Habeas Corpus Ad Testificandum directing ICE to bring the defendant to Jackson for his change of plea hearing, only to discover at the hearing that the defendant had been deported weeks earlier. *See* No. 3:19-CR-198-TSL-FKB, Docket Nos. 31-35 (S.D. Miss. 2019).[13] The government has now told the District Judge presiding over that matter that "[t]he Defendant may properly reenter the United States to resolve this pending criminal matter, by applying to the nearest Consular Services office in a United States Embassy or Consulate, and requesting a parole to reenter the United States for law enforcement purposes." Docket No. 35 at

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[11] At the last hearing, an ICE supervisor testified that there are no Immigration Judges in the entire State of Mississippi.

[12] The testimony on this point was inconclusive.

[13] In *Agustin-Gabriel*, the Magistrate Judge released the defendant on bond after a detention hearing, after which ICE took the defendant into custody. The defense attorney and prosecutor are now arguing over whether the criminal case should be dismissed, or instead whether the defendant should be added to the Fugitive Docket.

2.[14] But that argument is difficult to reconcile with the government's assurance in this matter that "if ICE were to remove [Baltazar-Sebastian] during the pendency of this case, the government would, of course, concede it could not continue its prosecution of her." Tr. at 66: 7-9. Suffice it to say that criminal proceedings in the Southern District of Mississippi *have* been stymied by ICE.

The Third Circuit concluded with its claim that the judiciary is trying to force "the Executive to choose which laws to enforce." 928 F.3d at 247 (citation omitted). It's just not true. The United States Attorney has brought these cases to the grand jury and into court. We are hearing each and every one of them. Our Magistrate Judges, probation officers, courtroom deputies, court reporters, and public defenders—Article III employees all—have bent over backwards to accommodate the influx of indictments and detention hearings necessitated by these enforcement actions.[15] We are doing so to respect the Executive's enforcement decisions, not to challenge them.

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[14] The government's filing then claims that "[t]he Court retains discretion and authority to manage its docket, and to govern any case before it so as to preserve the Court's jurisdiction." Docket No. 35 at 3 (citing Justice Cardozo). If the government had honored that principle in the first place, it would have obeyed the Magistrate Judge's detention order.

[15] Working with the Administrative Office of the Courts, our court made sure that defendants and their counsel had interpreters so that the accused would not be deprived of their Sixth Amendment protections. The defend-ants spoke various languages and indigenous dialects. Coordinating this was no easy task as the court ensured that counsel could meet with their clients in advance of each defendant's hearing. The coordination was made more difficult because the defendants were not being held in any local facilities. In addition, the judges and court personnel interrupted all other scheduled matters to conduct these detention hearings because the BRA required that these hearings be held.

The Executive Branch may have its cake and eat it too. It may pursue criminal charges to their conclusion *and* deport these defendants. What the text of the statutes and regulations indicate is how to sequence these actions to provide for both criminal and civil proceedings. Once the right hand of the Executive Branch (DOJ) has come into court and submitted a case to the Magistrate Judge, its left hand (ICE) should not be permitted to circumvent the Magistrate Judge's Order during the pendency of the criminal case.

* * *

For these reasons, this Court respectfully believes that the Third Circuit erred. Its failure to mention 8 C.F.R. § 215 is particularly odd. Section 215 serves as a central part of the textual analysis conducted by the sizeable number of district courts that ruled similarly to how this Court rules today. The federal regulation declares removal prejudicial to the government's active criminal case, so to omit any consideration of § 215 results in an incomplete analysis.

Rather than address DHS' own regulations, the Third Circuit departs from textualism to focus on general principles like dual sovereignty—despite dual sovereignty not being implicated by this case. And it then misses the equally-significant principle at stake: that the Executive Branch cannot disregard a Magistrate Judge's lawful order.

2. Sixth Circuit

The Sixth Circuit case the government relies upon is even less compelling.

In *United States v. Veloz-Alonso*, 910 F.3d 266 (6th Cir. 2018), the defendant was charged with illegal reentry into the United States. The case was cut-and-dry—the defendant had been removed from the country three times

previously—so he promptly pleaded guilty. *Id.* at 267. He then moved for release on bond pending sentencing. *Id.*

The District Court consulted the part of the BRA applicable to convicted defendants, 18 U.S.C. § 3143. That statute provides that a "judicial officer *shall* order that a person who has been found guilty of an offense in a case . . . and is awaiting imposition or execution of sentence be *detained* unless—"

> (A) (i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or
>
> (ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and
>
> (B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

18 U.S.C. § 3143(a)(2) (emphasis added). The District Judge concluded, as a factual matter, that the defendant met the criteria necessary to overcome the presumption of detention and therefore was required to be released.

The Sixth Circuit reversed. It found that § 3143 is a "permissive" law because it allows, but does not mandate, a judicial officer to release a defendant on bond. *Veloz-Alonso*, 910 F.3d at 269. In contrast, the appellate court observed, the INA section governing "illegal aliens with final deportation orders, such as Veloz-Alonso, [has] no ambiguity: ICE is authorized and mandated under the INA to detain and deport." *Id.* (citing 8 U.S.C. § 1231(a)). Thus, even if a judicial officer decides under the BRA to release a convicted alien-defendant before sentencing, the Sixth Circuit implicitly held that the INA's mandate overrides § 3143 of the BRA. *Id.* at 270.

The Sixth Circuit's decision has little application to our case. Veloz-Alonso was already subject to a final removal order and its attendant consequences. *See* 8 U.S.C. § 1231(a). Veloz-Alonso was also subject to the more stringent portion of the BRA governing persons awaiting sentencing. *See* 18 U.S.C. § 3143. Baltazar-Sebastian is not subject to either of those sections. She has never been removed and has not pleaded guilty to the criminal charge. The BRA and INA simply apply differently to her.

Even if the facts were closer, this Court is not sure that the Sixth Circuit's permissive-versus-mandatory framework is correct. The BRA may look "permissive" to an appellate court forced to consider all sorts of hypothetical fact patterns. To a Magistrate Judge presiding over a detention hearing, however, the BRA's mandatory nature becomes apparent. If a person like Baltazar-Sebastian presents evidence that she is not dangerous and will appear for future proceedings, the Magistrate Judge "*shall* order" her pretrial release. 18 U.S.C. § 3142(b) (emphasis added). From a Magistrate Judge's courtroom, the BRA is neither permissive nor mandatory: it is *conditional*. Pretrial detention turns on the evidence presented.

When seen in this light, the Sixth Circuit case was actually more complicated than the court acknowledged. Based on the clear and convincing evidence presented at the detention hearing, § 3143(a) of the BRA *required* the District Judge to release the defendant before sentencing. And based on the defendant's prior removal order, § 1231(a)(5) of the INA *required* ICE to remove the defendant. Courts have a duty to try and reconcile statutes, but it is not clear how this particular dilemma should have been reconciled. Fortunately, that is not our situation and can be avoided today.

The Court will now turn to the government's final supporting case.

3. D.C. Circuit

In *United States v. Vasquez-Benitez*, the government charged the defendant with illegal reentry. 919 F.3d 546, 548 (D.C. Cir. 2019). A Magistrate Judge and a District Judge determined that the defendant did not need to be detained before trial, and released him on conditions. *Id.* at 549. ICE then took him into custody. *Id.* The defendant moved to compel his release from ICE custody. *Id.* at 550. The case was reassigned to a different District Judge, who held two more hearings and concluded that the defendant should be released from ICE custody. *Id.*

The D.C. Circuit reversed. It did not "see a statutory conflict," and found that "the Department of Homeland Security's detention of a criminal defendant alien for the purpose of removal does not infringe on the judiciary's role in criminal proceedings." *Id.* at 552. The court endorsed the Sixth Circuit's permissive-versus-mandatory construction, choosing to interpret the BRA as permissive rather than conditional.[16] *Id.* at 553.

As before, this Court believes that the D.C. Circuit's interpretation did not fully consider the text of the BRA and 8 C.F.R. § 215.3(g). But any conflict is again avoidable because of our differing facts. In the D.C. Circuit case, the defendant was already subject to a final removal order, so the INA mandated detention. *Id.* at 549; *see* 8 U.S.C. § 1231(a)(5). Baltazar-Sebastian is not subject to a final removal order. The INA does not mandate her detention, and the BRA *does* mandate her pretrial release. Reading

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[16] Somewhat confusingly, the D.C. Circuit hedged at the end of its opinion, writing, "our holding is limited—we conclude only that the district court erred in prohibiting the U.S. Marshal from returning Vasquez-Benitez to ICE based on the mistaken belief that 'the BRA provides the exclusive means of detaining a defendant criminally charged with illegal reentry.'" *Vasquez-Benitez*, 919 F.3d at 553-54 (citation omitted).

these authorities together suggests that the BRA should be followed during the pendency of her criminal case.

C. Considerations on Appeal

The government is entitled to take an interlocutory appeal. *See* 18 U.S.C. § 3145(c). It has indicated that it will pursue that relief.

This Court respectfully requests that the Fifth Circuit's resulting decision not only adjudicate the legal issues, but also help the judges of the trial courts fulfill our duty "to eliminate unjustifiable expense and delay" in criminal proceedings. Fed. R. Crim. P. 2. Magistrate Judges, Assistant U.S. Attorneys, Assistant Federal Public Defenders, CJA panel attorneys, Deputy U.S. Marshals, and Probation Officers have spent an extraordinary amount of time arranging and conducting detention hearings and other criminal proceedings in these cases. Our Magistrate Judges have determined that a number of the accused are acceptable candidates for pretrial release. Yet, when Magistrate Judges have ordered their release under carefully-crafted conditions, ICE has shoved those findings aside in direct contravention of the Magistrate Judge's orders. These hearings and orders are rendered a nullity.

The easiest resolution, administratively speaking, would be if Magistrate Judges could be relieved from their obligation under the BRA to conduct detention hearings for alien-defendants, so all involved could uniformly defer to ICE detention. However, in this Court's view, the Magistrate Judges are bound by the statute, and relief from any obligation under the BRA would contradict Congress' instructions. Alternatively, perhaps the appellate court could clarify for ICE when its detention of an alien-defendant like Baltazar-Sebastian can commence. Either way, all involved would appreciate some clear instructions.

IV. Conclusion

Ultimately, whether to pursue deportation proceedings, criminal prosecution, or both, is up to the Executive Branch. However, once the Executive invokes the jurisdiction of this Court, the government cannot then circumvent an Order of Release under the BRA by way of the INA. Such interference with the criminal proceedings does not honor both statutes and presents a practical problem with the administration of justice. Accordingly, the government's motion for reconsideration is denied.

The defendant shall remain released subject to the conditions previously set by the Magistrate Judge.

SO ORDERED, this the 19th day of December, 2019.

s/ CARLTON W. REEVES
United States District Judge

APPENDIX C

United States Court of Appeals for the Fifth Circuit

No. 20-60067

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

MELECIA BALTAZAR-SEBASTIAN,

Defendant-Appellee,

Appeal from the United States District Court
For the Southern District of Mississippi
USDC No. 3:19-CR-173-1

ON PETITION FOR REHEARING EN BANC

(Opinion 3/10/2021 , 5 Cir., _____ , _____ F.3D _____)

Before BARKSDALE, SOUTHWICK, and GRAVES, *Circuit Judges.*

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

APPENDIX D

8 U.S.C. § 1226

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

(b) Revocation of bond or parole

The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

(c) Detention of criminal aliens

(1) Custody

The Attorney General shall take into custody any alien who—

(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence [1] to a term of imprisonment of at least 1 year, or

(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(2) Release

The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in

accordance with a procedure that considers the severity of the offense committed by the alien.

(d) Identification of criminal aliens

(1) The Attorney General shall devise and implement a system—

(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

(2) The record under paragraph (1)(C) shall be made available—

(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

(B) to officials of the Department of State for use in its automated visa lookout system.

(3) Upon the request of the governor or chief executive officer of any State, the Service shall

provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

(e) Judicial Review

The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

8 U.S.C. § 3142

(a) In General.—Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—

(1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;

(2) released on a condition or combination of conditions under subsection (c) of this section;

(3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or

(4) detained under subsection (e) of this section.

(b) **Release on Personal Recognizance or Unsecured Appearance Bond.**—The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of

release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a),[1] unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) **Release on Conditions.—**

(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a); and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

(i) remain in the custody of a designated person, who agrees to assume

supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode, or travel;

(v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;

(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

In any case that involves a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title, or a failure to register offense under section 2250 of this title, any release order shall contain, at a minimum, a condition of electronic monitoring and each of the conditions specified at subparagraphs (iv), (v), (vi), (vii), and (viii).

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) **Temporary Detention To Permit Revocation of Conditional Release, Deportation, or Exclusion.—** If the judicial officer determines that—

(1) such person—

(A) is, and was at the time the offense was committed, on—

(i) release pending trial for a felony under Federal, State, or local law;

(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for

any offense under Federal, State, or local law; or

(iii) probation or parole for any offense under Federal, State, or local law; or

(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

(2) such person may flee or pose a danger to any other person or the community;

such judicial officer shall order the detention of such person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take such person into custody during that period, such person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, such person has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

(e) **Detention.—**

(1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the

person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

(2) In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

(A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

(B) the offense described in subparagraph (A) was committed while the person was on release pending trial for a Federal, State, or local offense; and

(C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in subparagraph (A), whichever is later.

(3) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed—

(A) an offense for which a maximum term of imprisonment of ten years or more is

prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(B) an offense under section 924(c), 956(a), or 2332b of this title;

(C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;

(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or

(E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

(f) **Detention Hearing.**—The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community—

(1) upon motion of the attorney for the Government, in a case that involves—

(A) a crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

(E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of title 18, United States Code; or

(2) upon motion of the attorney for the Government or upon the judicial officer's own motion in a case, that involves—

(A) a serious risk that such person will flee; or

(B) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the

Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the

issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

(g) **Factors To Be Considered.**—The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including—

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by

the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

(h) **Contents of Release Order.—**In a release order issued under subsection (b) or (c) of this section, the judicial officer shall—

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of—

(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

(i) **Contents of Detention Order.—**In a detention order issued under subsection (e) of this section, the judicial officer shall—

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

(j) **Presumption of Innocence.—**

Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI NORTHERN DIVISION

UNITED STATES OF AMERICA

v. **Case No. 3:19cr173-CWR-FKB**

MELECIA BALTAZAR-SEBASTIAN a/k/a "Amparo Sanchez" **DEFENDANT**

UNOPOSED MOTION FOR STAY PENDING APPEAL

Defendant Melecia Baltazar-Sebastian (the "Parties"), by and through undersigned counsel, file this her Unopposed Motion for Stay Pending Appeal with Stipulation, hereto attached, to wit:

1. On December 19, 2019 the Court entered an order requiring the United States Immigration and Customs Enforcement agency (ICE) to release Ms. Baltazar-Sebastian from its custody because this Court's earlier order releasing Ms. Baltazar-Sebastian from U.S. Marshal custody under the BRA precluded her immediate arrest and detention by ICE. Dkt.47.

2. Following the entry of the Court's December 19, 2019 enforcement order, on January 7, 2020 the United States moved that this Court stay this case pending the outcome of the appeal. Dkt.49. Ms. Baltazar-Sebastian did not oppose that motion. Dkt.50. The court granted the

motion on August 14, 2020 and this case has since been stayed.

3. Following an interlocutory appeal by the United States, a panel of the Fifth Circuit reversed the Court's enforcement order on March 10, 2021. *See United States v. Baltazar-Sebastian*, No. 20-60067 (5th Cir. Mar. 10, 2021). The Fifth Circuit denied a timely petition for rehearing en banc on April 13, 2021. *See id.* (5th Cir. Apr. 13, 2021).

4. Ms. Baltazar-Sebastian intends to file a timely petition for a writ of certiorari on or before Friday, September 10, 2021.

5. The United States Government and Ms. Baltazar-Sebastian (the "Parties") have reached a stipulation and agreed that these herein criminal and immigration proceedings should be stayed pending the outcome of Ms. Baltazar-Sebastian's timely Petition for a Writ of Certiorari. Through their respective authorized representatives, the Parties have agreed to a stipulation that has been executed and attached to this Unopposed Motion. A substantive portion of the Parties' stipulation provides in part:

> a. The parties shall jointly move that the Court continue the stay of this case pending the filing and disposition of Ms. Baltazar-Sebastian's petition for a writ of certiorari.
>
> b. The United States shall stay further removal proceedings involving Ms. Baltazar-Sebastian pending the filing and disposition of Ms. Baltazar-Sebastian's petition for a writ of certiorari.

WHEREFORE PREMISES CONSIDERED, Defendant Melecia Baltazar-Sebastian prays that this Court will enter an Order granting her Unopposed Motion with its Stipulation. Defendant Melecia Baltazar-Sebastian

further prays for such relief as this Court may deem just and proper under the premises.

RESPECTFULLY SUBMITTED, this the 21st day of April, 2021.

DEFENDANT
Melecia Baltazar-Sebastian

By: /s/ T. Murry Whalen
T. Murry Whalen,
MSB No. 100618

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CERTIFICATE OF SERVICE

I, T. Murry Whalen, the attorney for Melecia Baltazar-Sebastian, hereby certify that on the 21st day of April, I electronically filed the foregoing with the Clerk of

Court using ECF system which sent notification of such filing to all parties of record to the electronic mail address on file with the clerk.

By: /s/ T. Murry Whalen
T. Murry Whalen

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiffs,

v. Criminal No. 3:19-cr-173-CWR-FKB

MELECIA BALTAZAR-SEBASTIAN
a/k/a "Amparo Sanchez,"

Defendant.

STIPULATION TO FURTHER STAY OF CRIMINAL AND IMMIGRATION PROCEEDINGS PENDING THE OUTCOME OF A TIMELY PETITION FOR A WRIT OF CERTIORARI

Plaintiff the United States of America and Defendant Melecia Baltazar-Sebastian, by and through undersigned counsel, stipulate and agree as follows:

1. On December 19, 2019, the Court entered an order requiring the United States Immigration and Customs Enforcement agency (ICE) to release Ms. Baltazar-Sebastian from its custody because this Court's earlier order releasing Ms. Baltazar-Sebastian from U.S. Marshal custody under the BRA precluded her immediate arrest and detention by ICE. Dkt.47.

2. Following the entry of the Court's December 19, 2019 enforcement order, on January 7, 2020 the United States moved that this Court stay this case pending the

outcome of the appeal. Dkt.49. Ms. Baltazar-Sebastian did not oppose that motion. Dkt.50. The Court granted the motion on August 14, 2020, and this case has since been stayed.

3. Following an interlocutory appeal by the United States, a panel of the Fifth Circuit reversed the Court's enforcement order on March 10, 2021. *See United States v. Baltazar-Sebastian*, No. 20-60067 (5th Cir. Mar. 10, 2021). The Fifth Circuit denied a timely petition for rehearing en banc on April 13, 2021. *See id.* (5th Cir. Apr. 13, 2021).

4. Ms. Baltazar-Sebastian intends to file a timely petition for a writ of certiorari on or before Friday, September 10, 2021.

5. IN VIEW OF THE FOREGOING, the Parties stipulate and agree, through their respective authorized representatives, as follows:

> a. The parties shall jointly move that the Court continue the stay of this case pending the filing and disposition of Ms. Baltazar-Sebastian's petition for a writ of certiorari. The parties are agreed that all time during the interim is subject to exclusion under the Speedy Trial Clock, pursuant to Title, 18, United States Code, Section 3161(h)(7)(A), in that ends of justice served by the continuance outweighs the best interest of the public and the defendant in a speedy trial.
>
> b. The United States shall stay further removal proceedings involving Ms. Baltazar-Sebastian pending the filing and disposition of Ms. Baltazar-Sebastian's petition for a writ of certiorari.

6. This Agreement shall be governed by and construed in accordance with the laws of the United States. Any action to enforce this Agreement, and any and all

disputes relating directly or indirectly to or in any way in connection with this Agreement, shall hereafter be heard exclusively in the U.S. District Court for the Southern District of Mississippi, and shall be brought by motion filed in the case (No. 3:19-cr-00173).

7. No part of this Agreement is or will be considered confidential by the parties.

8. This Agreement shall be binding upon, and inure to the benefit of, all successors and assigns of the Parties hereto.

9. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and merges any and all prior discussions and negotiations between the Parties.

10. This Agreement shall not be changed, altered, or modified in any manner except in a writing signed by all Parties to this Agreement.

11. Counsel to all Parties hereto have materially participated in the negotiation and drafting of this Agreement. Further, each Party and counsel for each Party has carefully reviewed this Agreement. None of the Parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

12. Each provision of this Agreement shall be considered severable, and if for any reason any provision is deemed to be invalid or contrary to any existing or future law, ordinance, regulation, or covenant, all other provisions shall remain in effect.

13. This Agreement may be executed in counterparts. Facsimile or PDF-ed signatures shall be considered as valid signatures as of the date thereof.

14. Each of the Parties represents that this Agreement and its recitals are being voluntarily executed by such party without any duress or undue influence of any kind on that party by any person, firm, or entity.

[Signature Pages Follow]

IN WITNESS WHEREOF, the following Parties have caused this Amendment to be executed by their respective duly authorized officers as of April 21, 2020.

On behalf of Plaintiff the United States, by its counsel:

DARREN J. LaMARCA
Acting United States Attorney

/s/ Shundral H. Cole
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Assistant United States Attorney

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APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA
PLAINTIFF

VERSUS CRIMINAL NO. 3:19
-cr-173-CWR-FKB

MELECIA BALTAZAR-SEBASTIAN.
also known as AMPARO SANCHEZ
DEFENDANT

DETENTION HEARING

BEFORE THE HONORABLE JUDGE
LINDA R. ANDERSON
UNITED STATES MAGISTRATE JUDGE
SEPTEMBER 3, 2019
JACKSON, MISSISSIPPI

APPEARANCES:
FOR THE GOVERNMENT: KEESHA MIDDLETON, ESQUIRE
FOR THE DEFENDANT: T. MURRY WHALEN, ESQUIRE

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THE COURT: Please be seated. Are you ready with this matter?

MS. MIDDLETON: Yes, Your Honor. We're here on United States vs. Melecia Baltazar-Sebastian. Criminal No. 3:19-cr-173. We're here for a detention hearing. The Honorable T. Murry Whalen is present, along with the defendant, Melecia Baltazar-Sebastian.

THE COURT: All right.

MS. MIDDLETON: And the government is ready.

THE COURT: All right. Thank you, Ms. Middleton.

Let me ask our interpreter. If you would, please state your name for the record and spell it for us, too.

THE INTERPRETER: (Inaudible.)

THE COURT: All right. Thank you so much for coming to assist us. Is that mic on?

THE INTERPRETER: No, it wasn't on.

THE COURT: I am sorry. Would you do it again?

THE INTERPRETER: Yes, Your Honor. Carmelina Cadena.

THE COURT: All right. If you will, while you're standing, raise your right hand to be sworn.

(Interpreter sworn.)

THE COURT: Thank you. Let me ask you, Ms. Cadena, have you had a chance to communicate with the defendant, Ms. Baltazar-Sebastian?

THE INTERPRETER: Yes, Your Honor, I have.

THE COURT: And have you had any difficulty communicating?

THE INTERPRETER: No, Your Honor. She understands me clearly.

THE COURT: All right. What language are you interpreting?

THE INTERPRETER: A-k-a-t-e-k-o, Akateko.

THE COURT: All right. Thank you so much.

It may work best if you remain seated at this table. We have some hand microphones. You can use that and they can share that one. We need to make sure that everybody can be heard and that it is recording.

All right. If you will, Ms. Middleton, if you'll call your witness.

MS. MIDDLETON: The government calls Special Agent Brent Young.

(Witness sworn.)

BRENT YOUNG,

Having been duly sworn and examined, testified as follows:

DIRECT EXAMINATION

BY MS. MIDDLETON:

Q. Would you please state your name for the record?

A. Brent Young.

Q. Mr. Young, where are you employed?

A. I am a special agent with Homeland Security investigations.

Q. How long have you held that position?

A. Approximately ten years.

Q. Were you working in that capacity on or about August 7th, 2019?

A. Yes, ma'am, I was.

Q. And would you please tell the Court whether or not you -- you are aware of a -- an employment -- an immigration raid that occurred on or about August 7th, 2019?

A. Yes, ma'am. Homeland Security Investigations conducted the most criminal and administrative search warrants in seven different locations throughout central Mississippi on August 7th of this year.

Q. And was one of those locations Koch Foods?

A. Yes. In Morton, Mississippi.

Q. And is that location within the Southern District of Mississippi?

A. Yes, it is within Scott County.

Q. During that mission, did you officially encounter an individual by the name of Melecia Baltazar-Sebastian?

A. Yes, ma'am, they did.

Q. And what happened after that encounter?

A. She was questioned as to her alienage to determine if she was lawfully present in the United States, at which time she admitted that she was a citizen and national of Guatemala that had not legally entered the United States. She was then taken into custody and processed for administrative removal proceedings.

Q. Let me ask you this. Does the defendant also have any other names or aliases?

A. Yes. She did state that she was using the name to work under.

Q. Is that name -- excuse me if I butcher it. Is that name, Amparo Sanchez?

A. Yes, that's correct.

Q. I want to talk a little bit about the search warrant that was executed on August 7, 2019. During this execution, did officers seize any documents relating to Ms. Baltazar?

A. Yes. We seized I-9 records, which is employment eligibility verification forms that all employers are required to complete. It determines whether or not an individual is legally authorized to work in the United States. We did find one I-9 form that was prepared in the alias name of Melecia Baltazar-Sebastian.

Q. And what else was significant about that I-9?

A. It stated that she was a United States citizen and there were two different identity documents, copies of those identity documents that were attached to that I-9 form that shows that she was eligible to be employed in the United States.

Q. Now those identification documents, along with the I-9, where were they found?

A. They were found in the human resources office of Koch Foods.

Q. At some point, was Ms. Baltazar-Sebastian arrested for being illegally present in the United States?

A. Yes. She was arrested at the plant at Koch Foods in Morton prior to being taken to Rankin County for processing.

Q. And was she questioned?

A. Yes, she was.

Q. And you may have already said this. Did she make any admissions in regards to her entering the United States?

A. May I refer to my notes?

Q. Yes, you may.

A. There were actually two different statements made. The initial statement made was that she entered on or about sometime in 2007, in a vehicle into Houston, Texas, but Houston is not a border town. And then in the sworn statement in administrative proceeding, she stated that she entered sometime in 2007, on foot at or near Brownsville, Texas.

Q. Was there any admission regarding the aliases at this point?

A. Yes. She also stated that she had used the alias, Amparo Sanchez.

Q. And was that also an admission about the use of the fraudulent social security card?

A. She did state that she bought the fraudulent document from a guy. That was her words, from a guy for $1,000.

MS. MIDDLETON: I tender the witness.

THE COURT: Cross-examination.

MS. WHALEN: Yes, Your Honor. May it please the Court.

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MS. WHALEN:

Q. Agent Young?

A. Yes, ma'am.

Q. Were you one of the agents that actually -- are you the agent that interviewed Ms. Baltazar?

A. No, ma'am, I was not.

Q. Okay. Were you present when she was arrested?

A. No, ma'am. I was not at the Koch Foods facility.

Q. So you relied on others' documents to prepare for this testimony today?

A. Yes, ma'am. That's correct.

Q. And do you have those documents with you now?

A. I do not.

Q. Okay. What do you have with you now to testify?

A. I have the notes that I took from reviewing the discovery packet.

MS. WHALEN: May I approach, Your Honor, to look at his notes?

THE COURT: Okay. That's your first question.

MS. WHALEN: Yes, Your Honor. I would like to approach to look at Agent Young's notes he used in preparation for his testimony.

THE COURT: All right. She's requesting to review his notes. Any objection?

MS. MIDDLETON: There are no objections as to the notes regarding this particular defendant.

THE COURT: All right. You may approach.

MS. WHALEN: Thank you, Your Honor.

BY MS. WHALEN:

Q. You have more than one page. Is this just related to Ms. Baltazar-Sebastian?

THE COURT: Excuse me. I need you to go to the microphone so they can pick up your question.

MS. WHALEN: I apologize, Judge.

BY MS. WHALEN:

Q. You handed me one sheet, Agent Young. Is this the only sheet that's limited to Ms. Baltazar?

A. Correct.

Q. All right.

MS. WHALEN: Thank you, Your Honor. Court's indulgence.

BY MS. WHALEN:

Q. Agent Young, what documents did you rely upon to prepare these notes?

A. As I stated previously, I used this discovery packet prepared by the U.S. Attorney's Office.

Q. And you did not interview Ms. Baltazar yourself, correct?

A. No, ma'am, I did not.

Q. Did you happen to review anything from U.S. Probation, documents from U.S. Probation?

A. No, ma'am, I did not.

Q. The documents that you reviewed as it relates to Ms. Baltazar-Sebastian states that she used -- she provided -- when she was first encountered back on August 7, 2019, she provided her name as Melecia Baltazar-Sebastian, correct?

A. Yes, ma'am.

Q. And further investigation shows that Koch's HR department had her under a different name, correct?

A. Correct.

Q. All right. And that's the name that's on her indictment, correct?

A. Yes, ma'am. That's my understanding. I do not have the indictment here in front of me.

Q. Okay. The would be that Amparo Sanchez?

A. Yes, ma'am.

Q. Besides using that name to work under, there are no other activities that Ms. Baltazar used that name for, correct?

A. To my knowledge, no, ma'am.

Q. Okay. There's nothing to show that she used it to purchase an automobile, is there?

A. No, ma'am.

Q. Nothing to show she used it to rent an apartment, correct?

A. Not to my knowledge, no.

Q. And are you aware that she has a minor child, sir?

A. If I may refer to my notes. I believe she did indicate that she had a child that was approximately 17 years of age.

Q. Okay. And are you aware that minor child is now without her parents, her mother or father?

A. We did take steps to ensure that there was an adult caregiver present for any minor children. I'm personally not familiar with her situation, but there were steps in place at the time of these enforcement actions to ensure that any minor child did have an adult caregiver present if one of the parents or caregivers were going to be detained.

Q. All right. Sitting here today, Agent Young, you don't know where that minor child lives at or who's taking care of that minor child, do you?

A. No, ma'am, I personally do not.

Q. Okay. Are you aware that Ms. Baltazar is a diabetic?

A. No, ma'am, I am not.

Q. Was that provided in any document showing her health issues?

A. I do not recall seeing anything. When she was taken into custody and transported to the federal detention center in Louisiana, they would have had a nurse that would have examined her.

Q. But you don't know that sitting here today, do you?

A. No, ma'am. That's just our standard practice.

Q. And your testimony is only limited to the discovery that you read that was given to you by the U.S. attorney?

A. Correct.

Q. You have no information that she is a danger to the community, do you?

A. No, ma'am.

Q. And you have no information that she is a flight risk, do you?

A. Other than her ties to her native country of Guatemala that she states she has -- her mother and father are both Guatemalan citizens, but I do not know if she personally still has family in Guatemala.

Q. Okay. But you know that she has a minor child in Scott County that's in the city of Morton, do you not?

A. I know she has a minor child, but I do not know the whereabouts of that child.

Q. And when the AUSA asked you about her being present here illegally -- she's only charged with one count of use of a social security number?

A. That's correct.

Q. And there is no charge for her for illegal entry at this stage?

A. No, ma'am. To my knowledge, she had no prior immigration history.

Q. And from the documents you were able to provide, she does have an address, does she not, here in the Southern District of Mississippi?

A. Yes, ma'am.

Q. And that address is 26 Sycamore Street in Morton, Mississippi?

A. There were two different addresses. I don't recall which was which. There was one that was listed on Sycamore Street on the I-9 form, and there was a different address that she provided at the processing also on Sycamore Street.

MS. WHALEN: All right. Court's indulgence.

THE WITNESS: Would you like me to clarify that after reviewing my notes?

BY MS. WHALEN:

Q. No, sir. Thank you, though.

A. Thank you.

MS. WHALEN: That's all, Your Honor. Tender the witness.

THE COURT: Redirect.

REDIRECT

BY MS. MIDDLETON:

Q. Agent Young, as to the last question that you were asked, would you please clarify your statement?

A. Yes. The I-9 form, which showed a preparation date of -- one moment, please -- August 5, 2015, listed an address under the alias name of Paul A. Sanchez as being 12 Sycamore Street, Morton, Mississippi. The address provided at the time of processing on August 7th of this year for Ms. Baltazar-Sebastian was 26 Sycamore Street, Morton, Mississippi.

Q. Thank you. You were asked --

THE COURT: I'm sorry. There was a 2015 encounter?

THE WITNESS: That was prepared from the I-9, the employment eligibility form.

THE COURT: Oh, the I-9 was dated in 2015?

THE WITNESS: Yes, Your Honor. Yes, ma'am.

BY MS. MIDDLETON:

Q. You were asked about whether or not you personally interviewed Ms. Baltazar. Is it common practice in your profession as a special agent to review files or properties by other agents?

A. Yes, ma'am, it is.

Q. And provide testimony?

A. Yes, ma'am.

Q. I want to ask you a little bit about the question that was asked regarding the defendant as a flight risk. Is she a citizen of the United States?

A. No, ma'am, she is not.

Q. And also, as to a flight risk, the fraudulent identification that was in the file, did it bear her -- did it bear the name, Melecia Baltazar-Sebastian, or did it bear the fraudulent or the alias?

A. It bore the fraudulent alias name. There was a Georgia identification card and a social security card both bearing that Amparo Sanchez.

Q. And the social security number, was this the social security number connected with Melecia Baltazar-Sebastian, or one utilized by the alias?

A. It was not connected with Melecia Baltazar-Sebastian, to my knowledge.

MS. MIDDLETON: No further questions.

THE WITNESS: Thank you, Your Honor.

MS. MIDDLETON: Your Honor, the government would like to offer the pretrial services report under seal.

THE COURT: Any objection?

MS. WHALEN: Your Honor, it bears to note that specifically a pretrial interview was not conducted on Ms. Baltazar. Also, to correct her date of birth. Ms. Baltazar is 50 years old. She was born January 15, 1969. Her physical health, they state -- and probably because she was not interviewed, they did not know that she is diabetic and she is on medication. That she has been having some issues.

THE COURT: All right. You can offer testimony as to those facts.

MS. WHALEN: Yes, Your Honor. But other than that, we wouldn't object, but to those corrections, and also to reference in the record that she wasn't interviewed. But to make those corrections to her date of birth as well as her health issues.

THE COURT: All right. It will be admitted with the noted objection and proposed corrections by counsel for the defendant.

MS. WHALEN: Thank you, Your Honor.

MS. MIDDLETON: Thank you, Your Honor. If I could point to the family ties section of the pretrial services report. In particular, it should be noted that the defendant failed to report an address. Also, both her parents are citizens of Guatemala. She herself is a citizen of Guatemala.

THE COURT: Are you moving into argument now?

MS. MIDDLETON: No, Your Honor, I would like to proffer from a portion of the --

THE COURT: From the pretrial report?

MS. MIDDLETON: Yes, Your Honor.

THE COURT: All right. Who would be your witness?

MS. MIDDLETON: Yes, Your Honor, I would like to call -- well, I can just offer it under seal and make it during argument.

THE COURT: All right.

MS. MIDDLETON: We don't have to call a witness. This is all the government has.

THE COURT: All right. The pretrial services report will be admitted with the earlier corrections, additions noted. With that, does the government rest?

MS. MIDDLETON: Yes, Your Honor.

THE COURT: All right. What would the defense have?

MS. WHALEN: Yes, Your Honor, we have a witness we would like to call, Attorney Patrick Rand.

THE COURT: All right. If you'll come forward, please.

(Witness sworn.)

THE COURT: You may proceed.

MS. WHALEN: Your Honor. May it please the Court.

PATRICK RAND,

Having been duly sworn and examined, testified as follows:

DIRECT EXAMINATION

BY MS. WHALEN:

Q. Attorney Rand, state your full name and spelling -- the first and last -- for the Court, please?

A. Patrick Rand, P-a-t-r-i-c-k, R-a-n-d.

Q. And I addressed you as Attorney Rand. Is that your occupation?

A. Yes, ma'am.

Q. Okay. And where are you licensed at, sir?

A. In the state of Mississippi.

Q. And how long have you been licensed?

A. Since 1994.

Q. And what's your area of practice, Attorney Rand?

A. Currently, it is primarily immigration-related practice.

Q. Okay. And explain some of those cases that you have on immigration, sir.

A. Generally, I represent folks that have somehow ran afoul with the immigration department in detained matters. And I work on getting them bonds, and then further representation in immigration court in either New Orleans, Memphis, Atlanta, or over in Texas.

Q. So you practice quite a bit in federal court?

A. Well, it is a federal administrative court, yes, ma'am.

Q. Okay. Federal administrative court, thank you. And what type of proceedings do you handle concerning the immigration -- concerning immigration?

A. I do null proceedings, as well as individual hearings, which are applications for relief before the immigration court to try to gain status for individuals that do not have it.

Q. And when you say "gain status," would you encounter some individuals who may have pending criminal charges in federal court?

A. Yes, ma'am.

Q. Okay. And let's just take Ms. Baltazar, for example, for misuse of a social security number. Would you be able to handle those persons with those type charges?

A. Yes, ma'am.

Q. And would they still be likely to obtain, I guess, a work visa, even with those charges?

A. Well, it would depend on the application that was filed. In her case, then I believe the application that she would be eligible for would be to attempt to try to seek asylum here in the United States, stating that she was afraid to return to her country of origin. And one of the parts of asylum application is the opportunity to obtain work authorization after waiting 150 calendar days from the filing of the application and the completion of a biometrics test.

Q. All right. And you first encountered Ms. Baltazar in a different situation, correct?

A. That's correct.

Q. Okay. Explain to the Court how Ms. Baltazar came to contact you or how your services were retained.

A. Ms. Baltazar-Sebastian came to see me in regards to her daughter's immigration case.

Q. Okay. And can you tell the Court the daughter's name, please?

A. Her daughter's name is Melecia Guadalupe Tomas Baltazar.

Q. Okay. And she does go by Lapita, correct, the daughter?

A. Sometimes, yes, ma'am.

Q. Okay. All right. And do you see Lapita in the courtroom today?

A. Yes.

Q. And she is your client?

A. Yes, sir.

Q. Is she also a minor, sir?

A. Yes, she is.

Q. Okay. Further tell the Court how you came to encounter Ms. Baltazar-Sebastian and her minor child?

A. The defendant's daughter entered the United States as a minor, an unaccompanied minor, and as such, she was placed with the Office of Refugee Resettlement, which is the entity where individuals who are under 18 are placed with until a family member or sponsor can be located so that they can be then placed with them.

Q. In the Office of Refugee Resettlement, is that a branch of Homeland Security?

A. Well, it's a part of the -- the broader Homeland Security, yes, ma'am.

Q. Okay. And at some point, there had to be a document that was completed, correct?

A. An application has to be filed with whichever facility is holding the minor so that those individuals can vet the person to make sure that they're not releasing them to someone that they would not want a minor to be in the custody of. So yes, there is an application process.

Q. And just to be clear, her daughter is also named Melecia as well, correct?

A. That is correct.

Q. Okay. Can you tell us when the application was done?

A. It was probably done the end of 2016 or the very first of 2017 because the child was released from the custody of the Office of Refugee Resettlement on February 2, 2017 to her mother.

Q. Okay. She was approved to be released to the mother?

A. The minor child, yes.

Q. When you say "the mother" what is her relationship as recognized by the Office of Refugee Resettlement?

A. They call it a sponsor.

Q. Explain what a sponsor is as it relates to an unaccompanied minor?

A. Well, if you're under the age of 18 and if you're in a federal immigration proceeding, then you have to have someone go to court with you until you reach the age of 18 and that person also has to be served with any legal paper of process up until the person's 18th birthday for process to be effective.

Q. So Ms. Baltazar-Sebastian has to not only sponsor her daughter, but she has to accept and receive notice of any court proceeding, concerning her minor child?

A. Yes, ma'am.

Q. And she has to make sure the sponsor, herself, and the minor child is present at the court proceedings?

A. That is correct.

Q. And do you have the verification of release documents in front of you?

A. I do.

Q. And when was that approved, sir?

A. As I said, she was released to her mother on February 2nd of 2017.

Q. And what address was given?

A. On this particular document, at the time, they were living on Highway 80 in Morton. But I do know that they have moved to Sycamore Street in Morton.

Q. And so, they have kept you updated regarding their residency, their move?

A. Yes, ma'am. I have met both the defendant and the defendant's daughter on a number of occasions in my office in regards to the daughter's immigration case.

Q. And in that section it says, "acknowledgment of sponsor care agreement." Attorney Rand, what does that expressly state?

A. It does state that the person to whom the Office of Refugee Resettlement releases a minor to has to act like their parent and has to provide for them and has to make all of their appointments.

Q. It expressly says that the minor's care, safety and wellbeing and the sponsor's responsibility for ensuring the minor is present at all future proceedings, correct?

A. Yes, ma'am.

Q. With the department of Homeland Security?

A. That is correct.

Q. As well as with the Department of Justice?

A. That is correct.

Q. And this is an official document, correct?

A. Yes, ma'am.

Q. Okay. And as an official document, it states that this should be considered as evidence, that the above-named sponsor is given physical custody of the above-named minor on the date indicated on the form, correct?

A. Yes, ma'am.

MS. WHALEN: At this time, Your Honor, I offer into evidence the Office of Refugee Resettlement, Division of Children's Services Verification of Release.

THE COURT: Okay. I'm going to need to ask the audience to bear with me and please be quiet because I am listening to the interpreter and trying to hear as well. So thank you.

Any objection?

MS. MIDDLETON: No objection.

THE COURT: It will be admitted as D-1.

(Exhibit D-1 marked for identification.)

MS. WHALEN: Yes, Your Honor, thank you. Your Honor, may I approach?

THE COURT: Yes. Give me a title of it for the record.

MS. WHALEN: As a style on the form, Judge Anderson, Office of Refugee Resettlement, Division of Children's Services, Verification of Release.

THE COURT: All right. Thank you. Let's say "verification of release."

MS. WHALEN: Yes, Your Honor.

THE COURT: Thank you.

MS. WHALEN: May I approach, Your Honor?

THE COURT: It is admitted, yes.

BY MS. WHALEN:

Q. As a part of the verification of release and Ms. Baltazar-Sebastian being a sponsor, she is required to make sure that the minor child, her child, is educated, correct?

A. That is correct.

Q. And that is a part of the conditions that's on this verification of release?

A. Yes.

Q. Where does her child go to school?

A. She goes to high school over in Morton.

Q. And who is the guardian of her as provided by the school records?

A. Her mother, the defendant.

Q. All right. And do you see the defendant in the courtroom today?

A. Yes, ma'am. She's seated at the defense table.

MS. WHALEN: Let the Court record --

THE COURT: It will reflect that the witness has identified the defendant.

MS. WHALEN: Thank you, Judge.

BY MS. WHALEN:

Q. And as part of all school records, does it have an address listed?

A. They do.

Q. And what's the address, Attorney Rand?

A. 26 Sycamore Street in Morton.

Q. And does it reflect her daughter's name on that record, too?

A. It does.

Q. Is there a seal on that documentation?

A. Yes.

MS. WHALEN: At this time, Your Honor, I offer into evidence the school records of Melecia Guadalupe Baltazar, the daughter of the defendant.

THE COURT: Any objections?

MS. MIDDLETON: No objections.

THE COURT: It will be admitted as D-2, school records.

(Exhibit D-2 admitted.)

MS. WHALEN: Your Honor, as the government pointed out, I will offer this document under seal.

THE COURT: All right. It will be admitted under seal. Did you look at the verification of release to make sure there were no personal identifiers?

MS. WHALEN: I will, Your Honor.

THE COURT: All right. And if there are -- if it has the name of the minor child, in general, I am sealing those.

MS. WHALEN: Yes, Your Honor. You are correct. There are -- the minor's date of birth. So again, Your Honor, we would ask this one be placed under seal as well.

THE COURT: All right.

MS. WHALEN: Now the next set of documents I'll just ask for as a composite, but through Attorney Rand. And the government has received their copies.

THE COURT: All right. Go ahead.

BY MS. WHALEN:

Q. Attorney Rand, you had been able to communicate with the family during the process of the minor child's proceeding, correct?

A. That is correct.

Q. And you've also been contacted here recently concerning the mother's immigration issues, correct?

A. That is correct.

Q. So documents were provided to you concerning -- well, let me put it like this: Do you know where Ms. Baltazar-Sebastian lives at?

A. Yes, ma'am. She lives at 26 Sycamore Street in Morton, Mississippi.

Q. Were there some documents that were provided to you that shows where she lives at?

A. Yes. In preparation for the possibility of representing her in immigration court in a bond proceeding, I needed to be able to verify an address, property, and residence, and I was provided a current electric bill from Entergy of Mississippi. And I was provided a rental agreement, a copy of a car title, and a letter from a church in Morton regarding the defendant.

Q. And let's go through one at a time, Attorney Rand.

A. Yes, ma'am.

Q. On that rental agreement, when was that rental agreement signed, sir?

A. In May of 2017.

Q. By whom, sir?

A. It says Melecia Baltazar.

Q. And how much does she pay in rent a month?

A. $250.

Q. And what -- address --

A. I am sorry. It is a $250 deposit and $500 per month for rent.

Q. And what address is -- where is the house that she's renting located at?

A. It is 26 Sycamore Street in Morton, Mississippi.

Q. And you have a bill in front of you, sir?

A. Yes, ma'am.

Q. Okay. And what type of bill is that?

A. It is a power bill from Entergy of Mississippi.

Q. And whose name is that bill under, sir?

A. Melecia Baltazar.

Q. All right. And does it show a payment, sir?

A. It does.

Q. Do you see how much the payment is?

A. I do.

Q. How much?

A. 92.59 cents.

Q. And you see an address on there for the service location?

A. Yes, ma'am. 26 Sycamore Street in Morton, Mississippi.

Q. Do you see a -- do you have an application for a title in front of you, Mr. Rand -- Attorney Rand?

A. I have a certificate of title. I don't have the application.

Q. Fair enough. The certificate of title is for what?

A. It is for a 1997 Nissan Altima.

Q. From what state?

A. The state of Mississippi.

Q. And what is the date of that title?

A. The date is April 6, 2018.

Q. And who is that vehicle titled to?

A. Melecia Sebastian-Baltazar.

Q. What address?

A. 26 Sycamore Street in Morton, Mississippi.

Q. What address was it mailed to, sir?

A. The same address.

Q. 26 Sycamore Street in Morton, Mississippi?

A. Yes, ma'am.

THE COURT: You may have said it, but what name is the rental agreement in?

THE WITNESS: May of 2017, Your Honor.

THE COURT: In whose name?

THE WITNESS: The defendant's, Melecia Baltazar.

THE COURT: Baltazar?

THE WITNESS: Yes, ma'am.

MS. WHALEN: Court's indulgence.

BY MS. WHALEN:

Q. Did you have an opportunity, Attorney Rand, to find out anything about her religious worship?

A. Yes, ma'am. It's often the case with folks from Guatemala that live here in central Mississippi, they are also Catholics in the Catholic church. Father Roberto Mena provided me with a letter stating that she had been a parishioner for 12 years. And, according to the pastor, comes to mass every Sunday.

Q. And prior to her detention, her arrest, Attorney Rand, where was Ms. Baltazar working?

A. That I do not know.

Q. Okay. Do you know how long she has resided in Morton?

A. It is my understanding that it has been for more than ten years.

Q. All right. Thank you.

Attorney Rand, when individuals come to you concerning immigration issues, and they have matters pending before immigration court, what is the likelihood of them leaving the country and fleeing?

A. In my personal practice experience, it has happened. I am not going to lie and say that it never happens, but it is rare for folks that actually hire a private attorney to represent them in immigration court not to show up for their hearings. There are no public defenders in immigration court because it is an administrative court and folks can represent themselves. But I would say over the past 15 years, maybe once or twice a year one of my clients would not show up for court.

Q. And you had contact with Ms. Baltazar and her family?

A. Yes, ma'am.

Q. Okay. And you had no trouble contacting them, have you, or Ms. Baltazar, in this case, since she's the sponsor?

A. No. I generally talk to my client, the daughter, but Ms. Baltazar, whenever they come to the office, the defendant brings my client to my office. She's very involved with her.

MS. WHALEN: Court's indulgence.

BY MS. WHALEN:

Q. And based on those contacts with Ms. Baltazar, do you have any concern of her being a flight risk?

A. I do not.

Q. Where is the minor child's father?

A. I do not know.

Q. Okay. Has he ever been present in any of the proceedings?

A. No, ma'am.

Q. Has he contacted you concerning his minor child?

A. No, ma'am.

Q. So the only parent is Ms. Baltazar?

A. That is correct.

Q. Who is the sponsor?

A. That is correct.

MS. WHALEN: Tender the witness, Your Honor.

At this time, Your Honor, I would like to move into evidence based on Attorney Rand's testimony, the rental agreement in my client's name, the Entergy bill that is also in my client's name, the certificate of title to an

automobile that's in my client's name, as well as a letter from the Catholic church from Father Roberto Mena.

THE COURT: Any objection?

MS. MIDDLETON: No objection.

THE COURT: Then it will be admitted as D-3, a composite exhibit.

(Exhibit D-3 admitted.)

MS. WHALEN: Your Honor, I do have the original here, but can I -- and I provided the government -- the government did look at the original as well. Can I just provide copies to the Court?

THE COURT: Any objection to that?

MS. MIDDLETON: No, Your Honor.

THE COURT: All right. The copies will be fine.

MS. WHALEN: I offer the original seal to the Catholic church letter.

Tender the witness, Your Honor.

THE COURT: Cross-examination.

MS. MIDDLETON: May I proceed?

THE COURT: You may.

CROSS-EXAMINATION

BY MS. MIDDLETON:

Q. Attorney Rand, I want to talk to you a little bit about the first document you were asked about, the application that was made for verification of release of Ms. Baltazar's daughter?

A. Yes, ma'am.

Q. In that application, is Ms. Baltazar-Sebastian required to provide any identifiers, identifying information, such as social security number or anything like that?

A. Ma'am, I have reviewed those applications before, but I did not prepare the application for the defendant to have her daughter released, so I cannot tell you what information was provided.

MS. MIDDLETON: May I approach, Your Honor?

THE COURT: You may.

BY MS. MIDDLETON:

Q. I want you to take a look at something. Is there a section on there for alias, if any?

A. Yes, ma'am.

Q. Did Ms. Baltazar provide or confirm the use of her alias, Amparo Sanchez? Do you see that on that document?

A. No, ma'am.

Q. Does it, in fact, ask if there are any aliases used?

A. It does.

Q. I want to turn your attention also to the letter from the church.

A. Yes, ma'am.

Q. I believe in that letter it states that she's been a parishioner for 12 years?

A. Yes, ma'am.

Q. What name does the church refer to her as?

A. Melecia Baltazar.

Q. And there is no indication that the church was even aware that she had been utilizing an alias, correct? From the face of this letter?

A. From the face of the letter, no.

Q. There was also a rental agreement that was -- that you mentioned. Do you know how many people live at the address?

A. I know that my -- my client, the defendant's daughter, lives with her mother, but as to any other individuals that live at that address, no, ma'am, I don't know.

Q. Okay. So you only know that the daughter lives there and Ms. Baltazar?

A. Yes, ma'am.

Q. But you have no knowledge if anyone else lives there at 26 Sycamore?

A. No, ma'am. No, ma'am.

Q. How old is Ms. Baltazar's daughter?

A. She is 17 years old.

Q. Do you know when she entered the United States?

A. As I said earlier, I believe she entered the latter part of 2016. She was released to her mother in February of 2017. Generally, it's been my experience that it usually takes a month or two to -- for the Office of Refugee Resettlement to find a suitable sponsor to release someone to.

Q. So the latter part -- you said approximately the latter part of --

A. I would assume the latter part of 2016, yes, ma'am.

Q. Do you know who arranged for her to be brought to the United States?

A. I do not.

Q. You mentioned earlier that she was unaccompanied?

A. Yes, ma'am.

Q. So she came -- from all knowledge, she came alone?

A. She did not have an adult with her at the time she was encountered at the border, that's correct.

Q. Do you know where she was encountered?

A. Not off the top of my head, no, ma'am.

Q. To your knowledge, was Ms. Baltazar already in the United States when her daughter crossed the border?

A. Yes, ma'am. I believe that she was.

MS. MIDDLETON: No further questions.

THE COURT: Any redirect?

MS. WHALEN: No, Your Honor.

THE COURT: Okay. You may step down.

MS. WHALEN: May Attorney Rand be excused?

THE COURT: Yes, you may be excused. What would the defense have?

MS. WHALEN: We call Elizatah Iraheta.

Your Honor, Ms. Elizatah speaks English but not that well, so I would ask whether she prefers to speak in Spanish or English.

THE COURT: Okay. Does she -- will you see if she speaks standard Spanish or -- will you assist us?

THE INTERPRETER: Of course, Your Honor.

(Witness sworn.)

THE COURT: All right. I need you to speak up.

To our interpreter, would you please state your name?

THE INTERPRETER: Janis Palma, J-a-n-i-s P-a-l-m-a. I am a federally-certified court interpreter.

THE COURT: Thank you. I remind you that you remain under oath.

THE INTERPRETER: Sorry.

THE COURT: I administered the oath previously and you remain under oath.

THE INTERPRETER: Thank you, Your Honor.

THE COURT: You may proceed.

ELIZATAH IRAHETA,

Having been duly sworn and examined, testified as follows:

DIRECT EXAMINATION

BY MS. WHALEN:

Q. Ms. Elizatah, can you state your full name for the record, the first and last and spelling it, please?

A. My name is Elizatah Iraheta, E-l-i-z-a-t-a-h I-r-a-h-e-t-a.

Q. And would it be okay if I call you Ms. Elizatah since I --

A. Of course, you can.

Q. Because I say your last name horribly, and I apologize.

A. It's fine.

Q. Do you recognize this young lady at the table with me?

A. Yes.

Q. Will you tell the Court who she is?

A. She is Melecia Baltazar.

Q. Okay. And how do you know Ms. Baltazar?

A. I met her many years ago when her husband was still here.

Q. All right. And how long has she been in Morton, Mississippi?

A. From what I can remember, maybe she's been here for ten years.

Q. All right. And you have known her for that length of time, ten years?

A. Yes. I have been living in the state for 19 years.

Q. And could you tell us your status in this country?

A. Mine?

Q. Yes, ma'am.

A. Yes. I have a work permit.

Q. And so you are legally -- you have permission to be in this country?

A. Yes, ma'am.

Q. And you are allowed to work legally in this country?

A. Of course.

Q. And you've known Ms. Baltazar from the time she lived in Morton, Mississippi, correct?

A. Yes.

Q. Have you guys ever worked together?

A. Yes, we worked at the Koch Foods company. I have been working there for 17 years and she worked there with me in the deboning department.

Q. And would it would be correct that she's worked at Koch Foods for at least 12 years?

A. Yes. I guess we could -- but I remember more or less ten years because she was in another department before.

Q. Do you know her daughter, Ms. Elizatah?

A. Yes, we call her Lapita.

Q. And is she in the courtroom today?

A. Yes.

MS. WHALEN: At this time, Your Honor, I would ask that the defendant's daughter stand up so she can be identified.

BY MS. WHALEN:

Q. Is that Lapita?

A. Yes. She is the daughter. She's her daughter.

Q. Is she still in school?

A. Yes, at the one in Morton.

Q. All right. And Ms. Elizatah, since she has -- since her mother has been in custody, have you checked on Lapita?

A. Yes. We stay close and sometimes we'll go to the school to see if there are any errands that need to be taken care of. We've been staying close to her.

Q. So you've checked on Lapita, correct?

A. Yes.

Q. And how far do you live from the address at 26 Sycamore Street?

A. Like six or seven blocks.

Q. And she does have other siblings, correct?

A. Yes. She has one brother and one sister and there are small children.

Q. Okay. Are you aware that they are also going through an immigration process as well?

A. Yes.

THE COURT: Let me understand. She's saying that the defendant has two small children younger than her?

MS. WHALEN: I will clarify.

BY MS. WHALEN:

Q. She has a daughter named Anna?

A. Yes.

THE COURT: Who has a daughter named Anna?

MS. WHALEN: I am sorry.

BY MS. WHALEN:

Q. Ms. Baltazar has an older daughter named Anna?

A. Yes. She's older than Lapita.

Q. And she's roughly 29 years old?

A. Yes.

Q. All right. And the defendant has a son as well, correct?

A. Yes, Pedro.

Q. And he is roughly 24 years old?

A. Yes. He also has a child.

Q. And how old is Pedro's child?

A. I think he's like year four. He's young.

Q. And Anna has a child as well?

A. Two.

Q. And how old are her children?

A. I would calculate seven to eight years.

Q. For one or both?

A. Both are between seven and eight.

Q. Okay. And Ms. Elizatah, both Anna and Pedro are going through the immigration process now, correct?

A. Correct.

Q. And are you aware they have hearings in Louisiana in December?

A. Yes.

Q. Ms. Elizatah, are you telling this Court that you will vouch for Ms. Baltazar to make sure that she comes to Court?

A. Of course.

Q. Would you -- if she's allowed out on a bond and she does commit a crime, would you contact the Court or probation to make them aware?

A. Yes, I would. But I don't believe that she would do anything of this sort because she's been here to struggle for the benefit of her family. She loves her children very much and I don't think she would do anything to harm them. She wouldn't try to flee or anything like that.

Q. Is there another person in the audience today that came with you?

A. Yes, also a friend of hers.

Q. And what is his name?

A. Oh, I don't know. He's not someone that I have known.

Q. All right. Fair enough.

MS. WHALEN: Court's indulgence.

BY MS. WHALEN:

Q. Do you know if Ms. Baltazar-Sebastian has medical issues, Ms. Elizatah?

A. She's diabetic.

MS. WHALEN: Tender the witness, Your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MS. MIDDLETON:

Q. Did you mention that you check on the defendant's daughter, Ms. Baltazar's daughter?

A. Yes.

Q. Do you check -- does she live at the 26 Sycamore Street location?

A. Yes.

Q. Who else lives at that location?

A. Her son, Pedro, her daughter, Anna, and her grandchildren live there.

Q. And so the son and the daughter are also in proceedings, correct?

A. Yes.

Q. You were asked earlier if you would vouch for Ms. Baltazar? Are you also willing to take responsibility if she does not comply with her terms of release?

A. That is correct.

MS. MIDDLETON: No further questions.

THE COURT: All right. Any redirect?

MS. WHALEN: No, Your Honor.

THE COURT: You may step down.

What would the defense have?

MS. WHALEN: No, Your Honor, I would just like the Court to recognize that the daughter is here in the courtroom, as well as another family member, Raymond Espanoza.

THE COURT: All right. So he's come all this distance. Stand up for us, Mr. Espanoza. He doesn't have to stand. I just wanted to acknowledge him since he came.

MS. WHALEN: Thank you, Your Honor.

THE COURT: All right. Anything further from the defense?

MS. WHALEN: None, Your Honor.

THE COURT: All right. The defense has rested. Any rebuttal by the government?

MS. MIDDLETON: No rebuttal.

THE COURT: All right. The Court will hear brief argument.

MS. MIDDLETON: Your Honor, the government would just like to point out that Ms. Baltazar entered approximately 2007. Her child was born approximately 2001. We would also like to point out that according to testimony from Attorney Rand, her daughter entered illegally unaccompanied, and that was approximately 2016. Between that time, Ms. Baltazar has been in the United States and had not been in contact with her daughter. We would also like to point out that the church --

THE COURT: I am sorry. Was there testimony that she had not been in contact with her daughter?

MS. MIDDLETON: Your Honor, we would like to point out, there is a gap. The child was born in 2001. Ms.

Baltazar entered in 2007. Her daughter entered approximately in 2016. She crossed the border in 2016. The defendant has been present in the United States for approximately ten years. The government is just pointing out that the defendant has been present in the United States approximately ten years, and her daughter only entered in 2016.

We also would like to point out that the application that was entered into evidence by defense -- I believe it was Exhibit 1 -- Ms. Baltazar-Sebastian was asked specifically about any aliases that she had used. It says aliases, if any. She failed to disclose that. She was using an alias at the time, Amparo Sanchez. We also would like to point out neither her church or Attorney Rand listed her name, but only the name Melecia Baltazar-Sebastian.

The address that's provided, 26 Sycamore Street, the second witness -- defense witness pointed out that her son and her daughter reside there, along with grandchildren.

Your Honor, we would just like to point out that we don't know if there are any other individuals who reside at the address. Based on the use of -- before I get there. The family ties -- I wanted to point to the pretrial services report wherein Ms. Baltazar failed to report an address. I want to point to her parents and her own citizenship of Guatemala. Based on her family ties, her use of -- her current charge, the government contends that she is a flight risk and asks for detention on that basis.

THE COURT: Thank you. For the defense?

MS. WHALEN: Yes, Your Honor.

MS. WHALEN: May it please the Court.

THE COURT: You may proceed.

MS. WHALEN: Your Honor, the government pointed out that the pretrial service report does not list

any children, but the pretrial services report does list her address as 26 Sycamore Avenue. While the report does not list any of her children, the report specifically states that a pretrial interview was not conducted. Had there been one, Your Honor, then, of course, that would have included her minor child and her minor children, as well as her health issues and her correct date of birth.

We contend, Your Honor, that this Court has been provided clear and convincing evidence that there are conditions, or a combination of conditions, that reasonably assure that the safety of Ms. Baltazar -- by a preponderance of the evidence, excuse me -- be, Your Honor, that she is not a flight risk. To begin, Your Honor, Attorney Rand provided documentation showing that Ms. Baltazar is the sponsor of her own minor child.

Now, to be clear, she didn't list any aliases. But as this Court noted, and her alias -- and oftentimes the defendants that come before this Court are limited to just employment. Her alias was limited to just employment, being able to work and to provide. When she contacted Attorney Rand, not only contacted him, but hired him, it was for the purpose of being a sponsor to her minor child.

Homeland Security, as well as the Department of Justice, knew -- or should have known at the time, that this woman did not have legal residence in this country, but nonetheless, gave sponsorship of Lapita to her mother there in Morton, Mississippi. The document clearly states that.

Also, as a sponsor, she's required to make sure that this child is educated. We provided the document of the school record from Morton High School, showing that Lapita does attend school there in Morton, Mississippi, Scott County, and that her mother is on her school records; that name being, Melecia Baltazar-Sebastian.

The address being, 26 Sycamore Street there in Morton, Mississippi.

A part of that -- also a part of that verification of release and that document from Office of Refugee Resettlement, she is required to not only have custody, but house this child.

Again, Your Honor, we provided the documents showing the rental agreement. She pays $500 a month. The other property title in her name, Your Honor, is a vehicle. That vehicle is titled to Melecia Baltazar-Sebastian, so she's acquiring property in her name. She is renting a home to house her children and her grandchildren. And to be clear, Your Honor, in order for her to be a sponsor, she has to make sure Lapita attends those hearings. If she's not in compliance, then she won't have a sponsor and she goes back into custody because she no longer has a sponsor. Ms. Baltazar-Sebastian is required to attend those hearings with her minor child. Attorney Rand spoke about, yes, Lapita is his client, but her mother attends those meetings with him. He's had no problems communicating with the mother or the minor.

We've heard character evidence from a coworker, Ms. Elizatah, who has a work visa. She testified that she's known her for at least ten years. Ms. Baltazar has worked at Koch Foods for 12 years, but Ms. Elizatah was able to testify that she's known her a little bit better than ten years. So there's definite ties to the community.

As Attorney Rand said, you don't invest in an attorney or hire an attorney for immigration proceedings just to run. We now know that she has three children that are going through the immigration process. She has spent the money to retain the attorneys, as well as to make sure they attend their hearings in Louisiana.

We've now had Ms. Elizatah to testify that she would vouch that she's of good character, as well as if there are any issues concerning any of her bond issues, then she will contact this Court or a probation officer.

Finally, Your Honor, there's only -- the only limited criminal history as to this charge of -- or fraudulent use of a social security number. And again, it is only in connection with her employment.

We contend, Your Honor, by a preponderance of the evidence, we've been able to show that Ms. Baltazar-Sebastian is not a flight risk and we would ask that Your Honor set a bond for her, as well as those conditions to allow her to be at home with her daughter and to attend those proceedings involving her daughter with the Office of Refugee Resettlement. Thank you.

THE COURT: All right. Thank you.

The Court has considered all the testimony and the evidence, and as stated repeatedly, that I would rule according to what is presented to the Court. So since very little was presented, the Court had to rule accordingly. In this instance, I have some evidence that I am going to consider under the 3142 factors, the nature and circumstance of the offense charged, the weight of the evidence, the nature and the circumstances which show that this defendant used or is charged with misuse of a social security number or the use of an alias. Looking at the circumstances, though, the evidence supports the fact that this defendant used the social security number and the alias only in connection to an effort to work.

The Court has been presented documents showing lease agreements, rental agreements, and other documents that represented her true name. She did not use an alias in order to get any of those things.

Looking at the history and characteristics, family ties, employment, financial resources, length of residence in the community, community ties and past conduct, these all weigh in the defendant's favor in that there is evidence of family ties in Guatemala; but there is evidence that there are even stronger ties that she has with this community; that being, a minor daughter, two other children and three grandchildren. She has no criminal history of any kind presented to the Court. There is evidence that she's been in the country some 12 years and in that 12 years, she's only worked -- not even a traffic ticket is reflected.

There is also evidence that she has been compliant with Court orders and other appointments related to court proceedings in that her children are going through proceedings in immigration and she has been responsible for making sure that her daughter was compliant.

I note that the defendant's true name is on the verification form. While it does not list the aliases, this information is available to the Department of Health and Human Services and to ICE at that time and she's used what has been represented as her true name.

I have letters from the church and other -- as I said, documents showing her ties to the community. This defendant has presented sufficient evidence to find that there's reasonable cause to believe that there are conditions, or a combination of conditions, that would assure her appearance in Court. It is not alleged that she poses any danger, and the Court does not find such.

So the Court is going to set bond in the amount of $10,000 unsecured. Ms. Baltazar-Sebastian, that means that you would not have to pay any money to be released unless you violate the terms of release. There are some other terms and conditions that you would have to abide

by. There are standard conditions for everybody that's released and I am going to go over those with you in just a little while.

Is there anything further from the defense?

MS. WHALEN: Nothing, Your Honor.

THE COURT: From the government?

MS. MIDDLETON: Nothing, Your Honor.

THE COURT: Okay. Thank you.

COURT REPORTER'S CERTIFICATE

I, Tamika T. Bartee, Certified Court Reporter, in and for the State of Mississippi, Official Court Reporter for the United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true, and correct transcript of the proceedings had in the aforenamed case at the time and place indicated, which proceedings were recorded by courtroom deputy clerk and later transcribed by me from a digital recording to the best of my skill and ability. I further certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

THIS the 23rd day of June, 2020.

/s / Tamika T. Bartee, CCR
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