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March 18, 2025

BY ECF
Honorable Diane Gujarati
United States District Judge
225 Cadman Plaza East
Brooklyn, New York 11201

RE: *Pullara v. Joyce, et al.,* No. 25-cv-870 (Gujarati, J.)

Dear Judge Gujarati:

Petitioner-Plaintiff, Vincent Pullara ("Petitioner") submits this letter in response to the Respondents' March 11, 2025 letter requesting a pre-motion conference in anticipation of a motion to dismiss. ECF 15.[1]

Background

Mr. Pullara is a 71-year-old man suffering from a myriad of critical health conditions including severe heart failure and debilitating spinal stenosis, placing him at imminent risk of losing the use of his legs. He was ordered removed in 2004. Almost twenty years later, he was taken into ICE custody in May 2023 and transferred immediately to the infirmary. After several days observing and evaluating his condition in the infirmary, ICE determined Mr. Pullara's chronic conditions made him too sick to detain and deport. Upon a legally required finding that he was not a danger to the community or risk of flight, ICE released Mr. Pullara. He was placed on an order of supervision ("OSUP") and informed that he would be allowed to remain in the United States. Thereafter, in reliance upon ICE's decision, Mr. Pullara and his family worked to establish a complex and interconnected team of medical providers. Unfortunately, Mr. Pullara's medical condition has nevertheless continued to deteriorate since his release.

Notwithstanding Mr. Pullara's compliance with all conditions of his OSUP, on February 5 of this year, a deportation officer assigned to his case informed his family that if Mr. Pullara does

[1] Petitioner respectfully request leave to file an oversized response to Respondents' oversized pre-motion conference letter. *See* ECF 15, p. 1 n.1.

not leave the country within two weeks, he would be redetained. The deportation officer confessed no knowledge of Mr. Pullara's medical condition and, thereafter, rebuffed attempts by Mr. Pullara's family and later counsel to seek clarification and provide such information. Unable to communicate with the agency and days away from redetention, on February 14, 2025, Petitioner commenced this action challenging ICE's decision to abruptly rescind his OSUP and redetain him without any process or opportunity to stabilize his medical condition. ECF 1.

There have been a number of developments since the initiation of this matter. A temporary restraining order was initially issued, ECF 7, and thereafter ICE agreed to forestall redetaining Mr. Pullara and revoking his OSUP until March 21 or until its adjudication of a forthcoming administrative application for a stay of removal, whichever is later. ICE declined, however, to extend such protections for a few extra days to allow Petitioner to seek redress from this Court if the agency denies the stay or otherwise provide incomplete relief in conflict with law. Last Friday, Petitioner alerted the Court that: (1) Mr. Pullara's doctors had identified a new serious spinal condition, which is actively being evaluated, and that may require surgery, (2) it had identified a claim related to U.S. citizenship, and (3) that it would seek to amend its pleading no later than tomorrow in light of these developments. ECF 16. In addition, Petitioner notified the Court that (4) it would also be filing a motion for interim relief, since Mr. Pullara will be at risk of detention again as soon as this Friday. Such filings will be forthcoming tomorrow.

Response to Asserted Bases for Respondent's Forthcoming Motion to Dismiss

A. Responses to Arguments Regarding Subject Matter Jurisdiction

Respondent asserts that this Court is deprived of jurisdiction over all of Petitioner's claims by 8 U.S.C. §§ 1252(a)(5), (b)(9), and/or 1252(g). Respondents are incorrect. Sections 1252(a)(5) and 1252(b)(9) are inapposite. The Supreme Court has explained that these provisions merely channel all claims going to merits of a removal order into a single proceeding for judicial review at the Courts of Appeals. *See DHS v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1907 (2020) (explaining that § 1252(b)(9) "is certainly not a bar where, as here, the parties are not challenging any removal proceedings."); *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) ("[A] suit brought against immigration authorities is not per se a challenge to a removal order; whether the district court has jurisdiction will turn on the substance of the relief that a plaintiff is seeking."). However, none of Petitioner's claims go directly or indirectly to the validity or merits of the underlying removal order. The Petition, ECF 1, challenges only the legality of the abrupt, process-less, decision to redetain him and revoke his OSUP without sufficient time to obtain medical clearance and stabilize him for relocation to Italy.[2]

In regard to § 1252(g), as this very Court has explained, the type of "very broad" interpretation advanced by the Respondents "would be at odds with the Supreme Court's 'narrow reading'" of this section. *Torres-Jurado v. United States*, No. 20cv04575, 2024 WL 1092527, at *6 n.7 (E.D.N.Y. Mar. 12, 2024) (citing *Reno v. AADC*, 525 U.S. 471, 482, 486 (1999) and *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018)). Here, Petitioner does not seek to enjoin or stay the removal order at all but rather seeks temporary relief related only to the imminent risk of

[2] Petitioner anticipates that the amended pleadings will also seek sufficient time to exhaust his newly discovered claim related to U.S. citizenship in collateral proceedings.

detention and revocation his OSUP. While the text of § 1252(g) speaks of "any cause or claim . . . arising from the decision or action by the Attorney General . . . execute removal orders", the Supreme Court has rejected a literally reading of this statute that "sweep[s] in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General." *Jennings*, 583 U.S. at 294. Indeed, the Supreme Court has specifically rejected application of this section to detention challenges for people, like Mr. Pullara, who have removal orders, *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001) ("Congress has enacted several statutory provisions that limit the circumstances in which judicial review of deportation decisions is available" but "none applies here" citing § 1252(g)), or to claims challenging the revocation of administrative grants of protection from deportation, *Regents of the Univ. of California*, 140 S. Ct. at 1907 (rejecting the government's argument that any provision of § 1252 barred review of DHS' recission of the protection against removal for DACA recipients—many of whom, like Mr. Pullara, had removal orders—as "implausible").

The cases Respondents cite in support of their jurisdictional arguments all are distinguishable because, unlike the instant petition, they involved impermissible attempts to challenge the merits of removal orders in habeas proceedings or sought to permanently enjoin removal. ECF 15 at pp. 2-3. Moreover, the non-binding and unpublished authorities upon which Respondents rely, fail to grapple with the binding authority set forth *supra*. Nor did any of these cases consider what additional jurisdiction district courts may enjoy beyond the bounds of § 1252(g) under the habeas powers constitutionally reserved to them by the Suspension Clause of the U.S. Constitution, Art. I, Sec. 9, Cl. 2. Respondents also fail to acknowledge that courts in this circuit have routinely exercised jurisdiction in similar proceedings. *See, e.g., Torres-Jurado v. Biden,* No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023); *S.N.C. v. Sessions*, No. 18 CIV. 7680 (LGS), 2018 WL 6175902, at *5 (S.D.N.Y. Nov. 26, 2018); *Calderon v. Sessions*, 330 F. Supp. 3d 944 (S.D.N.Y. 2018); *You v. Nielsen*, 321 F. Supp. 3d 451, 455–58 (S.D.N.Y. 2018).

B. Response to Arguments Regarding Failure to State a Claim

Respondents argue that Petitioner has failed to state a procedural due process claim, a substantive due process claim, and a claim under the Rehabilitation Act. They do not challenge or seek to dismiss Petitioner's claims under the Administrative Procedure Act for failure to state a claim. ECF 1, First & Second Causes of Action.

1. Petitioner States a Procedural Due Process Claim

Respondents argue that Petitioner lacks a liberty or property interest sufficient to state a due process claim. ECF 15 at pp.3-4. Respondents are incorrect. The due process liberty interest in physical freedom from redetention is well established. *See United States v. Melendez-Carrion*, 790 F.2d 984, 998 (2d Cir. 1986) ("[P]hysical confinement of an individual is the ultimate deprivation of liberty."); *see also Young v. Harper*, 520 U.S. 143, 146-47 (1997) (recognizing the same liberty interest in individuals released and at risk of redetention); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (same). In fact, Respondents ignore binding authority that specifically recognizes the procedural due process protections applicable to redetention determinations by ICE. *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022) ("[A]n individual whose release is sought to

be revoked [by ICE] is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing"); *see also Torres-Jurado*, 2023 WL 7130898, at *4 (holding that due process requires ICE to provide notice and an opportunity to be heard before revoking a stay of removal).

2. Petitioner States a Substantive Due Claim

Respondents misconstrue that nature of Petitioner's substantive due process claim, arguing that there is no right to "supervised release" or to a "preference for the medical care of the United States." ECF 15 at p. 4. Petitioner asserts no such rights. Rather Petitioner asserts that it violates substantive due process to abruptly redetain and revoke OSUP for an individual with life-threatening medical conditions, without the opportunity to evaluate and stabilize his health for relocation to Italy, where the agency has previously determined he can remain in the United States, he has relied upon that representation in establishing a network of care, and where the agency has already determined that he poses no risk of flight or danger to the community. There is simply no justification for the rush to redetain Mr. Pullara. The Supreme Court has recognized that arbitrary immigration detention of an individual, like Mr. Pullara, with a final order of removal, violates substantive due process if it serves no legitimate purpose. *Zadvydas*, 533 U.S. at 690. In addition, the Supreme Court has recognized that "deliberately indifferent conduct" directed towards civil detainees, such as federal immigration detainees, is "egregious enough to state a substantive due process claim." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 849–50 (1998).

3. Petitioner States a Claim under the Rehabilitation Act

The Second Circuit is clear that the "failure to make a reasonable accommodation" for an individual, like Mr. Pullara, with a qualifying disability is sufficient to state a claim under the Rehabilitation Act. *B.C. v. Mount Vernon Sch. Dist.*, 837 F.3d 152, 158 (2d Cir. 2016). The Petition seeks is a reasonable accommodation of the time necessary to evaluate and stabilize his tenuous medical condition. *See also* discussion *supra* at note 2. Courts in this circuit have assumed jurisdiction over similar Rehabilitation Act claims related to ICE detention. *See, e.g.*, *Velesaca v. Decker*, 458 F. Supp. 3d 224, 243 (S.D.N.Y. 2020) (reaching the merits of a claim related to ICE detention under the rehabilitation act but denying the claim because, unlike in this case, there was a "lack[of] evidence that ICE is in fact disregarding disability in its custody determinations"); *cf. New York v. United States Dep't of Homeland Sec.*, 408 F. Supp. 3d 334, 350 (S.D.N.Y. 2019), *aff'd as modified*, 969 F.3d 42 (2d Cir. 2020) (holding that there was a likelihood of success on the merits of a Rehabilitation Act claim against DHS).

C. Ripeness

Respondents assert that this matter is not ripe for adjudication because (1) they may grant Mr. Pullara's forthcoming application for an administrative stay; (2) they may reverse their decision to revoke his OSUP, and (3) they may decide to release him again *after* they redetain him. ECF 15 at p. 5. As an initial matter, none of these potential eventualities undermine the fact that he remains at imminent risk of redetention right as soon as Friday. Moreover, even if Respondents grants the forthcoming administrative stay, they have not represented that such stay would also serve to protect Mr. Pullara from detention (only removal) and the regulations provide

no such protection. *See generally* 8 C.F.R. § 241.6. Indeed, Respondents' ominous reference to an "in-custody" interview, ECF 15 at p. 5, belies their argument that Mr. Pullara's challenge to his imminently threatened detention is not ripe.

Moreover, "to say a plaintiff's claim is constitutionally unripe is to say the plaintiff's claimed injury, if any, is not 'actual or imminent,' but instead 'conjectural or hypothetical.'" *See Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 688 (2d Cir. 2013) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Mr. Pullara had been informed that if he was not on the plane on the next business day following filing, he would be detained. He now again remains under threat of detention, which will cause him irreparable injury, in a matter of days. There can be no plainer example of imminent injury.

Respondents are functionally arguing that their post-filing actions *may* moot the petition. That would be a welcome outcome, but it has not yet come to pass. To establish that voluntary post-filing actions obviate the need for court-ordered relief, the government bears a "formidable burden." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 170 (2000). First, it must show that the challenged conduct has actually ceased. *Lamar Advert. of Penn, LLC v. Town of Orchard Park*, 356 F.3d 365, 378 (2d Cir. 2004). Second, even if the challenged violations have ceased, the government must show "that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur" and there are no ongoing effects of the challenged conduct. *Laidlaw*, 528 U.S. at 170; *Eng v. Smith*, 849 F.2d 80, 83 (2d Cir. 1988) (granting preliminary injunction despite completely remedied practices because without it "there is nothing to prevent defendants from abandoning procedures which the court determined to be necessary to protect plaintiffs' constitutional rights"). Respondents have not met this formidable burden.

Respectfully,

/s/ Peter L. Markowitz

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