UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GEDEON MBOKO,

Petitioner,

v.

KEVIN JOYCE, Sheriff, Cumberland County Jail; PATRICIA HYDE, Boston Field Office Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and, PAMELA BONDI, Attorney General of the United States, in their official capacities,

Respondents.

No. 2:25-cv-00240-NT

RETURN AND RESPONSE TO ORDER TO SHOW CAUSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents,[1] by and through undersigned counsel, oppose Petitioner Gedeon Mboko's Petition for a Writ of Habeas Corpus. Dkt. #1, May 14, 2025 (the "Petition" or "Pet."). Petitioner is presently detained at the Cumberland County Jail ("CCJ") in Portland, Maine, in U.S. Immigration and Customs Enforcement ("ICE") custody. The initiation of removal proceedings as to Petitioner under 8 U.S.C. § 1229a is the true cause of the detention, *see* 28 U.S.C. § 2243, pursuant to 8 U.S.C. § 1225(b)(2)(A). In support, Respondents submit as follows.

[1] For purposes of this return, the Government refers to "Respondents" as the federal officials sued here in their official capacities. These are Patricia Hyde, the Boston Field Office Director of U.S. Immigration and Customs Enforcement; Kristi Noem, Secretary of the U.S. Department of Homeland Security; and Pamela Bondi, Attorney General of the United States. No position is taken with regard to the remaining non-federal respondent, Cumberland County Sheriff Kevin Joyce.

I. Introduction

This habeas matter is jurisdictionally barred by 8 U.S.C. § 1252(b)(9), which "consolidate[s] and channel[s] review of *all* legal and factual questions that arise from the removal of an alien into the administrative process, with judicial review of those decisions vested exclusively in the courts of appeals." *Aguilar v. ICE*, 510 F.3d 1, 9 (1st Cir. 2007) (emphasis original). Even were the Court to entertain the merits, there is no basis to find that a transfer would rise to the unconstitutional level of "fundamental unfairness" or otherwise violate Petitioner's statutory or regulatory rights to counsel in the context of his removal proceedings. Finally, the Petition is framed against a backdrop of other cases having nothing to do with this one: other matters, in other parts of the country, where ICE has reportedly "transferr[ed] noncitizen detainees to immigration detention centers located far from the geographical areas where they were initially apprehended." Pet. ¶ 34. Here, by contrast, Petitioner was arrested and convicted on state criminal charges in Maine; subsequently detained in ICE custody in Maine; and scheduled to appear before an Immigration Judge, not in some far-flung location thousands of miles away, but in Immigration Court in Massachusetts. ICE agreed not to transfer Petitioner during the pendency of this return. *See* Dkt. #5. And ICE has no intention of transferring Petitioner to another facility unless operationally necessary. The Petition is thus preemptive in nature, citing only prospective concerns unlikely to occur. Lack of ripeness thus presents additional grounds for dismissal.

II. Factual Background

Petitioner's habeas application under 28 U.S.C. § 2241 arises from his removal proceedings under 8 U.S.C. § 1229a. Pet. ¶¶ 1, 13-14.[2]

Petitioner's detention first arose from his prior commitment in state custody on criminal charges prosecuted in Cumberland County. Pet. ¶ 31. Despite referencing a single "criminal matter" being resolved on May 9, 2025, *see* Pet. ¶ 31, the resolution involved four distinct Cumberland County cases.

In June 2023, Petitioner was arrested and charged by criminal complaint with Operating Under the Influence (Alcohol), Failing to Notify of Motor Vehicle Accident, and Operating While License Suspended or Revoked; he was arraigned and released on bail conditions. *See* Attachment 1, Dkt. CUMCD-CR-2023-02135. In January 2024, Petitioner was again arrested and charged by criminal complaint with Operating Under the Influence (Alcohol), Theft by Unauthorized Use of Property, Violating a Condition of Release, and Criminal Mischief; he was arraigned and released on bail conditions. *See* Attachment 2, Dkt. CUMCD-CR-2024-00244. In October 2024, Petitioner was arrested and charged by criminal complaint with Violating a Condition of Release, Failing to Provide Correct Name, Address, DOB, and Operating While License Suspended or Revoked; he was arraigned and released on bail conditions. *See* Attachment 3, Dkt. CUMCD-CR-2024-04470. Most recently, in November 2024, Petitioner was arrested and charged by criminal complaint with Recklessly Endangering the Welfare of a Dependent Person and Violating a Condition of Release. *See* Attachment 4, Dkt. CUMCD-CR-2024-05060.

As a result of his November 2024 case, Petitioner began a period of detention in

[2] The Federal Rules of Civil Procedure apply to § 2241 proceedings. *See* FED. R. CIV. P. 81(a)(4); FED. R. CIV. P. 12(b)(6). The Government takes as true all well-pleaded factual allegations, *see Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009), but submits that Petitioner's "threadbare or speculative" allegations should be disregarded, *see Pruell v. Caritas Christi*, 678 F.3d 10, 13 (1st Cir. 2012). The provisions of 28 U.S.C §§ 2246-2247 further permit affidavits and documentary evidence to be submitted.

state custody without bail on November 27, 2024, in Dkt. CUMCD-CR-2023-02135 (*see id.* at 4) and Dkt. CUMCD-CR-2024-04470 (*see id.* at 3). On May 9, 2025, Petitioner pled guilty to Recklessly Endangering the Welfare of a Dependent Person, and a judgment of conviction entered. Attachment 4, Dkt. CUMCD-CR-2024-05060 at 1. He received a sentence of six months imprisonment, which his dockets indicate was tantamount to a time-served sentence. *See* Attachments 1-4; *see generally* Attachment 5, Declaration of ICE Assistant Field Office Director Keith M. Chan ("Chan Decl.") ¶¶ 14-15, May 28, 2025. Following this guilty plea and conviction, the Cumberland County District Attorney's Office dismissed the remaining charges in Dockets CUMCD-CR-2023-02135, CUMCD-CR-2024-00244, and CUMCD-CR-2024-04470, along with the remaining Violating a Condition of Release count in Docket CUMCD-CR-2024-05060. Throughout each criminal appearance and hearing, Petitioner utilized the services of a Lingala language interpreter, *see* Attachments 1-4, owing to his arrival from the Democratic Republic of Congo as a 17-year-old in 2019. Pet. ¶¶ 24-25; Chan Decl. ¶ 7.

On June 6, 2019, Petitioner applied for admission into the United States from Mexico via the pedestrian primary lanes at the San Ysidro Port of Entry, California. Chan Decl. ¶ 8. Upon entry, U.S. Customs and Border Protection ("CBP") identified Petitioner as an unaccompanied alien child, as he was then seventeen years of age. Pet. ¶ 25; Chan Decl. ¶ 9. Petitioner was placed in removal proceedings pursuant to 8 U.S.C. § 1229a and issued a Notice to Appear at that time, alleging that he was inadmissible under 8 U.S.C .§1182(a)(7)(A)(I)(i). Pet. ¶ 26; Chan Decl. ¶ 10.

On January 27, 2022, an Immigration Judge in Boston, Massachusetts, granted Petitioner's motion to administratively close his case. Chan Decl. ¶ 11. On April 21, 2022, United States Citizenship and Immigration Services ("USCIS") received Petitioner's

Form I-360 as a Special Immigrant Juvenile, filed by ILAP counsel. Pet. ¶ 29; Chan Decl. ¶ 12. On April 21, 2023, USCIS approved Petitioner's Form I-360. Pet. ¶ 29; Chan Decl. ¶ 12. USCIS granted deferred action in connection with the approved Form I-360. Chan Decl. ¶ 12. On October 21, 2024, an Immigration Judge in Boston, Massachusetts, granted Petitioner's motion to terminate proceedings without prejudice. Pet. ¶ 30; Chan Decl. ¶ 13.

On May 12, 2025, ICE Enforcement and Removal Operations ("ERO") in Scarborough, Maine, encountered and detained Petitioner at CCJ. Pet. ¶ 31; Chan Decl. ¶ 15. ICE ERO issued a Notice to Appear, alleging that Petitioner was inadmissible under 8 USC § 1182(a)(7)(A)(I)(i), based on his original entry into the United States. Pet. ¶ 32; Chan Decl. ¶ 15.

On May 14, 2025, USCIS terminated Petitioner's previously granted deferred action. Pet. ¶¶ 19, 29; Chan Decl. ¶ 16. Petitioner is detained as an arriving alien pursuant to 8 U.S.C. § 1225(b)(2)(A). Chan Decl. ¶ 17. He will not be eligible for a custody redetermination hearing before an Immigration Judge, *see* 8 C.F.R. § 1003.19(h)(2)(i). Chan Decl. ¶ 17. He may submit a request for parole with ICE. *Id.*

Petitioner is scheduled for an initial master calendar hearing in the Chelmsford (Massachusetts) Immigration Court on May 29, 2025. Pet. ¶ 32; Chan Decl. ¶ 15. Currently, ICE has no intention of transferring Petitioner to another facility, but reserves the right to do so as an operational decision by the agency. *Id.* ¶ 15. Petitioner remains detained in ICE custody at CCJ as of today, May 28, 2025. *Id.* ¶ 18.

III. Argument

A. Subject-Matter Jurisdiction is Barred by 8 U.S.C. § 1252(b)(9)

The Immigration and Nationality Act ("INA") limits the jurisdiction of federal courts when it comes to reviewing removal proceedings. Removal proceedings occurring before an Immigration Judge "are confined to determining whether a particular alien should be deported." *See Pereida v. Wilkinson*, 592 U.S. 224, 227 (2021); *see also* 8 U.S.C. § 1229a(c)(1)(A) (an "immigration judge shall decide whether an alien is removable from the United States"). At issue here in the context of Petitioner's removal is 8 U.S.C. § 1252(b)(9), which provides as follows:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final [removal] order under this section.

Id. Coupled with 8 U.S.C. § 1252(a)(5), which provides that "a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of an order of removal," the First Circuit has found that, "[i]n enacting section 1252(b)(9), Congress plainly intended to put an end to the scattershot and piecemeal nature of the review process that previously had held sway in regard to removal proceedings." *Aguilar v. ICE*, 510 F.3d 1, 9 (1st Cir. 2007).

The First Circuit in *Aguilar* characterized the "breathtaking" expanse and "vise-like grip" of § 1252(b)(9), which by its terms applies here:

> The reach of section 1252(b)(9) is not limited to challenges to singular orders of removal or to removal proceedings simpliciter. By its terms, the provision aims to consolidate "all questions of law and fact" that "arise from" either an "action" or a "proceeding" brought in connection with the removal of an alien. . . Importantly, the statute channels federal court jurisdiction over "such questions of law and fact" to the courts of appeals and explicitly bars all other methods of judicial review, *including habeas*.

Id. at 9 (emphasis added). Nor does anything "in the statute limit[] its reach to claims arising from extant removal proceedings," since "[r]eading the statute to limit the exhaustion requirement to claims that arise from ongoing removal proceedings would put an undue premium on which party rushed to the courthouse first." *Id.* at 10.

In *Aguilar*, as with the present Petition, "the petitioners claim[ed] that their detention and subsequent transfer by the government infringed their rights to counsel by barring their access to lawyers, interfering with preexisting attorney-client relationships, and making it difficult to secure counsel of their choosing." *Id.* at 13; *see also* Pet. ¶¶ 2, 5, 7, 11, 38-47. Here, as in *Aguilar*, "[t]he shorthand response to [Petitioner's] plaint is that [his] claims that are based upon an alleged deprivation of [his] right to counsel in connection with a removal proceeding, whether pending or imminent, arise[s] from the removal proceeding." *Aguilar*, 510 F.3d at 13 ("[b]y any realistic measure, the alien's right to counsel is part and parcel of the removal proceeding itself").

Accordingly, § 1252(b)(9) bars the habeas relief Petitioner seeks. "[A]llowing aliens to ignore the channeling provisions of section 1252(b)(9) and bring right-to-counsel claims directly in the district court" is proscribed by First Circuit precedent. *Aguilar*, 510 F.3d at 13-14.[3] Instead, Petitioner must "raise these claims before the immigration judge, before the Board of Immigration Appeals (BIA), and ultimately before the court of appeals." *Id.* at 14. Petitioner "can receive effective relief for [his] alleged violations of the right to counsel simply by navigating the channels deliberately dredged by Congress." *Id.*

[3] Some courts have found that the timing and placement of an alien's detention is an unreviewable determination of the Attorney General under 8 U.S.C. § 1252(a)(2)(B)(ii). *See Van Dinh v. Reno*, 197 F.3d 427, 433-34 (10th Cir. 1999) (finding that judicial review of decision to transfer a detainee is inappropriate due to lack of jurisdiction). The First Circuit in *Aguilar*, however, held that § 1252(a)(2)(B)(ii) did not itself specifically strip district courts of jurisdiction. *Id.* at 21-22.

B. No Violation of the Right to Counsel in the Specific Context of Removal Proceedings has Occurred

The Petition references the Great Writ's protections of individuals from unlawful detention and illegal restraint and confinement. Pet. ¶¶ 17-18. Yet Petitioner does not challenge or otherwise contest the legality of his detention and confinement. *Contra* 28 U.S.C. § 2241(c)(3). Instead, the Petition appears to cite the mere fact that Petitioner is "in custody under or by color of the authority of the United States," here ICE. *See* 28 U.S.C. § 2241(c)(1). In this regard, however, Petitioner fails to articulate any cognizable violation of his regulatory, statutory, or constitutional rights to counsel in the removal proceeding context.

That is because "Petitioner's statutory and regulatory right to counsel of his choosing" and "statutory and regulatory right to present evidence" are not at risk. *Contra* ¶¶ 39-40. Indeed, the regulatory and statutory provisions cited by Petitioner provide no substantive support. The provisions of 8 C.F.R. § 292.5 provide for a right to representation, but say nothing about what that right might entail. Likewise, pursuant to 8 C.F.R. § 1292.1(a)(1), persons entitled to representation may be represented by attorneys. However, § 1292.1 does not speak to a right to an attorney, at least not *per se*. For example, representation may also occur through "[a] law student who is enrolled in an accredited U.S. law school, or a graduate of an accredited U.S. law school who is not yet admitted to the bar" (*id.* § 1292.1(a)(2)), "reputable individuals" (*id.* § 1292.1(a)(3)), "accredited representatives" (*id.* § 1292.1(a)(4)), and "accredited officials" (*id.* § 1292.1(a)(5)). Nor does 8 C.F.R. § 1003.61 establish a right to counsel or otherwise speak to required legal representation. It simply sets forth "general provisions" for pro bono immigration legal services.

Petitioner's statutory authority fares no better. Pursuant to 8 U.S.C. §§ 1229a(a)(1) and (b)(1), Immigration Judges are solely vested with the authority to "conduct proceedings for deciding [] inadmissibility or deportability." Unless otherwise specified in Chapter 12 of the INA, proceedings under § 1229a "shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States." 8 U.S.C. § 1229a(a)(3). Proceedings may take place in person, through video conference, or via other means. 8 U.S.C. §§ 1229a(b)(2)(A)(i), (iii). In connection with such proceedings, an "alien shall have the privilege of being represented . . . by counsel of the alien's choosing who is authorized to practice in such proceedings." 8 U.S.C. § 1229a(b)(4)(A). Under 8 U.S.C. § 1362, as with 8 U.S.C. § 1229a(b)(4)(A), persons subject to removal have an overlapping right to counsel. Yet these provisions, by their terms, do not speak to any required frequency, mode, or other requirements for how the mechanics of the attorney-client relationship should exist. Moreover, as for the proceeding itself, aliens are assured "a reasonable opportunity to examine the evidence against [them], to present evidence on [their] own behalf, and to cross-examine witnesses presented by the Government." 8 U.S.C. § 1229a(b)(4)(B).

Nor has Petitioner established a violation of "fundamental fairness in [his] removal proceedings." Pet. ¶¶ 43-44. "Aliens in removal proceedings are not defendants in criminal proceedings," and thus, "[t]he same rules do not apply." *United States v. Castillo-Martinez*, 16 F.4th 906, 917 (1st Cir. 2021). Consequently, the First Circuit has said that a removal proceeding only becomes fundamentally unfair when "the alien [is] prevented from reasonably presenting his case." *Lozada v. INS*, 857 F.2d 10, 13 (1st Cir. 1988). No such facts have been presented here. Relatedly, there has been no violation of

Petitioner's procedural due process rights under the Fifth Amendment. *See Reno v. Flores*, 507 U.S. 292, 306 (1993). "[N]otice and an opportunity to respond" form "[t]he essential requirements of due process." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). In the context of removal proceedings, "the nature of that protection may vary depending upon status and circumstance." *Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001). As already discussed, Petitioner has ample procedural avenues available, including administratively and, ultimately, seeking review before the First Circuit.

C. The Petition is Nonjusticiable for Lack of Ripeness

Finally, the Petition seeks relief that is prospective and premature. Petitioner's claimed harm is anticipated, rather than actual. The Petition therefore fails to meet the dual ripeness requirements of fitness and hardship.

The critical allegations comprising the Petition concerning the likelihood of Petitioner's transfer are made "upon information and belief." *See* Pet. ¶ 3 ("Upon information and belief, ICE seeks to transfer Mr. Mboko and detain him outside of the District of Maine."); ¶ 33 ("Upon information and belief, ICE now seeks to transfer Mr. Mboko to be detained outside of the District of Maine."); ¶ 34 ("Upon information and belief, ICE maintains a policy and practice of transferring noncitizen detainees to immigration detention centers located far from the geographical areas where they were initially apprehended. These transfers frequently occur without adequate notice to the detainee or legal counsel, and often result in significant barriers to legal representation, communication, and access to evidence."); ¶ 35 ("Upon information and belief, ICE routinely transfers individuals who have strong ties to Maine—including those represented by legal counsel within the state—to detention facilities in distant jurisdictions. Upon information and belief, ICE routinely transfers individuals with no prior connection to Maine into CCJ."); ¶ 36 ("Upon information and belief, such transfers are routinely carried out without individualized assessments of the detainee's circumstances or due process needs.").[4] For verified pleadings, the First Circuit treats such information-and-belief allegations as just that—allegations. *See Sheinkopf v. Stone*, 927 F.2d 1259, (1st Cir. 1991) (ruling, in summary judgment context, that a statement made "upon information and belief" was "a mere allegation, not entitled to credence or weight").[5]

By contrast, ICE has provided a sworn declaration submitted under penalty of perjury confirming that ICE has no intention of transferring Petitioner to another facility. Petitioner remains detained in ICE custody at CCJ. And his hearings are scheduled in nearby Massachusetts.

Accordingly, Petitioner "seeks relief that is primarily prospective in character," requiring analysis of "the fitness of the issue for immediate review and the hardship to [him] should review be postponed." *Riva v. Massachusetts*, 61 F.3d 1003, 1009 (1st Cir. 1995). "The critical question concerning fitness for review is whether the claim involves uncertain and contingent events that may not occur as anticipated or may not occur at all." *McInnis-Misenor v. Me. Med. Ctr.*, 319 F.3d 63, 70 (1st Cir. 2003) (quotations omitted). As to hardship, courts assess the harm "that would come. . . from [the]

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[4] The Petition was verified by Petitioner's counsel, rather than Petitioner himself, as "true and correct to the best of [counsel's] knowledge." Pet. at 11; *see* 28 U.S.C. § 2242 (an "[a]pplication for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf"). The Government understands, of course, that this occurred out of necessity, given Petitioner's detention status and language difficulties.

[5] There is cause to question Petitioner's allegation that, on May 12, 2025, he "overheard an official reference plans to move him to another facility." Pet. ¶ 32. As mentioned above, Petitioner's criminal dockets show that he required the use of a Lingala interpreter throughout all four proceedings. *See* Attachments 1-4.

withholding of a decision." *Reddy v. Foster*, 845 F.3d 493, 501 (1st Cir. 2017) (citations omitted).

Here, concerning fitness, "allowing more time for development of events would 'significantly advance [the Court's] ability to deal with the legal issues presented [or] aid [] in their resolution.'" *Doe v. Bush*, 323 F.3d 133, 138 (1st Cir. 2003) (quoting *Duke Power Co. v. Carolina Envt'l Study Group*, 438 U.S. 59, 82 (1978)). This is so because Petitioner's claims are not merely speculatory, but also are belied by the reality of his particular proceeding, where he has: (1) remained detained in Maine; (2) been scheduled for removal proceedings in nearby Massachusetts; and (3) ICE has no plans to effect any transfer. His request for a premature adjudication of his Petition on facts subject to change therefore fails to raise any "'direct and immediate' dilemma." *W.R. Grace & Co. v. EPA*, 959 F.2d 360, 364 (1st Cir. 1992). No harm will arise from this Court withholding a decision and requiring Petitioner to raise his concerns—inchoate as they are—administratively during his removal proceedings, when the circumstances bearing on his case have fully crystallized. *See United States v. Seger*, 849 F. Supp. 2d 76, 82 (D. Me. 2011) (dismissing without prejudice a defendant's request for an order declaring when supervised release was to begin and ruling that the defendant was "free to return to federal court with a request for relief that will be constitutionally cognizable").

IV. Conclusion

For the foregoing reasons, Petitioner is not entitled to a writ of habeas corpus. The Government respectfully submits that the court should dispose of and dismiss the matter with prejudice "as law and justice require." 28 U.S.C. § 2243. To the extent this matter is not disposed of by dismissal, the Government is prepared for and available to attend any hearing scheduled not more than five days after the filing of this return. *Id.*

Dated: May 28, 2025
Bangor, Maine

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2025, I caused the foregoing to be electronically filed with Clerk of Court using the CM/ECF system, which sent such notice to any individuals and entities who have entered appearances in this case to date, pursuant to the Court's ECF system.

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