

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

FRANCISCO D’COSTA,

Petitioner,

v.

WARDEN, *et al.*,

Respondents.

§
§
§
§
§
§
§
§
§
§

CASE NO. 4:25-CV-6177

SUPPLEMENTAL BRIEF

Federal Respondents file the supplemental brief in response to the Court’s request for more information. The Court held a hearing in this matter on January 5, 2025. At the conclusion of the hearing, the Court requested information “regarding the possibility of a remote hearing on Petitioner’s pending Motion to Reopen his immigration proceedings and Second Motion for Stay with the immigration court.” Minute Entry. The Court also “invited either party to file additional briefing addressing *J.G.G. v. Trump*, No. CV 25-766 (JEB), 2025 WL 3706685 (D.D.C. Dec. 22, 2025).” *Id.* The Court should refrain from ordering additional relief in this habeas matter. As discussed below, the Petitioner was removed pursuant to a valid removal order. The Petitioner was afforded due process prior to his removal: among other things, the immigration judge denied his motion to stay his removal. This case is distinguishable from the *Abrego Garcia* matter (where the Government conceded that the alien was removed in violation of a withholding of removal order from the immigration court). Finally, ordering the return of Petitioner would be futile because the Court lacks jurisdiction over any challenge to his removal order. For these and all the reasons discussed below and at

the hearing, the Court should refrain from ordering any further relief, deny the habeas petition, and close this case.

Prior to addressing the merits, Federal Respondents reiterate that the Government's non-compliance with the Court's TRO was inadvertent. The timing of the Court's issuance of the Order and the Government's efforts to comply are addressed in prior filings. At bottom, the non-compliance was due to the timing of the Order (Saturday morning), the fact that Petitioner's removal was underway prior to the issuance of the Order, and, despite best efforts, the TRO was not able to be effectively communicated to on-the-ground personnel in the short window of time that was available. As stated at the hearing, Federal Respondents take compliance with this Court's orders seriously and the Petitioner's removal was in no way done in intentional defiance of the Court's TRO.

I. The Petitioner was afforded due process, and he will be able to continue to pursue challenges to his removal even though he was removed.

This habeas action was purportedly brought to protect Petitioner's ability to challenge his removal order in immigration court. Setting aside whether that is a proper basis for a habeas proceeding, Petitioner was in fact afforded due process prior to his removal. Petitioner agreed to a voluntary removal. Dkt. 1 at ¶ 13. After he did not voluntarily depart, that voluntary removal became a final order of removal. Dkt. 10-1; 8 C.F.R. § 1241.1 (voluntary departure becomes final order of removal upon overstay of voluntary departure period). Petitioner's order of removal was lawful and in place at the time of his removal. No one contests these facts. Further, Federal Respondents acknowledge that Petitioner did not have counsel when he agreed to voluntarily depart. However, Petitioner filed a motion to stay and motion to reopen his removal proceedings *before his removal and with the assistance of counsel*.

An immigration judge heard Petitioner's request to stay his removal and denied it on December 4, 2025. *See* Dkt. 10-1. In denying Petitioner's request to stay his removal, the immigration judge found the Petitioner failed "to show a strong likelihood of succeeding in reopening his case." Dkt. 10-1. The immigration judge also pointed out that Petitioner "signed a declaration which asserts that he does not have a fear of returning to his country and waived his right to submit any applications for relief." The immigration judge noted that Petitioner had been offered time to obtain counsel, which he declined, and when an "Immigration Judge specifically asked Respondent whether he had a fear of returning and he stated that he did not." Dkt. 10-1. Thus, the immigration judge fully considered Petitioner's motion to stay his removal and denied it based on rational reasons supported by the immigration court record. Petitioner was therefore afforded due process prior to his removal.

With the above being said, Petitioner's right to additional process is not foreclosed by his removal. First, he has a pending challenge to his removal order. This Petition for Review is pending in the Fifth Circuit. The Fifth Circuit maintains jurisdiction over that matter even though Petitioner has been removed. *See Flores-Ledezma v Gonzales*, 415 F.3d 375, 380 (5th Cir. 2005). Second, Petitioner has filed a renewed motion to stay/reopen his removal proceedings. Whether the immigration judge takes the renewed motion/motion to reconsider up and on what timeline and whether a hearing is set (these matters are typically resolved without a hearing) is within the discretion of the immigration judge. Assuming that the immigration judge sets a hearing on the renewed motion to reopen, Petitioner can appear via remote means from abroad. Indeed, the majority of hearings on the detained immigration docket are held virtually—with the alien appearing via WebEx. The Department of Homeland Security has

no objection to any hearing set on Petitioner's renewed motion to reopen being held virtually so that Petitioner can appear. This is in accord with 8 U.S.C. § 1229(a)(b)(2)(A), which provides that, with the parties' agreement, removal proceedings may take place through video or telephone conference when the alien is absent. Thus, Petitioner will be able to appear at any future immigration court hearing remotely from abroad.

II. The cases that Petitioner relies upon are distinguishable.

Petitioner relies on two cases in support of his argument that the Court should order the Government to facilitate his return. First, Petitioner points to the *Abrego Garcia* matter. *See Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025). That case is distinguishable in several respects. Most importantly, the Government conceded in the *Abrego Garcia* case that the alien was removed in violation of immigration court orders. In particular, Abrego Garcia had a withholding of removal order in place that prevented his removal to El Salvador. *Id.* at 1018. Thus, Abrego Garcia's removal to El Salvador was an admitted error. *Id.* Here, as explained above, Petitioner was subject to a valid removal order.

Second, Petitioner directed the Court to an order from the United States Court of Appeals for the Second Circuit: *Melgar-Salmeron v. Bondi*, No. 23-7792 (2d Cir. 2025). This matter is more akin to the current situation before the Court in that it involved a violation of a stay order from a federal court. However, the facts in *Melgar* were markedly different than what is before the Court here. Approximately thirty minutes after the Second Circuit granted Melgar-Salmeron a stay of removal, the government placed him on a plane and deported him to El Salvador. The Second Circuit ordered the government to facilitate his return to the United States. In *Melgar*, the following occurred:

As the Government first acknowledged on May 8, 2025, Petitioner was removed to El Salvador on the morning of May 7, 2025 despite the Government's prior assurance to this Court that it "would forebear removal until May 8, 2025." . . . As the Government recognizes in its filings, the removal was improper because it contradicted the Government's assurance to the Court that it would forbear from removing Petitioner, which this Court relied upon in resolving the stay motion. It was also improper because it violated this Court's order staying Petitioner's removal from the United States during the pendency of this matter before this Court.

June 24, 2025 Order in *Melgar*, Dkt. 49. Thus, in *Melgar*, the Government was on notice that the Second Circuit was considering a stay of removal (thus, the Government should have been on alert and ready to receive and comply with an emergency order). Moreover, the Government had made overt assurances to the court that the alien would not be removed. Consequently, when the Government contradicted its assurances and then violated the court's order, the Second Circuit ordered the alien returned.

Here, the Government was unaware of the habeas petition and pending request for emergency relief (prior to Saturday). There were no assurances made to the Court about the timing of Petitioner's removal. Indeed, there could not have been because the first the Government became aware of the matter was when the Court emailed the U.S. Attorney's Office on Saturday. As a result, this case is nothing like *Melgar*, the inadvertent non-compliance here does not support the extraordinary step of ordering the Petitioner returned to the United States.

III. The *J.G.G.* decision does not support an order requiring Petitioner's return.

As the Court is aware, the *J.G.G.* decision involved facts that are very different from the instant case. The habeas petitioners in *J.G.G.* "were hustled out of a detention center in Texas, loaded onto planes, and shipped to an infamous mega-prison in El Salvador with no explanation and no opportunity to challenge the reason for their hasty removal." *J.G.G. v.*

Trump, No. CV 25-766 (JEB), 2025 WL 3706685, at *1 (D.D.C. Dec. 22, 2025). The *J.G.G.* decision spends substantial time discussing the Terror Confinement Center (CECOT) in El Salvador where the aliens were sent. In this case, by contrast, a valid order of removal for Petitioner was in place. Petitioner was removed to his home country (not a foreign detention center). Petitioner had also been afforded numerous hearings before immigration judges prior to his removal. Indeed, Petitioner had previously agreed to voluntarily depart. And then, with the assistance of counsel, Petitioner had his request to stay his removal heard and decided by an immigration judge. Dkt. 10-1. Thus, the *J.G.G.* court's decision requiring that the removed aliens be "afforded some process to contest their designation [under the Alien Enemies Act]" has no bearing here. 2025 WL 3706685 at *17 (emphasis in original). The Petitioner was provided not just some process, but multiple rounds of process in immigration court prior to his removal.

Notably, even assuming the *J.G.G.* decision is applicable despite the starkly different facts, the *J.G.G.* court noted that the lack of due process afforded the aliens did not necessarily warrant an order requiring the alien's return to the United States. Specifically, the Court noted that: "[t]he Government could also theoretically offer Plaintiffs a hearing without returning them to the United States so long as such hearing satisfied the requirements of due process." For the reasons explained above, Petitioner can attend any subsequent hearing on his renewed motion to reopen via virtual or remote means. Therefore, although the *J.G.G.* holding is distinguishable, if the Court looks to it for the purposes of remedy, the *J.G.G.* court's statement regarding alternative forms of process supports an order requiring something less than a return to the United States.

IV. Ordering Petitioner's return is not necessary because the Court lacks jurisdiction over the habeas petition.

The Court should not order Petitioner's return to the United States for the purposes of a habeas petition over which it lacks jurisdiction. Section 1252(g) of Title 8 deprives the Court of jurisdiction over Petitioner's claims. By its terms, Section 1252(g) strips district courts of "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 * * * execute removal orders against any alien under" the INA, except as provided in Section 1252. 8 U.S.C. 1252(g); *see Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).

Petitioner's claims in this case are claims "arising from the decision or action" by the federal government to "execute [a] removal order[] against" him under the INA. 8 U.S.C. 1252(g). That much is clear from Petitioner's complaint, which sought to halt the execution of a valid order of removal. There can thus be no question that Petitioner's claims arise from the government's decision or action to "execute [a] removal order[] against" him under the INA. 8 U.S.C. 1252(g). Relatedly, any due process claims to challenge execution of his removal order, such claims are also barred by Section 1252(g). *Foster v. Townsley*, 243 F.3d 210 (5th Cir. 2001); *see also, Chen v. Escareno*, No. 4:09-CV-00270, 2009 WL 3073928, at *2, 6 (S.D. Tex. Sept. 18, 2009) (rejecting petitioner's claim that she faced removal "without due process," as "all of the plaintiffs' claims are connected directly and immediately with a decision or action by the Attorney General to execute the [removal order]," and thus were unreviewable under Section 1252(g)).

Petitioner will likely argue that they are not challenging the validity of Petitioner's

removal order itself. But Section 1252(g) not only applies to claims challenging the validity of a removal order; it refers to claims arising from a decision or action to “*execute* [a] removal order[].” 8 U.S.C. 1252(g) (emphasis added). And the execution of a removal order necessarily involves deciding when and where the alien will go. The facts of this case illustrate the point: DHS “executed” Petitioner’s Title 8 removal order by placing him on a flight to a particular country (here, India). By challenging Petitioner’s removal to India, his claims arise from the execution of a removal order against him. Section 1252(g) deprives the district court of jurisdiction to hear respondents’ claims—and to enter an injunction requiring Petitioner’s return to the United States.

CONCLUSION

For all the reasons discussed above, the Court should refrain from ordering any further relief in this action and deny the habeas petition.

Dated: January 6, 2026

Respectfully submitted,

NICHOLAS J. GANJEI
United States Attorney

/s/ Jimmy A. Rodriguez
Jimmy A. Rodriguez
Assistant United States Attorney
Southern District of Texas
Attorney in Charge
Texas Bar No. 24037378
Federal ID No. 572175
1000 Louisiana, Suite 2300
Houston, Texas 77002
Tel: (713) 567-9532
Fax: (713) 718-3300

Counsel for Federal Respondents

CERTIFICATE OF SERVICE

I certify that, on January 6, 2026, the foregoing was filed and served on all attorneys of record via the District's ECF system.

/s/ Jimmy A. Rodriguez

Jimmy A. Rodriguez
Assistant United States Attorney