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BY ECF
Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

February 5, 2026

Re: *Huang v. Bondi, et al.*, No. 26-cv-406 (Komitee, J.) (E.D.N.Y.)

Dear Judge Komitee:

This Office represents Respondents Pamela Bondi, U.S. Attorney General and Kristi Noem, U.S. Secretary of Homeland Security (collectively, "Respondents") in the above-captioned action. As set forth in the Court's Memorandum & Order dated January 24, 2026 (ECF 7), the Court set January 29, 2026 as the date for Respondents to show cause why the Court should not preliminarily enjoin Petitioner's removal in view of the lack of an exclusion order. Respondents sought an extension, which the Court granted, in part, to February 5, 2026 at 5:00 pm.

Relevant Procedural History

By way of background, Petitioner commenced this action on January 22, 2026 by filing her "Petition for Writ of Habeas Corpus" (the "Petition") (ECF 1) in which she acknowledged she was then confined at the Richwood Correctional Center in Monroe, Louisiana. ECF 1 at 1. Petitioner alleges that ICE is detaining her in order to enforce what she describes as an exclusion order issued in 1992, that "[u]pon information and belief" does not exist. ECF 1 ¶ 12.

As the January 24 Order frames the issue, the "primary thrust of Huang's petition is that the government has detained her in reliance on an order of exclusion that never actually issued," having "searched the Executive Office of Immigration Reviews' [EOIR] Automated Case Information System ("ACIS")" and other records "for any indication of that order without success" ECF 7 at 1. The Court noted that removal without a removal order would violate due process, and stayed removal absent further Order by Your Honor, and directed the government to explain: why that stay should not remain in place as a preliminary injunction, whether judicial review is permissible where the issue is the existence of a removal order, and whether venue might be proper in this district. ECF 7 at 1-2.

EOIR Records Confirm the Existence of the December 1992 Removal Order

This habeas action is based on a red herring. The December 1992 exclusion order is

enclosed. Declaration of Jessica Harrold, dated February 5, 2026 ("Harrold Decl."), Ex. A. p. 11.[1]

The record before the Court reflects that Petitioner attempted to enter this country with a counterfeit Thai passport and under a different name. Declaration of Charles Ward, dated February 5, 2026 ("Ward Decl.") ¶ 3-5. She was permitted to enter the United States to appear in removal proceedings, but then disappeared and was ordered removed in absentia in December 1992. *Id.* ¶ 6-10; Harrold Decl. Ex. A, p. 11. That Order is also evidenced in EOIR's electronic records. Harrold Decl. ¶ 4-5. Two decades ago, Petitioner tried to get ICE agree to jointly move to reopen her removal proceedings, but ICE declined, Ward Decl. ¶ 9, and she has never moved to reopen those proceedings. Harrold Decl. ¶ 8. ICE is detaining her to be removed, and the only thing holding up that removal is this Court's order temporarily staying it. Ward Decl. ¶ 16. ICE was detaining her in Monroe, Louisiana at the time suit was filed and continues to do so. *Id.* ¶ 14.

The admissible evidence submitted herewith reflects not only a copy of the December 1992 exclusion order, as noted above, but also that the fact of such order was maintained by EOIR, which is a component of the U.S. Department of Justice, not the U.S. Department of Homeland Security (of which both ICE and USCIS are components). Harrold Decl. ¶ 1, 3-6 & Ex. A.While EOIR was immediately able to confirm the existence of the December 1992 Order from its internal, non-public electronic databases, *Id.* ¶ 4-5, this Office awaited the hard copy of record of proceeding (ROP) of the removal proceedings for this alien, which includes a physical copy of the actual removal order, in view of the concerns raised by the Petitioner and the January 24 Order, and which was located in an offsite facility owing to its age. *Id.* ¶ 6 & n.2 & Ex. A, p. 11.[2]That December 1992 order is now in the record before the Court. *Id.* Ex. A p. 11, and has also been supplied to ICE, as it is needful to enable the removal. ICE Decl. ¶ 16.

This suit is based on a false premise, and should be dismissed.

The Stay of Removal Should Be Lifted And No Review of the Removal Order Is Permitted

As to the first issue the Court raised, whether removal should be preliminarily enjoined owing to what Petitioner asserted was the nonexistence of a removal order, the answer is no, not least because there *is* in fact a removal order in the record before the court. Harrold Decl. Ex. A, p.11. The government respectfully submits that the question of whether a court has jurisdiction to review whether a removal order exists is academic, inasmuch as that order inarguably exists.[3]

What is not academic, however, is that continuing a stay of a final order of removal where,

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[1] An exclusion order, the term used, along with deportation order, before the Immigration and Nationality Act was amended in 1996, is what the post-1996 amendments refer to as a "removal order." *Thapa v. Gonzales*, 460 F.3d 323, 333, n.3 (2d Cir. 2006) (noting that reference in the Immigration and Nationality Act to an order of removal is deemed to include an order of exclusion and deportation or an order of deportation).

[2] Even the public facing EOIR database, ACIS, reflected the order indexed under Petitioner's alien number, "no nationality." Harrold Decl ¶ 7.

[3] As Your Honor noted in the January 24 Order, the Third and Eleventh Circuits have held that 8 U.S.C. § 1252 does not divest district courts of jurisdiction to determine whether a removal order was issued against the petitioner. Dkt. 7 at 2, n.2,, citing *Kumarasamy v. Att'y Gen. of U.S.*, 453F.3d 169, 172 (3d Cir. 2006) and *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1366-67 (11th Cir. 2006). The undersigned counsel have been unable to locate any Second Circuit decision dealing with this issue. However, assuming *arguendo* that the Third and Eleventh Circuit holdings are correct, the question is now advisory because a removal order was in fact issued against Petitioner.

as here, even Petitioner cannot continue to dispute that the order exists, is impermissible, even if Petitioner may wish to challenge the removal order in Count II. The government respectfully submits that Congress has barred review to that end. *See* 8 U.S.C. § 1252(a)(5) ("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"); 8 U.S.C. § 1252(b)(9) ("[j]udicial review of all questions of law and fact" arising from a removal proceeding "shall be available only in judicial review of a final order" of removal, and "no court shall have jurisdiction . . . by habeas corpus . . . or by any other provision of law . . . to review such an order or such questions of law or fact."); *see also* 8 U.S.C. § 1252(g). Section 1252(a)(5) gives the courts of appeals exclusive jurisdiction over review of final orders of removal. *Ruiz-Martinez v. Mukasey*, 516 F.3d 102, 105 (2d Cir. 2008). "'[T]aken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue – whether legal or factual – arising from *any* removal-related activity can be reviewed only through' a petition for review filed with an appropriate court of appeals." *Asylum Seeker Advocacy Project v. Barr*, 409 F. Supp. 3d 221, 224 (S.D.N.Y. 2019) (quoting *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016)).

The Second Circuit has construed §§ 1252(a)(5) and 1252(b)(9) broadly to preclude district courts from exercising subject matter jurisdiction over an action that even "indirectly challeng[es]" an order of removal. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). In determining whether an action challenges an order of removal, the Second Circuit looks to "the substance of the relief that [the] plaintiff is seeking." *Id.*

Delgado is instructive. Delgado was subject to the same type of final removal order as Petitioner here, *i.e.* the reinstatement of an expedited removal order. Delgado filed an action in district court to compel United States Citizenship and Immigration Services ("USCIS") to adjudicate her application for a waiver of inadmissibility, claiming that USCIS's failure to adjudicate violated, *inter alia*, her due process and equal protection rights. *Id.* at 53-54. The Second Circuit held that §§ 1252(a)(5) and 1252(b)(9) precluded the district court from exercising jurisdiction over the action, because the action was a challenge to the order of removal: if USCIS were ordered to adjudicate the application, and were to grant the waiver, she would satisfy a necessary requirement for adjustment of status, and if she then succeeded in having her status adjusted, her removal order would be rendered invalid. *Id.* at 55; *accord, Singh v. USCIS*, 878 F.3d 441, 445-46 (2d Cir. 2017) (§ 1252(a)(5) precluded the district court from exercising jurisdiction over an action to compel USCIS to adjudicate the merits of the plaintiff's application for adjustment of status because ordering USCIS to consider that application could lead USCIS to approve that application, which in turn would lead to the nullification of his removal order); *Lopez Galvez v. Noem*, 25-cv-3229, 2025 WL 1823549, at *1 (E.D.N.Y. July 1, 2025) (Seybert, J.) ("§ 1252(a)(5) is a jurisdictional bar to [the court's] consideration of Petitioner's indirect challenge" to her removal order); *Leybinsky v. USCIS,* No. 19-cv-6154, 2021 WL 4407829, at *3-4 (E.D.N.Y. Sept. 26, 2021) (Kovner, J.) (§ 1252(a)(5) barred claim for district court order vacating the plaintiff's order of removal).

The petitioner in *Oriakhi v. DHS*, 762 F. Supp. 3d 183 (E.D.N.Y. 2025) (Matsumoto, J.), *aff'd*, No. 25-243-cv, 2026 WL 303642 (2d Cir. Feb. 5, 2026), sought a district court order staying his removal order and invalidating his removal order, claiming that his due process rights were violated because he was not afforded an opportunity to contest his removal proceedings. The Honorable Kiyo A. Matsumoto dismissed the action as barred by § 1252(a)(5), holding that only courts of appeals may review removal orders. *Oriakhi*, 762 F. Supp. 3d at 185-86. Likewise, in *Asylum Seeker*, the plaintiff organizations challenged the validity of *in absentia* removal orders

and sought a stay of removal and an order directing the government to give them an administrative hearing on motions to vacate those orders. *Asylum Seeker* held that the claims were barred by §§ 1252(a)(5) and 1252(b)(9) as indirect challenges to removal orders because the plaintiffs' "'ultimate goal' is to challenge the removal orders themselves." *Asylum Seeker*, 409 F. Supp. 3d at 225, 227 (quoting *Delgado*, 643 F.3d at 55). Thus §§ 1252(a)(5) and 1252(b)(9) deprive this Court of any claim by Petitioner that challenges the validity of the order issued against him in 1992.

Many other decisions have held that district courts are jurisdictionally barred from staying removal. *See Akhuemokhan v. Holder*, No. 12-cv-1181, 2013 WL 6913170, at *2 (E.D.N.Y. Dec. 30, 2013) (Bianco, J.) ("to the extent petitioner . . . is seeking a stay of, or any other relief from, his order of removal, this Court lacks jurisdiction to grant such relief"; citing § 1252(a)(5)); *see also Sauceda Henriquez v. Noem*, No. 25-CV-07023, 2026 WL 111665, at *4 (E.D.N.Y. Jan. 15, 2026) (DeArcy Hall, J.) (§§ 1252(a)(5) and 1252(b)(9) barred motion for stay of removal) *on apppeal*; *Metreveli v. Flanagan*, 25-cv-8039, 2025 WL 3496754, at *4-5 (S.D.N.Y. Dec. 5, 2025) (same); *Lin v. Borgen*, No. 25-cv-5618, 2025 WL 2158874, at *4-5 (S.D.N.Y. July 30, 2025) (concluding that §§ 1252(a)(5) and 1252(b)(9) jurisdictionally bar, *inter alia*, motion to stay execution of removal order); *Villatoro v. Noem*, No. 25-cv-5306, 2025 WL 2880140, at *2-4 (E.D.N.Y. Oct. 9, 2025) (Merchant, J.) (concluding that § 1252(a)(5) bars a claim for a stay of removal, including a claim that argued that petitioner was no longer within the removal period, and also citing § 1252(b)(9)); *Perez v. United States*, No. 25 Civ. 3400, 2025 WL 1558578, at *3 (S.D.N.Y. June 3, 2025) (denying application for stay of removal as barred by § 1252(a)(5)); *Oriakhi*, 762 F. Supp. 3d at 185-86 (dismissing as barred by § 1252(a)(5) action in which the petitioner, *inter alia*, sought a stay of removal); *Noor v. Homan*, 17-cv-1558, 2018 WL 1313233, at *3 (E.D.N.Y. Feb. 26, 2018) (Kuntz, J.) (holding that § 1252(a)(5) bars "a wide range of claims that were held to constitute challenges to removal orders, including requests for stays of removal . . .") (citing *Delgado*, 643 F.3d at 55); *Joseph v. U.S.A.G.*, No. 17-CV-5008, 2017 WL 6001776, at *1 (E.D.N.Y. Dec. 4, 2017) (Chen, J.) ("Since District Courts cannot review removal orders, they also cannot consider requests for stays of removal.")(citing § 1252(a)(5)); *Scott v. Napolitano*, 618 F. Supp. 2d 186, 191-92 (E.D.N.Y. 2009) (Vitaliano, J.) (§§ 1252(a)(5) and 1252(b)(9) bar action to stay removal order).

Thus, the Court should lift the stay, and decline to enter further orders related to removal.

Further, the Case Should Be Dismissed or Transferred to the Western District of Louisiana

Respondents respectfully further submit that, once the stay is lifted, this action warrants dismissal or transfer. Respondents concur with Petitioner's assertion in the Petition that ICE is detaining her in order to effectuate her removal, Ward Decl. ¶ 16. Indeed, the record reflects that ICE is prepared to remove petitioner once the stay is lifted. *Id.* The immediate concern Petitioner raised – whether there is a removal order – has been answered.

To the extent that Petitioner has any additional concerns regarding her detention incident to that removal, this is a "core" habeas action. *Trump v. J.G.G.* 604 S.Ct. 670, 672 (2025). Additionally, there is no question that the "district of confinement" and "immediate custodian," the habeas jurisdiction criteria, are not only not within this District, but also that these both lie within the Western District of Louisiana. Indeed, Petitioner acknowledges that she had been confined in Monroe, Louisiana, at the time this suit was filed. Thus, under *Ozturk v. Hyde*, 136 F.

4th 382, 390-91 (2d Cir. 2025), habeas jurisdiction lies in the Western District of Louisiana, not in this District, to address any other issues petitioner raises regarding her removability. The Court should either dismiss this action or transfer it.

Respondents thank the Court for its consideration of this submission.

Respectfully submitted,
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Enclosures (ICE Declaration; Harrold Declaration & exhibit thereto)

cc: Edward Cuccia, Esq.