UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GLORIA REGINA GARCIA PARRA, Petitioner, v. DAVID FAVRO, in his official capacity as Warden of the Clinton County Jail; JAMES BAUSCH, in his official capacity as Acting Deputy Field Office Director, Buffalo Field Office, U.S. Immigration & Customs Enforcement; PHILIP RHONEY, in his official capacity as Acting Field Office Director, Buffalo Field Office, U.S. Immigration & Customs Enforcement; TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; PAMELA BONDI, in her official capacity as U.S. Attorney General; KRISTI NOEM, in her official capacity as Secretary of Homeland Security, Respondents.	Civil Action No.: 9:26-cv-000393 AMN

FEDERAL RESPONDENTS'[1] RESPONSE TO PETITION PURSUANT TO ORDER TO SHOW CAUSE

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[1] The Federal Respondents are James Bausch, Philip Rhoney, Todd Lyons, Pamela Bondi, and Kristi Noem, in her official capacity as Secretary of Homeland Security.

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PRELIMINARY STATEMENT

This case does not implicate 8 U.S.C. § 1225 or 8 U.S.C. § 1226, which cease to apply once a final order of removal is entered. Petitioner has been arrested with a warrant of removal and has been detained after a final order of removal had been entered and the initial removal period lapsed. *See* 8 U.S.C. § 1231(a)(1)(A). Therefore, Petitioner has been properly detained pursuant to 8 U.S.C. § 1231(a)(6). Petitioner also does not—and cannot—claim her detention violated § 1231(a)(6), which provides that "an alien ordered removed who" was inadmissible under 8 U.S.C. § 1182 "may be detained." Petitioner also does not dispute any of the following facts: (1) the immigration court issued a final order of removal; (2) in the removal proceedings, the immigration court found Petitioner inadmissible pursuant to 8 U.S.C. § 1182; and (3) the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A) has passed.

Petitioner claims her detention violates due process. Post-removal period detention itself does not violate due process. Twenty-five years ago, the Supreme Court found detention after the conclusion of removal proceedings, and after the initial statutory removal period, comports with the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). The Supreme Court further explained that it is presumptively reasonable for the Government to detain a person who is subject to a final order of removal—after the initial removal period—for up to six months from a due process perspective. Petitioner filed suit the day she was detained. She has not yet been detained for a full week. Petitioner has not rebutted the presumption of reasonableness. Therefore, the Petition should be dismissed. This Court does not have jurisdiction over Petitioner's attempt to indirectly challenge her 2010 order of removal, which was entered through a statutory in absentia process. 8 U.S.C. §§ 1252(a)(5), (b)(9), and (g). And, that claim fails because her argument should be made to the immigration court by way of a motion to reopen her removal proceedings. 8 U.S.C. § 1229a(b)(5)(C)(ii). For these reasons, the Petition should be denied.

FACTUAL BACKGROUND

Petitioner, a citizen and national of Ecuador, entered the United States without inspection and outside of a port of entry on April 2, 2009. Hancox Decl. ¶ 4. An immigration official encountered her shortly after. *Id.* Petitioner was initially placed in expedited removal proceedings, but then claimed a fear of return to Ecuador, which resulted in an asylum officer making a credible fear finding. *Id.* ¶¶ 4, 5. As a result, she received a Notice to Appear and was placed in removal proceedings. *Id.* ¶ 5. In the removal proceedings, she was released on bond. *Id.* ¶¶ 6, 7. But, after she did not appear for subsequent proceedings, an immigration judge issued an order of removal. *Id.* ¶¶ 9-10.

On August 4, 2010, a warrant was issued for her arrest and removal. Hancox Decl. ¶ 11. Additionally, Petitioner was directed to report for removal on August 31, 2010. *Id.* ¶ 12. Again, she did not appear. *Id.*

Contrary to the Petition's allegations, a warrant was present—and shown to Petitioner—as a part of her arrest on March 6, 2026. Two warrants were issued: a 2010 warrant and a March 6, 2026 warrant. Hancox Decl. ¶ 13. Petitioner was arrested by immigration officers and taken into custody on March 6, 2026. *Id.* She admitted she knew about her removal order. *Id.* Later that day, she filed this suit. *See* Dkt. # 1. She has not moved to reopen her removal proceeding. *Id.* ¶ 14.

LEGAL BACKGROUND

Removal proceedings culminate in the immigration judge "decid[ing] whether an alien is removable from the United States." 8 U.S.C. § 1229a(c)(1)(A); 8 C.F.R. §§ 1240.1(a)(1)(i), (c). Congress has provided statutory procedures for handling aliens who fail to appear. 8 U.S.C. § 1229a(b)(5). Specifically, "[a]ny alien who, after written notice required under [8 U.S.C. § 1229(a)(1) or (2)] has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed in absentia" when it has been established "by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable." *Id.* § 1229a(b)(5)(A).[2]

If an immigration judge determines an alien is removable, the immigration judge enters an order of removal. When the alien's removal order is entered in his or her absence, the removal order is administratively final immediately upon entry of the order. *See* 8 C.F.R. § 1241.1(e). A final removal order can be executed at any time. 8 U.S.C. §§ 1231(a)(1)(B)(i), 1252(b)(8)(C); 8 C.F.R. § 1241.33. Where the immigration court enters a final removal order, 8 U.S.C. § 1231(a) governs the alien's detention until removal is effectuated.

An alien can seek rescission of a removal order issued in absentia "if the alien demonstrates that the alien did not receive notice in accordance with [8 U.S.C. § 1229(a)(1) or (2)] of this title." *Id.* § 1229a(b)(5)(C)(ii); *cf.* 8 C.F.R. §§ 241.6, 1241.6. Of note here, "[t]he filing of the motion to reopen described in [8 U.S.C. § 1229a(b)(5)(C)(ii)] shall stay the removal of the alien pending disposition of the motion by the immigration judge." 8 U.S.C. § 1229a(b)(5)(C).

Immigration officials are statutorily authorized to detain an alien who has been "ordered removed." *See* 8 U.S.C. § 1231(a). "Once the [initial] removal period defined in [8 U.S.C. § 1231] begins, an alien in the United States will be taken into custody pursuant to the warrant of removal," and "[a]ny bond previously posted will be canceled unless it has been breached or is subject to being breached," regardless of whether an alien was previously detained, and regardless of any prior detention authority. 8 C.F.R. § 241.3(a), (b).

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[2] Congress declared this standard can be met where "written notice" has been "provided at the most recent address provided under section 1229(a)(1)(F) of this title." 8 U.S.C. § 1229a(b)(5)(A). Congress also declared as follows: "No written notice shall be required under subparagraph (A) if the alien has failed to provide the address required under section 1229(a)(1)(F) of this title." *Id.* § 1229a(b)(5)(B).

In the initial "removal period," which lasts 90 days but can be extended for another 90 days, detention is generally mandatory. 8 U.S.C. § 1231(a)(2)(A), 1231(a)(1)(C). The initial removal period begins when "the order of removal becomes administratively final." 8 U.S.C. § 1231(a); 8 C.F.R. §§ 241.1, 1241.1. The initial removal period begins on the latest of the following: (1) the date the order of removal becomes administratively final; (2) 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; or (3) if the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement. 8 U.S.C. § 1231(a)(1)(B).

8 C.F.R. § 241.2 authorizes various immigration officials to issue a warrant of removal. 8 U.S.C. § 1231(a)(6) gives the Government the discretionary authority to continue to detain certain categories of aliens beyond the removal period:

> **(6) Inadmissible or criminal aliens**
>
> An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6). Stated differently, this statute allows the Government to "detain[] beyond the removal period" four categories of aliens who have been "ordered removed": (1) those who are "inadmissible under section 1182 of this title"; (2) those who are removable under certain specified statutes; (3) those who have "been determined . . . to be a risk to the community" and (4) those who are "unlikely to comply with the order of removal." *Id.*; *see also Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022) (analyzing § 1231(a)(6) and its four statutory categories).

"Section 1231(a)(6) does not expressly specify how long detention past the 90-day removal period may continue for those who fall within the four designated statutory categories." *Arteaga-Martinez*, 596 U.S. at 579. However, the Supreme Court has determined that detention remains presumptively valid for a period of six months. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In *Zadvydas*, the Supreme Court interpreted § 1231(a)(6) to limit an alien's detention beyond the 90-day to the period "reasonably necessary to bring about the alien's removal from the U.S." *Id.* The Supreme Court held that the removal period could be extended to six months and remain presumptively reasonable. *Id.* Only after the six-month period of detention would an alien be entitled to release, and even then only if they could show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

Aliens detained pursuant to § 1231(a)(6) receive custody determinations by immigration officials, which are conducted at 90-day intervals unless removal is imminent. 8 C.F.R. §§ 241.4(d)(1), (g)(4); *Arteaga-Martinez*, 596 U.S. at 579–81 ("On its face, the statute says nothing about bond hearings before immigration judges or burdens of proof, nor does it provide any other indication that such procedures are required."). Custody determinations are discretionary decisions. 8 C.F.R. § 241.4(d)(1); *see* 8 U.S.C. § 1231(h) ("Nothing in [8 U.S.C. § 1231] shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person."). The burden of proof lies on the alien to qualify: officials "may release an alien if the alien demonstrates to the satisfaction [the official] that his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending . . . removal from the United States." *Id.* The regulations provide six mandatory findings and eight factors the official must weigh in deciding whether to exercise this discretionary authority. *Id.* § 241.4(f), (g), (h).[3]

Aliens detained under § 1231(a)(6) do not have a right to a bond hearing before an immigration judge or to be released. *See Arteaga-Martinez*, 596 U.S. at 579 ("Section 1231(a)(6) does not expressly specify how long detention past the 90-day removal period may continue for those who fall within the four designated statutory categories."), 581 ("On its face, [§ 1231(a)(6)] says nothing about bond hearings before immigration judges or burdens of proof, nor does it provide any other indication that such procedures are required."). Though an alien does not have a statutory right to release or to a bond hearing, an alien may be entitled to relief if she establishes a due process violation under the standard set forth in *Zadvydas*, 533 U.S. at 690–701.

In *Zadvydas*, 533 U.S. at 689, the Supreme Court held that "in light of the Constitution's demands," "indefinite and potentially permanent" detention under § 1231 would raise a "serious question" under the Fifth Amendment's Due Process Clause. The Supreme Court concluded that detention of a noncitizen for up to six months under § 1231 is "presumptively reasonable," but added that "once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing." *Id.* at 700–01.

Congress has carefully phased, channeled, and limited the scope of judicial review of immigration decisions. 8 U.S.C. § 1252. As for phasing, Congress prioritized resolution of the administrative removal process before allowing for review in the judicial process. *Id.* § 1252(d)(1). To that end, § 1252(b)(9) provides, "[j]udicial review of all questions of law and fact, including

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[3] Any immigration officer's decision to release an alien would be "subject to . . . terms of supervision." 8 U.S.C. § 1231(a)(3); Further, if release is granted in the officer's discretion, a second discretionary decision ensues regarding the conditions of release. 8 C.F.R. §§ 241.4(j), 241.5 (discussing conditions).

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 order under this section." Congress further explained, "no court shall have jurisdiction, by habeas corpus under [28 U.S.C. § 2241] or any other habeas corpus provision, by [28 U.S.C. §§ 1361, 1651], or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact" aside from under § 1252. As for channeling, Congress established the petition for review process and designated the circuit courts as the exclusive venue for review of orders of removal. 8 U.S.C. § 1252(a)(5) ("[The] sole and exclusive means for judicial review of an order of removal . . . , except as provided in subsection (e).").[4] Indeed, "constitutional claims or questions of law" can be raised then and there. *Id.* § 1252(a)(2)(D). But even filing a petition for review "does not prevent" detention under 8 U.S.C. § 1231(a) "and does not require . . . defer[ral of] removal of the alien." *Id.* § 1252(b)(8).

Congress limited judicial review pertaining to discretionary decisions, adjudicating cases, and executing removal orders. Congress precluded review of decisions related to discretionary relief, "regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under" 8 U.S.C. § 1158. 8 U.S.C. § 1252(a)(2)(B). And, Congress limited review of "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders

[4] The petition for review process also allows for judicial reviews of motions to reopen the removal proceedings or to reconsider the order of removal. 8 U.S.C. § 1252(b)(6).

against any alien under this chapter" so that review is only authorized by § 1252. 8 U.S.C. § 1252(g). Finally, for aliens subject to removal orders entered in absentia, Congress limited the petition for review issues as follows: "(except in cases described in [8 U.S.C. § 1252(b)(5)]) . . . (i) the validity of the notice provided to the alien, (ii) the reasons for the alien's not attending the proceeding, and (iii) whether or not the alien is removable." 8 U.S.C. § 1229a(b)(5)(D).

STANDARD OF REVIEW

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 126 n.20 (2020).

ARGUMENT

I. Petitioner's Arrest and Detention Complies with 8 U.S.C. § 1231(a)(6).

Petitioner has been arrested with a warrant present and detained pursuant to 8 U.S.C. § 1231(a)(6), which states, "[a]n alien ordered removed who is inadmissible under [8 U.S.C. § 1182], . . . may be detained beyond the removal period . . . ." *Arteaga-Martinez*, 596 U.S. at 579. Petitioner does not dispute an immigration judge issued an order of removal, that the order of removal is final, or that she was inadmissible under 8 U.S.C. § 1182.[5] Hancox Decl. ¶¶ 10-12. She

[5] The Petition states Petitioner has pending immigration applications. But there is no authority that supports the proposition that pending applications affect detention authority under § 1231(a)(6). To the contrary, detention authority under the statute in this case derives from (1) a final order of removal, and (2) inadmissibility under § 1182 in the underlying removal proceedings. To the extent Petitioner implies those pending applications affect her *removability*, which the Government does not concede, the venue for those claims is either in the immigration courts or before United States Citizenship and Immigration Services. 8 U.S.C. § 1229a(b)(5)(C)(ii) (authorizing motion to reopen); 8 C.F.R. § 1240.10(c), (d) (describing removability inquiry); 8 C.F.R. § 1240.8(d)

also does not dispute the removal period has run. Therefore, immigration officials had the authority to arrest and detain Petitioner under § 1231(a)(6).[6] Moreover, the statute does not provide for bond hearings, so her detention without a bond hearing does not run afoul of the statutory procedures. Notably, however, ICE reviews custody determinations at 90-day intervals unless removal is imminent. 8 C.F.R. § 241.4.

II. Petitioner's Detention Complies Due Process.

Because § 1231(a)(6) authorizes Petitioner's detention, Petitioner's claim that she has been denied due process fails. *See, e.g.*, *Lin v. Francis*, No. 25 CIV. 10001 (PAE), 2025 WL 3751855, at *5 (S.D.N.Y. Dec. 29, 2025) (finding no due process violation because ICE had lawfully detained the petitioner under § 1231(a)(6)). Section 1231(a)(6) states that certain noncitizens—including those subject to final removal orders, such as Petitioner—"*may* be detained beyond the removal period and, *if* released, shall be subject to the terms of supervision in [§ 1231(a)(3)]." (emphasis added). Thus, the decision whether to detain an alien, and later, the decision whether to release an alien both lie within the discretion of the Executive Branch.

A noncitizen detained under § 1231(a)(6) does not have a statutory *right* to a bond hearing or to immediate release. *See* 8 U.S.C. § 1231(a)(6); *Arteaga-Martinez*, 596 U.S. at 580. Nor does § 1231(a)(6) set forth any other process due to Petitioner, and her Petition presents no argument otherwise. *See generally* Dkt. # 1. Indeed, Petitioner offers no caselaw "supporting the improbable proposition that—with [her] not having appeared at [her] removal hearing or evidently had any

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(describing burdens as to removal and relief from removal). This Court does not have jurisdiction over those claims, which arise out of removal proceedings. 8 U.S.C. §§ 1252(a)(5), 1252(b)(9), and 1252(g).

[6] Contrary to the Petition's allegations, a warrant was present—and shown to Petitioner—as a part of the arrest. Hancox Decl. ¶ 13.

contact in the ensuing [16] years with ICE—ICE was required either to (1) give [her] advance notice, upon encountering [her] . . . before detaining [her], or (2) to release [her] on supervisory conditions after it encountered [her]." *Lin*, 2025 WL 3751855, at *3.

Petitioner does not identify whether she claims she was entitled to pre-detention process or, if so, what process she believes she was due, or why—although the record establishes a warrant was present as a part of her arrest. *See generally* Dkt. # 1. But the burden of establishing what process was due falls on Petitioner, who must establish a deprivation of her rights leading to an unlawful detention. *See, e.g.*, 28 U.S.C. § 2241(c)(3) (prisoner is not entitled to habeas relief unless she "is in custody in violation of the Constitution or laws or treaties of the United States."); *Sicap v. Decker*, No. 1:20-CV-02638-MKV, 2020 WL 5440591, at *2 (S.D.N.Y. Sept. 9, 2020) ("When seeking a writ of habeas corpus pursuant to § 2241, the petitioner 'bears the burden of proving that he is being held contrary to law; and because the habeas proceeding is civil in nature, the petitioner must satisfy his burden of proof by a preponderance of the evidence.'" (quoting *Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011)). Even if the Court overlooks Petitioner's failure to articulate the nature of her due process claim, the record establishes that no due process violation occurred because Petitioner does not contest that there exists a significant likelihood that she will be removed in the reasonably foreseeable future under *Zadvydas*, and because her due process arguments are indirect challenges to her removal order that this Court lacks jurisdiction to review.

A. Petitioner's Due Process Claim is Premature Because She Has Been Detained for Less Than Six Months.

Petitioner cannot otherwise establish a due process violation under *Zadvydas*, 533 U.S. at 690-701. Indeed, any claim that Petitioner's detention violates due process must fail because her current detention has not lasted six months. Petitioner cannot establish a due process violation under *Zadvydas* because she been detained for approximately ***six days***—far short of the presumptively reasonable *six-month* detention duration contemplated there. Petitioner came into custody on March 6, 2026. Hancox Decl. ¶ 13. The presumptively reasonable detention period will not elapse until September 6, 2026. Thus, Petitioner's confinement is currently presumptively reasonable under *Zadvydas* and Petitioner has done nothing to rebut that presumption.

As a result, Petitioner's due process claim is premature under the framework set forth in *Zadvydas*. *See, e.g.*, *Lucce v. Freden*, No. 25-CV-6342-MAV, 2025 WL 3214485, at *3 (W.D.N.Y. Nov. 18, 2025) (dismissing petition as premature where petitioner was detained under § 1231 for under two months); *De Oliveira Jimenez v. Searls*, No. 22-CV-960 (JLS), 2023 WL 11134381, at *5 (W.D.N.Y. Mar. 2, 2023) (dismissing petition as premature where petitioner was detained under § 1231 for under two months); *Mitchell v. Wolf*, No. 20-CV-1183 (JLS), 2021 WL 1516450, at *4–6 (W.D.N.Y. Apr. 15, 2021) (dismissing petition as premature where petitioner was detained under § 1231 for under six months); *Contreras Blanco v. Garland*, No. 21-CV-172-LJV, 2021 WL 3667201, at *2 (W.D.N.Y. Aug. 18, 2021) (dismissing petition as premature where petitioner was detained under § 1231 for under two months); *Bazile v. Garland*, No. 20-CV-1819 JLS, 2021 WL 9455715, at *3 (W.D.N.Y. July 1, 2021) (dismissing petition as premature where petitioner was detained under § 1231 for under two months); *Frederick v. Feeley*, No. 19-CV-6090-FPG, 2019 WL 1959485, at *4 (W.D.N.Y. May 2, 2019) (dismissing petition as premature when the petitioner "ha[d] not been detained beyond the presumptively reasonable period of detention").

After six months of detention, release is not automatic for due process purposes, either. The Supreme Court explained Petitioner can only shift the burden to the government, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," at which time "the [g]overnment must respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701. Because Petitioner's due process claim is premature, the Court need not determine the likelihood of her removal in the reasonably foreseeable future. *See Gabriel v. Immigr. & Custom Enf't*, No. 08-CV-6178(CJS)(VEB), 2009 WL 1272291, at *4 (W.D.N.Y. Feb. 23, 2009), *report and recommendation adopted*, 2009 WL 2413674 (W.D.N.Y. Aug. 4, 2009) ("[C]ourts in this district have concluded that an analysis of whether the petitioner will be repatriated in the reasonably foreseeable future is not required because the petitioner's period of confinement had not yet exceeded that deemed presumptively reasonable by the Supreme Court."); *Tam v. Dep't of Homeland Sec.*, No. 05-CV-473S, 2006 WL 839425, at *2 (W.D.N.Y. Mar. 28, 2006) ("This case does not require an analysis of whether petitioner will be repatriated in the reasonably foreseeable future because petitioner's period of confinement has not yet exceeded that deemed presumptively reasonable by the Supreme Court.").

And Petitioner has not alleged that Petitioner's removal is not likely to occur in the reasonably foreseeable future; to the contrary, she alleges that Respondents will "swiftly deport her" to Ecuador. Dkt. # 1 ¶ 15. The record lacks other evidence of any impediment to her removal to Ecuador other than the restriction on transfer ordered by this Court. *See Zadvydas*, 533 U.S. at 699-700. For these reasons, Petitioner's due process claim is both premature and unsupported.

B. The Court Lacks Jurisdiction Over Petitioner's Remaining Claims That Challenge her Order of Removal.

The Court is without jurisdiction to consider the balance of Petitioner's so-called due process claims in which she essentially calls on the Court to take steps to prevent her removal from this country. Because those claims are, at bottom, challenges her order of removal, this Court lacks jurisdiction to consider them.

The REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005), amended the judicial review provisions of the Immigration and Nationality Act to explicitly provide that exclusive jurisdiction over claims that directly or indirectly challenge an order of removal lies in the federal courts of appeals. *See, e.g.*, *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) (noting that § 1252(a) "clearly preclude[s] [a] district court's entertaining of a direct challenge to a removal order," and it "applies equally to preclude . . . an indirect challenge"). Three subsections of 8 U.S.C. § 1252 are of particular significance: § 1252(a)(5), § 1252(b)(9), and § 1252(g).

Section 1252(a)(5) 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 entered or issued under any provision of this chapter.". In turn, § 1252(b)(9) provides that "[j]udicial 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 a [noncitizen] from the United States . . . shall be available only in judicial review of a final order." 8 U.S.C. § 1252(b)(9). Taken together, § 1252(a)(5) and § 1252(b)(9) channel all challenges to removal orders to the federal courts of appeals.

Additionally, § 1252(g) prohibits courts from "hear[ing] any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General [or Secretary of Homeland Security] to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) expressly bars jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 28 [U.S.C. § 2241], or any other habeas corpus provision, and [28 U.S.C. §§ 1361, 1651]." *Id.* (alteration added). Addressing § 1252(g), the Supreme Court has held that the provision "mak[es] it clear that" decisions to "commence proceedings, adjudicate cases, or execute removal orders"—as opposed to, for example, "decisions to . . . surveil the suspected violator, [or] reschedule [a] deportation hearing," are funneled into "the 'zipper' clause of § 1252(b)(9)." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-83 (1999). As the Supreme Court emphasized, this provision was "specifically directed at the deconstruction, fragmentation, and hence prolongation of removal proceedings" and designed to protect the Executive's discretion when it comes to the three enumerated acts. *Id.* at 486-87.

The Second Circuit has held that § 1252(a)(5) prevents a district court from considering not only *direct* challenges to a removal order, but indirect challenges as well. *Delgado*, 643 F.3d at 55. Although not every noncitizen's suit is a *per se* challenge to a removal order, a district court's jurisdiction to hear the claim "will turn on the substance of the relief that a plaintiff is seeking." *Id.* Applying that standard, the Second Circuit held that the district court did not have jurisdiction over a mandamus action to compel USCIS to adjudicate the merits of a petitioner's Form I-212 application for permission to reapply for admission after deportation or removal. *Id.* at 54-55. The Second Circuit held that even if a grant of the I-212 waiver would not "per se prevent her removal," it was "inextricably linked" to her removal order because it was "a necessary prerequisite to her ultimate goal of adjustment of status" and thus constituted an indirect challenge to her order of removal. *Id.* at 55.

Based on these provisions, this Court lacks jurisdiction to consider the Petitioner's claims which are inextricably linked to her final order of removal. Petitioner takes issue with (i) the adequacy of the notice that she was provided for a hearing in immigration court, *see* Dkt. # 1 ¶ 6; (ii) the fact that she was ordered removed *in absentia*, *see id.* ¶¶ 1, 6, 15; and (iii) the fact that she has been detained for removal despite her purported marriage to a U.S. citizen, her two U.S. citizen children, and having certain immigration applications pending, *see id.* ¶¶ 5, 31. Based on these assertions, Petitioner seeks relief because she predicts that she is "*likely to need federal court intervention to ameliorate the removal order* that was issued against her *in absentia* in violation of her due process rights" as she is concerned "Respondents will not hesitate to swiftly deport her to Ecuador." *Id.* ¶ 15 (emphasis added). When she states she will need assistance to "ameliorate the removal order," Petitioner could not be more explicit: through this habeas proceeding, Petitioner asks the Court to interfere with the lawful execution of her removal order. *See* Dkt. 1 at Prayer for Relief (asking the Court to temporarily "stay Petitioner's removal until this action is decided"). In other words, the "true error of law" Petitioner identifies is that she is properly subject to a final order of removal. *See Singh v. Napolitano*, 500 F. App'x 50, 52 (2d Cir. 2012) (finding no jurisdiction to review habeas petition in which it was alleged the government violated due process by not following regulations when rescinding a grant of asylum). .

Petitioner's case resembles *Barros Anguisaca v. Decker*, 393 F. Supp. 3d 344, 350 (S.D.N.Y. 2019), in which a habeas petitioner asked the district court to stay his removal because, as he argued, his removal order was based on a defective charging document. *See id.* Recognizing that the petitioner's "challenge . . . on its face [was] a sure, if indirect, attack on the removal order itself," the court found it lacked jurisdiction under § 1252. *Id.* This Petition is no different, as Petitioner asks the Court to temporarily "stay Petitioner's removal until this action is decided" and even speculates that she will "*need federal court intervention to ameliorate the removal order* that was issued against her." Dkt. # 1 ¶ 15 & Prayer for Relief. Accordingly, the same result should follow here: § 1252 deprives this Court to adjudicate Petitioner's habeas petition to the extent it seeks to interfere with her final order of removal.

Because her habeas petition directly implicates the validity of Petitioner's removal order, the Court lacks jurisdiction to entertain her claims. *See, e.g.*, 8 U.S.C. § 1252(g). Petitioner may seek to reopen her removal proceedings before an immigration judge and raise those concerns in that forum.

CONCLUSION

For these reasons, the Federal Respondents respectfully request that this Court enter an Order denying the Petition for a Writ of Habeas Corpus along with such further relief as this Court deems fair, just, and equitable.

Dated: March 11, 2026

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