U.S. Department of Justice

United States Attorney
Eastern District of New York

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Brooklyn, New York 11201

June 29, 2026

BY ECF
Honorable Ann M. Donnelly
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Cayamcela Caceres v. Mullin, et al.*, No. 26-cv-03759 (Donnelly, J.)

Dear Judge Donnelly:

This Office represents the Respondents in this habeas action, in which Juan Gabriel Cayamcela ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* ECF No. 1 ("Petition" or "Pet."). Respondents respectfully write in accordance with the Court's Order to Show Cause dated June 23, 2026 ("OTSC"). [1] The OTSC directed Respondents, in pertinent part, to show cause, in writing why the Petition should not be granted.

Respondents respectfully submit that the Petition should be denied. For reasons set forth below, the Court should dismiss the Petition as jurisdictionally barred by several subsections of 8 U.S.C. § 1252. Alternatively, the Court should deny the Petition on the merits, because Petitioner is subject to a final order of removal and is therefore lawfully detained pursuant to 8 U.S.C. § 1231(a)(6). And because this action should be dismissed, the Court should vacate its June 23, 2026 Order that prohibits Respondents from removing Petitioner and from transferring him outside this District.

Relevant Background

On or about July 15, 2013, Petitioner entered the United States without inspection at or near Naco, Arizona and was subsequently encountered by United States Border Patrol ("USBP") in the Sonita Border sector. *See* Declaration of Colin Quinn ("Quinn Decl.") ¶3 & Ex. A. After determining that Petitioner had unlawfully entered the United States, Petitioner was then arrested and transported to the Sonita Border Patrol Station for processing. *Id.*

On July 16, 2013, USBP issued Petitioner a Form I-860, Notice and Order of Expedited Removal, charging inadmissibility pursuant to Immigration and Nationality Act ("INA") § 212(a)(7)(A)(i)(I) [8 U.S.C. § 1182(a)(7)(A)(i)(I)]. Quinn Decl. ¶4 & Ex. B.

[1] In the Court's June 26, 2026 Order, the Court extended the Respondent's deadline to June 29, 2026.

On that same date, CBP issued a Form I-296, Notice to Alien Ordered Removed/Departure Verification ("Form I-296"), prohibiting him from entering, attempting to enter or being in the United States for a period of 5 years from the date of his departure from the United States, as a consequence of having been found inadmissible as an arriving alien in proceedings under INA § 235(b)(1) [8 U.S.C. § 1225(b)(1)]. Quinn Decl. ¶5 & Ex. C. Petitioner subsequently claimed fear and was issued an NTA.

On August 7, 2013, Petitioner was served with a Notice to Appear ("NTA") Form I-862, charging him with removability pursuant to INA § 212(a)(7)(A)(i)(I) [8 U.S.C. § 1182(a)(7)(A)(i)(I)], as an immigrant who at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the INA, or who is not in possession of a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the INA. Quinn Decl. ¶6 & Ex. D.

On August 9, 2013, Petitioner was served with a Form I-220A, Order of Release on Recognizance ("OREC"), and released from custody on his own recognizance. Quinn Decl. ¶7 & Ex. E. Among the conditions of the OREC, Petitioner had to report for any hearing as directed by the Executive Office of Immigration Review ("EOIR") and report for scheduled court dates. *Id.*

On or about November 4, 2013, DHS filed the NTA with EOIR, which initiated removal proceedings against Petitioner. Quinn Decl. ¶8. On July 18, 2014, Petitioner, with counsel, appeared for a master calendar at an immigration court in New York. Quinn Decl. ¶9. The immigration judge ("IJ") sustained the charge removability on the NTA. Petitioner filed an application for relief from removal with EOIR. *Id.*

On April 20, 2016, Petitioner failed to appear for his scheduled merits hearing. Quinn Decl. ¶10. The IJ ordered Petitioner removed, *in absentia*, from the United States to Ecuador. Quinn Decl. ¶10 & Ex. F.

On June 20, 2026, while reviewing DHS databases, officers observed that Petitioner was issued a removal order on April 20, 2016 by an IJ, which was not appealed at any time. Quinn Decl. ¶11. A Form I-205 Warrant of Removal/Deportation was issued at approximately 7:18 a.m. for Petitioner based upon a final order of removal by an IJ. Quinn Decl. ¶11 & Ex. G.

On that same date, ICE's Long Island Fugitive Operations team conducted a targeted enforcement action in East Meadow, New York, searching for Petitioner as the primary target. Quinn Decl. ¶12 & Ex. H. This targeted enforcement action was pursuant to the Form I-205. *Id.* During this surveillance, officers observed a male matching the physical description of the primary target in a nearby vehicle outside the target's residence. *Id.* ICE officers, in high visibility markings that said "POLICE", "ERO", "ICE", conducted a vehicle stop, and after identifying themselves as ICE officers, the officers engaged in a consensual field interview with the driver, who turned out to be Petitioner. *Id.* Petitioner provided officers with a New York State Driver's license bearing Petitioner's name and date of birth. *Id.* After positively identifying Petitioner, he was arrested pursuant to the I-205 Warrant of Removal/Deportation at approximately 7:52 a.m. *Id.* Petitioner was detained pursuant to 8 U.S.C. §1231(a). Quinn Decl. ¶13. Petitioner was also served with an OREC revocation notice. Quinn Decl. ¶13 & Ex. I.

At the time of his arrest, ICE was in possession of an Ecuadorian passport for Petitioner, which expired on September 5, 2019, and Petitioner's birth certificate. Quinn Decl. ¶17. Ecuador accepts their nationals and citizens with any copy of national identification document(s) regardless of expiration dates. *Id.* Petitioner remains in custody for the purpose of effectuating his removal pursuant to INA § 241(a) [8 U.S.C. §1231(a)]. *Id.* This Court's Order dated June 23, 2026, prohibiting ICE from removing Petitioner, is presently the sole impediment from removal. *Id.*

Legal Argument

It is "'axiomatic' under the principle of sovereign immunity 'that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction.'" *Adeleke v. United States*, 355 F.3d 144, 150 (2d Cir. 2004) (quoting *United States v. Mitchell*, 463 U.S. 206, 212 (1983)) (collecting cases). When the United States waives its immunity from suit, "limitations and conditions upon which the Government consents to be sued must be strictly observed, and exceptions thereto are not to be implied." *Lehman v. Nakshian*, 453 U.S. 156, 161 (1981); *see also United States v. Nordic Village, Inc.*, 503 U.S. 30, 33-34 (1992). Many statutes independently bar judicial review by this Court: 8 U.S.C. §§ 1252(a)(5), (b)(9), and (g). Thus, this Court lacks jurisdiction.[2]

I. THIS COURT LACKS JURISDICTION OVER THIS ACTION BECAUSE THIS ACTION IS A CHALLENGE TO A REMOVAL ORDER

This action is, in substance, a challenge to the Petitioner's final order of removal, and, therefore, is barred because Congress has enacted jurisdiction-stripping statutes that preclude the district courts from hearing challenges to the validity of a final order of removal.

A. This Action Is Jurisdictionally Barred By 8 U.S.C. §§ 1252(a)(5), 1252(b)(9)

First, 8 U.S.C. § 1252(a)(5) provides in relevant part 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." As a corollary to § 1252(a)(5), 8 U.S.C. § 1252(b)(9) provides that "[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 any other provision of law . . . to review such an order or such questions of law or fact." Thus, 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). The "clear intent'" of Congress in enacting § 1252(a)(5) was "'to have all challenges to removal orders heard in a single forum,' i.e., the courts of appeals." *Spina v. DHS*, 470 F.3d 116, 124 (2d Cir. 2006) (quotation omitted). "'[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) (emphasis by *J.E.F.M.*)); *accord Rodriguez v. Warden, Orange County Correctional Facility*, No.

[2] Dismissal of an action is warranted under Fed. R. Civ. P. 12(b)(1) when "the district court lacks statutory or constitutional power to adjudicate it." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). The plaintiff bears the burden of showing – by a preponderance of evidence – that the court has jurisdiction. *See id.* Courts may refer to evidence outside the pleadings. *Id.*

23-cv-242, 2023 WL 2632200, at *4 (S.D.N.Y. Mar. 23, 2023).

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 a final order of removal. *Delgado*, 643 F.3d at 55. Delgado filed an action in district court under the Administrative Procedure Act, 5 U.S.C. §§ 701-06 ("APA") to compel USCIS to adjudicate her application for a waiver of inadmissibility. *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, however indirectly, 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) (holding that § 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); *Villatoro v. Noem*, No. 25-cv-5306, 2025 WL 2880140, at *3 (E.D.N.Y. Oct. 9, 2025) (Merchant, J.) ("[t[he plain language of Section 1252 precludes district courts from exercising jurisdiction over direct challenges to removal orders); *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).

Notably, the §§ 1252(a)(5) and 1252(b)(9) jurisdictional bar encompasses claims predicated on violations of the United States Constitution. *Delgado* applied the bar to due process and equal protection claims. *Delgado*, 643 F.3d at 54-55; *accord*, *Villatoro v. Shanahan*, No. 26-cv-1210, 2026 WL 948297 (E.D.N.Y. Apr. 7, 2026) (Donnelly, J.) (§§ 1252(a)(5) and 1252(b)(9) barred claim predicated on due process violation); *Sauceda Henriquez v. Noem*, 25-cv-7023, 2026 WL 111665, at *4 (E.D.N.Y. Jan. 15, 2026) (DeArcy Hall, J.) ("That Petitioners challenge their detention as violative of due process . . . and the Suspension Clause . . . does not alter the Court's inability to review the Petition"), *appeal filed* January 29, 2026; *Villatoro v. Noem*, 2025 WL 2880140 at *3 (§ 1252(a)(5) barred claim predicated on alleged due process violation).

The jurisdictional bar also extends to claims predicated on statutory violations. The Second Circuit applied that bar to claims under the APA in *Delgado*, 643 F.3d at 54-55. And the Court in *Villatoro v. Noem* applied that bar to claims under the APA and the Immigration and Nationality Act, based on the contention that ICE lacked legal authority to remove the petitioner. *Villatoro v. Noem*, 2025 WL 2880140 at *2-3 (citing § 1252(a)(5)); *see also Sauceda Henriquez*, 2026 WL 111665, at *4 (APA claim subject to §§ 1252(a)(5) and 1252(b)(9) bar).

Consistent with *Delgado*, several district judges in this Circuit, among them three in this

District, have held that § 1252(a)(5) bars claims to enjoin ICE from detaining an individual for the purpose of removal. Two of these decisions also cite § 1252(b)(9).

In *Orellana Lainez v. Blanche*, 26-cv-3103, 2026 WL 1758249 (E.D.N.Y. June 18, 2026) (Donnelly, J.), the petitioner sought immediate release from detention and an injunction preventing the government from re-detention. Id. at *3. Your Honor found that the petitioner was detained pursuant to 8 U.S.C. § 1231 "so that he can be removed from the country". *Id.* Your Honor held that "[r]eleasing him from mandatory detention would frustrate the government's ability to remove him". Id. Your Honor concluded that the petition was jurisdictionally barred by § 1252(a)(5) because the "petitioner is making an indirect challenge to the removal order, and the requested relief would leave the government without a mechanism to enforce the removal order." Id.

In *Villatoro v. Shanahan*, the petitioner, who was detained by ICE for the purposes of removing him, sought an order directing ICE to release him from custody and prohibiting ICE from removing him. Your Honor held that the action was barred by §§ 1252(a)(5) and 1252(b)(9) as a challenge to the petitioner's removal order because granting the relief sought by the petitioner "would frustrate the government's ability to enforce the removal order." *Villatoro v. Shanahan*, 2026 WL 948297 at *3.

In *Cordoba Cruz v. Maldonado*, No. 26-cv-2792, 2026 WL 1785191 (E.D.N.Y. June 22, 2026) (Gonzalez, J.), the petitioner, who was detained by ICE for the purpose of removing him, sought an order directing ICE to release him immediately and prohibiting ICE form re-detaining him without notice and pre-deprivation bond hearing. *Id.* at 1. The Honorable Hector Gonzalez held that the petition was jurisdictionally barred by § 1252(a)(5) as an indirect challenge to the petitioner's removal order "[b]ecause releasing him from mandatory detention would frustrate Respondents' ability to enforce the removal order". *Id.* (citing, *inter alia*, *Delgado*, 643 F.3d at 55); *accord*, *Hernandez-Bran v. Blanche*, No. 26-cv-3388, 2026 WL 1831902, at *3-4 (E.D.N.Y. June 25, 2026) (Gonzalez, J.) (§§ 1252(a)(5) and 1252(b)(9) bar claim for release from detention by a foreign national detained for the purpose of removing him because "he seeks to frustrate the government's ability to enforce the removal order").

Similarly, in *Quintanilla Hernandez v. Mullin*, 26-cv-3340, 2026 WL 1694286 (E.D.N.Y. June 11, 2026), the petitioner sought release from detention or in the alternative, a custody determination by a neutral decision maker. The Honorable Orelia E. Merchant held that by seeking those forms of relief, the petitioner was "indirectly challenging his removal order and therefore triggers the Section 1252 jurisdictional bar". *Id.* at *3; *see also id.* at *2 (quoting §§ 1252(a)(5) and 1252(b)(9)). *See also Villatoro v. Noem*, 2025 WL 2880140, at *4 (Judge Merchant held that §§ 1252(a)(5) and 1252(b)(9) barred, as a "direct attack" on the petitioner's removal order, his claim for release from detention, based on his contention that his detention was no longer statutorily authorized because his removal period had ended).

In *Sauceda Henriquez*, ICE detained the petitioners for the purpose of effectuating their removal. The petitioners challenged their detention on due process and other grounds. The Honorable LaShann DeArcy Hall held that §§ 1252(a)(5) and 1252(b)(9) jurisdictionally barred that challenge because the challenge was "'inextricably linked to' a removal order." *Sauceda Henriquez*, 2026 WL 111665, at *4 (quotation marks omitted). Judge DeArcy Hall also held that "a challenge to a petitioner's detention, following an order of removal, constitutes . . . an indirect

challenge to an order of removal" that is precluded by §§ 1252(a)(5) and 1252(b)(9). *Id.* (citing *Delgado*, 643 F. F.3d at 55); *accord*, *Ceesay v. Bondi*, 25-cv-3716, 2025 WL 1435615, at *2 (S.D.N.Y. May 16, 2025) (§ 1252(a)(5) bars, as an indirect challenge to a removal order, an action for an order prohibiting ICE from detaining the petitioner for the purpose of removing him) ;because such an order "would . . . interfere with the execution of a lawful removal order"; *Rodriguez,* 2023 WL 2632200, at *4 (dismissing, as barred by §§ 1252(a)(5) and 1252(b)(9), an action "seek[ing] an end to [the petitioner's] detention, which was undertaken for the precise purpose of effectuating his existing removal orders").

ICE has detained Petitioner for the purpose of effectuating his removal order. Quinn Decl. ¶17. The removal order, issued *in absentia*, is a final order of removal. 8 CFR § 1240.15. His Petition seeking release from detention is a challenge to that removal order and an attempt to interfere with the execution of the order. Thus, the Petition is barred. *Sauceda Henriquez*, 2026 WL 111665, at *4; *Villatoro v. Noem*, 2025 WL 2880140, at *4; *Villatoro v. Shanahan*, 2026 WL 948297 at *3.

B. This Action Is Also Jurisdictionally Barred By 8 U.S.C. § 1252(g)

Another Congressionally enacted jurisdictional bar independently precludes review of Petitioner's anticipated removal. 8 U.S.C. § 1252(g), in relevant part, provides that, with exceptions not relevant here, "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action . . . to execute removal orders against any alien under this chapter." "[B]y its plain terms, 8 U.S.C. § 1252(g) strips district courts of jurisdiction over claims attacking the Government's decisions or actions to execute removal orders." *Yearwood v. Barr*, 391 F. Supp. 3d 255, 263 (S.D.N.Y. 2019). Section 1252(g) thereby precludes district courts from issuing an order that would prevent or hinder ICE from executing a removal order, *i.e.*, removing an individual who is the subject of a final order of removal. *Troy as Next Friend Zhang v. Barr*, 822 Fed. Appx. 38, 39 (2d Cir. 2020). Congress enacted § 1252(g) in order to avoid the "deconstruction, fragmentation, and hence prolongation of removal proceedings." *Reno v. Arab-American Anti-Discrimination Committee*, 525 U.S. 471, 487 (1999) (*"AADC"*).

Notably, § 1252(g) bars *all* claims challenging the execution of a removal order, so the bar is not limited to claims that challenge ICE's discretionary conduct, and therefore also includes challenges to conduct that allegedly violates federal law, including, without limitation, a provision of the United States Constitution. *See, e.g.*, *AADC*, 525 U.S. at 488 (§ 1252(g) barred First Amendment challenge to deportation); *Jean-Baptiste v. Reno*, 144 F.3d 212, 214, 218 (2d Cir. 1998) (§ 1252(g) barred Fifth Amendment due process challenge to deportation); *K.K. v. Garland,* No. 23-cv- 6281, 2025 WL 274431, at *2 (W.D.N.Y. Jan. 23, 2025) (dismissing action alleging violations of "various constitutional, statutory and regulatory provisions", citing, *inter alia*, *Rauda v. Jennings*, 55 F.4th 773, 777-78 (9th Cir. 2022), *Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021), *E.F.L. v. Prim*, 986 F.3d 959, 965 (7th Cir. 2021)), *appeal dismissed sub nom. K.K. v. Bondi,* No. 25-190 (2d Cir Apr. 8, 2025); *accord*, *Tazu v. Attorney General*, 975 F.3d 292, 297 (3d Cir. 2020). "Otherwise, § 1252(g) would be a paper tiger; any petitioner challenging the execution of a removal order could characterize his or her claim as an attack on [ICE']s 'legal authority" to execute the order and thereby avoid § 1252(g)'s bar." *E.F.L.*, 986 F.3d at 965 (affirming dismissal of action that challenged, on due process and statutory grounds, the execution

of a removal order).

The holdings of those decisions are fully consistent with Supreme Court case law on statutory construction. Section 1252(g) by its terms bars "*any* cause or claim" (emphasis added). The Supreme Court, in construing 8 U.S.C. § 1252(a)(2)(B)—like § 1252(g), enacted as part of § 306 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546 (1996) ("IIRIRA")—held that "the word 'any' has an expansive meaning." *Patel v. Garland*, 596 U.S. 328, 338 (2022) (quotation omitted). *Patel's* construction of "any" in § 1252(a)(2)(B) applies with special force to the use of the same word in § 1252(g) because of "the normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning." *See Gustafson v. Alloyd Co. Inc.*, 513 U.S. 561, 570 (1995) (internal quotation marks omitted). Thus, § 1252(g) bars any and all types of claims that challenge the execution of a removal order, including without limitation claims alleging violations of federal law.

Additional Supreme Court jurisprudence on statutory construction confirms that the § 1252(g) bar is not limited to claims that challenge ICE's discretionary conduct. Section 1252(g)'s wording contains no such limitation, and courts "may not engraft [their] own exceptions onto the statutory text." *Schein*, 586 U.S. at 70. Notably, the Congress that enacted IIRIRA knew how to limit a jurisdiction-stripping statute's reach to discretionary matters when that Congress wished to do so. The aforementioned § 1252(a)(2)(B) bars challenges "to (i) any judgment regarding the granting of relief under [specified statutes], or (ii) any other decision or action . . . which is specified in this subchapter to be *in the discretion of* the Attorney General or the Secretary of Homeland Security [with one specified exception]" (emphasis added). Section 1252(g), by contrast, does *not* include any language limiting its reach to discretionary matters, and thus cannot be construed to include such a limitation. *See Hardt v. Reliance Life Ins. Co.*, 560 U.S. 242, 251-52 (2010). In *Hardt,* the Supreme Court held that a party need not be a prevailing party in order to recover attorney's fees under one subsection of a statute, because the wording of that subsection included no prevailing-party requirement, while the wording of another subsection of the same statute did include such a requirement. *Id.* The Supreme Court described the court of appeals' reading a prevailing-party requirement into the first subsection as akin to "'invent[ing] a statute rather than interpret[ing] one.'" *Id.* (quoting *Pasquantino v. United States*, 544 U.S. 349, 359 (2005) (alterations by *Hardt*); *accord Romang Fasteners, Inc. v. Fossil, Inc.*, 590 U.S. 212, 215 (2020) ("read[ing] into statutes words that aren't there . . . [is] a temptation that we are doubly careful to avoid when Congress has . . . included the term in question elsewhere in the very same statutory provision"; declining to construe one subsection of a statute as requiring the plaintiff to prove intent in order to prevail because, unlike that subsection, another subsection of the same statute expressly required proof of intent).[3]

Section 1252(g) jurisdictionally bars claims for release from detention that, if granted, "would bar ICE from effectuating [the petitioner's] removal." *Lin v. Borgen*, No. 25-cv-5618, 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025). *Lin v. Borgen* held that § 1252(g) barred the petitioner's claim because his removal was imminent—he had provided his birth certificate to ICE

[3] Accordingly, *Gondal v. USDHS,* 343 F. Supp. 3d 83, 92 (E.D.N.Y. 2018) (Spatt, J.), incorrectly limited the § 1252(g) bar to challenges to discretionary conduct

and all that ICE needed to remove him was a travel document from his native country. *Id.* Here, Petitioner's removal is also imminent: ICE has submitted a travel document package to the Guinean Embassy and is awaiting the Embassy's determination and the issuance of a travel document for Petitioner. Harris Decl. ¶ 23. The Court should therefore dismiss this action as barred by § 1252(g). *Lin v. Borgen*, 2025 WL 2158874, at *4; *see also Ceesay*, 2025 WL 1435615, at *2 (§ 1252(g) bars an action for an order prohibiting ICE from detaining the petitioner for the purpose of removing him, because such an order "would . . . interfere with the execution of a lawful removal order.).

II. THE PETITION FAILS ON THE MERITS, BECAUSE PETITIONER IS LAWFULLY DETAINED PURSUANT TO 8 U.S.C. § 1231(a).

If *arguendo* not jurisdictionally barred, the Petition should be denied on the merits. The Petition is predicated on the incorrect premise that Petitioner is being detained pursuant to 8 U.S.C. § 1226(a). In fact, he is being detained under 8 U.S.C. § 1231(a) because he is subject to a final order of removal.

Under 8 U.S.C. § 1231(a), ICE has authority to detain an alien subject to a final removal order. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) ("8 U.S.C. § 1231(a), governs the detention, release, and removal of individuals 'ordered removed.'"); *accord Wang v. Ashcroft*, 320 F.3d 130, 145 (2d Cir. 2003) ("8 U.S.C. § 1231, governs the detention of aliens subject to final orders of removal."). Section 1231(a)(1)(A) establishes that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days," (i.e., the "removal period"). *Id.* The statute further provides that during "the removal period, the Attorney General *shall* detain the alien." 8 U.S.C. § 1231(a)(2)(A) (emphasis added). Where, as here, the removal period has expired, "[a]n alien ordered removed 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 . . . terms of supervision." 8 U.S.C. § 1231(a)(6) (emphasis added); *see also* § 1231(a)(3) (setting forth the terms of release of an "alien [who] does not leave or is not removed within the removal period.").

These provisions, taken together, provide that an alien who is subject to a final order of removal shall be detained for at least 90 days for purposes of removal, and may be detained longer than 90 days, or released subject to conditions. 8 U.S.C. § 1231(a). While the statute does not explicitly address the situation, where an alien is inaccessible during the 90-day removal period, the statute *presumes* that accessible aliens shall be detained for purposes of removal. *See Zavydas v. Davis*, 533 U.S. 678, 689 (2001) (interpreting § 1231(a)(6) to include an "implicit limitation" on detention *beyond* the removal period such that detention may last only for "a period reasonably necessary *to bring about that alien's removal* from the United States.") (emphasis added). In *Zadvydas*, the Supreme Court held that § 1231(a)(6) authorizes immigration detention for a period reasonably necessary to effectuate the alien' removal from the United States, beyond 90 days, and that six months is a presumptively reasonable time period for the Government to effectuate the alien's removal. *Zadvydas*, 533 U.S. at 699-701. The Court also made it clear that this "presumption . . . does not mean that every alien not removed must be released after six months." *Id.* at 701; *see also Arteaga-Martinez*, 596 U.S. at 581 ("there is no plausible construction of the text of § 1231(a)(6) that requires the Government to provide bond hearings after six months of detention").

The six-month *Zadvydas* period runs from the date an alien is *actually* detained, not from the date the alien's removal order became final, and the alien *could* have been detained. *See Callender v. Shanahan*, 281 F. Supp. 3d 428, 435 (S.D.N.Y. 2017) (habeas petitioner "is confusing the 90-day 'removal period' under [Section 1231(a)(1)(A)], which began when his order became final in 2006[,] with the six month 'presumptively reasonable period of detention' under *Zadvydas*, which could not have begun until he was detained by ICE in 2015") (citations omitted); *see also Jiang v. Bondi,* No. 25-cv-922, 2025 WL 3281819, at *2 (D.N.M. Nov. 25, 2025) (finding detention proper where removal period had begun to run 20 years earlier, because petitioner "confuses the 90-day removal period" with the "six-month "presumptively reasonable period of detention" under *Zadvydas*, which could not have begun until he was detained by ICE"); *Piao v. Lyons,* No. 25-cv-1725, 2025 WL 3046783, at *2 (E.D. Va. Oct. 31, 2025) (concluding "as has other courts, that the government's failure to detain the Petitioner during the removal period or immediately thereafter does not eliminate the Government's ability to detain Petitioner for the purpose of enforcing that removal order at this time"); *Rodriguez–Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. 2017) ("Petitioner's contention that the *Zadvydas* clock runs while he is not in custody defies common sense.") (internal quotation marks and citation omitted); *Chun Yat Ma v. Asher*, No. 11-cv-1797, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012) (noting that "detention is the core issue in *Zadvydas*" and holding that "the time between Petitioner's removal order becoming final and his detention does not impact the due process analysis established by *Zadvydas*").

As Judge Engelmayer held in *Lin v. Francis*, No. 25-cv-10001 (PAE), 2025 WL 3751855, at *4 (S.D.N.Y. Dec. 29, 2025), § 1231(a)(1)(A)'s 90-day period for ICE to remove the noncitizen is "self-evidently addressed to noncitizens accessible to ICE". Judge Engelmayer further held that because the petitioner in that case did not appear for his removal hearing "there is no basis to treat him as having been accessible to ICE, such that it could have removed him during the" removal period. Respondents respectfully submit that Judge Engelmayer's decision in *Lin v. Francis* is on all fours with this case. There, Judge Engelmayer determined that the petitioner failed to establish a statutory or constitutional violation because "[t]he agency had statutory authority to detain [him] without notice" because he "was subject to a final removal order and, having not appeared at his removal hearing or since, had never been released by ICE subject to conditions of supervision." *Lin v. Francis*, 2025 WL 3751855, at *3. Judge Engelmayer concluded that "[u]nder these circumstances, 8 U.S.C. § 1231(a)(6) gave ICE statutory authority to detain" the petitioner. *Id.*

In factually analogous cases, other judges in this Circuit have reached the same conclusion. *See, e.g.*, *Gualpa-Mizhquiri v. Francis*, No. 26-cv-156 (JAV), 2026 WL 396081, at *3 (S.D.N.Y. Feb. 12, 2026) ("The facts here are analogous to *Lin* [*v. Francis*]. Petitioner was not released on supervision following the issuance of his final removal order, and thus the regulations regarding the revocation of supervision are inapplicable. Rather, Petitioner failed to appear for his hearing, violated his bond conditions, and absconded when ICE issued a Warrant of Removal during the removal period. On these facts, Petitioner's detention under Section 1231(a)(6) is lawful."); *accord Romero v. Noem*, No. 26-cv-1884 (MMG), 2026 WL 775847, at *4-5 (S.D.N.Y. Mar. 19, 2026) (same); *Xol-Maas v. Francis*, No. 26-cv-25 (JAV), 2026 WL 457005, at *5 (S.D.N.Y. Feb. 18, 2026) ("[Petitioner] does not, for example, argue that ICE lacked statutory authority to take him into custody. Nor could he. It is undisputed that Petitioner is subject to a final order of removal entered *in absentia*. Accordingly, 8 U.S.C. § 1231(a) authorizes Petitioner's detention for the purpose of effectuating Petitioner's removal.")

In short, 8 U.S.C. § 1231(a)(6) statutorily authorizes Petitioner's detention. Petitioner was detained on June 20, 2026 and only nine days have elapsed at the time of this filing. Petitioner is therefore lawfully detained for the purpose of effectuating his removal order.

Cunha is Inapposite

The Court's OTSC also directed Respondents to indicate whether the Petitioner is controlled by *Cunha v. Freden*, 175 F.4th 61, 2026 WL 1146044 (2d Cir. Apr. 28, 2026). That case is inapposite. On April 28, 2026, the United States Court of Appeals for the Second Circuit issued its decision in *Cunha*, which held that that § 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), the asserted detention authority in that case, did not apply. Here, however, Petitioner's arrest post-dates *Cunha* and he has been held pursuant to INA § 241(a), 8 U.S.C. § 1231(a). Quinn Decl. ¶17. Accordingly, *Cunha* has no bearing on this matter.

Property

In further Response to the OTSC, Petitioner's property at the time of arrest included currency totaling $100.00 and one cell phone, one bracelet, two shoe laces, one hat, one belt, one wallet and one yellow chain. Ex. J.

* * * *

Accordingly, the Petition should be denied and this Court's Order enjoining Petitioner's removal, and his transfer outside this District, should be vacated.

Respondents thank the Court for consideration of this submission.

Respectfully submitted,

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