United States Department of Justice

United States Attorney
Northern District of New York

445 Broadway, Room 218
James T. Foley U.S. Courthouse
Albany, New York 12207-2924

Tel.: (518) 431-0247
Fax: (518) 431-0386

October 13, 2026

VIA CM/ECF
Hon. Anthony J. Brindisi
U.S. District Judge
Alexander Pirnie Federal Bldg. and U.S. Courthouse
10 Broad Street
Utica, NY 13501

RE: *Coulanges, et al. v. U.S. Border Patrol*
Civil Action No. 9:26-cv-02096 (AJB)

Dear Judge Brindisi:

I represent the respondent U.S. Customs and Border Patrol ("Respondent" or "CBP") in the above-captioned petition for a writ of habeas corpus, in which Petitioner appears to challenge his detention by CBP. I write to update the court as to Petitioner's status.

The following information was provided to me by counsel for CBP: on or about October 3, 2026, following the termination of Petitioner's Temporary Protected Status, Petitioner attempted to enter Canada. Canadian authorities denied Petitioner entry and returned Petitioner to the United States. When Petitioner attempted to re-enter the United States, CBP confirmed that Petitioner was subject to a final order of removal that issued in 2023. Petitioner was detained accordingly on October 4, 2026. *See* Ex A attached.[1]

CBP subsequently began taking steps to effectuate the final order of removal, arranging to remove Petitioner to Haiti via a flight from Newark airport on October 13. Thus, at approximately 3:00 a.m., Petitioner departed the Champlain Port of Entry located in Champlain, New York. Petitioner arrived at the Albany Port of Entry in Albany, New York at approximately 6:00 a.m., and by 8:40 a.m. Petitioner had reached the Newark Port of Entry in Newark, New Jersey, where Petitioner remained for removal processing.

At 10:31 a.m., undersigned counsel received a LEXIS CourtLink "Nature of Suit" (NOS) alert notifying counsel that a new action was filed in the Northern District of New York in which the NOS was coded as "Habeas Corpus – Alien Detainee." Although that alerted me to the filing of a new habeas petition, because documents are not viewable to non-case-participants in CourtLink or PACER, I was not able to view the petition and did not know the Petitioner's A-number. At 10:57 a.m., I filed a letter motion in this action notifying the Court that the petition had not yet

[1] Ex. A has been provided to undersigned counsel by agency counsel for CBP.

been served and, while expressly reserving all jurisdictional defenses, requested that any no-transfer order that the Court may be inclined to enter include the Western District of New York, as there is a federal immigration detention center in the Western, but not Northern, District of New York. At 11:05 a.m., I notified CBP that I had been alerted to the filing of a new habeas petition and that I had requested that Petitioner be permitted to be transferred to the Western District of New York.

At 11:21 a.m., the Court issued an order directing that Petitioner not be transferred outside the Northern or Western Districts of New York. *See* Dkt. 5. Undersigned counsel then promptly at 11:32 a.m., sent the Petition to CBP counsel, informed him of the response deadline, and requested all relevant information pertaining to Petitioner as soon as possible. I also specifically informed CBP counsel of the no-transfer order. At the time I relayed this information to CBP counsel, neither he nor I were aware that Petitioner was already in the process of being removed to Haiti.

At approximately 12:02 p.m., I received a phone call from the court informing me that Daphney Coulanges, as next friend, had called the court stating that Petitioner was being put on an airplane. I immediately relayed this information to CBP counsel at 12:06 p.m.. At or near the same time, at approximately 12:14 p.m., I received a phone call from CBP counsel acknowledging my email, at which time he indicated that he was continuing to work on locating and gathering information about the Petitioner. At 12:32 p.m., CBP counsel indicated via e-mail that he was still waiting for more information. After a string of emails in which information was requested and shared between 12:14 p.m. and 12:40 p.m., counsel for CBP confirmed at 12:40 p.m. via e-mail that Petitioner had already departed for Haiti. He subsequently obtained information that Petitioner reached the departure gate at Newark Liberty International Airport at approximately 11:58 a.m., and at 12:10 p.m. departed on a removal flight to Haiti. Petitioner was scheduled to arrive at the Hugo Chavez International Airport at 4:30 p.m.

The government acknowledges, with apologies to the Court, that Petitioner's plane departed the Newark airport approximately 45 minutes after this Court entered an order prohibiting transfer out of the Northern or Western Districts of New York. As an initial matter, Respondent notes that that Petitioner arrived in Newark, New Jersey three hours before that order issued, and was no longer in the Northern District of New York when the order entered. Moreover, undersigned counsel assures the Court that I promptly notified CBP of the Petition and the anti-transfer order as soon I received them via ECF. I was not aware that Plaintiff was being deported to Haiti today until after the plane departed Newark Airport. Likewise, CBP counsel (who did not have A-numbers to begin the process of locating and placing a transfer restriction on Petitioner until the Petition was served at 11:21) assures me that he promptly began the that process upon receipt of the court's order, and did not learn that Petitioner was on a plane to Haiti until after that plane had departed Newark. Counsel will provide any additional information to the Court as it may deem necessary, will make themselves available for a Court conference to discuss this matter, and will comply with any further instructions of this Court related to this issue.

Secondarily, it is unclear that this Court has jurisdiction over his Petition, given that Petitioner arrived in Albany, New York at approximately 6:00 a.m., then departed Albany and arrived in Newark, New Jersey by 8:40 a.m. Jurisdiction under 28 U.S.C. § 2241 attaches, if at all, at the "time of filing" and depends on the petitioner's location of custody at that moment. *See Walker v. Searls*, 2024 WL 1735213, at *7 (W.D.N.Y. Apr. 23, 2024); *Shaikh v. Barr,* 2020 WL 7021443, at *3 (W.D.N.Y. Nov. 30, 2020).

Here, the Petition's "time of filing" for purposes of determining jurisdiction is not clear. The Court clerk's office has advised that Petitioner transmitted the filing through Managed File Transfer ("MFT") at approximately 2:04 a.m., but that the case was opened and the Petition was filed with a Notices of Electronic Filing ("NEFs") issued at 10:09 a.m..

General Order 22 ("GO 22") defines "filing" as follows:

> Electronic transmission of a document to the System in accordance with these Administrative Procedures, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules of this Court

Id. § 4.1. GO 22 further defines "System" as "the Court's Internet-based Electronic Filing System." *Id.* § 1.3. This seems to indicate that Section 4.1 was drafted with ECF—not MFT—in mind. Although GO 22 does not directly address whether an MFT submission constitutes "filing," the closest analogue is a document emailed to the Clerk's Office—which GO 22 expressly states does not constitute filing. *Id.* § 4.1. And, the definition of "filing" quoted above as electronic submission "together with the transmission of a Notice of Electronic Filing" indicates that the Petition here should be deemed "filed" when the NEF issued – i.e., at 10:09 a.m.. Because Petitioner was not in this District at that time but rather had been in New Jersey for several hours, this Court likely lacks jurisdiction over the Petition.

If the Court is not able to make a *sua sponte* determination as to jurisdiction from this information, Respondents are prepared to file a motion to dismiss for lack of jurisdiction, supported by declarations and documentary evidence as appropriate, by the Response date set by the Court, or at any other time that the Court may direct.

Respectfully Submitted,

TODD BLANCHE
Attorney General

JOHN A SARCONE III
First Assistant United States Attorney

By: *s/ Alexis M. Osborne*
Alexis M. Osborne
Assistant United States Attorney
Bar Roll No. 707475