UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CANDIDA RAMIREZ LOPEZ,

Petitioner,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

Case No. 25 Civ. 4826 (JAV)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

BACKGROUND 2

I. FACTUAL BACKGROUND 2

II. DETENTION UNDER 8 U.S.C. § 1231 5

ARGUMENT 7

I. THE MOTION FOR A STAY OF REMOVAL SHOULD BE DENIED 8

A. The Court Lacks Jurisdiction to Stay Removal 8

II. PETITIONER'S IS UNLIKELY TO SUCCEED ON HER CHALLENGE TO HER DETENTION 13

A. Petitioner's Due Process Challenge to Her Detention Fails 13

B. Petitioner's APA Challenge to Her Detention Fails 16

III. PETITIONER CANNOT SHOW IRREPARABLE HARM 17

IV. THE PUBLIC INTEREST IS SERVED BY ENFORCING THE IMMIGRATION LAWS 18

V. PETITIONER SHOULD NOT BE RELEASED PENDING ADJUDICATION 19

CONCLUSION 22

TABLE OF AUTHORITIES

Cases

Akinwale v. Aschcroft,
287 F.3d 1050 (11th Cir. 2002) 14

Andoh v. Barr, No. 19 Civ. 8016 (PAE),
2019 WL 4511623 (S.D.N.Y. Sept. 18, 2019) 11

Asylum Seeker Advocacy Project v. Barr,
409 F. Supp. 3d 221 (S.D.N.Y. 2019) 12

Barros Anguisaca v. Decker,
393 F. Supp. 3d 344 (S.D.N.Y. 2019) 9, 11

Bernardo ex rel. M&K Eng'g, Inc. v. Johnson,
814 F.3d 481 (1st Cir. 2016) 16

Borey v. Nat'l Union Fire Ins. Co.,
934 F.2d 30 (2d Cir. 1991) 17, 18

Calley v. Callaway,
496 F.2d 701 (5th Cir. 1974) 20

Camarena v. Dir., ICE,
988 F.3d 1268 (11th Cir. 2021) 10

Castaneda-Castillo v. Holder,
638 F.3d 354 (1st Cir. 2011) 20

Chupina v. Holder,
570 F.3d 99 (2d Cir. 2009) 5

De Oliveira Jimenez v. Searls,
No. 22-CV-960 (LJS), 2023 WL 11134381 (W.D.N.Y. Mar. 2, 2023) 15

Delgado v. Quarantillo,
643 F.3d 52 (2d Cir. 2011) 9

Duamutef v. INS,
386 F.3d 172 (2d Cir. 2004) 10

Elgharib v. Napolitano,
600 F.3d 597 (6th Cir. 2010) 10

Evangelista v. Ashcroft,
204 F. Supp. 2d 405 (E.D.N.Y. 2002) 21

Fernandez Aguirre v. Barr,
No. 19 Civ. 7048 (VEC), 2019 WL 3889800 (S.D.N.Y. Aug. 19, 2019) 21

Halley v. Ashcroft,
148 F. Supp. 2d 234 (E.D.N.Y. 2001) 21

Hamama v. Adducci,
912 F.3d 869 (6th Cir. 2018) 10

Heckler v. Chaney,
470 U.S. 821 (1985) 16

Hoyte v. Holder,
No. 10 Civ. 3460 (PAC), 2011 WL 1143043 (S.D.N.Y. Mar. 25, 2011) 15

Johnson v. Arteaga-Martinez,
596 U.S. 573 (2022) 5, 7

K.K. v. Garland, No. 23-CV-6281-FPG,
2025 WL 274431 (W.D.N.Y. Jan. 23, 2025) 11

Kamerling v. Massanari,
295 F.3d 206 (2d Cir. 2002) 17, 18

Landano v. Rafferty,
970 F.2d 1230 (3d Cir. 1992) 20

Mapp v. Reno,
241 F.3d 221 (2d Cir. 2001) 19

Ozturk v. Trump,
__ F. Supp. 3d ___, 2025 WL 1420540, (D. Vt. May 16, 2025) 19

Rauda v. Jennings,
55 F.4th 773 (9th Cir. 2022) 9

Reno v. American-Arab Anti-Discrimination Committee,
525 U.S. 471, 482 (1999) 9

Rodriguez v. Warden, Orange County Corr. Facility,
No. 23 Civ. 242 (JGK), 2023 WL 2632200 (S.D.N.Y. Mar. 23, 2023) 9

Sankara v. Barr,
No. 17-2257, 2019 WL 4943755 (2d Cir. May 8, 2019) 11

Sean B. v. Wolf,
No. 20-cv-550 (JGK), 2020 WL 1819897 (S.D.N.Y. Apr. 10, 2020) 12

Silva v. United States,
866 F.3d 938 (8th Cir. 2017) 10

Singh v. Napolitano,
500 F. App'x 50 (2d Cir. 2012) 11

Tazu v. Att'y Gen. U.S.,
975 F.3d 292 (3d Cir. 2020) 10

Troy as Next Friend Zhang v. Barr,
822 F. App'x 38 (2d Cir. 2020) 10

Trump v. J.G.G.,
__ S. Ct. ___, 2025 WL 1024097 (Apr. 7, 2025) 16

Tucker Anthony Realty Corp. v. Schlesinger,
888 F.2d 969 (2d Cir. 1989) 17

United States v. Lui Kin-Hong,
83 F.3d 523 (1st Cir. 1996) 20

United States v. Mett,
41 F.3d 1281 (9th Cir. 1994) 20

Vasquez v. United States,
No. 15 Civ. 3946 (JGK), 2015 WL 4619805 (S.D.N.Y. Aug. 3, 2015) 9

Vidhja v. Whitaker,
19 Civ. 613 (PGG), 2019 WL 1090369 (S.D.N.Y. March 6, 2019) 8, 12

Wang v. Ashcroft,
320 F.3d 130 (2d Cir. 2003) 5

Yearwood v. Barr,
391 F. Supp. 3d 255 (S.D.N.Y. 2019) 9, 12

Zadvydas v. Davis,
533 U.S. 678 (2001) 13, 14, 15

Statutes

28 U.S.C. § 2241 7

5 U.S.C. § 701 15

8 U.S.C. § 1101 5

8 U.S.C. § 1182 ..... 2, 5

8 U.S.C. § 1231 ..... 3, 5

8 U.S.C. § 1252 ..... passim

Regulations

8 C.F.R. § 1003.23 11

8 C.F.R. § 241.13 6

8 C.F.R. § 241.4 5

8 C.F.R. § 241.6 6

The government respectfully submits this memorandum of law in opposition to the emergency motion for temporary restraining order and preliminary injunction filed by petitioner Candida Ramirez Lopez ("Petitioner") on June 10, 2025. ECF No. 8.

PRELIMINARY STATEMENT

Petitioner is native and citizen of Honduras who is subject to an in absentia final order of removal that was issued by an Immigration Judge in October 2005. In March 2019, Petitioner was apprehended by officers of the U.S. Department of Homeland Security ("DHS") in the Rio Grande Valley near Roma, Texas shortly after she unlawfully crossed the United States/Mexico border. She provided a sworn statement to Border Patrol about her illegal re-entry declared that she departed the United States to Honduras on September 15, 2005, and last entered the United States on March 9, 2019. After she was transferred from Border Patrol custody to the custody of U.S. Immigration and Customs Enforcement ("ICE"), on March 24, 2019, ICE released Petitioner on her own recognizance, subject to conditions which included reporting as directed by ICE. At the time, ICE served Petitioner with a Notice of Intent/Decision to Reinstate Prior Order.

On June 4, 2025, ICE detained Petitioner at a check-in pursuant to a warrant of removal premised on the reinstated prior order of removal. Because of a lack of bedspace for female detainees in this district, as well as no space at the time within the control of ICE's New York and Newark Field Offices, Petitioner was transferred to the Houston Detention Facility in Houston, Texas, where she remains at this time.

On June 16, 2025, ICE determined that the notice of reinstatement was improvidently issued and rescinded it; instead, ICE served Petitioner with the necessary documents to execute the in absentia removal order. Although Petitioner has alleged that she has a pending U-visa

application, that is not a basis for staying removal or interfering with ICE's decision to detain Petitioner pending execution of the administratively final order of removal.

Petitioner filed this habeas petition challenging her detention, seeking both release from custody and a stay of removal. But this Court lacks jurisdiction over removal issues, and Petitioner's detention is not unlawful. The motion should be denied.

BACKGROUND

I. FACTUAL BACKGROUND

Petitioner is a native and citizen of Honduras who, in April 2005, was apprehended by Border Patrol near Hidalgo, Texas. Declaration of Matthew Alexander dated June 16, 2025 ("Alexander Decl."), ¶¶ 3, 4. She admitted to Border Patrol that she unlawfully entered the United States, that she did not possess or present any valid entry documents, and that she was not admitted or paroled into the United States. *Id.* ¶ 4. On April 23, 2005, United States Customs and Border Protection ("CBP") served Petitioner with a Notice to Appear ("NTA"), the charging document used to commenced removal proceedings, charging her with removability pursuant to INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* ¶ 5. The NTA advised Petitioner that she was to appear before an immigration judge for a hearing scheduled for October 21, 2005, and that she needed to provide the immigration court with a written record of an address and telephone number at which she could be contacted concerning the removal proceedings. *Id.* CBP then released Petitioner on her own recognizance due to lack of bedspace at the border facility. *Id.* ¶ 6.

At the removal hearing on October 21, 2005, Petitioner did not appear because she had departed the United States on or about September 15, 2005, after removal proceedings were

commenced but before she was ordered removed. *Id.* ¶¶ 7, 9. The Immigration Judge granted DHS's oral motion to proceed in absentia. *Id.* ¶ 7. Upon review of the evidence provided that Petitioner was removable as charged, the Immigration Judge issued an in absentia order of removal. The Immigration Court was unable to forward the order to Petitioner because she had not provided an address following her release from CBP custody. *Id.*

Petitioner then unlawfully entered the United States on or about March 9, 2019. *Id.* ¶ 8. Petitioner admitted to Border Patrol that she unlawfully entered the United States, was not admitted or paroled, and did not possess valid entry documents, and she signed a sworn statement attesting to the same. *Id.* ¶ 9. Consequently, CBP placed Petitioner in custody that same day. *Id.* On March 14, 2019, CBP served Petitioner a Notice of Intent/Decision to Reinstate Prior Order, Form I-871, pursuant to INA § 241(a)(5), 8 U.S.C. § 1231(a)(5). *Id.* ¶ 10. The next day, March 15, 2019, Petitioner was transferred from CBP custody to ICE custody. *Id.* ¶ 11.

On March 24, 2019, ICE released Petitioner on her own recognizance, subject to conditions which included reporting as directed by ICE. *Id.* ¶ 12. Petitioner provided ICE with her address in Memphis, Tennessee. *Id.* ICE directed Petitioner to report to the ICE office in Memphis, Tennessee as directed. *Id.* On or about October 1, 2019, Petitioner provided ICE with a new address in Staten Island, New York. *Id.* ¶ 13. ICE transferred Petitioner's case to the ICE office in New York, New York. *Id.*

On June 4, 2025, Petitioner reported as directed by ICE to ICE's Intensive Supervision Appearance Program ("ISAP") office in New York, New York. *Id.* ¶ 15. She was taken into custody and brought to 26 Federal Plaza following the issuance of a Warrant of Removal, Form I-205, dated June 4, 2025, based on the reinstated prior order of removal. *Id.* ICE's only detention

facility in the Southern District of New York, the Orange County Jail, does not house female detainees, and in any event it was over capacity for her risk assessment level at the time Petitioner was taken into ICE custody. *Id.* ¶ 16. After Petitioner was detained on June 4, 2025, ICE requested bedspace for Petitioner from its Newark Field Office without success, though it secured temporary bedspace for the night of June 5 to June 6, 2025, at the Elizabeth Detention Center in Elizabeth, New Jersey, before she returned to 26 Federal Plaza later in the morning of June 6. *Id.* ¶¶ 17, 18. ICE's bedspace request for Petitioner was ultimately approved for the Houston Detention Facility in Houston, Texas, and Petitioner was transferred to Houston on June 8, 2025. *Id.* ¶¶ 19, 21.

On June 16, 2025, ICE concluded that the Notice of Intent/Decision to Reinstate Prior Order was improvidently issued because Petitioner departed the United States in September 2005, before the October 2005 removal order was issued by the immigration court, and ICE rescinded the notice. *Id.* ¶ 21. Also on June 16, ICE served Ramirez Lopez with a Warrant of Removal/Deportation, Form I-205, and a Warning to Alien Ordered Removed or Deported, Form I-294. *Id.* ¶ 22. ICE intends to remove Ramirez Lopez pursuant to the October 2005 removal order as soon as practicable, once there is no legal impediment to its execution. *Id.* ¶ 23.

In this habeas petition, Petitioner asserts three counts, asserting violations of the INA, its implementing regulations, the Administrative Procedure Act ("APA"), and due process. ECF No. 1, ¶¶ 94–110. Among other things, she seeks an order requiring that she be detained in this district should she remain detained, immediate release from custody during the pendency of these proceedings, and a stay of removal pending these proceedings.[1] *Id.* (Prayer for Relief).

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[1] As discussed at the scheduling conference in this matter, to the extent the petition sought relief related to the allegedly unknown whereabouts of the Petitioner and ability to contact the Petitioner,

II. DETENTION UNDER 8 U.S.C. § 1231

In general, once a noncitizen becomes subject to an administratively final removal order, the authority for his continued detention is pursuant to 8 U.S.C. § 1231(a). *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) ("The section at issue here, 8 U.S.C. § 1231(a), governs the detention, release, and removal of individuals 'ordered removed.'"); *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."). "An order of removal is 'final' upon the earlier of the BIA's affirmance of the immigration judge's order of removal or the expiration of the time to appeal the immigration judge's order of removal to the BIA." *Chupina v. Holder*, 570 F.3d 99, 103 (2d Cir. 2009) (citing 8 U.S.C. § 1101(a)(47)(B)). Noncitizens may seek judicial review of a final removal order by timely filing a petition for review in the appropriate court of appeals. *See generally* 8 U.S.C. § 1252.

Section 1231 provides that noncitizens subject to final removal orders must be detained during a 90-day "removal period." *See* 8 U.S.C. § 1231(a)(2). In addition, aliens liked Petitioner here, who are ordered removed because they are inadmissible under 8 U.S.C. § 1182, "may be detained beyond the removal period." 8 U.S.C. § 1231(a)(6).

Noncitizens detained under § 1231(a) are not entitled to bond hearings before an immigration judge; instead, they receive custody reviews just prior to the expiration of the removal period, *see* 8 C.F.R. § 241.4(c)(1), (h)(1)-(2), and, if they remain detained beyond the removal period, periodically thereafter, *see* 8 C.F.R. § 241.4(c)(2), (k). The regulations provide that ICE

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the government has made that information available to Petitioner's counsel and has facilitated legal communications between Petitioner and her counsel.

"shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section." 8 C.F.R. § 241.4(*l*)(2). Pursuant to this regulation, "release may be revoked in the exercise of discretion when, in the opinion of the revoking official: . . . (iii) [i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) . . . any other circumstance[] indicates that release would no longer be appropriate." *Id.* The regulation does not provide any requirement of advance notice before an alien's release is revoked pursuant to section 241.4(*l*)(2).[2]

DHS has also enacted special review procedures for detained aliens under final orders of removal who have "provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed . . . in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). Pursuant to that regulation, ICE will release an alien who has successfully made such a showing (absent special circumstances justifying continued detention, as defined by 8 C.F.R. § 241.14), subject to appropriate conditions of release. 8 C.F.R. § 241.13(g)(1). Section 241.13(i)(2) of these regulations provides that "[t]he Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." Moreover, ICE may, in its "discretion . . . grant a stay of removal or deportation for such time and under such conditions as [it] may deem appropriate." 8 C.F.R. § 241.6(a). However, while the agency is free to grant additional procedural rights in the exercise

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[2] In contrast, an alien whose release is revoked due to violations of the terms of the conditions of release under section 241.4(*l*)(1) must be notified at the time of revocation of the reasons for the revocation, and must be afforded an initial interview "promptly after his or her return to Service custody" to respond to the reasons stated in the notification. 8 C.F.R. § 241.4(*l*)(1).

of its discretion, a federal court is not free to impose them if the agency has not chosen to grant them. *Arteaga-Martinez*, 596 U.S. at 582 (analyzing § 1231(a)(6)).

ARGUMENT

"A preliminary injunction 'is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.'" *Students for Fair Admissions v. U.S. Military Academy at West Point*, 709 F. Supp. 3d 118, 129 (S.D.N.Y. 2024) (quoting *Grand River Enterprises Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007)); *see also Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008) ("A preliminary injunction is an extraordinary remedy never awarded as of right."). To demonstrate entitlement to this extraordinary and drastic remedy, a movant must clearly demonstrate: "(1) irreparable harm absent injunctive relief, (2) a likelihood of success on the merits, [] (3) public interest weighing in favor of granting the injunction," and (4) "that the balance of equities tips in his or her favor." *A.H. by & through Hester v. French*, 985 F.3d 165, 176 (2d Cir. 2021) (quotation marks and footnotes omitted). Indeed, "a TRO, perhaps even more so than a preliminary injunction, is an 'extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.'" *Free Country Ltd. v. Drennen*, 235 F. Supp. 3d 559, 565 (S.D.N.Y. 2016).

The Court should deny the motion for a temporary restraining order and preliminary injunction because by seeking to restrain Petitioner's removal from the United States, it in substance seeks a stay of removal, and Petitioner cannot meet the standard for a stay of removal, not least of which because district courts lack jurisdiction to grant stays of removal. Similarly, the Court should deny the motion to compel release of Petitioner pending adjudication because she is

unlikely to succeed on the merits, cannot show irreparable harm, and cannot meet the stringent requirements for such relief that would not be in the public interest.

I. THE MOTION FOR A STAY OF REMOVAL SHOULD BE DENIED

Petitioner's request for a stay of removal should be denied. "A stay [of removal] is not a matter of right, even if irreparable injury might otherwise result," but "is instead an exercise of judicial discretion." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal quotation marks omitted). To determine whether a stay of removal is appropriate, a court first considers "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits [and] (2) whether the applicant will be irreparably injured absent a stay." *Id.* at 434. These first two factors "are the most critical." *Id.* If an applicant satisfies the first two factors, a court "assess[es] the harm to the opposing party and weigh[s] the public interest," although "[t]hese factors merge when the Government is the opposing party." *Id.* at 435. "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the court's] discretion." *Id.* at 433–34. Where, as here, a party seeks temporary injunctive relief, the establishment of irreparable harm is the "single most important prerequisite" for issuance. *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (quotation marks and citations omitted).

The motion should be denied because (a) Petitioner is unlikely to succeed on the merits given the jurisdictional hurdles and ICE's compliance with applicable law, (b) Petitioner is still able to pursue her motion to reopen and U visa application, and thus there is no irreparable harm, and (c) the public interest favors the government.

A. The Court Lacks Jurisdiction to Stay Removal

This Court lacks jurisdiction notwithstanding any other law, including 28 U.S.C. § 2241, to grant Petitioner a stay of removal or otherwise entertain a collateral attack on her final removal

order.[3] *See* 8 U.S.C. § 1252(a)(5) ("a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal"), (b)(9) (so-called zipper clause channeling judicial review of all claims arising from removal proceedings to the courts of appeals), (g) ("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").

"[A] request for stay of removal constitutes a 'challenge to a removal order,' and . . . accordingly district court lack jurisdiction to grant such relief." *Vidhja v. Whitaker*, 19 Civ. 613 (PGG), 2019 WL 1090369 (S.D.N.Y. March 6, 2019) (finding that § 1252(a)(5) deprived the district court of jurisdiction to grant a stay of removal); *accord Barros Anguisaca v. Decker*, 393 F. Supp. 3d 344, 350 (S.D.N.Y. 2019) (citing *Vidhja*). Indeed, the Second Circuit has held that the jurisdictional bar of § 1252(a)(5) applies equally to direct and indirect challenges to a removal order. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) (inadmissibility waiver sought by plaintiff was inextricably linked to a removal order, and thus, was a challenge to the removal order).

In addition, "by 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.*

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[3] The jurisdiction of the federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Sheldon v. Sill*, 49 U.S. 441, 448 (1850) ("Congress, having the power to establish the courts, must define their respective jurisdictions."). They "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen*, 511 U.S. at 377 (internal citations omitted); *see also Sheldon*, 49 U.S. at 449 ("Courts created by statute can have no jurisdiction but such as the statute confers."). As relevant here, Congress divested district courts of jurisdiction to review challenges relating to removal orders and instead vested only the courts of appeals with jurisdiction over such claims.

Barr, 391 F. Supp. 3d 255, 263 (S.D.N.Y. 2019); *see also Rodriguez v. Warden, Orange County Corr. Facility*, No. 23 Civ. 242 (JGK), 2023 WL 2632200, at *4 (S.D.N.Y. Mar. 23, 2023); *Vasquez v. United States*, No. 15 Civ. 3946 (JGK), 2015 WL 4619805, at *3 (S.D.N.Y. Aug. 3, 2015) ("District courts within this Circuit and across the country have routinely held that they lack jurisdiction under § 1252 to grant a stay of removal." (collecting cases)); *id.* at *4 (only claims that are "independent of *any* challenges to removal orders" survive the jurisdictional bar (emphasis added)). Congress enacted unambiguous language that provides that "no court" has jurisdiction over "any cause or claim by or on behalf of any alien arising from the decision or action" to "execute removal orders," "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 [mandamus] and 1651 [All Writs Act] of such title." 8 U.S.C. § 1252(g); *see Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525 U.S. 471, 482 (1999).

Every circuit court of appeals to address this issue had held that § 1252(g) eliminates subject matter jurisdiction over habeas challenges, including constitutional claims, to an arrest or detention for the purpose of executing a final removal order. *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding that it lacked jurisdiction over noncitizen's habeas challenge to the exercise of discretion to execute his removal order); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order."); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide *whether* to execute a removal

order includes the discretion to decide *when* to do it" and that "[b]oth are covered by the statute"); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (§ 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "*any* cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim"); *Elgharib v. Napolitano*, 600 F.3d 597, 602 (6th Cir. 2010) ("[A] natural reading of 'any other provision of law (statutory or nonstatutory)' includes the U.S. Constitution." (quoting 8 U.S.C. § 1252(g))); *see also Duamutef v. INS*, 386 F.3d 172, 181–82 & n.8 (2d Cir. 2004) (holding that district court lacked mandamus jurisdiction due to § 1252(g) to compel ICE to take custody over state prisoner and execute final removal order, but declining to address whether § 1252(g) barred habeas claims); *Hamama v. Adducci*, 912 F.3d 869, 874–77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims).

The Court of Appeals for the Second Circuit has similarly held in unpublished decisions that 8 U.S.C. § 1252(g), by its terms, strips district courts of jurisdiction over habeas claims arising from the execution of removal orders. *See, e.g.*, *Troy as Next Friend Zhang v. Barr*, 822 F. App'x 38, 39 (2d Cir. 2020) (affirming that 8 U.S.C. § 1252(g) barred district court jurisdiction over habeas petition seeking a stay of removal, which "is a request to delay the execution of a removal order"); *Singh v. Napolitano*, 500 F. App'x 50, 52 (2d Cir. 2012) (holding that attempt to "employ[] a habeas petition effectively to challenge the validity and execution of [a] removal order" is "jurisdictionally barred").

It matters not that Petitioner is seeking a stay of removal on account of an anticipated motion to re-open her in absentia removal proceedings and her pending application for U visa. To

the extent Petitioner claims a due process right to have those adjudicated, they can be adjudicated even if she is removed, and in any event the Court lacks jurisdiction to issue a stay of removal in such a circumstance. *See, e.g.*, *Sankara v. Barr*, No. 17-2257, 2019 WL 4943755, at *2 (2d Cir. May 8, 2019) ("A pending U visa application does not affect [ICE's] ability to execute a final order of removal, although Petitioner may apply for a stay of removal from Immigration & Customs Enforcement. If Petitioner is removed, he may continue to pursue his U visa application from abroad." (citations omitted)); *K.K. v. Garland*, No. 23-CV-6281-FPG, 2025 WL 274431, at *2 (W.D.N.Y. Jan. 23, 2025) (rejecting argument that a purported challenge to the government's "legal authority" to remove petitioner while his T visa and U visa applications were pending was not barred by § 1252(g)); *Barros Anguisaca*, 393 F. Supp. 3d at 350 (court lacked jurisdiction to enter stay of removal where petitioner argued he sought only a meaningful opportunity for his motion to reopen be heard by the BIA and not be removed); *Andoh v. Barr*, No. 19 Civ. 8016 (PAE), 2019 WL 4511623, at *4 (S.D.N.Y. Sept. 18, 2019) ("Whether or not [petitioner's] motion to reopen before the BIA has any prospect of success, . . . the Court does not have jurisdiction over his claim here for a stay or removal pending resolution of the motion to reopen."); *id.* ("If resolved in [petitioner's] favor, the motion to reopen would have the effect of vacating his underlying order of removal. And [petitioner], in seeking a stay of the pending removal order until that point, is unavoidably, bringing an indirect challenge to his removal order. Section 1252(a)(5) therefore strips this Court of jurisdiction to hear his motion."); *Sean B. v. Wolf*, No. 20-cv-550 (JGK), 2020 WL 1819897, at *1 (S.D.N.Y. Apr. 10, 2020) ("Although the petitioner argues that he seeks not to nullify, but to stay, a removal order to protect his due process rights, a stay would render the removal order invalid and is an indirect challenge to the removal order.").

Petitioner's request for a stay of removal in this Court, then, is barred by § 1252, and this Court may not stay or enjoin the execution of her final removal order. *See, e.g.*, *Sean B.*, 2020 WL 1819897, at *1 ("Courts in the Second Circuit have consistently held that 8 U.S.C. §§ 1252(a)(5) and (g) strip district courts of jurisdiction over requests to stay removal."); *Vidhja*, 2019 WL 1090369, at *4 (section 1252(g) deprives the district court of jurisdiction to grant a stay of removal pending resolution of a motion to reopen); *Yearwood*, 391 F. Supp. 3d at 263–64 (finding direct challenge to removal order where motion challenged process by which petitioner had been ordered removed and holding that petitioner could not avoid jurisdictional bar by asserting APA claim); *cf. Asylum Seeker Advocacy Project v. Barr*, 409 F. Supp. 3d 221, 224–27 (S.D.N.Y. 2019) (no jurisdiction over claims seeking to enjoin removal). Indeed, Petitioner has an appropriate channel available to her through which she can pursue relief: in addition to her potential motion to reopen, she can seek a stay of removal with the BIA. But this Court lacks jurisdiction to grant her the relief she seeks.

II. PETITIONER'S IS UNLIKELY TO SUCCEED ON HER CHALLENGE TO HER DETENTION

A. Petitioner's Due Process Challenge to Her Detention Fails

Count One of the petition, due process, fails because Petitioner is subject to a final order of removal, and her two weeks of detention do not rise to a due process violation. ICE has the statutory authority to detain Petitioner, because those who are ordered removed because they are inadmissible under 8 U.S.C. § 1182 may be detained under 8 U.S.C. § 1231 (a)(6) for as long as is "reasonably necessary to bring about that alien's removal from the United States," *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). 8 U.S.C. § 1231(a) provides ICE a 90-day period to accomplish an alien's removal from the United States after his or her removal order becomes final. *See* 8

U.S.C. § 1231(a)(1)(A)-(B). It also mandates ICE to detain the alien during the 90-day removal period. *See* 8 U.S.C. § 1231(a)(2). And as noted, even after the removal period elapses, ICE may detain certain aliens, such as Petitioner, beyond the removal period. 8 U.S.C. § 1231(a)(6).

In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a) authorizes immigration detention for a period reasonably necessary to accomplish the alien's removal from the United States. *Zadvydas*, 533 U.S. at 699–700. The Court recognized six months as a presumptively reasonable period of time to allow the government to accomplish an alien's removal. *Id.* at 701. However, the Supreme Court did not require the government to release every alien whose detention exceeds six months. Rather, the Court held:

> After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as "reasonably foreseeable future" conversely would have to shrink. *This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.*

Id. (emphasis added).[4]

Thus, the Supreme Court placed the initial burden on the alien. *Id.* If the alien fails to meet that burden, or if the government rebuts the alien's showing, then continued detention is permissible. *Id.*

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[4] In *Zadvydas*, the concern of "indefinite detention" arose where the petitioners could not be removed from the United States because their home countries would not accept their repatriation, yet the government continued to detain them. *See Zadvydas*, 533 U.S. at 684–86. No such concern is present here.

As an alien subject to a final order of removal, Petitioner's detention is governed by 8 U.S.C. § 1231(a). However, Petitioner has been detained for only about two weeks, and she has not made the initial threshold showing that her removal pursuant to that order is not reasonably foreseeable. *Zadvydas*, 533 U.S. at 701; *see also Akinwale v. Aschcroft*, 287 F.3d 1050, 1051–51 (11th Cir. 2002) ("to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months *but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future*") (emphasis added). Indeed, so little time has passed since Petitioner was detained that it is difficult to conceive of any showing she could make to meet her burden, as she is in the presumptively reasonable period under *Zadvydas*. *See, e.g.*, *Hoyte v. Holder*, No. 10 Civ. 3460 (PAC), 2011 WL 1143043, at *3 (S.D.N.Y. Mar. 25, 2011) ("due process concerns are not ripe for consideration until the alien has been detained for six months after the final removal order"); *De Oliveira Jimenez v. Searls*, No. 22-CV-960 (LJS), 2023 WL 11134381, at *5 (W.D.N.Y. Mar. 2, 2023) (dismissing petition as premature without prejudice to filing a new petition if detention under § 1231 exceeded six months).

Moreover, the Court should reject Petitioner's claim that her continued detention violates her procedural due process rights. Following the Supreme Court's decision in *Zadvydas*, ICE enacted regulations to meet the criteria the Court established to prevent indefinite detention. *See* 8 C.F.R. § 241.4. Under those regulations, a detained alien is entitled to a review of his custody status before his removal period expires, at 180 days, and at annual intervals thereafter, with the right to request interim reviews from headquarters not more than once every three months. *See*

8 C.F.R. §§ 241.4(k)(1), (k)(2). Of course, in this case Petitioner has not been detained long enough for such a review to have yet occurred.

And as discussed above, her pending U-visa application does not compel a different outcome; the pending application does not provide a basis to stay removal, and thus, Petitioner is still subject to a final removal order and properly detained at this time.

B. Petitioner's APA Challenge to Her Detention Fails

And in Count Two, Petitioner argues that her detention violates the APA, asserting that she was not provided with procedural protections and without establishing material changed circumstances justifying redetention. *See* Pet. ¶¶ 102–06. But the APA is not available to challenge the validity of one's detention, and for that reason alone, Petitioner's APA challenge fails.

The Supreme Court recently held that, for an action bringing claims for relief, under statutes including the APA and the INA,[5] that necessarily imply the invalidity of a detainee's confinement, regardless of whether a detainee formally requests release from confinement, such "claims fall within the 'core' of the writ of habeas corpus and *must be brought in habeas*." *Trump v. J.G.G.*, 143 S. Ct. 1003, 1005 (2025) (emphasis added). Here, Petitioner seeks "immediate[] release . . . from custody on his own recognizance," either outright or pending a pre-deprivation hearing. This is a core habeas claim — that fails on the merits for the reasons already discussed — and it is simply not cognizable under the APA. Petitioner's challenge to his detention premised on the APA, then, must fail.

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[5] The plaintiffs in *J.C.G.* brought nine claims for relief pursuant to various federal statutes, including the Alien Enemies Act, the Administrative Procedure Act, various provisions of the Immigration and Nationality Act, the Due Process Clause, and habeas corpus. *See* Compl., ECF No. 1, *J.G.G. v. Trump*, No. 25-cv-00766 (D.D.C. Mar. 15, 2025).

Moreover, any APA challenge would fail for a separate reason: ICE's decision to detain Petitioner in order to execute her removal order is one of those "discretionary determinations" that is not a proper basis "for separate rounds of judicial intervention outside the streamlined process designed by Congress." *AADC*, 525 U.S. at 471. In any event, as a discretionary decision, it is absolutely precluded from review under the APA. *Heckler v. Chaney*, 470 U.S. 821, 831 (1985); 5 U.S.C. § 701(a)(2) (noting that there is no APA review of agency action committed to agency discretion by law). Furthermore, Petitioner's APA challenge to ICE's discretionary decision to detain her despite her prior release on recognizance fails under § 701(a)(1) because the Court is deprived of subject-matter jurisdiction by virtue of 8 U.S.C. § 1252(a)(2)(B)(ii). *See, e.g.*, *Bernardo ex rel. M&K Eng'g, Inc. v. Johnson*, 814 F.3d 481, 485 (1st Cir. 2016) (holding that the judicial review bar at § 1252(a)(2)(B)(ii) applied as a result of statutory terms suggesting a grant of administrative discretion). Accordingly, to the extent that Petitioner challenges the substance of ICE's discretionary decision to detain after prior release, the Court should decline to consider such a challenge, as it lies squarely within the discretion of the agency.

III. PETITIONER CANNOT SHOW IRREPARABLE HARM

Because Petitioner can pursue her U visa application and any resulting motion to reopen even if she is detained and removed, she cannot show irreparable harm. "The showing of irreparable harm is perhaps the single most important prerequisite for the issuance of a preliminary injunction." *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (internal quotation marks and citations omitted). A movant can establish irreparable harm if she shows that "there is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation." *Id.* (internal quotation marks and citations omitted). Monetary harm is insufficient; a party seeking a preliminary injunction must

show "evidence of damage that cannot be rectified by financial compensation." *Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.2d 969, 975 (2d Cir. 1989). Moreover, the irreparable harm alleged must be shown to be "actual and imminent, not remote or speculative." *Kamerling*, 295 F.3d at 214. The "mere possibility of irreparable harm is insufficient to justify the drastic remedy of a preliminary injunction." *Borey v. Nat'l Union Fire Ins. Co.*, 934 F.2d 30, 34 (2d Cir. 1991). Additionally, as relevant here, "[a]lthough removal is a serious burden for many aliens, it is not categorically irreparable[.]" *Nken*, 556 U.S. at 435.

Here, Petitioner asserts that because she has raised a constitutional claim and because she needs to access counsel, she has established irreparable harm. Not so; as explained above, her constitutional detention claim is unlikely to succeed because she is subject to detention under § 1231, and it has only been two weeks. Moreover, any assertions of future difficulties accessing counsel is entirely speculative; since this action has been filed, the government has provided information to Petitioner's counsel as to her whereabouts and facilitated communications. It is, of course, inherent in any detention scenario that access will be curtailed compared to release, but that does not make it unconstitutional. And the transfer at issue here, as explained in the Alexander Declaration, was a result of a lack of bedspace in this district and in the neighboring district. Alexander Decl. ¶¶ 16–21. Now that bedspace has been secured for Petitioner, mere speculation about a potential future transfer is not enough to establish irreparable harm. *Kamerling*, 295 F.3d at 214; *Borey*, 934 F.2d at 34.

IV. THE PUBLIC INTEREST IS SERVED BY ENFORCING THE IMMIGRATION LAWS

"Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge

when the Government is the opposing party." *Nken*, 556 U.S. at 435. In the present case, the harms to the opposing party and the public interest weigh against granting petitioner a stay of her removal.

Granting a stay of removal will harm the government and the public by delaying the enforcement of United States law. "There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and 'permit[s] and prolong[s] a continuing violation of United States law.'" *Nken*, 556 U.S. at 436 (quoting *AADC*, 525 U.S. at 490) (alterations in original). The *Nken* Court was clear that "[i]n considering [the merged final two stay factors], courts must be mindful that the Government's role as the respondent in every removal proceeding does not make the public interest in each individual one negligible." *Nken*, 556 U.S. at 435.

V. PETITIONER SHOULD NOT BE RELEASED PENDING ADJUDICATION

In Count Three, Petitioner seeks release under the Court's inherent authority and *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). However, such release is warranted only when a petitioner (i) raises substantial claims and (ii) extraordinary circumstances (iii) make the grant of bail necessary to make the habeas remedy effective. *Id.* at 230. This standard is "a difficult one to meet," and the burden is on the petitioner to make the necessary showings. *Id.* But no such claims or circumstances are raised here, and bail is not necessary to make the habeas remedy effective, and *Mapp* release should be denied.

First, for the reasons already discussed, Petitioner has not raised substantial claims. Her detention is permitted under 8 U.S.C. § 1231(a) and has not been unconstitutionally prolonged. Petitioner's claims are no different than those brought by countless aliens subject to final removal orders, and she does not raise any novel issues concerning the applicability of the immigration

laws. *Cf. Ozturk v. Trump*, __ F. Supp. 3d ___, 2025 WL 1420540, at *5-*6 (D. Vt. May 16, 2025) (raising a First Amendment retaliation claim regarding the institution of removal proceedings).

Second, Petitioner has not shown extraordinary circumstances. This matter concerns a final order of removal that the government intends to execute, and Petitioner does not seriously dispute that she is removable on the charged grounds. The Second Circuit has not elaborated in great detail on the extraordinary circumstances requirement,[6] but other circuits have noted that special circumstances include: (1) a serious deterioration of health while incarcerated, (2) unusual delay in the appeal process, (3) short sentences for relatively minor crimes so near completion that extraordinary action is essential to make collateral review truly effective. *See, e.g.*, *United States v. Mett*, 41 F.3d 1281, 1282 n.4 (9th Cir. 1994) (listing circumstances (1) and (2)); *Calley v. Callaway*, 496 F.2d 701, 702 n.1 (5th Cir. 1974) (internal citations omitted) (listing circumstance (3)); *see also Castaneda-Castillo v. Holder*, 638 F.3d 354, 361 n.7 (1st Cir. 2011) (holding that special circumstances may include delayed extradition hearing); *United States v. Lui Kin-Hong*, 83 F.3d 523, 524 (1st Cir. 1996) (same); *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992) (extraordinary circumstances "seem to be limited to situations involving poor health or the impending completion of the prisoner's sentence"). None of these circumstances are present here.

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[6] In *Elkimya v. DHS*, 484 F.3d 151, 154 (2d Cir. 2007), the court did not find extraordinary circumstances because the plaintiff there offered no reason "other than convenience, why his continued detention by the INS would affect th[e] Court's ultimate consideration of the legal issues presented in his petition for review." In *Daum v. Eckert*, No. 20-3354, 2021 WL 4057190, at *2 (2d Cir. Sept. 7, 2021), the court held that COVID-19 was not an extraordinary circumstance warranting bail. Other cases summarily reject assertions of extraordinary circumstances. *See, e.g.*, *Illarramendi v. United States*, 906 F.3d 268, 271 (2d Cir. 2018); *Stolfa v. Holder*, 498 F. App'x 58, 60 (2d Cir. Aug. 16, 2012).

Third, release on bail is not necessary to make the habeas remedy effective in this case. Indeed, Petitioner does not make any non-conclusory claim in her petition that bail is necessary to make the remedy effective. *Cf.* Pet. ¶¶ 107–10. She can continue to pursue her U visa while detained (and even if removed), and her detention in furtherance of execution of her final removal order is permitted by law. Congress has made the judgment that detention is warranted in the face of a final removal order, the Supreme Court has reaffirmed that authority, subject to limits that this case is nowhere near approaching. While Petitioner and her family are undoubtedly affected by her detention, the effects do not require release to make the remedy effective. Other courts have grappled with this requirement, and in the face of similar assertions have rejected release. *See, e.g.*, *Evangelista v. Ashcroft*, 204 F. Supp. 2d 405, 407-09 (E.D.N.Y. 2002) (denying bail application because, for several reasons, petitioner "has not convinced the court that his immediate release is necessary in order to make the habeas remedy effective," even where the petitioner argued that he and his wife suffered from medical issues); *Halley v. Ashcroft*, 148 F. Supp. 2d 234, 236 (E.D.N.Y. 2001) (denying bail application, and noting, "petitioner has not demonstrated why the grant of bail is necessary to make the discretionary Section 212(c) hearing, which guarantees neither his release from detention nor vacatur of the INS's order of removal, effective."); *cf. Fernandez Aguirre v. Barr*, No. 19 Civ. 7048 (VEC), 2019 WL 3889800, at *4 (S.D.N.Y. Aug. 19, 2019) ("Because the Petition seeks only a constitutionally-adequate bond hearing, and because the Court has granted that relief, immediate release is not necessary to make the habeas writ effective.").

Accordingly, the Court should deny the request for release pending adjudication.

CONCLUSION

For the foregoing reasons, the Court should deny the motion for temporary restraining order and preliminary injunction.

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June 16, 2025

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 6,442 words.