UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

VILMA NOEMI APARICIO-DERAS, Petitioner, v. JONATHAN TUREK, in his official capacity as Acting Superintendent of Chittenden Regional Correctional Facility; PATRICIA H. HYDE in her official capacity as Acting Boston Field Office Director, Immigration and Customs Enforcement Office; TODD M. LYONS, in his official capacity Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security, Respondents.	)	Case No. 2:25-cv-726

RESPONDENTS' OPPOSITION TO PETITION FOR HABEAS CORPUS AND RESPONSE TO ORDER TO SHOW CAUSE

Patricial H. Hyde, in her official capacity as Acting Boston Field Office Director, Immigration and Customs Enforcement ("ICE"), Todd M. Lyons, in his official capacity as Acting Director of ICE, and Kristi Noem in her official capacity as Secretary of the United States Department of Homeland Security (collectively, "Respondents"), respectfully submit this memorandum of law in opposition to Petitioner Vilma Noemi Aparicio-Deras's Petition for a Writ of Habeas Corpus, ECF No. 1, and in response to this Court's Order to Show Cause, ECF No. 2.[1]

[1] Because the Court's Order to Show Cause directed Respondents to respond to the Petition itself and Petitioner has not filed a motion for a preliminary injunction, Respondents have not applied the temporary restraining order/preliminary injunction framework and instead have addressed the merits of the Petition. In any event, as set forth herein, Petitioner cannot demonstrate that she is likely to succeed on the merits or to suffer irreparable harm absent release, and therefore the high standard for preliminary injunctive relief is not met. *See, e.g., Winter v. National Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008).

PRELIMINARY STATEMENT

Petitioner Vilma Noemi Aparicio-Deras is presently being held at the Chittenden Regional Correctional Facility, following her arrest by ICE on August 23, 2025. Petitioner acknowledges that she is subject to a final order of removal but seeks release from ICE custody on the grounds that her arrest was due to racial profiling and she has been denied necessary medical care in violation of the Fourth and Fifth Amendments, respectively. With these claims, Petitioner fails to establish her entitlement to a writ of habeas corpus. To the extent she attempts to challenge the order of removal, the Court lacks jurisdiction to do so, and ICE's detention pending execution of the final order is authorized by statute. Habeas relief is not available under the Fourth Amendment, and Petitioner has not demonstrated that her medical care has been so deficient as to give rise to a Fifth Amendment claim of deliberate indifference.

FACTUAL BACKGROUND

Petitioner was arrested by ICE agents on August 23, 2025 while working at the Optimo Car Wash in Newington, Connecticut and was then transported to the Chittenden facility. *See* Pet. ¶¶ 3, 19. She previously had been ordered removed on March 5, 2025 by an immigration judge. *See* Pet. ¶ 20. While Petitioner claims that she did not receive notice of the immigration court hearing and has filed a motion to rescind the final removal order, *see id.*, it presently remains in place, though removal is stayed in such instances until a ruling by the immigration court. *See* 8 C.F.R. 1003.23(b)(4)(ii) ("Except in cases involving in absentia orders, the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case.").

Prior to her arrest, Petitioner underwent surgery, and she claims that she was prescribed certain post-operative medications that she has not received while in ICE custody, except on August 30, 2025, when the medications were administered. *See* Pet. ¶ 20. Petitioner filed this

habeas action seeking her release on August 31, 2025. She claims her detention violates the Fourth and Fifth Amendments of the Constitution and requests immediate release pending adjudication of her claims, as well as an injunction barring her removal from the District of Vermont. *See* Pet. 7. On September 1, 2025, the Court issued a Temporary Restraining Order granting Petitioner's request that she not be moved, as well as an Order to Show Cause why a writ of habeas corpus should not be granted. ECF No. 2.

LEGAL BACKGROUND

In the Immigration and Nationality Act, Congress enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process." *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)).

Following a final order of removal, detention is statutorily authorized under 8 U.S.C. § 1231(a); *see, e.g.*, *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) ("8 U.S.C. § 1231, governs the detention, release, and removal of individuals 'ordered removed.'"); *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001) (noting that 8 U.S.C. § 1231(a)'s "basic purpose [is], namely, assuring the alien's presence at the moment of removal").

ARGUMENT

A. THE COURT LACKS JURISDICTION TO CONSIDER CHALLENGES TO PETITIONER'S REMOVAL ORDER OR TO STAY PETITIONER'S REMOVAL

While Petitioner primarily seeks her release from custody, she also suggests that the final order of removal is invalid due to her purported lack of notice, and she seeks an order barring ICE

from removing her from the District of Vermont. Yet, 8 U.S.C. §§ 1252(a)(5) and 1252(g) each operate to divest the Court of jurisdiction over her removal.

Section 1252(a)(5) provides, in pertinent part, as follows:

> Notwithstanding any other provision of law, statutory or nonstatutory, . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means of judicial review of an order of removal entered or issued under any provision of this chapter . . . .

Petitioner, in noting that she has filed a motion to rescind the removal order in a separate proceeding, Pet. ¶ 20, appears to concede that this Court cannot alter the final order of removal, which it plainly cannot under Section 1252(a)(5). Accordingly, any ongoing challenge to Petitioner's removal order is not relevant to this action or a basis for the court's jurisdiction. *See, e.g.*, *Lakhani v. U.S. Citizenship & Immigr. Servs.*, 817 F. Supp. 2d 390, 392 (D. Vt. 2011) ("The Second Circuit has held that even when a removal order is being challenged indirectly, the provisions of the REAL ID Act apply.") (citing *Delgado v. Quarantillo,* 643 F.3d 52, 55 (2d Cir. 2011)).

In addition, Section 1252(g) strips district courts of jurisdiction to issue stays of removal, stating:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to hear 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 against any alien under this chapter.

The Second Circuit has held that "[a] stay of removal is a request to delay the execution of a removal order" and, as such, is barred by § 1252(g). *Troy as Next Friend Zhang v. Barr*, 822 F. App'x 38, 39 (2d Cir. 2020) (Summary Order) (citing *Sharif ex rel. Sharif v. Ashcroft*, 280 F.3d 786, 787 (7th Cir. 2002)). Thus, to the extent Petitioner seeks a stay of removal in requesting that

she not be removed from the District of Vermont, the Court lacks jurisdiction to grant such relief and moreover, as previously noted, Petitioner already is entitled to a stay of removal pending a decision by the immigration court on her motion to reopen the removal order.

B. THE FOURTH AMENDMENT DOES NOT PROVIDE A REMEDY OF RELEASE THROUGH HABEAS

Petitioner's claim that she is entitled to habeas relief on the ground of alleged racial profiling fails, because the Fourth Amendment does not provide a remedy of release through habeas. Petitioner makes an unsupported claim that she was indiscriminately arrested to fulfil a quota; however, her Petition acknowledges that she is subject to a final order of removal, Pet. ¶ 20, and, under 8 U.S.C. § 1231(a), the detention of noncitizens pending execution of removal orders is authorized. Accordingly, Petitioner has not alleged that she is unlawfully detained.

Moreover, even if her arrest and detention were unconstitutional (which they are not), an order of release upon a habeas petition is not a proper remedy for a Fourth Amendment violation, and Petitioner does not cite any authority to the contrary. *See, e.g.*, *Marvan v. Slaughter*, No. CV 25-49-H-DLC, 2025 WL 1940043, at *3 (D. Mont. July 15, 2025) ("Petitioner fails to cite—and the Court is unaware of—a case in which a federal district court provided habeas relief after administrative removal proceedings had commenced against an individual without legal status in the United States, based on a Fourth Amendment violation."). When a Fourth Amendment violation occurs, the typical remedy–the exclusionary rule–generally does not apply to subsequent civil deportation proceedings. *See United States v. Kisyorgy*, No 5:09-CR-81, 2010 WL 3323675, at *4 (D. Vt. Apr. 23, 2010) (citing *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1046 (1984)). Indeed, "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." *Lopez-Mendoza*, 468 U.S. at 1039; *Pretzantzin v. Holder*, 736

F.3d 641, 646 (2d Cir. 2013) ("Because an individual cannot escape a tribunal's power over his 'body' despite being subject to an illegal seizure en route to the courthouse, he cannot contest that he is, in fact, the individual named in the charging documents initiating proceedings.").

Because an individual's identity is not suppressible, district courts have recognized that habeas is not an appropriate means to seek release on Fourth Amendment grounds pending removal proceedings. *See, e.g.*, *H.N. v. Warden, Stewart Det. Ctr.*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) ("[E]ven if the Court accepted Petitioner's argument that his initial detention was somehow unlawful, he is still not entitled to habeas relief."); *Jorge S. v. Sec'y of Homeland Sec.*, No. 18-CV-1842 (SRN/HB), 2018 WL 6332717, at *4 (D. Minn. Nov. 15, 2018), *report and recommendation adopted*, No. 18-CV-1842 (SRN/HB), 2018 WL 6332507 (D. Minn. Dec. 4, 2018) ("Release from Jorge S.'s *current* detention because his detention *previously* had been unlawful would be a remedy ill-fitted to the specific injury alleged.") (emphasis in original); *Amezcua-Gonzalez v. Lobato*, No. C16-979-RAJ-JPD, 2016 WL 6892934, at *2 (W.D. Wash. Oct. 6, 2016), *report and recommendation adopted sub nom. Amezcua–Gonzalez v. Lobato*, No. C16-979-RAJ, 2016 WL 6892547 (W.D. Wash. Nov. 22, 2016) ("[E]ven if petitioner's arrest amounts to an egregious Fourth Amendment violation, he is not entitled to habeas relief, and his petition should be denied."). Thus, even assuming that a Fourth Amendment violation occurred here, Petitioner would not be entitled to the habeas remedy of release because she cannot suppress her identity and status in connection with the removal proceedings upon which her detention is based.

Further, no Fourth Amendment remedy is available to Petitioner because she has independently conceded her removability in her habeas petition in acknowledging that she is subject to a final order of removal. Voluntary concessions of removability during proceedings that

result from an unlawful arrest constitute independent evidence that is not subject to suppression. *Vanegas-Ramirez v. Holder*, 768 F.3d 226, 235-36 (2d Cir. 2014) (collecting cases); *see also Lopez-Mendoza*, 468 U.S. at 1043 (recognizing that "regardless of how the arrest is effected," sufficient evidence to support removal could be "gathered independently of, or sufficiently attenuated from, the original arrest"). Here, Petitioner concedes that there is a final order of removal against her, and as set forth above, detention pending execution of removal orders is authorized by statute. *See* 8 U.S.C. § 1231(a). Petitioner's claim under the Fourth Amendment therefore should be denied.

C. PETITIONER'S MEDICAL-CARE CHALLENGE FAILS

Finally, Petitioner claims that the government has violated her Fifth Amendment substantive due process rights "by subjecting [her] to conditions of confinement that amount to punishment and failing to ensure her safety and health." Pet. ¶ 6. This claim fails because any delay in providing Petitioner with medical care has been rectified and was not due to deliberate indifference, and even if Petitioner could establish such a cause of action, release is not the appropriate remedy.

To state a Fifth Amendment due process claim for deliberate indifference to the medical needs of civil detainees, the conduct at issue must be "egregious enough to state a substantive due process claim." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849-50 (1998). That requires two showings: first, that petitioner has serious, unmet medical needs; second, that the government acted with deliberate indifference to those needs. *See Charles v. Orange Cnty.*, 925 F.3d 73, 85-86 (2d Cir. 2019). A petitioner establishes a claim for deliberate indifference by "prov[ing] that the defendant-official acted intentionally to impose the alleged condition, or recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even

though the defendant-official knew, or should have known, that the condition posed an excessive risk to health or safety." *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017).

Petitioner alleges that she underwent surgery involving [redacted] six days before her arrest and that she was given a variety of medication to take, both to manage pain and her underlying condition. Pet. ¶ 17. Petitioner claims to have developed a series of symptoms due to a lack of sufficient water and the failure to provide her prescribed medication for all but one day that she has been in ICE custody. Pet. ¶¶ 22-23. She purports to be at "imminent risk of grievous bodily harm or death," Pet. ¶ 1, though her specific allegations fall short of such a showing, and Petitioner's medical records do not support the assertion that a lack of daily medication put her at such risk. For example, the records obtained from her provider state that most of the medications should be taken "as needed," not as a rigid daily regimen. *See* Ex. A at 3. As for the symptoms Petitioner has experienced during her detention, on August 30, 2025, the day before she filed her Petition, she spoke with medical personnel about her medication and stated that she had "mild abdominal discomfort." *Id.* at 22. This account is not consistent with the allegations in the Petition of grievous bodily harm; nor is it the type of condition found to state a medical-indifference claim. *See, e.g.*, *Tapp v. Tougas*, No. 9:05-CV-01479 (NAM/DEP), 2008 WL 5471766, at *9 (N.D.N.Y. Aug. 11, 2008), *report and recommendation adopted in relevant part* No. 9:05-CV-1479, 2008 WL 4371762 (N.D.N.Y. Sept. 18, 2008) (complaints that included "swollen testicles" and "blood in urine & stool" found to be insufficiently severe to state a medical-indifference claim because there were insufficient indications that the conditions gave rise to "extreme pain, degeneration, or death").

Moreover, even assuming a serious, unmet medical need has been demonstrated, Petitioner cannot show that the government acted with deliberate indifference to that need. Petitioner claims

that she did not receive her medication was "because ICE withheld it from her," Pet. ¶ 2, an unsupported assertion that suggests inaccurately that ICE provides the medical care in a non-federal facility. Further, Petitioner's allegations ignore the facility's efforts to ascertain and respond to her medical needs. During the visit described above on August 30, 2025, a nurse advised Petitioner that one of the medications she sought was not kept in stock but had been ordered and was now available. *See* Ex. A at 22. Thus, while the records confirm that Petitioner did not have access to one medication during the first week of her detention, a lack of availability rather than a lack of care was responsible, and the problem was rectified.

As for the other medications Petitioner was prescribed, the medical records establish that Petitioner was not denied them but instead did not understand how to obtain them. The nurse progress note dated August 31, 2025—the day the Petition was filed—reads, "Patient brought to medical this morning [due to] her not coming down for her medication this morning. Patient signed a refusal and was asked why she declined medication per our conversation yesterday. Patient stated, 'they didn't tell me I needed to come down to get my medicine.'" *Id.* at 24. The nurse then wrote that Petitioner was once again reminded of the process for medication administration: that "medication is not brought to her individually and that she needed to come to medline to receive her medication . . . and that a sign was placed in her house in Spanish so she could read the instructions if there was lingering confusion." *Id.* The medical note dated September 2, 2025 confirms that Petitioner's confusion over how medications are administered was the primary source of any missed doses, stating, "She has not been taking her medications consistently; it was explained to her multiple times the past few day. She says she understands now and has been getting her meds. . ." *Id.* at 25.

During that September 2 visit, which included an interpreter, Petitioner did claim to be missing medications, specifically oxycodone and an antibiotic. *See id.* According to the note, medical personnel explained that Petitioner was only sent home with [redacted] by her provider and the facility does not stock it, with Tylenol and Ibuprofen available for pain. *See id.* It was further explained to Petitioner that her records did not show that an antibiotic was prescribed, but if Petitioner experienced symptoms of an infection, testing could be done and an antibiotic prescribed. *See id.* As to Petitioner's complaint about a lack of water, the note stated that Petitioner had been given a cup, shown the location of the water cooler on her unit, and encouraged to drink water. *See id.* Petitioner also was referred to the University of Vermont Medical Center, Urology Department, for follow up, and separately offered an appointment with a Spanish-speaking women's health provider at the correctional facility. *See id.* at 1, 26. Finally, on September 3, 2025, Petitioner again was seen by medical providers with the aid of a Spanish interpreter. *See id.* at 27. She claimed to be experiencing symptoms due to a lack of medication; however, the providers explained that all of the medications are available at the "med cart" and that Petitioner cannot instead request delivery of medication. *See id.* The note indicates that Petitioner was again shown where she can obtain water and ice at all times. *See id.*

In sum, the medical records demonstrate that providers repeatedly have met with Petitioner and been responsive to her needs while she has been in ICE custody. While one medication was delayed due to a lack of availability, Petitioner has had access to what she needs for the past five days, and her inability to obtain other medications before then resulted from her failure to visit the medical center. While Petitioner may prefer different medications or to have them delivered, "it is well-established that mere disagreement over the proper treatment does not create a constitutional claim. . .[and] negligence, even if it constitutes medical malpractice, does not,

without more engender a constitutional violation." *Chance v. Armstrong*, 143 F.3d 698, 703 (2d Cir. 1998) (internal citations omitted). Here, there is no showing of even medical negligence, let alone facts that would suggest egregious conduct exhibiting deliberate indifference to Petitioner's medical needs.

Further, even if Petitioner had stated a constitutional claim concerning her medical care, the appropriate remedy would be to ensure the provision of treatment. It is true that in rare instances, courts within the Second Circuit have ordered the release of detainees whose due process rights were violated due to conditions of confinement. *See, e.g., Basank v. Decker*, 449 F. Supp. 3d 205, 215 (S.D.N.Y. 2020) (releasing high-risk detainees vulnerable to Covid-19 after finding that ICE had failed to demonstrate adequate steps to protect them); *Coronel v. Decker*, 449 F.Supp.3d 274, 289 (S.D.N.Y. 2020) (same). Yet, most of these cases arose in the context of Covid-19 concerns early in the pandemic, when facilities were not able to minimize the risk of infection through modified detention arrangements.

Indeed, these courts first looked to see whether petitioners' risks could be addressed through measures such as social distancing and single-occupancy cells and did not grant release to those individuals for whom remedial steps had been taken. For example, in *Ramsundar v. Wolf*, the court denied the petitions seeking release of detainees who were placed in single-occupancy cells and accommodated through other social distancing measures. No. 20-CV-361, 2020 WL 1809677, at *4 (April 9, 2020). In conditionally granting release to several petitioners if protective measures were not provided immediately, the court noted the rarity of the relief, stating, "Indeed, this Court is aware of few instances of a court's ordering the release of an individual on the grounds that the government has failed to provide reasonably safe conditions of confinement. But these are extraordinary times." *Id.*; *see also Jones v. Wolf*, 467 F. Supp. 3d 74, 95 (W.D.N.Y. 2020) ("[T]his

Court is not convinced that the unconstitutional conditions at [the detention facility] cannot be remedied through an injunction."); *Reynolds v. Petrucci*, No. 20-CV-3523, 2020 WL 4431997, at *2 (S.D.N.Y. July 29, 2020) ("While *habeas* relief may be available to petitioners making claims based on conditions of confinement, the appropriate remedy in that context is relief from those conditions, not release from custody.").

Here, Petitioner's medical needs can be met while she is in custody—and in fact already are being met. Significant steps have been taken to address Petitioner's discomfort and to combat her confusion around the system for administering medications. These measures demonstrate not only that any previously unmet medical needs were not caused by deliberate indifference, but also that habeas relief in the form of release is not appropriate and should not be granted.

CONCLUSION

For the reasons stated above, this Court should decline to issue a writ of a habeas corpus and terminate the temporary restraining order.

Dated: September 3, 2025

Respectfully submitted,

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