UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

[redacted] Petitioner, v. JONATHAN TUREK, Interim Superintendent, Chittenden Regional Correction Facility, South Burlington, Vermont; PATRICIA HYDE, Field Office Director, MICHAEL KROL, HSI New England Special Agent in Charge, and TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, U.S. Secretary of Homeland Security; PAMELA BONDI, U.S. Attorney General, Respondents.	Civil Case No. [redacted]

FEDERAL RESPONDENTS' OPPOSITION TO
PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

Respondents Patricia Hyde, Field Office Director, Michael Krol, HSI New England Special Agent in Charge, Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement (ICE), Kristi Noem, U.S. Secretary of Homeland Security, and Pamela Bondi, U.S. Attorney General (collectively, Federal Respondents) respectfully submit this opposition to the Petition for Writ of Habeas Corpus filed by Petitioner [redacted].

PRELIMINARY STATEMENT

Petitioner is presently being held at the Chittenden Regional Correctional Facility, following her arrest by ICE on [redacted], 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 and detention violate the Fourth Amendment, the Fifth Amendment, and 8 U.S.C. § 1231, which governs detention subject to final orders of removal. Petitioner fails to establish her entitlement to

a writ of habeas corpus. To the extent she attempts to seek a stay of her removal, the Court lacks jurisdiction to do so, and ICE's detention pending execution of the final order is authorized by statute. Moreover, habeas relief is not available under the Fourth Amendment. Furthermore, Petitioner's two-week detention does not violate the Fifth Amendment, and she does not have a cognizable interest under the Fifth Amendment in a pending visa application filed earlier this year. Finally, an extension of a Temporary Restraining Order is not appropriate here.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a citizen of [redacted] who admits she entered the United States unlawfully. *See* Pet. ¶¶ 1, 19. On or about [redacted], 2005, U.S. Border Patrol agents encountered Petitioner at or near the southwestern land border and took her into custody for processing. Ex. A, Declaration of Assistant Field Office Director Keith Chan ¶ 6. On [redacted], 2005, Petitioner was served in person with a Notice to Appear, which required her to appear for a hearing at the Immigration Court in Harlingen, Texas on [redacted], 2006. *Id.* ¶ 7. On [redacted] 2006, Petitioner failed to appear at the duly scheduled hearing and was ordered removed *in absentia* from the United States in the Immigration Court for Harlingen, Texas. This was a final order of removal. *Id.* ¶ 8.

Petitioner alleges that on [redacted], 2025, she filed a Petition for T Nonimmigrant Status (T-visa), including an Application for T Nonimmigration Status (Form I-914), and Application for Advance Permission to Enter as a Nonimmigrant (Form I-192). *See* Pet. ¶ 21. Petitioner claims that on [redacted], 2025, she appeared for a biometrics appointment and was detained by ICE. *Id.* ¶ 23.

Petitioner presently is detained pursuant to 8 U.S.C. § 1231. Ex. A ¶ 9. On [redacted], 2025, Petitioner was transferred from the ICE office in Burlington, Massachusetts to the Chittenden Regional Correctional Facility in Vermont. *Id.* ¶ 10. Petitioner filed this petition for

habeas seeking her immediate release on [redacted] 2025. Pet. ¶ 4.[1] Petitioner asserts that her detention violates her rights under 8 U.S.C. § 1231 and its implementing regulations and the Fourth and Fifth Amendments of the United States Constitution. Pet. ¶¶ 3, 24-35. While Petitioner seeks immediate release through her habeas petition and an order "in the interim preventing her transfer outside the District," *id.* at 7, she has not moved for a preliminary injunction.

On [redacted], 2025, the Court issued a temporary restraining order (TRO) directing that Petitioner not be removed from the State of Vermont pending further order from the Court, as well as an Order to Show Cause directing the Federal Respondents to answer or respond to the Petition by [redacted]. ECF No. [redacted]. On [redacted], 2025, the Court granted the Federal Respondents' unopposed request for an extension of their deadline to respond until [redacted], 2025. ECF No. [redacted].

LEGAL BACKGROUND

Through 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 Johnson v. Arteaga-Martinez*, 596 U.S. 573,

[1] Petitioner filed a substantially similar petition in the District of Massachusetts on August 30, 2025. *See* [redacted] *v.* [redacted], No. [redacted] ([redacted] ECF No. [redacted] On September 8, 2025; the District Court for the District of Massachusetts ordered the case be transferred to the District of Vermont, [redacted] *v.* [redacted], No. [redacted]), ECF No. [redacted] and it was assigned a civil case number in this Court, [redacted] *v.* [redacted], No. [redacted] ([redacted] Petitioner's counsel has indicated they intend to voluntarily dismiss the matter transferred from the District of Massachusetts (D. Vt. No. [redacted]).

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").

STANDARD OF REVIEW

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions unless Congress has separately stripped the court of jurisdiction to hear the claim. *Zadvydas*, 533 U.S. at 687-88. A petitioner bears the burden of proving that his custody violates the Constitution, laws, or treatises of the United States such that a writ of habeas corpus should be granted. *See Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011) ("it is the petitioner who bears the burden of proving that he is being held contrary to law").

ARGUMENT

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

Petitioner seeks her release from custody and an order barring ICE from removing her from the District of Vermont, which would effectively stay her removal. Yet, 8 U.S.C. §§ 1252(a)(5) and 1252(g) each operate to divest the Court of jurisdiction over her removal. *See, e.g., Turcio v. Noem*, No. 25-CV-05941 (MMG), 2025 WL 2124129, at *3 (S.D.N.Y. July 29, 2025) (recognizing the "weight of precedent" within the Second Circuit has held Section 1252 deprives district courts of jurisdiction to grant habeas relief or stay a 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 . . . .

This provision makes clear this Court cannot alter Petitioner's final order of removal. 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)); *Magasouba v. Norris*, 546 F. Supp. 2d 153, 155 (D. Vt. 2008) (Section 1252(a)(5) precluded district court's jurisdiction to hear habeas petition when Petitioner was detained pursuant to 8 U.S.C. 1231 once order of removal became administratively final).

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.

B. PETITIONER'S DETENTION IS AUTHORIZED BY STATUTE.

ICE's statutory authority to arrest, detain, and remove Petitioner from the United States stems from 8 U.S.C. § 1231(a) which provides for the detention and removal of aliens with final orders of removal. By statute, ICE is required to detain an individual during the removal period, which by statute lasts for 90 days post-removal order. *See* 8 U.S.C. § 1231(a)(2). Because Petitioner's order of removal was entered in 2006, Petitioner argues that her detention violations Section 1231 because it is outside this 90-day removal period.

However, 8 U.S.C. § 1231(a)(6) allows ICE to arrest and detain an alien with a removal order beyond the removal period when an individual is inadmissible. *See* 8 U.S.C. § 1231(a)(6) ("An alien ordered removed who is inadmissible under section 1182 of this title . . . may be detained beyond the removal period."); 8 U.S.C. § 1182 ("An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.").[2] Petitioner was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) because – as she acknowledges – she entered the United States without inspection. Pet. ¶ 19; Ex. A ¶ 6; *see also Guamanrrigra v. Holder*, 670 F.3d 404, 406 n.4 (2d Cir. 2012) (explaining that the "term of art 'without inspection'" refers to entering the United States without being admitted or paroled, or arriving at any time or place other than a designated port of entry, as specified in 8 U.S.C. § 1182(a)(6)(a)(i)). Consequently, Petitioner's claim that her detention violates Section 1231 fails.

The fact that Petitioner has filed a T-visa application with USCIS does not bear on her removability. "Federal regulations state that the filing of [T-visa] applications 'has no effect on

[2] In relying on 8 U.S.C. § 1231(a)(6), Federal Respondents do not concede that 8 U.S.C. § 1231(a)(2) is inapplicable.

DHS authority or discretion to execute a final order of removal[,]" though an applicant may request an administrative stay or removal. 8 C.F.R. § 214.204(b)(2)(i); *K.K. v. Garland*, No. 23-CV-6281-FPG, 2025 WL 274431, at *2 (W.D.N.Y. Jan. 23, 2025) (quoting 8 C.F.R. § 214.204(b)(2)(i)); *see also Nicholas L. L. v. Barr*, No. 19-cv-02543-ECT-TNL, 2019 WL 4929795, at *5 (D. Minn. Oct. 7, 2019) ("[f]ederal regulations say the opposite" of a petitioner's claims that "a T-visa applicant cannot be removed before a bona fide determination has been made concerning his application"). A final order of removal for a T-visa applicant is only automatically stayed if USCIS determines that the application is bona fide. *Id.* § 214.204(b)(2)(iii). Plaintiff has not alleged USCIS has made a bona fide determination of her T-visa application. Therefore, Petitioner's claim that her arrest violates Section 1231 and its implementing regulations fails and does not provide a basis for habeas relief.

C. PETITIONER FAILS TO ASSERT A COGNIZABLE CLAIM UNDER THE FOURTH AMENDMENT.

Petitioner's claim that she is entitled to habeas relief based on a Fourth Amendment violation fails. Petitioner alleges her arrest and detention violate the Fourth Amendment because her private interest in applying for lawful status outweighs the Government's interest. Pet. ¶ 25. However, "[t]he Fourth Amendment protects the right of private persons to be free from unreasonable government intrusions into areas where they have a legitimate expectation of privacy." *United States v. Snype*, 441 F.3d 119, 130 (2d Cir. 2006) (quoting *United States v. Newton,* 369 F.3d 659, 664 (2d Cir. 2004)); *see also* U.S. Const. amend IV. Petitioner provides no basis for the contention that her interest in applying for lawful status is cognizable under the Fourth Amendment.

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 by acknowledging that she entered the United States without inspection and that she is subject to a final order of removal. Pet. ¶¶ 19-20. 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 she entered the United States without inspection and that there is a final order of removal against her. As set forth above, detention is authorized by 8 U.S.C. § 1231(a)(6) because Petitioner is inadmissible under Section 1182. Accordingly, Petitioner's claim under the Fourth Amendment should be denied.

D. PETITIONER'S ARREST, DETENTION, AND REMOVAL DO NOT VIOLATE THE FIFTH AMENDMENT.

Petitioner's claim that her detention violates the Fifth Amendment's Due Process Clause is similarly without merit. The Supreme Court has made clear that "detention during deportation

proceedings [is] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523; *Wong Wing v. U.S.*, 163 U.S. 288, 235 (1896) (holding deportation proceedings "would be [in] vain if those accused could not be held in custody pending the inquiry into their true character").

When a final order of removal is entered by an immigration court, detention is mandatory during the 90-day removal period. 8 U.S.C. § 1231(a)(2)(A). Even after the initial 90-day removal period, "the Government 'may' continue to detain an alien who still remains here or release that alien under supervision" for a "period reasonably necessary to bring about that alien's removal from the United States[.]" *Zadvydas,* 533 U.S. at 683, 689 (citing 8 U.S.C. § 1231(a)(6)). When evaluating "reasonableness" of post-final order detention, the touchstone is whether an alien's detention continues to serve "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Id.* at 699. When an individual is subject to a final order of removal, the Supreme Court has recognized that detention for six months is a "presumptively reasonable period of detention." *Id.* at 701. Beyond six months, a detained individual may file a habeas petition seeking release, but must show there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Id.* at 701. If the individual does so, the burden would then shift to the government to produce "evidence sufficient to rebut that showing." *Id.* at 700-01.

Petitioner's claim that her detention falls outside the lawful removal period fails because her detention complies with the standards established by *Zadvydas*. First, Petitioner's two-week detention is presumptively reasonable. In *Callender v. Shanahan*, the district court, faced with similar facts, rejected the argument that the six-month period of presumptively reasonable detention began when the order of removal became final, explaining, "[the petitioner] is confusing

the 90-day 'removal period' under 8 U.S.C. § 1231(a)(1)(A), which began when his order of removal became final in 2006, *see id.* § 1231(a)(1)(B), with the six-month 'presumptively reasonable period of detention' under *Zadvydas*, which could not have begun until he was detained by ICE in 2015." *Callender v. Shanahan*, 281 F. Supp. 3d 428, 436, n.7 (S.D.N.Y. 2017) (recognizing that "most district courts" "within and outside [the Second] Circuit" have concluded that "*Zadvydas* meant what it said: six months is the presumptively reasonable period of '*detention*' after the entry of a final order of removal.") (emphasis added). Here, Petitioner concedes she is subject to a final order of removal, *see* Pet. ¶ 20, and she has been detained for just over two weeks. Petitioner's detention falls well within the six-month time period during which an alien's detention pursuant to 8 U.S.C. § 1231(a)(6) is presumptively reasonable. Second, Petitioner has not alleged any "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701. Therefore, Petitioner's detention does not violate the Fifth Amendment's Due Process Clause, and her request for habeas relief on that basis must be denied.

Petitioner's application for a T-visa does not otherwise create a liberty or property interest protected by the Fifth Amendment. While Petitioner alleges her arrest "impeded her ability to avail herself of immigration benefits for which she is facially eligible," Pet. ¶ 31, there is no cognizable Fifth Amendment claim based on adjudications of immigration proceedings for benefits that are discretionary, *Islam v. Barr*, 394 F. Supp. 3d 279, 286 (E.D.N.Y. 2019) (collecting cases). District courts thus routinely find no due process violations in effectuating a removal order for an individual with a pending T-visa application. *See e.g.*, *Nicholas L.L.*, No. 19-cv-02543, 2019 WL 4929795 at *6-7 (D. Minn. Oct. 7, 2019) (rejecting claim that removal of a T-visa applicant before a bona fide determination has been made violates the Fifth Amendment as "there is no

constitutionally protected liberty interest in discretionary immigration relief"); *Suarez-Reyes v. Williams*, No. CV-20-01222-PMX-MTL-(JFM), 2020 WL 3414781, at *2 (D. Ariz. June 22, 2020) (petitioner's claim that he will be deprived of an opportunity to have his T-visa applications heard at a meaningful time and manner if removed is insufficient to show his due process claim is not precluded by § 1252(g)); *Marcelo Rojas v. Moore*, No. 19-cv-20855, 2019 WL 3340630, at *1 (S.D. Fla. Mar. 26, 2019) (T-visa applicant does not have a constitutionally protected liberty interest in remaining in the United States); *Viera v. McAleenan*, No. 19-cv-05112-PHX-DWL-IZB, 2019 WL 4303417, at *4 (D. Ariz. Sept. 11, 2019) (petitioner alleges no facts to support contention that USCIS has a "clear nondiscretionary duty" to adjudicate a T-visa application before an applicant is removed). Therefore, Petitioner's detention is fully permissible and does not violate the Fifth Amendment's Due Process Clause, and her claim for release must be rejected.

E. THE TRO SHOULD NOT BE EXTENDED.

Extension of the Court's TRO would be improper under the Federal Rules of Civil Procedure. Rule 65 contemplates that a TRO issues only upon a motion for a preliminary injunction. *See* Fed. R. Civ. P. 65(b)(3) (when a TRO issues without notice, the motion for a preliminary injunction should be set for a hearing at the earliest possible time). As a threshold issue, Petitioner has not sought a preliminary injunction here. Further, even if Petitioner's habeas petition could be construed as requesting such relief, Petitioner has not met the high burden of establishing she is entitled to it; indeed, Petitioner's filing does not even discuss the standard for injunctive relief or its applicability. "As the Supreme Court has explained, '[a] preliminary injunction is an extraordinary and drastic remedy' and is never awarded as of right.'" *Upsolve, Inc. v. James*, No. 22-1345, 2025 WL 2598725, at *4 (2d Cir. Sept. 9, 2025) (citing *Daileader v. Certain Underwriters at Lloyds London Syndicate 1861*, 96 F.4th 351, 356 (2d Cir. 2024)). Moreover, the Second Circuit has warned that preliminary injunctions "should not be routinely

granted." *Id.*

In seeking a preliminary injunction, a petitioner bears the burden of demonstrating: a likelihood of success on the merits; irreparable harm; a balance of equities in her favor; and a public interest favoring injunctive relief. *See D'Ambrosio v. Scott*, No. 2:25-CV-468, 2025 WL 1502936, at *4 (D. Vt. May 23, 2025). Here, Petitioner has not requested a preliminary injunction or TRO, and thus, has made no showing regarding either why it is warranted in the first place or why there is good cause for an extension of the TRO. In particular, for the reasons discussed herein, Petitioner cannot show she has a likelihood of success on the merits. *See D'Ambrosio*, 2025 WL 1502936, at *4 (denying request for TRO preventing removal from the United States where a Petitioner's failure to show a likelihood of success on the merits "weigh[ed] definitively against him"). Moreover, there is no need for injunctive relief pending resolution of Petitioner's claims, which present purely legal issues. "A habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course," *Bracy v. Gramley*, 520 U.S. 899, 904, (1997), and thus, the Court can, without delay, adjudicate the merits of the Petition itself.

Finally, extension of the TRO and the restriction on movement of Petitioner impermissibly constrains the government's removal authority under § 1231(g). Decisions where to detain an alien pending removal proceedings are within the discretion of the Secretary of Homeland Security and therefore may not be reviewed or enjoined by the district courts. *See* 8 U.S.C. § 1231(g)(1) ("The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal."). The INA precludes judicial review over such discretionary decisions. *See* 8 U.S.C. § 1252(a)(2)(B)(ii). Here, the Executive's authority under § 1231(g) to decide the location of detention for individuals detained pending removal falls within § 1252(a)(2)(B)(ii)'s scope and is therefore barred from judicial review. That is because, under

section 1231(g), DHS "necessarily has the authority to determine the location of detention of an alien in deportation proceedings," including whether to change that location during the pendency of proceedings. *Gandarillas-Zambrana v. Bd. Immigration Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995).

Courts have routinely refused to review the Executive's exercise of its broad discretion in this area. *See, e.g., Wood v. United States*, 175 F. App'x 419, 420 (2d Cir. 2006) (holding that the Secretary "was not required to detain [Plaintiff] in a particular state" given the Secretary's "statutory discretion" under § 1231(g)); *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (holding that "a district court has no jurisdiction to restrain the Attorney General's power to transfer aliens to appropriate facilities by granting injunctive relief"). Accordingly, the Court should not extend the TRO barring Petitioner's transfer to any detention facility outside the District of Vermont.

CONCLUSION

The Court should deny the petition for a writ of habeas corpus and permit the TRO to expire.

Dated at Burlington, in the District of Vermont, this 12th day of September, 2025.

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