

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

T. Y.S.,

Petitioner,

v.

JUDITH ALMODOVAR, *et al.*,

Respondents.

Case No. 25 Civ. 8267 (ER)

**RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S
PETITION FOR WRIT OF HABEAS CORPUS**

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The Government respectfully submits this memorandum of law in opposition to the petition for writ of habeas corpus, ECF No. 1 (“Pet.”), filed by petitioner T.Y.S. (“Petitioner”) on October 6, 2025.

PRELIMINARY STATEMENT

Petitioner, a native and citizen of Honduras, challenges his detention by U.S. Immigration and Customs Enforcement (“ICE”), arguing that his re-detention in May 2025 was unlawful. But Petitioner’s challenges are without merit. First, Petitioner’s challenges to his detention under 8 U.S.C. § 1226 are moot, as he became subject to a final order of removal on August 15, 2025, after which his detention became governed by 8 U.S.C. § 1231(a). Petitioner’s detention under § 1231 is lawful, as that statute mandates his detention during the 90-day removal period while ICE seeks to execute his final removal order. Second, Petitioner’s claims under the Administrative Procedure Act (“APA”) are similarly moot, but also fail because such claims fall within the core of the writ of habeas corpus and can only be brought in habeas.

For these reasons, as detailed further below, the Court should deny the petition in its entirety.

BACKGROUND

I. PROCEDURAL HISTORY

Petitioner is a noncitizen detained by ICE. On October 6, 2025, Petitioner initiated this action by filing a Verified Petition for Writ of Habeas Corpus and Complaint. ECF No. 1 (“Pet.”). Petitioner seeks an order from this Court directing his release from custody or to release him on his own recognizance pending the outcome of a pre-deprivation hearing where ICE bears the burden of proof to show changed circumstances justifying his re-detention. *Id.* at 27-28.

II. RELEVANT FACTUAL BACKGROUND

Petitioner is a native and citizen of Honduras who entered the United States at an unknown location on an unknown date. Declaration of Mayra A. Pardo-Figueroa dated October 24, 2025 (“Pardo-Figueroa Decl.”), ¶ 3. On June 12, 2019, ICE arrested Petitioner upon his release from criminal custody at the Nassau County Correctional Center. *Id.* ¶ 5. That same day, ICE served Petitioner with a Notice to Appear (“NTA”), the charging document used to commence removal proceedings, charging him with being removable pursuant to Immigration and Nationality Act (“INA”) Section 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. *Id.* ICE also served Petitioner with a Notice of Custody Determination, Form I-286, notifying him that ICE determined that he would be detained pending removal proceedings. *Id.* ¶ 5. Petitioner’s detention pending removal proceedings was governed by 8 U.S.C. § 1226(a). *Id.*

On August 30, 2019, Petitioner filed a request for a bond hearing with the Immigration Court. Pardo-Figueroa Decl. ¶ 6. A bond hearing was held on September 12, 2019, and the Immigration Judge denied Petitioner’s request for bond. *Id.* ¶ 7. Petitioner appealed the Immigration Judge’s decision to the Board of Immigration Appeals (the “BIA”), and on February 13, 2020, the BIA dismissed Petitioner’s bond appeal. *Id.* On April 6, 2021, Petitioner filed a petition for writ of habeas corpus in the Southern District of New York challenging his continued detention. *Id.* ¶ 11. The government agreed to resolve that case by providing Petitioner with a new bond hearing where ICE would bear the burden of proving danger or flight risk. *Id.* On May 4, 2021, the Immigration Judge conducted the stipulated bond hearing and granted Petitioner release on bond in the amount of \$15,000 with monitoring by ICE and participation in Wellpath as conditions. *Id.* ¶ 12. Petitioner bonded out of custody on May 10, 2021. Pardo-Figueroa Decl.

¶ 13. On March 25, 2022, the BIA affirmed the Immigration Judge's May 4, 2021 bond decision and dismissed ICE's appeal. *Id.* ¶ 14.

In the meantime, Petitioner filed a Form I-589, Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture and, on October 25, 2019, the Immigration Judge denied the application and ordered Petitioner removed to Honduras. *Id.* ¶ 8. Petitioner appealed the Immigration Judge's decision and, on February 11, 2021, the BIA denied Petitioner's appeal, in part, and remanded the case to the Immigration Judge for further fact finding and conclusions of law regarding whether the petitioner was convicted of a particularly serious crime that renders him ineligible for asylum and withholding of removal. *Id.* On March 1, 2021, the Immigration Judge issued a decision finding that Petitioner was ineligible for asylum and withholding of removal because he had been convicted of a particularly serious crime and certified the matter back to the BIA for adjudication of the appeal. *Id.* ¶ 9. On or about August 26, 2022, Petitioner filed a motion with the BIA to remand his case back to the Immigration Judge for consideration of intervening case law. *Id.* ¶ 10.

On May 15, 2025, officers from Homeland Security Investigations arrested Petitioner in Newburgh, New York, pursuant to a Form I-205, Warrant of Removal/Deportation. Pardo-Figueroa Decl. ¶ 15. His detention pending conclusion of his removal proceedings remained governed by 8 U.S.C. § 1226(a). *Id.* ¶ 5.

On August 15, 2025, the BIA denied Petitioner's motion to remand and dismissed his appeal, rendering his removal order final. *Id.* ¶ 16. At that time, Petitioner's detention became governed by 8 U.S.C. § 1231(a)(2). *Id.* On August 21, 2025, Petitioner filed a Petition for Review of his removal order with the Second Circuit Court of Appeals. *Id.* ¶ 17. On August 25, 2025, Petitioner filed a Motion for Stay of Removal with the Second Circuit. *Id.* On September 25,

2025, the Department of Justice filed a motion to expedite a decision on the stay motion, along with a notice of intent to remove Petitioner sometime after October 15, 2025. Pardo-Figueroa Decl. ¶ 17. The Second Circuit denied Petitioner’s Motion for Stay of Removal on October 14, 2025. *Id.* ICE is now engaged in securing travel arrangements for Petitioner’s removal, and ICE has a valid travel document for Petitioner (his Honduran passport). *Id.* ¶ 18. ICE is unaware of any impediments to effectuating Petitioner’s removal to Honduras pursuant to his final removal order, and ICE expects to do so in the reasonably foreseeable future. *Id.* ¶ 19.

III. DETENTION AUTHORITY

The INA provides specific—and distinct—statutory directives for the detention of aliens before and after final removal orders are issued. *See, e.g., Hechavarria v. Sessions*, 891 F.3d 49, 54 (2d Cir. 2018) (“The government’s power to detain an immigrant must be grounded in a specific provision of the INA.”). The detention of aliens who are in ongoing removal proceedings is governed by either 8 U.S.C. § 1226 or 8 U.S.C. § 1225(b). Under section 1226(a), ICE may detain an alien who has entered the United States pending a decision in removal proceedings, or may release the alien on bond. By contrast, § 1226(c) provides for mandatory detention for certain criminal aliens. Section 1225(b) governs the pre-removal-order detention of applications for admission.

In general, regardless of which provision governs an alien’s detention during his pre-removal-order proceedings, once an alien becomes subject to an administratively final removal order, detention authority shifts 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)(i), (ii)).

Section 1231 establishes a 90-day “removal period” within which ICE generally must secure removal after a removal order becomes final, and during which ICE “shall” detain the alien until such removal. *See* 8 U.S.C. §§ 1231(a)(1)(A), (a)(2). Thus, there is a mandatory period of post-removal-order detention at its outset. *See* 8 U.S.C. § 1231(a)(2). The commencement of the removal period, and thus detention under § 1231, depends on the circumstances of the case. As relevant here, the 90-day removal period began on “[t]he date the order of removal [became] administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i).¹

ARGUMENT

The Court should deny the petition for writ of habeas corpus because Petitioner’s challenges are moot. Petitioner is now subject to a final order of removal and his detention is statutorily authorized—indeed required—under 8 U.S.C. § 1231(a)(2). The entirety of Petitioner’s challenges to his detention concern his pre-removal-order detention under 8 U.S.C. § 1226(a), on grounds that ICE re-detained him without procedural protections and without establishing a material change in circumstances justifying re-detention. *See* Pet. at pp. 15-20; 22-27. But once a final order of removal has been entered (and the removal period commenced), detention authority shifts to 8 U.S.C. § 1231, and a challenge to pre-removal-order detention under 8 U.S.C. § 1226

¹ The other two triggering events are not applicable here. Subsection (a)(1)(B)(ii) is inapplicable here because the Second Circuit denied Petitioner’s motion for a stay of removal, and subsection (a)(1)(B)(iii) is inapplicable because Petitioner is detained by ICE and not in criminal custody.

is moot. *See Wang*, 320 F.3d at 147 (when alien became subject to detention under 8 U.S.C. § 1231, “[t]o the extent [he] previously may have had a cognizable . . . argument under [8 U.S.C. § 1226], that claim has been rendered moot”); *see also, e.g., Godfrey v. Ball*, No. 23-7104, 2024 WL 4471571, at *1 (2d Cir. Oct. 11, 2024) (holding that “[a] due process challenge to detention under § 1226 is rendered moot” upon a decision that “shifts detention authority to § 1231”); *Castro-Almonte v. Garland*, No. 23-297, 2024 WL 1551044, at *1 (2d Cir. Apr. 10, 2024) (dismissing habeas appeal as moot, noting “this appeal challenging [petitioner’s] detention under § 1226 is moot since his detention authority has necessarily switched to § 1231(a)(1)”); *Ali v. DuBois*, No. 16 Civ. 3190 (AJN) (HBP), 2017 WL 1449749, at *4 (S.D.N.Y. Apr. 21, 2017) (“The law is . . . clear that the entry of a final order of removal and the change in the legal basis for an alien’s detention moots any Due Process claim that may have existed with respect to the pre-removal-order period of detention.” (collecting cases)); *Tireus v. Decker*, No. 17 Civ. 2348 (WHP), 2018 WL 2426643, at *1, (S.D.N.Y. May 29, 2018) (dismissing as moot petition challenging detention under §§ 1226(a) or 1225(b) after Second Circuit dismissed petition for review of BIA’s affirmance of the immigration judge’s denial of asylum, withholding of removal, and protection under the Convention Against Torture as detention was then governed by § 1231); *De Oliveira Jimenez v. Searls*, No. 22 Civ. 960 (JLS); 2023 WL 11134381, at *4 (W.D.N.Y. Mar. 2, 2023) (holding that any cognizable due process claim petitioner may have had when he was detained under § 1226 was rendered moot when his removal order became final) (collecting cases); *accord, e.g., De La Teja v. United States*, 321 F.3d 1357, 1363 (11th Cir. 2003) (“Because the Attorney General no longer is acting pursuant to [8 U.S.C. § 1226(c)] . . . [a]ny opinion on the matter would be purely advisory in nature, and therefore this issue has become moot.”).

Petitioner is subject to a final removal order—and detention under § 1231—because his removal order became final on August 15, 2025, when the BIA denied his motion for remand and dismissed his appeal from the Immigration Judge’s order of removal and decision finding that Petitioner was ineligible for asylum and withholding of removal. *See* 8 U.S.C. § 1101(a)(47)(B); Pardo-Figueroa Decl. ¶ 16. Additionally, Petitioner’s detention is mandatory during the 90-day “removal period.” *See* 8 U.S.C. § 1231(a)(2). The removal period began on August 15, 2025—the date the order of removal became administratively final. *See* 8 U.S.C. § 1231(a)(1)(B)(i). Petitioner is therefore lawfully subject to mandatory detention until November 13, 2025, and he may be permissibly detained beyond that period pending his removal.²

Thus, Petitioner’s challenges to his detention under 8 U.S.C. § 1226 are moot and any challenge to his detention under 8 U.S.C. § 1231 would be premature.

One final point merits mention. Petitioner purports to assert separate claims under the APA challenging ICE’s decision to revoke Petitioner’s release as arbitrary and capricious and in violation of Petitioner’s Fifth Amendment Due Process rights. *See* Pet. at pp. 20-27. But he merely repackages his habeas/due process challenges to his detention as APA claims. Such claims are not cognizable under the APA. His APA claims “necessarily imply the invalidity” of his confinement and fall within the “core” of the writ of habeas corpus, and thus “must be brought

² Because Petitioner was ordered removed as inadmissible under 8 U.S.C. § 1182, he is subject to detention beyond the 90-day removal period. *See* 8 U.S.C. § 1231(a)(6). Accordingly, while pursuing his removal, ICE may detain Petitioner for at least a presumptively reasonable period of six months under *Zadvydas v. Davis*, 533 U.S. 678, 699-701 (2001), and that presumptively reasonable detention period will not expire until, at the earliest, February 15, 2026. *See Ali*, 2017 WL 1449749, at **3-4 (citing *Clark v. Martinez*, 543 U.S. 371, 378 (2005); *Zadvydas*, 533 U.S. at 699-702)). And at this time, any challenge to his detention under 8 U.S.C. § 1231 is premature. *See, e.g., Godfrey*, 2024 WL 4471571, at *2 (holding any challenge to detention under § 1231 is premature because the 90-day removal period had not yet expired).

in habeas.” *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (holding that when an alien’s claims for relief “necessarily imply the invalidity of their confinement,” those claims “must be brought in habeas”). Accordingly, Petitioner’s APA claims fail at the threshold, but they are also moot for the reasons discussed above.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner’s petition for writ of habeas corpus in its entirety.

Dated: New York, New York
October 24, 2025

Respectfully submitted,

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