ROBERT F. KENNEDY HUMAN RIGHTS

November 4, 2025

BY ECF

The Honorable Meredith A. Vacca
United States District Judge
Kenneth B. Keating Federal Building
100 State Street
Rochester, New York 14614

Re: *Carranz Chuqui v. Kurzdorfer et al,* Case No.: 6:25-cv-06614-MAV

Dear Judge Vacca:

Petitioner-Plaintiff Fernando Carranz Chuqui ("Petitioner" or "Fernando") respectfully submits this letter brief in reply to Respondent's letter brief in opposition to Petitioner's request for a temporary restraining order ("TRO"). *See* ECF No. 8, Resp'ts' Letter. Fernando, a 19-year-old young man with no criminal history and Special Immigrant Juvenile Status ("SIJS"), was suddenly and arbitrarily arrested in New York State on July 21, 2025, and now challenges his unlawful detention by Respondents and other related agency actions. During the pendency of this case, he has requested that, in light of his vulnerable status as a teenager and his dependence on his counsel and community in New York, this Court enjoin his transfer out of this district or, at the very least, order Respondents to provide 72 business-hours' notice to counsel of any intended transfer.

First, for the avoidance of doubt, Fernando is not seeking a stay of removal; he has a pending appeal before the Board of Immigration Appeals ("BIA") and therefore his removal is administratively stayed. 8 C.F.R. § 1003.6. Instead, Fernando is challenging his unlawful detention by Respondents and his prayer for relief requests, *inter alia*, that the Court "[e]njoin the Respondents from transferring Petitioner away from the jurisdiction of this District pending these proceedings." *See* ECF No. 1, Petition at 34. Similarly, his motion for a TRO requests only limited relief: to enjoin transfer during the pendency of these proceedings or, in the alternative, order Respondents to provide seventy-two (72) business-hours' notice of any intended transfer. *See* ECF No. 4-2, TRO Motion at 11-15.

This Court has jurisdiction to grant the relief Fernando seeks because he is challenging the legality of his detention and he seeks release and a temporary stay or advance notice of his transfer while the Court decides his case. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 152 (W.D.N.Y. 2025) (explaining that "challenges to the manner in which ICE executes the removal order … are not [barred]"). Section 1252(g)'s "bar on jurisdiction is narrow" and "does not preclude jurisdiction over the challenges to the legality of [a noncitizen's] detention." *Ozturk v. Hyde*, 136 F.4th 382, 396-397 (2d Cir. 2025) (citation modified). Thus,

> even though, in a but-for sense, a claim of unlawful detention might arise from the government's decision to commence proceedings, adjudicate a case, or execute a removal, challenges to unlawful detention do not "arise from" the government's decision to "execute removal orders" within the meaning of §1252(g) simply because the claims relate to that discretionary, prosecutorial decision.

Id. (citation modified).[1]

Second, the only issue currently before the Court, to Petitioner's understanding, is whether to order Respondents to provide 72 business-hours' notice to counsel before any intended transfer. Fernando understood that on October 30, 2025, the Court denied his request to enjoin his transfer outside of the jurisdiction, but if the Court is continuing to consider this request, he relies on his memorandum of law in support. *See* ECF No. 4-2 at 11-15. The cases cited by Respondents are distinguishable from this case. In *Singh v. Whitaker,* 362 F. Supp. 3d 93 106 (W.D.N.Y. 2019), the court does not appear to have been asked for a temporary injunction against transfer.

What the Court did not deny on October 30, 2025, was Fernando's request that, if the Court does not enter an order enjoining transfer during the pendency of this proceeding, it order Respondents to provide at least 72-business-hours' notice to his counsel so that an application to enjoin transfer can again be presented to the Court, if necessary. *See* ECF No. 4-2 at 13 (requesting business-hours' notice). Respondents failed to address this argument entirely.

The "Attorney General is mandated to arrange for *appropriate* places of detention for [persons] detained pending removal." 8 U.S.C. § 1231(g)(1) (emphasis added). Although Respondents have discretion to make administrative decisions about a detained individual's transfer to a different detention facility, that discretion is limited by the requirement that Respondents ensure an "appropriate" detention setting. In *Salgado v. Francis,* No. 1:25-cv-06524-VEC, WL 2806757 (S.D.N.Y. Oct. 1, 2025), the court granted release pending adjudication of the habeas petition pursuant to *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). It also declined to defer to the government regarding placement of the petitioner in a particular facility. The court explained that

> it does not take an expert in penological issues to conclude that a smallish (5'6" tall) transgender woman who is undergoing hormone treatment to suppress her testosterone levels and to boost her estrogen levels would not be safe in general population in a male prison. Accordingly, the Court affords no weight to the Government's argument that any solitary confinement would be Petitioner's choice.

Salgado v. Francis, WL 2806757, at *6, n.11.

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[1] Respondents' expansive reading of 8 U.S.C. §1252(g) has also been specifically rejected by the Supreme Court. *See Reno v. Am.-Arab Anti-Discrimination Comm. (AADC),* 525 U.S. 471, 482 (1999) and *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (reiterating that "Section 1252(g) is . . . narrow" and rejecting as "implausible the Government's suggestion that §1252(g) covers all claims arising from deportation proceedings or imposes a general jurisdictional limitation") (citation modified). Respondents cite to *Fulton v. Mayorkas,* No. 25-CV-63 (JLS), 2025 WL 296051 (W.D.N.Y.), but a motions panel at the United States Court of Appeals for the Second Circuit explicitly rejected the broad reading that both the District Court and the government adopted in that case. *See Fulton v. Noem*, No. 25-194, at 2 (2d Cir. Apr. 30, 2025).

Likewise, Fernando is a vulnerable teenager who depends upon the ability to meet in person with his removal and habeas counsel at Prisoner's Legal Services (PLS), located in Buffalo and Albany, New York. He also depends upon the community support of his family and loved ones in Albany, including his mother and sister. Because any transfer of Fernando must be to an appropriate place of detention, 72-business-hours' notice of transfer ensures that his counsel will receive meaningful notice and a meaningful opportunity to respond if the location of the intended transfer would be inappropriate. *See e.g.*, Order, *Andrade Lozano v. Hyde*, Case No. 25-cv-12760-RGS, ECF No. 3 (D. Mass. Sept. 25, 2025) (transferred to this Court as Case No. 6:25-cv-06528-MAV); *Mei Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 402-403 (2004); Order, *Joshua M.*, No. 3:19-cv-00770-MHL, ECF No. 37 (E.D. Va. Dec. 19, 2018). *See also*, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.").

For the foregoing reasons and those set forth in Petitioner's memorandum of law in support of the TRO (ECF No. 4-2), Fernando respectfully requests that the Court grant his TRO and order Respondents to provide counsel 72- business-hours' notice prior to any intended transfer.

Respectfully submitted,

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