

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

SALVADOR RAYMUNDO MATEO
FRANCISCO

Petitioner,

v.

TAMMY MARICH, et al.,

Respondents.

Case No. 1:25-cv-01194

**PETITIONER'S REPLY IN SUPPORT OF HIS MOTION FOR A TEMPORARY
RESTRAINING ORDER**

INTRODUCTION

Petitioner Salvador Raymundo Mateo Francisco (“Petitioner” or “Salvador”) respectfully submits this memorandum in reply to Respondents’ opposition to his request for a temporary restraining order. Salvador’s motion for a TRO seeks that this Court enjoin transfer outside of the District, or in the alternative, require the government to provide 72 business-hours’ notice of any proposed transfer, pending the adjudication of his Amended Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief.¹ Upon information and belief, Salvador is scheduled to be transferred as soon as tomorrow, November 22, 2025. Accordingly, he respectfully asks to be heard on this motion as soon as possible or, in the alternative, for the Court to stay his transfer until the status conference currently scheduled on the motion on Monday, November 24.

Respondents’ claim that it would be too hard for the government not to transfer Salvador—or even to provide his counsel 72 business-hours’ notice of any intended transfer—even though his counsel, entire family, and these habeas proceedings are in New York, is absurd. It was easy enough for the government to unlawfully arrest a young man who has lived in this country since he was 15, has no criminal record, and is on a path to citizenship, depriving him of liberty for what has now been 11 days, without any legal authority. Ultimately, the government’s attempt to suggest that what has happened to Salvador is nothing more than business as usual fails. There is nothing usual about this case, and the Court should ensure that Salvador is not transferred for the pendency of these proceedings.

¹ Although Salvador’s original motion for a TRO also asked for immediate release based on his detention being ultra vires (Claim Four of the amended petition), as a Notice to Appear appears to have been filed with the immigration court today, Salvador no longer moves on this basis, although notes that he was deprived for his liberty 11 days with no statutory basis whatsoever. Because the government argues that this Court does not have jurisdiction over Salvador’s claims, he will also address jurisdictional arguments in this reply. With this motion, Petitioner is not moving on other claims in the Petition and respectfully reserves the right to address those claims in greater detail during future briefing on the merits of his petition.

ARGUMENT

I. THE COURT SHOULD GRANT SALVADOR'S REQUEST TO STAY TRANSFER OR REQUIRE 72 BUSINESS-HOURS' NOTICE OF TRANSFER.

Respondents argue that this Court should not grant Salvador's transfer request because the government has the right to detain him where they would see fit and that transfer is simply a matter of "inconvenience" for Salvador. *See* ECF No. 11, Resp'ts Memo at 14-15. But that is not the proper legal standard. Instead, habeas courts evaluate transfer requests based on the "interest of justice." *See Ozturk v. Trump*, 779 F. Supp. 3d 462, 495 (D. Vt.), *amended sub nom. Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025) (ordering return transfer to district of habeas court in the "interest of justice").

Under this standard, factors used by judges in this District in decisions ordering return transfer or injunctions of transfer include preserving access to local legal counsel, protecting the habeas court's ability to conduct fact-finding and legal analysis, preserving the petitioner's right to participate in the habeas proceeding, and minimizing threats to health and safety. *See e.g. id.* (ordering transfer because "it would assist the Court's exploration of the important constitutional questions in this case, would allow the Court to conduct appropriate fact-finding including to support a potential bail hearing, and would otherwise have no impact on removal proceedings" and because at place of detention petitioner is "suffering from severe asthma attacks"); *Alvarez Ortiz v. Freden*, 2025 WL 3085032, *n.3 (W.D.N.Y. Nov. 4, 2025) (finding "that the petitioner's interests in participating in further proceedings before this Court and in maintaining adequate access to legal counsel through these proceedings warrant an order enjoining transfer"); *Barillas Resinos v. Noem*, No. 6:25-cv-06689-EAW (W.D.N.Y. Nov. 21, 2025), ECF No. 2 (same). The Second Circuit has found that these factors "outweigh[] the government's purported administrative and logistical costs." *Ozturk v. Hyde*, 136 F.4th at 388.

Based on these factors, Salvador seeks an order precluding his transfer so that he can maintain adequate access to legal counsel and meaningfully participate in habeas proceedings as provided by 28 U.S.C. § 2243. Enjoining transfer will also ensure that Salvador is available for testimony going to the heart of important constitutional questions before this Court that will not be resolved by this TRO motion, including whether he received constitutional due process when he was arrested. Salvador's vulnerability and history of serious medical issues further counsel in favor of ensuring that he remain in New York during this case, because it will preserve his access to adequate medical care and family support, thereby aiding his meaningful participation in these proceedings and promoting the interests of justice.

Respondents do not meaningfully engage with these facts. Instead, Respondents cite to cases within this District that have permitted transfer from the Buffalo Federal Detention Facility to another facility after a petition for a writ of habeas corpus had been filed. *See* ECF No. 11, Resp'ts Memo at 15. But those cases do not clearly address the factors Salvador raises. In *Walker v. Searls*, No. 23-CV-140-LVJ, 2024 WL 1735213 (W.D.N.Y. Apr. 23, 2024), no mention of the legal standard for transfer or the appropriate factors is made. In *Shaikh v. Barr*, No. 20-CV-6300 CJS, 2020 WL 7021443, at *3 (W.D.N.Y. Nov. 30, 2020), the *pro se* petitioner's request for injunction of transfer was denied because it was "based primarily on Petitioner's mistaken belief that if he is transferred this action will be dismissed and/or that he will be subject to less-favorable caselaw outside of the Second Circuit." And neither *Garland v. Aleman Gonzalez*, 596 U.S. 543, 570 (2022) nor *Demore v. Kim*, 538 U.S. 510, 554 (2003) dealt with a request to compel or enjoin transfer, so they do not dictate a denial of Salvador's request.

Respondents also fail to address Salvador's alternative request for 72 business hours' notice of any intent to transfer, abandoning any argument against it. *See* ECF No. 8-1, Pet. Memo

at 15-16. Such notice is appropriate for the reasons discussed above. It is also consistent with a statutory requirement that the government “arrange for *appropriate* places of detention for [persons] detained pending removal.” 8 U.S.C. § 1231(g)(1). Although Respondents have discretion to make administrative decisions about a detained individual’s transfer to a different detention facility, that discretion must be exercised reasonably, consistent with the requirement that Respondents of an “appropriate” detention setting for that individual. *See also*, Pet. Memo at 9-10. This requires individualized consideration of Salvador’s status as a vulnerable young person with medical issues who relies upon his proximity to legal counsel and family. Notably, courts in this District regularly find it appropriate to require at least 72 business-hours’ notice of any proposed transfer. *See, e.g.*, Order, *Ahmed v. Freden et al*, 6:25-cv-06662-EAW, ECF No. 12 (W.D.N.Y. Nov. 20, 2025) (“Respondents are hereby temporarily enjoined from transferring Petitioner outside this District without providing 72 hours’ notice to Petitioner because the Court agrees that Petitioner’s presence in the district will assist the Court’s resolution of the issues in the petition, including enabling Petitioner to fully participate in these proceedings and maintain adequate access to legal counsel.”); Order, *Carranza Chuqui v. Noem*, Case No. 6:25-cv-06614-MAV, ECF No. 11 (W.D.N.Y. Nov. 7, 2025) (same).

II. THIS COURT HAS JURISDICTION TO HEAR SALVADOR’S CLAIMS.

Sections 1252(g) and 1252(b)(9) do not—as argued by Respondents—deprive this Court of jurisdiction. Salvador is challenging the legality of his detention and he seeks release. He argues that he should not be transferred while these proceedings are ongoing or that he should at least be afforded advance notice of any proposed transfer while the Court decides his case.

First, 8 U.S.C. § 1252(g) does not deprive this Court of jurisdiction. Respondents’ expansive reading of 8 U.S.C. § 1252(g) has been rejected by the Supreme Court and the Second

Circuit. *See Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 482 (1999); *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). As the Second Circuit affirmed earlier this year, 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 at 396-397 (citation modified). Thus,

[E]ven 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).

Second, 8 U.S.C. § 1252(b)(9) does not deprive this Court of jurisdiction. Section 1252(b)(9) bars review of “claims arising from actions or proceedings brought to remove [a noncitizen].” *Ozturk*, 136 F.4th at 399, 401. That statute is not at issue here, where Salvador does not challenge any aspect of his removal proceedings (and in fact is not currently being subjected to any removal proceedings). *See Regents*, 591 U.S. at 19. That “detention itself is ‘necessary for . . . removal proceedings’” does not “funnel[] . . . unlawful detention claims into § 1252(b)(9) claims.” *Ozturk*, 136 F.4th at 399. Salvador’s claims that his detention is unlawful “may be resolved without affecting” any removal proceedings the government may commence against him. *Id.* Contrary to Respondents’ contention, the plurality opinion in *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018), does not compel otherwise. *See Ozturk*, 136 F.4th. at 400-401 (distinguishing challenges to detention from challenges to removal). The *Jennings* plurality in fact found that there

was jurisdiction to review detention claims despite § 1252(b)(9), rejecting a reading that would force noncitizens to wait until their removal proceedings were complete to challenge their unlawful detention, as this would make these claims “effectively unreviewable.” 583 U.S. at 293-94; *see also Ozturk*, 136 F.4th at 400-401.

III. SALVADOR SUFFERS IRREPARABLE HARM WITH EACH DAY OF UNLAWFUL DETENTION AND THE EQUITIES AND PUBLIC INTEREST WEIGH IN HIS FAVOR.

The crux of Respondents’ argument that the equities and public interest weigh in favor of the government is that the immigration laws have to be enforced. *See* ECF No. 11, Resp’ts Memo at 23. Respondents’ arguments are all based on the faulty assumption that Salvador’s detention was lawful to begin with. But it was not, and “there is no question that unlawful detention causes irreparable harm: indeed, every minute that someone is unlawfully denied freedom results in an injury that really can never be remedied.” *Alvarez Ortiz*, 2025 WL 3085032, at *11. Accordingly, this requirement is “easily met.” *Id.* Unlike in *Hernandez-Hernandez v. Feeley*, 535 F. Supp. 3d 142, 151 (W.D.N.Y. Apr. 21, 2021), Salvador does not challenge lawful detention authorized by statute. Rather, he should never have been detained at all without pre-deprivation process and his detention without any purpose or process is equally unlawful.

“Likewise, . . . the balance of the equities and the public interest favors granting” a preliminary injunction. *Alvarez Ortiz*, 2025 WL 3085032, at *11. Respondents do not even attempt to argue (nor could they) that Salvador is “a danger or a flight risk” and so “it is in no one’s interest to detain him.” *Id.* And while Respondents may have an interest in strictly enforcing the nation’s immigration laws, neither those laws nor our Constitution authorize Salvador’s current detention. Moreover, “any added burden on the government” from releasing Salvador or precluding transfer

without 72 business-hours' notice "is far outweighed by [his]—and society's—interest in his release if his detention is not warranted." *Id.* at *11.

IV. THE COURT SHOULD NOT REQUIRE SALVADOR TO POST A BOND IF IT GRANTS A TRO.

Rounding out their arguments that there is nothing for the Court to do here and all was done to Salvador in the normal course, Respondents suggest that Salvador should post a bond because it will cost them more money to detain him at the Buffalo Federal Detention Facility than in other detention facilities. *See* ECF No. 11, Resp'ts Memo at 24-25. Respondents do not cite any source of authority or evidence upon which they base this argument. Presumably, the labor and materials costs of a transfer flight are saved by keeping Salvador in this district. But regardless, the Court should deny the government's request to have Salvador post a bond.

Prior to his unnoticed arrest and re-detention, Salvador was working and trying to earn his GED. *See* ECF No. 7, Petition, ¶ 34. Despite the unsupported insinuation that Salvador was a flight risk simply because he was arrested after being in a car (ECF No. 11, Resp'ts Memo at 24), there is no basis to conclude that Petitioner had to be re-detained. In fact, the direct opposite is true. Salvador had followed all the rules, had approved SIJS status and deferred action, and was working lawfully. Now, the government seeks to use the cost of their arbitrary and unlawful decision to detain Salvador against him. *Id.* at 24-25. But courts in this district have not required the posting of a bond for indigent litigants, especially where, as here, their lawsuits vindicate important federal rights and public interests in the rule of law. *See* ECF No. 8-1, Pet. Memo at 27 (collecting cases). This Court should equally deny Respondents' request and decline to require bond.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his motion for a temporary restraining order.

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New York, New York

Respectfully Submitted,

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