IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

VICTOR ALEJANDRO GOMEZ PAULINO,
Petitioner,
v.

JOSEPH FREDEN, in his official capacity as Deputy Field Office Director, Buffalo Field Office, U.S. Immigration & Customs Enforcement, et al.,
Respondents.

Civil Action No. 25-cv-1341

Immigration No. A[redacted]

PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Comes now, Petitioner, through counsel and opposes the Motion to Dismiss filed by Respondents for the reasons stated herein.

Jurisdictional Arguments

With respect to the jurisdictional arguments raised by Respondents, this Court has already ruled that it has jurisdiction over habeas corpus petitions. In *Josimar Ferreira Candido v. Bondi, et. al.*, 25-CV-867-JLS (W.D.N.Y. December 4, 2025), this Court held that "it has jurisdiction over the petition, notwithstanding 8 U.S.C. §§ 1252(e)(3) and (g)." The Court held that Section 1252(g) does not strip its jurisdiction because Petitioner "does not challenge the Attorney General's decision or action 'to commence proceedings, adjudicate cases, or execute removal orders'," citing *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020)

("Noncitizens are ... entitled to challenge through habeas corpus the legality of their ongoing detention."). The Court also stated that "because he does not challenge the validity of the system under Section 1225(b), Section 1252(e)(3) does not funnel jurisdiction over this petition to the United States District Court for the District of Columbia." This, with respect to §§ 1252(e)(3) and (g), this Court has already held that it has jurisdiction.

With respect to Respondents' arguments on jurisdiction under § 1252(b)(9), Section 1252(b)(9) provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove a [noncitizen] from the United States under this subchapter shall be available only in judicial review of a final order." 8 U.S.C. § 1252(b)(9).

And section 1252(g) states that:

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any [noncitizen] arising from the decision or action by [ICE] to commence proceedings, adjudicate cases, or execute removal orders against any [noncitizen] under this chapter.

8 U.S.C. § 1252(g).

This Court has held that sections 1252(b)(9) and (g) do not preclude this Court from exercising jurisdiction over a habeas corpus petition for a noncitizen detainee. *Ceesay v. Kurzdorfer, et. al,* 781 F.Supp.3d 137, 154 (W.D.N.Y. May 2, 2025). The Court acknowledged that Section 1252 effectively strips district courts of jurisdiction to review a final order of deportation (citing *De Ping Wang v. Dep't of Homeland Sec.*, 484 F.3d 615, 615-16 (2d Cir. 2007)) and also bars a district court from reviewing either a direct or an indirect challenge to an order of removal (citing *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). However, in his

analysis, Judge Vilardo stated that the district court retains jurisdiction over *habeas corpus* petitions.

The Court, in *Ceesay*, went on to point out that, in *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491 (2001), the Supreme Court explicitly held that "[section] 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention." 533 U.S. at 688. More recently, in *Jennings v. Rodriguez*, the Supreme Court rejected a reading of section 1252(b)(9) that would have limited detained noncitizens to challenging their detentions only through petitions for review of the underlying removal orders in the court of appeals. 583 U.S. 281, 292-95 (2018) (plurality opinion). As Justice Alito explained, writing for a plurality of the Court, while "it [could] be argued that" such a challenge arose from the government's decision to remove the noncitizen "in the sense that if those actions had never been taken, the [noncitizens] would not be in custody at all," such an "expansive interpretation of [section] 1252(b)(9) would lead to staggering results." *Id.* at 293. Indeed, "[i]nterpreting 'arising from' in this extreme way would also make claims of prolonged detention effectively unreviewable." *Id.*

Remarkably, the Respondents' argue that 8 U.S.C. § 1252(b)(9) bars this Court from exercising jurisdiction despite the fact that Petitioner does not even have a final order of removal – and thus a Petition for Review would be premature in any event.

Exhaustion Arguments

This Court has held that, in a nearly identical matter, exhaustion was futile because immigration judges are bound to follow *Hurtado* absent an order from this Court. See *Alvarez Ortiz v. Freden*, No. 25-CV-960-LJV (W.D.N.Y. November 4, 2025), citing *Guerrero Orellana*, —— F. Supp. 3d at —— n.2, 2025 WL 2809996, at *4 n.2 (explaining that "[t]he BIA made its

position on the scope of [section] 1225(b)(2)(A) crystal clear in Matter of Hurtado such that further agency proceedings would be futile" (citation and internal quotation marks omitted)).

Arguments That Petitioner is Properly Detained Under 8 U.S.C. § 1225

The arguments about why the government is wrong to claim that Petitioner is detained under 8 U.S.C. § 1225 have been fully briefed in the incorporated memorandum of law, and have been exhaustively analyzed by three of the other judges in this district. At this point, three of the judges in this district have found that the Trump administration's sudden about-face on which statute governs detentions of noncitizens, is not supported by "Supreme Court caselaw and decades of practice." *Alvarez Ortiz,* No. 25-CV-960-LJV, 2025 WL 3085032 (W.D.N.Y. Nov. 4, 2025); see also *Da Cunha v. Freden*, 25-CV-06532-MAV, ECF No. 25 (W.D.N.Y. Oct. 20, 2025); *Quituizaca Quituisaca v. Bondi et al.*, No. 6:25-CV-6527-EAW, 2025 WL 3264440 (W.D.N.Y. Nov. 24, 2025). "[R]espondents' new interpretation is contrary to the agency's own implementing regulations, its published guidance, the decisions of its immigration judges (until very recently), decades of practice, the Supreme Court's gloss on the statutory scheme, and the overall logic of our immigration system." *Alvarez Ortiz, quoting Romero v. Hyde*, —— F. Supp. 3d ——, ——, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025). As stated in *Alvarez Ortiz*, "numerous district courts—including Judge Meredith A. Vacca of this District — have disagreed with the BIA's reasoning and granted habeas petitions or motions for preliminary relief for noncitizens whom DHS has detained ostensibly under section 1225(b)(2)."

Petitioner recognizes that the judge assigned to this matter has broken with the prevailing view in this district in the Court's decision in *Josimar Ferreira Candido v. Bondi, et. al.*, 25-CV-867-JLS (W.D.N.Y. December 4, 2025), which explicitly states that the Court has "considered

decisions from other courts on this issue and is persuaded by some but not persuaded by others." The Court, searching far and wide, cites a number of decisions from various judges across the country that arrived at the same conclusion it did in *Ferreira Candido* –that is, to uphold the Trump administration's illegal attempt to mandatorily detain vast numbers of noncitizens. *See, e.g., Altamirano Ramos v. Lyons,* No. 2:25-cv-9785-SVW-AJR, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Vargas Lopez v. Trump,* No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem,* No. 3:25-cv-2525-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Sandoval v. Acuna,* No. 6:25-cv-1467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Pena v. Hyde,* Civil Action No. 25- 11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025). The Court acknowledged a number of other decisions, which were favorable ones, but stated that it is not persuaded by them. *See Alvarez Ortiz v. Freden,* No. 25-CV-960-LJV, 2025 WL 3085032 (W.D.N.Y. Nov. 4, 2025); *J. U. v. Maldonado,* No. 25-CV-4836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Savane v. Francis,* No. 1:25-cv-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Lopez Benitez v. Francis,* No. 25 Civ. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025).

This Court believes that "The fact that more district courts nevertheless have decided this issue differently from this Court is neither binding nor persuasive." Indeed, undersigned counsel is aware of at least 286 favorable decisions from district courts nationwide on this issue, and only 23 at least partially unfavorable decisions which uphold the *Hurtado* framework (although the compendium of decisions from which these numbers are gleaned relies on the reporting of decisions by practitioners nationwide, and may not be complete). The sheer volume of favorable decisions vs. unfavorable decisions shows where the weight of authority lies on this matter. That, combined with the fact that the three other judges in this district who have already ruled on this

matter, have ruled differently, calls into question the *Ferreira Candido* decision. Indeed, the sheer number of federal judges who have correctly ruled that the *Hurtado* framework is illegal, with judges all over the ideological and geographical spectrum speaking in unison on this topic, is remarkable. Few novel legal issues in history have been litigated so frequently across the country over such a short period of time, resulting in an overwhelming chorus of agreement from federal judges. Where there lies such overwhelming consensus on an issue of such import, Petitioner suggests that this Court avoid a split and follow the well-reasoned rationale of the other judges in this district.

Dated: December 30, 2025

Respectfully submitted,

/s/ Matthew K. Borowski

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