U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

April 2, 2026

Honorable Ann M. Donnelly
United States District Judge
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

Re: *Villatoro v. Shanahan, et al.*, No. 26-CV-1210 (Donnelly, J.)

Dear Judge Donnelly:

This Office, on behalf of the Respondents, respectfully submits this letter in response to Petitioner's letter dated March 31, 2026.

Petitioner Is Challenging the Removal Order

Although Petitioner repeatedly claims he is not seeking to "challenge, reopen, or otherwise invalidate any removal order" (Dkt. No. 12 at 1) that is exactly what he is doing. Petitioner admits that "the relief sought is release from unconstitutional custody." *Id.* As set forth in Respondents' Response to the Order to Show Cause, Petitioner is detained pursuant to 28 U.S.C. § 1231 for the purpose of his removal. Section 1231 provides for a 90-day period of mandatory detention. The rReleasing Petitioner from custody, for any reason, would interfere with the execution of the removal order. As Respondents have previously demonstrated (Dkt. No. 8 at 4-5). 8 U.S.C. §§ 1252(a)(5), 1252(b)(9) and 1252(g) jurisdictionally bar district courts from ordering the release of a foreign national who is being detained for the purpose of effectuating his removal order because the claim for release constitutes a challenge to the removal order. *See, e.g.*, *Sauceda Henriquez v. Noem*, 25-cv-7023, 2026 WL 111665, at *4 (E.D.N.Y. Jan. 15, 2026) (DeArcy Hall, J.), *appeal filed* January 29, 2026 (§§ 1252(a)(5) and 1252(b)(9)); *Villatoro v. Noem*, No. 25-cv-5306, 2025 WL 2880140, at *4 (E.D.N.Y. Oct. 9, 2025) (Merchant, J.) (§ 1252(a)(5)); *Lin v. Borgen*, No. 25-cv-5618, 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025) (§ 1252(g)); *Ceesay v. Bondi*, 25-cv-3716, 2025 WL 1435615, at *2 (S.D.N.Y. May 16, 2025) (§§ 1252(a)(5) and 1252(g)); *Rodriguez v. Warden, Orange County Correctional Facility*, No. 23-cv-242, 2023 WL 2632200, at *4 (S.D.N.Y. Mar. 23, 2023) (§§ 1252(a)(5), 1252(b)(9) and 1252(g)).

Petitioner (Dkt. 12 at 1) cites to *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011), but misses its application here. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). *Delgado* stands for the proposition that *any* challenge, even an indirect challenge, to a removal order is jurisdictionally barred. *Delgado* construes §§ 1252(a)(5) and 1252(b)(9) broadly to preclude district courts from exercising subject matter jurisdiction over an action that even "indirectly

challeng[es]" an order of removal. *Id.* Because the *effect* of releasing Petitioner would be to interfere with the order of removal, this Court is barred from releasing Petitioner. Thus, district court decisions rely on *Delgado* in holding that courts are jurisdictionally barred from releasing a foreign national who is being detained for the purpose of effectuating his removal order. *See, e.g., Sauceda Henriquez*, 2026 WL 111665, at *4; *Ceesay*, 2025 WL 1435615, at *2; *Rodriguez*, 2023 WL 2632200, at *4.

Notably, the §§ 1252(a)(5), 1252(b)(9) and 1252(g) jurisdictional bars apply to claims that the government violated the foreign national's constitutional rights. *See, e.g. Villatoro*, 2025 WL 2880140, at *2; *Rodriguez*, 2023 WL 2632200, at *2; *see also Delgado*, 643 F.3d at 54. Thus, the Court is jurisdictionally barred from considering Petitioner's contention that ICE violated his Fourth Amendment rights, a contention that takes up the bulk of his letter. Nevertheless, Respondents will address the merits of that contention, without conceding that the Court has jurisdiction to consider the contention.

Petitioner Misreads *Gopie* and *Diallo*

In support of his Fourth Amendment contention, Petitioner cites to *Gopie v. Garland et al.*, No. 25-cv-05229, 2025 WL 3167130 (E.D.N.Y. Nov. 13, 2025) (Bulsara, J.). But *Gopie* made no mention of the Fourth Amendment. And Gopie involved entirely different facts and applicable law.. First, the detention authority at issue in *Gopie* was 8 U.S.C. §1226(a); Judge Bulsara held that ICE had failed to make a custody determination for Gopie, and thereby violated §1226(a) and Gopie's due process rights. *Id.* at *2. By contrast, the detention authority here is Section 1231.

Second, in *Gopie*, the procedural issue with Petitioner's arrest that Judge Bulsara took issue with was chronological; Judge Bulsara found that "when ICE arrested Gopie they had no authority to do so" because a Notice to Appear was not issued until after Gopie was arrested. *Id.* at *1. The circumstances here are entirely different. At all times since Petitioner illegally entered this country after March 11, 2019, he has been subject to a valid order of removal. Indeed, by way of reminder, the Petitioner here has illegally entered this country *four times* and has been removed *three times*; indeed, in 2019, he was criminally prosecuted and confined prior to being removed. Declaration of Deportation Officer David Rodriguez at ¶¶ 3-13. As stated at the March 31, 2026 hearing, ICE agents are authorized to arrest an individual who they believe "is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2). Here, Petitioner was in a vehicle that ICE officers knew was owned by an individual without lawful status in this country; immediately after he was detained and arrested, they checked his identification, which identified him as the Petitioner, an individual with an order of removal. These facts are entirely different and distinguishable from those of in *Gopie*.

Petitioner also cites to a Southern District of New York case, *Diallo v. Joyce, et al.*, No. 25-CV-9909, 2025 WL 3718477 (S.D.N.Y. Dec. 23, 2025) (Subramanian, J.). Petitioner claims that this in *Diallo* "the court underscored that civil immigration authority does not diminish Fourth Amendment protections and that detention premised on questionable or insufficiently supported enforcement actions raises serious constitutional concerns." Dkt. No. 12 at 2. Most importantly, the words "Fourth Amendment" appear nowhere in the *Diallo* decision. Rather, the Court in *Diallo* stated that she was entitled to certain protections required by the Due Process Clause. *Diallo,* 2025

WL 3718477 at *5. Due Process Clause concerns stem from the Fifth Amendment, not the Fourth; Petitioner has firmly taken the position that only the latter type of violation took place in this case, and therefore, his reliance on *Diallo* is misplaced. Moreover , *Diallo* expressly recognized that ICE may detain a foreign national "for purposes of effectuating . . . removal", *id.* at *4, which ICE is doing here.

For the reasons set forth herein and in their prior submission, Respondents respectfully ask that the Court deny Petitioner's habeas petition.

Thank you for Your Honor's consideration of this submission.

Respectfully submitted,

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