

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

ROGELIO JOSE MOLINA ORDONEZ,

Petitioner,

-against-

Raul MALDONADO JR., Warden,
Metropolitan Detention Center; Judith
ALMODOVAR, New York Field Office
Director for U.S. Immigration and Customs
Enforcement; Todd BLANCHE, Attorney
General of the United States; Markwayne
MULLIN, Secretary of Homeland Security;
and Todd M. LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,

Respondents.

Civil Action No. 26-cv-2485 (DG)

Oral Argument Requested

MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION

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INTRODUCTION

Petitioner Rogelio Jose Molina Ordonez (“Mr. Ordonez”), who is being held by Respondents at the Brooklyn Metropolitan Detention Center (the “MDC”), initiated this action after he was detained by Respondents without notice or opportunity to be heard, without findings required by law, and in violation of the government’s own regulations. He is at risk of imminent transfer and removal outside the Eastern District.

Mr. Ordonez brings this motion pursuant to the All Writs Act, 28 U.S.C. § 1651 (the “AWA”), and the Court’s inherent equitable authority seeking (i) immediate release from detention due to due to the Second Circuit’s controlling decision handed down two days ago in *Cuhna v. Fredon*, No. 25-3141, slip op. (2nd Cir. April 28, 2025) (affirming the district court’s grant of the writ of habeas corpus), or, in the alternative (ii) an order preventing his transfer outside those areas encompassing the United States District Court for Eastern District of New York (the “District”) pending Court’s adjudication of his petition for a writ of habeas corpus. Alternatively, if Mr. Ordonez has already been transferred outside the District, he seeks an order mandating that Respondents return him to a detention center in the District.

Mr. Ordonez’ request by this motion is particularly pressing due to the Second Circuit’s decision in *Cuhna*. Here, as in *Cuhna*, Respondents are unlawfully detaining Mr. Ordonez pursuant to 8 U.S.C. § 1225(b)(2)(A). In *Cuhna*, the Second Circuit held, as have the great majority of judges in this District and elsewhere, that Section 1225(b)(2)(A) does not apply to individuals like Mr. Ordonez, who previously entered and has now been living in the United States for almost 10 years. *Cuhna*, slip. Op at 61.

FACTS ABOUT THE PETITIONER

Mr. Ordonez is a 27-year old alleged national of Guatemala. Petition for Writ of Habeas Corpus, April 25, 2026, Docket No. 1, at 26 (“Petition” or “Pet”).¹ He has lived in the United States since at least 2017, when he seventeen years old. *Id.*

On or about August 11, 2017, Mr. Ordonez was detained by DHS in or around McAllen, Texas. Pet. ¶ 27. Pursuant to an Order of Release on Recognizance, dated August 11, 2017, the DHS released Mr. Ordonez from detention on his own recognizance. *Id.* ¶ 28. Mr. Ordonez timely filed an application for asylum and withholding of removal and was granted Special Immigrant Juvenile Status. *Id.* ¶ 29.

Upon his release Mr. Ordonez attended and graduated from high school in Sullivan County, New York and is fluent in English. Pet. ¶ 30. After graduating from high school, he has been gainfully employed in construction and as a plumber up until the time of his arrest on April 7, 2026. *Id.*

Mr. Ordonez has been married for just over one-year and has a [REDACTED] stepdaughter. Peti. ¶ 31. He is the primary provider for his family, who live in [REDACTED]
[REDACTED]

On April 7, 2026, Mr. Ordonez attended a regularly scheduled probation date, related to a DUI violation in October 2020, at the Sullivan County Probation Department in Monticello, New York. Pet. ¶ 33. It was at that probation appointment that ICE arrested and detained Mr.

¹ The Petition mistakenly states that Mr. Ordonez is 22-years old. Pet. ¶ 26. Mr. Ordonez is 27-years old.

Ordonez. *Id.* He has been detained at the MDC since April 7, 2026. *Id.* ¶ 35. Mr. Ordonez has been advised by his guards that he will be transferred out of MDC imminently. *Id.* ¶ 2.

ARGUMENT

This Court has ample authority to (i) order Mr. Ordonez released from detention under *Cuhna*, or, in the alternative, (ii) to enjoin Mr. Ordonez' transfer outside the District and, if necessary, to order his immediate return to the District.

I. Due To the Second Circuit's Recent Controlling Decision in *Cuhna v. Fredon*, the Court Should Order Petitioner's Immediate Release From Detention

Respondent's detention of Mr. Ordonez pursuant to Section 1225(b)(2)(A) was unlawful for a number of reasons, as set forth in the Petition, but the Second Circuit decision in *Cuhna* makes crystal clear that Section 1225(b)(2)(A) does not apply to noncitizens, like Mr. Ordonez, who have been present in the United States for almost ten years after entering the without inspection and admission. *Cuhna*, slip op. 6. Rather, Section 1226(a) governs detention of noncitizens like Mr. Ordonez, *id.*, and under Section 1226(a) Mr. Ordonez' release is appropriate if "such release would not pose a danger to property or person" and that he is "likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8).

There is no reasonable argument on the facts here that Mr. Ordonez is either a danger to the community or a flight risk. To the contrary, during his nearly ten years in the United States, Mr. Ordonez has graduated from high school, become fluent in English, started a family and has worked continuously in both construction and plumbing. Moreover, he has an immigration attorney and has regularly attended his immigration hearings on his asylum petition.

Under pressure to astronomically increase immigrant detentions beyond what is lawfully permitted, Respondents have begun arguing that Section 1225(b)(2)(A), which requires

mandatory detention without bond, applies. *Cuhna*, slip op. at 5. “But this is not what the law says.” *Id.* at 6. Accordingly, the Second Circuit in *Cuhna* has “join[ed] the overwhelming majority of judges across the Nation,” including in this District, that have rejected the Respondent’s newly found basis for detention without bond. *Id.*

For the foregoing reasons, Mr. Ordonez’s respectfully requests that the Court grant him his immediate release from detention at the MDC.

II. Pursuant to Its Authority Under the All Writs Act, the Court Should Order that Petitioner Remain in the Eastern District of New York

The AWA provides federal courts with the power to preserve the integrity of their jurisdiction to adjudicate claims before them. *See* 28 U.S.C. § 1651(a) (authorizing federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law”). *See also Local 1814, Intern. Longshoremen’s Ass’n, AFL-CIO v. New York Shipping Ass’n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) (“Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act authorizes a federal court to protect that jurisdiction”) (cleaned up); *Tariq v. United States Department of Homeland Security, et al.*, 2025 WL 3687764, at *1 (E.D.N.Y. Dec. 19, 2025) (enjoining respondents from “moving Petitioner to a location outside this District, the Southern District of New York, or the District of New Jersey, absent further order of this Court”) (citing *1814, Inter. Longshoremen’s Ass’n*).

The AWA standard differs from traditional preliminary injunction requirements. Unlike a conventional request for injunctive relief, which requires, among other things, a party to show injury and a likelihood of success, the AWA requires only that a party identify a threat to the integrity of an ongoing proceeding. *See Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100–

01 (11th Cir. 2004) (collecting cases). Accordingly, to issue an injunction pursuant to the AWA, this Court need not find that there is a likelihood of success on the merits of the underlying claims—although Petitioner also readily satisfies that standard, in particular after the Second Circuit’s decision in *Cuhna*. See *Arctic Zero, Inc. v. Aspen Hills, Inc.*, 2018 WL 2018115, at *5 (S.D. Cal. May 1, 2018) (distinguishing AWA injunction from traditional preliminary injunction). Indeed, Courts regularly invoke the AWA to enjoin transferring or removing a habeas petitioner during the pendency of litigation without delving into the merits of the underlying claim. See, e.g., *Rivera Zumba v. Bondi*, 2025 WL 2476524, at *8 (D.N.J. Aug. 28, 2025)

Courts likewise retain comparable, inherent equitable authority to enjoin transfers pending a habeas petition, see 28 U.S.C. § 2243 (habeas courts authorized to order relief “as law and justice require”), and courts in this District and other courts in the Second Circuit regularly exercise that authority. See, e.g., *Perez v. Noem*, 2025 WL 1908284, at *2 (S.D.N.Y. June 13, 2025) (enjoining transfer from the SDNY “in light of the equitable and flexible nature of habeas relief and pursuant to the Court’s inherent authority under the All Writs Act”); *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 288 (E.D.N.Y. 2025) (discussing an earlier order issued under the All Writs Act enjoining removal from the United States and transfer outside New York/New Jersey area); *Minarcaja Concha v. Lyons*, 2026 WL 215417, at *7 (E.D.N.Y. Jan. 28, 2026) (same).

Here, the AWA standard is easily met. First, Mr. Ordonez has instituted the habeas action pending before this Court, which must assure itself of its jurisdiction as this litigation unfolds. Moreover, the integrity of these proceedings will depend on whether Mr. Ordonez is able to access his attorneys and otherwise participate in this litigation. Because his claims involve

allegations that ICE did not comply with its own regulations in detaining him, Mr. Ordonez' testimony about the facts and circumstances surrounding his detention may be required. But his ability to do so will be impaired if he is transferred to a remote detention center, as he has been advised by his guards is imminent, where his attorneys will have far more limited access to him. Finally, absent this Court's intervention, Mr. Ordonez' access to his family, in particular his wife and  daughter, could be severely impacted.

For the foregoing reasons, the Court should exercise its authority under the All Writs Act to keep Mr. Ordonez within this District.

III. The Court Has Authority to Review Respondents' Detention of Mr. Ordonez

The presumption of judicial review is deeply rooted in our history and separation of powers. To guard against arbitrary government, our founders knew, elections are not enough: "An elective despotism was not the government we fought for." *The Federalist No. 48*, p. 311 (C. Rossiter ed. 1961) (J. Madison). In a government "founded on free principles," no one person, group, or branch may hold all the keys of power over a private person's liberty or property. *Id.* Instead, power must be set against power, "divided and balanced among several bodies . . . checked and restrained by the others." *Id.*

The Supreme Court has long held that judicial review of agency action "is the norm in our legal system." *Mach Mining, LLC v. E.E.O.C.*, 575 U.S. 480, 495 (2015). "Absent such review, the [agency's] compliance with the law would rest in [its] hands alone," a result contrary to basic principles of administrative law. *Id.* at 488. Legislating with this "well-settled presumption" of judicial review of administrative action in mind, *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 496 (1991), Congress passed the Illegal Immigration Reform and

Immigrant Responsibility Act of 1996 to streamline removal proceedings by, among other things, limiting judicial review of certain government acts. One such jurisdiction-limiting provision, 8 U.S.C. § 1252(g), was tailored to preserve the Executive’s “prosecutorial discretion” in the decision or action to commence proceedings, adjudicate cases, and execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 n.9 (1999) (“AAD”). The law, however, did not shield the Executive from executing such actions in an unlawful manner.

In *Jennings v. Rodriguez*, a plurality of the Supreme Court reiterated that although Section 1252(g) by its terms covers claims “arising from” the “decision or action” by the Executive to “commence proceedings, adjudicate cases, or execute removal orders,” the “arising from” language “refer[s] to just those three specific actions themselves.” 138 S. Ct. 830, 841 (2018). The Court further noted that the provision does not “sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General[,]” and reaffirmed the reading supplied by Justice Scalia in *AADC*. *Id.* Similarly, in *Dep’t of Homeland Sec. v. Regents of Univ. of Calif.*, the Supreme Court again emphasized that Section 1252(g) is “narrow” and does not cover “all claims arising from deportation proceedings” or impose “a general jurisdictional limitation” on the government’s otherwise unlawful conduct concerning transfer and removal. 140 S. Ct. 1891, 1907 (2020).

In *Michalski v. Decker*, the Court explained that “the decision or action to detain an individual” is different from “the decision or action to commence a removal proceeding.” 279 F. Supp.3d 487, 495 (S.D.N.Y. 2018) (internal citations omitted). In *Vasquez v. Wolf*, 830 F.App’x 556 (9th Cir. 2020), the United States Court of Appeals for the Ninth Circuit Court found that

that 8 U.S.C. §1252(g) does not strip jurisdiction to hear a claim that challenges the manner of transfer or removal of a person.

In *AADC*, the Supreme Court emphasized that 8 U.S.C. § 1252(g) does not strip jurisdiction for the “universe of deportation claims,” but rather for a “narrow” class of noncitizen challenges to “discrete actions” of the Attorney General. *Id.* at 482. The Supreme Court stressed that the “discretion-protecti[on]” of Section 1252(g) was not crafted to bar non-final-order review of “*all* claims arising from deportation proceedings.” *Id.* (emphasis added). Instead, as Justice Scalia, writing for the Court, noted, Section 1252(g) demands “much narrower” application. *Id.* at 482. Justice Scalia explained that “[t]here are of course many other decisions or actions that may be part of the deportation process” that do not fall within the three acts identified by 8 U.S.C. § 1252(g) and that it would be “implausible that the mention of three discrete events along the road to deportation [serve] as a shorthand way of referring to all claims arising from deportation proceedings.”

This Court therefore has the jurisdiction and authority to grant Mr. Ordonez’ motion.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court issue an order under the All Writs Act and/or the Court’s inherent equitable authority directing Respondents to (i) immediately release Mr. Ordonez from detention, or, in the alternative (ii) enjoin transfer of Mr. Ordonez outside the District to maintain the status quo at the commencement of this litigation, and if has already been transferred outside the District, return him to a detention center in the District.

Dated: April 30, 2026
New York, New York

/s/ Mathew B. West
Mathew B. West

8 Bedford Street
New York, New York 10014
mathewwest1@gmail.com
(917) 797-4995

Pro Bono Counsel for Petitioner