



U.S. Department of Justice

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By ECF

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

June 3, 2026

Re: *D.J.R.R. v Kenneth Genalo, et al.*, 26-cv-03124 (Donnelly, J.)

Dear Judge Donnelly:

This Office represents Respondents in this habeas matter, in which Petitioner D.J.R.R.¹ ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). See ECF No. 1 (the "Petition"). Respondents write respectfully in response to the Court's Order dated May 26, 2026, directing Respondents, *inter alia*, to show cause why the Petition should not be granted. See ECF Docket Text Order to Show Cause dated May 26, 2026 ("Order").²

Respondents respectfully submit that the Petition should be denied. For reasons set forth below, the Court should dismiss the Petition as jurisdictionally barred by several subsections of 8 U.S.C. § 1252. Alternatively, the Court should deny the Petition on the merits, because Petitioner is subject to a final order of removal and is therefore lawfully detained pursuant to 8 U.S.C. § 1231(a)(6). And because this action should be dismissed, the Court should vacate its prior Order that to the extent that it prohibits Respondents from removing Petitioner.

Relevant Background

On October 19, 2021, Petitioner, a Nicaraguan national, entered the United States without being admitted or paroled after inspection at or near Del Rio, Texas. Declaration of Dmitry Rousseau ("Decl.") ¶3-4. U.S. Customs and Border Patrol Agents ("CBP") encountered Petitioner in the Del Rio, Texas border patrol sector. Decl. ¶5. CBP determined that Petitioner had unlawfully entered the U.S. from Mexico and arrested Petitioner. *Id.* Petitioner admitted to CBP that he illegally crossed the international boundary without being inspected by an immigration officer at a designated port of entry. *Id.* Ex. A. Petitioner was transported to the U.S. Border Patrol Station in Del Rio, Texas for further processing. *Id.* Petitioner was issued and served a Notice to Appear ("NTA"), Form I-862, charging him as inadmissible pursuant to Section 212(a)(6)(A)(i) of the

¹ See ECF No. 5 (Order granting petitioner's motion for leave to proceed under pseudonym dated May 27, 2026).

² See also Docket Text Scheduling order dated May 29, 2026, which reset the deadline for Respondent's response to the Order to June 3, 2026 5:30 p.m.

Immigration and Nationality Act (“INA”) [8 U.S.C. § 1182(a)(6)(A)(i)], as being an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General of the United States of America. Decl. ¶6.

On October 20, 2021, Petitioner was issued an Order of Release on Recognizance (“OREC”), Form I-220A, which allowed for his release on his recognizance provided that he comply with certain conditions and that he report in person to 26 Federal Plaza, New York, New York (“26 Federal Plaza”) on November 4, 2021. Decl. ¶7. Pursuant to the OREC, Petitioner was prohibited from, *inter alia*, violating any local, State, or Federal laws or ordinances. Ex. B

On September 13, 2023, Petitioner was arrested by the New York City Police Department (“NYPD”) in Queens, New York, and charged with violations of (1) N.Y. Penal Law § 265.01(1) (criminal possession of a weapon in the fourth degree), (2) N.Y. Veh. & Traf. Law §1192(3) (operating a motor vehicle while under the influence of alcohol or drugs), (3) N.Y. Veh. & Traf. Law §1192(2) (operating a motor vehicle with .08 of 1% or more by weight of alcohol in person’s blood), (4) N.Y. Veh. & Traf. Law §509(1) (driving without a license), and (5) N.Y. Veh. & Traf. Law §375(2)(a) (failing to use headlights). Decl. ¶8. Ex. C.

On March 3, 2024, Petitioner was arrested a second time by the NYPD for assault in the third degree, with intent to cause physical injury. Decl. ¶9.

On May 6, 2024, Petitioner reported to 26 Federal Plaza pursuant to the reporting requirements of his OREC. Decl. ¶10. Due to his criminal charges, ICE cancelled his OREC for failure to comply with the conditions of release (to not violate any local, State, or Federal laws or ordinances) and took Petitioner into custody that day. Decl. ¶10, Ex. B. Petitioner was transported to the New York City (“NYC”) holding room located at 26 Federal Plaza. Decl. ¶10.

On this same day, Petitioner was issued and served with a superseding NTA charging him as inadmissible pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) [8 U.S.C. § 1182(a)(6)(A)(i)], as being an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General of the United States of America.³ Decl. ¶11, Ex. D. This NTA was filed with the Executive Office of Immigration Review (“EOIR”), placing Petitioner into removal proceedings. Later that same day, Petitioner was transferred from the NYC hold room to the Orange County Jail, where he remained detained until his merits hearing on September 13, 2024. Decl. ¶11.

On July 1, 2024, ICE officers received an NYPD Wanted poster from the NYPD 102nd Precinct detective squad indicating that the NYPD is seeking to locate Petitioner in connection with an assault in the third degree that occurred on March 8, 2024. Decl. ¶13.

³ At Petitioner’s June 12, 2024 master calendar hearing, Petitioner, through his attorney, admitted to the factual allegations contained in the NTA, conceded to the sole charge of removability contained in the NTA, and the IJ sustained the charge of removability. Decl. ¶20.

On September 3, 2024, Petitioner appeared with his attorney for his merits hearing on his applications for relief from removal. Decl. ¶15. The IJ ordered Petitioner removed to his home country, Nicaragua but granted Petitioner Withholding of Removal to that country, Nicaragua. *Id.* Parties waived appeal and the order became final that same day. Decl. ¶15, Ex. E.

On September 13, 2024, Petitioner was released from custody on an Order of Supervision (“OSUP”) which contained several conditions, including, to not commit any crimes while on the Order of Supervision. Decl. ¶16. The conditions of the OUSP were read, interpreted and explained to Petitioner in Spanish. *Id.* Petitioner signed the OUSP, acknowledging his understanding to comply with the terms of the OUSP. Decl. ¶16, Ex. F. Petitioner released to the NYPD and arrested by the NYPD in Queens, New York due to the pending assault in the third degree, for which he was wanted. Decl. ¶17.

On May 23, 2025, Petitioner was arrested a third time by the NYPD in Queens, New York for a misdemeanor Petit Larceny charge. Decl. ¶17, Ex. G.

On May 21, 2026, Petitioner reported to ICE at 26 Federal Plaza pursuant to his OUSP. Decl. ¶18. ICE officers served Petitioner with a Notice of Revocation of OSUP due to violations of the conditions of release, including his arrests. Decl. ¶18, Ex. H. Petitioner was arrested pursuant to his order of removal and notified that his case was under review for removal to an alternate country. *Id.* Petitioner was given an initial interview which afforded Petitioner the opportunity to respond to the OUSP revocation, and the interview notice –Ex. F – reflects that he did provide a response in Spanish, citing, *inter alia*, that he had children and that he paid some taxes. *Id.*

Petitioner remains detained at the Brooklyn Metropolitan Detention Center in Brooklyn, New York, pursuant to INA § 241(a)(5) [8 U.S.C. § 1231(a)(5)] for the purpose of effectuating his removal. Decl. ¶19.

Petitioner commenced this action on May 22, 2026. *See* ECF No. 1. Pursuant to this Court’s Order to Show Cause dated May 26, 2026 (the “May 26 Order”), this Court, *inter alia*, prohibited Respondents, absent a further order, from removing Petitioner from the United States and from moving Petitioner to a location outside this District.

The May 26 Order is now the sole impediment to the removal of Petitioner. Decl. ¶ 20. Mexico has agreed to consider accepting Cuban, Honduran, Haitian, Guatemalan, Nicaraguan, El Salvadorian, and Venezuelan nations with final order of removal on a case-by-case basis. Decl. ¶ 20. Mexican authorities have indicated criminality is not an issue for acceptance decisions. Generally, DHS can effectuate the removal to Mexico expeditiously. *Id.*

Legal Argument

It is “‘axiomatic’ under the principle of sovereign immunity ‘that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction.’” *Adeleke v. United States*, 355 F.3d 144, 150 (2d Cir. 2004) (quoting *United States v. Mitchell*, 463 U.S. 206, 212 (1983)) (collecting cases). When the United States waives its immunity from suit, “limitations and conditions upon which the Government consents to be sued must be strictly observed, and exceptions thereto are not to be implied.” *Lehman v. Nakshian*, 453 U.S. 156, 161 (1981); *see also United States v. Nordic Village, Inc.*, 503 U.S. 30, 33-34 (1992). Many statutes

independently bar judicial review by this Court: 8 U.S.C. §§ 1252(a)(5), (b)(9), and (g). Thus, this Court lacks jurisdiction.⁴

I. THIS COURT LACKS JURISDICTION OVER THIS ACTION BECAUSE THIS ACTION IS A CHALLENGE TO A REMOVAL ORDER

This action is, in substance, a challenge to the Petitioner's final order of removal, and, therefore, is barred because Congress has enacted jurisdiction-stripping statutes that preclude the district courts from hearing challenges to the validity of a final order of removal.

A. This Action Is Jurisdictionally Barred By 8 U.S.C. §§ 1252(a)(5), 1252(b)(9)

Congress enacted numerous bars to judicial review once there is a removal order at issue. For example, 8 U.S.C. § 1252(a)(5) provides in relevant part that “a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of an order of removal.” As a corollary to § 1252(a)(5), 8 U.S.C. § 1252(b)(9) provides that “[j]udicial review of all questions of law and fact” arising from a removal proceeding “shall be available only in judicial review of a final order” of removal, and “no court shall have jurisdiction . . . by any other provision of law . . . to review such an order or such questions of law or fact.” Thus, section 1252(a)(5) gives the courts of appeals exclusive jurisdiction over review of final orders of removal. *Ruiz-Martinez v. Mukasey*, 516 F.3d 102, 105 (2d Cir. 2008). The “clear intent” of Congress in enacting § 1252(a)(5) was “‘to have all challenges to removal orders heard in a single forum,’ *i.e.*, the courts of appeals.” *Spina v. DHS*, 470 F.3d 116, 124 (2d Cir. 2006) (quotation omitted). “[T]aken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue – whether legal or factual – arising from *any* removal-related activity can be reviewed *only* through’ a petition for review filed with an appropriate court of appeals.” *Asylum Seeker Advocacy Project v. Barr*, 409 F. Supp. 3d 221, 224 (S.D.N.Y. 2019) (quoting *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis by *J.E.F.M.*)); *accord Rodriguez v. Warden, Orange County Correctional Facility*, No. 23-cv-242, 2023 WL 2632200, at *4 (S.D.N.Y. Mar. 23, 2023).

The Second Circuit has construed §§ 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. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). In determining whether an action challenges an order of removal, the Second Circuit looks to “the substance of the relief that [the] plaintiff is seeking.” *Id.*

Delgado is instructive. *Delgado* was subject to a final order of removal. *Delgado*, 643 F.3d at 55. *Delgado* filed an action in district court under the Administrative Procedure Act, 5 U.S.C. §§ 701-06 (“APA”) to compel USCIS to adjudicate her application for a waiver of inadmissibility. *Id.* at 53-54. The Second Circuit held that §§ 1252(a)(5) and 1252(b)(9) precluded the district court from exercising jurisdiction over the action, because the action was, however indirectly, a challenge to the order of removal: if USCIS were ordered to adjudicate the application, and were to grant the waiver, she would satisfy a necessary requirement for adjustment of status, and if she

⁴ Dismissal of an action is warranted under Fed. R. Civ. P. 12(b)(1) when “the district court lacks statutory or constitutional power to adjudicate it.” *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). The plaintiff bears the burden of showing – by a preponderance of evidence – that the court has jurisdiction. *See id.* Courts may refer to evidence outside the pleadings. *Id.*

then succeeded in having her status adjusted, her removal order would be rendered invalid. *Id.* at 55; *accord, Singh v. USCIS*, 878 F.3d 441, 445-46 (2d Cir. 2017) (holding that § 1252(a)(5) precluded the district court from exercising jurisdiction over an action to compel USCIS to adjudicate the merits of the plaintiff's application for adjustment of status because ordering USCIS to consider that application could lead USCIS to approve that application, which in turn would lead to the nullification of his removal order); *Villatoro v. Noem*, No. 25-cv-5306, 2025 WL 2880140, at *3 (E.D.N.Y. Oct. 9, 2025) (Merchant, J.) (“[t]he plain language of Section 1252 precludes district courts from exercising jurisdiction over direct challenges to removal orders); *Lopez Galvez v. Noem*, 25-cv-3229, 2025 WL 1823549, at *1 (E.D.N.Y. July 1, 2025) (Seybert, J.) (“§ 1252(a)(5) is a jurisdictional bar to [the court's] consideration of Petitioner's indirect challenge” to her removal order); *Leybinsky v. USCIS*, No. 19-cv-6154, 2021 WL 4407829, at *3-4 (E.D.N.Y. Sept. 26, 2021) (Kovner, J.) (§ 1252(a)(5) barred claim for district court order vacating the plaintiff's order of removal).

Notably, as Your Honor has found earlier this year, in *Villatoro v. Shanahan*, the §§ 1252(a)(5) and 1252(b)(9) jurisdictional bar encompasses claims predicated on violations of the United States Constitution. *Villatoro v. Shanahan*, No. 26-cv-1210, 2026 WL 948297, at *2-3 (E.D.N.Y. Apr. 7, 2026) (Donnelly, J.). Similarly, the Second Circuit in *Delgado* applied the same jurisdictional bars to due process and equal protection claims. *Delgado*, 643 F.3d at 54-55; *accord Jimenez v. Shanahan, et al.*, No. 26-cv-1501, 2026 WL 1309291 (E.D.N.Y. May 13, 2026) (Cogan, J.) ((§§ 1252(a)(5) and 1252(b)(9) barred Fourth Amendment challenge to stop and arrest that led to his detention); *Sauceda Henriquez v. Noem*, 25-cv-7023, 2026 WL 111665, at *4 (E.D.N.Y. Jan. 15, 2026) (DeArcy Hall, J.) (“That Petitioners challenge their detention as violative of due process . . . and the Suspension Clause . . . does not alter the Court's inability to review the Petition”), *appeal filed* January 29, 2026; *Oriakhi v. DHS*, 762 F. Supp. 3d 183 (E.D.N.Y. 2025) (Matsumoto, J.) (dismissing due process challenge to removal order as barred by § 1252(a)(5)), *aff'd*, No. 25-243-cv, 2026 WL 303642 (2d Cir. Feb. 5, 2026) (dismissing due process challenge to removal order as barred by § 1252(a)(5)); *Villatoro v. Noem*, 2025 WL 2880140 at *3 (§ 1252(a)(5) barred claim predicated on alleged due process violation).

The jurisdictional bar also extends to claims predicated on statutory violations. The Second Circuit applied that bar to claims under the APA in *Delgado*, 643 F.3d at 54-55. In *Villatoro v. Shanahan*, 2026 WL 948297, at *2-3, Your Honor held that §§ 1252(a)(5) and 1252(b)(9) barred a claim that the detention of the petitioner “is ‘without statutory authority’”. And the Court in *Villatoro v. Noem* applied that bar to claims under the APA and the Immigration and Nationality Act, based on the contention that ICE lacked legal authority to remove the petitioner. *Villatoro v. Noem*, 2025 WL 2880140 at *2-3 (citing § 1252(a)(5)); *see also Saucedo Henriquez v. Mullin*, No. 26-cv-2886, 2026 WL 1552279 (E.D.N.Y. June 1, 2026) (DeArcy Hall, J.).

District courts in this Circuit, including Your Honor, have dismissed challenges to detention filed by aliens who were being detained for the purpose of effectuating their removal. In *Villatoro*, 2026 WL 948297, the petitioner, who was detained by ICE for the purposes of removing him, sought an order directing ICE to release him from custody and prohibiting ICE from removing him. Your Honor held that the action was barred by §§ 1252(a)(5) and 1252(b)(9) as an indirect challenge to the petitioner's final order of removal order because granting the relief sought by the petitioner “would frustrate the government's ability to enforce the removal order.” *Id.* at *3.

In *Sauceda Henrriquez*, ICE detained the petitioners for the purpose of effectuating their removal. The petitioners challenged their detention on due process and other grounds. The Honorable LaShann DeArcy Hall held that §§ 1252(a)(5) and 1252(b)(9) jurisdictionally barred that challenge because the challenge was “‘inextricably linked to’ a removal order. *Sauceda Henrriquez*, 2026 WL 111665, at *4 (quotation omitted). Judge DeArcy Hall also held that “a challenge to a petitioner’s detention, following an order of removal, constitutes . . . an indirect challenge to an order of removal” that is precluded by §§ 1252(a)(5) and 1252(b)(9). *Id.* (citing *Delgado*, 643 F. F.3d at 55).

In *Villatoro v. Noem*, 2025 WL 2880140, at *4, the petitioner, who was subject to a final order of removal, challenged his detention by arguing that his removal period had ended. The Honorable Orelia E. Merchant held that the challenge was a direct attack on his removal order and thus barred by § 1252(a)(5); *accord*, *Ceesay v. Bondi*, 25-cv-3716, 2025 WL 1435615, at *2 (S.D.N.Y. May 16, 2025) (§ 1252(a)(5) barred, as an indirect challenge to a removal order, an action for an order prohibiting ICE from detaining the petitioner for the purpose of removing him, because such an order “would . . . interfere with the execution of a lawful removal order”); *Rodriguez*, 2023 WL 2632200, at *4 (S.D.N.Y. Mar. 23, 2023) (§§ 1252(a)(5) and 1252(b)(9) barred an action “seek[ing] an end to [the petitioner’s] detention, which was undertaken for the precise purpose of effectuating his existing removal orders”).

Petitioner’s 2024 removal order is “final” and subject to the jurisdictional bar. “[I]n streamlined removal proceedings . . . the order becomes final immediately upon issuance.” *Riley v. Bondi*, 606 U.S. 259, 267 (2025) (partial dissent of Sotomayor, J.).

Here, the jurisdictional bar applies to Petitioner’s claims and requires dismissal of this case. ICE arrested and detained Petitioner for the purpose of enforcing the a final order of removal, and, as a result, his challenge to his detention is jurisdictionally barred. Sections 1252(a)(5) and 1252(b)(9) deprive this Court of jurisdiction to review Petitioner’s demand for an order directing Respondents to release him from custody and his underlying contentions of violations of law by ICE. *See, e.g., Villatoro v. Shanahan*, 2026 WL 948297, at *2-3;; *Sauceda Henrriquez*, 2026 WL 111665, at *4; *Villatoro v. Noem*, 2025 WL 2880140, at *4.

Furthermore, the Court should vacate the stay of removal issued as part of the Court’s Order dated May 26, 2026. That provision of the Order is the sole impediment to the removal of Petitioner. Decl. ¶20. Mexico has agreed to consider accepting Cuban, Honduran, Haitian, Guatemalan, Nicaraguan, El Salvadorian, and Venezuelan nations with final order of removal on a case-by-case basis. *Id.* Mexican authorities have indicated criminality is not an issue for acceptance decisions. *Id.* Generally, DHS can effectuate the removal to Mexico expeditiously. *Id.* Because ICE has detained Petitioner for the sole purpose of effectuating his removal, §§ 1252(a)(5) and 1252(b)(9) jurisdictionally bar this Court from prohibiting his removal. *See Ceesay*, 2025 WL 1435615, at *2 (denying motion for an order barring ICE from removing the petitioner); *see also Villatoro v. Shanahan*, 2026 WL 948297, at *3 (denying relief that “would frustrate the government’s ability to enforce the removal order”).

B. This Action Is Also Jurisdictionally Barred By 8 U.S.C. § 1252(g)

Another Congressionally enacted jurisdictional bar independently precludes review of Petitioner's anticipated removal. 8 U.S.C. § 1252(g), in relevant part, provides that, with exceptions not relevant here, "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action . . . to execute removal orders against any alien under this chapter." "[B]y its plain terms, 8 U.S.C. § 1252(g) strips district courts of jurisdiction over claims attacking the Government's decisions or actions to execute removal orders." *Yearwood v. Barr*, 391 F. Supp. 3d 255, 263 (S.D.N.Y. 2019). Section 1252(g) thereby precludes district courts from issuing an order that would prevent or hinder ICE from executing a removal order, *i.e.*, removing an individual who is the subject of a final order of removal. *Troy as Next Friend Zhang v. Barr*, 822 Fed. Appx. 38, 39 (2d Cir. 2020). Congress enacted § 1252(g) in order to avoid the "deconstruction, fragmentation, and hence prolongation of removal proceedings." *Reno v. Arab-American Anti-Discrimination Committee*, 525 U.S. 471, 487 (1999) ("AADC").

Notably, § 1252(g) bars *all* claims challenging the execution of a removal order, so the bar is not limited to claims that challenge ICE's discretionary conduct, and therefore also includes challenges to conduct that allegedly violates federal law, including, without limitation, a provision of the United States Constitution. *See, e.g., AADC*, 525 U.S. at 488 (§ 1252(g) barred First Amendment challenge to deportation); *Jean-Baptiste v. Reno*, 144 F.3d 212, 214, 218 (2d Cir. 1998) (§ 1252(g) barred Fifth Amendment due process challenge to deportation); *K.K. v. Garland*, No. 23-cv- 6281, 2025 WL 274431, at *2 (W.D.N.Y. Jan. 23, 2025) (dismissing action alleging violations of "various constitutional, statutory and regulatory provisions", citing, *inter alia*, *Rauda v. Jennings*, 55 F.4th 773, 777-78 (9th Cir. 2022), *Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021), *E.F.L. v. Prim*, 986 F.3d 959, 965 (7th Cir. 2021)), *appeal dismissed sub nom. K.K. v. Bondi*, No. 25-190 (2d Cir Apr. 8, 2025); *accord, Tazu v. Attorney General*, 975 F.3d 292, 297 (3d Cir. 2020). "Otherwise, § 1252(g) would be a paper tiger; any petitioner challenging the execution of a removal order could characterize his or her claim as an attack on [ICE]'s 'legal authority' to execute the order and thereby avoid § 1252(g)'s bar." *E.F.L.*, 986 F.3d at 965 (affirming dismissal of action that challenged, on due process and statutory grounds, the execution of a removal order).

The holdings of those decisions are fully consistent with Supreme Court case law on statutory construction. Section 1252(g) by its terms bars "*any* cause or claim" (emphasis added). The Supreme Court, in construing 8 U.S.C. § 1252(a)(2)(B)—like § 1252(g), enacted as part of § 306 of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546 (1996) ("IIRIRA")—held that "the word 'any' has an expansive meaning." *Patel v. Garland*, 596 U.S. 328, 338 (2022) (quotation omitted). *Patel*'s construction of "any" in § 1252(a)(2)(B) applies with special force to the use of the same word in § 1252(g) because of "the normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning." *See Gustafson v. Alloyd Co. Inc.*, 513 U.S. 561, 570 (1995) (internal quotation marks omitted). Thus, § 1252(g) bars any and all types of claims that challenge the execution of a removal order, including without limitation claims alleging violations of federal law.

Additional Supreme Court jurisprudence on statutory construction confirms that the

§ 1252(g) bar is not limited to claims that challenge ICE’s discretionary conduct. Section 1252(g)’s wording contains no such limitation, and courts “may not engraft [their] own exceptions onto the statutory text.” *Schein*, 586 U.S. at 70. Notably, the Congress that enacted IIRIRA knew how to limit a jurisdiction-stripping statute’s reach to discretionary matters when that Congress wished to do so. The aforementioned § 1252(a)(2)(B) bars challenges “to (i) any judgment regarding the granting of relief under [specified statutes], or (ii) any other decision or action . . . which is specified in this subchapter to be *in the discretion of* the Attorney General or the Secretary of Homeland Security [with one specified exception]” (emphasis added). Section 1252(g), by contrast, does *not* include any language limiting its reach to discretionary matters, and thus cannot be construed to include such a limitation. *See Hardt v. Reliance Life Ins. Co.*, 560 U.S. 242, 251-52 (2010). In *Hardt*, the Supreme Court held that a party need not be a prevailing party in order to recover attorney’s fees under one subsection of a statute, because the wording of that subsection included no prevailing-party requirement, while the wording of another subsection of the same statute did include such a requirement. *Id.* The Supreme Court described the court of appeals’ reading a prevailing-party requirement into the first subsection as akin to “‘invent[ing] a statute rather than interpret[ing] one.’” *Id.* (quoting *Pasquantino v. United States*, 544 U.S. 349, 359 (2005) (alterations by *Hardt*); accord *Romang Fasteners, Inc. v. Fossil, Inc.*, 590 U.S. 212, 215 (2020) (“read[ing] into statutes words that aren’t there . . . [is] a temptation that we are doubly careful to avoid when Congress has . . . included the term in question elsewhere in the very same statutory provision”; declining to construe one subsection of a statute as requiring the plaintiff to prove intent in order to prevail because, unlike that subsection, another subsection of the same statute expressly required proof of intent).⁵

Section 1252(g) jurisdictionally bars claims for release from detention that, if granted, “would bar ICE from effectuating [the petitioner’s] removal.” *Lin v. Borgen*, No. 25-cv-5618, 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025). *Lin* held that § 1252(g) barred the petitioner’s claim because his removal was imminent—he had provided his birth certificate to ICE and all that ICE needed to remove him was a travel document from his native country. *Id.* Here, Petitioner’s removal is imminent, as demonstrated above.

II. STAY OF REMOVAL TO A THIRD COUNTRY SHOULD BE DENIED BECAUSE PETITIONER IS A MEMBER OF A CLASS IN AN ACTION CHALLENGING THIRD-COUNTRY REMOVAL

Assuming *arguendo* that the Court were to find this Petition seeking a stay or removal not barred due to jurisdiction-stripping statutes, this action should be dismissed for another reason. To wit, Petitioner would be required to obtain relief in a final class action judgment -- pending appeal -- that challenges third-country removal, and in which a non-opt-out class has already been certified.

Petitioner is a member of a nationwide, non-opt-out class, certified in the District of Massachusetts pursuant to Federal Rule of Civil Procedure 23(b)(2), that consists of

⁵ Accordingly, *Gondal v. USDHS*, 343 F. Supp. 3d 83, 92 (E.D.N.Y. 2018) (Spatt, J.), incorrectly limited the § 1252(g) bar to challenges to discretionary conduct.

All individuals who have a final removal order issued in proceedings under [8 U.S.C. §§ 1229a, 1231(a)(5), or 1228(b)] (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

D.V.D. v. DHS, 778 F. Supp. 3d 355, 378 (D. Mass. 2025); *see also id.* at 394 (granting motion for class certification). The Supreme Court subsequently stayed an injunction issued by the *D.V.D.* district court, but did not disturb the class certification. *DHS v. D.V.D.*, 145 S. Ct. 2153 (2025); *see also DHS v. D.V.D.*, 145 S. Ct. 2627 (2025) (granting DHS motion for clarification concerning the injunction).⁶

Petitioner's challenge to third-party removal is exactly the same as a challenge to third-party removal raised by the *D.V.D.* plaintiffs. Petitioner and the *D.V.D.* plaintiffs all contend that removing them to a third country without prior notice and an opportunity to object would violate their rights under the Due Process Clause. Petition ¶¶ 3, 9, 23 (also citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), which applied the Due Process Clause); *D.V.D.*, 778 F. Supp. 3d at 369.

Thus, to the extent that Petitioner is entitled to any relief regarding an alleged third-country removal -- including without limitation a stay of removal -- Petitioner must obtain that relief in *D.V.D.*, and not in this action. *Lopez v. Ferguson*, 361 Fed. Appx. 225, 226 (2d Cir. 2010). In *Lopez*, the Second Circuit affirmed the dismissal of an action brought by a lone plaintiff because his claims were the subject of a class action. *Id.* Consistent with *Lopez*, several district courts have dismissed claims challenging third-country removal, and/or denied injunctive relief based on such a claim, due to the pendency of the *D.V.D.* class action. *See Manango v. Carter*, No. 25-3183, 2025 WL 2576755, at *2-3 (D. Kan. September 5, 2025) (denying motion for a temporary restraining order ("TRO")); *Sanchez v. Bondi*, No. 25-cv-02287, 2025 WL 2550646, at *2-3 (D. Col. Aug. 20, 2025) (denying motion for TRO, preliminary injunction and stay of administrative proceedings); *Ghamelian v. Baker*, No. SAG-2502106, 2025 WL 2049981, at *3 (D. Md. July 22, 2025) (because he is a *D.V.D.* class member, Ghamelian's "claims regarding his potential third country removal are more appropriately resolved in the *D.V.D.* case and will not be addressed in this Court"); *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1519449, at *3 (D. Md. May 25, 2025) (denying motion for TRO and dismissing claims).

Indeed, Petitioner would benefit by having his challenge to third party removal adjudicated in *D.V.D.* The *D.V.D.* plaintiffs' challenge to third-party removal is premised not just on the Due Process Clause upon which Petitioner relies, but also on alleged violations of the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.* ("INA"); the Foreign Affairs Reform and Restructuring Act of 1998, 8 U.S.C. § 1231 note ("FARRA"); and regulations promulgated pursuant to the INA and FARRA. *D.V.D.*, 778 F. Supp. 3d at 369. Thus, having Petitioner's challenge to third-party removal adjudicated in *D.V.D.* would provide him with additional opportunities to obtain relief.

For this reason, even if the Court were to find the other jurisdictional bars inapplicable, and

⁶ The First Circuit then stayed the *D.V.D.* district court's final judgment.

were to find Petitioner will be removed to a third country, the Court should deny this motion due to the final judgment of the *D.V.D.* class action.

III. PETITIONER'S ARGUMENTS CONCERNING HIS OSUP REVOCATION ARE UNAVAILABLE

Petitioner also challenges his OSUP revocation as improper, arguing, *inter alia*, that he was not provided with notice or an interview. See ECF No. 1. To the extent that Petitioner is using this to challenge his removal and obtain instead release, again, the jurisdictional bars apply and the claim warrants dismissal, see Part I, *supra*. Even if those bars did not apply, which they do, this claim warrants dismissal.

To state a claim for procedural due process, a plaintiff must establish: (i) a cognizable liberty or property interest, and (ii) a deprivation of that interest without being afforded the process that is due to the plaintiff, which process is circumstance-specific. See *Weinstein v. Albright*, 261 F.3d 127, 134 (2d. Cir. 2001) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)) (“[D]ue process is flexible and calls for such procedural protections as the particular situation demands.”).

Plaintiff cannot establish either element. As an initial matter, Petitioner’s argument overlooks the fact that the Due Process Clause does not protect a “benefit . . . if government officials may grant or deny it in their discretion.” *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 756 (2005) (citing *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 462–63 (1989)); *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983). It is well-established that an alien has no entitlement, and therefore no protected liberty interest, in discretionary relief from the immigration laws. *Jin v. Mukasey*, 538 F.3d 143, 156–57 (2d Cir. 2008) (holding that aliens have no “liberty or property interest in asylum that warrants Fifth Amendment protection,” as such relief is discretionary); *Rojas-Reyes v. INS*, 235 F.3d 115, 125–26 (2d Cir. 2000) (holding that alien did not have constitutional right to be considered for the discretionary relief of cancellation of removal).⁷

It is well settled that the authority to issue an order of supervised release is a “wholly discretionary act by ICE, which [does] not supersede or otherwise undermine the validity of [a] removal order.” *Lin v. Borgen*, No. 25-CV-05618 (MMG), 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025). Thus, Petitioner’s OSUP, a grace exercised at ICE’s discretion, did not confer an enforceable entitlement upon him, and ICE’s discretionary decision to revoke it accorded with the

⁷ See also *Matias v. Sessions*, 871 F.3d 65, 72 (1st Cir. 2017) (holding that, because BIA’s exercise of its sua sponte authority was purely discretionary, there could be no due process violation in the denial of such relief); *Assaad v. Ashcroft*, 378 F.3d 471, 475–76 (5th Cir. 2004) (holding that there could be no due process violation from the failure to be considered for discretionary waiver of removability); *Smith v. Ashcroft*, 295 F.3d 425, 429–30 (4th Cir. 2002) (“[T]he discretionary right to suspension of deportation does not give rise to a liberty or property interest protected by the Due Process Clause.”); *Oguejiofor v. Attorney General of the United States*, 277 F.3d 1305, 1309 (11th Cir. 2002) (“[A]n alien has no constitutionally protected right to discretionary relief or to be eligible for discretionary relief.”); *Ashki v. INS*, 233 F.3d 913, 921 (6th Cir. 2000) (“Ashki has no constitutionally-protected liberty interest in obtaining discretionary relief from deportation.”); *Appiah v. INS*, 202 F.3d 704, 709 (4th Cir. 2000) (“Because suspension of deportation is discretionary, it does not create a protectible liberty or property interest.”).

applicable regulations.⁸ In short, an alien who has “been adjudicated removable and ordered deported, and who has nevertheless remained in the country illegally for several years, does not have a liberty or property interest in a discretionary grant” of relief from removal. *Jin*, 538 F.3d at 157. An OSUP does not shield an alien who is subject to a final removal order from being detained in order to be removed. As such, Petitioner cannot articulate a protected property interest.

Indeed, to the extent that Petitioner wants to be at liberty, the evidence of record establishes the only thing holding up his liberty – albeit removal – is the May 26 Order staying his removal. Decl. ¶20. Liberty is available to Petitioner, just not liberty *in this country*. He may secure his liberty abroad immediately by withdrawing this suit; if the Court were to vacate its order that would likewise be the outcome.

Even if there were a protectible liberty or property interest in maintaining an OSUP, a grace granted to him by ICE, he identifies no procedural errors. First, he contends, *inter alia*, that there was no change in his case which compelled a change in his custody status. This is false. When Petitioner was released from custody on OSUP on September 13, 2024, Petitioner signed the OUSP, acknowledging his understanding the necessity to comply with the terms of the OUSP. Decl. ¶16, Ex. F. The conditions of the OUSP were read, interpreted and explained to Petitioner in Spanish. *Id.* Of the conditions contained in Petitioner’s OSUP, Petitioner was to not commit any crimes while on the Order of Supervision. Decl. ¶16. However, on May 23, 2025, Petitioner was arrested a third time by the NYPD in Queens, New York for a misdemeanor Petit Larceny charge. Decl. ¶17, Ex. G. May 21, 2026, when Petitioner reported to ICE at 26 Federal Plaza pursuant to his OUSP, ICE officers served Petitioner with a Notice of Revocation of OSUP due to violations of the conditions of release, including his arrests. Decl. ¶18, Ex. H. Petitioner was then arrested pursuant to his order of removal and, in view of the withholding to Nicaragua that had been granted by the IJ, was notified that his case was under review for removal to an alternate country. *Id.* Petitioner was given an initial interview which afforded Petitioner the opportunity to respond to the OUSP revocation. *Id.*

Here, Petitioner was afforded the process he was due. As discussed, Petitioner was provided with notice and an interview. *Compare Zhu v. Genalo*, -- F. Supp. 3d-- 2025 WL 2452352, at *8-9 (S.D.N.Y. Aug. 26, 2025) (petitioner was not provided notice or an interview).

IV. PETITIONER’S REMAINING CLAIMS UNDER THE ADMINISTRATIVE PROCEDURE ACT, ET. SEQ (“APA”), INCLUDING HIS ACCARDI CLAIM, SHOULD BE DENIED

Assuming *arguendo* that the Court were to find this Petition not barred due to jurisdiction-stripping statutes or the existence of the class action for those challenging third-country removal, Petitioner’s Administrative Procedure Act claims, which include his claim under *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260 (1954), which are a species of APA claims concerning

⁸ Under 8 C.F.R. § 241.4(l)(2), that provision expressly authorizes ICE to revoke the release of an alien and return him to custody “in the exercise of discretion,” 8 C.F.R. § 241.4(l)(2), whether “to enforce a removal order” among other considerations or even “whenever the relevant official determines that there is “any . . . circumstance[]” that “indicates that release would no longer be appropriate,” 8 C.F.R. § 241.4(l)(2)(iii),(iv).

agencies following their own regulations, this suit is not a viable vehicle. The APA is not a viable vehicle for claims arising out of his detention. In *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025), in which claims including due process claims were brought under the APA, the INA, various habeas provisions, the Supreme Court held that where the claims for relief, as here, “necessarily imply the invalidity of their confinement,” regardless of whether Petitioner requests release from confinement, those claims “fall within the ‘core’ of the writ of habeas corpus and must be brought in habeas.” *See Id.* at 1005. The Supreme Court’s holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)). All the claims in this suit constitute a core habeas claim—though they fail for the reasons discussed *supra*—and are not cognizable under the APA. Additionally, by the APA’s terms, it is available only for agency action “for which there is no other adequate remedy in a court.” 5 U.S.C. § 704. Thus, Petitioner’s APA claims, including under *Accardi*, are independently barred by this limitation. As noted by Justice Kavanaugh’s concurrence in *J.G.G.*, “[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention.⁹

Petitioner’s Property

In further Response to this Court’s Order dated May 26, 2026, Petitioner’s property at the time of arrest included shoelaces, belt, wallet, keys, ring, chain, earrings, and a cellular phone. Ex. I.

* * * *

Accordingly, the Petition should be denied and this Court’s Order enjoining Petitioner’s removal should be vacated.

Respondents thank the Court for consideration of this submission.

Respectfully submitted,
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⁹To the extent that the Court finds that the APA claim lies, and also does not grant the Petition, Respondents should be afforded 60 days to respond as Fed. R. Civ. P. 12(a)(2) requires.