UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

RUMEYSA OZTURK, Petitioner, v. DONALD J. TRUMP, in his official capacity as President of the United States, PATRICIA HYDE, Field Office Director, MICHAEL KROL, HSI New England Special Agent in Charge, TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement, and KRISTI NOEM, Secretary of Homeland Security; and MARCO RUBIO, in his official capacity as Secretary of State Respondents.	No. 2:25-cv-374

RESPONDENTS' SUPPLEMENTAL OPPOSITION TO PETITIONER'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

As explained herein, and in Respondent's initial Opposition to Petitioner's Amended Petition (ECF No. 19), the Court should deny and dismiss Petitioner Rumeysa Ozturk's Amended Petition for Writ of Habeas Corpus (ECF No. 12, the "Petition"), because:

- The Court lacks jurisdiction over the Petition under 28 U.S.C. § 2241 because the petition has never been filed in her place of confinement and has never named her immediate custodian as respondent, as required by *Rumsfield v. Padilla,* 542 U.S. 426 (2004), and the Court lacks personal jurisdiction over her immediate custodian;
- Transfer to this Court from the District of Massachusetts under 28 U.S.C. § 1631 does not create jurisdiction;

- Petitioner no longer challenges the revocation of her visa in this action. *See* ECF No. 26, at 25 ("Ms. Ozturk does not challenge the revocation of her visa."). But with her visa revoked, she lacks status and is subject to detention under 8 U.S.C. § 1226 for the duration of removal proceedings, and it is well-settled that the immigration detention is "a constitutionally valid aspect of the deportation process," *Demore v. Kim,* 538 U.S. 510, 523 (2003), especially where, as here, a bond hearing is available before the immigration judge;
- This Court lacks jurisdiction under 8 U.S.C. § 1252; and
- The Immigration and Nationality Act does not permit the Court to circumvent the processes available for Petitioner to seek relief before an immigration judge, the Board of Immigration Appeals, and ultimately the appropriate circuit court of appeals.

Because the Court lacks habeas jurisdiction and because Petitioner has not been deprived of a bond hearing before the Immigration Judge, this Court should also not to consider releasing Petitioner during the pendency of this action. Even if the Court were to consider the question of release, Petitioner fails to satisfy the necessary threshold qualifications for such an order.

INTRODUCTION

In *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004), the Supreme Court made clear an individual challenging the legality of her detention through a habeas petition must file that petition in the district where she is detained and must name the custodian detaining her in such district as the respondent. *Padilla* itself was a rebuke to the Second Circuit's relaxed approach to the immediate custodian rule. *See* 542 U.S. at 437-38 (rejecting the Second Circuit's "view that we have relaxed the immediate custodian rule in cases involving prisoners detained for 'other than federal criminal violations,' and that in such cases the proper respondent is the person exercising

'the reality of control over the petitioner."). And as recently as this week, the Supreme Court reiterated that for claims that "fall within the 'core' of the writ of habeas corpus," "jurisdiction lies in only one district: the district of confinement." *Trump v. J. G. G.,* 2025 WL 1024097, at *1 (U.S. Apr. 7, 2025). Because Petitioner neither filed her petition in the place of confinement – even after she was aware the place of confinement was the Western District of Louisiana – nor named her immediate custodian, her petition must be dismissed under *Padilla.* And as shown below, transfer to this Court under 28 U.S.C. § 1631 does not cure the absence of jurisdiction.

Additionally, even if Petitioner had properly filed her original petition in Vermont during the approximately 8.5 hours when she was here, this Court would nonetheless lack jurisdiction over this matter to consider her claims under the Immigration and Nationality Act ("INA"). The federal immigration laws strip district courts of jurisdiction over the sorts of governmental decisions challenged in the Petition, including the revocation of Petitioner's student visa and ICE's decision to initiate removal proceedings. The Department of State revoked Petitioner's visa on March 21, 2025, pursuant to INA Section 221(i), 8 U.S.C. § 1201(i), which allows revocation of a visa at the Secretary of State's discretion. *See* Doc. No. 12-2, Form I-862, Notice to Appear ("NTA"). Per Section 1201(i), Congress barred judicial review of a visa revocation, specifically stating that "[t]here *shall be no means of judicial review* … of a revocation under this subsection," including through a habeas petition, other than in the context of removal proceedings and only if the visa revocation is the sole basis for removal. (emphasis added).

Petitioner's request for review of ICE's decision to initiate removal proceedings against her is also barred by 8 U.S.C. § 1252(g), which strips district courts of jurisdiction "to hear any cause or claim by or on behalf of an alien arising from the decision or action by [ICE] to commence proceedings … against any alien," including constitutional claims. Courts also lack jurisdiction to

review ICE's discretionary decisions to arrest and detain aliens under 8 U.S.C. § 1226(a). Per 8 U.S.C. § 1226(e), ICE's "discretionary judgment regarding the application of [Section 1226] shall not be subject to review [and] … [n]o court may set aside any action or decision by [ICE] under this section regarding the detention of any alien …". And finally, 8 U.S.C. §§ 1252(a)(5) and (b)(9) strip "federal courts of jurisdiction to decide legal and factual questions arising from an alien's removal" and instead channel such questions to the courts of appeal via a petition for review. *Gicharu v. Carr*, 983 F.3d 13, 16 (1st Cir. 2020); *see also Delgado v. Quarantillo,* 643 F.3d 52, 54-55 (2d Cir. 2011) (§ 1252(a)(5)'s jurisdictional bar applies to direct and indirect challenges to removal orders); *Asylum Seeker Advoc. Project v. Barr*, 409 F. Supp. 3d 221, 224 (S.D.N.Y. 2019) ("As the Ninth Circuit has explained, '[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." (quoting *J.E.F.M. v. Lynch,* 837 F.3d 1026, 1031 (9th Cir. 2016)) .

Critically, Petitioner is not without recourse to challenge the revocation of her visa and her arrest and detention, but such challenge cannot be made before this Court. Instead, Petitioner must seek release before an immigration judge and must pursue relief from removal in Immigration Court, whose decision would be reviewable before the Board of Immigration Appeals ("BIA"), and (if necessary) a federal circuit court. At bottom, this is neither the right forum nor the right time for a district court to consider Petitioner's claims.

Because this Court lacks jurisdiction over this Petition, Petitioner's request for release on bail pending adjudication of the matter is similarly unwarranted.

FACTUAL AND PROCEDURAL BACKGROUND

A. Petitioner's Arrest and Transfer from the District of Massachusetts.

Respondents original Opposition to the Amended Petition and its exhibit, ECF Nos. 19 & 19-1, summarizes the factual and legal background through the date of that filing. Since that time, the following additional events have occurred.

1. Petitioner's Response to the Opposition

In her response to Respondents' Opposition to her Amended Petition, Petitioner asserted that the revocation of her visa, and her subsequent arrest and detention, were intended to "silence and chill" political speech, focusing on Executive Orders 14161 and 14188 issued by the new administration, as well as public statements attributed to the Secretary of State. ECF No. 26, at 5-7. She reiterated that her petition raises constitutional challenges under the First and Fifth Amendments, as well as the Administrative Procedures Act. *Id.* at 7-9. She also emphasized that she seeks an order from the district court releasing her from immigration custody on bail. *Id.* at 9.

In her filing, Petitioner also relied largely on First Circuit case law to respond to Respondents' contentions that various provisions of the INA stripped a district court of jurisdiction to here constitutional or other challenges to an immigration enforcement proceeding. *See* ECF No. 26, at 19-29. Finally, relying in large part on *Mapp v. Reno,* 241 F.3d 221 (2d Cir. 2001), Petitioner argued that she should be released pending the adjudication of this district court action. ECF No. 26, at 31-32.

2. The District of Massachusetts Order Transferring the Case to Vermont

Last Friday, Judge Casper of the United States District Court for the District of Massachusetts ordered that this case be transferred to this Court pursuant to 28 U.S.C. § 1631. ECF Nos. 42 & 43. Her decision noted, among other things, that "[i]t will be for the District of

Vermont to determine if it has jurisdiction over Ozturk's Petition notwithstanding her later transfer to Louisiana after the filing of the Petition that is now transferred there." ECF No 42, at 25 n.6. In another footnote, Judge Casper also surveyed First Circuit law to suggest the Respondents' claims that the INA stripped the court of jurisdiction should be rejected. *Id.* at 9-10 n.1. Because the Court ultimately transferred the case to Vermont, and because, as shown below, under the law of this Circuit the INA bars this Court's involvement in Petitioner's immigration proceedings, this part of the Massachusetts decision is of no import.

3. Status of Petitioner's Case Before the Immigration Judge

Prior to the April 7 date in Petitioner's Notice to Appear (ECF No. 12-1), counsel entered an appearance on her behalf in immigration court. Through counsel, Petitioner has admitted the allegations contained in the Notice to Appear (i.e., that she no longer has immigration status), denied that she was removable, and requested judicial review of the revocation of her visa in removal proceedings.[1]

As a result of this filing, the government is required to produce evidence in support of Petitioner's removability before the immigration judge by April 22, 2025.

ARGUMENT

Petitioner improperly filed her original petition in Massachusetts when she filed her action at 10:02 PM on March 25, because she was located in Vermont at that time. She also improperly named the wrong supervisory officials as respondents. Then, after she had been transferred to

[1] *See* 8 U.S.C. § 1201(i) ("There shall be no means of judicial review (including review pursuant to section 2241 of title 28 or any other habeas corpus provision, and sections 1361 and 1651 of such title) of a revocation under this subsection, *except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 1227(a)(1)(B) of this title.*) (emphasis added).

custody in the Western District of Louisiana, Petitioner filed an amended Petition, again in Massachusetts, and again naming improper supervisory officials from Washington D.C. and the Northeast. The case now has been transferred to this district, where she happened to be located at 10:02 PM on March 25. However, the Petition still fails because this Court lacks jurisdiction over her immediate custodian, who is in Louisiana, and who is not named in the Amended Petition. As such, this Court should dismiss this action without prejudice.

But even were this Court to assert habeas jurisdiction, the INA nonetheless bars a district court from hearing a constitutional challenge to the revocation of Petitioner's visa, the commencement of immigration proceedings, whether an alien is subject to detention during those proceedings, and the prosecution of those proceedings. *All* of those issues, and others intertwined with those issues, are subject to judicial review at the appropriate court of appeals at the end of immigration proceedings – not a district court before they have even started.

Finally, as argued in a separate filing submitted today, because the court lacks jurisdiction, it is without authority to grant Petitioner the bail she seeks here, but has yet to seek before the immigration judge. And even if the Court were to assume habeas jurisdiction over this case, Petitioner fails to make the necessary showing for release.

A. The Immediate Custodian and District of Confinement Rules Apply to this Petition and Render this Court without Jurisdiction.

Petitioner's original petition was improperly filed in Massachusetts, because at 10:02 PM on March 25 she was in Vermont, and because she did not name her immediate custodian as a respondent. Petitioner departed Massachusetts shortly after 6:30 PM, when ICE officials transported her from Methuen, Massachusetts on the way to Lebanon, New Hampshire before eventually arriving in St. Albans, Vermont later that evening. ECF No. 19-1, ¶¶ 11-13. Because Petitioner was in Vermont when her original petition was filed, Massachusetts lacked habeas

jurisdiction. Similarly, now that she is in Louisiana, *this Court* lacks habeas jurisdiction. (And, as explained in section B, below, the transfer to this court under 28 U.S.C. § 1631, does not cure the absence of jurisdiction.)

The Supreme Court explained that when considering "challenges to present physical confinement … the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Padilla*, 542 U.S. at 439. *Padilla* involved a habeas petition filed by a U.S. citizen who was initially detained in the Southern District of New York but then transferred to South Carolina. *Id.* at 431. After Mr. Padilla was transferred, he filed a petition in SDNY, naming President Bush and Secretary Rumsfeld as respondents. *Id.* at 432. The Court confronted the "question whether the Southern District has jurisdiction over Padilla's habeas petition[,]" which required two determinations: "First, who is the proper respondent to the petition? And second, does the Southern District have jurisdiction over him or her?" *Id.* at 434.

Answering the first question, the Supreme Court explained that the habeas statute "provides that the proper respondent to a habeas petition is 'the person who has custody over [the petitioner].'" *Id.* (quoting 22 U.S.C. § 2242). The Court stated that "there is generally only one proper respondent to a given prisoner's habeas petition," the immediate custodian who has "the ability to produce the prisoner's body before the habeas court." *Id.* The Court applied its "longstanding" rules – known as the "district of confinement" and "immediate custodian" rules – and explained that in a challenge to present physical confinement, "the proper respondent is the warden of the facility where the prisoner is held, not the Attorney General or some other remote supervisory official." *Id.* at 435. The Court acknowledged that while Mr. Padilla's detention was "undeniably unique in many respects, it is at bottom a simple challenge to physical custody imposed by the Executive…." *Id.* at 441. Without evidence that "there was any attempt to

manipulate" his transfer or that government was hiding his location, the Court explained that his "detention is thus not unique in any way that would provide arguable basis for a departure from the immediate custodian rule." *Id.* at 441-42.

As to the question of the proper district court to consider the petition, the Court affirmed the applicability of the traditional rule "that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement." *Id.* at 443. Because Mr. Padilla was moved from the Southern District of New York before the petition was filed, "the Southern District never acquired jurisdiction over Padilla's petition." *Id.* at 441-42.[2] In summary, the *Padilla* Court explained that whenever a "habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement." *Id.* at 447; *see also Trump v. J. G. G.,* 2025 WL 1024097, at *1 (U.S. Apr. 7, 2025).

Though the Second Circuit has not addressed the question directly, district courts within this circuit routinely find jurisdiction wanting over habeas petitions that are filed by ICE detainees outside of the filing district and that fail to name the immediate custodian. *See Khalil v. Joyce,* 2025 WL 849803, at * 6 (S.D.N.Y. March 19, 2025) ("'a clear majority of courts in this circuit' – including *this Court*, on at least five separate occasions – 'have held that the "immediate custodian" rule applies' to 'core' immigration habeas cases in which a petitioner challenges his or her

[2] As such, the *Padilla* Court distinguished the factual circumstances before the Court from those at issue in *Ex parte Endo,* 323 U.S. 283 (1944), where the Supreme Court had created an exception to its general rule for cases in which the petitioner properly filed the habeas petition against the immediate custodian and thereafter was transferred outside the district court's territorial jurisdiction. Here, as in *Padilla*, *Endo* is not applicable because Petitioner never properly filed her habeas petition because she was not detained in Massachusetts at the time it was filed.

detention pending removal 'and that jurisdiction [in such cases] lies only in the district of confinement." (quoting *Signh v. Holder*, 2012 WL 5878677, at *2 (S.D.N.Y. Nov. 21, 2012)).

Because Petitioner was not detained in Massachusetts when she filed her original petition there, because no petition was filed in Vermont during the approximately 8.5 hours she spent here from March 25 through March 26, and because she failed to name her immediate custodian either in her original Petition or her Amended Petition, neither this Court nor the District of Massachusetts have or had jurisdiction over this matter. Petitioner's Amended Petition is similarly improperly defective in this district, because it fails to name her immediate custodian in Louisiana, and it is not filed in her district of confinement.

Under the plaint terms of 28 U.S.C. § 2241, district courts can only provide habeas relief "within their respective jurisdictions." Because Petitioner's immediate custodian has never been named in either of her Petitions, and because that custodian is located in the Western District of Louisiana, this Court lacks jurisdiction.

1. Petitioner failed to name her immediate custodian.

Petitioner named improper respondents in her original petition because she named supervisory officials, rather than her immediate custodian in Vermont when the petition was filed. Her Amended Petition suffers from the same flaws, as she adds additional supervisory officials but fails to name her immediate custodian in Louisiana.

Courts within this circuit hold that they lack jurisdiction over a habeas petition seeking release from detention if the alien names improper respondents. *Lagunas v. Decker,* 2021 WL 164100 (S.D.N.Y. Jan. 15, 2021); *Barros v. Decker,* 2018 WL 11473082, at *1 (S.D.N.Y. Nov. 30, 2018) ("This Court has previously held that where a habeas petitioner presents a 'core' claim, meaning a claim that challenges the conditions and fact of physical detention, jurisdiction lies in

the district where the petitioner's immediate physical custodian is located."); *Allen v. Holder,* 2010 WL 11643354, at *4 (S.D.N.Y. Dec. 9, 2010) ("Because this case involves a core habeas petition, the 'immediate custodian' rule applies and the named respondents – the Attorney General of the United States, the District Director of Detention and Removal Operations, and the INS – are not proper parties to the case.").

Because Petitioner is now detained in Louisiana, her failure to name her immediate custodian subjects her Amended Petition to dismissal.

2. No Exceptional Circumstances Allow Deviation from the District of Confinement and Immediate Custodian Rules.

In explaining its decision to transfer this case to Vermont, the District of Massachusetts surveyed potential exceptions to the immediate custodian rule, including, for example, habeas cases challenging an out-of-state person's authority over petitioners located in a different state. ECF 42, at 11-12. The Court also summarized the rule of *Ex Parte Endo,* 323 U.S. 283 (1944), that once a habeas case has been filed in the district of confinement and against the proper custodian, the petitioner's subsequent transfer out of that district does not divest the court with habeas jurisdiction. ECF 42, at 12-13. (The "limited" exception of *Endo* – that when the petition is filed in district of detention and against the immediate custodian, that district keeps jurisdiction despite Petitioner's subsequent move away – does not apply here because the Petition in this case was never filed in the proper district.) *Padilla* recognized that *Endo* stood for an "important but limited proposition[:] when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Padilla*, 543 U.S. at 441 (emphases added).

The Massachusetts Court also explored the exception "proposed" by Justice Kennedy's two-justice concurrence in *Padilla,* that might apply if the government engaged in efforts to make it difficult to determine where the petition should be filed, or concealed the identity of the immediate custodian. ECF 42, at 13-14 (citing *Padilla,* 542 U.S. at 454 (Kennedy, J., concurring)); *but see Khalil*, 2025 WL 849803, at *8 ("But Khalil does not cite, and the Court has not found, a single example of Justice Kennedy's opinion being applied to award relief.").

Judge Casper's decision suggested suspicion that ICE may have engaged in conduct that would implicate the *Padilla*-concurrence's proposal: "the government here provides no information about whether it is routine to move detainees to various locations in a single day or to have a detainee on a plane heading out of the region within twelve hours of her arrest." ECF 42, at 20. Judge Casper also characterized the arrest, processing, and detention as "irregular," and noted that the government failed to disclose Ozturk's location to her attorneys while the Petitioner was in transit.

Judge Casper's concerns are misplaced, not only for the reasons in Respondent's Opposition, ECF No. 19, at 13-15 & ECF No. 19-1, but also as explained below.

As this Court is aware, it is commonplace for federal criminal detainees to be housed throughout New England, and upstate New York. In addition, ICE had recently housed at least one female detainee in Vermont before transferring her to a detention facility in Louisiana. *See Jane Doe v. DHS, et al.*, No. 2:25-cv-240-cr (Petition filed while female petitioner held in the Chittenden County Correctional Facility). While it may not be as noticeable to a judge located in a big city, experience in this Court confirms that managing bedspace for detainees by transferring them around facilities in New England and upstate New York is occurs frequently and on a routine basis.

Judge Casper's order also suggested that Petitioner's quick transport to the facility in Louisiana evidenced an effort to conceal. As this Court is aware, however, it is not unusual for federal criminal detainees to lament how long it takes to be transported long distances, and to spend time in different facilities while enroute. It also bears emphasis that the facilities Judge Casper lists in her decision as potentially having bedspace available throughout New England, were not confirmed at that time to have available bedspace for the Petitioner. To be sure, Louisiana is far away from the Boston area. But the efficiency of Petitioner's transport to that facility should not be the source of the adverse inference Judge Casper seemed to draw.

ICE's transport of Petitioner out of New England was justified by the record evidence: "there was no available bedspace for Petitioner at a facility where she could appear for a hearing with the U.S. Department of Justice's Executive Office for Immigration Review in New England[.]" ECF No. 19-1, ¶ 6. Prior to her arrest, therefore, ICE determined that Petitioner would be transferred to a detention facility in Louisiana. *Id.* On the day of her arrest, ICE served Petitioner with a Notice to Appear, reflecting that her first immigration court hearing would be held before an immigration judge in Louisiana, and promptly transported her to a detention facility near there. ECF No. 12-1, ¶¶ 10-19.

Finally, that Petitioner was not allowed to contact her attorney while enroute to the Louisiana detention facility, though understandably frustrating to Petitioner and her counsel, is consistent with sound operational and security practices. Many detainees may be desperate to avoid the prospect of removal from the United States. Permitting them to communicate about their location while enroute between detention facilities would raise serious security concerns. And it would be unreasonable to task transporting agents with assessing each detainee's individual security risk.

Because there is no applicable exception to the immediate custodian rule, the Petition must be dismissed.

B. 28 U.S.C. § 1631 Does Not Vest This Court With the Power to Issue a Remedy That it Otherwise Lacks the Power to Issue.

As shown above, this court lacks habeas jurisdiction, because no petition was filed here against Petitioner's immediate custodian during the few hours Petitioner was in Vermont.

Petitioner—along with the district court in Massachusetts—has relied on 28 U.S.C. § 1631 as a way to cure this deficiency, and insist that habeas jurisdiction is proper in this Court. That is incorrect.

Section 1631 serves a narrow function: It was enacted to "aid litigants who were confused about the proper forum for review." *Liriano v. United States,* 95 F.3d 119, 122 (2d Cir. 1996). In service of that end, § 1631 enables transfer to cure certain technical defects in an improperly filed pleading. In *Liriano*, for example, the Second Circuit directed district courts to transfer unapproved second or successive § 2255 petitions to the circuit court for review under 28 U.S.C. § 2244(b)(3). 95 F.3d at 122-23. The Court noted that § 1631 specifies that for transferred cases "the filing date for limitations purposes" would be the date of the original filing. *Id.* at 123. Transfer to the circuit court in the context of *Liriano*, was appropriate because the circuit court was the proper venue by statute. Similarly, in *Paul v. I.N.S.*, 348 F.3d 43 (2d Cir. 2003), the Court held that under § 1631 an otherwise timely petition for review of a decision of the Board of Immigration Appeals that was improperly filed in the district court should be transferred to the appropriate circuit court. *Id.* at 46.

This case is different in kind. It is not about correcting some technical or procedural defect, regarding how a court administers its own business (such as a filing deadline). Instead, Petitioner seeks to use § 1631 to vest this Court with authority that it otherwise would lack by way of statute. That does not work. Section 2241, as detailed above, authorizes the federal courts to issue habeas

relief, but if and only if certain preconditions are satisfied. *See Padilla*, 542 U.S. at 434-35. Nothing in § 1631 allows a district court to somehow blow past those statutory requirements, based on the fiction that the suit was properly before it. Put otherwise, the general transfer statutes (including § 1631) cannot be used to raze the specific statutory prerequisites for any particular remedy.

Indeed, in analogous contexts, the courts have consistently held that § 1631 does not permit the receiving court to ignore substantive defects in the filing being transferred. The Second Circuit has held that, while § 1631 allows a transferee court to proceed as if the case had been filed on a certain date, § 1631 does not allow courts to ignore other facts and substantive limits on jurisdiction. *De Ping Wang v. Dep't of Homeland Sec.*, 484 F.3d 615, 617–18 (2d Cir. 2007) ("Because we would have lacked jurisdiction over Wang's petition for review had it been filed in this Court 'at the time it was filed or noticed' in the District Court, transfer under § 1631 was not permitted."). The Third Circuit sees it the same way. *See Campbell v. Office of Personnel Management*, 694 F.2d 305, 309 n.6 (3d Cir. 1982). In *Campbell*, the Court held that § 1631 did not permit a transfer to the Court of Appeals for the Federal Circuit as if the appeal had been filed there on April 7, 1982, because the Federal Circuit did not yet exist on that date. *Id*. *See also Monteiro v. Att'y Gen. of U.S.*, 261 F. App'x 368, 369 (3d Cir. 2008) (holding that transfer was improper when the original filing would have been untimely in the transferee court).

These cases demonstrate that a transfer under § 1631 cannot cure fundamental defects in the original filing. [3] When it was filed, the Petition failed to meet the place of confinement and

[3] Respondents recognize that other courts have transferred habeas cases under § 1631 to the district where the petitioner was located at the time the initial petition was filed, even after petitioner was no longer located in that district. *See, e,g., Alvarado v. Gillis,* 2023 WL 5417157

immediate custodian rules. When it was transferred last Friday, the Petition still suffered those defects. The only forum with habeas jurisdiction at this time is in Louisiana.

C. Even if the Original Petition was Properly Filed, the INA Strips District Courts of Jurisdiction to Review the Challenged Executive Actions.

Even if properly filed, this action must still be dismissed because Congress has stripped this Court of jurisdiction over Petitioner's challenges to the revocation of her visa, her subsequent arrest, detention, and initiation of removal proceedings, and the location of her detention.

1. The INA Bars District Court Review of Petitioner's Place of Detention.

Petitioner seeks an order returning her to Massachusetts pending the resolution of this case. ECF No. 12, at 22. As explained below, the Court lacks authority to dictate where ICE detains persons subject to removal proceedings.[4]

"A principal feature of the removal system is the broad discretion exercised by immigration officials." *Arizona v. United States*, 567 U.S. 387, 396 (2012). Decisions where to detain an alien pending removal proceedings are within the discretion of the Secretary of Homeland Security and therefore may not be reviewed or enjoined by the district courts. *See* 8 U.S.C. § 1231(g)(1) ("The Attorney General shall arrange for appropriate places of detention for aliens detained pending

(S.D.N.Y. Aug. 3, 2023), rep. and rec. adopted at ECF 16 (S.D.N.Y. Aug. 22, 2023); *Golding v. Sessions,* 2018 WL 6444400, at *3 (S.D.N.Y. Dec. 6, 2018).

Section 1631 was also the basis for the District of New Jersey last week accepting jurisdiction over a similar habeas action that was recently commenced in the Southern District of New York. *See Khalil v. Joyce,* 2025 WL 972959, at *15-20 (D.NJ. April 1, 2025). Four days after issuing that ruling, however, the District of New Jersey certified the question of its jurisdiction for interlocutory appeal under 28 U.S.C. § 1292(b). *Khalil v. Joyce,* 2025 WL 1019658 (D.NJ. April 4, 2025).

[4] The question of Petitioner's *release* pending this proceeding is addressed in Respondent's Supplemental Briefing Relating to the Question of Bail, filed today.

removal or a decision on removal."). The INA precludes judicial review over such discretionary decisions. *See* 8 U.S.C. § 1252(a)(2)(B)(ii) (barring district courts from exercising subject matter jurisdiction over "any . . . decision or action of the Attorney General . . . the authority for which is specified under this subchapter [8 U.S.C. §§ 1151-1381] to be in the discretion of the Attorney General . . ."). Here, the Executive's authority under § 1231(g) to decide the location of detention for individuals detained pending removal proceedings falls within § 1252(a)(2)(B)(ii)'s scope and is therefor barred from judicial review. . That is because, under § 1231(g), DHS "necessarily has the authority to determine the location of detention of an alien in deportation proceedings," including whether to change that location during the pendency of proceedings. *Gandarillas-Zambrana v. Bd. Immigration Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995).

The Executive's broad discretion to determine appropriate places of detention pending removal has repeatedly been recognized as unreviewable by federal courts after careful review of § 1231(g). *See, e.g., Wood v. United States*, 175 F. App'x 419, 420 (2d Cir. 2006) (holding that the Secretary "was not required to detain [Plaintiff] in a particular state" given the Secretary's "statutory discretion" under § 1231(g)); *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (holding that "a district court has no jurisdiction to restrain the Attorney General's power to transfer aliens to appropriate facilities by granting injunctive relief"); *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985) ("We are not saying that the petitioner should not have been transported to Florida. That is within the province of the Attorney General to decide.").

Thus, given the jurisdictional bar at § 1252(a)(2)(B)(ii), a district court may not exercise jurisdiction over ICE's decision to detain an alien in a given facility, and may not order ICE to transfer an alien from one location to another. *See, e.g., Edison C. F. v. Decker*, No. 2-cv-15455-SRC, 2021 WL 1997386, at *6 (D.N.J. May 19, 2021) ("Congress has provided the Government

with considerable discretion in determining where to detain aliens pending removal or the outcome of removal proceedings." (citing § 1231(g)(1))); *Salazar v. Dubois*, No. 17-cv-2186 (RLE), 2017 WL4045304, at *1 (S.D.N.Y. Sept. 11, 2017) (concluding that the district court "does not have authority to issue an order to change or keep [an alien] at any particular location"); *Zheng v. Decker*, No. 14-cv-4663 (MHD), 2014 WL 7190993, at *15-16 (S.D.N.Y. Dec. 12, 2014) (denying petitioner's request that the Court order ICE not to transfer him to another jurisdiction, holding that § 1231(g) transfer authority "is among the [Secretary of Homeland Security's] discretionary powers"); *Avramenkov v. INS*, 99 F. Supp. 2d 210, 213 (D. Conn. 2000) (refusing to grant petitioner's request for an injunction to prevent transfer because "Congress has squarely placed the responsibility of determining where aliens are to be detained within the sound discretion of the Attorney General"); *accord Van Dinh*, 197 F.3d at 434 ("Because the discretionary decision to transfer aliens from one facility to another and the correlative discretionary decision to grant or deny relief from such a transfer is a 'decision . . . under this subchapter.' Judicial review of that decision is expressly barred by § 1252(a)(2)(B)(ii).").

Petitioner's requested relief is also precluded by 8 U.S.C. § 1252(g). The Supreme Court has explicitly held that the Attorney General's "decision to commence proceedings falls squarely within § 1252(g)." *Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525 U.S. 471, 487 (1999) (cleaned up); *see also* 8 U.S.C. § 1252(g) ("no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings . . .against any alien under this chapter"). In reaching this conclusion, the Court noted that the provision had no effect on review of other actions that may be taken before, during, and after removal proceedings—"such as the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include

various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order." *Id.* at 482.

Thus, although *AADC* provides that § 1252(g) does not bar review of other actions before, during, and after removal proceedings, the provision does bar actions and decisions relating to commencement of proceedings, which necessarily includes the method by which they are commenced. *See Alvarez v. ICE,* 818 F.3d 1194, 1202 (11th Cir. 2016) (recognizing that the three actions listed "represent the initiation or prosecution of various stages in the deportation process," and "[a]t each stage the Executive has discretion to abandon the endeavor" for any number of reasons) (*citing AADC*, 525 U.S. at 483). Accordingly, considering that the commencement of proceedings requires DHS to determine whether, when, and where to commence such proceedings, § 1252(g) bars review of DHS's decision where to initiate removal proceedings. *See, e.g., Alvarez*, 818 F.3d at 1203 ("The challenge to ICE's decision, made by its counsel, Defendant Emery, essentially asks this Court to find that the agency should have chosen a different method of commencing proceedings. The district court was correct to find that § 1252(g) strips us of the power to entertain such a claim."); *Arostegui v. Holder*, 368 F. Appx 169, 171 (2d Cir. 2010) ("Whether and when to commence removal proceedings is within the discretion of DHS, and we do not have jurisdiction to review such decisions, unless petitioner raises constitutional claims or questions of law.") (citing 8 U.S.C. § 1252(g); *Ali v. Mukasey*, 524 F.3d 145, 150 (2d Cir. 2008)); *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) ("We construe § 1252(g) to include not only a decision whether to commence, but also when to commence a proceeding.") (cleaned up) (emphases in the original).

If there were any doubt about this Court's lack of jurisdiction over Petitioner's challenges to the commencement of proceedings, the REAL ID Act's amendments to § 1252(b)(9) should

dispel them. Those amendments provided 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 an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9). By law, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). Congress thus divested district courts of jurisdiction over such matters and vested review in only the courts of appeals. *Id*.; *see also Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (the REAL ID Act "clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals."). These provisions sweep more broadly than § 1252(g). *See AADC*, 525 U.S. at 483.

Indeed, in *Delgado v. Quarantillo*, the Second Circuit held that the REAL ID Act divests district courts of jurisdiction to review both direct and indirect challenges to removal orders. 643 F.3d 52, 55 (2d Cir. 2011). Only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction. *Ruiz v. Mukasey,* 552 F.3d 269, 274 n.3 (2d Cir. 2009). "[T]he substance of the relief that a plaintiff is seeking" will dictate. *Delgado*, 643 F.3d at 55. Where the proceedings occur and whether he had proper access to counsel are issues to be decided in a petition for review. *See, e.g., Nolasco v. Holder*, 637 F.3d 159, 163-64 (2d Cir. 2011); *Aguilar v. ICE,* 510 F.3d 1, 13 (1st Cir. 2007). Petitioner's request for transfer is "inextricably linked" to her removal proceedings and its conclusion. *Delgado,* 643 F.3d at 55.

2. The INA Bars District Court Review of the Revocation of Petitioner's Visa and Removal Proceedings.

Petitioner seeks an order to restore her Student and Exchange Visitor Information System (SEVIS) record. ECF No. 12, at 22. However, the termination of her SEVIS record is not the basis for her detention or her removability. A SEVIS record is only a data entry in an information system maintained by DHS. Restoring the SEVIS record would not restore her F-1 student nonimmigrant visa, nor would it negate the sole charge on the NTA that after her admission to the United States, her nonimmigrant visa was revoked under 8 U.S.C. § 1201(i).

Petitioner also seeks an injunction prohibiting enforcement actions against her relating to "the Foreign Policy Ground."[5] *Id.* She may also seek restoration of her nonimmigrant visa. The Court does not have authority to do any of these things.

Petitioner was previously admitted on an F-1 Student visa which has been revoked. Any claim she may wish to raise regarding that revocation must be asserted through the exclusive procedures set out by Congress in the INA, including judicial review of any legal or constitutional claim – not in district court. *See AADC*, 525 U.S. at 487; *see generally* 8 U.S.C. § 1252. Moreover, any claim that Petitioner's placement in removal proceedings is a violation of her First Amendment rights is precluded by 8 U.S.C. § 1252(g) and directly contrary to the Supreme Court's *AADC* decision. *Id.* at 487-92.

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[5] The only basis for Petitioner's removability listed in the Notice to Appear is that after her admission to the United States, her nonimmigrant visa was revoked under 8 U.S.C. § 1201(i). *See* ECF No. 12-2. The NTA does not allege anything about 8 U.S.C. § 1227(b)(4)(C) (permitting removal of an "alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States.") That statute is mentioned as one of two possible reasons why Petitioner's SEVIS record was terminated. ECF No. 12-1. But that data entry into a DHS information system is not a State Department record, and does not speak for the State Department.

In other words, the INA does not permit Petitioner to prioritize her constitutional claims over Congress's removal scheme—transforming this Article III court into a proper venue for an administrative removal case. Congress precluded such piecemeal litigation, *see AADC*, 525 U.S. at 487 (the INA's judicial review scheme, including section 1252(g), bars the "deconstruction, fragmentation, and [] prolongation of removal proceedings"), but also provided a forum in which constitutional claims *will* be heard in due course. *See id.* at 487-88 (holding the doctrine of constitutional doubt does not require pre-enforcement review of removal proceedings even when there is a claim of First Amendment chilling effect). In short, Petitioner's challenges concerning the revocation of her student visa are not properly before this Court. *Id.; cf. Dep't of State v. Munoz*, 602 U.S. 899, 907-08 (2024) (reaffirming that the admission and exclusion of foreign nationals, including visa denials, is a fundamental sovereign attribute "largely immune from judicial control") (cleaned up).

Additionally, 8 U.S.C. § 1201(i) provides that after the issuance of a visa, a "consular officer or the Secretary of State may *at any time*, in his discretion, revoke such visa or other documentation," and commands "[t]here shall be no means of judicial review [such as habeas corpus review] of a revocation under this subsection, *except in the context of a removal proceeding* if such revocation provides the sole ground for removal." 8 U.S.C. § 1201(i) (emphasis added). So review of that denial may only happen, if at all, in the context of a removal proceeding.

3. The INA Bars District Court Review of Petitioner's Constitutional Challenges.

Petitioner also seeks an order declaring her arrest and detention are violations of the First Amendment and the Due Process Clause. ECF No. 12, at 22. The Court lacks authority to do so.

The district court does not obtain jurisdiction simply because Petitioner makes constitutional arguments under the First and Fifth Amendments. Instead, the INA 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" to remove an alien are "available only in judicial review of a final order [of removal]." 8 U.S.C. § 1252(b)(9) (emphasis added). By law, therefore, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). That includes challenges inextricably intertwined with the final order of removal that precede issuance of any order of removal, *see Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011), and decisions to detain for purposes of removal. *See Jennings,* 138 S. Ct. at 841 (1252(b)(9) includes challenges to "decision to detain [alien] in the first place or to seek removal," which precedes any issuance of an NTA); *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (the REAL ID Act clarified that removal orders may not be reviewed in district courts, "even via habeas corpus," and may be reviewed only in the courts of appeals.).

In *Delgado v. Quarantillo*, the Second Circuit held that the REAL ID Act divests district courts of jurisdiction to review both direct and indirect challenges to removal orders. 643 F.3d 52, 55 (2d Cir. 2011); *Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009). Indeed, this provision circumscribes district court jurisdiction over "*any* issue—whether legal or factual—arising from any *removal-related activity* [which] can be reviewed only through the [administrative] process." *J.E.F.M. v. Lynch*, 837 F.3d at 1026, 1029-30. That includes "policies-and-practices challenges," *J.E.F.M.*, 837 F.3d. at 1032, arising from any "action taken or proceeding brought to remove an alien," 8 U.S.C. § 1252(b)(9), whether or not the challenge is

to an actual final order of removal or whether there even is a final order at all. *J.E.F.M.*, 837 F.3d at 1032. Were it otherwise, the statute's reference to "actions taken" before removal proceedings are initiated, would be "superfluous and effectively excised" it from the statute. *Aguilar*, 510 F.3d at 10. Thus, any constitutional challenge to actions taken to remove Petitioner can only be raised through the immigration courts and in the court of appeals following a petition for review.

As explained by another district court when dismissing a petition which challenged a visa revocation on account of a political dispute: "Congress has taken it out of my hands. … I cannot address this argument because I lack subject matter jurisdiction over the case. The legality of petitioner's detention depends on the resolution of such issues as whether the government lawfully revoked his visa and whether he is removable from the United States and, as indicated above, I am precluded from reviewing those issues." *Bolante v. Achim*, 457 F. Supp. 2d 898, 902 (E.D. Wis. 2006). The court also found the Suspension Clause not implicated because "the government has initiated removal proceedings" and a circuit court could review a challenge to the visa revocation upon a petition for review. *Id.* at 902-03, n.6; 8 U.S.C. § 1252(a)(2)(D) (Explaining that judicial review remains available for "constitutional claims or questions of law raised upon a petition for review).

Other courts also routinely find themselves without jurisdiction to consider the merits of a visa revocation upon operation of Section 1201(i)'s language. *See e.g.*, *Aldabbagh v. Sec'y of State*, 2021 WL 6298664, at *2 (M.D. Fla. Oct. 5, 2021) (Finding no jurisdiction over complaint that asked court to declare revocation of visa to be arbitrary and capricious, an abuse of discretion, and not in accordance of law.); *Tarlinsky v. Pompeo*, 2019 WL 2231908, at *5 (D. Conn. May 23, 2019) ("As the basis for [the visa] revocation is expressly non-reviewable by statute, the [c]ourt lacks subject matter jurisdiction over" the complaint.). To the extent Petitioner seeks

review of the State Department's revocation of her visa, this Court lacks jurisdiction to consider her claims.

Furthermore, it is well-settled that § 1252(g)'s jurisdiction stripping-effect passes constitutional muster. In *AADC,* a group of aliens sued immigration authorities for "targeting them for deportation because of their affiliation with a politically unpopular group." 525 U.S. at 472. The Supreme Court rejected the argument that the unavailability of habeas relief or a viable petition for review to challenge constitutional concerns called into doubt the constitutionality of § 1252(g). The Court explained that "the doctrine of constitutional doubt [does not have] any application" because "[a]s a general matter . . . an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation." 585 U.S. at 487-88. While the aliens in *AADC* claimed that a lack of immediate review of their constitutional challenges would have a "chilling effect" on their First Amendment rights, *id.* at 488, the Supreme Court held that the "challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within § 1252(g)" and does not violate their constitutional rights. *Id.* at 487; *Zuniga-Perez v. Sessions*, 897 F.3d 114, 122 (2d Cir. 2018); *Singh v. Mukasey*, 553 F.3d 207, 212-13 (2d Cir. 2009) (Fifth Amendment applies to noncitizens in removal proceedings).

In *AADC,* in concluding that despite the lack of factual development, § 1252(g) barred review of the aliens's constitutional claim that their removal would have a "'chilling effect' upon their First Amendment rights," 525 U.S. at 488, the Court observed that "the decision to prosecute is particularly ill-suited to judicial review," and that "[t]hese concerns are greatly magnified in the deportation context." *Id.* at 489-90 (citation omitted).

> What will be involved in deportation cases is not merely the disclosure of normal domestic law enforcement priorities and

> techniques, *491 but often the disclosure of foreign-policy objectives and (as in this case) foreign-intelligence products and techniques. The Executive should not have to disclose its "real" reasons for deeming nationals of a particular country a special threat—or indeed for simply wishing to antagonize a particular foreign country by focusing on that country's nationals—and even if it did disclose them a court would be ill equipped to determine their authenticity and utterly unable to assess their adequacy.

Id. at 490-91. These considerations further confirm the why § 1252 strips the district court's jurisdiction here.

The Second Circuit has also made clear that the INA's system for adjudicating claims first in the immigration court, with Article III judicial review at the end, does not work to suspend the writ of habeas corpus. "[A]lien petitioners in "Executive custody" must either be given access to an "adequate substitute' to the writ (*such as a petition for review*) or the writ itself, so as to maintain the delicate balance of governance that is itself the surest safeguard of liberty." *Ragbir v. Homan*, 923 F.3d 53, 73 (2d Cir. 2019) (internal citations omitted, emphasis added) (*cert. granted, judgment vacated sub nom. Pham v. Ragbir*, 141 S. Ct. 227 (2020)).

Ragbir also reenforces the Second Circuit's view that § 1252(g) strips the district court of jurisdiction to hear a retaliatory First Amendment challenge in a removal case. 923 F.3d at 57. Ragbir was an immigration activist who had criticized ICE. *Id.* at 59. He claimed that the decision to execute a previously entered removal order against him was in retaliation for his protected speech. *Id.* at 61. Because the removal proceedings in immigration court had already concluded, however, he could no longer petition for the circuit court to review his claim. *Id.* at 73. It was only because of the absence of the petition for review that the Court considered whether habeas relief was available – that is, until the Supreme Court vacated the judgment. *See also Taal v. Trump,* 2025 WL 926207, at *2 (N.D.N.Y. March 27, 2025) (concluding §§ 1252(a)(5) and (b)(9) precluded a constitutional challenge in district court to the process by

which removability will be determined because plaintiff "will have the opportunity to raise his constitutional challenges before the immigration courts and, if a final order of removal is issued, before the appropriate court of appeals.")

And, finally, Petitioner's constitutional claims may eventually have an Article III forum. Should Petitioner not prevail before the immigration judge, and the BIA, she is then entitled to judicial review before the appropriate United States Court of Appeals under § 1252.

D. Petitioner's APA Claim Fails.

Petitioner's APA claim fails for the reasons previously stated. *See* ECF No. 19, 23-25.

CONCLUSION

For the above reasons, this Court lacks jurisdiction over the Petitioner and must therefore deny the request to issue a writ of habeas corpus.

Respectfully submitted,

Dated: April 10, 2025

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