No. 25-1019

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RUMEYSA OZTURK,
Petitioner-Appellee,

v.

PATRICIA HYDE, ET AL.,
Respondents-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT
District Court Case No. 2:25-cv-374

THE GOVERNMENT'S REPLY IN SUPPORT OF ITS EMERGENCY MOTION PURSUANT TO CIRCUIT RULE 27.1(d) FOR STAY PENDING APPEAL WITH RELIEF REQUEST BY APRIL 29, 2025

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

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INTRODUCTION

Right now, two forums—an immigration court in Louisiana, and a federal district court in Vermont—are reviewing in parallel whether Rumeysa Ozturk is removable from this country. That concurrent litigation is *exactly* what the federal immigration laws forbid. Under the statutory scheme that Congress designed, some forum has to give. And Congress could not have been clearer about which one it is.

Relief is warranted. The district court's order is in excess of jurisdiction three ways over: The INA bars district courts from dictating where an alien is held during removal proceedings; bars district courts from pretermitting those proceedings via habeas; and bars district courts from indulging collateral challenges to those

proceedings. It is no jurisdiction all the way down. And given the real-world harms that the district court's *ultra vires* order promises, it should be promptly set aside.

ARGUMENT

I. The District Court's Order Is Appealable.

As the district court itself recognized, *Ozturk v. Trump*, -- F.Supp.3d --, 2025 WL 1145250, at *25 (D.Vt. Apr. 18, 2025), its transfer order is appealable. The order directs ICE to transfer Ozturk from the federal facility in Louisiana where she is currently held, to an unspecified facility in Vermont. In so doing, the court's order not only forces the Executive Branch to expend resources on arranging a new facility for Ozturk and transporting her there—which, as discussed below, is no small feat—but it also requires the government to arrange for Ozturk to appear for her immigration proceedings in Louisiana remotely. *See* Ex. A. ¶¶ 6-17. All of that alters the status quo and poses costs the Executive Branch cannot recover.

The district court's order is thus plainly an appealable injunction, which this Court may review under 8 U.S.C. § 1291(a)(1). Indeed, the Supreme Court "has made clear that where an order has the 'practical effect' of granting or denying an injunction, it should be treated as such for purposes of appellate jurisdiction." *Abbott v. Perez*, 585 U.S. 579, 595 (2018) (citation omitted). By any measure, that is the case here. *See, e.g.*, *Dep't of Educ. v. California*, 145 S. Ct. 966, 968 (2025).

Ozturk's only response is "an order in aid of jurisdiction" is not an appealable injunction. Opp.8. But the two cases she cites say nothing in support of this categorical assertion. In *Shoop v. Twyford*, the Court held it *had* jurisdiction to review a transfer order. 596 U.S. 811, 817 n.1 (2022). While the *Shoop* Court based its decision on the collateral order doctrine, nowhere did it announce a rule that transfer orders under the All Writs Act ("AWA") must *always* be reviewed as such.

Even taking this case on those terms, the district court's order is readily appealable under the collateral order doctrine. Indeed, this case follows *a fortiori* from *Shoop*. There, the Court held that an order to temporarily transfer a prisoner to a hospital (in aid of a habeas claim) was a reviewable collateral order. *Id.* If that order suffices, so too does this order: It "conclusively requires transportation"; it implicates an "important" feature of federal "sovereignty"; and it involves costs and actions that are effectively "unreviewable by the time the case has gone to final judgment." *Id.* Thus, here as there, this Court has appellate jurisdiction.

II. The District Court Lacks Jurisdiction Three Ways Over.

A. The District Court Lacks Jurisdiction Over Transfer Decisions.

Courts in this Circuit have repeatedly held that they lack the authority to dictate to the Executive Branch where it must detain an alien during removal proceedings.[1] That rule follows from a straightforward application of the INA:

[1] *See, e.g.*, *Zheng v. Decker*, No. 14-cv-4663 (MHD), 2014 WL 7190993, at *15-16

Section 1226(a) gives DHS broad discretion over whether to detain an alien during removal proceedings; Section 1231(g) gives the Secretary authority to "arrange for appropriate places of detention for aliens detained pending removal or a decision on removal"; and Section 1252(a)(2)(B)(ii) strips jurisdiction for federal district courts to review that sort of discretionary determination. *See, e.g.*, *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999).

Ozturk's primary response is that none of these provisions mention the word "transfer." Opp.13. But that is irrelevant. The INA commits to DHS's discretion *where* to detain an alien in removal proceedings; a *transfer* order, by definition, interferes with that judgment call, and injects the courts into an area that Congress assigned exclusively to the Executive. *See* 8 U.S.C. § 1226(e).

Ozturk also says that an "AWA order" does not involve the sort of "judicial review" covered by § 1252(a)(2)(B). But that provision *specifically references* the AWA as a precluded form of relief. Regardless, an AWA order is capable of impermissible review just the same as any other order: When a federal court uses

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(S.D.N.Y. Dec. 12, 2014); *Salazar v. Dubois*, No. 17-cv-2186 (RLE), 2017 WL4045304, at *1 (S.D.N.Y. Sept. 11, 2017); *Mathurin v. Barr*, No. 6:19-CV-06885-FPG, 2020 WL 9257062, at *11 (W.D.N.Y. Apr. 15, 2020); *P.M. v. Joyce*, No. 22-CV-6321 (VEC), 2023 WL 2401458, at *5 (S.D.N.Y. Mar. 8, 2023); *Vasquez-Ramos v. Barr*, No. 20-CV-6206-FPG, 2020 WL 13554810, at *6 (W.D.N.Y. June 26, 2020); *Adejola v. Barr*, 408 F. Supp. 3d 284, 287 (W.D.N.Y. 2019); *Gomez v. Whitaker*, No. 6:18-CV-06900-MAT, 2019 WL 4941865, at *6 (W.D.N.Y. Oct. 8, 2019).

the AWA to alter a discretionary decision made by the Executive, it has necessarily reviewed that decision and decided a different course is appropriate—as this case makes clear. *See* Ex. A ¶¶ 13-17 (describing burdens unacknowledged in order).

The out-of-circuit cases cited by Ozturk do not help. Opp.13-14. Foremost, they all rest on the faulty premise that § 1252(a)(2)(B) extends only to provisions that *expressly* confer discretion. *E.g.*, *Aguilar v. U.S. Immigr. & Customs Enf't Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 20 (1st Cir. 2007). But as this Court recognized in *Wood v. U.S.*, "statutory discretion" can come in many forms, including where the Secretary is given the power to do something, without being simultaneously "required" to do so in any "particular" way. 175 F. App'x 419, 420 (2d Cir. 2006). So much so here: The Secretary has discretion over whether and where to detain Ozturk; that sort of "discretionary judgment" is unreviewable. *See also* 8 U.S.C. § 1226(e).

Even on their own terms, the cases cited by Ozturk are inapposite. Each case involves a challenge to some specific aspect of the transfer. None involve—let alone bless—a court deciding for itself what district is most "appropriate" in light of other considerations. 8 U.S.C. § 1231(g). More fundamental, much as some aspect of an alien's detention may present an issue (*e.g.*, a challenge to the detention length via the Due Process Clause), that does not mean the federal courts can review one's detention as an *indirect way* of reviewing the underlying removal decision. That is,

for detentions as transfers, if the legal challenge is at bottom a challenge to the underlying detention, it runs into the INA's jurisdictional bars. *See Aguilar*, 510 F.3d at 21 (limiting holding to only claims that are "collateral to removal").

B. The District Court Lacks Habeas Jurisdiction.

The district court ordered transfer to facilitate its review of Ozturk's habeas petition. But the district court does not have habeas jurisdiction in the first place.

Like the district court, Ozturk primarily relies on § 1631. But like the district court, Ozturk misunderstands that provision. Section 1631 works to cure technical or procedural defects that would otherwise prevent a court from exercising its existing authority over a case (such as a statute of limitations). Mot.12-14. It does not, and cannot, vest that court with authority it otherwise lacks over a dispute.

Consider a hypothetical. Suppose a person sued a company in State A, on the theory it was headquartered in that state, and therefore subject to general personal jurisdiction in that state. But in truth, at the time of filing, the company was really headquartered in State B. If the company moved its headquarters to State C before the case was transferred to State B, nobody would think that a federal district court in State B could exercise general personal jurisdiction over the company via § 1631.

So much so here. Section 1631 does not allow a district court to acquire substantive authority over a case or its litigants, based on the fiction that the case was filed before, at a time when it could have properly acted: If the district court

lacks the power to issue a given remedy (like habeas) or command a given person (like a custodian outside its jurisdiction), then it cannot rely on the general transfer statute to acquire that otherwise absent ability.

Ozturk next argues the habeas statute does not contain "specific statutory perquisites." Opp.11. But that is the opposite of *Rumsfeld v. Padilla*'s holding. *Padilla* was a statutory interpretation case about what it meant to be "within" the "jurisdiction" of a federal habeas court. 542 U.S. 426, 435-38, 442-47 (2004). To be sure, the Supreme Court read that statute in light of the history that came before it. But the point remains: To issue habeas relief, a district court must satisfy § 2241's terms; and where a district court fails to do so, nothing in § 1631 gives it the authority to issue relief anyway. That is dispositive. Ozturk never filed a proper habeas petition in the District of Vermont; the District of Vermont is not her district of confinement; and the District of Vermont does not have personal jurisdiction over Ozturk's immediate custodian. The district court thus lacks habeas jurisdiction.[2]

Ozturk's other responses are just as lacking. She says that limiting *Ex Parte Endo*, 323 U.S. 283 (1944), to situations where a petition has been first "properly filed" is too "dim." Opp.11-12. But that is literally how the *Padilla* Court described

[2] Contrary to Ozturk's claim (Opp.12), the "unknown custodian" exception applies when the custodian is actually *unknowable* for some deliberate and permanent reason. *Demjanjuk v. Meese*, 784 F.2d 1114, 1115-16 (D.C. Cir. 1986). As Judge Bork emphasized, those are "limited and special circumstances." *Id.*

the case. 542 U.S. at 441. Likewise, Ozturk insists that this Court excuse her failure to name her immediate custodian, because she has named her "ultimate custodian" in Secretary Noem. Opp.12. But *Padilla* "reaffirm[ed] that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." 542 U.S. at 435. Just as naming Secretary Rumsfeld was insufficient, so too is naming Secretary Noem.

C. The District Court Lacks Jurisdiction Over This Case.

Ozturk essentially concedes (Opp.20) that she cannot presently bring a challenge in federal court to her removal proceedings under the INA. But she nonetheless seeks to circumvent that bar by styling this suit as purely a challenge to her detention, without more. Opp.17, 19-20. That workaround fails.

Section 1252(g). When an alien challenges her detention on the ground that she should not be removed in the first place, it is in substance a challenge to her removal. And when an alien challenges being detained in the process of being removed, that suit is one that "aris[es] from the decision … to commence [removal] proceedings." 8 U.S.C. § 1252(g).

That is this case. As her habeas petition makes clear, Ozturk is not challenging some discrete aspect of her detention; she is challenging the fact she is detained, on the ground she cannot properly be removed to begin with. *See* ECF# 19.1, Ex. A ¶¶ 69, 73-75, 78, 85-86. That falls within the heartland of § 1252(g). *See, e.g.*,

Limpin v. United States, 828 F. App'x 429, 429 (9th Cir. 2020) ("[C]laims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction."); *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("[§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and reviewing "ICE's decision to take him into custody and to detain him during removal proceedings."); *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999) (similar).

Indeed, anything less would neuter the very purpose of § 1252(g): It would allow every alien to attack the merits of his removal, through a habeas suit nominally challenging his detention; and in turn, the government would be subject to the sort of burdensome, parallel litigation the INA endeavored to stop. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-86 (1999). Instead, what matters is the "substance" of the challenge. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). And where, as here, a challenge to detention is in substance a collateral attack on the decision to remove, § 1252(g) bars it.

Sections 1252(a)(5), (b)(9). The INA's exclusive review and zipper provisions independently bar Ozturk's suit. Ozturk relies on *Jennings v. Rodriguez* for the proposition that challenges to detention are outside these bars bar. Opp.18-20. But *Jennings specifically said* that whatever § 1252(b)(9)'s reach, it covered the "decision to detain [an] alien in the first place or to seek removal [of him]." 583 U.S.

at 294. *Jennings* only excludes actions *both* unreviewable *and* disconnected to the substance of the removal action itself. *Id.* at 291-92. Or as this Court put it, only when the action is "unrelated to any removal action or proceeding" is it within a 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 v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). If the substance of a suit is an *indirect* challenge to a removal order, it is barred by the INA all the same. *Id.*

III. The Balance of Equities Support a Stay.

The government will experience irreparable harm if this Court does not intervene. Besides the fundamental affront to sovereignty that comes with the order below, it does not appear the district court appreciated any of the practical costs.

Under that order, the Executive must relocate Ozturk to some short-time facility in Vermont, and set up an impromptu system for her to participate in her removal proceedings remotely. Ex. A ¶¶ 6, 12. But the only facility that could house Ozturk "does not house immigration detainees on a long-term basis and does not connect remotely to removal proceedings conducted by the Executive Office for Immigration Review (EOIR)." *Id.* ¶ 7. If Ozturk is detained in CRCF, "ICE will be forced to create an ad-hoc location for [her] to continue to appear for her removal proceedings remotely." *Id.* ¶ 14. Such a system is not only burdensome on the

facility and Ozturk's immigration proceedings, it "will also present additional security concerns for the officers involved." *Id.* ¶ 16; *see id.* ¶¶ 14-17.

Finally, a stay is equitable. The district court's order preempts the immigration scheme that Congress established, and forces the Executive to expend limited resources in service of the very parallel litigation that Congress sought to eliminate. Especially if replicated elsewhere, that deeply harms the public interest.

IV. Mandamus is Appropriate.

Alternatively, mandamus relief is warranted. Just as a discovery order that intrudes on the separation of powers satisfies the requirements of mandamus, so too does a transfer order. *See Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 382 (2004). All the more so where, as here, the district court lacks jurisdiction at virtually every level. *See In re Roman Cath. Diocese of Albany, New York, Inc.*, 745 F.3d 30, 37 (2d Cir. 2014) (citing *In re Ivy*, 901 F.2d 7, 10 (2d Cir. 1990)).

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CONCLUSION

The Court should grant the emergency motion.

Respectfully submitted,

/s/Alanna T. Duong

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May 1, 2025

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27(d)(2), I certify that the foregoing was prepared using 14-point Times New Roman type, is proportionally spaced and contains 2,598 words, exclusive of the tables of contents and citations, and certificates of counsel.

/s/ Alanna T. Duong
ALANNA T. DUONG
Senior Litigation Counsel
U.S. Department of Justice

May 1, 2025

Attorney for Respondents-Appellants

CERTIFICATE OF SERVICE

I certify that on May 1, 2025, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate ACMS system. I further certify that all participants in the case are registered ACMS users and that service will be accomplished through that system.

/s/ Alanna T. Duong
ALANNA T. DUONG
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Exhibit A

DECLARATION OF ACTING DEPUTY FIELD OFFICE DIRECTOR

JOHN P. CHARPENTIER

Pursuant to the authority of 28 U.S.C. § 1746, I, John P. Charpentier, an acting Deputy Field Office Director, for U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Burlington, Massachusetts declare as follows:

1. I am an acting Deputy Field Office Director ("(a)DFOD") for U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO").
2. Included in my official duties as (a)DFOD in Burlington, Massachusetts is the responsibility for assisting in the managing and monitoring and the scheduling and execution of removal orders for aliens in ICE custody. I am familiar with ICE policies and procedures for detaining individuals in order to initiate removal proceedings or to effectuate removal orders as well as releasing individuals from ICE custody.
3. I have experience utilizing ICE record systems to obtain information regarding specific aliens. ICE maintains electronic and paper records on aliens in the course of its regularly conducted business activity that it creates at or near the time of relevant events by an ICE official with knowledge of these events.
4. In preparing this declaration, I have examined the official records available to me regarding the immigration history and custody status of Ms. Rumeysa Ozturk ("Petitioner"). I have also discussed this case internally with officials within my office.
5. Upon Petitioner's arrest, ICE transported her to Vermont in anticipation of needing to detain her at the Chittenden Regional Correctional Facility (CRCF) in South Burlington,

Vermont for a short duration, while ICE finalized its arrangements to transport her to Louisiana, a decision made prior to ICE arresting her.

6. The CRCF is the only detention facility located in Vermont that ICE houses female detainees.
7. The CRCF does not house immigration detainees on a long-term basis and does not connect remotely to removal proceedings conducted by the Executive Office for Immigration Review (EOIR).
8. Instead, the CRCF is used by ICE to house immigration detainees on a short-term basis, until ICE can secure detention space in another facility that provides for the ICE detainee to appear for her removal proceedings in person or has the capabilities for her to appear remotely.
9. ERO Boston routinely transfers female ICE detainees to Louisiana, and other detention facilities outside of New England because of these limitations referenced in paragraphs 7 and 8.
10. Because ICE was able to secure Petitioner's transportation to Louisiana for the early morning on March 26, 2025, the day after her arrest, it did not need to detain her at the CRCF and instead detained her at the ERO Facility in St. Albans, Vermont overnight.
11. The ERO facility in St. Albans is not a detention facility. It is an ERO office that is used to process aliens upon their arrest, before transporting them to a detention facility with which ICE has a contract. The ERO St. Albans office is not equipped to detain anyone on a long-term basis and is not equipped to connect to EOIR remotely.
12. If ICE is ordered to return Petitioner to Vermont, it will have to detain her at the CRCF.

13. EOIR has virtual hearing capabilities through the WebEx platform, but it depends on the location of where the detainee is held. The CRCF does not have virtual EOIR capabilities. Nor does any ICE facility in Vermont.

14. Because Petitioner is in continued removal proceedings with EOIR at the Oakdale Immigration Court in Louisiana, ICE will be forced to create an ad-hoc location for Petitioner to continue to appear for her removal proceedings remotely.

15. ICE detainees in Vermont do not typically appear for removal proceedings, remotely or otherwise because no alien is detained in Vermont on a long-term basis and no facility has virtual EOIR capabilities.

16. Creating an ad-hoc location to allow Petitioner to continue to appear for her removal proceedings creates an operational burden on ICE as it will require the assignment of additional ICE officers to transport her to and from the location where she will appear for her EOIR hearing remotely, and given the media attention to this particular case, will also present additional security concerns for the officers involved. Based on the foregoing, continuing to bring Petitioner to another facility to allow Petitioner to attend her EOIR hearings remotely is not something that could be sustained, nor is it being utilized routinely by other aliens.

17. In addition, as previously referenced in paragraphs 7 and 8, the CRCF is not utilized by ICE as a long-term facility. Depending on how long EOIR takes to issue a final decision in her removal and bond proceedings, which includes any decisions on appeal, Petitioner is likely to exceed the average length of detention.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on the 28th day of April, 2025

_____

John P. Charpentier
Acting Deputy Field Office Director
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Burlington, Massachusetts