UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SERING CEESAY,

Petitioner,

v. 25-CV-00267 LJV

STEVE KURZDORFER, in his official capacity as Acting Field Office Director, Buffalo Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security,

JOSEPH FREDEN, in his official capacity as Warden, Buffalo Federal Detention Facility,

WILLIAM JOYCE, Acting New York Field Office Director for U.S. Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security,

U.S. DEPARTMENT OF HOMELAND SECURITY, and

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.[1]

**RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS THE PETITION AND COMPLAINT**

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Steve Kurzdorfer is automatically substituted in place of Thomas Brophy, his predecessor, and Joseph Freden, Deputy Field Office Director at Buffalo Federal Detention Facility, is substituted in place of Michael Ball, the previous Acting Deputy Field Office Director.

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## INTRODUCTION

Petitioner Sering Ceesay is a national of the Gambia who unlawfully entered the United States and was ordered deported, after failing to voluntarily depart. Because obtaining a travel document was initially difficult, the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE") released Petitioner on an Order of Supervision. ICE is now working to execute the removal order against Petitioner, and he was therefore taken back into ICE custody pursuant to the relevant provisions of the Code of Federal Regulations. The jurisdiction-stripping provisions of the Immigration and Nationality Act ("INA") deprive this Court of jurisdiction to hear claims challenging Petitioner's removal, or even the execution of a removal order (including re-detaining an alien to do so), and render the Administrative Procedures Act ("APA") inapplicable. In addition, none of the provisions of the APA or the Rehabilitation Act were violated, even assuming all allegations in the Petition and Complaint are true, and Petitioner has failed to state a claim upon which relief can be granted. Accordingly, this action should be dismissed in its entirety.

## STATEMENT OF FACTS[2]

Petitioner is a native and citizen of the Gambia. Ex. A to Declaration of Nicholas Truax ("Ex. A") at pg. 1. He entered the United States at New York, New York on August 22, 1994. *Id.*

[2] Due to time constraints, this statement of facts is truncated. This statement is meant to add further detail and specifics to the facts alleged by Petitioner, without admitting the truth of those statements not supported by documentation here.

Petitioner was taken into ICE custody and by Notice to Show Cause and Notice of Hearing dated May 20, 1995, the Immigration and Naturalization Service instituted immigration proceedings against Petitioner. Ex. A at pg. 1.

By order dated September 20, 1997, Petitioner was granted voluntary departure. [3] Ex. A at pg. 6. If he failed to depart by November 22, 1997, the order provided in the alternate that Petitioner be deported to the Gambia. *Id.* Petitioner never departed the United States.

On May 3, 2011, ICE issued a Release Notification advising that Petitioner would be released from custody pending his removal from the United States. Ex. A at pg. 7. The Notification specifically advised that ICE would continue to work to obtain a travel document for Petitioner's removal and that, upon obtaining such a document, he would be required to surrender to ICE for removal. *Id.* An Order of Supervision ("OSUP") was issued dated May 5, 2011 in this regard. *Id.* at pg. 9.

ICE issued a Notice of Revocation of Release dated February 19, 2025 and took him into custody at his check-in appointment. Ex. A at pg. 11. The Notice specifically indicates

[3] "Voluntary departure [pursuant to 8 U.S.C. § 1229c] is a discretionary form of relief that allows certain favored aliens—either before the conclusion of removal proceedings or after being found deportable—to leave the country willingly. . . . Voluntary departure, under the current structure, allows the Government and the alien to agree upon a *quid pro quo*. From the Government's standpoint, the alien's agreement to leave voluntarily expedites the departure process and avoids the expense of deportation—including procuring necessary documents and detaining the alien pending deportation. The Government also eliminates some of the costs and burdens associated with litigation over the departure. . . . Benefits to the alien from voluntary departure are evident as well. He or she avoids extended detention pending completion of travel arrangements; is allowed to choose when to depart (subject to certain constraints); and can select the country of destination. And, of great importance, by departing voluntarily the alien facilitates the possibility of readmission." *Dada v. Mukasey*, 554 U.S. 1, 8, 11 (2008).

that Petitioner was being taken into custody because his removal was imminent.[4] *Id.* It also notes that his release was being revoked pursuant to 8 C.F.R. § 241.4. *Id.*

**LEGAL FRAMEWORK FOR REMOVAL AND REMOVAL DETENTION**

The INA, at Section 241 (8 U.S.C. § 1231), govern the detention of aliens who are subject to a final order of removal. Section 1231(a)(2) states that the government "shall detain the alien" for the 90-day "removal period" set forth in § 1231(a)(1)(A).

After the 90-day removal period elapses, the INA provides that—if the alien is not removed—the alien "shall be subject to supervision" under relevant regulations with certain requirements. 8 U.S.C. § 1231(a)(3). DHS has enacted regulations relating to aliens who are detained beyond the removal period and subject to release. *See* 8 C.F.R. § 241.4. These regulations likewise provide for the revocation of release from DHS custody. 8 C.F.R. § 241.4(l). Specific to this case, "[r]elease may be revoked in the exercise of discretion when, in the opinion of the revoking official" "[i]t is appropriate to enforce a removal order" under § 241.4(l)(2). Contrary to revocation based upon a violation of the conditions of release, under § 241.4(l)(1), revocation under subsection (l)(2) is discretionary and does not require notice or an interview upon return to immigration custody.

DHS has also enacted special regulations for aliens who have "provided good reason to believe there is no significant likelihood of removal to the country to which he or she was

[4] The Notice states ". . . in light of the fact that ICE was able to obtain a valid travel document to effect your repatriation." Ex. A at pg. 11. It appears that the word "was" should have been "is". ICE has confirmed with me that they do not presently possess a travel document for Petitioner's removal, but anticipate being able to obtain one forthwith. A travel document for Petitioner was obtained on November 13, 2019, but, due to the COVID-19 pandemic, Petitioner's removal was not carried out, and the document expired on May 4, 2020. If this motion is not granted, the government will submit a declaration from a deportation officer attesting to these facts.

ordered removed . . . in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). Pursuant to that regulation, DHS will release an alien who has made such a showing, subject to appropriate conditions of release. 8 C.F.R. § 241.13(g)(1). Similar to the regulations described above, § 241.13 provides for the revocation of release if the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). This provision does require that the alien be notified for the reasons for revocation of release and that an initial informal interview be conducted upon return to custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notice. 8 C.F.R. § 241.13(i)(3).

## ARGUMENT

### I. THIS COURT SHOULD DENY PETITIONER'S REQUEST TO ENJOIN PETITIONER'S TRANSFER OUTSIDE OF THE WESTERN DISTRICT OF NEW YORK

In his prayer for relief, Petitioner asks this Court to enjoin his transfer outside the jurisdiction of this Court. ECF No. 7 at pg. 23. This Court has repeatedly denied such requests. *See, e.g., Walker v. Searls,* No. 23-CV-140-LJV, 2024 WL 1735213, at *7 (W.D.N.Y. Apr. 23, 2024) (holding that jurisdiction attaches on the initial filing for habeas corpus relief, and that jurisdiction is not affected by a transfer outside of the district, so there is no reason for a court to interfere with DHS's authority under 8 U.S.C. § 1231(g)(1) to arrange for appropriate places of detention for aliens); *Tucker v. Searls*, No. 22-CV-608-LJV, 2022 WL 16832642, at *9 (W.D.N.Y. Nov. 9, 2022); *Forbes v. Garland*, No. 20-CV-1419-LJV, 2021 WL 1588812, at *8 (W.D.N.Y. Apr. 23, 2021); *Santos Abreu v. Barr*, No. 20-CV-372-LJV, 2020 WL 4504986, at *7 (W.D.N.Y. Aug. 5, 2020); *De La Rosa v. Barr*, No. 20-CV-383-LJV, 2020 WL 4059111, at *8 (W.D.N.Y. July 20, 2020); *Ramos v. Barr*, No. 20-CV-371, 2020

WL 4059189, at *9 (W.D.N.Y. July 20, 2020). Petitioner's request here should likewise be dismissed or entirely denied.

## II. THIS COURT LACKS JURISDICTION TO ENJOIN PETITIONER'S REMOVAL

This Court has also been asked to stay removal in the past, and has held that because 8 U.S.C. § 1252(g) strips district courts of jurisdiction to review a final order of deportation, they likewise have no jurisdiction to review requests for stays of removal. *See Barrie v. Barr,* No. 20-CV-171, 2020 WL 1877706, at *8 (W.D.N.Y. Apr. 15, 2020); *see also Sankara v. Barr,* No. 19-CV-174, 2019 WL 11624207, at *1 (W.D.N.Y. Sept. 3, 2019)*; Johnson v. Barr,* No. 19-CV-693, 2019 WL 6112338, at *9 (W.D.N.Y. Nov. 14, 2019); *Hemans v. Searls,* No. 18-CV-1154, 2019 WL 955353, at *10 (W.D.N.Y. Feb. 27, 2019). Accordingly, Petitioner's request that this Court issue an order staying his removal should be dismissed or otherwise denied in its entirety.

## III. THIS COURT LACKS JURISDICTION OVER THIS CASE PURSUANT TO 8 U.S.C. § 1252

As noted above, 8 U.S.C. § 1252(g) strips district courts of jurisdiction over "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." This case arises out of the execution of Petitioner's removal order, and therefore this Court lacks jurisdiction to hear this case.

District courts have only that jurisdiction which Congress has provided. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Sheldon v. Sill*, 49 U.S. 441, 448 (1850) ("Congress, having the power to establish the courts, must define their respective

jurisdictions."). Pursuant to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act and the 2005 REAL ID Act, this Court is deprived of jurisdiction over this case. Indeed, the Court of Appeals for the Second Circuit has held that 8 U.S.C. § 1252(g) strips district courts of jurisdiction over habeas claims arising from the execution of removal orders, such as this case. *Singh v. Napolitano*, 500 F. App'x 50, 52 (2d Cir. 2012) (holding that attempt to "employ[] a habeas petition effectively to challenge the . . . execution of [a] removal order," even "indirectly," is "jurisdictionally barred").

Likewise, 8 U.S.C. § 1252(b)(9) bars "[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" except by "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(b)(9), § 1252(a)(5). Re-detaining an alien for purposes of removal constitutes an enforcement mechanism of a removal order. *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 298–99 (3d Cir. 2020) ("Re-detaining Tazu was simply the enforcement mechanism the Attorney General picked to execute his removal. So § 1252(g) funnels review away from the District Court and this Court.").

In a case similar to this one, ICE detained an alien during her check-in in order to remove her, and revoked her release on an order of supervision. *Westley v. Harper*, No. CV 25-229, 2025 WL 592788, at *2 (E.D. La. Feb. 24, 2025). The alien filed suit alleging that the process was unlawful, violated her due process, did not comply with federal regulations, and violated the APA. *Id.* The government argued that the matter was outside of the district court's jurisdiction under 8 U.S.C. § 1252(g), and the court agreed. *Id.* at *4. The *Westley* court held that all of the actions taken by ICE, including the purported 'ruse' of having the

alien appear for a check-in only to then detain her for removal, were all directly connected to the execution of a removal order, and thus the district court was precluded from exercising jurisdiction over the claims. *Id.* at *5-*6 ("Here, Petitioner was the subject of a final order of removal, and ICE called her to its office, revoked the OSUP, and detained her with the intent to execute that order and the belief that removal would occur in the reasonably foreseeable future."). The court further noted that the jurisdiction-stripping provision of § 1252(g) also barred the alien's claims brought under other statutes, such as the APA. *Id.* at *6.

Here, as Petitioner admits, he challenges his "ongoing detention-the purpose of which is to remove him from the United States . . . ." Amend. Pet., ECF No. 7 at ¶ 13. This falls squarely within the purview of § 1252(g), and this Court lacks jurisdiction to interfere with the execution of a removal order. Accordingly, the Petition and Complaint should be dismissed in their entirety.

## IV. EVEN ASSUMING THE APA CLAIM WERE NOT JURISDICTIONALLY BARRED, RESPONDENTS DID NOT VIOLATE ANY RIGHTS PETITIONER MAY HAVE UNDER THAT STATUTE

Petitioner's claim under the APA is barred by the jurisdiction-stripping provisions discussed above. However, even if the claim was not barred, Petitioner has failed to state a claim upon which relief can be granted because, even taking all allegations in the Complaint as true, Respondents acted in accordance with regulations, and thus no APA claim can stand.

Petitioner rightly cites 8 C.F.R. § 241.4 as the authority for his initial release in 2010 (as opposed to 8 C.F.R. § 241.13, which pertains to aliens who have made an affirmative showing that their removal is not significantly likely to occur within the reasonably

foreseeable future). Amend. Pet., ECF No. 7, at ¶¶ 54-55. ICE's records confirm that 8 C.F.R. § 241.4 was the mechanism by which Petitioner's release was revoked. Ex. A at pg. 11 ("Based on the above, and pursuant to 8 CFR 241.4, . . .").

Importantly, § 241.4(l)(2), the relevant subsection here, does not require notification of the reasons for the revocation or an informal interview where release is revoked based upon the discretion of the official, to enforce a removal order. *Compare* 8 C.F.R. § 241.4(l)(1) ("Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.") *with* 8 C.F.R. § 241.4(l)(2) (containing no such language or requirements). Thus, Petitioner has conflated the two sections and wrongly argued that his revocation of release under § 241.4(l)(2) requires a detailed explanation and an interview, when, in fact, it does not. Amend. Pet., ECF No. 7 at ¶ 63.

Notably, neither section requires pre-revocation notice or a pre-detention hearing, as Petitioner seems to argue for. Amend. Pet., ECF No. 7 at ¶¶ 4, 8, 11, 31, 48. *See Moran v. U.S. Dep't of Homeland Sec.,* No. EDCV2000696DOCJDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) ("Here, Petitioners have not alleged with sufficient particularity the source of any due process right to advance notice of revocation of supervised release or other removal-related detention.")

Likewise, § 241.4(l)(2) doesn't require a "change in circumstances" as Petitioner seems to argue. Amend. Pet., ECF No. 7 at ¶ 59.

Because § 241.4 does not require any of the things Petitioner claims ICE failed to do (*i.e.* notification before revocation of release, providing a detailed explanation as to why

revocation occurred, or providing an interview after revocation), Petitioner has failed to plead any violation by ICE under the APA and has thus failed to state a claim upon which relief can be granted. Accordingly, the Petition and Complaint should be dismissed or elsewise denied in their entirety.

## V. RESPONDENT FAILS TO STATE A CLAIM WITH REGARD TO THE REHABILITATION ACT ALLEGATIONS, AND, IN ANY EVENT, RESPONDENTS DID NOT VIOLATE THE REHABILITATION ACT IN TAKING PETITIONER BACK INTO CUSTODY

Petitioner's claims under the Rehabilitation Act likewise fail to state a claim upon which relief be granted due to Petitioner's failure to appreciate the legal requirements he is entitled to prior to being taken into detention. Specifically, Petitioner alleges that he was given no notice or warning before being taken into custody. Amend. Pet., ECF No. 7, at ¶ 69. As noted above, there is no such requirement in the statute or the regulations regarding the revocation of an order of supervision. In addition, Petitioner argues that a federally funded agency violates the Rehabilitation Act by failing to provide meaningful access to its benefits programs or services, but then fails to allege whatsoever that Petitioner has been deprived of such meaningful access.

Courts have held that "[t]o make a prima facie claim of discrimination, Petitioners must allege facts showing they (1) have a qualifying disability, (2) have been denied the benefits of services, programs or activities, (3) the discrimination is solely by reason of their disability, and (4) the program received federal financial assistance." *Moran v. U.S. Dep't of Homeland Sec.*, No. EDCV2000696DOCJDE, 2020 WL 6083445, at *8 (C.D. Cal. Aug. 21, 2020). Here, the Amended Complaint fails to state a claim upon which relief can be granted because Petitioner has not even identified what disabilities he suffers from (apart from a list

of medical conditions), and the Petition is silent as to whether said disabilities qualify under the Rehabilitation Act. Petitioner correctly notes that a disability can be defined as a physical or mental impairment that substantially limits one or more major life activities, Amend. Pet., ECF No. 7, at ¶ 67, but then never alleges that Petitioner suffers from a disability or how his medical conditions meet this definition. *Franco-Gonzalez v. Holder*, No. CV 10-02211 DMG DTBX, 2013 WL 3674492, at *4 (C.D. Cal. Apr. 23, 2013) ("[T]he Rehabilitation Act defines 'disability' as '(A) a physical or mental impairment that substantially limits one or more major life activities of [the] individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.' 42 U.S.C. § 12102(1)."). He also has failed to allege that the discrimination he alleges to suffer from is solely by reason of his disability. These failure renders the complaint deficient.

The Amended Complaint merely alleges that Petitioner should not have been taken into custody without warning and against the law, even though the law does not require such warning. Because Petitioner has failed to allege how ICE has violated the Rehabilitation Act in any manner, he has failed to state a claim upon which relief can be granted and this matter should be dismissed in its entirety.

## VI. THE RELIEF SOUGHT IN THE PETITION AND COMPLAINT WILL NOT REDRESS THE ALLEGED INJURIES CLAIMED, AND THUS THIS CASE IS NONJUSTICIABLE

In his prayer for relief, Petitioner seeks, among other things, that this Court: (1) "[d]eclare that Petitioner's detention violates the INA, regulations and the Due Process Clause of the Fifth Amendment because he has been released on an OSUP"; (2) "[d]eclare that the detention of Petitioner violates Section 504 of the Rehabilitation Act, as it deprives Mr. Ceesay of a reasonable accommodation for his disabilities and is contrary to law and

regulations and order his immediate release"; and (3) "[o]order Petitioner's immediate release". Amend. Pet., ECF No. 7, at pg. 24. Because none of this relief would redress Petitioner's alleged injuries, this case is nonjusticiable.

In our sister district, the Southern District of New York, a case involving a parallel issue arose and the court there held that the case was nonjusticiable because a grant of the relief sought would not redress the injuries suffered. Specifically, in *Yearwood v. Barr*, the petitioner sought his return to the United States upon allegations that he was removed in violation of his Fifth Amendment rights and the APA. 391 F.Supp.3d 255, 257 (2019). The *Yearwood* court noted that the case was nonjusticiable because his injuries were not likely to be redressed by a favorable judicial decision. *Id.* at 262. The court noted that while "[i]t is possible that the petitioner's claims could be redressed by damages . . . the petitioner has not sought such relief, and the petitioner's complaints about the procedural defects in removing him would not be redressed by bringing him back to the United States subject to being removed again." *Id.*

Similarly, here, even if Petitioner were released, and the Court were to declare his detention at present unlawful or violative of certain statutes or regulations, nothing would prevent ICE from re-detaining Petitioner upon his release from custody. Indeed, except for the Rehabilitation Act argument, Petitioner does not seem to challenge that his detention is authorized by law, merely that the way he was detained was violative of his rights.[5] This is

[5] Petitioner seems to argue that any detention of him would be violative of the Rehabilitation Act. Amend. Pet., ECF No. 7, at ¶ 91 ("The government has violated Section 504 by subjecting Mr. Ceesay to re-detention rather than making reasonable modifications to its detention policy so as to avoid discrimination against individuals such as Petitioner who suffers from severe medical impairments."). Obviously, plenty of people detained in immigration custody and in criminal incarceration suffer from medical impairments, and

insufficient to establish redressability. *See O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974) ("Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, if unaccompanied by any continuing, present adverse effects."). Accordingly, this case, like *Yearwood*, fails to seek relief that would redress the injuries claimed, and is nonjusticiable. The Petition and Complaint should be dismissed.

## CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Court deny Petitioner's prayer for relief and issue an order dismissing this case in its entirety.

Respectfully submitted,

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Petitioner's suggested reading of the Rehabilitation Act would make their custody unlawful. The government doesn't argue this point further given this patently illogical result.