

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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SAAD OSMAN,

Petitioner,

v.

Civil Action No. 2:25-cv-00286-BBC

DALE J. SCHMIDT,  
Sheriff, Dodge County, Wisconsin,

Respondent.

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RESPONDENT'S ANSWER TO PETITIONER'S APPLICATION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241 AND PETITIONER'S MOTION FOR A TEMPORARY  
RESTRAINING ORDER

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In accordance with the Court's order dated February 28, 2025 (Dkt. 5), and pursuant to Rule 5 of the Federal Rules Governing Section 2254 Cases,<sup>1</sup> Respondent Dale J. Schmidt, sued in his capacity as the Sheriff of Dodge County, Wisconsin and the present custodian of Petitioner Saad Osman, by and through his undersigned counsel of record, respectfully submits this answer to Petitioner's Application for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2441 ("Petition," Dkt. 1) and Petitioner's Motion for a Temporary Restraining Order ("TRO Motion," Dkt. 2).

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<sup>1</sup> Local Civil Rule 9(a)(2) authorizes judges in this District to "apply any of the Rules Governing 28 U.S.C. § 2254 Cases to applications for release from custody under 28 U.S.C. § 2241," as contemplated by Rule 1(b) of the Federal Rules Governing Section 2254 Cases.

## I. INTRODUCTION

Petitioner alleges that he is a Somali citizen, and he acknowledges that he is unlawfully present in the United States and subject to a final order of removal dated January 22, 2024. (Petition, Dkt. 1 at 10; *see also* Final Order of Removal, Dkt. 2-3.) Officials with United States Immigration and Customs Enforcement (“ICE”) detained Petitioner on February 5, 2025, to execute that final order of removal. (Petition, Dkt. 1 at 10.) With this action, Petitioner asks the Court to do two basic things: (1) issue a writ of habeas corpus for his release from custody; and (2) enjoin Respondent from removing him from the United States pursuant to his final order of removal. (Petition, Dkt. 1 at 12; *see also* TRO Motion, Dkt. 2 at 9.)

The Court, however, lacks subject-matter jurisdiction over Petitioner’s claims, as 8 U.S.C. § 1252(g) removes from federal courts’ jurisdiction “any cause or claim by or on behalf of any alien arising from the decision or action ... to ... execute removal orders against any alien under this chapter.” Petitioner’s requests for both habeas and injunctive relief constitute such a claim and, therefore, are outside this Court’s statutorily limited subject-matter jurisdiction. *See E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021) (“Section 1252(g) precludes judicial review of ‘any’ challenge to ‘the decision or action by DHS to execute removal orders.’”) (quoting 8 U.S.C. § 1252(g)) (internal punctuation marks omitted); *Bhatt v. Reno*, 204 F.3d 744, 746–48 (7th Cir. 2000) (“[W]e have consistently decided that Congress’s 1996 amendments to the INA, and specifically § 1252(g), foreclose virtually all judicial review of deportation, including habeas review, in cases to which it applies.”).

Moreover, the injunctive relief that Petitioner requests is not available in habeas proceedings, and he has failed to allege facts that plausibly establish the unlawfulness of his detention and/or removal, making dismissal appropriate under Rule 12(b)(6). The Supreme Court has held that the writ of habeas corpus is not a mechanism for pursuing immigration status changes or benefits. *See Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 119–20 (2020). And nowhere in the Petition does Petitioner allege that the United States Citizenship and Immigration Services (“USCIS”) has made a finding that he is *prima facie* eligible for Temporary Protected Status, a necessary prerequisite for his argument that he is entitled to receive temporary benefits under that immigration program. In fact, as shown by the accompanying declaration of Julia Harrison, a deputy director with USCIS, the agency has determined the Petitioner’s application did not establish his *prima facie* eligibility for the program.

Accordingly, Respondent respectfully requests that the Court dismiss this action for lack of subject-matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure 12(b)(1) and Rules 4 and 5(b) of the Federal Rules Governing Section 2254 Cases, and for failure to state a claim upon which relief may be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure,<sup>2</sup> and that it vacate the temporary restraining order dated February 28, 2025. (Dkt. 6.)

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<sup>2</sup> Rule 12 of the Federal Rules Governing Section 2254 Cases states that the Federal Rules of Civil Procedure “may be applied to a proceeding under these rules,” to the extent they are not in conflict.

## II. FACTUAL BACKGROUND

Petitioner alleges that he is a Somali citizen, who in 2023 entered the United States from Mexico at a point near San Diego, California. (TRO Motion, Dkt. 2 at 3; Form I-821 Application, Dkt. 2-4 at 3.)<sup>3</sup> He was detained upon arriving in the United States, and his applications for asylum, withholding of removal, and protection under the Convention Against Torture were all denied by an immigration judge on the merits, who ruled that Petitioner was ineligible for asylum status based on the “Circumvention of Lawful Pathways bar.”<sup>4</sup> (*Id.*; Final Removal Order, Dkt. 2-3 at 3.) The immigration judge issued his final removal order on January 22, 2024, which directed that Petitioner be removed to Somalia. (Final Removal Order, Dkt. 2-3 at 2.) ICE maintained Petitioner in detention pending removal for approximately ten months. (TRO Motion at 3.)


Last July, the Department of Homeland Security announced a redesignation of Somalia for Temporary Protected Status (“TPS”) for an additional 18-month period, through March 17, 2026. *See* U.S. DEPT OF HOMELAND SECURITY, *Extension*

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<sup>3</sup> Petitioner’s route from Somalia to the United States appears to have traced through Libya, Malta, the Netherlands, Mexico, Nicaragua, Honduras, and Guatemala. (Form I-821 Application, Dkt. 2-4 at 13.)

<sup>4</sup> In 2023, the Department of Homeland Security and the Department of Justice issued a final rule that created “a rebuttable presumption of asylum ineligibility for certain noncitizens who neither avail themselves of a lawful, safe, and orderly pathway to the United States nor seek asylum or other protection in a country through which they travel.” U.S. DEPT OF HOMELAND SECURITY and U.S. DEPT OF JUSTICE, *Circumvention of Lawful Pathways*, 88 Fed. Reg. 31314-01 (May 16, 2023); *see also State of Indiana v. Mayorkas*, No. 1:23-cv-00106, 2024 WL 5358932, at \*1 (D. N. Dakota Nov. 26, 2024) (“[T]he ‘Circumvention of Lawful Pathways’ final rule ... states noncitizens who present at the southern border ‘after traveling through a country other than their native country’ carry a rebuttable presumption they are ineligible for asylum.”).

*and Redesignation of Somalia for Temporary Protected Status*, 89 Fed. Reg. 59135 (July 22, 2024).<sup>5</sup> Petitioner first filed a TPS application on August 20, 2024. (Form I-821 Application, Dkt. 2-4; *see also* Notice of Receipt, Dkt. 2-5.) When asked to provide his passport number or travel document number in his application, Petitioner could not provide such information, indicating that he had lost his travel document in Mexico. (Form I-821 Application, Dkt. 2-4 at 3.) Also, Petitioner reported in his application that he has been arrested, but he did not provide any additional information concerning the nature of the arrest or the resolution of that situation. (*Id.* at 8, 13.)

Despite these anomalies, Petitioner alleges that he “is facially eligible for TPS status” and was released from ICE detention pursuant to his application last October. (Petition, Dkt. 1 at 10; TRO Motion, Dkt. 2 at 3.) As of the date of this filing, Petitioner’s application for Temporary Protected Status remains under review by USCIS. *See* U.S. CITIZENS AND IMMIGRATION SERVICES, *Case Status Online*, [egov.uscis.gov](https://egov.uscis.gov) (search receipt number ) (last visited March 6, 2025).

Petitioner alleges that ICE officials detained him when he appeared for a mandatory supervised release check-in appointment on February 5, 2025, at which point he was told he was being detained to execute his final order of removal.

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<sup>5</sup> *See also* U.S. DEP’T OF HOMELAND SECURITY, *Secretary Mayorkas Announces Extension and Redesignation of Somalia for Temporary Protected Status*, <https://www.dhs.gov/archive/news/2024/07/19/secretary-mayorkas-announces-extension-and-redesignation-somalia-temporary> (July 19, 2024, last visited March 6, 2025).

(Petition, Dkt. 1 at 8, 10.) According to Petitioner, his pending TPS application renders his detention unlawful, pursuant to 8 U.S.C. § 1254a(a)(4)(B), and “arbitrary in violation of his substantive due process rights.” (Petition, Dkt. 1 at 8, 10.)

### III. REGULATORY BACKGROUND

The following subsections summarize the relevant provisions of the reticulated statutes and regulations that govern the detention and removal of non-citizen immigrants who are unlawfully present in the United States and subject to final orders of removal, as well as the TPS program.

#### *a) Detention After Final Orders of Removal*

After administrative immigration proceedings are completed and an immigration judge issues a final order of removal, ICE is statutorily authorized (and indeed mandated) to detain the non-citizen immigrant for 90 days pending removal. *See* 8 U.S.C. § 1231(a)(2). ICE also possesses discretionary authority to detain a non-citizen immigrant subject to a final order of removal beyond the initial 90-day period if he is inadmissible under 28 U.S.C. § 1182. *See* 28 U.S.C. § 1231(a)(6) (“An alien ordered removed who is inadmissible under section 1182 of this title ... may be detained beyond the removal period and, if released, shall be subject to the terms of supervision in paragraph (3).”); *see also* 8 C.F.R. § 241.4 (regulatory procedures for the continued detention of inadmissible immigrants beyond the removal period). This applies to non-citizen immigrants who are present in the United States without being admitted or paroled, as well as those lacking

valid entry, travel, or identity documentation. *See* 8 U.S.C. §§ 1182(a)(6)(A) & 1182(a)(7)(A)(i).

Even in situations where a non-citizen immigrant subject to a final order of removal has been released from detention subject to an order of supervision, the government retains the discretionary authority to revoke that supervised release and proceed “to enforce a removal order.” 8 C.F.R. § 241.4(l); *see also Alam v. Nielsen*, 312 F. Supp. 3d 574, 578 (S.D. Tex. 2018) (explaining that “Congress has laid out a short and straight path by which the Executive may remove people whose presence here violates the law”). When ICE revokes a non-citizen immigrant’s supervised release, the “normal review process” includes a review of relevant records and an interview of the non-citizen immigrant, “which will ordinarily be expected to occur within approximately three months after release is revoked” and reoccur on an annual basis thereafter. 8 C.F.R. § 241.4(l)(3).

***b) Temporary Protected Status***

Congress has authorized the Secretary of Homeland Security to designate foreign countries for “Temporary Protected Status” (“TPS”) under certain conditions. 8 U.S.C. § 1254a(b)(1).<sup>6</sup> Those found eligible for the TPS program are entitled to certain benefits, including temporary protection from removal and authorization to engage in employment in the United States. *See* 8 U.S.C.

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<sup>6</sup> Although the Immigration and Nationality Act originally granted this authority to the Attorney General, Congress later transferred it to the Secretary of Homeland Security. *See Homeland Security Act of 2002*, Public Law No. 107-296, 116 Stat. 2135 (2002).

§ 1254a(a)(1). But non-citizen immigrants from designated countries are not automatically entitled to TPS benefits; they must submit a registration application for processing and approval. 8 U.S.C. § 1254a(c)(1)(A); *see also* 8 C.F.R. § 244.6.

The non-citizen immigrant's TPS application must establish three basic criteria for eligibility: (1) he must have "been continuously physically present in the United States since the effective date of the most recent designation" of the foreign country; (2) he must have "continuously resided in the United States since such date as the [Secretary] may designate;" and (3) he must be "admissible as an immigrant" and "not ineligible for temporary protected status" based on his criminal history or other delineated conduct (*e.g.*, terrorist activity or religious persecution of others). 8 U.S.C. § 1254a(c)(1)(A); *see also* 8 C.F.R. § 244.2. Congress made certain exceptions to the admissibility requirement, including for individuals who are inadmissible because they lack a valid entry document. *See* 8 U.S.C. § 1254a(c)(2)(A)(i) (incorporating provisions of 8 U.S.C. §§ 1872(a)(5) and (7)(A)); *see also* 8 C.F.R. § 244.3.

The statute also provides for temporary benefits during the pendency of a TPS application, but only after the non-citizen "establishes a *prima facie* case of eligibility." 8 U.S.C. § 1254a(a)(4)(B). This *prima facie* eligibility requirement distinguishes the TPS program from other immigration programs where the filing of a benefits application is itself sufficient to trigger temporary benefits. *Compare* 8 U.S.C. § 1154(a)(1)(D) (granting employment authorizations to non-citizen immigrants who "filed a petition") *with* 8 U.S.C. § 1254a(a)(4)(B) (making

temporary benefits available only once the non-citizen immigrant “establishes a *prima facie* case of eligibility”).

Federal regulations explain that “temporary treatment benefits” under TPS are available during the pendency of full review of the application only “if the application establishes the alien’s *prima facie* eligibility for Temporary Protected Status.” 8 C.F.R. § 244.5(b).<sup>7</sup> To establish *prima facie* eligibility, the applicant must file “a completed application ... containing factual information that if unrebutted will establish a claim of eligibility.” 8 C.F.R. § 244.1. Over thirty years ago, during the public notice-and-comment proceedings concerning these regulations, regulators considered and expressly rejected commenters’ suggestion “that temporary treatment benefits should be issued immediately upon the completion of an application which, on its face, establishes the alien’s eligibility.” 56 Fed. Reg. 23491-02, at 23493 (May 22, 1991). Instead, regulators concluded that a *prima facie* eligibility determination by immigration officials was necessary because such officials “must be able to make use of evidence that effectively rebuts the alien’s claim to eligibility” before awarding temporary TPS benefits. *Id.*

There exists no statute or regulation that requires USCIS to determine the *prima facie* eligibility of a TPS application within a particular period of time. USCIS officials reviewed Petitioner’s TPS application on March 3, 2025, and

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<sup>7</sup> Congress has delegated to the Department of Homeland Security (of which USCIS and ICE are component agencies) the authority to establish regulations to implement and administer the Immigration and Nationality Act. *See* 8 U.S.C. § 1103(a)(3).

determined that his application failed to establish *prima facie* eligibility for the TPS program.

#### IV. LEGAL STANDARD

“A motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure challenges the court’s subject-matter jurisdiction.” *Ferreyra v. Nielsen*, No. 18-cv-1005, 2018 WL 4496330, at \*1 (E.D. Wis. Sept. 18, 2018) (citing *Bultasa Buddhist Temple of Chi. v. Nielsen*, 878 F.3d 570, 573 (7th Cir. 2017) and *Scanlan v. Eisenberg*, 669 F.3d 838, 841 (7th Cir. 2012)). And while the court “must accept all well-pleaded factual allegations as true and draw all reasonable inferences in the [petitioner’s] favor,” a challenge to subject-matter jurisdiction permits the court to “properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter [jurisdiction] exists.” *Id.* at \*1 (quoting *Evers v. Astrue*, 536 F.3d 651, 656–57 (7th Cir. 2008)).

Rule 12(b)(6) authorizes a district court to dismiss a complaint that fails “to state a claim upon which relief can be granted.” FED. R. CIV. P. 12(b)(6).<sup>8</sup> The factual allegations in the complaint “must suggest that the plaintiff is entitled to relief beyond the speculative level.” *Vargas v. Beth*, 378 F. Supp. 3d 716, 724 (E.D. Wis.

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<sup>8</sup> This Court has previously authorized the use of Rule 12(b)(6) motions “as the procedural vehicle to answer a habeas petition.” See *McGowan v. Pollard*, No. 10-CV-382, 2010 WL 5060535, at \* n.1 (E.D. Wis. Dec. 6, 2010) (citing *Lonchar v. Thomas*, 517 U.S. 314, 325 (1996)); see also *Powers v. Pollard*, No. 10-C-1127, 2011 WL 5900775, at \*3 (E.D. Wis. Nov. 23, 2011) (recognizing that Rule 12 of the Federal Rules Governing Section 2254 Cases “permits federal courts to apply the Federal Rules of Civil Procedure to petitions for habeas corpus relief when appropriate”).

2019) (citing *EEOC v. Concentra Health Servs., Inc.*, 496 F.3d 773, 777 (7th Cir. 2007)). This requires the petitioner to plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,” and if a habeas petition fails to do so it must be dismissed. *Akbar v. Barr*, No. 20-CV-01132, 2021 WL 1345530, at \*4 (W.D. Tex. Mar. 5, 2021) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2007)); see also *Wright v. Guadarrama*, No. 3:21-cv-710, 2022 WL 19338, at \*5 (D. Conn. Jan. 3, 2022) (dismissing habeas petition for failing to satisfy *Iqbal* / *Twombly* plausibility standard).

## V. ARGUMENT

At the threshold, Petitioner’s claims should be dismissed because the Court lacks subject-matter jurisdiction to hear them. And even if the Court concludes that it retains habeas jurisdiction to hear Petitioner’s challenge to his detention, he has failed to allege sufficient facts to establish a plausible claim to the relief he seeks.

### ***a) The Court Lacks Subject-Matter Jurisdiction over Petitioner’s Claims.***

A bedrock principle of the federal judicial system is that district courts possess limited subject-matter jurisdiction and are entrusted with “only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); see also *Sheldon v. Sill*, 49 U.S. 441, 449 (1850) (“Courts created by statute can have no jurisdiction but such as the statute confers.”).

With respect to deportation matters, Congress delineated by statute an exclusive path for judicial review of final orders of removal, which runs directly to the Court of Appeals. *See* 8 U.S.C. § 1252(a)(5). Non-citizen immigrants may not seek relief from a final order of removal from a district court, regardless of the procedure used or the name of their filing, and Congress has expressly barred “habeas corpus review pursuant to section 2241 of title 28, or any other habeas corpus provision.” *Id.*; *see also* 8 U.S.C. § 1252(b)(9) (Court of Appeals’ review of a final order of removal is the exclusive vehicle for reviewing “all questions of law and fact arising from any action taken or proceeding brought to remove an alien from the United States,” such that “no court shall have jurisdiction by habeas corpus under section 2241 of title 28 or any other habeas corpus provision”).

Congress went even further to make clear the exclusivity of the judicial review that it made available in the Court of Appeals when it enacted 28 U.S.C. § 1252(g), quoted below, which strips all federal courts of jurisdiction to hear claims related to actions taken to execute final orders of removal:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, ... **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, adjudicate cases, or execute removal orders** against any alien under this chapter.

8 U.S.C. § 1252(g) (emphasis added).

The Supreme Court has interpreted this provision to bar judicial review of “three discrete actions that the Attorney General may take: her ‘decision or action’

to ‘commence proceedings, *adjudicate* cases, or *execute* removal orders.’” *Reno v. Am.-Arab Antidiscrimination Comm.*, 525 U.S. 471, 482 (1999). Thus, the Seventh Circuit has “consistently decided that Congress’s 1996 amendments to the INA, and specifically 1252(g), foreclose virtually all judicial review of deportation, including habeas review, in cases to which it applies.” *Bhatt*, 204 F.3d at 746.<sup>9</sup>

Here, Petitioner’s request that the Court enjoin Respondent from enforcing the immigration judge’s final order of removal runs headfirst into this jurisdictional bar, as this Court and numerous other federal courts have held in similar cases. *See Vargas v. Beth*, 378 F. Supp. 3d 716, 721 (E.D. Wis. 2019) (“To the extent Vargas seeks judicial review of an order of removal, his petition is barred by 8 U.S.C. 1252(a)(5) and (g).”); *Elias-Nieves v. Wallace*, No. 06-c-0603, 2006 WL 1728113, at \*1 (E.D. Wis. June 23, 2006) (habeas petition failed because “the district court generally lacks subject-matter jurisdiction to review the Attorney General’s decision

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<sup>9</sup> All other federal Courts of Appeals to have addressed the issue agree with the Seventh Circuit that 8 U.S.C. § 1252(g) eliminates subject-matter jurisdiction over habeas challenges, including those raising constitutional claims, to an arrest or detention for the purpose of executing a final removal order. *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *Camarena v. ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021); *Tazu v. Att’y General*, 975 F.3d 292, 297 (3d Cir. 2020); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017); *Elgharib v. Napolitano*, 600 F.3d 597, 602 (6th Cir. 2010).

to execute a final removal order”).<sup>10</sup> Because Congress established an exclusive path for judicial review of final orders of removal and expressly stripped the courts of any jurisdiction that might be derived from another other source, through 28 U.S.C. § 1252(g), the Court cannot entertain Petitioner’s request for an order enjoining Respondent from executing his final order of removal.<sup>11</sup>

The Seventh Circuit’s opinion in *E.F.L. v. Prim*, 986 F.3d 959 (7th Cir. 2021), is instructive. The petitioner in *E.F.L.* was a Mexican national who, although she was subject to a final order of removal, had lived in the United States for almost twenty years and applied for relief from removal with USCIS under the Violence Against Women Act. *Id.* at 961–62. When immigration officials sought to enforce her final order of removal, the petitioner filed a habeas petition asking the district court to issue an order enjoining her removal, which the district court dismissed

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<sup>10</sup> See also *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (collecting court of appeals decisions holding 8 U.S.C. § 1252(g) bars judicial review of execution of final removal orders); *Perry v. Searls*, No. 23-CV-6521, 2024 WL 3163430, at \*8 (W.D.N.Y. June 25, 2024) (no jurisdiction in the district court over petitioner’s request for an order vacating his final order of removal); *Oldaker v. Giles*, 724 F. Supp. 3d 1315, 1337–38 (M.D. Ga. 2024) (petitioners request for an injunction against their expedited deportations was “exactly the type [of relief] that Section 1252(g) precludes the Court from granting”); *Soares v. Dep’t of Homeland Security*, No. CV-23-2550, 2023 WL 6165729, at \*1 (C.D. Cal. Aug. 24, 2023) (“Petitioner seeks to enjoying Respondents from removing him from the United States while his case is pending. But this Court has no jurisdiction to stay the execution of an administratively final order of removal.”) (citation omitted).

<sup>11</sup> Although the Court possesses the authority, under 28 U.S.C. § 1631, to transfer a case within the exclusive jurisdiction of the Court of Appeals, doing so would be futile in this case. The Court of Appeals would also lack jurisdiction over Petitioner’s claims because he has failed to exhaust all administrative remedies available to him. See 8 U.S.C. § 1252(d)(1); *Padilla v. Gonzales*, 470 F.3d 1209, 1213 (7th Cir. 2006). Petitioner has not filed any administrative action or request to reopen his final order of removal. *But see* 8 C.F.R. § 1003.23(b)(3) (providing a procedure for non-citizen immigrants to petition immigration courts to reopen proceedings).

pursuant to 8 U.S.C. § 1252(g). *Id.* at 962. The Seventh Circuit affirmed, concluding that the “habeas petition falls directly in § 1252(g)’s path.” *Id.* at 964. In doing so, the Court of Appeals rejected the petitioner’s argument that she was not challenging the government’s discretionary decision to “execute” her removal order but instead its “legal authority” to do so, concluding that accepting such an argument would render 8 U.S.C. § 1252(g) “a paper tiger,” as “any petitioner challenging the execution of a removal order could characterize his or her claim as an attack on DHS’s ‘legal authority’ to execute the order and thereby avoid § 1252(g)’s bar.” *Id.* at 965.

Just like the situation in *E.F.L.*, the fact that Petitioner has a pending application for immigration benefits does not alter the jurisdictional bar imposed by 8 U.S.C. § 1252(g). *Id.* at 965 (explaining that Constitutional protections for habeas relief do not apply to a habeas petitioner’s efforts to “remain in the United States or to obtain administrative review potentially leading to that result”) (quoting *Thuraissigiam*, 591 U.S. at 119–20). The Seventh Circuit rejected similar arguments in *Sharif ex rel. Sharif v. Ashcroft*, 280 F.3d 786, (7th Cir. 2002), where Pakistani immigrants filed a habeas petition asking the district court to “stay” execution of their final orders of removal to permit them to seek additional administrative review or other immigration relief under a different statute. *Id.* at 787. The Seventh Circuit explained that 8 U.S.C. § 1252(g) “does not differentiate

among kinds of relief” and that a “request for a stay of removal ‘arises from’ the Attorney General’s decision ... to execute a removal order.” *Id.*<sup>12</sup>

Section 1252(g) also deprives the Court of habeas jurisdiction to order that Respondent release Petitioner from detention before his removal. Although federal courts retain jurisdiction over habeas petitions challenging aspects of their detention on grounds that are “independent” of a final order of removal, “a petitioner may not circumvent the jurisdiction-stripping statute by couching his challenge to removal as a challenge to detention.” *Vargas*, 378 F. Supp. 3d at 721–22.<sup>13</sup>

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<sup>12</sup> Similar decisions from federal courts around the country abound. *See, e.g., Sanchez v. Longshore*, No. 08-cv-01937, 2008 WL 4447062, at \*3 (D. Colo. Sept. 29, 2008) (no district court jurisdiction over petitioner’s request to stay deportation pending processing of his TPS application); *see also Westley*, 2025 WL 592788, at \*2 (no jurisdiction over habeas petition despite pending visa application); *K.K. v. Garland*, No. 23-cv-6281, 2025 WL 274431, at \*2 (W.D.N.Y. Jan. 23, 2025) (“Petitioner’s claims that the execution of the removal order *now*—i.e., while his visa applications are pending—violates various constitutional, statutory, and regulatory provisions, is a claim ‘arising from’ the government’s ‘decision’ to ‘execute’ a removal order, and is thus subject to Section 1252(g)’s jurisdictional bar.”).

<sup>13</sup> *See also Kimone G. v. United States*, No. 22-1688, 2023 WL 7115115, at \*2 (D. Minn. Oct. 27, 2023) (“Federal courts also lack jurisdiction over claims that, although not a direct attack on the substance of a removal determination or the procedures employed to reach a removal determination, are ‘inextricably linked to the order of removal.’”) (quoting *Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir. 2012)); *Santos v. Mayorkas*, No. CV-21-01133, 2021 WL 3411088, at \*2 (D. Ariz. July 12, 2021) (“While Petitioner ‘seeks relief from immigration detention without asking the court to exercise jurisdiction over his final order of removal,’ his claims are ‘wholly intertwined’ with his removal proceedings and order.”) (quoting *Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011); *Olola v. U.S. Attorney General*, No. 17-cv-02510, 2018 WL 11446899, at \*2 (D. Colo. Mar. 7, 2018) (“While federal district courts do retain jurisdiction to consider issues solely related to detention, such jurisdiction extends only to detention issues unrelated to the final order of removal.”) (citing *Ferry v. Gonzalez*, 457 F.3d 1117, 1132 (10th Cir. 2006)); *Garnica v. Chertoff*, No. C-07-4953, 2007 WL 2827698, at \*1 (N.D. Cal. Sept. 27, 2007) (district court lacked jurisdiction to consider challenge to detention pending execution of final order of removal).

Here, Petitioner's habeas challenge is based entirely on the argument that his final order of removal is trumped by the TPS application that he filed last August. (Petition, Dkt. 1 at 10.) Framed another way, Petitioner claims that his TPS application automatically stayed his final order of removal and deprived ICE of its legal authority to detain him for purposes of executing the order. (*Id.*) Petitioner is not challenging some matter tangential to his final removal order—such as bond hearing timelines or the conditions of confinement—but rather ICE's authority to execute the final order of removal itself. As another federal court explained recently, ICE detaining someone is “a necessary prelude to securing Petitioner for her removal,” such that claims of “denial of due process ... that all allegedly occurred in the arrest and detention process ... [a]re all directly connected to the execution of a removal order.” *Arely Westley v. Harper*, No. 25-cv-229, 2025 WL 592788 (E.D. La. Feb. 24, 2025) (internal quotation marks and citation omitted).<sup>14</sup>

This Court's decision in *Vargas* does not compel a different result with respect to Petitioner's claim for habeas relief and, in fact, reinforces the lack of jurisdiction. The petitioner in *Vargas* was being detained during the administrative immigration process and filed his habeas petition before entry of “an administratively final order

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<sup>14</sup> To the extent that Petitioner's claims might be characterized as a challenge to an alleged failure by USCIS to conclude that his TPS application established *prima facie* eligibility and to award him temporary benefits, 8 U.S.C. § 1252(g) still bars judicial review of such discretionary determinations by the agency in connection with final removal orders. See *Gomez-Chavez v. Perryman*, 803 F.3d 796, 800 (7th Cir. 2002) (“An alien attempting to achieve judicial review of such discretionary measures may not avoid the § 1252(g) bar by the simple expedient of recharacterizing a claim as one challenging a refusal to act.”).

of removal against him.” 378 F. Supp. 3d at 720. Specifically, the petitioner brought two different habeas claims, one challenging the legality of his pre-final order detention without an “individualized bond hearing,” which did “not ask the court to review any order of removal,” and another that alleged the immigration court lacked jurisdiction to order his removal. *Id.* at 721–23. This Court held that it retained jurisdiction concerning the petitioner’s claim with respect to the need for bond hearings, but that his second claim was “precisely the sort of claim that is barred by § 1252(g)” because it “would necessarily amount to an invalidation of his order of removal.” *Id.* at 723. In this case, Petitioner claims that his TPS application automatically invalidated the immigration court’s order of removal, which cannot be characterized as a claim that is “independent” of the final order of removal. *Id.*

There are mechanisms for relief potentially available to Petitioner.<sup>15</sup> But this Court simply lacks the authority to grant Petitioner the relief that he requests under 8 U.S.C. § 1252(g), so the Petition should be denied and this case dismissed.

***b) Petitioner’s Application Fails to State a Cognizable Claim upon which Relief May Be Granted.***

Even if the Court concludes that Petitioner’s application for a writ of habeas corpus is not barred by 8 U.S.C. § 1252(g), the Petition still fails to state a cognizable claim upon which relief may be granted.

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<sup>15</sup> See, e.g., U.S. DEPT OF HOMELAND SECURITY, Form I-246, *Application for a Stay of Deportation or Removal*, <https://www.ice.gov/doclib/forms/i246.pdf> (last accessed March 5, 2025).

First, with respect to Petitioner's request that the Court issue an order enjoining the immigration judge's final order of removal, such relief is unavailable through a petition for the writ of habeas corpus. The writ of habeas corpus provides for a release from unlawful detention. See *Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention."); see also *Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 119–20 (2020) (concluding that an alien's attempt to use a habeas petition to seek administrative review that might potentially allow them to remain in the country lawfully fell "outside the scope of the writ as it was understood when the Constitution was adopted"). To the extent that Petitioner is requesting injunctive relief that goes beyond the legality or duration of his detention, it falls outside the purview of habeas relief. Cf. *Nelson v. Campbell*, 541 U.S. 637, 643 (2004) (requests for injunctive relief ordering release from detention fell within the "core" of the writ of habeas corpus, while requests for injunctive relief challenging the conditions of confinement did not).

Practically, ICE does not want to detain Petitioner—it wants to remove him from the country as soon as possible, pursuant to his final order of removal, which Petitioner does not want to happen. See *Thuraissigiam*, 591 U.S. at 119 ("[T]he Government is happy to release him—provided the release occurs in the cabin of a plane bound for Sri Lanka."). Clearly, Petitioner's primary goal is to obtain a stay of removal that will allow him to pursue immigration benefits that might allow him to remain in the United States indefinitely, which is not the type of relief available through a habeas petition. Cf. *E.F.L.*, 986 F.3d at 965–66 (holding that the

Suspension Clause is inapplicable to a petitioner's request to use a habeas petition to vie "for her right to remain in the United States or to obtain administrative review potentially leading to that result") (quoting *Thuraissigiam*, 591 U.S. at 120).

Beyond the remedy issue, Petitioner also fails to allege facts that plausibly call into question the legality of his detention or removal. Again, Petitioner acknowledges that he is subject to a final order of removal. (Petition, Dkt. 1 at 10.) When entered, the final order not only authorized his detention, but mandated it. 8 U.S.C. § 1231(a) ("When an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days."); 8 U.S.C. § 1231(b) ("During the removal period, the Attorney General shall detain the alien."); *see also Phadael v. Ripa*, No. 24-cv-22227, 2024 WL 3088350, at \*2 (S.D. Fla. June 21, 2024) ("As the mandatory language of the statute suggests, an alien *must be detained* once an order of removal becomes final.") (emphasis in original).

Although the government may not hold non-citizen immigrants subject to final orders of removal indefinitely, *see Zadvydas v. Davis*, 533 U.S. 678, 699 (2001), and there exists a mechanism for ICE to release them under an order of supervision, *see* 8 U.S.C. 1231(a)(3), ICE may also re-detain such individuals for the purpose of executing their final removal orders. *See* 8 C.F.R. § 241.4(l). That is exactly what Petitioner alleges occurred here. (Petition, Dkt. 1 at 10.) Given that Petitioner's current detention dates back only to February 5, 2025, that he has made no showing "that there is no significant likelihood of removal in the reasonably foreseeable future," and that he himself alleges that "ICE is now

threatening imminently to remove” him from the country (Petition, Dkt. 1 at 10), Petitioner cannot establish a *Zadvydas* claim for habeas relief with respect to his detention. *See Fei Wang v. Sessions*, No. 17-c-1521, 2018 WL 317847, at \*2–3 (E.D. Wis. Jan. 5, 2018) (petitioner failed to present evidence to support theory that removal was not likely to occur in the reasonably foreseeable future).

Petitioner appears to believe that his current detention is unlawful because he entitled to temporary TPS benefits under 8 U.S.C. § 1254a(a)(4)(B). But that provision requires a TPS applicant to “establish a *prima facie* case of eligibility,” and Petitioner does not allege that USCIS has made such a *prima facie* eligibility determination on his TPS application, just that his application “remains pending.” (Petition, Dkt. 1 at 10.) As the accompanying Declaration of Julia Harrison shows, USCIS has reviewed Petitioner’s TPS application and determined that he “is not *prima facie* eligible for TPS.” (Declaration of Julia Harrison ¶4.)

Petitioner only alleges that he is “facially eligible for TPS status” based on the content of his application, which is not the standard applied by the statute or regulations. (Petition, Dkt. 1 at 10.) But even the content of his Form I-821 Application—which Petitioner himself filed with the Court in support of his motion for a temporary restraining order—belies Petitioner’s assertion. Petitioner’s application fails to identify a passport number, travel document number, or any other document establishing his personal identity. (Form I-821 Application, Dkt. 2-4 at 3.) In order to constitute a “completed application” for purposes of *prima facie* eligibility under 8 C.F.R. § 244.1, the applicable regulation required “evidence of the

applicant's identity and nationality," or if such documentation was unavailable, "an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state." 8 C.F.R. § 244.9(a)(1). Nowhere in his application did Petitioner provide such documentation or a substitute affidavit.

Moreover, Petitioner reported in his application that he has been arrested previously for violating the law. (Form I-821 Application, Dkt. 2-4 at 8.) Despite being instructed to "provide information about the events, including the places and dates of occurrence," and "a full explanation of the circumstances related to the specific event," Petitioner supplied no information to USCIS concerning his prior arrest in his application. (*Id.* at 7.)

As the applicant, Petitioner bore the burden of proof to establish his *prima facie* eligibility for TPS benefits, which he failed to carry. 8 C.F.R. § 244.9(b). Accordingly, USCIS has reviewed his application and concluded that he has failed to establish *prima facie* eligibility for temporary TPS benefits. (Declaration of Julia Harrison ¶4.) By failing to allege facts establishing the plausibility of his alleged entitlement to TPS benefits, Petitioner has failed to plausibly allege that he is eligible for relief from removal under 8 U.S.C. § 1254a(a)(4)(B) and, therefore, failed to state a claim upon which relief may be granted.

## VI. CONCLUSION

For these reasons, Respondent respectfully requests that the Court dismiss the Petition for lack of subject-matter jurisdiction under Rule 12(b)(1) of the Federal

Rules of Civil Procedure, and for a failure to state a claim under Rule 12(b)(6). As a corollary, Respondent also respectfully requests that the Court vacate its temporary restraining order dated February 28, 2025. (Dkt. 6.)

Respectfully submitted this 6th day of March, 2025.

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