UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MILTON MISAEL PEREZ Y PEREZ,

Petitioner,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

Case No. 25 Civ. 4828 (DEH)

RESPONDENTS' MEMORANDUM IN OPPOSITION TO THE AMENDED PETITION FOR WRIT OF HABEAS CORPUS

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The government[1] respectfully submits this memorandum of law in opposition to the amended petition for writ of habeas corpus served on the government via email by petitioner Milton Misael Perez y Perez ("Petitioner") on August 26, 2025. *See* ECF Nos. 23, 24. For the reasons that follow, the amended petition for writ of habeas corpus should be denied.

PRELIMINARY STATEMENT

Petitioner is a citizen of Guatemala who has been subject to a final removal order since 2020. In June 2024, Petitioner was arrested by local law enforcement on a criminal matter and released. In January 2025, Petitioner filed a motion to reopen his removal proceedings, which remains pending, but that motion does not stay his removal. Petitioner was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") at a check-in on June 7, 2025, pursuant to Immigration and Nationality Act ("INA") § 241(a), 8 U.S.C. § 1231(a), so that ICE could execute his final order of removal.

In his amended petition, Petitioner challenges ICE's discretionary decision to detain him in order to execute his removal order, claiming that his arrest at a supervision check-in violated his due process rights. But courts lack jurisdiction to review detention arising from a decision to execute a removal order, and even on the merits, ICE properly re-detained him under § 1231(a) in order to execute his final removal order. ICE is diligently pursuing removal, has obtained the relevant travel documents, and will remove Petitioner within a few days of this Court vacating its order prohibiting transfer outside of this district, which effectively operates as a stay of removal

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[1] The amended petition names Donald J. Trump, Kristi Noem, Todd Lyons, Ken Genalo, the Department of Homeland Security, and Immigration and Customs Enforcement as respondents. Mr. Genalo is no longer the ICE Field Office Director in New York, and Acting Field Officer Director DeLeon Francis is automatically substituted in his place under Rule 25(d).

while this action is pending. Because his removal is substantially likely to occur in the reasonably foreseeable future, Petitioner's detention pending removal is lawful.

This Court should deny the amended petition for writ of habeas corpus.

BACKGROUND

I. PROCEDURAL HISTORY

Petitioner filed this action on June 8, 2025. ECF No. 1. Following expedited briefing on Petitioner's motion for a temporary restraining order, the Court held oral argument on June 12, 2025, after which it ordered that Petitioner not be transferred from a facility in New Jersey until space became available in the Southern District of New York. Minute Entry (June 12, 2025). On June 13, 2025, the Court memorialized its oral decision in a written order. ECF No. 14. As directed by the Court, on July 1, 2025, the parties proposed a briefing schedule on the merits by which Petitioner would file an amended petition no later than July 18, 2025, which the Court so-ordered. ECF No. 17.

Petitioner did not file an amended petition by July 18, and the Court granted a *nunc pro tunc* extension to August 22, 2025. ECF No. 20. Petitioner did not file an amended petition by August 22, but the Court granted a further *nunc pro tunc* extension to August 26, 2025. ECF No. 21. Petitioner served the amended petition on the government via email on August 26, 2025, and on September 3, 2025, the Clerk of Court filed the amended petition on the docket at the Court's instruction after Petitioner failed to file the pleading on the docket. ECF Nos. 23, 24..

II. RELEVANT FACTUAL BACKGROUND

Petitioner is a native and citizen of Guatemala who unlawfully entered the United States on or about March 27, 2019. Declaration of Mayra Pardo-Figueroa dated September 2, 2025 ("Pardo-Figueroa Decl."), ¶¶ 3, 4. Petitioner requested admission into the United States, but he

admitted that he did not possess valid entry documents. *Id.* ¶ 4. Consequently, United States Customs and Border Protection ("CBP") placed Petitioner in custody that same day. *Id.* The next day, on March 28, 2019, CBP served Petitioner with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings, charging him with removability pursuant to INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), because he was "not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document." *Id.*; Return Ex. A. Petitioner was then returned to Mexico pending his immigration removal hearings. Pardo-Figueroa Decl. ¶ 4.

On April 25, 2019, Petitioner appeared *pro se* at the San Diego Immigration Court in San Diego, California for his initial master hearing, having been paroled into the United States for the sole purpose of attending the immigration court hearing. *Id.* ¶ 5. At the hearing, the immigration judge advised Petitioner of his rights through a Spanish interpreter, including the right to an attorney and was provided with a list of *pro bono* and low-cost legal service providers. *Id.* Petitioner told the Immigration Judge that he did not want an attorney, and he waived his right to find an attorney. *Id.* ICE served Form I-261 that listed additional factual allegations against Petitioner. Return Ex. B. The master hearing was adjourned to May 13, 2019, to allow Petitioner time to review the additional charges. Pardo-Figueroa Decl. ¶ 5. Additionally, ICE left a copy of the NTA for Petitioner and provided instructions on how to return for the next hearing. *Id.* Petitioner was returned to Mexico under the then-existing Migrant Protection Protocols to await the May 13, 2019, court date. *Id.*

On May 13, 2019, Petitioner appeared *pro se* at his Immigration Court hearing. *Id.* ¶ 6. At the hearing, pleadings were taken, and Petitioner admitted and conceded all allegations and his

removability as charged in the NTA. *Id.* The Immigration Judge found him removable to Guatemala. *Id.* The Immigration Judge adjourned the matter to July 25, 2019, so that Petitioner could complete and file a Form I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture (CAT), with the assistance of preparer Lisa Knox. *Id.* Later on May 13, 2019, Petitioner returned to Mexico to await the July 25, 2019, hearing date, under the then-existing Migrant Protection Protocols. *Id.* ¶ 7.

On July 25, 2019, Petitioner appeared *pro se* for the scheduled master hearing, once again having been paroled into the United States for the sole purpose of attending the immigration court hearing, and he filed an I-589 application, which he identified as his own application for relief, but which in fact were for his partner and his child. *Id.* ¶ 8. The case was adjourned to November 19, 2019, to allow Petitioner time to file a separate Form I-589 for his child. Petitioner was returned to Mexico to await the November 19, 2019, hearing. *Id.* On or about November 14, 2019, Petitioner served and filed his own separate Form I-589. *Id.* ¶ 9.

On November 19, 2019, Petitioner appeared for a merits hearing on his application for asylum and withholding of removal, once more having been paroled into the United States for the sole purpose of attending the immigration court hearing. *Id.* ¶ 10. The Immigration Judge denied the application that same day and ordered Petitioner removed to Guatemala. *Id.*; Return Ex. C. Petitioner was returned to Mexico again the next day, November 20, 2019. Pardo-Figueroa Decl. ¶ 10. On November 22, 2019, Petitioner was accepted into pre-order Alternatives to Detention and released on an Order of Release on Recognizance with GPS monitoring under the Intensive Supervision Appearance Program, and instructed to report to ICE at 26 Federal Plaza in December 2019. *Id.* ¶ 11; Return Ex. F. The Order of Release on Recognizance

expressly informed Petitioner that, among other things, he "must surrender for removal from the United States if so ordered" and "must assist [ICE] in obtaining any necessary travel document." Return Ex. F.

Petitioner filed an appeal of the denial of his application for asylum and withholding of removal with the Board of Immigration Appeals ("BIA") on December 17, 2019. Pardo-Figueroa Decl. ¶ 12. The BIA dismissed his appeal on September 22, 2020, rendering his removal order final. *Id.* ¶ 13; Return Ex. D. On October 21, 2020, Petitioner filed a petition for review with the Court of Appeals for the Ninth Circuit.[2] Pardo-Figueroa Decl. ¶ 14. The case was administratively closed on March 30, 2022. *Id.* ¶ 15. The court order stated: "the Clerk will close this court's docket for administrative purposes until further order of the court. This order is not a decision on the merits and has no impact on any stay of removal. No mandate will issue, and at any time any party may request that this immigration petition be reopened, or the court may reopen the petition sua sponte." *Id.*; Return Ex. E. On August 7, 2025, the government moved to reopen the administratively closed case; that motion remains pending at this time.[3] Pardo-Figueroa Decl. ¶ 24.

On June 4, 2024, the New York City Police Department arrested Petitioner and charged him with Menacing in the 2nd Degree in violation of New York Penal Law § 120.14(1). *Id.* ¶ 15. The criminal case was pending at the Queens County Criminal Court under Case No. CR-019217-24QN. *Id.* Petitioner was released on his own recognizance. *Id.*

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[2] Because Petitioner admitted and conceded all allegations and his removability in the NTA as charged, and because he appealed only the denial of asylum and withholding relief to the BIA, the only issue before the Ninth Circuit is the denial of asylum and withholding relief.

[3] As of the date of this filing, Petitioner does not appear to have sought a stay of removal from the Ninth Circuit in the petition for review case.

On January 31, 2025, Petitioner filed a motion to reopen his removal proceedings with the BIA, which remains pending at this time. *Id.* ¶ 17. Petitioner reported to, and was detained by ICE at, a contractor office for ICE's Intensive Supervision Appearance Program on June 7, 2025. *Id.* ¶ 18. Petitioner was detained so that ICE could pursue travel documents and prepare to execute his administratively final removal order, barring subsequent legal impediment. *Id.* Upon arrest, he was served with a Warrant of Removal/Deportation and a Warning to Alien Ordered Removed or Deported. *Id.*; Return Ex. G.

He was transported to ICE's Enforcement and Removal Operations processing area at 26 Federal Plaza, New York, New York. *Id.* At the time he was being processed, Orange County Jail in Goshen, New York ("OCJ"), ICE's only detention facility in the Southern District of New York, was overcapacity for individuals with Petitioner's risk classification and could not accommodate him. *Id.* ¶ 19. On June 9, 2025, ICE removed Petitioner from ATD because ICE had taken Petitioner into custody under its § 1231(a) authority. *Id.* ¶ 20. Upon the later availability of bedspace and consistent with this Court's June 12, 2025, oral order and subsequent written order dated June 13, 2025, ICE transferred Petitioner to OCJ, where he has remained detained since June 13, 2025. *Id.* ¶¶ 21, 22.

On June 12, 2025, ICE came into possession of Petitioner's Guatemalan passport bearing his national verification number 2404413031218, with an expiration date of February 24, 2025. *Id.* ¶ 24. Guatemala accepts the return of its natives and citizens with expired passports and requires some form of national verification number. *Id.* This documentation is sufficient to effectuate his removal to Guatemala. *Id.* ICE intends to remove Petitioner within a few days if the Court vacates its order. *Id.*

In his amended petition, Petitioner asserts that his detention violates his constitutional rights to due process under the Fifth Amendment of the United States Constitution. Am. Pet. at 7. Though not in the amended petition itself, Petitioner's accompanying memorandum of law asserts that his arrest at an ISAP check-in pursuant to an alleged "ICE Check-In Arrest Policy," which he attempts to equate to an alleged immigration court arrest policy. Mem. of Law in Supp. of Am. Pet. ("Mem.") at 11–16. Petitioner seeks release from custody or, in the alternative, a bond or custody redetermination hearing, along with an order enjoining ICE from transferring Petitioner from the Southern District of New York while his habeas petition is pending. Am. Pet. at 7 (Prayer for Relief).

III. DETENTION AUTHORITY UNDER 8 U.S.C. § 1231

In general, once a noncitizen becomes subject to an administratively final removal order, the authority for his detention is pursuant to 8 U.S.C. § 1231(a). *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) ("The section at issue here, 8 U.S.C. § 1231(a), governs the detention, release, and removal of individuals 'ordered removed.'"); *Wang v. Ashcroft*, 320 F.3d 130, 145 (2d Cir. 2003) ("8 U.S.C. § 1231, governs the detention of aliens subject to final orders of removal."). "An order of removal is 'final' upon the earlier of the BIA's affirmance of the immigration judge's order of removal or the expiration of the time to appeal the immigration judge's order of removal to the BIA." *Chupina v. Holder*, 570 F.3d 99, 103 (2d Cir. 2009) (citing 8 U.S.C. § 1101(a)(47)(B)). Noncitizens may seek judicial review of a final removal order by timely filing a petition for review in the appropriate court of appeals. *See generally* 8 U.S.C. § 1252.

Section 1231 provides that noncitizens subject to final removal orders *must* be detained during a 90-day "removal period." *See* 8 U.S.C. § 1231(a)(2). In addition, noncitizens like

Petitioner here, who are ordered removed because of a criminal conviction for an aggravated felony, "may be detained beyond the removal period." 8 U.S.C. § 1231(a)(6).

Noncitizens detained under § 1231(a) are not entitled to bond hearings before an immigration judge; instead, they receive custody reviews just prior to the expiration of the removal period, *see* 8 C.F.R. § 241.4(c)(1), (h)(1)-(2), and, if they remain detained beyond the removal period, periodically thereafter, *see* 8 C.F.R. § 241.4(c)(2), (k). *See also Arteaga-Martinez*, 596 U.S. at 576 (§ 1231(a)(6) does not require the government to provide detained noncitizens bond hearings after six months of detention).

DHS has also enacted special review procedures for detained aliens under final orders of removal who have "provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed . . . in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). Pursuant to that regulation, ICE will release an alien who has successfully made such a showing (absent special circumstances justifying continued detention, as defined by 8 C.F.R. § 241.14), subject to appropriate conditions of release. 8 C.F.R. § 241.13(g)(1). Section § 241.13(i)(2) of these regulations provides that "[t]he Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." Moreover, ICE may, in its "discretion . . . grant a stay of removal or deportation for such time and under such conditions as [it] may deem appropriate." 8 C.F.R. § 241.6(a). However, while the agency is free to grant additional procedural rights in the exercise of its discretion, a federal court is not free to impose them if the agency has not chosen to grant them. *Arteaga-Martinez*, 596 U.S. at 582 (analyzing § 1231(a)(6)).

Although the Supreme Court has "read an implicit limitation into the statute . . . in light of the Constitution's demands" and held that § 1231(a) authorizes detention only for "a period reasonably necessary to bring about [an] alien's removal from the United States" and recognized a presumptively reasonable six-month period of detention to bring about the alien's removal, even then the alien must first "provide good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future," after which the government "must respond with evidence to rebut that showing" or release the alien subject to supervision. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Furthermore, the concerns animating *Zadvydas* pertained to aliens in a "removable-but-unremovable limbo," where an alien's confinement is "not limited, but potentially permanent." *Jama v. ICE*, 543 U.S. 335, 347 (2005). Thus, where an alien has been ordered removed and detained for an extended period of time under § 1231(a), courts have held that the alien has failed to show that there is no significant likelihood of his removal in the reasonably foreseeable future because there is a definite termination point upon the conclusion of consideration of such relief. *See, e.g.*, *Leslie v. Mule*, 324 F. App'x 29 (2d Cir. 2011) (more than two years of § 1231 detention); *Amimbola v. Ridge*, 181 F. App'x 97 (2d Cir. 2006) (more than two years of § 1231 detention); *G.P. v. Garland*, 103 F.4th 898, 901–02 (1st Cir. 2024) (44 months of § 1231 detention); *Castenada v. Perry*, 95 F.4th 750, 753–54 (4th Cir. 2024) (58 months of § 1231 detention); *Martinez v. Larose*, 968 F.3d 555, 565 (6th Cir. 2020) (31 months of § 1231 detention).

ARGUMENT

The Court should dismiss the amended petition for writ of habeas corpus because Petitioner's detention pending removal is lawful. Petitioner's removal is reasonably foreseeable, and his detention arising from efforts to execute his removal order does not violate due process.

I. THE COURT LACKS JURISDICTION TO STAY REMOVAL OR TO CONSIDER THE CHALLENGE TO DETENTION ARISING FROM THE DECISION TO EXECUTE THE REMOVAL ORDER

Petitioner seeks an order "[e]njoin[ing] ICE from transferring [him] from the Southern District of NY while [his] petition is pending," (*i.e.*, a stay of removal). Am. Pet. at 7 (Prayer for Relief, ¶ 3). But this Court lacks jurisdiction notwithstanding any other law, including 28 U.S.C. § 2241, to grant Petitioner a stay of removal or otherwise entertain a collateral attack on his final removal order.[4] *See* 8 U.S.C. § 1252(a)(5) ("a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal"), (b)(9) (so-called zipper clause channeling judicial review of all claims arising from removal proceedings to the courts of appeals), (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 . . . [to] execute removal orders against any alien"). The only court with authority to stay his removal is the Ninth Circuit.

"[A] request for stay of removal constitutes a 'challenge to a removal order,' and . . . accordingly district court lack jurisdiction to grant such relief." *Vidhja v. Whitaker*, 19 Civ. 613 (PGG), 2019 WL 1090369 (S.D.N.Y. March 6, 2019) (finding that § 1252(a)(5) deprived the district court of jurisdiction to grant a stay of removal); *accord Barros Anguisaca v. Decker*, 393

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[4] The jurisdiction of the federal courts is presumptively limited. *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."). They "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen*, 511 U.S. at 377 (internal citations omitted); *see also Sheldon*, 49 U.S. at 449 ("Courts created by statute can have no jurisdiction but such as the statute confers."). As relevant here, Congress divested district courts of jurisdiction to review challenges relating to removal orders and instead vested only the courts of appeals with jurisdiction over such claims.

F. Supp. 3d 344, 350 (S.D.N.Y. 2019) (citing *Vidhja*). Indeed, the Second Circuit has held that the jurisdictional bar of § 1252(a)(5) applies equally to direct and indirect challenges to a removal order. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011) (inadmissibility waiver sought by plaintiff was inextricably linked to a removal order, and thus, was a challenge to the removal order).

In addition, "by its plain terms, 8 U.S.C. § 1252(g) strips district courts of jurisdiction over claims attacking the Government's decisions or actions to execute removal orders." *Yearwood v. Barr*, 391 F. Supp. 3d 255, 263 (S.D.N.Y. 2019); *see also, e.g.*, *Rodriguez v. Warden, Orange County Corr. Facility*, No. 23 Civ. 242 (JGK), 2023 WL 2632200, at *4 (S.D.N.Y. Mar. 23, 2023); *Vasquez v. United States*, No. 15 Civ. 3946 (JGK), 2015 WL 4619805, at *3 (S.D.N.Y. Aug. 3, 2015) ("District courts within this Circuit and across the country have routinely held that they lack jurisdiction under § 1252 to grant a stay of removal." (collecting cases)); *id.* at *4 (only claims that are "independent of *any* challenges to removal orders" survive the jurisdictional bar (emphasis added)).[5] Congress enacted unambiguous language that provides that "no court" has jurisdiction over "any cause or claim by or on behalf of any alien arising from the decision or action" to "execute removal orders," "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 [mandamus] and 1651 [All Writs Act] of such

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[5] The Second Circuit's recent opinion in *Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025), is not to the contrary, as that case did not involve "the government's decision to . . . execute a removal order"; instead, it concerned detention "pending" removal proceedings. *Id.* at 397; *id.* at 398 ("Nor could her detention possibly 'arise from' the execution of a removal order, because no such order has been entered.").

title." 8 U.S.C. § 1252(g); *see Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525 U.S. 471, 482 (1999).

Here, Petitioner is subject to a valid, final order of removal. ICE made the discretionary decision to execute that removal order, and it has detained him in order to do so. As explained by Deportation Officer Pardo-Figueroa, for individuals from Guatemala such as Petitioner, "Guatemala accepts the return of its natives and citizens with expired passports and . . . [a] national verification number." Pardo-Figueroa Decl. ¶ 23. ICE is now in possession of Petitioner's recently-expired passport, which contains his national verification number. *Id.* As such, ICE has sufficient documentation to effectuate his removal to Guatemala. The only legal impediment to execution of his final removal order is this Court's order enjoining transfer outside of this judicial district, the Eastern District of New York, or the District of New Jersey. ECF No. 14.

Thus, Petitioner's detention does not merely "aris[e] from" the decision to execute his removal order; it is part and parcel of the process. Petitioner's detention claims in his amended petition, then, "aris[e] from" and are not collateral to the execution of his final removal order and are barred by § 1252(g), and this Court may not enjoin ICE's detention, which is expressly for the purpose of executing Petitioner's removal order.

II. PETITIONER'S DETENTION TO EXECUTE HIS FINAL REMOVAL ORDER DOES NOT VIOLATE DUE PROCESS

Petitioner's detention under § 1231 is valid and does not violate due process. ICE has travel documents sufficient to execute his removal order, no court (other than this one on a temporary basis) has stayed his removal, and thus Petitioner cannot show that there is no significant likelihood of removal in the reasonably foreseeable future.

As an initial matter, to the extent Petitioner asserts that his arrest following an ICE check-in renders his detention unlawful, that is not the correct inquiry. The question is whether his current detention under 8 U.S.C. § 1231 is valid. *See U.S. ex rel. Ling Yee Suey v. Spar*, 149 F.2d 881, 883 (2d Cir. 1945) ("But on a writ of habeas corpus we can determine only whether petitioners can be lawfully detained; and if sufficient ground for their detention is shown, they are 'not to be discharged for defects in the original arrest or commitment.'" (citing *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 158 (1923) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 662 (1892)))).

Petitioner here has been subject to a final order of removal since September 2020, when the BIA dismissed his appeal of the immigration judge's removal order and order denying relief. Although the government in its discretion permitted Petitioner to remain at liberty during that time and even moved for administrative closure of his petition for review, that administrative grace did not confer any protection from removal. Indeed, by the terms of his release on recognizance in November 2019, he was required to surrender for removal from the United States and to assist ICE in obtaining any necessary travel document. After Petitioner was taken into custody for removal, ICE cancelled the order of release. Return Ex. F.

The Due Process Clause does not protect a "benefit . . . if government officials may grant or deny it in their discretion." *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 756 (2005); *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 462–63 (1989); *see Olim v. Wakinekona*, 461 U.S. 238, 249 (1983). The protections of the Due Process Clause categorically do not attach to liberty and property interests that are granted at the discretion of government officials. The Second Circuit and other circuit courts have applied the Supreme Court's holdings

on the reach of the Due Process Clause in the particular context of discretionary relief for aliens subject to final orders of removal and unequivocally concluded that "[a]n alien has no constitutionally-protected right to discretionary relief or to be eligible for discretionary relief." *Yuen Jin v. Mukasey*, 538 F.3d 143, 157 (2d Cir. 2008) (quoting *Oguejiofor v. Attorney General of U.S.*, 277 F.3d 1305, 1309 (11th Cir. 2002) (emphasis omitted)); *see Smith v. Ashcroft*, 295 F.3d 425, 430 (4th Cir. 2002) (addressing former statutory immigration scheme).

Ultimately, due process does not preclude Petitioner's detention when removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 689. For an alien detained under § 1231, *Zadvydas* provides the framework for evaluating a due process challenge to that detention. ICE has detained Petitioner for the purpose of executing his removal, has obtained sufficient travel documents for removal to Guatemala, and intends to remove him "within a few days" pursuant to the final removal order. Petitioner has been detained for approximately three months as of this filing — the majority of which was due to Petitioner's own delays in filing the amended petition, *see* ECF Nos. 17, 20, 21 — which is not an unconstitutionally prolonged period of detention for an alien subject to a final order of removal. *Cf. Vidhja*, 2019 WL 1090369, at *6 (*Zadvydas* "addresses aliens subject to removal who have been detained for more than six months after the 90-day statutory removal period" (emphasis in original)). But "[f]or obvious reasons, a noncitizen's use of the American judicial process, to the extent it delays removal, does not warrant release under *Zadvydas*." *Portillo v. Decker*, No. 21 Civ. 9506 (PAE), 2022 WL 826941, at *5 (S.D.N.Y. Mar. 18, 2022). Nor is the length of detention dispositive in this context. *See, e.g.*, *Callender v. Shanahan*, 281 F. Supp. 3d 428, 436 (S.D.N.Y. 2017) ("Regardless of the length of detention to date, *Zadvydas* places the burden of proving that there is no significant

likelihood of removal in the reasonably foreseeable future on the alien." (quotation omitted)). There is no legal impediment to Petitioner's removal beyond this very proceeding: he is subject to a valid removal order entered after full removal proceedings, and although his petition for review is pending, no stay of removal has been entered by the Ninth Circuit or the BIA. Due process does not require that Petitioner be released when the government is ready, willing, and able to expeditiously execute his final order of removal.

III. PETITIONER CANNOT RAISE AN APA CHALLENGE TO HIS ARREST AT HIS ISAP CHECK-IN

Although not adequately pled in his amended petition, to the extent Petitioner challenges an alleged policy of arrests at ISAP check-ins, he nevertheless cannot bring such a challenge beyond his core habeas claim, which fails for the reasons already given.

The Supreme Court recently held that, for an action bringing claims for relief, under statutes including the APA and the INA,[6] that necessarily imply the invalidity of a detainee's confinement, regardless of whether a detainee formally requests release from confinement, such "claims fall within the 'core' of the writ of habeas corpus and *must be brought in habeas*." *Trump v. J.G.G.*, 143 S. Ct. 1003, 1005 (2025) (emphasis added). Here, Petitioner seeks immediate release from custody, either outright or pursuant to a bond hearing. This is a core habeas claim — that fails on the merits for the reasons already discussed — and it is simply not cognizable under the APA. Petitioner's challenge to his detention premised on the APA, then, must fail.

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[6] The plaintiffs in *J.G.G.* brought nine claims for relief pursuant to various federal statutes, including the Alien Enemies Act, the Administrative Procedure Act, various provisions of the Immigration and Nationality Act, the Due Process Clause, and habeas corpus. *See* Compl., ECF No. 1, *J.G.G. v. Trump*, No. 25-cv-00766 (D.D.C. Mar. 15, 2025).

Furthermore, as discussed at length in the government's motion to dismiss[7] in *African Communities Together v. Lyons*, No. 25 Civ. 6366 (PKC), ECF No. 39, at 10–25, the policies are not reviewable under the APA, do not make out a valid *Accardi* claim, and are not arbitrary, capricious, or contrary to law.

In any event, any APA challenge would fail on the merits. ICE's decision to detain Petitioner and to execute his removal order is one of those "discretionary determinations" that is not a proper basis "for separate rounds of judicial intervention outside the streamlined process designed by Congress." *AADC*, 525 U.S. at 485. Moreover, as a discretionary decision, it is absolutely precluded from review under the APA. *Heckler v. Chaney*, 470 U.S. 821, 831 (1985); 5 U.S.C. § 701(a)(2) (noting that there is no APA review of agency action committed to agency discretion by law). To the extent Petitioner makes an APA challenge to ICE's discretionary decision to redetain him, the Court is deprived of subject-matter jurisdiction by virtue of 8 U.S.C. § 1252(a)(2)(B)(ii). *See, e.g.*, *Bernardo ex rel. M&K Eng'g, Inc. v. Johnson*, 814 F.3d 481, 485 (1st Cir. 2016) (holding that the judicial review bar at § 1252(a)(2)(B)(ii) applied as a result of statutory terms suggesting a grant of administrative discretion). Indeed, courts that have considered habeas challenges to post-removal-order orders of supervision have accorded administrative authorities "wide latitude" to impose such orders. *E.g.*, *Yusov v. Shaughnessey*, 671 F. Supp. 2d 523, 528 (S.D.N.Y. 2009) (citing cases). Accordingly, to the extent that Petitioner challenges the substance of ICE's decision to revoke discretionary release and re-

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[7] Petitioner's memorandum of law makes blockquote citations to the plaintiff's filings in *African Communities Together*, without further argument. *See* Mem. at 11–13. To the extent the Court considers those incorporated arguments, the government, in turn, expressly incorporates the arguments raised its motion papers in the same action.

detain him for removal, the Court should reject such challenge, as it lies squarely within the discretion of the agency.

CONCLUSION

For the foregoing reasons, the Court should dismiss Petitioner's amended petition for writ of habeas corpus.

Dated: New York, New York
September 3, 2025

Respectfully submitted,

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 4,769 words.