UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-03197-KMM-SGE

MARTIN BERCHIE,

Petitioner,

v.

PAMELA BONDI et al.,

Respondents.

REPSONSE TO MOTION FOR EVIDENTIARY HEARING

Respondents Pamela Bondi, Kristi Noem, Todd M. Lyons, Marcos Carlos, Sam Olson, U.S. Immigration and Customs Enforcement ("ICE"), and the Department of Homeland Security hereby submit this response to Petitioner's motion for an evidentiary hearing (ECF 30). The Court is without jurisdiction to consider the claims Petitioner makes in this motion under 8 U.S.C. § 1252(g), as they undoubtedly relate to the execution of a removal order. That said, the United States understands that the tenor and nature of Petitioner's allegations made in support of his motion caused the Court concern. ECF 33. To allay these concerns, the United States submits this response with three detailed declarations to show that this was a routine removal.

The travel document on which Petitioner was removed was issued by the Embassy of Ghana in his name, with his picture, with his date of birth, with his mother and father's biographical information, and the seal and signature of a Ghanaian official on September 4, 2025. A true and accurate copy of the document is attached to the Declaration of Christopher Campbell ¶¶ 22-23, Ex. A, and the two officers who escorted Berchie to Ghana

verified this was the document used. Declaration of Xiong Lee (Lee Decl.) ¶ 7; Declaration of Robert Rodkewich (Rodkewich Decl.) ¶ 7. As the United States noted before, disclosing a copy of the travel document to Petitioner before his travel would have unnecessarily disclosed sensitive information to Petitioner and his attorney – including, most significantly, the date of expiration of the travel document. *See* ECF 20 at 3 n.1. The United States' position in this regard is not unique to this case, and Petitioner's travel document is being filed now—after his removal—to finally put this issue to bed.

Petitioner's accusation that "Respondents started lying about having a travel document" to avoid a ruling on this habeas is outrageous. ECF 30. As this Court noted: "Counsel for the government has repeatedly averred that a valid travel document for Mr. Berchie exists, and a sworn affidavit attesting to that fact was submitted to this Court on September 17, 2025." ECF 33. Petitioner's third declaration accusing the United States of lacking a travel document is full of speculation, incomplete observations, insinuation, conclusory statements, and hearsay that is not competent evidence, and it should be disregarded. All of that is to say nothing about the fact that Petitioner is hardly an unbiased witness, and the declaration relies entirely and exclusively on Petitioner's self-serving allegations. Likewise, the motion Petitioner's counsel filed has no citation to law or authority and jumps immediately to accusations of fraud and illegality with no apparent attempt to verify facts. There is no basis for the Court to have an evidentiary hearing on this record.

The facts of this case are simple. Petitioner does not dispute he is a citizen of Ghana, ECF 1 ¶ 39. He overstayed his student visa, was convicted of criminal sexual conduct, and

was ordered removed to Ghana. ECF 9 ¶¶ 4-6; ECF 1 ¶ 40. He does not contest his removability and did not seek any relief from removal. ECF 41-42. Ghana provided a travel document for Petitioner to be returned to Ghana. Campbell Decl., Ex. A; ECF 21 ¶ 8. ICE removed him to Ghana. Declaration of Xiong Lee; Declaration of Robert Rodkewich. Ghana accepted him by accepting his travel document from the officers, taking over processing him for entry, and ultimately releasing him into his home country. ECF 31 ¶ i.

Petitioner is not in ICE custody and is apparently at liberty in Ghana where he continues to be in touch with his counsel. *See generally* ECF 31. Counsel cited no legal authority for the relief he seeks in his motion or any basis for the Court to grant habeas relief, when it is undisputed that he is not in ICE custody. Nor has Petitioner come up with a coherent theory by which he would be entitled to return to the United States for release here—contrary to his order of removal to Ghana.

The United States respectfully submits that this case is moot, the motion should be denied, and the habeas petition dismissed.

I. FACTS

Berchie is indisputably a Ghanaian citizen. Declaration of Xiong Lee ("Lee Decl.") ¶ 4; ECF 1 ¶ 39. In March 2021, he was ordered removed to Ghana. ECF 9 ¶ 10; ECF 9-3. The order became final when Berchie dismissed his appeal challenging the removal order. ECF 9 ¶ 11. While the United States had previously been unable to remove Berchie because Ghana did not reliably issue travel documents for its citizens, ECF 9 ¶ 12, that has changed. ECF 9 ¶¶ 14-16.

On September 4, 2025, ERO St. Paul e-mailed ERO HQ to explain that the Embassy of Ghana had not responded to requests to schedule a nationality verification interview for Berchie. ERO HQ contacted the Embassy, and the Embassy issued a travel document later that same day. Campbell Decl. ¶ 22. ERO St. Paul received the hard copy of Berchie's travel document on September 8, 2025. A copy was added to his A-file and the original was kept in his removal packet with the travel coordinator until his removal. Campbell Decl. ¶ 23. As Berchie agrees, he had been interviewed in the past, and he is a Ghanaian citizen. ECF 31 at 2 ¶ d; Petition.

In September, two Deportation Officers were assigned to remove Berchie on an escorted, commercial flight to Accra Ghana. Lee Decl. ¶ 5; Rodkewich Decl. ¶ 4. Each of the officers is incredibly experienced. Lee Decl. ¶ 2; Rodkewich Decl. ¶ 2. For example, DO Rodkewich has been on approximately 100 removals over his twenty-three-year career. Rodkewich Decl. ¶ 7.

On October 07, 2025, the Sherburne County Jail transported Berchie to the ICE St. Paul ERO Office, in Fort Snelling, for removal. Rodkewich Decl. ¶ 5; Lee Decl. ¶ 6. Berchie was informed of his removal and asked to sign the Warrant of Removal/Deportation (Form I-205) by DO Rodkewich. Berchie refused to sign Form I-205 and DO Rodkewich served him Warning to Alien Ordered Removed or Deported, Form I-294. Lee Decl. ¶ 6.

When they arrived at the Minneapolis St. Paul airport, the officers checked Berchie in with Delta Airlines, who, with a supervisor, input his travel document and gave the officers a boarding pass for Berchie in his name. Lee Decl. ¶ 7; Rodkewich ¶ 6. It is not

uncommon for a ticketing agent to have trouble entering a travel document into the airline's system. Lee Decl. ¶ 7. The boarding passes were in Berchie's name. *Id*; Rodkewich Decl. ¶ 6.

To board the plane, Officer Rodkewich presented the Delta Airlines representative with the "gate lift" copies as per airline requirements and retained the travel document and boarding passes in the removal packet envelope as per standard operation procedure. Rodkewich Decl. ¶ 7; Lee Decl. ¶ 8. "This practice has remained the same during my twenty-three-year career in which I have performed approximately one hundred escort missions." Rodkewich Decl. ¶ 7. Berchie had access to his cell phone at JFK airport in New York City. Lee Decl. ¶ 9.

There were issues with the seating assignments on the flight from New York to Accra. During the connection in New York at the JFK airport, Officer Rodkewich again presented the "gate lift" copies to the airline representative and told them that the group needed the seats rearranged so that they were seated together in the rear of the plane, per airline policy. Rodkewich Decl. ¶ 8; Lee Decl. ¶ 10. The airline representative said that the group would be seated in seats 50A, 50B, and 50C, and returned the passports and new boarding passes to Officer Rodkewich. Rodkewich Decl. ¶ 8. It was discovered that the airline representative had mixed up seats and names with Berchie and another passenger. *Id.*; Lee Decl. ¶ 11. A flight attendant onboard the plane shifted Berchie and the officers to different seats in the same row to rectify the problem. Rodkewich Decl. ¶ 8; Lee Decl. ¶ 11.

Upon arrival in Ghana, Berchie and the officers had to present their travel documents to Ghanaian officials. Lee Decl. ¶ 12. Officer Rodkewich presented Berchie's travel document to the Ghanaian official. Lee Decl. ¶ 12; Rodkewich ¶ 9. The Ghanaian official spoke to Berchie in Ghanaian and Berchie responded. The official then gave Berchie his travel document and waved Berchie through and separated him from Officers Lee and Rodkewich. Lee Decl. ¶¶ 12-13; Rodkewich ¶¶ 9-10. Officers Lee and Rodkewich were then photographed and fingerprinted by Ghanaian officials for their entry into the country. Rodkewich Decl. ¶ 9; Lee Decl. ¶ 13. Berchie was at this point in the hands of the Ghanaian officials. Rodkewich Decl. ¶ 10; Lee Decl. ¶¶ 14. The ICE officers then left the airport. Lee Decl. ¶ 13; Rodkewich Decl. ¶ 10. There was nothing out of the ordinary, in the officers' experience. Rodkewich Decl. ¶ 10; Lee Decl. ¶ 14.

II. ARGUMENT

A. Berchie's habeas petition is moot and should be dismissed.

Berchie's Petition alleges that he had remained in custody under 8 U.S.C. § 1231 for too long under the Supreme Court's framework in *Zadvydas*. ECF 1 ¶¶ 73-75. Berchie's "removal from the United States leaves nothing for the Court to grant by way of habeas relief. He is no longer in the custody of . . . U.S. Immigration and Customs Enforcement (ICE), and as a result, the Court cannot order his release." *Sirleaf v. Dep't of Homeland Sec.*, No. 17-cv-4126 (DSD/HB), 2018 WL 3407697, at *1 (D. Minn. June 19, 2018), *adopted*, 2018 WL 3404154 (D. Minn. July 12, 2018); *see also Oscar M.-S. v. Garland*, No. 21-cv-1341 (WMW/JFD), 2022 WL 2959944, at *2 (D. Minn. June 28, 2022), *adopted*, 2022 WL 2953913 (D. Minn. July 26, 2022); *Jude A.O. v. Garland*, No.

21-cv-1731 (ECT/JFD), 2021 WL 5496025, at *2 (D. Minn. Oct. 19, 2021), *adopted*, 2021 WL 5494720 (D. Minn. Nov. 23, 2021); *Larry Z. v. Garland*, 21-cv-1030 (NEB/BRT), 2021 WL 3639602, at *1-2 (D. Minn. July 30, 2021), *adopted*, 2021 WL 3639479 (D. Minn. Aug. 19, 2021). No exception to mootness applies here, *see Sirleaf*, 2018 WL 3407697, at *2, and Berchie alleges no collateral consequences that would preserve jurisdiction.

B. This Court does not have jurisdiction in habeas or otherwise to provide Berchie any relief on his theory of alleged fraud.

Berchie's motion attempts to assert a non-habeas, broad-reaching fraud claim,[1] generally declaring Berchie's removal to be "illegal." Even if this claim were properly alleged or supported by competent evidence, and it is not, this Court would not have jurisdiction to hear it or provide Berchie any relief. This Court should therefore deny Berchie's motion for an evidentiary hearing and dismiss his still-pending habeas petition as moot.

Congress has deprived courts of jurisdiction to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] *execute removal orders* against any

[1] Berchie does not flesh out this claim. Is he asserting a generalized fraud on the Ghanaian government, i.e., that the United States passed a false document in violation of some sort of international agreement with Ghana? Or Delta airlines? If so, the undersigned struggles to understand how Berchie would have standing to raise such a claim or be entitled to relief because of it. Berchie's home country accepted him on the travel document presented, which is certainly the best evidence of its authenticity despite Berchie's outrageous allegations to the contrary.

alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."[2] Thus, unless authorized in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

The Eighth Circuit in *Silva v. United States*, 866 F.3d 938, 940 (8th Cir. 2017) made clear that 1252(g) precludes claims, like Petitioner's, that he was injured by the execution of a removal order. In *Silva*, a tort claim was brought for damages arising from Silva's removal despite an applicable administrative stay of removal. The Eighth Circuit explained that 1252(g)'s language restricting review of claims "arising from a decision or action" includes any claim "connected directly and immediately to a decision to execute a removal order." *Id. (*citing *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 943 (5th Cir. 1999)).

In his motion, Petitioner frames his challenge as one to the "manner" of Berchie's removal. The relief sought is his return—i.e., un-execution of the removal order—and

---

[2] In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

"release in the United States on an Order of Supervision." ECF 30 at 2. Berchie's claim is inextricably tied to the execution of the removal order. And, it would not fall within the Eighth Circuit's carveout to 1252's reach for "purely legal question[s] of statutory construction." *Jama v. INS*, 329 F.3d 630, 632 (8th Cir. 2003). Berchie's claim is not a legal question at all.

The Tenth Circuit applied 1252(g) to a very similar claim in *Tsering v. United States Immigration and Customs Enforcement*, 403 F. App'x 339, 343 (10th Cir. 2010). There, the plaintiff had claimed he was denied both substantive and procedural due process when ICE removed him "based on a false identity that represented him to be a Nepali citizen[ ]" when, in fact, he is Tibetan." *Id.* He expressly argued that § 1252(g) did not preclude claims alleging that ICE removed him "based on wrongfully obtained travel documents."

The Tenth Circuit found § 1252(g) clearly applied. Citing a prior Fifth Circuit case, the Tenth Circuit concluded the claim was "directly and immediately connected to the execution of his removal order, because these travel documents allowed for Mr. Tsering's removal to Nepal." *Id.* at 343 (citing *Humphries v. Various Federal USINS Employees,* 164 F.3d 936, 943 (5th Cir.1999)); *see also Akande v. Philips*, No. 1:17-CV-01243 EAW, 2018 WL 3425009, at *4 (W.D.N.Y. July 11, 2018) (applying 1252(g) and finding no jurisdiction over claim that ICE "fabricated the travel certificate, and that this document was misrepresented to government officials in Nigeria in order to permit his entry to that country").

The *Tsering* court then went even further to explain that this type of claim is not properly raised in habeas. Tsering's release, via removal, just like Berchie's, left him

without a claim that was redressable by the Court in habeas. *Id.* at 343-44. This rationale is entirely consistent with the Eighth Circuit's reading of the 1252(g)'s limitations in *Silva*. The Court does not have jurisdiction to consider Berchie's new claims and should deny the motion and dismiss his Petition as moot.

C. Berchie's allegations are incredible, and there is no need for an evidentiary hearing.

Berchie's filing should be read for what it is: a last-ditch effort to overcome his lawful removal order. That request should have been addressed to the BIA and then to the Eighth Circuit, and it should have been made years ago. *See* 8 U.S.C. § 1252(a)(5) (the only review of a removal order is in the Eighth Circuit via a petition for review). This is not a case in which there are allegations of mistreatment or unconstitutional conditions during removal. Berchie alleges no injury. The circumstances under which he was removed were standard and uneventful. At most, he is seizing on a seat reassignment issue that occurred after a seat-change at the gate and is not out of the ordinary for international commercial flights. Petitioner allegedly spent three hours with Ghanaian immigration officials before he was released into Ghana. He has not alleged that he has any conditions upon his release or liberty in Ghana. While the United States does not concede that any of these allegations would support a claim, their absence illustrates that Petitioner's real complaint is the mere execution of his removal order—he did not want to be removed from

the United States and is willing to make whatever inflammatory accusations necessary to secure his return.[3]

Case in point: Petitioner is basically alleging a conspiracy between the United States and Delta Airlines to allow him to board a commercial airline with a boarding pass and travel document of another person. This fantastical allegation is impossible to support with just the circumstantial evidence of secret contact and suspicious moving of seats on the airplane. The two federal law enforcement officers who accompanied Petitioner have explained the circumstances of his removal, and their explanations are persuasive. In fact, this case has now seen the sworn testimony of four different law enforcement officers who testified to the existence of Petitioner's valid travel document, the lawfulness of his detention pending removal, and the routine nature of his removal itself. Petitioner has consistently questioned the veracity of this testimony, but neither he nor his counsel have been able to produce even a single piece of corroborating evidence beyond Petitioner's unverified declarations.

Petitioner also alleges that an unnamed Ghanaian official told him that the number on his travel document showed up as previously used. This statement is hearsay, and no exception to that rule would allow for it to be admissible here (not that Petitioner has asserted one). Indeed, Petitioner has no personal knowledge of (and made no effort to

[3] In *Akande*, 2018 WL 3425009 at *5, the court did not dismiss a pro se *Bivens* claim based on physical abuse alleged to have occurred during the plaintiff's removal. The court expressed much skepticism about the claim, however, and explained that its decision was based on a liberal reading of a pro se complaint. Berchie is not entitled to such a liberal pleading standard for his absolutely ill-defined claim.

address) how and whether Ghana re-uses numbers, whether and how Ghana tracks records in its computer system, how frequently those records are updated, whether Ghana issued the document to the United States with a typo, or a whole host of other explanations for a supposedly re-used number. Petitioner instead just tossed this allegation out there, asked the Court to make the United States disprove it, and demanded his return to the country while the matter gets sorted out. It is illogical to jump from the hearsay and insinuation that defines Petitioner's affidavit, which cannot be accepted for its truth, to a conclusion that the travel document Ghana issued (and on which Petitioner traveled and was admitted to Ghana) was fabricated by ICE to evade this Court's review of the habeas petition.[4]

Petitioner should not be allowed to use these allegations to achieve habeas relief on a claim that is moot or to conduct a fishing expedition on an entirely new claim. Petitioner's motion for an evidentiary hearing and return and release puts the cart before the horse. He has provided no authority for the extraordinary relief he seeks in this motion. These new allegations read as a fraud claim against the agency, without the requirement for identifying a statutory basis for the claim or any indication that he attempted to meet the heightened pleading standard for fraud. Fed. R. Civ. P. 8. This Court should reject Petitioner's motion.

[4] A similar claim was characterized by the District of Arizona as speculative, even though counsel had at least attempted to investigate by making FOIA requests and contacting the consulate before filing their claim. Ultimately the claim was mooted for different reasons.

III. CONCLUSION

The United States respectfully requests that this Court deny Petitioner's motion for an evidentiary hearing. Because this motion is non-dispositive, the United States requests that the Court consider the motion fully briefed and deny any request by Petitioner to reply.

Respectfully submitted,

Dated: October 14, 2025

DANIEL N. ROSEN
United States Attorney

s/ Ana H. Voss

BY: ANA H. VOSS
Assistant United States Attorney
Attorney ID Number 483656DC
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600
Ana.voss@usdoj.gov