UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZHI MING ZHANG, Petitioner, v. KENNETH GENALO, *et al.*, Respondents.	No. 25 Civ. 8772 (JPO)

RESPONDENTS' AMENDED[1] MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

JAY CLAYTON
United States Attorney
Southern District of New York
86 Chambers St., 3rd Floor
New York, New York 10007
Telephone: 212-637-2711
Attorney for Respondents

MELISSA A. CHILDS
Assistant United States Attorney
Of Counsel

[1] The Table of Authorities has been corrected from the previous filing (Dkt. 16).

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE(s)**

STATUTES

REGULATIONS

The Government respectfully submits this memorandum of law in opposition to the petition for writ of habeas corpus ("Pet."), filed by petitioner Zhi Ming Zhang ("Zhang") on October 23, 2025 (Dkt. 1).

PRELIMINARY STATEMENT

Zhang is a native and citizen of the People's Republic of China who has been subject to a final removal order since January 1998 after undergoing full review by the judicial system. On February 27, 2025, Zhang was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") upon revocation of his Order of Supervision ("OSUP") pursuant to Immigration and Nationality Act ("INA") § 241(a), 8 U.S.C. § 1231(a), so that ICE could execute his removal order. Zhang was subsequently taken into criminal custody by the U.S. Marshals Service in June 2025 for criminal proceedings in the Eastern District of New York. Upon release by the Marshals, ICE took Zhang back into custody on October 23, 2025. He remains detained while ICE seeks to execute his final removal order.

In his petition, Zhang seeks to challenge ICE's discretionary decision to detain him to execute his removal order. Zhang claims that he is being unconstitutionally detained without notice or opportunity to be heard, on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules. On this basis, he is requesting that this Court declare his detention unlawful and order his release pending removal. However, Zhang is not entitled to the relief he seeks. First, district courts lack jurisdiction over any claim arising from ICE's decision to execute final orders of removal, and therefore, cannot stay removal or order release under these circumstances. Even if Zhang could overcome this jurisdictional bar, his claim would fail on the merits. Detention for the purpose of executing a final order of removal is constitutional and statutorily authorized, and ICE properly exercised its discretion to detain Zhang

for that purpose. ICE is diligently pursuing removal and will remove Zhang as soon as travel documents are available. Because his removal is expected to occur in the near future, Zhang's detention pending removal is lawful.

For these reasons, as detailed further below, this Court should deny the petition for writ of habeas corpus.

BACKGROUND

I. PROCEDURAL HISTORY

Zhang is a noncitizen detained by ICE. On October 23, 2025, Zhang initiated this action by filing a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 ("Pet.") (Dkt. 1). Zhang seeks an order enjoining his removal or transfer outside the jurisdiction of this Court, a declaratory judgment that his detention is unlawful, and an order for his immediate release. *Id.*

II. FACTUAL BACKGROUND

Zhang is a citizen of China who unlawfully entered the United States in 1992; he was not inspected by an Immigration Officer upon entry. Declaration of Rocco Kish dated November 6, 2025 ("Kish Decl."), ¶ 3 (Dkt. 15). After nearly two years in the United States, on March 25, 1994, Zhang filed a Request for Asylum with the former U.S. Immigration and Naturalization Service ("INS"). Kish Decl. ¶ 4. Seven months later, on August 30, 1994, INS notified Zhang that it intended to deny his asylum application because he was not credible. The notice advised Zhang that the INS intended to seek an advisory opinion on his application from the U.S. Department of State. Kish Decl. ¶ 5.

On February 14, 1997, the INS informed Zhang that it denied his asylum application and issued a Form I-221, Notice to Show Cause, which ordered him to appear for an initial hearing before an Immigration Judge ("IJ") at 26 Federal Plaza, New York, New York on July 23, 1997.

At that hearing, the IJ scheduled Zhang's merits hearing for 9 a.m. on January 26, 1998. Kish Decl. ¶ 6. Zhang failed to appear for his hearing on January 26, 1998, and the IJ ordered him deported in absentia. Kish Decl. ¶ 7.

Zhang filed a Motion to Reopen his proceedings with the Immigration Court, which the IJ denied. Kish Decl. ¶ 10. Zhang appealed the determination to the Board of Immigration Appeals ("BIA"), which dismissed his appeal. Kish Decl. ¶ 10. Zhang filed a second Motion to Reopen and Stay of Deportation with the BIA, which it again denied. Kish Decl. ¶ 11. Zhang filed a Petition for Review ("PFR") with the U.S. Court of Appeals for the Second Circuit, Docket No. 09-0813, and the Second Circuit dismissed his PFR on October 1, 2010. Kish Decl. ¶ 12.

On April 12, 2012, ICE's NYC Fugitive Operations arrested Zhang pursuant to a Warrant of Removal, as deportable under INA § 241(a)(1)(B) because he had been ordered deported in proceedings commenced before April 1, 1997 under INA § 242. Kish Decl. ¶ 13. Following Zhang's arrest, he was transported to 26 Federal Plaza for processing, then detained by ICE at Delaney Hall Detention Facility in Newark, New Jersey, pending removal. *Id.* Two weeks after his arrest, Zhang filed an Application for Stay of Removal, Form I-246 and deferred action on his deportation. Kish Decl. ¶ 14. On May 11, 2012, ICE granted Zhang a Stay of Removal for six months. *Id.* ICE obtained a valid travel document from the consulate of China for Zhang's deportation, which was valid for only three months, but his travel was put on hold because of the grant of the Stay of Removal. Kish Decl. ¶ 16.

On May 14, 2012, ICE subsequently released Zhang from custody on an Order of Supervision ("OSUP"). Kish Decl. ¶ 15. Pursuant to the OSUP, ICE permitted Zhang to remain out of ICE custody provided that he complied with certain conditions, including to avoid committing any crimes, to refrain from associating with known gang members, criminal associates,

or "be associated with any such activity" and to periodically report to ICE in person as directed.[2] *Id.* The OSUP further warned Zhang that any violation of the conditions "may result in you being taken into Service custody and you being criminally prosecuted." *Id.* Before the OSUP was due to expire, in October 2013, Zhang requested a one-year extension of the Stay of Removal because he had two U.S. citizen children for whom he alleged he was the sole provider, while he cared for his U.S. citizen mother, and he owned two properties here. Kish Decl. ¶ 17. On December 18, 2013, ICE denied Zhang's request to further stay his removal because he failed to comply with producing travel documents. *Id.* Six months later, in June 2014, Zhang again requested deferral of his removal as the sole provider for his wife and children. Kish Decl. ¶ 18.

After the OSUP had warned Zhang against committing crimes, on March 1, 2016, he was charged in Kings County Criminal Court with driving while intoxicated under NYVTL § 1192 (03), driving while impaired under NYVTL § 1192 (01), refusal to take a breath test under NYVTL § 1194, and a windshield equipment violation under VTL § 0375 (12A1). Kish Decl. ¶ 19. Zhang pleaded guilty to reckless driving under NYVTL § 1212 and received a conditional discharge and a $150 fine.[3] *Id.* On August 8, 2018, a grand jury in the U.S. District Court for the Eastern District of New York ("EDNY") indicted Zhang (also known by six alias names) and multiple codefendants with Conspiracy to Traffic in Counterfeit Goods and Attempted Smuggling in violation of 18 U.S.C. §§ 2320(a), 371, 545 ("the Federal Criminal Case"). Kish Decl. ¶ 20.

---

[2] Zhang's criminal history prior to the OSUP included multiple charges in August 2000, including grand larceny under NYPL §155.30 and aggravated harassment under NYPL § 240.30 (02), to which he pleaded guilty to the lesser charge of criminal mischief under NYPL § 145.00 and received a one-year conditional discharge and a $120 fine. Kish Decl. ¶¶ 8-9.

[3] Driving under the influence is a significant adverse consideration in determining whether a respondent is a danger to the community in bond proceedings. *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018).

On August 16, 2018, agents of the Department of Homeland Security Investigations ("HSI") and the New York Police Department arrested Zhang at a vehicle stop in Kearney, New Jersey, based on a federal warrant issued pursuant to the EDNY indictment. Kish Decl. ¶ 21. ICE recorded Zhang's Chinese passport number as G12101398, and he was later released and granted deferred action on his removal until 2023 due to EDNY's pending criminal action. *Id.* On February 7, 2019, pursuant to a plea agreement, Zhang was convicted of two federal felonies, namely Conspiracy to Traffic in Counterfeit Goods and Attempted Smuggling in violation of 18 U.S.C. §§ 2320(a), 545, for which the criminal monetary penalties included a forfeiture money judgment in the amount of $1,030.000 representing the proceeds of his crimes. Kish Decl. ¶ 22. EDNY released Zhang on bond pending sentencing in the Federal Criminal Case. *Id.*

Zhang was detained by ICE on February 27, 2025, to effectuate his long-outstanding removal order. Kish Decl. ¶ 24. After he was detained, Petitioner was served with a Warrant of Removal/Deportation (Form I-205), Warning to Alien Ordered Removed or Deported (Form I-294), Notice of Custody Determination (Form I-286), and Notice of Revocation of Order of Supervision (Form I-200) signed by Assistant Field Officer Darius Robinson, and Detainee Locator Notice informing him of ICE's intent to remove him and providing the reasons for the revocation of his OSUP. *Id.* In accordance with ICE's 2021 Civil Immigration Enforcement Priorities ("CIEP"), pursuant to Executive Order 13993, and the prioritization of detention and removal of aliens with final orders of removal and criminal histories, Zhang's detention followed ICE review of his file, including review of his multiple criminal arrests and convictions, verbal confirmation from HSI that his Deferred Action status had ended in 2023. *Id.* ICE provided Consular Notice of Zhang's detention to the People's Republic of China. *Id.*

While in ICE custody, on March 2, 2025, Zhang was transferred to the Buffalo Service Processing Center in Batavia, New York. Kish Decl. ¶ 25. On March 9, 2025, he was transferred to the IAH Polk Adult Detention Center in Livingston, Texas. Kish Decl. ¶ 26. On March 17, 2025, he was transferred to Joe Corley Processing Center in Conroe, Texas. Kish Decl. ¶ 27.

On April 7, 2025, EDNY issued a warrant for Zhang's arrest to appear for sentencing in the Federal Criminal Case. Kish Decl. ¶ 28. ICE transferred Zhang to the custody of U.S. Marshals Service ("USMS") on June 22, 2025, and he was detained at the Bureau of Prisons in Brooklyn, New York, pending adjudication of his criminal case. Kish Decl. ¶ 29. On October 23, 2025, upon his 2019 convictions for Conspiracy to Traffic in Counterfeit Goods and Attempted Smuggling, the Honorable Brian M. Cogan, U.S District Judge for the Eastern District of New York, sentenced Zhang to time-served, two years of supervised release, and ordered him to pay a $200 special assessment, $151,261 in restitution, and a $1,030,00 forfeiture money judgment. Kish Decl. ¶ 30. On October 23, 2025, the USMS released Zhang to ICE custody, and he was transported to Elizabeth Contract Detention Facility in Elizabeth, New Jersey, where he remains detained. Kish Decl. ¶ 31.

On November 4, 2025, Zhang completed identification verification documents required by ICE and the Consulate of China to obtain travel documents, which have been submitted to an ICE contractor for translation into English and further ICE review. Kish Decl. ¶ 32. According to the Deportation Officer, ICE is actively engaged in the process of gathering Zhang's information to obtain current travel documents to secure his removal to China. *Id.*

III. DETENTION AUTHORITY

Pursuant to 8 U.S.C. § 1231, ICE has authority to detain an alien subject to a final removal order. 8 U.S.C. § 1231(a). *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580–82 (2022) ("8

U.S.C. § 1231(a), governs the detention, release, and removal of individuals 'ordered removed.'"); *accord 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 considered final upon the earlier of "(i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals. 8 US.C. § 1101(a)(47)(B). *Chupina v. Holder*, 570 F.3d 99, 103 (2d Cir. 2009) (citing § 1101(a)(47)(B) to conclude that [a]n 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.").

Section 1231 establishes a 90-day "removal period" within which the government must generally secure removal after a removal order becomes final, and during which the government "shall" detain the alien until such removal. *See* 8 U.S.C. §§ 1231(a)(1)(A), (a)(2). When the government is unable to secure removal within the removal period, while detention is no longer mandatory, the government "may" continue to detain four categories of aliens: (1) inadmissible aliens, (2) aliens who are removable for national-security or foreign-policy reasons or for violating entry conditions, status requirements, or certain criminal laws, (3) aliens who pose a "risk to the community," and (4) aliens who are "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6). Aliens who fall outside those categories (or who fall within them but are not detained) are subject to supervision upon release. 8 U.S.C. § 1231(a)(3)&(6).

The Supreme Court addressed ICE's authority to detain aliens after their removal orders become final in *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the Court held that 8 U.S.C. § 1231(a) authorizes immigration detention for a period reasonably necessary to accomplish the alien's removal from the United States. 533 U.S. at 699-700. The Supreme Court recognized six

months as a presumptively reasonable period of time to allow the government to accomplish an alien's removal. *Id.* at 701. However, the Court did not require the government to release every alien whose detention exceeds six months. Rather, the Court held:

> After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as "reasonably foreseeable future" conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Id. (emphasis added).[4] Thus, the Supreme Court placed the initial burden on the alien. *Id.* If the alien fails to meet that burden, or if the government rebuts the alien's showing, then continued detention is permissible. *Id.*

Pursuant to the relevant regulations, ICE "shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section." 8 C.F.R. § 241.4(*l*)(2). The regulation permits ICE to exercise its discretion to revoke release when, in the opinion of the revoking official: "(i) the purposes of release have been served; (ii) the alien violates any condition of release; (iii) it is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." *Id.*

---

[4] In *Zadvydas*, the concern of "indefinite detention" arose where the petitioners could not be removed from the United States because their home countries would not accept their repatriation, yet the government continued to detain them. *See Zadvydas*, 533 U.S. at 684-86. But "indefinite" does not merely mean of uncertain duration; 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).

The regulation does not require advance notice prior to revoking an alien's release pursuant to section 241.4(*l*)(2).[5]

ICE utilizes different review procedures in instances where an alien subject to a final removal order has "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). In those circumstances, ICE may choose to release an alien subject to "appropriate conditions of supervision." 8 C.F.R. § 241.13(g)(1). ICE "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." 8 C.F.R. § 241.13(i)(2). ICE may also, 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)).

ARGUMENT

The Court should deny the petition for writ of habeas corpus because ICE has lawfully detained Zhang for the purpose of executing his valid, final order of removal. Zhang's removal is reasonably foreseeable, and his detention arising from efforts to execute his removal order does not violate due process.

---

[5] In contrast, an alien whose release is revoked due to violations of the terms of the conditions of release under section 241.4(*l*)(1) must be notified at the time of revocation of the reasons for revocation, and must be afforded an initial interview "promptly after his or her return to Service custody" to respond to the reasons stated in the notification. 8 C.F.R. § 241.4(*l*)(1).

I. THE COURT LACKS JURISDICTION TO HEAR ANY CLAIM ARISING FROM THE DECISION TO EXECUTE THE FINAL REMOVAL ORDER

Zhang asks this Court to "assume jurisdiction over this matter," enjoin his removal or transfer outside the jurisdiction of this Court, enter a declaratory judgment that his detention is unlawful, and order his immediate release (which would effectively operate as a stay of removal). He challenges his detention on the grounds that it violates the substantive and procedural due process afforded to him by the Fifth Amendment of the United States Constitution,[6] the Administrative Procedure Act ("APA"),[7] and the *Accardi* Doctrine.[8] Pet. at 3, ¶ 8. Zhang thus seeks an order restraining the Government's ability to execute his removal order, and thus they are barred by the jurisdiction stripping provisions of 8 U.S.C. § 1252. Specifically, Zhang's claims are barred by 8 U.S.C. §§ 1252(a)(5) and (b)(9), which deprive this Court of jurisdiction to review actions taken or proceedings brought to remove aliens from the United States, and channel such challenges to the courts of appeals, and § 1252(g), which deprives this Court of jurisdiction to review claims arising from the decision or action to "execute removal orders."[9]

By its plain terms, 8 U.S.C. § 1252(g) eliminates district court jurisdiction over challenges to the execution of removal orders. Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien

---

[6] First and Second Claims for Relief. Pet. 14-15, ¶¶ 52-63.

[7] Third, Fourth, and Fifth Claims for Relief. Pet. 16-20, ¶¶ 64-89.

[8] Seventh Claim for Relief. Pet. 21, ¶¶ 93-96.

[9] 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.").

arising from the decision or action by [the Secretary of Homeland Security] to [1] commence proceedings, [2] adjudicate cases, or [3] *execute removal orders against any alien* under this chapter."[10] *Id.* (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 [mandamus] and 1651 [All Writs Act] of such title." Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under § 2241 (as well as review pursuant to the All Writs Act and APA) of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525 U.S. 471, 482 (1999).

Every circuit court of appeals to address this issue had held that § 1252(g) eliminates subject matter jurisdiction over habeas challenges, including 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) (holding that it lacked jurisdiction over alien's habeas challenge to the exercise of discretion to execute his removal order); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order."); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide *whether* to execute a removal

[10] The Attorney General once exercised all of that authority, but much of that authority has been transferred to the Secretary of Homeland Security. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005). Many of the Immigration and Nationality Act's ("INA"), 8 U.S.C. § 1101 *et seq.*, references to the Attorney General are now understood to refer to the Secretary. *Id.*

order includes the discretion to decide *when* to do it" and that "[b]oth are covered by the statute"); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (§ 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "*any* cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim"); *Elgharib v. Napolitano*, 600 F.3d 597, 602 (6th Cir. 2010) ("[A] natural reading of 'any other provision of law (statutory or nonstatutory)' includes the U.S. Constitution." (quoting 8 U.S.C. § 1252(g))); *see also Duamutef v. INS*, 386 F.3d 172, 181-82 & n.8 (2d Cir. 2004) (holding that district court lacked mandamus jurisdiction due to § 1252(g) to compel ICE to take custody over state prisoner and execute final removal order, but declining to address whether § 1252(g) barred habeas claims); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims).

The Second Circuit has similarly held in unpublished decisions that 8 U.S.C. § 1252(g), by its terms, strips district courts of jurisdiction over habeas claims arising from the execution of removal orders. *See, e.g.*, *Troy as Next Friend Zhang v. Barr*, 822 F. App'x 38, 39-40 (2d Cir. 2020) (affirming that 8 U.S.C. § 1252(g) barred district court jurisdiction over habeas petition seeking a stay of removal, which "is a request to delay the execution of a removal order," noting that petitioner's "request for a stay was outside the [district] court's jurisdiction"); *Singh v. Napolitano*, 500 F. App'x 50, 52 (2d Cir. 2012) (holding that attempt to "employ[] a habeas petition effectively to challenge the validity and execution of [a] removal order," even "indirectly," is "jurisdictionally barred"). And in its vacated decision in *Ragbir v. Homan*, the Second Circuit held that where the government "unquestionably ha[s] statutory authority to execute [an alien's] final order of removal," a habeas challenge to that decision, including a constitutional challenge,

falls squarely within the scope of § 1252(g). 923 F.3d 53, 64-66 (2d Cir. 2019), *cert. granted, judgment vacated sub nom. Pham v. Ragbir*, 141 S. Ct. 227 (2020); *see also, e.g.*, *Yearwood v. Barr*, 391 F. Supp. 3d 255, 263 (S.D.N.Y. 2019) ("[B]y 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.").

Additionally, 8 U.S.C. §§ 1252(a)(5) & (b)(9) deprive this Court of jurisdiction to grant Zhang's requested relief. Section 1252(b)(9) provides that "[j]udicial review of *all questions of law and fact*, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphases added). By law, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). Congress thus divested district courts of jurisdiction over such matters and vested review in only the courts of appeals. *Id.*; *see also Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (the REAL ID Act "clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals."). These provisions sweep more broadly than § 1252(g). *See AADC*, 525 U.S. at 483.

Indeed, in *Delgado v. Quarantillo*, the Second Circuit held that the REAL ID Act divests district courts of jurisdiction to review both direct and indirect challenges to removal orders. 643 F.3d 52, 55 (2d Cir. 2011). Only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction. *Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009). Although a "suit brought against immigration authorities is not *per se* a challenge

to a removal order" that becomes jurisdictionally defective, a claim that amounts to an "indirect challenge" to a removal order is barred by § 1252, and the distinction between the two "will turn on the substance of the relief that a plaintiff is seeking." *Delgado*, 643 F.3d at 55. In *Delgado*, the Second Circuit held that the REAL ID Act divests district courts of jurisdiction to review even indirect challenges to removal orders.[11] *Id.*

Zhang has been subject to a final order of removal for decades, having fully exhausted his appeal rights to the BIA and the Court of Appeals for the Second Circuit. ICE has made the

---

[11] Judges in this district have repeatedly applied *Delgado* to preclude district courts from exercising jurisdiction in cases where aliens have moved to stay their removal. *See, e.g.*, *Ceesay v. Bondi*, No. 25 Civ. 3716 (JSR), 2025 WL 1435615, at *2 (S.D.N.Y. May 16, 2025) (denying TRO, noting that "it is likely the Court lacks jurisdiction to grant the requested relief," applying *Delgado* and noting that the petitioner "fails to meaningfully engage with the *substance* of the relief that he requests, which would require the Court to interfere with the execution of a lawful order of removal"); *Ramos de la Rosa v. DHS*, No. 20 Civ. 10038 (LGS) (SLC), 2021 WL 11690844, at *7 (S.D.N.Y. Apr. 30, 2021), *report and recommendation adopted*, 2021 WL 11690819 (S.D.N.Y. May 18, 2021) ("[T]o the extent that Ramos' Petition seeks a stay of his removal pending resolution of his Motion to Reopen in the Houston Immigration Court, such 'a request for a stay of removal constitutes a challenge to a removal order, and [ ] accordingly district courts lack jurisdiction to grant such relief.'"); *Sean B. v. Wolf*, No. 20 Civ. 550 (JGK), 2020 WL 1819897, at *2 (S.D.N.Y. Apr. 10, 2020) (dismissing habeas petition for lack of jurisdiction pursuant to INA jurisdiction-stripping provisions, noting that, "[a]lthough the petitioner argues that he seeks not to nullify, but to stay, a removal order to protect his due process rights, a stay would render the removal order invalid and is an indirect challenge to the removal order"); *Asylum Seeker Advocacy Project v. Barr*, 409 F. Supp. 3d 221, 224-27 (S.D.N.Y. 2019) (dismissing for lack of jurisdiction action seeking in-person hearings before aliens subject to *in absentia* removal orders could be removed, effectively staying removal until such hearings are provided); *Li v. Barr*, No. 19 Civ. 5085 (PAE), 2019 WL 2610537, at *2 (S.D.N.Y. June 14, 2019) ("Regardless of the merits of Mr. Li's arguments to the BIA, . . . the Court concludes that it does not have jurisdiction over his motion to stay his removal[.]"); *Vidhja v. Whitaker*, No. 19 Civ. 613 (PGG), 2019 WL 1090369, at *3 (S.D.N.Y. Mar. 6, 2019) (concluding that district court lacked jurisdiction under § 1252(a)(5) and § 1252(g) to stay removal: "a request for a stay of removal constitutes a 'challenge to a removal order,' and . . . accordingly district courts lack jurisdiction to grant such relief"); *Lainez v. Osuna*, No. 17 Civ. 2278 (HBP), 2018 WL 1274896, at *5 (S.D.N.Y. Mar. 8, 2018), *aff'd* 809 F. App'x 40 (2d Cir. 2020) (denying request to stay removal for lack of jurisdiction); *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))

discretionary decision to execute that removal order at this time, and it has detained him in order to do so. As explained by Deportation Officer Kish, since USMS returned Zhang to ICE custody two weeks ago, ICE has been working to obtain travel documents for Zhang, who claims he lost his passport years ago. Kish Decl. ¶¶ 23, 32. ICE's efforts to obtain a travel document establish that Zhang's detention is in furtherance of his removal. His detention does not merely "aris[e] from" the decision to execute his removal order; it is part and parcel of the process. *Cf., e.g.*, *Yearwood v. Barr*, 391 F. Supp. 3d 255, 263 (S.D.N.Y. 2019) ("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"); *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)). Zhang's detention clams 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 while the Chinese Embassy works on ICE's request for a travel document for Zhang's removal.

For these reasons, Zhang's challenge to his detention for purposes of removal and request to be released from custody is an indirect, if not direct, request to stay removal, as the substance of that relief would prevent the government from executing his valid removal order. *See, 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) ("[T]he petitioner seeks an end to his detention, which was undertaken for the precise purpose of effectuating his existing removal orders, so that he may remain in the United States until such time as USCIS can resolve his 'pending' applications[.] . . .

Because such an outcome would effectively operate as a stay of removal pending adjudication of the petitioner's applications," § 1252 strips jurisdiction over the matter.); ***CF. SINGH V. NAPOLITANO***, 500 F. App'x 50, 52 (2d Cir. 2012) (concluding that the petitioner was "challeng[ing] the validity and execution of his removal order" by "assert[ing] that his custody pursuant to a final order of removal is illegal because he was granted asylum, a status precluding removal from the United States").

II. THE CHALLENGES TO DETENTION FAIL ON THE MERITS

Even apart from the jurisdictional bars, Zhang's claims fail on the merits. His detention for the purpose of executing a valid, final removal order, complies with all applicable statutes and regulations. Zhang mistakenly claims that ICE revoked his OSUP without any notice, reasons for the revocation, or opportunity to be heard. Pet. At 8, ¶ 30. He also erroneously alleges that the ICE official who revoked his OSUP lacked authority to do so. *Id.* None of the facts in the record prevent ICE from detaining and removing Zhang.

First, it is well-established that an alien has no entitlement, and therefore no protected liberty interest, in discretionary relief from the immigration laws. *See, e.g.*, *Yuen Jin v. Mukasey*, 538 F.3d 143, 156-57 (2d Cir. 2008) (holding that aliens have no "liberty or property interest in asylum that warrants Fifth Amendment protection," as such relief is discretionary); *Rojas-Reyes v. INS*, 235 F.3d 115, 125-26 (2d Cir. 2000) (holding that alien did not have constitutional right to be considered for the discretionary relief of cancellation of removal); *see also Matias v. Sessions*, 871 F.3d 65, 72 (1st Cir. 2017) (holding that, because BIA's exercise of its sua sponte authority was purely discretionary, there could be no due process violation in the denial of such relief); *Assaad v. Ashcroft*, 378 F.3d 471, 475-76 (5th Cir. 2004) (holding that there could be no due process violation from the failure to be considered for discretionary waiver of removability); *Smith*

v. Ashcroft, 295 F.3d 425, 429-30 (4th Cir. 2002) ("[T]he discretionary right to suspension of deportation does not give rise to a liberty or property interest protected by the Due Process Clause."); *Oguejiofor v. Attorney General of the United States*, 277 F.3d 1305, 1309 (11th Cir. 2002) ("[A]n alien has no constitutionally protected right to discretionary relief or to be eligible for discretionary relief."); *Ashki v. INS*, 233 F.3d 913, 921 (6th Cir. 2000) ("Ashki has no constitutionally-protected liberty interest in obtaining discretionary relief from deportation."); *Appiah v. INS*, 202 F.3d 704, 709 (4th Cir. 2000) ("Because suspension of deportation is discretionary, it does not create a protectible liberty or property interest.").

The above principles apply in the context of discretionary relief from detention granted by government officials for aliens subject to final orders of removal. ICE's authority to issue or revoke OSUPs is discretionary. *See, e.g.*, *Jianmei Lin v. Borgen*, No. 25-CV-05618 (MMG), 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025) (describing ICE's authority make determinations regarding OSUPs as a "wholly discretionary act"). Indeed, the regulations governing revocation of release establish the discretionary nature of an alien's release from detention. ICE regulations authorize ICE to revoke the release of an alien and return him to custody "in the exercise of discretion," whenever the relevant official determines that there is "any . . . circumstance[]" that "indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2). Such a regulatory scheme does not confer an enforceable entitlement upon any alien to a continuation of their release from detention, except as required to comply with the constitutional limitations set forth in *Zadvydas*. In short, an alien who has "been adjudicated removable and ordered deported, and who has nevertheless remained in the country illegally for several years, does not have a liberty or property interest in a discretionary grant" of relief from removal. *Yuen Jin*, 538 F.3d at 157. An

OSUP does not shield an alien who is subject to a final removal order from being removed. As such, Petitioner cannot articulate a protected liberty interest.

Second, it is indisputable that the immigration laws authorize ICE to detain aliens subject to final orders of removal for purposes of executing those orders, and that such detention is constitutional. As explained above, the Supreme Court held that aliens subject to final removal orders may be detained for as long as is "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. The Court concluded that six months was a presumptively reasonable period of time for detention in order to execute a removal order. *Id.* at 701. While it found that this six-month period was presumptively reasonable, the "6-month presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* An alien challenging their post-removal-order detention bears the initial burden of "providing good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," after which "the Government must respond with evidence sufficient to rebut that showing." *Id.* Here, while any *Zadvydas* claim is premature given that Zhang has not yet been detained for six months, any such claim fails because Zhang has not met his initial burden. But even if he did, the Government rebuts it here. Since USMS released Zhang to ICE custody two weeks ago, ICE has been working to obtain travel documents for Zhang's removal. Kish Decl. ¶¶ 30-32. As noted above, ICE had previously obtained travel documents for Zhang that lapsed during a stay of removal that is no longer in effect, has recently secured the information it needs to complete an application for new travel documents, and is currently working toward submitting the application to the Embassy of the People's Republic of China. Once ICE obtains the requested travel document, it can effectuate the removal order. *Id.* ¶¶ 32-34. *Guangzu Zheng v. Decker*, 618 F. App'x 26, 28 (2d Cir. 2015) (affirming denial of habeas petition where

the Chinese government had issued a travel document valid for three months that lapsed during petitioner's stay of removal, holding that because China had previously issued a travel document, there was no reason to believe it would not do so again, thus petitioner had failed to demonstrate that there is no significant likelihood of removal in the reasonably foreseeable future (citing *Zadvydas*, 533 U.S. at 701)). Given that ICE is actively pursuing Zhang's removal and his removal is significantly likely to occur in the reasonably foreseeable future, Zhang's detention pending removal does not violate due process.

Third, ICE fully complied with its regulations in revoking Zhan's OSUP for the purpose of executing his removal order. Under section 241.4(*l*)(2), ICE has the "authority, in the exercise of discretion, to revoke release and return to [ICE] custody an alien previously approved for release under the procedures in this section." Zhang was served with a written notice of revocation that detailed the reasons for the revocation, and he received an opportunity to participate in an informal interview. Kish Decl. ¶ 24; Return Group Exhibit I (Dkt. 14). In doing so, ICE complied with the notice requirement of section 241.1(*l*)(1) even though the requirement did not apply in Zhang's case. As such, ICE acted within in statutory and regulatory authority when it detained Zhang for the purpose of effecting his removal. Since he has been in custody, ICE has interviewed Zhang to obtain information to complete an application for travel documents for repatriation to China. Kish Decl. ¶ 32. According to Deportation Officer Kish, ICE is actively working toward completing that application for submission to the Embassy of the People's Republic of China. *Id.* These actions are part and parcel of the process of effectuating Zhang's removal.

Also without merit is Zhang's claim the ICE official who revoked his OSUP lacked authority to do so. Assistant Field Office Director Darius Robinson revoked the OSUP. Kish Decl. ¶ 24. Supervision of aliens subject to final orders of removal after the 90-day removal period

is governed by regulations promulgated pursuant to 8 U.S.C. § 1231(a)(3). Under the regulation at issue here, 8 C.F.R. § 241.4(*l*)(2), the "Executive Associate Commissioner[12] shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section." The authority to make these custody determinations may be further delegated to "any person or persons (including a committee) designated in writing by the Executive Associate Commissioner." 8 C.F.R. § 241.4(c)(4). In accordance with these regulations, by order dated July 25, 2019, Executive Associate Director Nathalie R. Asher re-delegated her "Authority under INA § 241 [8 U.S.C. § 1231] and 8 C.F.R. Part 241, relating to warrants of removal, reinstatement of removal, self-removal, and release of aliens from detention" to, among others, Assistant Field Office Directors. ICE has consistently applied the delegation order to permit Assistant Field Office Directors to revoke OSUPs under 8 C.F.R. § 241.4(*l*)(2). Zhang's argument is without merit.

Fourth, Zhang purports to assert claims under the APA. Pet. at 16-20, ¶¶ 64-89. These claims are duplicative of the habeas claims, and fail for the reasons discussed above. They also fail because the APA does not apply here. First, the Supreme Court recently held that where the claims for relief, as here, "necessarily imply the invalidity of [the petitioner's] confinement," those claims "must be brought in habeas." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025) (cleaned up). Second, by the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Because habeas corpus is an "adequate remedy" through which Zhang can challenge his detention, the APA does not apply here.

---

[12] After the transfer of the functions of the former Immigration and Naturalization Service to the Department of Homeland Security and ICE, the "Executive Associate Commissioner" now refers to the "Executive Associate Director." *See* 8 C.F.R. § 1.2.

Lastly, and relatedly, Zhang likewise fails to assert a valid claim under *Accardi*. Pet. 21-23, ¶¶ 93-96. "*Accardi* and its progeny teach generally that federal agencies are required to follow their own regulations and some other formally adopted procedures, including those that govern exercises of an agency's discretion." *Diaz v. Rosen*, 986 F.3d 687, 690 (7th Cir. 2021). However, the *Accardi* doctrine is a principle governing review of agency action, not an independent cause of action. *See, e.g.*, *Velesaca v. Decker*, 458 F. Supp. 3d 224, 236 (S.D.N.Y. 2020) (noting that, "[w]hen agencies fail to [follow their own regulations], the APA (as developed by case law) gives aggrieved parties a cause of action to enforce compliance" (citing *Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020))). Rather, to bring a cause of action based on *Accardi*, Zhang must satisfy the requirements of the APA. *Id.*; *see also Tendo v. U.S.*, Case No. 2:23-cv-438, 2024 WL 3650462, at *13 (D. Vt. (Aug. 5, 2024) ("Because actions alleging violation of the *Accardi* principle are based upon the APA, they must challenge a "final agency action."); *Damus v. Nelson,* 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (collecting cases for the proposition that *Accardi* claims are actionable under the APA). Construed as an additional APA claim (or habeas claim), Zhang's *Accardi* claim fails for the same reasons discussed above.

CONCLUSION

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

Dated: New York, New York
November 7, 2025

Respectfully submitted,

JAY CLAYTON
United States Attorney

By: */s/ Melissa A. Childs*

MELISSA A. CHILDS
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: 212-637-2711
Email: melissa.childs@usdoj.gov