UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

E.J.C.C., a minor, by and through his next friend and attorney, Beth Baltimore,

Petitioner,

v.

WILLIAM JOYCE, *et al.*,

Respondents.

Case No. 25 Civ. 8805 (CS)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

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The Government respectfully submits this memorandum of law in opposition to the amended petition for writ of habeas corpus, ECF No. 7 ("Pet."), filed by petitioner E.J.C.C. ("Petitioner") on October 27, 2025.

PRELIMINARY STATEMENT

Petitioner is a native and citizen of Ecuador who has been subject to a final removal order since February 28, 2024. On October 23, 2025, U.S. Immigration and Customs Enforcement ("ICE") took Petitioner into custody, administered by the Office of Refugee Resettlement ("ORR") while ICE seeks to execute his removal order. During such time, Petitioner's detention is authorized by 8 U.S.C. § 1231(a). In his petition, Petitioner argues that he should be ordered released because (1) he has been granted Special Immigrant Juvenile Status ("SIJ status" or "SIJS"), (2) his removal is not reasonably foreseeable, and (3) ORR has not made prompt efforts to place Petitioner with qualified family sponsors.

Petitioner's challenges are without merit. SIJ status provides a non-citizen with only the opportunity to apply to adjust status to become a lawful permanent resident ("LPR") but does not provide any legal protection against detention or deportation. Petitioner has a final order of removal, and it does not violate the Constitution to detain a non-citizen for the purpose of promptly executing a final order of removal. Furthermore, ORR is processing Petitioner's family member's sponsorship application in accordance with applicable laws and regulations. For these reasons, as detailed further below, this Court should deny the petition for writ of habeas corpus.

FACTUAL BACKGROUND

Petitioner is a citizen of Ecuador who unlawfully entered the United States in 2022. Declaration of Cindy Kim dated November 6, 2025 ("Kim Decl."), ¶¶ 3, 5. On July 20, 2023, Petitioner was served with a Notice to Appear ("NTA"), charging him with removability pursuant

to 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the U.S. without being admitted or paroled. Kim Decl. ¶ 13, Ex. 6. That NTA was subsequently served on the Executive Office for Immigration Review, thereby commencing removal proceedings against Petitioner. Kim Decl. ¶ 13.

On February 28, 2024, the Immigration Judge issued a written decision denying Petitioner's applications for asylum, withholding, and protection under the Convention Against Torture, and ordered him removed to Ecuador. Kim Decl. ¶ 17, Ex. 7. Petitioner never appealed the Immigration Court's Order of Removal, rendering Petitioner's removal order final. Kim Decl. ¶ 7.

On December 23, 2024, Petitioner filed a SIJ application with USCIS. Kim Decl. ¶ 18. On April 15, 2025, USCIS approved Petitioner's SIJ application, but did not grant deferred action. Kim Decl. ¶ 19, Ex. 8. Petitioner cannot adjust his status until his application is "current" with an available visa number, that is, the timeframe where immediate action in the application process can be taken. Kim Decl. ¶ 20. The November 2025 Visa Bulletin indicates that SIJ applications filed on or before July 1, 2020 are current. Kim Decl. ¶ 20.

On October 23, 2025, Petitioner reported to ICE for a check-in, at which time ICE took him into custody given his final removal order. Kim Decl. ¶¶ 23, 24. Petitioner is currently in the custody of the Office of Refugee Resettlement ("ORR") at Catholic Guardian Services Crotona in the Bronx, New York. Kim Decl. ¶ 25; Declaration of Toby Biswas dated November 6, 2025 ("Biswas Decl.") ¶ 15. As of November 3, 2025, ORR had identified a potential sponsor for the child in the form of his uncle, Juan Yupa Camas and was moving forward with the process required for release of a child to a sponsor as described in the Unaccompanied Alien Children Program

Foundational Rule at 45 C.F.R. § 410 Subpart C – Releasing an Unaccompanied Child from ORR Custody. Biswas Decl. ¶ 16.

ICE is in possession of Petitioner's passport with an expiration date of October 25, 2032 and is prepared to effectuate the existing removal order. Kim Decl. ¶¶ 28, 29. To do so, ICE will prepare Petitioner for removal with ICE Air Charter, a process that will take less than one week and will involve transferring Petitioner out of ORR custody and to a local hotel in Louisiana for staging prior to removal. Kim Decl. ¶ 29. ICE routinely effectuates removals to Ecuador, and ICE is unaware of any impediments to effectuating Petitioner's removal to Ecuador, other than this Court's order staying removal during the pendency of these proceedings. Kim Decl. ¶ 30.

STATUTORY AND REGULATORY BACKGROUND REGARDING SPECIAL IMMIGRANT JUVENILE STATUS

When Congress enacted the Immigration and Nationality Act of 1990, it "included a new form of immigration relief for non-citizen children." *Budhathoki v. Nielsen*, 898 F.3d 504, 508 (5th Cir. 2018). Specifically, "Congress established SIJ status in 1990 in order to 'protect abused, neglected or abandoned children who, with their families, illegally entered the United States,' and it entrusted the review of SIJ petitions to USCIS, a component of DHS." *Osorio-Martinez v. Attorney General United States of America*, 893 F.3d 153, 163 (3d Cir. 2018) (quoting *Yeboah v. U.S. Dep't of Just.*, 345 F.3d 216, 221 (3d Cir. 2003)). To obtain SIJ status, a non-citizen must: (1) be under 21 years of age at the time of filing a petition for SIJ status; (2) be unmarried at the time of filing and adjudication; (3) be physically present in the United States; (4) be subject to a qualifying juvenile court order; and (5) "[o]btain[] consent from the Secretary of Homeland Security to classification as a special immigrant juvenile." 8 C.F.R. § 204.11(b); *see id.* § 204.11(c)-(d).

There are two primary benefits of SIJ status: The non-citizen becomes eligible for adjustment of immigration status to that of lawful permanent resident—a benefit within the federal government's discretion to confer—and certain statutory grounds of inadmissibility are waived or waivable in that context and with respect to deportability. *See* 8 U.S.C. §§ 1227(c), 1255(a), (h); *Reyes v. Cissna*, 737 F. App'x 140, 142 (4th Cir. 2018). Individuals with SIJ status can apply for adjustment of status if they are eligible, admissible, and—importantly—an immigrant visa is immediately available. 8 U.S.C. § 1255(a); 8 C.F.R. § 245.1(e)(3)(i). Congress, however, limited the number of immigrant visas annually available to non-citizens in the employment-based fourth preference category (E-4), which includes SIJs. 8 U.S.C. § 1153(b)(4). Consequently, because there are more SIJs than available immigrant visas, SIJs must wait, sometimes for years, before an immigrant visa is available, which is determined by the SIJ's priority date (i.e., the date when USCIS received their SIJ petition). *See* Dep't of State, November 2025 Visa Bulletin, Employment Based Preferences (Fourth), available at https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-november-2025.html.

Although the priority dates have retrogressed (meaning the priority date has moved back in time) the past three years due to a significant increase in SIJ petitions, Congress has not changed the adjustment-of-status process for SIJs or provided them any interim benefits. And while "[t]he SIJ program offers aliens a multitude of benefits and protections, including the opportunity to seek lawful permanent resident status," without an adjustment of status, "an SIJ designation does not strip the U.S. government of all removal powers." *See United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018).

On March 7, 2022, USCIS "update[ed] its policy guidance to provide that USCIS will consider granting deferred action on a case-by-case basis to noncitizens classified as SIJs who are ineligible to apply for adjustment of status solely due to unavailable immigrant visa numbers." Return Ex. 12. The policy guidance noted that "SIJ classification does not render a noncitizen lawfully present" nor does it "confer lawful status." *Id.* The policy guidance was not a new program that conferred any new benefit, but a process for considering discretionary grants of deferred action based on then-existing enforcement priorities.

On June 6, 2025, USCIS once again updated its policy guidance to "confirm[] that USCIS will no longer consider granting deferred action on a case-by-case basis to aliens classified as SIJs who are ineligible to apply for adjustment of status solely due to unavailable immigrant visas" and stated that the update "applies to aliens classified as SIJs before, on, or after" the date of the publication of the policy guidance. Return Ex. 13.

STATUTORY AND REGULATORY BACKGROUND REGARDING ORR CUSTODY

The statutory and regulatory framework governing the federal care and custody of Unaccompanied Alien Children ("UAC"), as well as their release and sponsorship, reflects congressional intent for ORR to "mak[e] placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status" that ensure UAC "are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity." 6 U.S.C. § 279(b)(1)(C) & (b)(2)(A)(ii). That framework balances the mandate that ORR protect UAC from harm with the requirement that ORR "promptly" place UAC "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A).

I. The Homeland Security Act of 2002 ("HSA")

In 2002, Congress enacted the HSA, Pub. L. No. 107-296, 116 Stat. 2135 (2002) (codified in relevant part at 6 U.S.C. § 279), abolishing the Immigration and Naturalization Service ("INS") and transferring the responsibility for the care and placement of UAC from INS to ORR. 6 U.S.C. §§ 279(a), (b)(1)(A), (g)(2).

The HSA defines a UAC as "a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2). Further, it assigns ORR broad authority over the care and custody of UAC while they are in federal custody due to their immigration status, including coordinating their care and placement, ensuring their best interests in custodial decisions and that they are protected from smugglers, traffickers, and others who might seek to victimize and exploit UAC. 6 U.S.C. § 279(b)(1)(A) & (b)(2)(A)(ii). These responsibilities are carried out through cooperative agreements and contracts with care providers under ORR policies and oversight. *See* 6 U.S.C. § 279(b)(1); 31 U.S.C. § 6305.

II. The Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA")

Congress enacted the TVPRA in 2008 to strengthen protections for UAC and support their safe repatriation or appropriate placement. The statute, consistent with the HSA, makes the Secretary of HHS responsible for the care and custody of UAC. 8 U.S.C. § 1232(b)(1). It also requires the HHS Secretary to make a determination that a sponsor "is capable of providing for the child's physical and mental well-being." 8 U.S.C. § 1232(c)(3)(A). This safety and suitability determination must "at a minimum, include verification of the custodian's identity and relationship

to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." *Id.* TVPRA requires ORR to prioritize the safety and well-being of UAC while in its care and upon release.

III. The Foundational Rule (2024)

In April 2024, ORR promulgated the Unaccompanied Children Program Foundational Rule, codified at 45 C.F.R. Part 410, to establish comprehensive regulations governing its UAC program. The Foundational Rule also implements provisions of the *Flores Settlement Agreement* ("FSA") relevant to ORR's care and custody of UAC and conditionally and partially terminated the FSA as to ORR in June 2024. Effective July 1, 2024, the Foundational Rule formalized previously informal procedures, including those related to ORR's release policies and practices.

The Foundational Rule provides that ORR identifies a standard program placement for the UAC upon notification from any federal department or agency that a child in its custody is an UAC and therefore must be transferred to ORR custody. 45 C.F.R. § 410.1101(b). ORR works with the referring federal government department or agency to accept transfer of custody of the UAC, consistent with the statutory requirements at 8 U.S.C. § 1232(b)(3) and 45 C.F.R. § 410.1101(c). ORR places each UAC in the least restrictive setting that is in the best interest of the child and appropriate to the unaccompanied child's age and individualized needs. 45 C.F.R. § 410.1103(a). ORR may place a child in a shelter facility, foster home or group home (which may be therapeutic), heightened supervision facility or secure facility (including residential treatment centers), or other care facility that can provide for their specific individualized needs, including an out-of-network ("OON") placement (which may be restrictive or non-restrictive). 45 C.F.R. § 410.1102; UAC Policy Guide § 1.2. ORR also considers several factors that are relevant to the UAC's placement,

including but not limited to: danger to self; danger to the community/others; runaway risk; trafficking in person or other safety concerns; age; and gender. 45 C.F.R. § 410.1103(b).

While the UAC remains in ORR custody, ORR seeks to release the UAC from its custody "[s]ubject to an assessment of sponsor suitability," 45 C.F.R. § 410.1201, which includes "verification of the potential sponsor's identity," 45 C.F.R. § 410.1202(b), "verification of the employment, income, or other information provided by the potential sponsor as evidence of the ability to support the child," 45 C.F.R. § 410.1202(c), and "[i]n all cases, ORR shall require background and criminal records checks," *id.*, which may include a criminal history check based on fingerprints. The Foundational Rule reinforces congressional intent articulated in the HSA and TVPRA that HHS ensure UAC protection from human traffickers and release UAC only to those sponsors capable of protecting their well-being. 45 C.F.R. § 410.1003.

IV. ORR Release Policies and Practices

To carry out its statutory mandate under the HSA and TVPRA, ORR has developed policies and procedures for identifying, and conducting suitability assessments of, potential sponsors. These procedures are generally set out in the ORR's publicly available UAC Bureau Policy Guide (UAC Policy Guide). *See* ORR Unaccompanied Alien Children Bureau Policy Guide, *available at* https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide. A full assessment of a potential sponsor's suitability is particularly appropriate because ORR is not a law or immigration enforcement agency and lacks the authority to hold individuals accountable by reassuming care if the sponsor abuses or neglects a child after a UAC has been released from ORR custody. Biswas Decl. ¶ 9. Rather, ORR only takes children into its custody upon referral by another federal agency, as described in statute. Biswas Decl. ¶ 9. In this regard, ORR is also very

different from state child welfare agencies, which typically retain such authority post-placement. Biswas Decl. ¶ 9. Accordingly, ORR must front-load child safety considerations in its identity verification and sponsor-vetting policies. Biswas Decl. ¶ 9.

In light of ORR's obligation to protect UAC from smugglers, traffickers, and others who may seek to victimize them, "safe and timely release . . . involves several steps, including: the identification of sponsors; sponsor application; interviews; the assessment (evaluation) of sponsor suitability, including verification of the sponsor's identity and relationship to the child (if any), background checks, and in some cases home studies; and post-release planning." UAC Policy Guide § 2.1; Biswas Decl. ¶ 10. There are four categories of potential sponsors: (1) Category 1, consisting of parents or legal guardians; (2) Category 2A, consisting of siblings, half-siblings, grandparents, immediate relatives (such as aunts, uncles, and cousins) who previously served as a primary caregiver, and other biological relatives and relatives through marriage; (3) Category 2B, consisting of immediate relatives (including biological relatives and relatives through marriage) who did not previously serve as a primary caregiver; (4) Category 3, consisting of other sponsors, such as distant relatives and unrelated adult individuals. UAC Policy Guide § 2.2.1; Biswas Decl. ¶ 10. ORR (through its care providers) conducts a suitability assessment of the potential sponsor, including a review of the sponsor's strengths, resources, risk factors, and special concerns within the context of each child's needs, strengths, resources, risk factors, and relationship to the sponsor. UAC Policy Guide §§ 2.2.2, 2.4; Biswas Decl. ¶ 12.

A potential sponsor must complete a Family Reunification Application ("FRA"), provide unexpired government-issued identification documentation for the sponsor and any other adults living in the household or identified in a sponsor care plan, and, along with any adult living in his

or her household, undergo a background check. UAC Policy Guide §§ 2.2.4, 2.5; Biswas Decl. ¶ 11. All potential sponsors must also submit proof of address, income, sponsor-child relationship, and criminal history documents (if applicable). UAC Policy Guide § 2.2.4; Biswas Decl. ¶ 11. Additionally, in certain circumstances a home study, which consists of interviews, a home visit, and a written report containing the home-study case worker's findings, is performed. UAC Policy Guide § 2.4.2; Biswas Decl. ¶ 12.

Once the assessment of the potential sponsor is complete, the care provider makes a release recommendation. UAC Policy Guide § 2.7; Biswas Decl. ¶ 13. The recommendation must take into consideration all relevant information, including the report and recommendations from a home study, if conducted, laws governing the process, and other facts in the case. Biswas Decl. ¶ 13. ORR makes the final release decision. UAC Policy Guide § 2.7; Biswas Decl. ¶ 13. Release decisions include: (1) approve release to sponsor; (2) approve release with post-release services; (3) conduct a home study before a final release decision; (4) deny release; or (5) remand for further information. UAC Policy Guide § 2.7; Biswas Decl. ¶ 13. ORR denies release if: (1) the potential sponsor is not willing or able to provide for the child's physical or mental well-being; (2) the potential sponsor is not willing to complete the mandatory fingerprint check; (3) the physical environment of the home presents a risk to the child's safety or well-being; or (4) release of the UAC would present a risk to him or herself, the sponsor, household, or community. UAC Policy Guide § 2.7.4; Biswas Decl. ¶ 13.

ARGUMENT

The Court should deny the petition for writ of habeas corpus because Petitioner's detention for the purpose of executing a valid final removal order and complies with all applicable statutes and regulations.

I. Petitioner's SIJ Status Does Not Prevent His Removal Nor Does Denying Deferred Removal Amount to a "*De Facto*" Revocation of his SIJ Status

As discussed above, the benefit of SIJ status is that eligible SIJs can apply for adjustment of status. 8 U.S.C. § 1255(a); 8 C.F.R. § 245.1(e)(3)(i). But in and of itself, SIJ status does not confer any legal right to remain in the United States nor any protections against removability. *See* Return Ex. 12 ("SIJ classification does not render a noncitizen lawfully present, does not confer lawful status, and does not result in eligibility to apply for employment authorization.").

In *Benito Vasquez v. Moniz*, a Massachusetts district court explicitly recognized that a petitioner's SIJ status "has no effect on ICE's statutory and regulatory authority to detain him." 788 F. Supp. 3d 177, 181 (D. Mass. 2025). It found that "federal courts have routinely recognized that SIJ status alone does not render an alien lawfully present in the country and thus does him to release, nor does it prevent the government from affecting his removal." *Id.* (citing *Granados-Alvarado*, 350 F. Supp. 3d at 357 and *D.M.S.C. v. Kelly*, No. 16 Civ. 5727, 2017 WL 3390234, at *5 (E.D. Pa. Aug. 7, 2017)). Similarly, the Third Circuit found that "the plain language" of 8 U.S.C. § 1255 "demonstrates that Petitioner is removable despite his SIJS." *Cortez-Amador v. Att'y Gen.*, 66 F.4th 429, 433 (3d Cir. 2023).[1]

In his petition, Petitioner claims that Respondents' attempt to remove him is a *de facto* revocation of his SIJ, Pet. ¶¶ 2, 76, 105, 109, and deprives him of his "interest in his SIJ status," Pet. ¶¶ 106, 107. But this fundamentally mischaracterizes the limited benefits that SIJ status

[1] Petitioner cites to *Osorio-Martinez v. U.S. Att'y Gen.*, 893 F.3d 153, 163 (3d Cir. 2018) in his petition. Pet. ¶¶ 43, 76, 77. However, in a subsequent Third Circuit decision, *Cortez-Amador*, the court explicitly distinguished its prior ruling in *Osorio-Martinez*, stating that "the Court did not hold SIJS recipients are exempt from removal due to inadmissibility, but only that Congress intended to provide SIJS recipients with an opportunity to pursue adjustment of status." 66 F.4th at 433 n.12.

provides, and the purported protections that it in fact does not. Petitioner continues to be an SIJ, and with that designation, may apply to adjust his status. But there are no statutory or regulatory impediments to his removal before Petitioner adjusts his status to become a lawful permanent resident.

II. This Court Lacks Jurisdiction to Stay Petitioner's Removal or Order Respondents to Grant Discretionary Deferred Action

In his habeas petition, Petitioner challenges execution of his 2024 final order of removal. *See* Pet. ¶ 75 (challenging Respondents' attempt to remove Petitioner pursuant to his final removal order). But this Court lacks jurisdiction notwithstanding any other law, including the APA and the Mandamus Act, to grant Plaintiff a stay of removal or otherwise entertain a collateral attack on his final removal order. *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"); *see also Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir. 2012) (noting lack of jurisdiction when claims were "repackaged" as APA claims).

"[A] request a for stay of removal constitutes a 'challenge to a removal order,' and . . . accordingly district courts lack jurisdiction to grant such relief." *Vidhja v. Whitaker*, 19 Civ. 613 (PGG), 2019 WL 1090369, at *3 (S.D.N.Y. Mar. 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 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 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). 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 title." 8 U.S.C. § 1252(g).

Every circuit court of appeals to address this issue had held that § 1252(g) eliminates subject matter jurisdiction over challenges, including constitutional claims, to ICE's decision to execute a final removal order. *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding that it lacked jurisdiction over noncitizen'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 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 that 8 U.S.C. § 1252(g), by its terms, strips district courts of jurisdiction over claims arising from the execution of removal orders. *See, e.g.*, *Troy ex rel. Zhang v. Barr*, 822 F. App'x 38, 39 (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"); *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" is "jurisdictionally barred").

This Court thus may not stay or enjoin the execution of Petitioner's final removal order. *See, e.g.*, *Lin v. Borgen*, No. 25 Civ. 5618 (MMG), 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025) ("[T]o the extent that the Petition "arises from [a] decision or action . . . to . . . execute [the] removal order[] against [Petitioner]," no court has jurisdiction to hear the Petition." (alterations in original) (quoting 8 U.S.C. § 1252(g))); *Turcio v. Noem*, No. 25 Civ. 5941 (MMG), 2025 WL 2124129, at *3 (S.D.N.Y. July 29, 2025) ("[N]umerous courts in this Circuit have held . . . that a request for a stay of removal constitutes a challenge to a removal order, and that accordingly district courts lack jurisdiction to grant such relief." (alterations in original) (quoting *Barros Anguisaca*, 393 F. Supp. 3d at 350; *Sean B. v. Wolf*, No. 20 Civ. 550 (JGK), 2020 WL 1819897, at *1 (S.D.N.Y. Apr. 10, 2020) ("Courts in the Second Circuit have consistently held that 8 U.S.C. §§ 1252(a)(5) and (g) strip district courts of jurisdiction over requests to stay removal."); *Vidhja*, 2019 WL 1090369, at *4 (section 1252(g) deprives the district court of jurisdiction to grant a stay of removal pending resolution of a motion to reopen); *Yearwood*, 391 F. Supp. 3d at 263–64 (finding direct challenge to removal order where motion challenged process by which petitioner had been ordered removed and holding that petitioner could not avoid jurisdictional bar by asserting APA claim); *cf. Asylum Seeker Advocacy Project v. Barr*, 409 F. Supp. 3d 221, 224–27 (S.D.N.Y. 2019) (no jurisdiction over claims seeking to enjoin removal).

The jurisdiction-stripping statute applies specifically to challenges to the executive's decision not to grant discretionary deferred action determinations. *See Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999) ("Section 1252(g) seems clearly

designed to give some measure of protection to 'no deferred action' decisions and similar discretionary determinations, providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed."); *Sanchez v. Gonzales*, 161 F. App'x 710, 710 (9th Cir. 2006) ("We lack jurisdiction to review the Department of Homeland Security's discretionary decision to place Villegas Sanchez in removal proceedings instead of granting her deferred action."); *McCloskey v. Keisler*, 248 F. App'x 915, 917 (10th Cir. 2007) ("The Government argues that we lack jurisdiction to review Ms. McCloskey's petition because the essence of her challenge is ICE's refusal to continue deferring her removal. We agree.").

As Petitioner admits, he has a final order of removal for which he did not seek an appeal. Pet. ¶ 25; Kim Decl.¶ 17, Ex. 7. And since Petitioner's petition for SIJ status was approved, Petitioner has not filed a motion to reopen his immigration case with the Board of Immigration Appeals. Kim Decl.¶ 17; *see* 8 C.F.R. § 1003.2(a) ("The Board may at any time reopen or reconsider on its own motion any case in which it has rendered a decision.").[2] Because this Court

[2] Even if Petitioner were to move to reopen his case, a pending motion to reopen is not a basis to get a district court stay; the Board of Immigration Appeals would need to grant such a stay. *See, e.g.*, *Barros Anguisaca*, 393 F. Supp. 3d at 350 (court lacked jurisdiction to enter stay of removal where petitioner argued he sought only a meaningful opportunity for his motion to reopen be heard by the Board of Immigration Appeals and not be removed); *Andoh v. Barr*, No. 19 Civ. 8016 (PAE), 2019 WL 4511623, at *4 (S.D.N.Y. Sept. 18, 2019) ("Whether or not [petitioner's] motion to reopen before the BIA has any prospect of success, . . . the Court does not have jurisdiction over his claim here for a stay or removal pending resolution of the motion to reopen."); *id.* ("If resolved in [petitioner's] favor, the motion to reopen would have the effect of vacating his underlying order of removal. And [petitioner], in seeking a stay of the pending removal order until that point, is unavoidably, bringing an indirect challenge to his removal order. Section 1252(a)(5) therefore strips this Court of jurisdiction to hear his motion."); *Sean B.*, 2020 WL 1819897, at *1 ("Although 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.").

does not have jurisdiction to review Petitioner's final order of removal or Respondents' non-grant of discretionary deferred action, this Court should deny the petition.

III. Petitioner's APA and *Accardi* Claims Should Be Denied or, in the Alternative, Stayed

A. APA and Accardi Claims Cannot Be Brought When Habeas is an Adequate Remedy

Petitioner brings almost all of his claims as APA or *Accardi* challenges. Pet. ¶¶ 73–82 (Claim 1); 83–91 (Claim 2); 92–96 (Claim 3); 97–110 (Claim 4); 111–16 (Claim 5). For the reasons already given, they are barred by 8 U.S.C. § 1252(a)(5), (b)(9), and (g). But were his claims not expressly barred by statute, the Supreme Court has made clear that where a non-citizen's claims for relief "'necessarily imply the invalidity' of their confinement," those claims "must be brought in habeas." *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); *see also id.* at 674 (Kavanaugh, J., concurring) ("[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' . . . habeas corpus, not the APA, is the proper vehicle here."). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claims had merit, which they do not, the result would be the same as that in habeas—release from detention.

Raspoutny v. Decker, a case involving a petitioner who challenged his detention pursuant to § 1226(a), is instructive. 708 F. Supp. 3d 371 (S.D.N.Y. 2023). In declining to review the petitioner's APA claim, the court held that "petitioner points to no 'statute' that permits 'review[] of the arrest,'" and an arrest is not a "'final agency action for which there is no other adequate remedy in a court'—because the issuance of a writ of habeas corpus under 28 U.S.C. § 2241 would provide an adequate remedy were the Court to find [the petitioner's] custody to be improper." *Id.* at 381 (quoting 5 U.S.C. § 704) (first alteration in original); *see also Lucas v. Fed. Bureau of*

Prisons, No. 17 Civ. 1184 (VB), 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018) ("[B]ecause plaintiff could adequately remedy his conditions of confinement claim in a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim."); *Quintanilla v. Decker*, No. 21 Civ. 417 (GBD), 2021 WL 707062, at *3 n.5 (S.D.N.Y. Feb. 22, 2021) (finding a violation of due process and thus not addressing the petitioner's INA or APA claims).

B. Petitioner's APA and *Accardi* Claims are Brought on His Behalf in a First-Filed Case in the Eastern District of New York

Petitioner acknowledges that he is a member of a putative class in existing APA and *Accardi* litigation in the Eastern District of New York relating to the SIJ program and deferred action. Pet. ¶ 61 n.17 ("The rescission of the deferred action policy is currently being challenged in a separate lawsuit, *A.C.R. v. Noem*, No. 1:25-cv-3962, in the Eastern District of New York. Should class certification be granted, E.J.C.C. will be a class member and may be eligible for deferred action."). If this Court is inclined to entertain Petitioner's APA and *Accardi* claims, because Petitioner asserts that he would be a class member in a previously filed suit, this case should be stayed pending class certification in that action. *See Sacerdote v. Cammack Larhette Advisors, LLC*, 939 F.3d 498, 504 (2d Cir. 2019) ("As part of its general power to administer its docket, a district court may stay or dismiss a suit that is duplicative of another federal court suit." (quoting *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138 (2d Cir. 2000))). While this Court need not and should not reach the merits of Petitioner's APA claims in this case brought in habeas, because Petitioner claims he would be a class member in the existing litigation against overlapping Respondents also represented by the Department of Justice, this Court should stay this matter at least until the Eastern District of New York court determines whether to certify a class in the first-filed case, and it is determined whether Petitioner is a member of such a certified class.

C. Petitioner's APA and *Accardi* Claims Substantively Fail

Petitioner brings an APA challenge to USCIS's discretionary decision not to grant him deferred action as an SIJ. Pet. ¶¶ 75–79, 86–91, 105–10. But Section 706(2)(A) does not apply to actions "committed to agency discretion by law." *Heckler v. Chaney*, 470 U.S. 821, 831–32 (1985). "[A]n agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." *Id.* at 831; *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 17 (2020).

Non-citizens are subject to removal if "they were inadmissible at the time of entry, have been convicted of certain crimes, or meet other criteria set by federal law." *Arizona v. United States*, 567 U.S. 387, 396 (2012). But because the Executive Branch lacks the resources and manpower to remove every non-citizen who is subject to removal, a "feature of the removal system is the broad discretion exercised by immigration officials" to first "decide whether it makes sense to pursue removal at all." *Id.* To make these policy and priority decisions—like prosecutors choosing whether to indict—DHS engages "a complicated balancing of a number of factors which are peculiarly within its expertise." *Chaney*, 470 U.S. at 831. Absent a statute "circumscribing an agency's power to discriminate among issues or cases it will pursue," the agency's "exercise of enforcement power" is "committed to agency discretion by law." *Id.* at 833, 835. Because USCIS's decision to automatically consider SIJs for the discretionary benefit of deferred action and its later decision to rescind that process are non-enforcement decisions, they are not judicially reviewable.

Petitioner's *Accardi* claim likewise fails because he cannot show that the agency's failure to follow its regulation "affect[ed] [a] fundamental right[] derived from the Constitution or a federal statute." *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993). The regulation which

Petitioner alleges should have been followed was USCIS's 2022 policy guidance. That guidance "[p]rovide[d] that USCIS automatically conduct deferred action determinations for noncitizens with SIJ classification" instead of requiring SIJs to separately file for deferred action. Return Ex. 12. That same guidance recognized that "SIJ classification does not render a noncitizen lawfully present, does not confer lawful status, and does not result in eligibility to apply for employment authorization." *Id.* Nor did the policy guidance guarantee that every SIJ applicant would be granted deferred action, or any specific criteria that USCIS would follow in making that determination, but rather that the discretionary decision would be made "on a case-by-case basis." *Id.* Petitioner appears to acknowledge that, even if USCIS followed its 2022 policy, all he would have been entitled to is a discretionary determination regarding deferred action, not that he would have been guaranteed deferred action. *See* Pet. ¶¶ 92–96.

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).

There is no fundamental constitutional or statutory right to an automatic deferred action determination because SIJ status does not confer any lawful status or protection against deportation. And there is no fundamental right for Petitioner to be granted deferred action, especially where the cited guidance would not have guaranteed a grant of deferred action, but only a case-by-case determination by the agency. Should the Court reach Petitioner's substantive claims under the APA and *Accardi*, those claims should be dismissed.

IV. Petitioner's Removal is Reasonably Foreseeable

8 U.S.C. § 1231(a) provides authority to detain non-citizens subject to final removal orders. *See 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."); *accord Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) ("8 U.S.C. § 1231(a), governs the detention, release, and removal of individuals 'ordered removed.'"). 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 U.S.C. § 1101(a)(47)(B); *see also 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."). The non-citizen may request judicial review of a final removal order by filing a petition for review in the court of appeals that has jurisdiction. *See* 8 U.S.C. § 1252(a)(5), (b)(9).

Section 1231 establishes a 90-day "removal period" within which the government generally must secure removal after a removal order becomes final, and during which the government "shall" detain the non-citizen 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). Those 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 non-citizens 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 non-citizen'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 a non-citizen's removal. *Id.* at 701. However, the Court did not require the government to release every non-citizen 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 the "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).[3] Thus, the Supreme Court placed the initial burden on the non-citizen. *Id.* If the alien fails to meet that burden, or if the government rebuts the non-citizen's showing, then continued detention is permissible. *Id.* Following *Zadvydas*, the government promulgated regulations requiring ICE to conduct custody reviews for non-citizens whose post-removal-order detention has exceeded six months. *See* 8 C.F.R. §§ 241.4, 241.13.

As set forth above, 8 U.S.C. § 1231(a) governs the detention of non-citizens subject to final removal orders such as Petitioner. While § 1231(a)(2) provides for a 90-day period of mandatory detention during the removal period (which at this time, has elapsed), § 1231(a)(6) authorizes detention beyond the removal period. Petitioner is an inadmissible alien who falls within the category of those who may be detained even after the removal period expires. *See* 8 U.S.C. § 1231(a)(6). In short, there is nothing in the statute that prevents ICE from detaining Petitioner at this time.

Here, Petitioner has been in ORR custody for only about two weeks, and detention is pending placement by ORR with an approved sponsor, a far cry from the "indefinite" detention beyond six months that concerned the *Zadvydas* court. In any event, Petitioner's detention pending removal is nonetheless statutorily authorized and does not violate due process because Petitioner's removal is reasonably foreseeable. *Cf.* Pet. ¶ 116 (arguing that Petitioner should be released because his "removal is not reasonably foreseeable"). ICE is in possession of Petitioner's passport

[3] 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. 533 U.S. at 684–86.

and is prepared to effectuate the existing removal order upon lifting of this Court's order temporarily enjoining Petitioner's removal. Kim Decl. ¶¶ 28, 29. To do so, ICE will prepare Petitioner for removal with ICE Air Charter, a process that will take less than one week. Kim Decl. ¶ 29. ICE routinely effectuates removals to Ecuador, and ICE is unaware of any impediments to effectuating Petitioner's removal to Ecuador other than this Court's order. Kim Decl. ¶ 30. This is not a case where Petitioner's cannot be removed to his native country. *Cf. Monestime v. Reilly*, 704 F. Supp. 2d 453, 458–59 (S.D.N.Y. 2010) (due process violation arising from the United States' then-existing moratorium on deportations to Haiti); *Ly v. Hansen*, 351 F.3d at 263, 265 n.1, 271–73 (6th Cir. 2003) (detention unconstitutional where petitioner's actual removal was never a possibility due to the then-existing lack of a repatriation agreement between the United States and Vietnam).

While Petitioner is free to pursue whatever efforts he deems appropriate to prevent his removal, such efforts do not make his removal unlikely or entitle him to relief under *Zadvydas*. *See, e.g.*, *Abimbola v. Ridge*, 181 F. App'x 97, 99 (2d Cir. 2006) (petitioner's filing of numerous petitions is a "self-inflicted wound" that does not entitle him to protection under *Zadvydas*); *see also Guangzu Zheng v. Decker*, 618 F. App'x 26, 28 (2d Cir. 2015) ("[T]he Government has been prevented from removing Zheng by the BIA's stay of removal (sought by Zheng) and by its own forbearance policy (also resulting from Zheng's pursuit of an additional stay). If this Court denies Zheng's petition for review and pending stay motion, the Government can seek another travel document. Given this record, Zheng has not 'provide[d] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'"); *Agoro v. Dist. Dir. for Immigration Custom Enforcement*, 09 Civ. 8111 (SAS), 2010 WL 9976, at *5 & n.72 (S.D.N.Y.

Jan. 4, 2010) ("[T]here is a significant likelihood that ICE will be able to procure another travel document for Agoro when he no longer has litigation pending in United States courts. Even if Agoro files additional claims in an effort to prolong the removal process, his removal will still be considered reasonably foreseeable because any resulting delay will be caused by Agoro's own actions."); *cf. Olajide v. BICE*, 402 F. Supp. 2d 688, 689, 694 (E.D. Va. 2005) ("[F]or like the orphan who sought sympathy after murdering his parents, petitioner cannot claim that his pre-removal detention is unreasonably long when he is the cause of the delay in his removal.").

V. Given Petitioner's Lawful Detention, ORR is Following Applicable Statutes, Regulations, and Policies Before Releasing Petitioner to a Potential Sponsor.

Petitioner alleges that ORR acted arbitrarily and capriciously by "disregarding the controlling child-welfare framework governing custody and release of immigrant children" and that his detention "flies in the face of the statutory regime's contemplation that minors remain in the least restrictive setting." Pet. ¶¶ 80–81. But he mischaracterizes the statutory and regulatory framework governing the federal care and custody of UAC, their release, and sponsorship.

ORR has a dual mandate under the HSA and TVPRA. On the one hand, ORR must "mak[e] placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status"; on the other hand, ORR must ensure that UAC "are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity." 6 U.S.C. § 279(b)(1)(C) & (b)(2)(A)(ii). ORR must prioritize the health, safety, and wellbeing of UAC in its care while balancing the requirement to "promptly" place UAC "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). Consistent with these statutory mandates, ORR has instituted policies

and procedures and promulgated the Foundational Rule regarding key aspects of the placement, care, services, and release of UACs to sponsors.

Petitioner was taken into custody by ICE on October 23, 2025, and then transferred to ORR custody. Kim Decl. ¶¶ 24, 25. Because Petitioner is a UAC, he was placed in ORR custody at Catholic Guardian Services Crotona. Kim Decl. ¶ 25; Biswas Decl. ¶ 15. The process for the safe and timely release of a UAC from ORR custody involves several steps, including: the identification of sponsors; sponsor application; interviews; the assessment (evaluation) of sponsor suitability, including verification of the sponsor's identity and relationship to the child (if any), background checks, and in some cases home studies; and post-release planning. Biswas Decl. ¶¶ 10. As of November 3, 2025, ORR had identified Petitioner's uncle, Juan Yupa Camas, as a potential sponsor and began moving forward with the process required for release of a child to a sponsor as described in the UAC Program Foundational Rule at 45 CFR § 410 Subpart C – Releasing an Unaccompanied Child from ORR Custody. Biswas Decl. ¶ 16. Contrary to Petitioner's assertions, ORR is adhering to the requirements of the HSA and TVPRA to ensure he is "protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity," 6 U.S.C. § 279(b)(1)(C) & (b)(2)(A)(ii), while making prompt and continuous efforts to place him with a safe and appropriate sponsor.

VI. Petitioner Should Not Be Released Pending Adjudication of His Petition

Petitioner also seeks immediate release under the Court's inherent authority and *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). *See* Pet. ¶¶ 117-21. However, such release is warranted only when a petitioner (i) raises substantial claims and (ii) extraordinary circumstances (iii) make the grant of bail necessary to make the habeas remedy effective. *Mapp*, 241 F.3d at 230. This standard

is "a difficult one to meet," and the burden is on the petitioner to make the necessary showings. *Id.* at 226. No such claims or circumstances are raised here, and immediate release is not necessary to make the habeas remedy effective. As such, *Mapp* release should be denied.

First, for the reasons already discussed, ORR has a statutory mandate to ensure UAC like Petitioner "are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity." 6 U.S.C. § 279(b)(1)(C) & (b)(2)(A)(ii). ORR is required to follow the law and its procedures before releasing a UAC from its care, and ordering Petitioner's immediate release would be contrary to the law implemented to protect UAC who are in the government's care.

Second, Petitioner has not shown extraordinary circumstances. The Second Circuit has not elaborated in great detail on the extraordinary circumstances requirement,[4] but other circuits have noted that special circumstances include: (1) a serious deterioration of health while incarcerated, (2) unusual delay in the appeal process, (3) short sentences for relatively minor crimes so near completion that extraordinary action is essential to make collateral review truly effective. *See, e.g.*, *United States v. Mett*, 41 F.3d 1281, 1282 n.4 (9th Cir. 1994) (listing circumstances (1) and (2)); *Calley v. Callaway*, 496 F.2d 701, 702 n.1 (5th Cir. 1974) (internal citations omitted) (listing circumstance (3)); *see also Castaneda-Castillo v. Holder*, 638 F.3d 354, 361 n.7 (1st Cir. 2011)

[4] In *Elkimya v. DHS*, the court did not find extraordinary circumstances because the plaintiff there offered no reason "other than convenience, why his continued detention by the INS would affect th[e] Court's ultimate consideration of the legal issues presented in his petition for review." 484 F.3d 151, 154 (2d Cir. 2007). In *Daum v. Eckert*, the court held that COVID-19 was not an extraordinary circumstance warranting bail. No. 20-3354, 2021 WL 4057190, at *2 (2d Cir. Sept. 7, 2021). Other cases summarily reject assertions of extraordinary circumstances. *See, e.g.*, *Illarramendi v. United States*, 906 F.3d 268, 271 (2d Cir. 2018); *Stolfa v. Holder*, 498 F. App'x 58, 60 (2d Cir. Aug. 16, 2012).

(holding that special circumstances may include delayed extradition hearing); *United States v. Lui Kin-Hong*, 83 F.3d 523, 524 (1st Cir. 1996) (same); *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992) (extraordinary circumstances "seem to be limited to situations involving poor health or the impending completion of the prisoner's sentence"). And in *Vasquez Salgado v. Francis*, a judge in this district found extraordinary circumstances in a case where the petitioner suffered "severe mental health issues" and based on petitioner's "status as a transgender female." No. 25 Civ. 6524 (VEC), 2025 WL 2806757, at *6 (S.D.N.Y. Oct. 1, 2025); *id.* at *8 n.13 (noting the specific "confluence of facts presented" in that matter and that not "all mentally ill ICE detainees or all transgender ICE detainees are entitled to release while their habeas claims are pending"). None of these circumstances are present here. And again, because all ORR must follow applicable statutes and policies before releasing any UAC to a potential sponsor, Petitioner is being treated the same as all other UAC in ORR's care.

Third, release is not necessary to make the habeas remedy effective in this case. Petitioner can continue to pursue immigration relief by moving to reopen his immigration case and the pursuit of which does not require his release. While Petitioner is undoubtedly affected by his placement in ORR custody pending vetting of his proposed sponsor in accordance with the law, the effects do not require immediate release to make the remedy effective. And in any event, this Court need not consider interim release at all if it resolves the underlying merits, which the parties are briefing on an expedited schedule. *Cf. Reid v. Decker*, No. 19 Civ. 8393 (KPF), 2020 WL 996604, at *13 (S.D.N.Y. Mar. 2, 2020) (denying release under *Mapp* for habeas petitioner because the petitioner failed to establish the existence of extraordinary circumstances that made the grant of bail

necessary to make the habeas remedy effective, given that the court was granting the relief sought in the petition for a bond hearing).

Accordingly, the Court should deny the request for release pending adjudication.

CONCLUSION

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

Dated: New York, New York
November 7, 2025

Respectfully submitted,

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