UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAMADOU BOCUOM NDOYE, Petitioner, v. WILLIAM JOYCE, *et al.*, Respondents.	25 Civ. 8856 (VSB)

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 petition for writ of habeas corpus, ECF No. 1 ("Petition" or "Pet."), filed by petitioner Mamadou Bocuom Ndoye ("Petitioner") on October 25, 2025.

PRELIMINARY STATEMENT

Petitioner is a native and citizen of Mali who entered the United States illegally over 20 years ago. He has been subject to a final removal order since November 2008, of which he waived any right to appeal. On October 21, 2025, Petitioner was encountered and taken into custody by U.S. Immigration and Customs Enforcement ("ICE") for purposes of executing his removal order.

In his petition, Petitioner challenges ICE's discretionary decision to detain him to execute his removal order. Petitioner claims that his arrest was unlawful, and that his continued detention violates the Fifth Amendment of the Constitution and Administrative Procedure Act ("APA"). Petitioner, however, is not entitled to the relief he seeks. First, district courts lack jurisdiction to any claim arising from ICE's decision to execute final orders of removal and thus cannot stay removal or order release under these circumstances. Even if Petitioner could overcome this jurisdictional bar, his claim would fail on the merits. Detention to exercise a final order of removal is constitutional and statutorily authorized, and ICE properly exercised its discretion to detain him for that purpose. ICE is diligently pursuing removal and will remove Petitioner as soon as travel documents are available. Because his removal is expected to occur in the near future, Petitioner'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

Petitioner is an alien detained by ICE pending execution of his final removal order. On October 25, 2025, Petitioner initiated this action by filing a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241. ECF No. 1. Petitioner seeks, among other things, to have this Court declare that his detention violates due process and that he should be released from ICE custody. *Id.* at 2. Petitioner does not contest any aspect of his final order removal, nor does he seek any other form of relief.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Mali who unlawfully entered the United States at an unknown location on an unknown date without being admitted or paroled. *See* Declaration of Jonathan Quizhpi dated November 7, 2025 ("Quizhpi Decl.")(ECF No.15), ¶ 3.

After Petitioner was convicted in a Pennsylvania state court for false reports to law enforcement (*see* Quizhpi Decl., ¶ 4), ICE served Petitioner with a Notice to Appear on October 17, 2008, charging him as subject to removal pursuant to Section 212(a)(6)(A)(i) of the then-operative Immigration and Nationality Act ("INA").[1] *Id.*, ¶ 5, Exhibit A (ECF No. 15-1).[2] On November 3, 2008, an Immigration Judge ("IJ") ordered Petitioner removed from the United States

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[1] 8 U.S.C. § 1182(a)(6)(A)(i) ("An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.").

[2] Exhibits referenced in this Memorandum of Law are attached to the Government's Return to Habeas Petition, which is filed separately from the accompanying declaration. Petitioner initially claimed to be a citizen of Senegal, but a handwritten notation on the Notice to Appear states that he claimed to be a citizen and native on Mali. *See* Quizhpi Decl., Exhibit A at p.1. A Record of Deportable/Inadmissible Alien further stated that Petitioner filed an application for Status as a Temporary Resident (I-687), but that application was denied on August 22, 2006. *Id.*, Exhibit A (ECF No. 15-1) at 4.

to Mali. *Id.*, ¶ 6, Exhibit B (ECF No. 15-2). Petitioner waived any appeal, thus making the IJ's order the final order of removal. *Id.*; *see* 8 C.F.R. § 1241.1(b).

On November 12, 2008, ICE submitted a request for a travel document from the Embassy of the Republic of Mali. *See* Quizhpi Decl., ¶ 7, Exhibit C (ECF No. 15-3). The following day, ICE received notification from the Embassy of the Republic of Mali that Petitioner's case would be investigated, and a travel document would be issued upon completion of their investigation and authorization from the Malian government. *Id.*, ¶ 8, Exhibit D (ECF No. 15-4). On April 29, 2009, the Embassy of the Republic of Mali advised ICE that its request for Petitioner's travel document was still pending. *Id.*, ¶ 9.

On May 21, 2009, ICE released Petitioner on an Order of Supervision ("OSUP") because it was unable to obtain travel documents from Mali for Ndoye's removal due to country conditions in Mali at the time. *Id.*, ¶ 10, Exhibit E (ECF No. 15-5). Ndoye's release on an OSUP was subject to several conditions, including maintaining proper behavior and not violating any local, state or federal laws. *Id.*, ¶ 10, Exhibit E.

A week following his release by ICE, Petitioner was convicted in a New York State court of Trademark Counterfeiting in the Third Degree in violation of New York Penal Law § 165.71. *See* Quizhpi Decl., ¶ 11. Petitioner, however, failed to comply with the state court's orders and on December 16, 2009, he was returned on bench a warrant and was sentenced by a New York state court to a conditional discharge and three days community service. *Id.*, ¶¶ 11, 12. Upon completion of the New York state criminal proceedings, ICE took Petitioner back into custody for having violated the terms of his OSUP. *Id.*, ¶ 13. On December 21, 2009, ICE again released Petitioner on an OSUP because it was unable to obtain travel documents from Mali due to the country conditions at the time. *See Id.*, ¶ 14.

On May 14, 2013, Ndoye was convicted in New York state court of Assault in the Third Degree in violation of New York Penal Law § 120.00(1) and was sentenced to ten days imprisonment. *See* Quizhpi Decl., ¶ 16.

On April 5, 2017, Ndoye was convicted in Wyoming state court of Possession of a Controlled Substance – Marijuana in violation of Wyoming State Statute ("W.S.S.") 35-7-1031(c)(i)(A) and Speeding 86 mph in a posted 75 mph zone in violation of W.S.S. 31-5-301. *Id.*, ¶ 17. Ndoye was ordered by the court to be remanded to the custody of the Sheriff of Carbon County for a period of forty-five days with credit for three days served. *Id.*

On December 14, 2022, Petitioner was convicted in Oregon state court of Unauthorized Use of a Vehicle in violation of Oregon Revised Statutes § 164.135, and was sentenced to probation for a term of six months. *Id.*, ¶18.

On October 21, 2025, officers from ICE Enforcement and Removal Operations ("ERO") encountered Ndoye during a field operation on Canal Street, New York, New York and asked Ndoye for identification. *See* Quizhpi Decl., ¶ 19. Upon further investigation, Ndoye's identity as a removable alien was confirmed and, thereafter, he was taken into ICE custody and transported to Elizabeth Contract Detention Facility for processing and to await transfer to a facility pending removal. *Id.* Also on October 21, 2025, ICE served Ndoye with a Warrant of Removal and a Notice of Revocation of Release informing him that his Order of Supervision was revoked, and he will be taken into ICE custody. *Id.*, ¶ 21. On the same date, ICE interviewed Petitioner and obtained information to complete an application for travel documents for repatriation to Mali. *Id.*

On October 22, 2025, Ndoye was transported to Orange County Jail ("OCJ") in Goshen, New York, where he is currently being housed pending his removal pursuant to his final removal order. *See* Quizhpi Decl., ¶ 20. Pending removal, his detention is governed by Immigration and

Nationality Act ("INA") section 241(a), 8 U.S.C. § 1231(a). He has been detained since October 21, 2025. *Id.* ICE is currently working to obtain travel documents from Mali to effectuate Ndoye's removal. *Id.* ¶ 22. Since January 2025, Mali has accepted its citizens who were removed from the United States, and ICE expects to receive travel documents for Petitioner. *Id.* ¶¶ 23-24.

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 U.S.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).[3] 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.*

[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. *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).

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.* The regulation does not require advance notice prior to revoking an alien's release pursuant to section 241.4(*l*)(2).[4]

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

[4] 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).

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 Petitioner for the purpose of executing his final order of removal. Petitioner's removal is reasonably foreseeable, and his detention arising from efforts to execute his removal order does not violate due process.

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

Petitioner asks this Court to "assume jurisdiction over this matter," and issue an order releasing Petitioner. In substance, Petitioner 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, Petitioner'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."[5]

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,

[5] 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.").

including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien 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."[6] *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); *cf. Golding v. DHS/ICE*, No. 20-CV-8679 (VSB), 2024 WL 3012620, at *4 n.7 (S.D.N.Y. Jun. 13, 2024) (collecting cases reflecting that courts in this district have interpreted § 1252(g) to apply to discretionary acts by the Attorney General or ICE).

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

[6] 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.*

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 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 Petitioner'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.[7] *Id.*

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[7] 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).

Petitioner has been subject to a final order of removal since 2008 and affirmatively decided not to appeal that final order. ICE has made the 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 Quizhpi, ICE is working diligently to obtain travel documents for Petitioner, who himself has failed to do so for nearly two decades. Quizhpi Decl. ¶¶ 22-23. ICE's efforts establish that Petitioner's detention is in furtherance of his removal. A stay of removal or order to immediately release Petitioner while ICE is in the process of effectuating his removal would undermine the determination that Petitioner should be removed. 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)). Petitioner'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 Mali Embassy works on ICE's request for a travel document for Petitioner's removal.

For these reasons, Petitioner'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"); *Alomaisi v. Decker*, No. 20 Civ. 5059 (VSB) (SLC), 2021 WL 611047, at *6 (S.D.N.Y. Jan. 27, 2021), *report and recommendation adopted sub nom. Alomaisi v. Mayorkas*, No. 20 Civ. 5059 (VSB) (SLC), 2021 WL 3774117 (S.D.N.Y. Aug. 25, 2021) (determining court lacked subject matter jurisdiction where "an alien moved to set aside a final order of removal pending the resolution of an immigration adjudication [ ] that necessarily stood, if successful, effectively to vacate the underlying order of removal." (internal quotation marks omitted)).

II. PETITIONER'S CHALLENGE TO HIS DETENTION FAILS ON THE MERITS

Even apart from the jurisdictional bars, Petitioner's claims fail on the merits. His detention for the purpose of executing a valid, final, 2008 removal order, complies with all applicable statutes and regulations. Petitioner challenges his detention on the grounds that his recent arrest violated the Fourth and Fifth Amendment of the Constitution, and the APA. None of these reasons, however, prevent ICE from detaining and removing Petitioner.

A. Detention is Lawful and Does Not Violate Due Process[8]

Petitioner is an alien subject to a final removal order for whom ICE has detained for the purpose of executing that valid order. 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 Supreme 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, any *Zadvydas* claim is premature given that Petitioner has not yet been detained for six months. *See, e.g.*, *De Oliveira Jimenez v. Searls*, No. 22 Civ. 960 (JLS), 2023 WL 11134381, at *5 (W.D.N.Y. Mar. 2, 2023) (collecting cases). Petitioner has been detained for less than a month, and so his challenge to his detention is premature. And "[b]ecause [Petitioner's] petition is premature, the Court need not determine the likelihood of his removal in the reasonably foreseeable future." *See id.* at *5 n.4.

[8] Petitioner's reference in the petition to being arrested at immigration court, his need to gather evidence to pursue immigration relief, and the like, *see, e.g.*, Pet. ¶¶ 26-27, are not facts that pertain to Petitioner and appear to be remnants of a recycled habeas petition. As noted above, Petitioner is subject to a final removal order from 2008 who was arrested during a targeted law enforcement operation on Canal Street.

Petitioner's detention pending removal is nonetheless statutorily authorized and does not violate due process. Petitioner has not met his threshold burden of showing that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. But even if he did (which he plainly does not, as he makes no assertion about the inability to remove him), the government rebuts it here. Since he has been in custody, ICE has interviewed Petitioner to obtain information to complete an application for travel documents for repatriation to Mali. Quizhpi Decl. ¶ 21. ICE is currently in the process of preparing an application to submit to the Embassy of the Mali to obtain a travel document for Petitioner to effectuate his removal. *Id.* at ¶ 22. Once ICE obtains the requested travel document, it can effectuate the removal order. ICE has noted that, since January 2025, Mali has accepted citizens who were removed from the United States, and based on their experience, Mali will issue a travel document to its nationals who are in the United States. *Id.* at ¶ 23. Given that ICE is actively pursuing Petitioner's removal and his removal is significantly likely to occur in the reasonably foreseeable future, Petitioner's detention pending removal does not violate due process.

B. Petitioner's Unfounded Allegations of Fourth Amendment Violations Does Not Affect His Detention and Removal

Petitioner's Fourth Amendment claim—namely, that ICE officials detained him without reasonable suspicion that he was not a United States citizen, *see* Pet. ¶¶ 16–21—should also be rejected because the Fourth Amendment has no applicability in the context of an immigration arrest. *Abel v. United States*, 362 U.S. 217, 232-37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). Instead, there is "overwhelming historical legislative recognition of the propriety of administrative arrest for deportable aliens such as petitioner." *Abel,* 362 U.S. at 233; *cf. Gerstein v. Pugh*, 420 U.S. 103, 127 n. 27 (1975) (noting that "the Fourth Amendment was tailored explicitly for the criminal justice system," and that its "probable cause

determination is in fact only the first stage of an elaborate system, unique in jurisprudence, designed to safeguard the rights of those accused of criminal conduct"). Here, ICE undertook an administrative arrest of Petitioner, not an arrest in connection with any alleged criminal conduct. Accordingly, the Fourth Amendment offers no relief to Petitioner. Further, when ICE encountered Petitioner during a field operation, they asked Petitioner for identification and verified that he was a removable alien, after which he was taken into custody. Quizhpi Decl. ¶ 19.

C. *Petitioner's Other Challenges Are Without Merit*

Petitioner claims that his current detention is unlawful because his due process rights have been violated. Pet. ¶¶ 22-38. Contrary to the circumstances of this case, Petitioner states that his recent arrest "at the Immigration Court[9]" was unwarranted, and that his detention by the government has deprived him of "protected [property] interest." Pet. ¶¶ 26, 34. His argument fails because it is unmoored in the facts of his own case. But it also fails because he is subject to a final order of removal and his current detention pending removal is discretionary and does not involve a liberty interest.

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

[9] Petitioner's references to his arrest at the "Immigration Court" and his claims regarding the government's purported "courthouse arrest policy" are inapt. *See* Pet. ¶¶ 26, 41. As noted previously, Petitioner was taken into ICE custody during a field operation on Canal Street, New York, New York. *See* Quizhpi Decl., ¶ 19.

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.

Next, Petitioner argues that his detention violates the APA because he was allegedly arrested as part of a "courthouse arrest policy." Pet. ¶¶ 41-43. But this claim fails for the simple reason that he was not arrested at an immigration court hearing, or anywhere near a courthouse—this claim has nothing to do with Petitioner. Separately, this claim fails for the additional reason that 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.*, 604 U.S. 670, 672 (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 Petitioner can challenge his detention, the APA does not apply here.

In sum, this Court lacks jurisdiction over Petitioner's challenge to his detention in furtherance of removal, but jurisdiction aside, Petitioner's detention pending removal is lawful, statutorily authorized, and does not violate due process.

CONCLUSION

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

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November 7, 2025

Respectfully submitted,

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