UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAMADOU BOCUOM NDOYE,

Petitioner,

v.

WILLIAM JOYCE, *et al.*,

Respondents.

25 Civ. 8856 (VSB)

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

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The government respectfully submits this reply memorandum of law in opposition to the petition for writ of habeas corpus, ECF No. 1 ("Petition" or "Pet.") and the amended petition for writ of habeas corpus ECF No. 27 ("Amended Petition" or Am. Pet."), filed by petitioner Mamadou Bocuom Ndoye ("Petitioner") respectively on October 25, 2025, and December 4, 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 amended petition, Petitioner challenges ICE's discretionary decision to detain him to execute his removal order. Petitioner claims that his detention under 8 U.S.C. § 1231(a) is unlawful, and that his 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 over claims arising from ICE's decision to execute final orders of removal and thus cannot stay removal or order release under these circumstances. Notwithstanding this jurisdictional bar, Petitioner's claim fails on the merits.

Detention to execute a final order of removal is constitutional, and ICE is validly detaining Petitioner pending his removal. There is no merit to Petitioner's assertion that he cannot be detained under § 1231(a) after six months have passed, nor has Petitioner presented any support for his assertion that his removal is not foreseeable. To the contrary, ICE has obtained a travel document to effectuate Petitioner's removal to Mali, which ICE was unable to obtain in 2009. Thus, even if Petitioner provided good reason to believe that his removal is not reasonably foreseeable—which he has not—the government easily rebuts that showing here, as it has a travel

document in hand and is prepared to remove Petitioner once this Court lifts the stay of removal it imposed at the start of the case. Petitioner's detention comports with law. 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. The government opposed the petition on November 7, 2025. ECF Nos. 14–16. Thereafter, on December 4, 2025, Petitioner filed an Amended Petition for Writ of Habeas Corpus. ECF. No. 27. In his petitions, Ndoye seeks, among other things, to have this Court declare that his detention violates due process and that he be released from ICE custody. ECF No. at 2, and ECF No. 27 at 3-4. Petitioner does not contest any aspect of his final order removal, nor does he seek any other form of relief.

II. FACTUAL BACKGROUND

The government incorporates by reference the factual statement provided in its original Memorandum of Law ("Resp. Mem.") (ECF. No. 16 at 8-11) and supplements it as follows:

On October 21, 2025, officers from ICE Enforcement and Removal Operations ("ERO") encountered Ndoye during a field operation[1] on Canal Street, New York, New York and asked Ndoye for identification, which he provided. *See* Quizhpi Decl., ¶ 19; Declaration of Minchel So dated November 25, 2025 ("So Decl.")(ECF 21), ¶ 3, Exhibit H (ECF 22-3 at 3). Upon reviewing

[1] The operation was known informally as the "Canal Street Operation." *See* Supplemental Declaration of Jonathan Quizhpi ("Quizhpi Supp."), dated December 16, 2025, at ¶ 4.

Ndoye's identification card and consulting ICE's immigration database, ICE officers confirmed Ndoye's identity and confirmed that he was subject to a final order of removal. *Id.*

Petitioner was taken into ICE custody and then transported to Delaney Hall Detention Facility at 451 Doremus Avenue, Newark, New Jersey. So Decl., ¶ 4. On October 21, 2025, ICE served Ndoye with a Warrant of Removal and a Notice of Revocation of Release ("Notice of Revocation") informing him that his Order of Supervision was revoked, and that he would be detained in ICE custody. Quizhpi Decl., ¶ 21; Exh. G (ECF 22-2 - Notice of Revocation and Release).

The October 21, 2025 Notice of Revocation advised Ndoye that he was being detained pending removal because ICE determined that Ndoye had violated the conditions in Order of Supervision. *See* Exh. G. At the time of Ndoye's last release from ICE detention in December 2009, ICE released him on him an Order of Supervision ("OSUP"), which required, among several things, that Ndoye was to provide information under oath about such things as his nationality and circumstances and not commit any crimes while on the OSUP. *See* Exh. F (ECF 22-1 - OSUP). The Notice of Revocation stated that Ndoye had been arrested for the crime of 3rd degree assault in New York in 2013 and had been arrested for Unlawful Taking of a Motor Vehicle in Oregon in 2017. *Id.*[2] The Notice further advised Petitioner that he would be given an informal interview to respond to the reasons for the revocation and he would have the opportunity to submit evidence or information to support his release. *Id.* An ICE Report dated October 27, 2025, states that Petitioner

[2] In fact, Ndoye had been convicted of the crimes listed in the Notice of Revocation and Release. *See* Quizhpi Decl., ¶¶ 16, 18; and Exhibit I at 3, 7, which is included in the Government's Second Supplemental Return.

had been interviewed and advised of the reasons for his revocation. *See* Exhibit H (ECF 22-3; I-831 and I-213 forms).

On October 22, 2025, Petitioner was transported to the 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.*

On November 11, 2025, Petitioner was sent DHS Form I-217 (Information for Travel Document or Passport) at the Jail Liaison Unit at OCJ. So Decl., ¶ 6. After receiving the requisite information, Petitioner's travel request packet was sent to ICE Headquarters Regional International Operations for review and submission to the Embassy of the Republic of Mali. *Id.*, ¶ 8. On December 10, 2025, Petitioner had an interview with Malian Embassy personnel in furtherance of completing the request for travel documents. *See* Quizhpi Supp., ¶ 10. On December 11, 2025, the Embassy of the Republic of Mali issued a travel document for Petitioner to return to his home country. *Id.*, ¶10; Exhibit J, which is included in the Government's Second Supplemental Return. Petitioner's travel document is valid for 90 days from its issuance. *Id.*

ARGUMENT

The Court should deny the petition for writ of habeas corpus because Petitioner's detention for the purpose of executing a valid, final, 2008 removal order is lawful. Petitioner challenges his detention on due process grounds, alleged Administrative Procedure Act violations and because he has been detained, collectively, more than six months after his removal order was final. None of these arguments have merit. Given that a travel document to his home country has been secured,

Petitioner's removal is more than reasonably foreseeable, and his detention arising from efforts to execute his removal order does not violate due process.

I. Petitioner's Detention[3] is Lawful under 8 U.S.C. § 1231(a)

Petitioner argues that his detention is not presently authorized by section 1231 because more than sixteen years have elapsed since his final removal order. Am. Pet. at 26. He also argues that his removal is uncertain, and thus not reasonably foreseeable, because it is, in his view, unlikely that the government's removal of Petitioner is reasonably foreseeable. *Id.* at 27-28. Neither argument is supported by law or fact.

As noted previously, 8 U.S.C. § 1231(a) governs the detention of aliens subject to final removal orders such as Petitioner. Contrary to Petitioner's argument, nothing in the statute prevents Petitioner's detention while ICE seeks to execute his removal order; there is no absolute immunity from detention after the 90-day removal period. While § 1231(a)(2) provides for a 90-day period of mandatory detention during the removal period,[4] § 1231(a)(6) authorizes detention beyond the removal period. Petitioner's assertion that ICE now lacks any statutory authority to detain him for removal is incorrect and legally unsupported; Petitioner is an alien ordered removed under 8 U.S.C. § 1182(a)(6)(A)(i) and therefore falls within the category of aliens that may be detained even after the removal period expires. *See* 8 U.S.C. § 1231(a)(6); Quizhpi Decl. ¶ 5.

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[3] The government's discussion of its detention authority is fully set out in Respondents' Memorandum (ECF 16) at 5-8.

[4] The government does not dispute that the statutory 90-day removal period expired in 2009, ninety days after Petitioner's removal order became final. *See* 8 U.S.C. § 1231(a)(1)(B)(i). Petitioner was detained during the removal period in 2008 into 2009, but he was released on an order of supervision (first in May 2009, and again in December 2009) after ICE was unable to obtain travel documents for Petitioner's removal to Mali at that time. *See* Quizhpi Decl. ¶¶ 10, 14.

Section 1231(a)(6) does not expressly specify how long detention may continue after the removal period expires. But the Supreme Court has resolved this question. In *Zadvydas*, the Supreme Court interpreted the statute to include an "implicit limitation": detention beyond the removal period may last only for "a period reasonably necessary to bring about" removal. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court identified six months of detention as presumptively reasonable. *Id.* Thereafter, if an alien "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the government must rebut the showing or release the alien on an order of supervision. *Id.* at 701.

Petitioner points to the time that has elapsed between the expiration of the 90-day removal period and the present, suggesting that ICE has attempted "restart the clock" on his detention period. *See* Am. Pet. ¶¶ 26-27, 29 (citing *Tadros v. Noem*, No. 25cv4108 (EP), 2025 WL 1678501 (D.N.J. Jun. 13, 2025).[5] He is both wrong and legally incorrect. As discussed, § 1231(a)(6) provides the legal authority for Petitioner's detention beyond that 90-day removal period. There is nothing in the statute that withdraws ICE's authority to detain Petitioner for removal, even years after the removal order becomes final.

[5] *Tadros* is distinguishable in several important respects. There the petitioner had been granted a deferral of removal to his home country and was not subject to removal until and unless the deferral had been terminated by further legal proceedings, including a finding that the government of a third country would accept the alien into that country. *Tadros*, at *2. That court noted, however, that none of the requisite legal proceedings for lifting a deferred removal had taken place. By contrast, in the instant case Petitioner has not been granted any status or relief that would now preclude effectuating his final order of removal. Additionally in *Tadros*, the petitioner had been fully compliant with his supervision order, while the Petitioner here violated the terms of his December 2009 OSUP by committing crimes. *Id.*; *see Quizhpi* Decl. ¶¶ 14, 16-18; Exh. G. Further, in *Tadros* the government could not meet its burden to show that the petitioner's removal was reasonably foreseeable. Here, however, ICE has obtained travel documents from petitioner's home country and there is no impediment to his timely removal.

Further, regardless of whether the presumptively reasonable six-month period of detention has passed, the Supreme Court made clear that the "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." *Zadvydas*, 533 U.S. at 701. Petitioner has not met his threshold burden under *Zadvydas* of showing that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, and even if he did, the government rebuts it here, as ICE has a travel document for his removal and is prepared to remove him once the Court lifts the stay of removal. *Zadvydas*, 533 U.S. at 701. Petitioner's detention pending removal remains statutorily authorized and does not violate due process.

II. Petitioner's Detention Does Not Violate Due Process

DHS regulations provide a process for detaining people beyond the removal period and for releasing them thereafter. *See* 8 C.F.R. § 241.4(d)-(k). Such regulations also specify a process for returning a person, once released, back to detention. *Id.* § 241.4(l). Specifically, "[a]ny alien described in paragraph (a) or (b)(1) of this section who has been released under an order of supervision or other conditions of release who *violates the conditions of release may be returned to custody*. *Id.* § 241.4(l)(1)(emphasis added).

Petitioner argues, however, that ICE's Revocation Notice did not comport with the agency's own regulations in several respects. *See* Am. Pet. ¶¶33-35. In its original brief, the government stated that Petitioner's detention determination was made under 8 C.F.R. § 241.4(l)(2), which permits ICE to exercise its discretion to revoke release when, in the opinion of the revoking official an alien violates any condition of release. *See* Resp. Mem. (ECF No. 16) at 18. Although not stated precisely in ICE's Notice of Revocation of Release ("Notice") (Exh. G), it appears that

the revocation here is more closely aligned with the procedures set forth in § 241.4(l)(1) rather than § 241.4(l)(2). For example, the Notice advised Petitioner that his release was revoked because he had violated the conditions of his order of supervision, specifically criminal violations. *Id.*[6] And, as required under § 241.4(l)(1) – but not § 241.4(l)(2) –Petitioner's Notice stated that he would be afforded an initial informal interview promptly and have an opportunity to respond to the stated reasons for the revocation. *Id.* After the Notice was issued and served on Petitioner, he was interviewed and advised of the reasons for the revocation of his release. *See* Quizhpi Supp. Decl. ¶ 5; Exh. H. Accordingly, Petitioner received the process required for a revocation made under § 241.4(l)(1).

Courts in two recent cases have addressed ICE's regulatory requirements when revoking an alien's release on an OSUP. *See E.M.M. v. Almodovar*, No. 25 Civ. 8212 (MMG), 2025 WL 3077995 (S.D.N.Y. Nov. 4, 2025); *Funes v. Francis*, No. 25 Civ. 7429 (PAE), 2025 WL 3263896 (S.D.N.Y. Nov. 24, 2025). Unlike the instant matter, neither case involved a revocation of release for clear violations of an OSUP due to criminal activity.[7] Given the circumstances surrounding the revocation in both cases, the courts concluded that the revocation of release for those individuals was made under § 241.4(l)(2), which is done at the discretion of the "Executive Associate Commissioner." The court in *E.M.M.*, however, stated that there were two separate bases to revoke an OSUP (§ 241.4(l)(1) and § 241.4(l)(2)), which would conform to ICE's actions here in revoking

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[6] A copy of Petitioner's December 2009 OSUP is at Exh. F (ECF 22-1). On the day Petitioner was arrested, Petitioner received ICE's Notice of Revocation, stating the reasons for his revocation. *See* Exh. G; Quizhpi Decl., ₱19.

[7] In both cases, the reasons stated for the revocation were something other than, like the instant case, a specific violation of an OSUP. *E.M.M. v. Almodovar*, 2025 WL 3263896, at *4 (policy initiative created changed circumstances); *Funes v. Francis*, 2025 WL 3263896, at *6 (travel document ready).

Petitioner's release under § 241.4(l)(1) procedures. *E.M.M.*, at **5-6. On the other hand, the court in *Funes* concluded that the requirements for either bases to revoke under 241.4 were not mutually exclusive. *See Funes*, at *15 (noting that § 241.4(l)(2) includes revocation for violations of conditions of release). In both cases, the courts found that because § 241.4(l)(2) was invoked, the ICE notifications were defective because neither one had been signed by an individual of sufficient authority. *E.M.M.*, at * 6 (assistant field office director); *Funes* at *19 (acting assistant field office director). The Revocation Notice in this case was signed by a Field Office Director for ICE. *See* Exh. G.

As stated above, the revocation notice in this case is more closely aligned with procedures set forth in § 241.4(l)(1) rather than § 241.4(l)(2). Assuming *arguendo* that the notice in this case was done under § 241.4(l)(2), the government respectfully disagrees with the above-cited decisions regarding which official has the authority to revoke a release. Supervision of aliens subject to final orders of removal after the 90-day removal period is governed by regulations promulgated pursuant to 8 U.S.C. § 1231(a)(3). Under 8 C.F.R. § 241.4(l)(2), the "Executive Associate Commissioner[8] shall have authority in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section." The authority to make these custody determinations may be further delegated to "any person or persons (including a committee) designated in writing by the Executive Associate Commissioner." 8 C.F.R. § 241.4(c)(4). In accordance with these regulations, by order dated July 25, 2019, Executive Associate Director Nathalie R. Asher re-delegated her "Authority under INA

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

§ 241 [8 U.S.C. § 1231] and 8 C.F.R. Part 241, relating to warrants of removal, reinstatement of removal, self-removal, and release of aliens from detention" to, among others, Assistant Field Officers. Exhibit J is attached hereto to supplement the Government's Second Supplemental Return.

The only issue is whether the Delegation Order delegates the authority to revoke an Order of Supervision. For the reasons discussed below, it does. The Delegation Order delegates the "[a]uthority under INA § 241 [8 U.S.C. § 1231] and 8 C.F.R. Part 241, relating to warrants of removal, reinstatement of removal, self-removal, and *release of aliens from detention.*" (emphasis added). The Second Circuit interpreted the phrase "relating to" broadly, explaining that it encompasses more than the similar phrase "arising out of." *Coregis Ins. Co. v. American Health Foundation*, 241 F.3d 123, 128-29 (2d Cir. 2001) (Sotomayor, J.). The Second Circuit found that "[t]o 'arise' out of means 'to originate from a specified source.' . . . The phrase 'arising out of' is usually interpreted as 'indicat[ing] a causal connection.'" *Id.* at 128. By contrast, the Second Circuit held that "related to" must be interpreted more broadly:

> The term "related to" is typically defined more broadly [than arising out of] and is not necessarily tied to the concept of a causal connection. Webster's Dictionary defines "related" simply as "connected by reason of an established or discoverable relation." . . . The word "relation," in turn, as "used esp[ecially] in the phrase 'in relation to,'" is defined as a "connection" to or a "reference" to. . . . Courts have similarly described the term "relating to" as equivalent to the phrases "in connection with" and "associated with," . . . and synonymous with the phrases "with respect to," and "with reference to," . . . and have held such phrases to be broader in scope than the term "arising out of."

Id. at 128-29; *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (finding that the "ordinary meaning" of "relating to" is "a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with'") (citing Black's

Law Dictionary 1158 (5th ed. 1979)); *Diesel Props S.r.L. v. Greystone Business Credit II LLC*, No. 07 Civ. 9580 (HB), 2008 WL 4833001, at *8 (S.D.N.Y. 2008) (stating that "[t]he meaning of 'related to' is 'extremely broad.'") (citation omitted).

The Delegation Order applies the broad phrase "related to" in connection with the delegation of authority concerning the "release of aliens from detention." While this phrase does not expressly describe a revocation of an Order of Supervision, the concept of "detention" and "release" are unquestionably related to each other, as the opposite outcomes of the same binary custody question. Detention is a decision not to release, while release is a decision not to detain. Thus, the delegation of authority "relating to . . . release of aliens from detention" necessarily includes the authority to revoke such release. These intertwined concepts of detention and release are expressly covered by 8 C.F.R. § 241.4 within Part 241, and the language in the Delegation Order relating to the release of aliens from detention thus invokes the very provision at issue in this case. Section 241.4 is titled "Continued detention of inadmissible, criminal, and other aliens beyond the removal period," and it thus mirrors the "detention" language in the Delegation Order. Moreover, a review of the various provisions of Section 241.4 makes clear that this section of the regulation addresses both detention and release. *See, e.g.*, 8 C.F.R. § 241.4(a) (referring to the "authority to continue an alien in custody or grant release or parole under sections 241(a)(6) and 212(d)(5)(A) of the Act [i.e., 8 U.S.C. § 1231(a)(6) and 8 U.S.C. § 1182(d)(5)(A)]"), (c) (referring to the "statutory authority to make custody determinations under"§ 1231(a)(6)), (d) (referring to a "decision . . . to release or to detain an alien"), (f) ("factors [that] should be weighed in considering whether to recommend further detention or release of a detainee"); and, most pertinent here, (l)(2) (addressing the discretion to revoke release when it is appropriate to enforce a removal order).

Accordingly, the Delegation Order provides authority to Field Office Directors to address

issues of detention and release, including the decision to revoke an Order of Supervision. Reaching the opposite conclusion, the court in *E.M.M.* failed to address the meaning of "related to" in applying an overly narrow reading of the Delegation Order, and further failed to examine how the various provisions of Section 241.4 coincide with the concepts of detention and release that are referenced in the Delegation Order. If the Court nevertheless finds the regulation ambiguous, the Court should defer to ICE's interpretation of its own Delegation Order and its own consistent practice. *See Kisor v. Wilkie*, 588 U.S. 558, 575–76 (2019) (deference to agency's interpretation of its own ambiguous regulation where the character and the context of the agency interpretation entitles it to controlling weight).

In sum, 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.

Dated: New York, New York
December 16, 2025

Respectfully submitted,

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