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**United States District Court
For the Southern District of New York
New York, New York**

MAMADOU BOCOUM NDOYE,)
Petitioner)
)
Vs.)
)
WILLIAM JOYCE et al,)
Respondents)
_____)

Civil Action No. 25-cv-8856 (VSB)

PETITIONER’S RESPONSE TO RESPONDENT’S REPLY MEMORANDUM

I. Introduction

Petitioner Mamadou Ndoye submits this response through his wife and next friend, Charisse Smith. He has now been detained for more than two months in violation of his due process rights. He respectfully asks the Court to order his release so that he can return home to his family, including his U.S. citizen wife and seven U.S. citizen children, during the holiday season, and especially to help care for his youngest daughter, an eight-month-old infant, who remains hospitalized.


Release would allow Mr. Ndoye to exercise his constitutional right to liberty and would also give him a meaningful opportunity to consult with and hire an immigration lawyer. With the help of that lawyer, he intends to seek reopening of his 2008 removal order so that he may pursue lawful status and remain in the United States with his family.

Mr. Ndoye has met his burden of showing that there is no reason to believe that it is likely that he will be removed in the foreseeable future. The government has not been able to show that he will be removed in the near future. The only evidence the government offers is a purported Malian travel document, but that document contains numerous serious, factual errors and cannot reasonably be relied upon to effect removal.

The Respondent also provides an incorrect reading of 8 C.F.R. § 241.4(l), arguing that different procedural protections apply depending on the asserted basis for revoking an Order of Supervision (“OSUP”). Mr. Ndoye disagrees with Respondent’s attempt to read into the regulation at 8 CFR § 241.4(l) a distinction between the procedural requirements for an Order of Supervision (OSUP) revocation due to an alleged OSUP violation and one based on the other three grounds found in subsection (l)(2). Mr. Ndoye was never given the required interview or opportunity to respond, and the record does not support Respondent’s claim that he was. In addition, even though it is not completely clear from the evidence provided by the government who revoked Mr. Ndoye’s OSUP, the evidence shows that his OSUP was revoked by an official who lacked authority to do so without additional findings and process.

For all of these reasons, Mr. Ndoye’s continued detention violates due process.

II. Facts and Procedural History

Mr. Ndoye is a citizen of Mali. His full name is Mamadou Bocoum Ndoye, and he was born on  *Exh B*. His parents, Abdoul-Aziz Ndoye and Fatou Kine Dieng, live in France. *Id.*

Mr. Ndoye is married to Charisse Smith, a U.S. citizen. *Exh D*. Together they are raising seven U.S. citizen children: [REDACTED] (born [REDACTED] who is not Mr. Ndoye's biological son, but whom Mr. Ndoye has raised as his own), [REDACTED] (born [REDACTED] [REDACTED], [REDACTED] (named after Mr. Ndoye's father and born [REDACTED] N [REDACTED] (born [REDACTED] [REDACTED] (born [REDACTED] [REDACTED] (born [REDACTED]), and F [REDACTED] (named after Mr. Ndoye's mother and born [REDACTED]. *Id.*

Mr. Ndoye's family is currently experiencing a serious medical and emotional crisis. *Exh E*. His youngest child, [REDACTED], is only eight months old and has been repeatedly hospitalized at Mount Sinai due to severe respiratory complications. She is presently hospitalized. Mr. Ndoye's wife is struggling to manage her infant's medical care while also caring for six other children, the oldest of whom is fourteen. Avery Wallerstein, a licensed social worker at Mount Sinai has explained that Mr. Ndoye's presence is urgently needed—not only to care for his children, but to participate in critical medical decision-making for his baby.

Mr. Ndoye was first taken into ICE custody in October 2008. *Docket Entry (Dkt) 15-1*. He was detained during removal proceedings and ordered removed to Mali on November 3, 2008 by an Immigration Judge under INA § 212(a)(6)(A)(i). *Dkt 15-1, Dkt 15-2*. ICE was unable to obtain travel documents from Mali, and he was released under an Order of Supervision on May 21, 2009. *Dkt 15-3, Dkt 15-4, Dkt 15-5*. His OSUP was briefly revoked in December 2009, but he was released on an OSUP again the same day. *Dkt. 22-1*.

On October 21, 2025, Mr. Ndoye was arrested by ICE officers on Canal Street in New York. Records show that he was not the target of the operation that day. When Mr. Ndoye was

asked for identification, and after providing it, officers discovered his old removal order. *Dkt 14*, *Dkt 21 paragraph 3* (stating that Petitioner was not the target), *Dkt 22-3* (stating that the ICE operation on Canal Street was targeted at several individuals issued warrants of arrest and that Petitioner was not a target but matched the physical description and build of a target whose name is redacted). However, according to DHS' own publication, the operation on Canal Street was a "targeted, intelligence-driven enforcement operation... focused on criminal activity relating to selling counterfeit goods¹." Petitioner himself has explained that he does not believe ICE found information that justified his arrest just based on his name and date of birth, because he heard an officer say "Take him anyway." *Exh. B*.

Following Mr. Ndoye's arrest, ICE revoked his OSUP. The Notice of Revocation is signed by the Newark Field Office Director Ruben Perez. *Dkt 22-2*; however, the I-213 prepared in connection with the October 21 arrest states that Petitioner's "Order of Supervision (OSUP) was revoked based on his failure to comply with reporting and his criminal arrest history post placement on OSUP... Subject's OSUP revocation and detention was approved by AFOD [Assistant Field Office Director] J. Laforge." *Dkt. 22-3*.

Mr. Ndoye was never interviewed in connection with the revocation of his OSUP. *Dkt 22-3, Exh. B*. Instead, he was instructed to attempt to obtain a travel document from the Malian Embassy. *Dkt. 22-3* ("Subject's Order of Supervision (OSUP) was revoked based on his failure to comply with reporting and his criminal arrest history post placement on OSUP. Subject was provided with an I-229 Notice of Warning for Failure to Depart. It was explained to the subject

¹ U.S. Department of Homeland Security, MAKING NEW YORK'S CANAL STREET SAFE AGAIN: ICE Arrests 9 Illegal Aliens on Canal Street Operation with Rap Sheets Including Robbery, Domestic Violence, Assaulting Law Enforcement, Counterfeiting, Drug Trafficking, and Forgery, October 22, 2025, available at: <https://www.dhs.gov/news/2025/10/22/making-new-yorks-canal-street-safe-again-ice-arrests-9-illegal-aliens-canal-street>

that he must make attempts and every good faith effort to secure a travel document or passport...”).

On December 10, 2025, he spoke with a person who identified himself as an official at the Malian Embassy in Washington, D.C., and provided basic biographical information, including his name, date of birth, height, and his parents’ names. *Exh. B*.

III. Argument

a. Respondent’s jurisdiction argument mischaracterizes Petitioner’s requests

In his Response Memorandum, the Respondent argues again that this Court lacks jurisdiction because Mr. Ndoye’s claims allegedly arise from ICE’s decision to execute his final removal order. *Dkt 30 at 2*. That argument misstates the nature of this case. In his original return to Petitioner’s initial habeas petition, Respondent argued that 8 USC §§ 1252(a)(5), (b)(9), and (g) bar jurisdiction here. *Dkt 16 at 8-14*. But District Courts all over the country have found jurisdiction to review claims identical to Petitioner’s because he is not challenging ICE’s decision to execute his final removal order.

With regard to subsections (b)(9) and (g), though detention related to a final order of removal “always is related to the execution of an immigration order, [] courts routinely hear habeas petitions filed by individuals challenging detention during the removal process.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 152 (W.D.N.Y. May 2, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018)). That is because courts in the Second Circuit (and beyond) “have distinguished between challenges to ICE’s discretion to execute a removal order, which are barred, and challenges to the manner in which ICE executes the removal order, which are not.” *Ceesay*, 781 F. Supp. 3d at 152 (citing *Torres-Jurado v. Biden*, 2023 WL 7130898 (S.D.N.Y. Oct

29, 2023) at *2 (collecting cases)). Similarly, in the Southern District of New York, District Court Judges have found jurisdiction to hear challenges almost identical to Petitioner's despite subsection (g), because "[e]ven though, '[i]n a but-for sense,' a claim of unlawful detention might arise from the government's decision to commence proceedings, adjudicate a case, or execute a removal, challenges to unlawful detention 'do not 'arise from' the government's decision to 'execute removal orders' within the meaning of § 1252(g) simply because the claims relate to that discretionary, prosecutorial decision.'" *Zhu v. Genalo*, --- F.Supp.3d ----, 2025 WL 2452352, at *3 (S.D.N.Y. Aug. 26, 2025) (quoting *Öztürk v. Hyde*, 136 F.4th 382, 396 (2d Cir. 2025)). In *Zhu*, the Court decided that because "Petitioner's claims are collateral to the Government's decision to execute the final order of removal, and instead involve whether the Government complied with its own revocation procedures and whether the length of his detention after the removal period is constitutional." *Id.* at *3. The same is true here.

Subsection (a)(5) holds that a judicial challenge to a final order removal must occur through a Petition for Review in the applicable Court of Appeals. Petitioner did not even appeal his final order of removal to the Board of Immigration Appeals, and there is no indication anywhere in his petition that he seeks judicial review of his 2008 order of removal, as such a challenge would be years past the deadline, and he did not exhaust his administrative remedies.

This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq., and Administrative Procedure Act, 5 U.S.C. § 551, et seq.

b. Respondent's argument justifying Petitioner's detention under 8 USC §1231 is unavailing because Petitioner's detention has extended way beyond a reasonable time, Petitioner has demonstrated there is good reason to believe

there is no significant likelihood he will be removed in the reasonably foreseeable future, and Respondent has not rebutted the presumption

Respondent does not disagree that Petitioner's statutory 90-day removal period expired in 2009 and that he was then detained until May 2009, released under an OSUP, and then briefly re-detained and released in December 2009. *Dkt 30 at 6, footnote 4*. But Respondent says that Petitioner's argument that he cannot be re-detained after the presumptively reasonable 180 day long period of detention post final order under *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) has expired is "both wrong and legally incorrect." However, that is not what Petitioner argued.

Instead, he alleged that his period of detention beyond the 180 day long presumptively reasonable period was unconstitutional because he had provided good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future: ICE had not requested a travel document from the Embassy of Mali. This was true when he submitted his amended petition for habeas (though it did not reach the Court and was not filed on the docket until December 4) and was still true when Respondent submitted his declaration on November 25. *Dkt 21, Dkt 27*. Courts in the Second Circuit and in jurisdictions around the country have held that the presumptively reasonable 180 day period of detention in *Zadvydas* is counted cumulatively and is not reset when a previously detained Petitioner is re-detained. *See, Sied v. Nielsen*, 2018 WL 1876907, at *6 (N.D. Cal.); *Farah v. I.N.S.*, 2003 WL 221809, at *5 (D. Minn.); *Nhean v. Brott*, 2017 WL 2437268, at *2 (D. Minn.) (report and recommendation), adopted, 2017 WL 2437246 (D. Minn.); *Bailey v. Lynch*, 2016 WL 5791407, at *2 (D.N.J.); *Diaz-Ortega v Lund*, 2019 WL 6003485, at *7 n 6 (W.D. La.) (collecting cases), *Hamama v Adducci*, 2019 WL 2118784, at *3 (E.D. Mich.); *Siguenza v Moniz*, 2025 WL 2734704, at *3 (D. Mass); *Nguyen v. Scott*, 796 F. Supp. 3d 703, 722 (W.D. Wash. 2025); *Escalante v Noem*, 2025 WL 2206113, at *3 (E.D. Tex.); *Abuelhawa v. Noem*, 2025 WL 2937692, at *4 (S.D. Tex.);

Abubaka v. Bondi, 2025 WL 3204369, at *3 (W.D. Wash.); *Villanueva v. Tate*, 2025 WL 2774610, at *9–10 (S.D. Tex.); *see also, Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 500 (S.D.N.Y. 2009) (concluding that, where the Government was aware of a noncitizen's address but failed to pursue her removal until more than 15 months after the removal order was entered, “the removal period, as well as any presumptively reasonable six-month period of removal to which the Government may have been entitled” had expired six months after the entry of the removal order).

Courts have also generally held that the fact that ICE had been unable to remove a Petitioner for years and had submitted evidence that it was making a good faith effort to deport him and that the removal may be effected in the future allowed a Petitioner to meet his burden of proof of demonstrating there was no significant likelihood of his removal in the reasonably foreseeable future, and that ICE had not rebutted that presumption. *See, e.g., Nguyen*, 796 F. Supp. 3d at 725; *Siguenza*, 2025 WL 2734704, at *3; *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1220 (W.D. Wash. 2006); *Chun Yat Ma v. Asher*, 2012 WL 1432229, at *5 (W.D. Wash.); *Momennia v. Bondi*, 2025 WL 3006045, at *1 (W.D. Okla.); *Vaskanyan v. Janecka*, 2025 WL 3050075, at *3 (C.D. Cal.) (“That the government was ‘pursuing the possibility of removing Petitioner to Armenia’ did not show that Petitioner's removal was likely in the reasonably foreseeable future. In fact, that position – that a showing of continued good faith efforts to effectuate deportation is sufficient to prolong detention – was squarely rejected by the Supreme Court in *Zadvydas* as ‘demand[ing] more than our reading of the [INA] can bear.’”); *Ahmed v. Freden*, 744 F. Supp. 3d 259, 267 (W.D.N.Y. 2024) (“DHS's active efforts to obtain travel documents from Pakistan are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to

suggest a timeline on which such documents will actually be issued.”); *Cyclewala v. Searls*, 2021 WL 5989781, at *5 (W.D.N.Y.) (finding ICE's failure to explain the lack of progress in effectuating petitioner's removal, especially when respondent conceded that India had “a good prior record of accepting removed aliens[,]” left the Court unable to estimate when removal would occur); *Seretse-Khama v. Ashcroft*, 215 F.Supp.2d 37, 50 (D.D.C. 2002) (government failed to rebut showing that deportation is not reasonably foreseeable where they “have not demonstrated ... that any travel documents are in hand, nor have they provided any evidence, or even assurances from the [foreign] government, that travel documents will be issued in a matter of days or weeks or even months”); *Singh v. Whitaker*, 362 F. Supp. 3d 93, 104 (W.D.N.Y. 2019), *abrogated on other grounds by Alvarez Ortiz v. Freden*, 2025 WL 3085032 (W.D.N.Y.).

ICE has tried to remove Petitioner to Mali since 2008. *Dkt 15-3*. The Malian Embassy has previously agreed to review Petitioner’s travel document application but did not issue a travel document. *Dkt 15-4*. Petitioner has cooperated in ICE’s efforts to obtain a travel document for him. On December 10, 2025, he provided the information requested by the Embassy of Mali. ICE states that since January 2025, Mali has accepted Malian citizens who were ordered removed from the United States, and in Fiscal Year 2025 ICE facilitated 78 removals to Mali. But just because Mali has, since January 2025, accepted a number of Malian citizens who were ordered deported does not mean that Mali has accepted Petitioner for repatriation. Petitioner can meet his burden of demonstrating that his removal is not foreseeable in the reasonably foreseeable future.

Respondent states that Petitioner has not met his burden but even if he had, Respondent can rebut it because it has obtained a travel document for Petitioner and is prepared to remove him if the Court lifts the stay of removal. *Dkt 30 at 8, Dkt 31, Dkt 32-2*. However, as Petitioner

explains in his declaration, the document obtained by ICE (*Exh C*) contains multiple errors, and it appears highly unlikely that ICE will be able to effectuate Petitioner's removal with a travel document that bears a 16 year old photo, contains a totally incorrect date of birth for Petitioner ([REDACTED] instead of [REDACTED]), lists the wrong name for his mother (Kine Diop instead of Fatou Kine Dieng), states the wrong height of Petitioner (1 meter 70 cm, which is about 5 feet and 7 inches, instead of 6 feet and 1 inch), contains the wrong country of residence for his parents (Bamako, Mali instead of France), and states that he has been living on Varick Street in New York for the past three months, which is also incorrect (Petitioner has been detained at Orange County Jail since October 22, 2025 and prior to that was living with this family). Compare *Dkt 32-2* and *Exh C* with *Exh B*. Thus, as before, Respondent has not rebutted the presumption that Petitioner's removal is not likely in the reasonably foreseeable future.

"[A]s the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely [shrinks]." *Zadvydas*, 533 U.S.at 701. Petitioner was first detained by ICE on October 16, 2008. *Dkt. 15-1*. He was ordered removed by the Immigration Judge on November 3, 2008 and waived appeal of that decision, so his removal order became final the same day. *Dkt 15-2*. He was released from ICE detention in May 21, 2009. *Dkt 14 paragraph 10, Dkt 15-5*. He was re-detained on December 21, 2009 for one day. *Dkt 14 paragraphs 13, 14, Dkt 22-1*. Then he was detained on October 21, 2025 and remains detained today. *Dkt 22-2, Dkt 22-3*. So far, Petitioner has been detained for 263 days since his removal period began. Petitioner respectfully suggests that a defective travel document does not meet Respondent's burden of proof to rebut the presumption he has established that his removal is not foreseeable and to justify his continued and prolonged detention under *Zadvydas* and requests that the Court grant his petition and order his immediate release.

c. Respondent is drawing artificial lines in the regulation that governs Petitioner's re-detention; but even under Respondent's reading, Petitioner's detention violates his due process rights.

As Respondent acknowledges, in his initial return to Petitioner's habeas petition he asserted that Petitioner's OSUP was revoked pursuant to 8 CFR § 241.4(l)(2). *Dkt. 16 at 7, 18, Dkt 30 at 8*. However, now Respondent argues that Petitioner's OSUP was revoked pursuant to 8 CFR § 241.4(l)(1). *Dkt. 30 at 8-9*. Respondent asserts that each subsection entails different procedural requirements that ICE must follow, and that while 241.4(l)(1) requires an informal interview and an opportunity to respond to the stated reason for the revocation be given to an individual whose OSUP is revoked for violation of its terms, 241.4(l)(2) does not require this interview and opportunity to respond. *Dkt 30 at 9*. Respondent also explains that while *E.M.M. v. Almodovar*, 2025 WL 3077995 at *4 (S.D.N.Y) held that subsections (l)(1) and (l)(2) provided two separate bases to revoke an OSUP, *Funes v. Francis*, 2025 WL 3263896 at *15 (S.D.N.Y.) concluded that the requirements for either bases to revoke under 241.4 were not mutually exclusive. *Dkt. 30 at 9-10*.

While it is true that *E.M.M.* distinguished between the bases for revocation in subsections (l)(1) and (l)(2), Respondent's assertion that only (l)(1) requires an informal interview and opportunity to respond, while (l)(2) does not is entirely unsupported by the caselaw. In fact, District Courts have generally held that it makes no sense for an individual accused of having violated their OSUP to be given an informal interview and an opportunity to respond to the reasons for revocation, while an individual who complied with their OSUP is given less process. Moreover, subsection (l)(2) provides four discretionary bases for OSUP revocation, *including violation of its terms*, and (l)(1) states that ICE *may* revoke an OSUP for violation of its terms (in other words, the decision is discretionary), demonstrating that the two subsections are not in any

way mutually exclusive and must be read together to find the interview and opportunity to respond requirement regardless of the basis for the OSUP revocation. *Ceesay*, 781 F. Supp. 3d at 164; *Doe v. Smith*, 2018 WL 4696748 (D. Mass. Oct. 1, 2018); *M.Q. v. United States*, 2025 WL 965810, at *3, *5 n.1 (S.D.N.Y. Mar. 31, 2025); *You v. Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018); *Zhu*, --- F.Supp.3d at ---, 2025 WL 2452352, at *7; *Grigorian v. Bondi*, 2025 WL 1895479, at *2 (S.D. Fla.); *Truong v. Noem*, 2025 WL 2988357, at *6 (S.D. Cal.); *Villanueva*, 2025 WL 2774610, at *7.

As the Court explained in *Funes*, “although § 241.4(l) is far from pellucid prose, *Funes*’ construction—under which the procedural protections of notice and an interview extend to persons whose release is revoked on any of the grounds listed in the subsection (l)(2)—is, on balance, more persuasive.” 2025 WL 3263896, at *16. The Court went further to explain that it was “not alone in holding that the text of § 241.4(l) sets forth a unified set of procedures governing the revocation of release. Every other court in this Circuit to resolve the issue has similarly held.” *Id.* The Court also noted that the “history of the regulation as implemented by ICE thus belies the agency’s recent litigation position—apparently adopted in opposing habeas challenges to revocations in which ICE was claimed to have failed to provide the procedural safeguards of § 241.4(l)—that these protections apply only where the revocation is based on violating a condition of release.” *Id.* at *17.

Thus, regardless whether Petitioner’s OSUP was revoked because of a violation of its conditions or not, he should have been provided with a prompt interview and the opportunity to respond to the reason for the revocation.

Respondent here claims that after being served the Notice of Revocation, Petitioner was interviewed and advised of the reasons for the revocation for his release. For support for this

claim, Respondent cites to paragraph 5 of the supplemental declaration of Officer Quizphi and Docket entry 22-3 (Exh H). *Dkt 30 at 9*. However, the supplemental declaration is by an ICE Officer who at no point was part of Petitioner's re-detention and who states that he prepared the declaration based on review of Petitioner's administrative file, consultation with his colleagues, and ICE electronic records. *Dkt 31 paragraph 2*. In paragraph 5 of his declaration, the Officer cites only to the I-213 prepared on October 27, 2025 (Ex. H), approximately one week after Petitioner's re-detention by ICE. *Dkt 31 paragraph 5*. The I-213, in turn, contains zero information that Petitioner was provided with an interview *regarding the reason for his OSUP revocation or an opportunity to respond to the revocation*. Instead, the I-213 states that Petitioner was served with the Notice of Revocation of Release and was then instructed about the information he needed to provide and the documents he needed to request so that ICE could get a travel document for him. *Dkt 22-3*. Petitioner has explained that he has to date not been provided with an interview regarding the reason for his OSUP revocation. *Exh B*. Since the informal interview and opportunity to respond requirement applies both to subsections (l)(1) and (l)(2), ICE's failure to provide such an interview is a clear violation of the regulations.

The regulation that ICE violated was designed to protect Petitioner's due process rights. It is black-letter law that noncitizens are entitled to due process rights no matter whether their presence in the United States is "lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law."). "[T]he Supreme Court has long recognized that, where 'the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.'" *Funes*,

2025 WL 3263896, at *22 (citing to *Morton v. Ruiz*, 415 U.S. 199, 235 (1974)). “[W]hen the minimal elements of due process—notice and an opportunity to be heard—have been satisfied, a failure by an agency to adhere to its own regulations does not, of itself, violate due process. But the notion of fair play animating the Fifth Amendment precludes an agency from promulgating a regulation affecting individual liberty or interest, which the rule-maker may then with impunity ignore or disregard as it sees fit.” *Id.* (internal citations and quotations omitted). ICE’s failure to provide Petitioner with an informal interview and an opportunity to respond to the reason for his OSUP revocation constitutes a due process violation. *Funes*, 2025 WL 3263896, at *23; *Zhu*, — F.Supp.3d at —, 2025 WL 2452352, at *9 (“ICE’s failure to follow its own regulations and provide Petitioner with notice or an interview violated Petitioner’s procedural due process rights”); *Ceesay*, 781 F. Supp. 3d at 164 (“ICE was required to afford Ceesay at least an informal interview ... ICE’s failure to afford Ceesay such an interview violated his right to due process.”).

Petitioner’s due process rights were also violated when his OSUP was revoked by an official who was not authorized to revoke it. This is true whether his revocation occurred under (l)(1) or (l)(2). Since ICE commonly includes language in a Notice of Revocation of OSUP informing noncitizens that they will be provided with an information interview whether the OSUP was revoked under 241.4(l)(1) or 241.4 (l)(2) (compare *Dkt. 30 at 9-10* alleging that Petitioner’s OSUP was likely revoked under (l)(1) since the Notice states he will be afforded an informal interview, with *Funes*, where the Court found that for at least the past eight years, ICE has included the same language in Notices of Revocation where the reasons for OSUP revocation clearly fall under (l)(2), 2025 WL 3263896, at *16), since courts have held that 241.4(l)(1)-(3) must be read as a whole, and since violation of an OSUP is listed in both subsections (l)(1) and

(l)(2), Petitioner asserts that the specifications of who is authorized to revoke his OSUP listed in (l)(2) apply to him and should be examined by this Court.

Here, the evidence of who revoked Petitioner's OSUP is a bit unclear. On the one hand, the Notice of Revocation is signed by the Newark Field Office Director (FOD); on the other hand, the I-213 prepared in conjunction with Petitioner's 2025 ICE arrest states that it was the Assistant Field Officer Director (AFOD) who approved the revocation. *Dkt 22-2*, *Dkt 22-3*. Regardless of whether it was the FOD or the AFOD, under ICE's own regulations, further process (a finding that revocation was in the public interest and that a higher-ranking official could not be consulted) was required in order for the OSUP revocation to satisfy due process.

“The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody a [noncitizen] previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner.” 8 C.F.R. § 241.4(l)(2). As *Ceesay* explained, “[o]n its face, the regulation seems straightforward enough: According to its terms, only the ‘Executive Associate Commissioner’ or the ‘district director’—if the latter finds that ‘revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Association Commissioner’—may revoke a noncitizen's release.” 781 F. Supp. 3d at 160. Since the reorganization of the legacy INS into DHS, this means that the Executive Associate Director of ICE can revoke an OSUP, and a Field Officer Director and any other official “delegated the function or authority ... for a particular geographic district, region, or area” can revoke an OSUP *after making certain findings*. *Id.* at 161.

Like in *Ceesay*, Respondent argues that the FOD or AFOD who revoked Petitioner's OSUP in this case did not have to make any further findings (that revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Director), because a 2019 Delegation Order by Nathalie Asher, the then Executive Associate Director of ICE, delegates to assistant field officer directors the "[a]uthority under ...8 C.F.R. Part 241[] relating to warrants of removal, reinstatement of removal, self-removal, and release of [noncitizens] from detention." *Id.*; *Dkt 30 at 10-11*; *Dkt 32-3*. However, as various Courts have already found, this delegation order does not include the authority to revoke release from ICE custody, and it is unclear if AFODs are included at all. *See, Ceesay*, 781 F. Supp. 3d at 161; *M.S.L. v. Bostock*, 2025 WL 2430267, at *10 (D. Or.); *Funes*, 2025 WL 3263896, at *19.

Respondent argues that because the delegation order "applies the broad phrase 'related to' in connection with the delegation of authority concerning the 'release of aliens from detention,'" and because "'detention' and 'release' are unquestionably related to each other, as the opposite outcomes of the same binary custody question...the delegation of authority 'relating to...release of aliens from detention' necessarily includes the authority to revoke such a release." *Dkt 30 at 12*.

But the proposition that a word, when used in a regulation, necessarily also includes its polar opposite does not find support in the case law. Citing to a number of Supreme Court decisions, the Court in *Funes* explained that "the omission of one item from a list of like items implicitly excludes that item" and concluded that "because the Delegation Order lists a series of other actions under 8 C.F.R. § 241 as to which authority has been delegated but does not include OSUPs or their revocation, the *expressio unius* canon excludes revocation." 2025 WL 3263896, at *19. *E.M.M.*, which Respondent cites for support for his previous argument, concluded: "Fatal

to the Government's argument, the Delegation Order does not purport to delegate a general authority under 8 C.F.R. Part 241; rather, it does so only with respect to certain enumerated matters, none of which apply to E.M.M.... Revocation of release, which is a specific event enumerated elsewhere in the governing regulations, is found nowhere in the list of authorities delegated to assistant field office directors in the Delegation Order. Neither the relevant regulations nor the Delegation Order authorized the assistant field office director to revoke E.M.M.'s OSUP." 2025 WL 3077995, at *6.

In *Funes*, the Respondent had also argued that the term "relating to" must be read broadly, relying on the same case that Respondent relies on in his brief, *Coregis Ins. Co. v. American Health Foundation*, 241 F.3d 123, 128-29 (2nd Cir. 2001). "But *Coregis* is far afield. It construed the term 'related to' in assessing an 'insolvency exclusion' in an insurance policy, interpreting the ordinary meaning of the term 'related to' as used in th[at] provision. The Circuit nowhere conveyed that this tool applied outside that niche. And the policy text in *Coregis* did not implicate the *expressio unius* canon. Moreover, respondents cherry-pick in citing *Coregis*. Other Second Circuit decisions, including ones post-dating *Coregis*, have adopted narrower constructions of 'related to.'" *Funes*, 2025 WL 3263896, at *19 (internal citations and quotations omitted).

Respondent's reliance on *Kisor v. Wilkie*, 588 U.S. 558, 575-76 (2019) is similarly unavailing; as *Funes* explains, there is no ambiguity in the regulation at issue here. 2025 WL 3263896, at *20.

Petitioner's OSUP was not revoked by an official who was authorized to do so, regardless of whether it was the FOD or the AFOD. This also constitutes a due process violation. As a result, Petitioner's OSUP revocation was unlawful and his continued detention as a result is, as well.

See, E.M.M., 2025 WL 3077995, at *6; *Funes*, 2025 WL 3263896, at *20; *Ceesay*, 781 F. Supp. 3d at 162 (“As a result, this Court cannot conclude that Robinson had the authority to revoke release, finds that Ceesay's release was not lawfully revoked, and holds that he is entitled to release on that basis alone.”).

Finally, although Petitioner did not raise this in his written amended Habeas, as he, through his next friend, expressed during the hearing held in November, his Notice of Release promised him – in the event that ICE obtained travel documents for him – the opportunity to prepare for an orderly departure. *Transcript (Tr)* at 33; *Dkt 15-5* (release notification from May 2009, Respondent has not submitted the December copy). Petitioner’s next friend asserted that ICE’s failure to give him that opportunity when it simply had masked agents sweep him off the street violated his constitutional rights. Respondent has not addressed this issue in his Reply Memorandum, but Petitioner here asks the Court to acknowledge that “the promise of an orderly departure cannot mean nothing.” *Ceesay*, 781 F. Supp. 3d at 169. Petitioner has a wife and seven children, who did not know on the morning of October 21, when Petitioner left home to go to deliver food, that they would not be able to see him again or hug him good bye. Petitioner’s youngest child, who is only eight months old, has been in and out of the hospital and is currently hospitalized due to severe respiratory challenges, while his wife is struggling to balance their baby’s medical care with their other six children’s needs. *Exh E*.

Because of this promise and based on the due process violations described, Petitioner respectfully requests that the Court order his immediate release. Even in the event that the Court finds that the travel document submitted by Respondent, despite its many deficiencies, may allow ICE to remove Petitioner to Mali, the regulatory violations alone require that Petitioner be released immediately to vindicate his due process rights. *See, Mbonga v. Raycraft*, 2025 WL

3122829, at *2 (N.D. Ohio Nov. 7, 2025) (Petitioner was issued a travel document by the Embassy of the Democratic Republic of Congo on August 19, 2025. On October 28, 2025, Petitioner filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. Because ICE had not provided Petitioner with an informal interview prior to his OSUP revocation, and the correct official had not revoked the OSUP, the Court ordered his release despite the fact that ICE already had his travel document.).

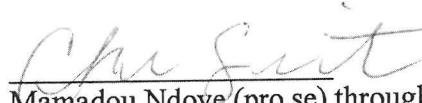
IV. Conclusion

Mr. Ndoye has shown that his re-detention violated due process and that his continued confinement is unconstitutional. He understands that if he does not hire an immigration lawyer to reopen his case, ICE can remove him to Mali in the future if it goes through the steps required by law. But he respectfully requests that he should not remain detained another day without the basic procedural protections the Constitution requires. “If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.” *Niz-Chavez v. Garland*, 593 U.S. 155, 172 (2021).

Petitioner thus repeats his prayers for relief in his amended petition and, in particular, asks this Court to order his immediate release, so that he can be with his wife and help care for his seven children, including his sick baby, who is currently hospitalized.

Petitioner received assistance from counsel in preparing this filing.

Respectfully submitted.


Mamadou Ndoye (pro se) through his next friend,
his wife, Charisse Smith Ndoye

12/23/2025
Date

EXHIBIT B

Mamadou Bocoum Ndoeye v. Joyce Civil Action No. 25-cv-8856 (VSB)

Declaration of Petitioner

**United States District Court
For the Southern District of New York
New York, New York**

MAMADOU BOCOUM NDOYE,)
Petitioner)
)
Vs.)
)
WILLIAM JOYCE et al,)
Respondents)
_____)

Civil Action No. 25-cv-8856 (VSB)

Declaration of Mamadou Ndoye

I, Mamadou Bocoum Ndoye, pursuant to 28 U.S.C. § 1746, declare as follows:

- 1) I am the petitioner in this case. I am currently detained by ICE at the Orange County Jail in New York.
- 2) Prior to my arrest by ICE on October 21, 2025, I was living in New York with my wife, Charisse Smith Ndoye, who is a United States Citizen, and my seven children, who are also United States Citizens. They are: [REDACTED] (born [REDACTED], who is not my biological son, but who only knows me as his father), [REDACTED] (born [REDACTED]), [REDACTED] (born [REDACTED]), [REDACTED] (named after my father and born [REDACTED]), N [REDACTED] (born [REDACTED]), [REDACTED] (born [REDACTED]), [REDACTED] (born [REDACTED]), and [REDACTED] (named after my mother and born [REDACTED]).
- 3) My wife and I own a restaurant on Canal Street in New York City, named D Salam African Cuisine, where we serve West African food.
- 4) On October 21, I was delivering food on Canal Street. I saw a large group of officers close to where I was. They were wearing masks and carrying weapons. First they walked past me but then they came straight toward me and surrounded me. I was surrounded by officers who were wearing masks, and some of them had guns. One of them asked me who I was, and I asked him why he needed to know. Some of the officers said they were with immigration enforcement. So then I gave them my name (Mamadou Bocoum Ndoye) and my date of birth ([REDACTED]). One of the officers had a phone, and he appeared to be searching for my information. But I do not think he found my information, because I heard one of the officers tell him: "Take him anyway." They arrested me, and I did not resist.
- 5) The officers handcuffed me very tightly and put me into a white van. There were seven other men with me, who had also been arrested. They were all African, as well. We were

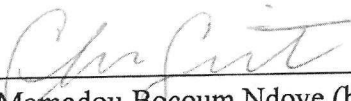
driven to an office in Newark, NJ. During the drive, some of the officers told us that they were going to deport us back to our countries.

- 6) Once we got to the office in Newark, an ICE officer told me that my Order of Supervision had been revoked. He gave me a document to sign, but I did not understand exactly what I was signing. I was just handed the document and told to sign it. I was not told why my Order of Supervision had been revoked. I was not told that I could have an interview to explain why my Order of Supervision should not be revoked, and I have not been given an interview like that since I was arrested. If I had, I would have explained that I want to help my wife take care of our young children, especially my youngest, who has been in the hospital since October 19, 2025, just two days before I was detained by ICE.
- 7) One of the ICE officers asked me if I had a travel document, and I told him I did not have one. He told me I would have to request one from the Embassy of Mali. I remember that one of the officers said ICE would send me back to my country. But the officer used a swear word when he said this.
- 8) That night, I was driven to a detention center in Elizabeth where I slept for just a couple of hours, and then I was driven to Orange County, where I have been since October 22. When I arrived at the Orange County jail, I was not given Halal food for the first four days, so I could not eat anything during that time. I was permitted to shower for the first time after I had been at Orange County jail for three days.
- 9) Shortly before my last hearing in District Court, an ICE officer at the jail told me that ICE already had my travel document from Mali and that I would be deported on November 24. Officers have also told me that even if they could not get my travel document, they would just deport me to El Salvador, even though I have never been there.
- 10) On December 10, 2025, I spoke by phone with the Embassy of Mali. An official there asked me some questions so that they can issue me a travel document. I am not sure if I remember all of the questions I was asked, but I do remember I was asked for my name, my date of birth, my parents' full names, and my height. I provided answers to all of these questions (full name: Mamadou Bocoum Ndoye; date of birth: [REDACTED]; father's name: Abdoul-Aziz Ndoye; mother's name: Fatou Kine Dieng; my height: 6' 1").
- 11) I have seen a copy of the travel document that ICE says they received from the Embassy of Mali. ICE has not shown me the document, but a copy of it was attached to the documents the government sent me in my habeas case. The document says it was made on December 11, the day after I spoke with the Embassy.
- 12) I dispute the accuracy of the travel document. The photo on the document is one that ICE took of me at [REDACTED] in 2009 when I went to get fingerprinted. In the photo, I have a shaved head, but now I have hair that reaches down past my shoulders. My date of birth on the travel document is incorrect; my date of birth is [REDACTED]. My mother's name on the travel document is incorrect; her real name is Fatou Kine Dieng. My

parents' residence on the travel document is incorrect; they live in France, not in Bamako, Mali. My height on the travel document is incorrect. I am about 6 feet and 1 inch tall, not 1 meter 70 cm, which is about 5 feet, 7 inches. It says I have lived on [REDACTED] [REDACTED] for the past three months, but that is not true. I have been detained at the Orange County jail for about two months, and before that I was living at home with my family.

13) I know that I was ordered deported by the Immigration Judge in 2008. At the time, I could not afford a lawyer, but even though I was ordered deported, ICE was not able to deport me because Mali was not giving travel documents. I know that I should have paid more attention to my immigration case, but my wife and I have very busy lives raising our children and running a restaurant, and so I did not prioritize my immigration case because it did not feel urgent. I know that was a mistake, and I intend to hire an immigration lawyer to help me reopen my case so that I can try to get legal status in the United States and stay here with my wife and with my children who have never lived anywhere other than the United States. I do not qualify for having an automatic free immigration lawyer in New York because I already have a deportation order. An immigration lawyer from one of the organizations in New York that gives free help to detained immigrants came to see me, because my wife asked for help, but the lawyer said the organization cannot accept my case. My wife also talked to a few private immigration lawyers to ask them to take my case, but they said they are too busy to take detained cases where everything has to be done very quickly. If I can get out of detention, I can look for a lawyer who can help me try to reopen my case. Since I have been detained, my wife and our community have been raising money to pay for my legal fees so that I can have a chance to stay here and raise my kids.

Signed under pains of perjury by:


Mamadou Bocoum Ndoye (by Charisse Smith,
his wife and next friend)

12/23/2025
Date

I, Charisse Smith, swear under penalty of perjury that I was on a phone call with my husband, Mamadou Bocoum Ndoye, and our friend, Olivya Veazey, on December 21, 2025, and that I listened to Olivya Veazey read this declaration word for word to my husband, and he confirmed that everything therein is true and correct to the best of his knowledge. Because he only had one week to file his response, it was impossible for this declaration to be mailed to him for his signature and for him to return it to me for filing with the court before the deadline.

Charisse Smith
Charisse Smith Ndoye

12/23/2025
Date

EXHIBIT C

Mamadou Bocoum Ndoeye v. Joyce Civil Action No. 25-cv-8856 (VSB)

Copy of Travel Document Submitted by Respondent with Certified English
Translation

EXHIBIT D

Mamadou Bocoum Ndoeye v. Joyce Civil Action No. 25-cv-8856 (VSB)

Proof of Petitioner's Wife's United States Citizenship

EXHIBIT E

Mamadou Bocoum Ndoeye v. Joyce Civil Action No. 25-cv-8856 (VSB)

Letter from Avery Wallerstein, LMSW, Mount Sinai Health System and
photo of , Petitioner's youngest daughter

EXHIBIT F

Mamadou Bocoum Ndoeye v. Joyce Civil Action No. 25-cv-8856 (VSB)

Photos of Petitioner with his family

CERTIFICATE OF SERVICE

This certifies that I placed a true and correct copy of this Response to file amended complaint by placing said motion in the outgoing mail on December 23, 2025 to the following addresses:

John E. Gura, Jr

Assistant United States Attorney

86 chambers st, 3rd floor

New York, NY 10007

212-637-2712

ATTN: Pro SE Intake

Pro Se Intake Unit

United States District Court

500 Pearl St

New York, NY 10007