UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

DOĞUKAN GÜNAYDIN,

Petitioner,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; JOEL BROTT, in his official capacity as the Sherburne County Sheriff; PETER BERG, in his official capacity as the St. Paul Field Office Director for U.S. Immigration and Customs Enforcement; JAMIE HOLT, in her official capacity as Homeland Security Investigations St. Paul Special Agent in Charge, U.S. Immigration and Customs Enforcement; TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; and MARCO RUBIO, in his official capacity as Secretary of State,

Respondents.

Case No. 0:25-cv-01151-JMB-DLM

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

I. INTRODUCTION

Petitioner Doğukan Günaydın respectfully submits this reply to Respondents' return ("return") (Doc. 10) to his petition for writ of habeas corpus ("petition") (Doc. 1). On April 2, the Court issued an Order to Show Cause ("OSC") with a clear directive: establish the lawfulness and correct duration of Mr. Günaydın's detention. Doc. 5. Simply, Respondents failed to meet this directive. Respondents circumvented due process and statutory requirements in arresting and detaining Mr. Günaydın, and they urge the Court to

allow them also to circumvent any judicial review of such actions. Mr. Günaydın therefore pleads the Court to grant his petition.

II. FACTUAL BACKGROUND

There have been several developments since the filing of the petition, which Respondents address in the return, including the presentation of a Notice to Appear ("NTA"), the immigration court charging document. Mr. Günaydın maintains, as further explained herein, that these developments still do not sufficiently justify his arrest and continued detention. Additionally, the Form I-213 (ECF No. 11-1) contains an immigration official's narrative of Mr. Günaydın's arrest and the following hours. Special Agent David Whereatt, who wrote and signed this record, did not provide a declaration and has not been subject to cross-examination. *See* ECF Nos. 10, 11. This is akin to a police report and, to the extent Respondents are attempting to rely on the narrative information in the Form I-213 for the truth of the matters asserted, that narrative is inadmissible hearsay.

III. ARGUMENT

A. Mr. Günaydın's terminated nonimmigrant status, the apparent justification for his arrest, was unlawful and is reviewable by this Court.

i. DHS's termination of Mr. Günaydın's Student Status was unlawful and cannot be based on a revoked visa.

A nonimmigrant visa controls a noncitizen's admission into the United States, not their continued stay. Congress established a statutory basis for student visas under 8 U.S.C. § 1101(a)(15)(F)(i), requiring that a noncitizen engage in a full course of study to maintain nonimmigrant status. Once admitted in F-1 status, a student is granted permission to

remain in the United States for the duration of status (D/S) as long as they continue to meet the requirements established by the regulations governing their visa classification in 8 C.F.R. § 214.2(f), such as maintaining a full course of study and avoiding unauthorized employment.

DHS regulations distinguish between two separate ways a student may fall out of status: (1) a student who "fails to maintain status," and (2) an agency-initiated "termination of status." The first category, failure to maintain status, involves circumstances where a student voluntarily or inadvertently falls out of compliance with the F-1 visa requirements, for example by failing to maintain a full course of study, engaging in unauthorized employment, or other violations of their status requirements under 8 C.F.R. § 214.2(f). In addition, 8 C.F.R. §§ 214.1(e)-(g) outlines specific circumstances where certain conduct by any nonimmigrant visa holder, such as engaging in unauthorized employment, providing false information to DHS, or being convicted of a crime of violence with a potential sentence of more than a year, "constitutes a failure to maintain status."

With the respect to the crime of violence category, 8 C.F.R. § 214.1(g) sets forth that a nonimmigrant's conviction "for a crime of violence for which a sentence of more than one year imprisonment may be imposed (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status . . . ." Misdemeanor non-violent offenses, such as Mr. Günaydın's criminal conviction, do not meet this threshold for termination based on criminal history, nor do Respondents make any such argument. *See* ECF No. 11-2.

The second category, termination of status by DHS, can occur only under the limited

circumstances set forth in 8 C.F.R. § 214.1(d), which only permits DHS to terminate status when: (1) a previously granted waiver under INA § 212(d)(3) or (4) is revoked; (2) a private bill to confer lawful permanent residence is introduced in Congress; or (3) DHS publishes a notification in the Federal Register identifying national security, diplomatic, or public safety reasons for termination. DHS cannot otherwise unilaterally terminate nonimmigrant status. *See Jie Fang v. Dir. United States Immigr. & Customs Enf't*, 935 F.3d 172, 185 n. 100 (3d Cir. 2019).

Accordingly, the revocation of a visa does not constitute failure to maintain status and cannot therefore be a basis for Student Status termination through ICE's online Student and Exchange Visitor Information System ("SEVIS"). ICE's own guidance confirms that "[v]isa revocation is not, in itself, a cause for termination of the student's SEVIS record."[1] A student who has not violated their F-1 status, even if their visa is revoked, cannot have a SEVIS record terminated based on INA § 237(a)(1)(C)(i) (failure to maintain status), INA § 237(a)(4)(C)(i) (foreign policy grounds), or any deportability ground for that matter. Therefore, even if Mr. Günaydın's visa was properly revoked—though there was no notice of the revocation—it would not be a valid basis for terminating his Student Status.

ii. This Court has jurisdiction over issues related to DHS's termination of Mr. Günaydın's Student Status.

It is Mr. Günaydın's understanding that his arrest and ongoing detention are based

[1] ICE Policy Guidance 1004-04 –Visa Revocations (June 7, 2010), available at https://www.ice.gov/doclib/sevis/pdf/visa_revocations_1004_04.pdf (last visited April 6, 2025).

on the termination of his Student Status.[2] As explained in the petition and further herein, DHS's termination of Mr. Günaydın's Student Status was unlawful and therefore cannot be the proper basis for his arrest and detention.

Importantly, this issue is properly before this Court. Respondents argue that Mr. Günaydın must present his case to the immigration court (ECF No. 10 at pp. 8-10, 12-14, 18), but the immigration courts have no ability to review DHS's SEVIS termination because the process is collateral to removal. *Nakka v. United States Citizenship & Immigr. Servs.*, 111 F.4th 995, 1007 (9th Cir. 2024); *Jie Fang v. Dir. United States Immigr. & Customs Enf't*, 935 F.3d 172, 183 (3d Cir. 2019). There is also no administrative appeal of a denial to reinstate F-1 status. The termination of a SEVIS record constitutes final agency action for purposes of APA review. *Fang*, 935 F.3d at 185.[3]

To the extent the return implies that the arrest was actually based on the revocation of Mr. Günaydın's visa, such an argument is not clearly put forth (as was the directive of the OSC), and is contradicted by the NTA. It appears that on April 2, five days after

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[2] This assumption is based on the initial charging document (ECF No. 11-5) stating "You have failed to maintain your status" and charging Petitioner with deportability under INA § 237(a)(1)(C)(i) (failure to maintain status). The return does not explicitly state the basis for his arrest, beyond referencing a statement made in an immigration official's narrative of the arrest. This is clearly hearsay if offered for the truth of the statement asserted. *See, supra* section II.

[3] As noted in the return (ECF No. 10 at pp. 14-15), there is no statutory requirement that Petitioner exhaust his administrative remedies. Indeed, as explained, Petitioner cannot seek immigration court review of his terminated Student Status. Courts may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (*quoting S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981).

arresting Mr. Günaydın and after he filed the instant petition, DHS amended the NTA to include an additional charge of deportability under INA § 237(a)(1)(B) for having his visa revoked.[4] ECF No. 11-6. This still cannot explain or justify Mr. Günaydın's March 27 arrest and ongoing detention, nor the underlying SEVIS termination. Respondents are moving the target and cannot continue to be afforded the time to backtrack, change the record, and come up with justification for detaining Mr. Günaydın **after** his arrest, while he remains in custody.

B. Mr. Günaydın's due process rights were violated.

Respondents violated Mr. Günaydın's due process rights by arresting and continuing to detain him. Constitutional claims are properly before this Court. Noncitizens are entitled to the guarantees of the Fifth Amendment. *Sanchez-Velasco v. Holder*, 593 F.3d 733, 737 (8th Cir. 2010); *Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003) ("all aliens[] are clearly protected by the Fifth and Fourteenth Amendments"); *Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1987); *Mathews v. Diaz*, 426 U.S. 67 (1976); *Yamataya v. Fisher*, 189 U.S. 86 (1903); *see also Rusu v. INS*, 296 F.3d 316, 321-22 (4th Cir. 2002).[5]

The Due Process Clause of the Fifth Amendment provides that "[n]o person shall

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[4] INA § 237(a)(1)(B) provides, "Any alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is deportable." 8 U.S.C. § 1227(a)(1)(B).

[5] The return makes an affirmative argument that Petitioner's detention is not prolonged. ECF No. 10 at pp. 15-17. Petitioner did not raise a claim of prolonged detention in the petition and therefore sees no need to address these arguments by Respondents.

be…deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Youngberg v. Romeo*, 457 U.S. 307 (1982); *see also Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). This vital liberty interest is at stake when an individual is subject to detention by ICE. *See Zadvydas*, 533 U.S. at 690 ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem"); *Kiareldeen v. Reno*, 71 F.Supp.2d 402, 409-10, 413 (D.N.J. 1999) (holding that, in analyzing due process in the immigration context, the first factor in the procedural due process analysis, "the petitioner's private interest in his physical liberty, must be accorded the utmost weight.").

Mr. Günaydın's continued detention violates substantive due process by depriving him of his fundamental liberty interest in remaining free from detention. Government detention violates an individual's fundamental liberty interest unless the detention is "narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993); *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992). Non-punitive detention must present a "special justification" that "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690. No such special justification exists in Mr. Günaydın's case.

In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show "actual prejudice." *Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (citation omitted). Actual prejudice occurs if "an alternate result may well have resulted

without the violation." *Id.* (citation omitted) (internal quotations omitted); *see also Lazaro v. Mukasey*, 527 F.3d 977, 981 (9th Cir. 2008) (explaining that prejudice is not necessary where agency action was *ultra vires*). "To show prejudice, [a petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted). Mr. Günaydın is clearly prejudiced by his continued, unjustified detention.

The timing of Mr. Günaydın's arrest and detention further fly in the face of due process. The events surrounding his arrest are such that he could not have conformed his conduct or remediated in such a manner that would have avoided detention in the first place. Mr. Günaydın was not notified of his supposed March 25 visa revocation; a Department of State ("DOS") document filed by Respondents notes that the revocation is "silent" and DOS "will not notify [Mr. Günaydın] of the revocation." ECF No. 11-3. Additionally, he was arrested before DHS terminated his nonimmigrant status. *See* ECF No. 1 at ¶¶ 25, 39; ECF No. 1-1. Mr. Günaydın was not afforded the opportunity to take any action that might have prevented this administrative arrest and civil detention, which continue on for Mr. Günaydın's twelfth day in custody. Respondents terminated Mr. Günaydın's SEVIS record based on improper grounds without prior notice and without providing him an opportunity to respond. The failure to provide notice of the facts that formed the basis for the SEVIS termination is itself a violation of due process under the Fifth Amendment.

C. 8 U.S.C. § 1252(g) is not applicable to Mr. Günaydın's detention.

Respondents argue in the return that 8 U.S.C. § 1252(g) precludes this Court from hearing Mr. Günaydın's petition.[6] Respondents read and urge the Court to read section 1252(g) much more broadly than its plain language and the case law demand. As the Supreme Court noted, section 1252(g) "applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original); *see also Sabhari v. Reno*, 197 F.3d 938, 942 (8th Cir. 1999) ("section [1252(g)] is to be read narrowly and precisely"). Here, there is no basis under § 1252(g) to bar review or relief.

Here, Mr. Günaydın argues that his detention is unlawful and violates federal statutes and regulations: he was arrested by immigration officers, purportedly on the basis of being out of status; he was in valid Student Status at the time of his arrest and for seven hours thereafter; and DHS's eventual termination of his Student Status was improper and without basis. Mr. Günaydın's claims therefore do not fall within the narrow scope of section 1252(g). Mr. Günaydın's claims differ from those cited in the return because Mr. Günaydın is challenging DHS's decision to terminate his Student Status, which apparently

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[6] Respondents' return also includes three pages of arguments addressing their contention that "[t]his Court likewise has no jurisdiction to order Doğukan be detained at any particular location." Doc. 10 at pp. 10-12. The petition did not seek an order that he be detained at any particular location, so Petitioner was surprised to see such a detailed affirmative argument made in the return. In any case, this Court does plainly have jurisdiction to order that Petitioner not be transferred out of this District, because Petitioner's detention does not fall under 8 U.S.C. § 1252(g), as explained in section C, *supra*.

was the cause for his arrest and eventual implementation of removal proceedings.

IV. CONCLUSION

Respondents contend through their return that they may detain a non-citizen, without valid basis for the detention, without a valid warrant, and without any idea what the charges against him may be. They urge the Court to hold that they may detain such persons while they work to determine, retroactively, how they can justify the arrest and continue to keep those persons detained. Therefore, Mr. Günaydın respectfully requests that this Court grant his petition for writ of habeas corpus, order him immediately released, and order his student status be reinstated.

Respectfully submitted,

Dated: April 8, 2025

/s/ Hannah Brown

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