

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 25-cv-01151-JMB-DLM

DOĞUKAN G.,

Petitioner,

v.

**RESPONSE TO AMENDED  
PETITION**

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 the 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*; MARCO RUBIO, *in his official capacity as Secretary of State*,

Respondents.

The Respondents hereby file this Response to Petitioner's Amended Petition (ECF 18). The Respondents' position has been consistent and focused throughout this litigation. Doğukan has been and is detained under 8 U.S.C. § 1226(a) for the purpose of facilitating his removal proceedings. *See* ECF 10 at 4-8; ECF 14 at 4-5.<sup>1</sup> Respondents acknowledge that the charges lodged against Doğukan have changed but maintain that the decision to institute removal proceedings and to litigate in immigration court the question of whether

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<sup>1</sup> Respondents have not repeated all of the arguments and authority cited there, and respectfully asks permission to incorporate those arguments by reference here.

his DWI conviction makes him removable was always within Respondents' authority. His detention as his removability is determined, in accordance with due process and consistent with the law of this circuit, is lawful. His Petition should be denied.

**I. This Court's review must focus on Doğukan's current detention.**

Doğukan's detention during his removal proceedings is lawful, and this Court should deny the petition. The proper inquiry in this habeas matter is the legality of the Petitioner's current detention. 28 U.S.C. § 2241; *see Preiser v. Rodriguez*, 411 U.S. 475, 490 (1973); *Spencer v. Haynes*, 774 F.3d 467, 469 (8th Cir. 2014); *Archuleta v. Hedrick*, 365 F.3d 644, 647 (8th Cir. 2004); *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996). The additional cases Petitioner cites in the Amended Petition (ECF 18 ¶¶ 93-95)<sup>2</sup> stand only for this basic principle. Respondents have never disputed that this Court can review any constitutional challenges to the Petitioner's detention, but habeas review is limited to that inquiry and the relief available is release. As the Respondents set out in their Supplemental Return, there is persuasive authority in this district to support the Attorney General's discretionary decision to detain Doğukan under 1226(a). ECF 14 at 5-8.

The Amended Petition, however, asks the Court to do much more. Petitioner focuses on issues collateral to the legality of his current detention to draw this Court into a review of immigration law and the proceedings in immigration court. That type of review of immigration proceedings bypasses the district court and follows the well-worn path

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<sup>2</sup> These cases largely deal with the question of jurisdiction when a petitioner has been transferred outside of the district. Petitioner is, and has always been, present in the district of Minnesota, and these courts' decisions are inapplicable beyond the unremarkable point that this Court has jurisdiction in habeas to consider detention.

under 8 U.S.C. § 1252 that leads ultimately to the Eighth Circuit. This Court does not have jurisdiction to review ICE's decision to institute removal proceedings or to determine what charges fit the facts presented. ECF 10 at 8-10.

Petitioner requests that this Court declare "Respondents' actions to arrest and detain Petitioner violate the Due Process Clause." ECF 18 at 35, ¶ 3. By Memorandum dated March 23, 2025, the Department of State advised DHS that it had revoked Doğukan's F-1 visa "effective immediately" based on his DWI conviction and that he now posed a "threat to U.S. public safety." ECF 11-3. Based on the Department of State Memo dated March 23, 2025, ICE ERO had probable cause to arrest and initiate removal proceedings against Doğukan. In accordance with its procedures, ICE prepared a proper Warrant for Arrest of Alien on a Form I-200. ECF 11-4. ICE arrested Doğukan and brought him to the ICE offices in St. Paul. ICE read Doğukan the contents of the Warrant for Arrest of Alien. *Id.* ICE also served Doğukan with a Notice to Appear on DHS Form I-862 charging him as being subject to removal under with removability under INA 237(a)(1)(C)(i). Doğukan personally signed the NTA, confirming that he had been personally served the NTA. By the service of the NTA, ICE placed Doğukan in removal proceedings and detained him in mandatory detention under 8 U.S.C. Sect 1226(a). Subsequently, ICE added an addition charge of removal under INA Section 237(a)(1)(B), based on the revocation of Doğukan's visa.<sup>3</sup>

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<sup>3</sup> Doğukan asserts he had maintained his student visa status uninterrupted since he had entered in January 2022. This is not so. His F-1 visa expired in July 2022. His DWI conviction occurred in March 13, 2023. And his other B1/B2 visa was revoked on March 23, 2023, 2025. At no time prior to his placement in removal proceedings did Doğukan apply to extend continue his F-1 visa. To maintain present visa status, a nonimmigrant

To the extent Petitioner is challenging the progression of the charging decisions, he cannot show any prejudice resulting from the amendments. *See Copeland v. Minnesota*, No. CIV.03-3631 ADM/JSM, 2004 WL 1701034, at \*4 (D. Minn. July 29, 2004) (“With respect to the first part of Ground Four, addressing amendment to the indictment, Petitioner cannot raise a valid habeas claim because he was not convicted of the charge of which he complains.”); *Cf. United States v. Gomez-Rosario*, 418 F.3d 90, 108 (1st Cir. 2005) (rejecting claim of due process violation for alleged delay in superseding indictment because no prejudice was identified).

Prejudice is a necessary element of a due process claim. *United States v. Lovasco*, 431 U.S. 783, 790 (1977); *United States v. Bartlett*, 794 F.2d 1285, 1289 (8th Cir. 1986). The immigration court can consider all of Petitioner’s arguments regarding the timing of the notice of the new charges, whether the charge was an amendment as an additional charge or a superseding charge, etc. Ultimately, that court, which is currently reviewing the legality of the charges, and will be the forum for the trial as to whether DHS can sustain those charges, should be given the opportunity in the first instance to address these arguments.

Petitioner asserts legal challenges to the applicability of that charge (ECF 18 ¶¶ ; but the proper forum for those challenges is immigration court. Petitioner had a *Joseph*

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visa holder must timely file for a continuation or extension of his visa, not otherwise violate his visa status, not be convicted of certain crimes, not violate any regulatory provisions, and importantly, must not be placed in removal or deportation proceedings. See 8 C.F.R. Sec. 248.1(b). After ICE placed Doğukan in removal proceedings, DHS properly terminated Doğukan’s student status in SEVIS. *Id.*

hearing on April 11, 2025. At that hearing, the immigration judge considered Petitioner's arguments, both legal and factual, by the parties and took the issue under advisement. ECF 18 ¶ 52. As of the time of this filing, the immigration court has not issued a decision. The immigration court (including the IJ and the BIA), not this Court, has authority to consider whether the charges lodged are appropriate. *E.g.*, *Matter of Tavares Peralta*, 26 I. & N. Dec. 171, 174 (BIA 2013) (evaluating the propriety of the public safety charge at issue here).

Congress's jurisdiction-stripping provision in 1252(g) prohibits this Court from reviewing decisions to commence and adjudicate proceedings. ECF 10 at 8. As such, Petitioner's request that this Court "Enjoin Respondents from taking any enforcement action against Petitioner arising directly or indirectly from an investigation into the applicability of the Foreign Policy Ground" must be denied for lack of jurisdiction.

The Amended Petition also continues to raise an APA claim based on the action taken in Petitioner's SEVIS record. *See* Am. Pet. ¶¶ 66-69. As set forward in the Respondents initial return (ECF 10 at 18), this Court does not have jurisdiction in habeas to review an APA claim. If Petitioner wants to raise this claim, he needs to file a civil complaint, properly serve it, and follow the procedural rules applicable to the APA. The cases on which Petitioner relies are not habeas petitions (ECF 18 ¶ 104). The Respondents also note that the law is quite clear that the SEVIS system is a data collection system. 8

U.S.C. § 1372; 8 C.F.R. §§ 214.3-214.4; 22 C.F.R. part 62.<sup>4</sup> Petitioner's requested relief that this Court "Restore Petitioner's SEVIS record" (ECF 18 at 35, ¶ 4) should be rejected.

**II. The *Joseph* hearing procedure applied to Doğukan is constitutional.**

For the first time, Doğukan argues that the bond proceedings available to him in immigration court in the form of the *Joseph* hearing held by the immigration court on April 11 violate due process. ECF 18 at ¶ 92. Petitioner cites no binding authority for this proposition, and the respondents are not aware of any Eighth Circuit or district court precedent on this question. This Court should exercise care in evaluating this question, particularly as petitioner has not shown how the alleged bond standard was applied to him. *E.g.*, Oscar M.S. v. Garland, No. 21-cv-1341, 2022 WL 1050054, at \*2 (D. Minn. Apr. 7, 2022). The Respondents respectfully submit that the *Joseph* procedures applicable to Doğukan do not violate due process.

**a. The standard of review and allocation of the burden of proof at a *Joseph* hearing.**

The standard of review for the immigration judge at a *Joseph* hearing is whether ICE is "substantially unlikely to prevail" on its charges; if they are, he cannot be detained.

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<sup>4</sup> Respondents do not concede any fact regarding Petitioner's SEVIS record or that Petitioner has any cause of action to enforce any particular information in SEVIS or to correct any perceived inaccuracies. *See, e.g., Hollingsworth v. State*, No. A14-1874, 2015 WL 4877725, at \*2 (Minn. Ct. App. Aug. 17, 2015) (rejecting claim against a university and holding that the SEVIS regulations do not create a private right of action); *Yerrapareddypeddiredy v. Albence*, No. CV-20-01476-PHX-DWL, 2021 WL 5324894, at \*1 (D. Ariz. Nov. 16, 2021), *aff'd*, No. 21-17070, 2022 WL 17484323 (9th Cir. Dec. 7, 2022) (denying APA challenge to SEVIS records).

*Matter of Joseph*, 22 I & N Dec. 799 (BIA 1999). The initial burden at a *Joseph* hearing is on Immigration and Customs Enforcement (“ICE”) to establish that there is “reason to believe” that the detained individual is deportable or inadmissible based on one of the grounds listed in § 1226(c)(1)(A)-(D).<sup>5</sup> *Joseph*, 22 I. & N. Dec. at 801; *see also Gonzalez v. O’Connell*, 355 F.3d 1010, 1015 (7th Cir. 2004) (finding the Government “necessarily must [first] make a ‘decision’ that *all* detainees are ‘deportable’ (or ‘inadmissible’) in order to detain them under [section 1226(c), even if they concede their deportability” (emphasis in original)). The “reason to believe” standard is equivalent to the “probable cause” standard. *Matter of U- H-*, 23 I. & N. Dec. 355, 356 (BIA 2002)).

Once ICE has carried its initial burden, “the detainee may avoid mandatory detention by demonstrating that he is not an alien, was not convicted of the predicate crime, or that [ICE] is otherwise substantially unlikely to establish that he is in fact subject to mandatory detention.” *Demore v. Kim*, 538 U.S. 510, at 514 n.3 (2003); *Joseph*, 22 I. & N. Dec. 799). The purpose of 8 C.F.R. § 1003.19(h)(2)(ii) “is to provide an alien ... with the opportunity to offer evidence and legal authority on the question whether [ICE]

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<sup>5</sup> Before the *Joseph* hearing, ICE must first arrest an alien and issue a Notice to Appear (“NTA”) to place the individual into removal proceedings for which there must be “reason to believe that the alien ... is in the United States in violation of any [immigration] law or regulation and is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2); *see also* 8 C.F.R. § 287.8(c)(1) (“[a]n arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested . . . is an alien illegally in the United States.”). At that time, ICE provides the alien with notice of the “charges against the alien and statutory provisions alleged to have been violated.” 8 U.S.C. § 1229(a)(1)(D). Though Petitioner complains that these things were not timely done, it is clear in the record that Petitioner had notice before the *Joseph* hearing and had an opportunity to present legal argument through counsel.

properly included him within a category that is subject to mandatory detention.” *Joseph*, 22 I. & N. Dec. at 805. In order to prevail, the alien must show that ICE is “substantially unlikely to establish at the merits hearing, or on appeal, the charge or charges that would otherwise subject the alien to mandatory detention.” *Id.* at 806; *see also Matter of Davey*, 26 I. & N. Dec. 37, 38 (BIA 2012). The Board of Immigration Appeals (“BIA”) adopted the “substantially unlikely standard” because it would give “significant weight” to ICE’s initial custody determination and “genuine life” to the regulation allowing redetermination of ICE’s custody determination. *Joseph*, 22 I. & N. Dec. at 807.

**b. The *Joseph* hearing procedures satisfy due process.**

When determining if procedures satisfy the Constitution, there is no bright-line rule. “Due process ‘is flexible and calls for such procedural protection as the particular situation demands.’” *United States v. Delker*, 757 F.2d 1390, 1397 (3d Cir. 1985) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). To assist courts in making a case-by-case analysis, the Supreme Court set out three factors for courts to consider: (1) the private liberty interest affected; (2) the risk of an erroneous deprivation of that interest and the probable value of additional procedural safeguards; and (3) the Government’s interest, including the function involved and the burdens that additional procedural requirements would create. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

*Joseph* hearings are structured to balance the individual’s liberty interest along with important Governmental interests and avoid circumventing congressional intent. The burden on the Petitioner is fair and constitutional. *See e.g., Joseph*, 22 I. & N. Dec. at 806 (concluding that ICE had “provided little to challenge the [IJ]’s determination that Joseph’s

offense was incorrectly classified as an aggravated felony); *Matter of Davey*, 26 I. & N. Dec. 37 (BIA 2012) (dismissing DHS's appeal after holding that the agency failed to carry its burden of proving that the respondent possessed marijuana for some reason other than personal use, which would have made her subject to mandatory detention); *In re Hernandez*, 2012 WL 3911850 (BIA 2012) (affirming the IJ's determination that DHS is substantially unlikely to prove the ground of inadmissibility at the merits hearing or on appeal).

As the Supreme Court has explained, “[D]ecisions concerning constitutional burdens of proof have not turned on any presumption favoring a particular standard. To the contrary, the Supreme Court has engaged in a straightforward consideration of the factors identified in [*Mathews*] to determine whether a particular standard of proof in a particular proceeding satisfies due process.” *Santosky v. Kramer*, 455 U.S. 745, 754 (1982).

The procedures and standards that apply at *Joseph* hearings satisfy due process because they provide individuals with a meaningful opportunity to challenge their detention without requiring the IJ to conduct a full hearing on the merits at the outset of removal proceedings every time there is a challenge to a removal charge that implicates § 1226(c). *Dia v. Ashcroft*, 353 F.3d 228, 239 (3d Cir. 2003) (noting that the fundamental requirement for due process is “the opportunity to be heard at a meaningful time and in a meaningful way.”) (quoting *Mathews*, 424 U.S. at 333). The *Joseph* hearing is necessarily preliminary (before the charges are proved) but gives Petitioner an opportunity to present any strong facial challenge to the removal ground (here public safety) that triggers mandatory detention. If successful, he will remain in 1226(a) detention but would have

available a bond hearing under 8 C.F.R. § 1003.19. An individual with a *substantial* challenge to a ground of removal who is unsuccessful at a *Joseph* hearing can also seek termination of the removal proceedings. *See Matter of Sanchez-Herbert*, 26 I. & N. Dec. 43, 45 (BIA 2012) (“[A]n [IJ] may terminate proceedings when the DHS cannot sustain the charges....”). This process properly accounts for an individual’s liberty interests as it provides a mechanism that removes the risk of lengthy detention or any erroneous deprivation of liberty.

The “substantially unlikely to prevail” standard is not impermissibly high. Generally, in civil immigration detention proceedings, aliens seeking release must establish by clear and convincing evidence that they pose no danger or flight risk,<sup>6</sup> *Guerra*, 24 I. & N. Dec. 37; in criminal bond hearings, the Government is seeking detention and must establish by clear and convincing evidence that the accused poses a danger or risk of flight, 18 U.S.C. § 3142 (f)(1).<sup>7</sup>

When reviewing the procedural protections, this Court must also consider the Government’s interest, along with the function involved and the burdens that the additional procedural requirements would create. *Mathews*, 424 U.S. at 335. The Government has a

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<sup>6</sup> There is no post-Banyee precedent in this district, or the Eighth Circuit, that evaluates the bond standard in a “prolonged” detention. Any pre-Banyee precedent on the issue of the bond standard in immigration bond proceedings should be reevaluated.

<sup>7</sup> Moreover, even in the context of the merits proceeding, an individual charged with inadmissibility (as opposed to deportability) bears the high burden to show, after the Government establishes alienage, either: (1) that he is “clearly and beyond doubt entitled to be admitted and is not inadmissible under” 8 U.S.C. § 1182; or (2) “by clear and convincing evidence, that [he] is lawfully present in the United States pursuant to prior admission.” 8 U.S.C. § 1229a(c)(2).

compelling interest in detaining aliens pending their removal proceedings and preventing them from absconding during those proceedings, despite competing liberty interests that the Constitution safeguards. That compelling interest is rooted in ensuring that the individuals of most concern complete their removal proceedings. *Demore*, 538 U.S. at 520.

In the context of mandatory detention under 8 U.S.C. § 1226(c), the Third Circuit has held that due process requires that “the Government must show by a preponderance of the evidence that the detainee is properly included within § 1226(c) as both a factual and a legal matter. . . . It must show, in other words, that it is more likely than not both that the detainee in fact committed a relevant offense under § 1226(c) and that the offense falls within that provision as a matter of law.” *Gayle v. Warden Monmouth Cnty. Corr. Inst.*, 12 F.4th 321, 333 (3d Cir. 2021).

Respondents respectfully urge this Court not to adopt the Third Circuit’s approach here as it is inconsistent with the Supreme Court and the Eighth Circuit’s holdings on detention during removal proceedings. The Supreme Court has consistently affirmed the constitutionality of detention pending removal proceedings, and it has *never* required the government to bear the burden of justifying that detention, let alone by clear and convincing evidence. *See, e.g., Demore*, 538 U.S. at 531 (affirming categorical detention of certain criminal noncitizens); *Reno v. Flores*, 507 U.S. 292, 306 (1993) (affirming detention of juvenile noncitizens on suspicion of being deportable); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (affirming categorical detention of Communist Party associates); *cf. Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (permitting release only after the noncitizen bears the initial burden to show “that there is no significant likelihood of

[his] removal in the reasonably foreseeable future”). In the immigration context, the government’s plenary authority is at its zenith, *see Flores*, 507 U.S. at 305, and immigration detention pending completion of removal proceedings has a definite termination point, *see Demore*, 538 U.S. at 529; *Jennings v. Rodriguez*, 583 U.S. 281, 304 (2018). Nor has the Supreme Court ever held immigration detention during removal proceedings to the same standard it has applied to the indefinite (and potentially permanent) civil detention of individuals (generally U.S. citizens) in *Addington v. Texas*, 441 U.S. 418 (1979), *Foucha v. Louisiana*, 504 U.S. 71 (1992), or *Kansas v. Hendricks*, 521 U.S. 346 (1997), or to the pretrial criminal detention<sup>8</sup> of individuals in *United States v. Salerno*, 481 U.S. 739 (1987).

Respondents disagree with the extent to which Petitioner seeks to distinguish the Eighth Circuit’s decision in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024) (ECF 18 at 29 n.68), and notes that the Petition does not address Judge Davis’s decision in *Barajas Farias* (Order, *Ernesto Ruben Barajas Farias v. Garland, et al.*, No. 24-cv04366 (MJD/LIB) (Dec. 6, 2024)). *See* ECF 14 at 508. Both of those decisions are faithful to the congressional design of 8 U.S.C. § 1226 and uphold its application in the face of constitutional challenges. *Banyee* did so in the face of detention that exceeded a year. This is not an extraordinary case. Detention during removal proceedings has long been

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<sup>8</sup> Even the Bail Reform Act contains provisions requiring certain individuals (including U.S. citizens) to bear the burden to show they are not a danger to the community and a flight risk. *See Miranda v. Garland*, 34 F.4th 338, 363 (4th Cir. 2022). Accordingly, “it cannot be unconstitutional for the government to place a similar burden on [noncitizens] facing removal proceedings, especially considering the detention lasts only until removal.” *Id.*

part of the process: “The rule has been clear for decades: ‘[d]etention during deportation proceedings [i]s ... constitutionally valid.’” *Banyee*, 115 F. 4th at 931 (citing *Demore*, 538 U.S. at 523). No evidentiary hearing is necessary. This Court should deny the petition.

## CONCLUSION

For the reasons set forward above and all those set out in the Respondents' initial and supplemental responses, the Respondents respectfully request that this Court deny the Petition in its entirety.

Dated: April 14, 2025

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