

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

Dogukan Gunaydin,

Plaintiff,

v.

Donald J. Trump, Joel Brott, Peter Berg,
Jamie Holt, Todd Lyons, Kristi Noem, and
Marco Rubio,

Defendants.

**DEFENDANTS'
MEMORANDUM IN
OPPOSITION TO MOTION
FOR TEMPORARY
RESTRAINING ORDER
AND/OR INJUNCTIVE RELIEF**

INTRODUCTION

Petitioner Dogukan Gunaydin (Gunaydin) remains in immigration custody under 8 U.S.C. § 1226(a) and 8 C.F.R. § 1003.19(i)(2), pending the resolution of Respondents' appeals to the Board of Immigration Appeals (BIA) on the Bond Redetermination Order dated April 14, 2025 (ECF No. 22-1) and the Immigration Court's Written Decision of the Immigration Judge Regarding Contested Removability dated April 28, 2025 (ECF No. 29-5). The BIA ordered briefs to be filed by both parties no later than May 8, 2025. ECF No. 29-7.

In this action for habeas corpus relief, on April 28, 2025, Gunaydin filed a motion for a temporary restraining order with supporting documents. ECF Nos. 24-27. By Order dated April 28, 2025, the Court ordered that Respondents may continue to detain Gunaydin in immigration custody but cannot transfer Gunaydin out of this judicial district; however, the Court denied the other requested injunctive relief. ECF No. 28 at 10. The Court ordered

Respondents to file a response to the Plaintiff's Motion for a Temporary Restraining Order by or before May 5, 2025. *Id.* Pursuant to that directive, Respondents now file this response.

Plaintiff does not meet his burden to show the need for a preliminary injunction. He is unlikely to succeed on the merits because immigration custody is mandatory except as the BIA may dictate otherwise. For the same reason, Gunaydin cannot show any immediate irreparable harm from a denial of Gunaydin's amended habeas petition. Because Plaintiff cannot establish that he will suffer irreparable harm or success on the merits of the Complaint, he is not entitled to this extraordinary relief.

PERTINENT FACTS AND PROCEDURAL HISTORY

A. IMMIGRATION PROCEEDINGS.

On April 7, 2025, as a result of his DWI conviction, DHS filed an additional charge in Gunaydin's Immigration Court proceeding, charging Gunaydin as having "engaged in criminal activity which endangers public safety or national security" in violation of INA Section 237(a)(4)(A)(ii). See 8 U.S.C. § 1237(a)(4)(A)(ii). ECF No. 22-1. After a Master Calendar hearing and a *Joseph* hearing, the Immigration Court entered a "Bond Redetermination" Order on April 14, 2025 in which the Immigration Court determined that the DHS was "unlikely to establish the charge of removability [public safety threat] that would otherwise subject [Gunaydin] to mandatory detention." ECF 22-1 at 5. The Immigration Court analyzed Gunaydin's case under the discretionary bond factors, concluded that Gunaydin did not pose a danger to the community or a flight risk, and ordered Gunaydin's release on a \$5,000 bond. ECF 22-1 at 6-7. DHS immediately appealed to the BIA. ECF 22-2 and 22-3. The BIA ordered briefs to be filed on the bond

redetermination issue by both parties no later than May 8, 2025. ECF No. 29-7.

The filing of the bond appeal by DHS under 8 C.F.R. § 1003.19(i)(2), which has the effect of automatically staying the bond decision of the Immigration Judge. The automatic stay expires 90 days from the date of DHS's appeal. 8 C.F.R. § 1003.6(c)(3).

On the merits of Gunaydin's removability, the Immigration Court entertained memoranda and exhibits from both DHS and Gunaydin. See 29-1, 29-2, 29-3, 29-4. Then, on April 30, 2025, the Immigration Court entered its "Written Decision of the Immigration Judge Regarding Contested removability." ECF 29-5. While finding that Gunaydin had engaged in dangerous activity, the Immigration Judge concluded the evidence was insufficient to establish that he had placed a large segment of the general population at risk. *Id.* at 4. The Immigration Court concluded that DHS had not sustained the charge of removability under INA Section 237(a)(4)(A)(ii) by clear and convincing evidence and terminated the removal proceedings. *Id.* at 5. DHS appealed to the BIA immediately. ECF 29-6. The BIA has not set a merits briefing schedule as of this writing.

So, as of this writing, the issues of Gunaydin's removability and continued immigration detention are pending before the BIA. Gunaydin remains in DHS's detention in Sherburne County Jail in Elk River, MN pursuant to 8 U.S.C. § 1226(a), 8 C.F.R. § 1003.19(i)(2), pending the resolution of DHS's detention/bond and removal appeals. Robinson Supplemental Declaration, ¶ 10 (ECF No. 29).

B. HABEAS PROCEEDINGS.

April 25, 2025, Plaintiff filed a Motion for Temporary Restraining Order ("TRO") with supporting documents. ECF Nos. 24-27. Three days later, on April 28, 2025, the Court

granted Plaintiff's TRO motion in part and ordered that, while DHS may continue to detain Gunaydin, DHS must do so in Minnesota, pending the hearing on May 12, 2025. ECF No. 28 at 6, 10. The Court denied the other requested injunctive relief, namely reinstatement of Gunaydin's student status. *Id.* Finally, the Court scheduled a hearing for May 12, 2025 to consider whether to convert the TRO into a preliminary injunction. *Id.*

STANDARD OF REVIEW

Preliminary injunctive relief is an extraordinary remedy, never awarded as of right. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. The Eighth Circuit has established a four-factor test for determining whether to grant the extraordinary relief of a preliminary injunction: "(1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties []; (3) the probability that movant will succeed on the merits; and (4) the public interest." *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013) (quoting *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc)). Moreover, the Eighth Circuit has held that "[t]he failure of a movant to show irreparable harm is an independently sufficient basis upon which to deny a preliminary injunction." *Sessler v. City of Davenport*, 990 F.3d 1150, 1156 (8th Cir. 2021) (quotation omitted). The party seeking a preliminary injunction must show "that irreparable injury is *likely* in the absence of an injunction," not merely "a possibility of

irreparable harm.” *Hotchkiss v. Cedar Rapids Cmty. Sch. Dist.*, 115 F.4th 889, 893 (8th Cir. 2024) (quoting *Winter*, 555 U.S. at 22) (emphasis in original; citation omitted).

ARGUMENT

A. Until the BIA issues its decisions, Gunaydin is unlikely to succeed on the merits.

The Respondents’ position has been consistent and focused throughout this litigation. Gunaydin has been and is detained under 8 U.S.C. § 1226(a) and 8 C.F.R. § 1003.19(i)(2) for the purpose of facilitating his removal proceedings. *See* ECF 10 at 4-8; ECF 14 at 4-5.¹ Respondents’ decisions to institute removal proceedings and to litigate in immigration court the question of whether his DWI conviction makes him removable was always within Respondents’ authority. The issues of Gunaydin’s removability and ongoing detention are before the BIA and will be decided by the BIA in the foreseeable future. His ongoing detention pending the BIA determinations comports with due process, is consistent with the law of this circuit, and is lawful. The Court should deny the motion for a TRO or a preliminary injunction and the amended habeas petition.

1. This Court’s review must focus on Gunaydin’s current detention.

Gunaydin’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 Gunaydin’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).

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

This Court may review any constitutional challenges to the Petitioner's detention, but habeas review is limited to that inquiry and the only relief available is release. There is persuasive authority in this district to support the Attorney General's discretionary decision to detain Gunaydin 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. The Court should continue to decline to review of immigration law and the proceedings in immigration court. See 8 U.S.C. § 1252. 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. 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); *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). Indeed, the Immigration Court has made its rulings on the charges against Gunaydin and the threat to public safety charge is before the BIA. That Court should be given the opportunity to address that charge and the concomitant immigration detention.

Congress's jurisdiction-stripping provision in 1252(g) prohibits this Court from reviewing decisions to commence and adjudicate proceedings. ECF 10 at 8. Moreover,

this Court has already declined to address the issue of reinstatement of Gunaydin's SEVIS record and his request for immediate release from detention. ECF 28 at 6-7.

In this case, the Immigration Court has afforded Gunaydin ample due process. It conducted a Joseph hearing, ruled in Gunaydin's favor on both the bond determination and removability issues, and ultimately terminated the removal proceedings. DHS appealed and Gunaydin remains detained under the automatic stay provisions of 8 C.F.R. § 1003.19(i). This process properly accounted for Gunaydin's individual liberty interests and it provides a mechanism that removes the risk of lengthy detention or any erroneous deprivation of liberty. The detention issue is squarely before the BIA. Gunaydin has offered no reason for this Court to jump in and interfere with this appeal process.

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 v. Eldridge*, 424 U.S. 319, 335 (1976). The Government has a 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.

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 detention² of individuals in *United States v. Salerno*, 481 U.S. 739 (1987).

Continued detention pending the BIA’s determinations is consistent with the Eighth Circuit’s decision in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024) (ECF 18 at 29 n.68) and with 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

² 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.*

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 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).

2. Legal and Statutory Authority for Detention.

For more than a century, the immigration laws have authorized immigration officials to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during their removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. “The rule has been clear for decades: “[d]etention during deportation proceedings [i]s ... constitutionally valid.” *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), *rehearing by panel and en banc denied*, *Banyee v. Bondi*, No. 22-2252, 2025 WL 837914 (8th Cir. Mar. 18, 2025) (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003)); *see Demore*, 538 U.S. at 523 n.7 (“In fact, prior to 1907 there was no provision permitting bail for *any* aliens during the pendency of their deportation proceedings.”); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) (“Detention is necessarily a part of this deportation procedure.”). Indeed, removal proceedings ““would be [in] vain if those accused could not be held in custody pending the inquiry into their true character.””

Demore, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)).

Section 1226 “generally governs the process of arresting and detaining . . . aliens pending their removal.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). Section 1226(a) provides that “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). The Attorney General and the Department of Homeland Security (“DHS”) thus have broad discretionary authority to detain a noncitizen during removal proceedings.³ *See* 8 U.S.C. § 1226(a)(1) (DHS “may continue to detain the arrested alien” during the pendency of removal proceedings); *Nielsen v. Preap*, 139 S. Ct. 954, 966 (2019) (highlighting that “subsection (a) creates authority for *anyone*’s arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions”).

When a noncitizen is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS “may continue to detain the arrested alien.” 8 U.S.C. § 1226(a)(1). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2280–81 (2021) (citing 8 C.F.R. §§ 236.1(c)(8),

³ Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General’s authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is “one of the authorities he retains . . . although this authority is shared with [DHS] because officials of that department make the initial determination whether an alien will remain in custody during removal proceedings.” *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

If DHS decides to release the noncitizen, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, the noncitizen may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the noncitizen, based on a variety of factors that account for the noncitizen's ties to the United States and evaluate whether the noncitizen poses a flight risk or danger to the community. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006);⁴ *see also* 8 C.F.R. § 1003.19(d) (“The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].”).

Section 1226(a) does not provide a noncitizen with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does § 1226(a) explicitly address the burden of proof that should apply or any particular factor that must be considered in bond hearings. Rather, it grants DHS and the Attorney General broad

⁴ The BIA has identified the following non-exhaustive list of factors the immigration judge may consider: “(1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States.” *Guerra*, 24 I. & N. Dec. at 40.

discretionary authority to determine whether to detain or release a noncitizen during his removal proceedings. *See id.* If, after the bond hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

Included within the Attorney General and DHS's discretionary authority is a provision that allows DHS to invoke an automatic stay of any decision by an immigration judge to release an individual on bond when DHS files an appeal of the custody redetermination. 8 C.F.R. § 1003.19(i)(2) ("The decision whether or not to file [an automatic stay] is subject to the discretion of the Secretary."). If an automatic stay is invoked, regulations require the BIA to track the progress of the custody appeal "to avoid unnecessary delays in completing the record for decision." 8 C.F.R. § 1003.6(c)(3). The stay lapses in 90 days, unless the detainee seeks an extension of time to brief the custody appeal, 8 C.F.R. § 1003.6(c)(4), or unless DHS seeks, and the BIA grants, a discretionary stay. 8 C.F.R. § 1003.6(c)(5).

3. Gunaydin's detention is constitutional.

In his Amended Petition, Gunaydin asserts his detention violates the Fifth Amendment. Gunaydin's claims fail as a matter of law because his removal proceedings and detention follow from his criminal record. He is receiving all the process that is due to him under the statutory and regulatory scheme set out by Congress in 8 U.S.C. § 1226(a). Gunaydin is not in prolonged detention. He has been in detention for about five weeks during which time his removal and detention have been adjudicated in the Immigration Court and are now on appeal to the BIA.

Gunaydin has no right to be released during the pendency of his immigration proceedings. *See Reno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.”). Importantly, “when the Government deals with deportable [noncitizens], the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Demore*, 538 U.S. at 528. And as the Supreme Court has ruled, “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citation and quotation marks omitted). Due process demands only that the government provide “‘adequate procedural protections’ to ensure that the government’s asserted justification for physical confinement ‘outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (quoting *Zadvydas v. Davis*, 533 U.S. 679, 690-91 (2001)).

During their removal proceedings, noncitizens like Gunaydin who are detained under § 1226(a) receive numerous procedural safeguards. Gunaydin has had several hearings in Immigration Court and indeed has been successful thus far. But, that does not mean he should be released. That issue is pending before the BIA and this Court should not intervene. He has not been denied due process. His motion for injunctive relief and his amended habeas petition should be denied.

“Detention of aliens pending their removal in accordance with the INA is constitutional and is supported by legitimate governmental objectives.” *Hope*, 972 F.3d at 328–29 (citing *Demore*, 538 U.S. at 531, and *Wong Wing v. United States*, 163 U.S. 228,

235 (1896)). Indeed, the Supreme Court “has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Demore*, 538 U.S. at 522. Because “any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government.” *Id.* at 522–23. Accordingly, the Supreme Court has long held that “detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process.” *Id.* at 522–23. This has resulted in the Supreme Court ruling that individuals held during the pendency of removal proceedings may be detained even without an individualized determination as to flight risk or dangerousness. *See, e.g., Carlson v. Landon*, 342 U.S. 524, 528–34, 538 (1952); *Wong Wing*, 163 U.S. at 235 (holding deportation proceedings “would be vain if those accused could not be held in custody pending the inquiry into their true character.”).

Instead of addressing this line of cases, Gunaydin appears to argue that mitigating flight risk and preventing danger to the community can be the only legitimate purposes for immigration detention. That is incorrect. “The enforcement of our immigration laws is the government’s sovereign prerogative, and detention is *necessarily* a part of the removal procedure.” *Miranda v. Garland*, 34 F.4th 338, 366 (4th Cir. 2022) (emphasis added). *Carlson* is particularly instructive here. There, four petitioners had been arrested and charged with being members of the Communist Party of the United States. *Id.* at 529. The petitioners challenged their detention without bond while in custody during the pendency of consideration of their deportability. *Id.* The Supreme Court upheld their detention without bond, recognizing that “evidence of membership plus personal activity in

supporting and extending the Party's philosophy concerning violence gives adequate ground for detention.” *Id.* at 535. Gunaydin has been charged as removable on public safety grounds. “It cannot be expected that the Government should be required in addition to show specific acts of sabotage or incitement to subversive action.” *Id.* at 535. Therefore, Gunaydin is wrong and his current detention is not punishment or for deterrence.

Zadvydas v. Davis, 533 U.S. 679 (2001), is not controlling here. In *Zadvydas*, the detention statute at issue, § 1231, concerned post-removal hearing detention where indefinite detention without the possibility of removal posed a “serious constitutional problem.” 533 U.S. 678, 690 (2001). But § 1226 does not pose those same problems. The statute authorizes detention until the end of one’s removal proceedings.

In *Farass Ali v. Brott, et al.*, No. 19-1244, 2019 WL 1748712 (8th Cir. Apr. 16, 2019), the Court held that the language of 1226(a), which allows for detention during removal proceedings, was clear. Farass Ali had been taken into ICE custody in May 2017 and charged with removability based on fraud or misrepresentation at the time of his entry. *Id.* at *1. Because he was detained under § 1226(a), Ali received a bond hearing, which the IJ denied. In September 2018, after over a year in detention, Ali filed a habeas petition arguing his detention was unconstitutional. *Id.* The district court granted Ali’s petition and ordered him released, reasoning the Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001) (which governs § 1231 post-removal order detention), and the doctrine of constitutional avoidance required the Court to read a “reasonableness limitation” into the time an alien could be detained during removal proceedings. *Id.* at *2.

The Eighth Circuit reversed and remanded. The court reasoned, citing *Jennings*, that § 1226 is not susceptible to more than one construction as to the length of detention.

In contrast to the statute analyzed in *Zadvydas*, § 1226(a) limits the period of detention to the period “pending a decision on whether the alien is to be removed from the United States.” While this is not subject to precise calculation, it is, nonetheless, a defined period that does have an end.

Id. at *3. With respect to § 1226(c), the *Ali* court continued:

It is significant the Supreme Court has found unambiguous the language of § 1226(c), which requires mandatory detention until a decision regarding removal is reached, and therefore has refused to use constitutional avoidance to read an extra-textual “reasonableness” limitation into the statute. We see no principled basis for viewing § 1226(a)’s text regarding the length of detention any differently.

Id. at *4. Even if this Court were to consider the merits of the detention question here, there is no question that this short period of detention, coupled with the process afforded Gunaydin is valid.

The fact that ICE has invoked the automatic stay provision to keep Gunaydin during his bond appeal does not change the constitutionality of his detention. Judge Davis recently rejected a constitutional challenge to another provision of the regulations implementing the exercise of the Secretary’s discretion under § 1226(a). Order, *Ernesto Ruben Barajas Farias v. Garland, et al.*, No. 24-cv04366 (MJD/LIB) (Dec. 6, 2024) (ECF No. 18, hereinafter Order Denying Petition). There, Judge Davis was considering a challenge 8 C.F.R. § 1003.19(h)(2)(i)(C), which allowed DHS to exempt a category of individuals from receiving any bond hearing under 1226(a).

Judge Davis explained the statutory structure of immigration detention as set out in Section 1226 and the accompanying DOJ regulations. Order to Show Cause, 24-cv-4366

(MJD/LIB) (Dec. 4, 2024) (ECF No. 14, hereinafter “Order to Show Cause”). Congress’s scheme in 1226 clearly gave discretion to the Attorney General under 1226(a) to make detention decisions for the individuals in removal proceedings. Judge Davis wrote:

In exercising that discretion, the Attorney General has decided that some detainees . . . will not be released on bond, while other detainees will be given a more granular determination. This appears entirely consistent with the delegation of authority to the Attorney General effected by 1226(a).

Order to Show Cause at 3. Judge Davis recognized that this statutory structure was like one Congress set up for the Bureau of Prisons that the Supreme Court upheld in *Lopez v. Davis*, 531 U.S. 230 (2001). Order to Show Cause at 3-4. There, the Supreme Court upheld a BOP regulation categorically denying a sentence reduction provision to a category of inmates, as an exercise of discretion given to it by Congress. Order to Show Cause at 4 (citing *Lopez*, 531 U.S. at 233, 244).

In his Order Denying the Petition, Judge Davis carefully considered and rejected several arguments made by the petitioner. Judge Davis’s reasoning focused on the text of section 1226, “which expressly commits” detention authority to the Attorney General’s discretion. Order Denying Petition at 4. The Attorney General’s further delegation, via regulation, to immigration judges is constrained by the Attorney General’s finding that for individuals charged under section 1227(a)(4), no IJ review is allowed. *Id.* at 5. Judge Davis rejected an argument that *Lopez* was not applicable because this detention is in the civil context. *Id.* at 6-7.

Finally, Judge Davis highlighted the Eighth Circuit’s very recent precedent in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024), *rehearing by panel and en banc denied*, *Banyee v. Bondi*, No. 22-2252, 2025 WL 837914 (8th Cir. Mar. 18, 2025). The *Banyee*

decision rejects a constitutional challenge to mandatory detention under 1226(c) for the length of an individual's removal proceedings. 115 F. 4th at 931 ("The rule has been clear for decades: '[d]etention during deportation proceedings [i]s ... constitutionally valid.'") (citing *Demore*, 538 U.S. at 523). *Banyee* and *Farass Ali* (see ECF 10 at 16-17) make clear that the Eighth Circuit reads section 1226 to allow for constitutional detention during removal proceedings, and this Court's review of the detention is constrained. Judge Davis distinguished and disagreed with out-of-district authority to the contrary. *Id.* at 7. This Court should adopt Judge Davis's reasoning and find that Gunaydin's detention is constitutional as his removal proceedings progress. The Court should deny the pending motion for preliminary injunctive relief and the amended habeas petition.

B. Plaintiff Cannot Establish Irreparable Harm

Irreparable harm must be likely absent an injunction, not merely possible. *Winter*, 555 U.S. at 22. Here, Plaintiff has failed to establish any irreparable harm. The Court can and should deny his preliminary injunction motion on this basis alone. *Sessler*, 990 F.3d at 1156. Moreover, the Supreme Court has held in other immigration contexts that claims related to the possibility of removal proceedings do not constitute irreparable injury. See *Nken v. Holder*, 556 U.S. 418, 435 (2009) ("[T]he burden of removal alone cannot constitute the requisite irreparable injury."). Accordingly, Plaintiff has failed to establish any irreparable harm.

Gunaydin's essentially asserts that, since his original arrest and movement through the removal and detention proceedings thus far have been without legal or factual justification and deprived him of his Fifth Amendment rights, he has suffered and will

suffer immediate and irreparable harm and he should be released immediately. As set forth above, Gunaydin has received due process under the circumstances and in fact he has been successful thus far. Meanwhile, he conveniently ignores that being exposed to removal and detention are normal consequences of the situation in which he placed himself through his underlying criminal conduct. The Immigration Judge specifically found that he engaged in dangerous activity. DHS has the right to pursue the charges through the BIA until they are completed. Gunaydin has demonstrated that he can be successful in defending himself and he retains his right to appeal any adverse decision. Gunaydin has sustained and will not sustain any irreparable harm cognizable through his motion for a preliminary injunction and his amended habeas petition.

C. The Balance of Equities and Public Interest Favor the Government

The balance of equities and public interest factors “merge when the Government is the opposing party.” *See Nken*, 556 U.S. at 435. A court “‘should pay particular regard for the public consequences’” of injunctive relief. *Winter*, 555 U.S. at 24 (quoting *Weinberger v. Romero- Barcelo*, 456 U.S. 305, 312 (1982)). Here, this factor weighs in the Government’s favor. Congress has provided the Secretary of Homeland Security significant authority to administer and enforce U.S. immigration laws, including those governing public safety. Any order that enjoins a governmental entity from exercising its discretion pursuant to statute constitutes an irreparable injury that weighs against the entry of injunctive relief. *See New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977). Granting Gunaydin the extraordinary relief that he seeks would undermine DHS’s

authority to enforce the provisions of the Immigration and Nationality Act. The public interest would not be served by restricting the agency's authority.

D. The Court Should Require Plaintiff to Post a Bond

Pursuant to Rule 65(c), “[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c); *see also Global NAPs, Inc. v. Verizon New England, Inc.*, 489 F.3d 13, 20-21 (1st Cir. 2007). A bond posted for a preliminary injunction is viewed as a contract in which “the court and [Plaintiff] ‘agree’ to the bond amount as the ‘price’ of a wrongful injunction.” *Global NAPs, Inc.*, 489 F.3d at 21 n. 5 (internal citation omitted). As a result of the posting of the bond, a presumption arises that damages will be awarded from those posted bond amounts in order for defendants “to receive compensation for their damages in cases where it is later determined that a party was wrongfully enjoined.” *Nintendo of America, Inc. v. Lewis Galoob Toys, Inc.*, 16 F.3d 1032, 1036 (9th Cir. 1994); *see also Global NAPs, Inc.*, 489 F.3d at 23. Defendants respectfully request that Plaintiff be required to post security during the pendency of the Court's Order, in the event it is later determined that Defendants were wrongfully enjoined.

CONCLUSION

For these reasons, the Court should deny Plaintiff's request for a preliminary injunction and his amended habeas petition.

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LISA D. KIRKPATRICK
Acting United States Attorney

s/ Friedrich A. P. Siekert

BY: FRIEDRICH A. P. SIEKERT
Assistant U.S. Attorney
Attorney ID Number 142013
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
Telephone: 612-664-5600
Email: Fred.Siekert@usdoj.gov

Attorneys for Defendants