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CLERK, U.S. DISTRICT COURT
MINNEAPOLIS, MINNESOTA

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT COURT OF MINNESOTA
600 U.S. Courthouse Suite 202
300 South Fourth Street
Minneapolis, MN, 55415

YEE SHAE

A# 

Petitioner,

v.

James Mchenry and Lisa Monaco,
US ATTORNEY GENERAL;

Kristi Noem,
SECRETARY OF DEPARTMENT OF
HOMELAND SECURITY;

Peter Berg,
FIELD OFFICE DIRECTOR FOR THE
MINNEAPOLIS FIELD OFFICE
Warden of Freeborn County Detention Center,

Respondents,

**PETITION FOR PRELIMINARY INJUNCTION, TEMPORARY RESTRAIN ORDER
AND WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

Petitioner, YEE SHAE, brings this preliminary injunction, temporary restrain order and writ of habeas corpus petition seeking immediate relief from unlawful detention. Petitioner requests that this Court issue a Writ of Habeas Corpus and direct Respondent to immediately release Petitioner from custody and enter preliminary and permanent injunctive relief enjoining [Respondent] from further unlawful detention of petitioner. Petitioner challenges the lawfulness



of his detention by Immigration and Customs Enforcement (“ICE”) under 8 C.F.R. 241.13. In 2022, having released Petitioner, the Government may not re-detain Petitioner without satisfying 8 C.F.R. § 241.13(i).

Petitioner challenges his unlawful detention under the Fifth Amendment clause as a violation of due process and The Immigration and Nationality Act. Specifically, he argues that the immigration officials unlawfully detained him after he reported to his intense supervision check in. Petitioner seeks immediate release from custody and injunction to prevent future unlawful re-detention. In support of this petition and complaint for injunctive relief, petitioner alleges as follows:

CUSTODY

1. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement (“ICE”). Petitioner is detained at the **Freeborn County Adult Detention Center** in **Albert Lea, Minnesota**. ICE has contracted with **Freeborn County Jail** to house immigration detainees such as Petitioner. Petitioner is under the direct control of Respondents and their agents. Petitioner was detained at his house on **June 6, 2025**.

Petitioner was transferred to **Freeborn County Adult Detention Center** in **Albert Lea, Minnesota** on **June 6, 2025**.

JURISDICTION

2. This action arises under the constitution of the United States, and the Immigration and Nationality Act (“INA”), 8 U.S.C. 1101 et seq. as amended by the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570, and the Administrative Procedure Act (“APA”), 5 U.S.C. 701 et seq.

3. This court has jurisdiction under 28 U.S.C. 2241: art. I 9, cl. 2 of the United States Constitution (“Suspension Clause”); and 28 U.S.C. 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, law, or treaties of the United State. This court may grant relief pursuant to 28 U.S.C. 2241, 5 U.S.C. 702, and the All Writs Act, 28 U.S.C. 1651.

4. Petitioner has exhausted any and all administrative remedies to extend require by law.

VENUE

5. Pursuant to Braden v. 30th Judicial Circuit Ct., 410 U.S. 484, 495-96, 93 S. Ct. 1123, 35 L. Ed. 2d 443 (1973); Roman v. Ashcroft, 340 F.3d 314, 318-20 (6th Cir. 2003). Thus, because the petition indicates that Petitioner is currently incarcerated at Freeborn County Adult Detention Center in Minnesota, the proper venue for this action is the United States District Court for the District of Minnesota, the judicial district in which Petitioner resides.

PARTIES

6. Petitioner is is STATELES. He was born in a refugee camp in Thailand but he is not a citizen of Thailand. Petitioner was taken into ICE custody on June 6, 2025, and has remained in ICE custody continuously since that date. Petitioner was granted deferral of removal on August 13, 2021.

7. Respondent James Mchenry and Lisa Monaco is the Attorney General of the United States and is responsible for the administration of ICE and the implementation and enforcement of the Immigration & Nationality Act (INA). As such, James Mchenry and Lisa Monaco has ultimate custodial authority over Petitioner.

8. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. He is responsible for the administration of ICE and the implementation and enforcement of the Immigration & Nationality Act (INA). As such, Kristi Noem is the legal custodian of Petitioner.

9. Respondent Peter Berg is one of the ICE Field Director of the Minnesota Field Office of ICE and is Petitioner's immediate custodian who has signed Petitioner's continued Detention Letters. See Vasquez v. Reno 233 F.3d 688, 690 (1st Cir. 2000), cert. denied, 122 S. Ct. 43 (2001).

10. Respondent Warden of Freeborn County Detention Center, where Petitioner is currently detained under the authority of ICE, alternatively, may be considered to be Petitioner's immediate custodian.

FACTUAL ALLEGATIONS

11. Petitioner, YEE SHAE, is stateless. He was born in a refugee camp in Thailand but he is not a citizen of Thailand. Petitioner has been in ICE custody since June 6, 2025. An Immigration Judge Granted petitioner deferral of removal under the convention against torture on August 13, 2021.

12. Petitioner entered the United States on or about 2007 as a refugee, and he has not left since arriving.

13. Petitioner was arrested in Minnesota and charged with Sexual conduct on September 21, 2021. Petitioner pleaded guilty to the charge and was sentence to 30 years' probation.

14. Petitioner was released on September 21, 2021 to ICE custody and was transported to a county jail under ICE supervision in Minnesota. Petitioner was released under an order of supervision in March 11, 2022.

15. ICE tried obtaining respondent's travel documents from a third country and unsuccessfully failed to obtain them.

16. Petitioner never violated any of the above conditions, nor have any encounter with the law enforcement. Petitioner was law abiding individual that has proven rehabilitation.

17. Petitioner was unlawfully and unconstitutionally detained by ICE official on June 6, 2025. Petitioner was not given any reason for his detention violating his due process rights under the Fifth Amendment.

LEGAL FRAME OF WORK FOR RELIEF SOUGHT

18. Having released petitioner pursuant to 8 C.F.R. § 241.13, the government may not re-detain petitioner without satisfying 8 C.F.R. § 241.13 (i). ICE's decision to re-detain a noncitizen like Petitioner who has been granted supervised release is governed by ICE's own regulation requiring (1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future. See 8 C.F.R. § 241.13(i)(2). The first circuit determined the following: "The plain language of the regulation, however, does not allow a court in the first instance to make the required individualized finding. To the extent ICE claims that it made such a determination, the court should review that claim in light of the regulations instructing ICE on how it should make such a determination. See 8 C.F.R. § 241.13(f), (i)(2).

19. Respondent asserts petitioner's case is under current review by ICE deportation officer. See notice of revocation. Respondent allegations does not account as change of circumstances. Respondent could have started by securing travel documents from any third country for petitioner's removal before arresting him.

20. In *Sayonkon v. Beniecke*, 2012 U.S. Dist. LEXIS 66960 (D. Minn., April 17, 2012) ICE has determined the following after releasing an individual with an order of supervision: ("Once a travel document is obtained, you will be required to surrender to ICE for removal. You will, at that time, be given an opportunity to prepare for an orderly departure."). Petitioner alleges ICE has not follow its own regulations. ICE should obtain a travel document for petitioner before ICE could arrest him.

CLAIMS FOR RELIEF

COUNT ONE

21. Petitioner re-alleges and incorporates by reference paragraphs 1 through 20 above.

22. Petitioner filed this action seeking habeas corpus relief pursuant to 28 U.S.C. § 2241 on the ground that his continued detention in post-removal-order custody is unlawful under the due process standards set forth by the United States Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001) and that his removal to Thailand or any third country is unlikely to occur in the reasonably foreseeable future.

23. The Supreme Court has long held that civil detention must be justified: "[G]overnment detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and 'narrow' non-punitive 'circumstances,' where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal citations and quotations omitted). Civil detention becomes unconstitutional when "punitive" in nature, meaning "not [or no longer] reasonably related to a legitimate, non-punitive governmental objective." *Scott v. Moore*, 114 F.3d 51, 53 (5th Cir. 1997).

24. Petitioner claims that the government lacked a valid warrant and that the government, having previously determined that his removal was "not possible or practicable," failed to follow its own regulations requiring ICE to determine that, "on account of changed circumstances, . . . there [was] a significant likelihood that [petitioner] may be removed in the reasonably foreseeable future." See 8 C.F.R. § 241.13(i)(2). He contends that, absent such an individualized finding, ICE lacked the legal authority to detain him and is therefore liable for false arrest and false imprisonment.

25. Petitioner does not challenge the decision to try to execute his removal. Petitioner claims that his renewed detention was unlawful because the government by failing to adhere to regulatory procedures, neither offered nor proved any "special justification" that existed at that time to outweigh his "constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997)).

CLAIMS FOR RELIEF

COUNT TWO

26. Petitioner re-alleges and incorporates by reference paragraphs 1 through 25 above.

27. Petitioner seek emergency relief in the form of preliminary injunctions. Petitioner further contends this court should enjoin respondent from re-detaining him without court approval. This injunction are governed by Rule 65 of the Federal Rules of Civil Procedure. Preliminary injunctive relief is "an extraordinary remedy" and "should be granted only in limited circumstances." *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004) (citing *AT&T v. Winback and Conserve Program, Inc.*, 42 F.3d 1421, 1426-27 (3d Cir. 1994)).

28. In determining whether to grant a motion seeking preliminary injunctive relief, the Court considers the following four factors: (1) the likelihood that the movant will prevail on the merits; (2) the extent to which the movant is being irreparably harmed by the challenged conduct; (3) the extent to which the non-moving party will suffer irreparable harm if the preliminary injunction is issued; and (4) whether granting preliminary injunctive relief will be in the public interest. *S & R Corp. v. Jiffy Lube Int'l, Inc.*, 968 F.2d 371, 374 (3d Cir. 1992) (citing *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 197-98 (3d Cir. 1990)).

29. The Third Circuit clarified this standard. See *Reilly v. City of Harrisburg*, 858 F.3d 173 (3d Cir. 2017). As a threshold matter, the movant must establish the two "most critical" factors: likelihood of success on the merits and irreparable harm. *Id.* at 179. Under the first factor, the movant must show that "it can win on the merits," which requires a showing that is "significantly better than negligible but not necessarily more likely than not." *Id.* Under the second factor, the movant must establish that it is "more likely than not" to suffer irreparable harm absent the requested relief. *Id.* Only if these "gateway factors" are satisfied may the court consider the third and fourth factors and "determine[] in its sound discretion if all four factors, taken together, balance in favor of granting the requested preliminary relief." *Id.* at 176, 179

30. Here, Petitioner satisfied both requirements. Petitioner may only be re-detained if he violates a condition of his release, or "change circumstances" demonstrate a "significant likelihood that [he] may be removed in the reasonably foreseeable future". 8 C.F.R. § 241.13. Since petitioner was released on March 11, 2022 under 8 C.F.R. § 241.13 this current detention is unlawful. ("[I]f Petitioner were to be brought back into custody, it would be under a new set of circumstances and facts, and [it] would be impossible for the government to repeat the same

unlawful conduct that [Petitioner] challenged. See DR. Ashqar v. Larose, 2019 U.S. Dist. LEXIS 48082 (N.D. Ohio, Mar. 26, 2019)

31. In Kargbo v. Brott, 2016 U.S. Dist. LEXIS 87690, 2016 WL 3676162, at *2 (D. Minn.) the court stated the following: ("[T]his is not a case in which the government voluntarily ceased allegedly unlawful conduct but is free to restart such conduct at whim. To the contrary, by releasing Kargbo under 8 C.F.R. § 241.13, the government has placed itself under new legal limitations-limitations that did not exist at the time that Kargbo filed his habeas petitions and that make it impossible for the government to resume the objectionable conduct."). Put plainly, Petitioner challenged his post-order-of-removal detention. Should he be re-detained, it will be under 8 C.F.R. § 241.13. Thus, there is no reasonable expectation Petitioner will again suffer the same harm initially alleged. See *Friends of the Earth*, 528 U.S. at 190; *Mosley*, 920 F.2d at 415.

32. Petitioner argues that there is no significant likelihood of removal now because he has no contacts with any third country, and ICE has not begun the process of identifying a third country either by interviewing him or securing documents from any third country for his removal.

33. Petitioner notes that in situations where individuals are granted a withholding of removal, "only 1.6% of noncitizens . . . were actually removed to an alternative country." (Id.) (citing *Johnson v. Guzman Chavez*, 594 U.S. 523-, 141 S. Ct. 2271, 2286, 210 L. Ed. 2d 656 (2021)). (citing American Immigration Council & National Immigrant Justice Center, *The Difference Between Asylum and Withholding of Removal* 7 (Oct. 2020), www.americanimmigrationcouncil.org/sites/default/files/research/the_difference_between_asylum_and_withholding_of_removal.pdf). Petitioner also includes a declaration from Daniel Bible, an ICE Enforcement and Removal Operations Executive Associate Director, who stated

that "removal to third countries is rare" and "particularly unlikely unless the noncitizen has a connection to a third country."

34. Petitioner alleges ICE should have obtain a travel document before they would have arrested him. Therefore, ICE is not following its own regulation and preliminary injunction should be granted.

CLAIMS FOR RELIEF

COUNT THREE

35. Petitioner re-alleges and incorporates by reference paragraphs 1 through 34 above.

36. Petitioner seeks an immediate release from custody and seeks a temporary restraining order ("TRO"). Rule 65 of the Federal Rules of Civil Procedure provides for a TRO, in pertinent part, as follows: (b)(1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition, and (B) the movant's attorney certifies in writing any efforts made to give the notice and the reasons why it should not be required. Fed. R. Civ. P. 65. Petitioner satisfied requirement for injunctive relief. As discussed in preceding sections of these findings, due process, entitles petitioner to immediate release. He is thus entitled to a TRO to obtain such relief.

CONCLUSION

Petitioner unlawful detention by ICE is in violation of the Fifth Amendment of the United States Constitution and due process clause. Therefore, Petitioner is entitled to be granted habeas corpus, preliminary and permanent injunction and temporary restraining order enjoining respondent from future unlawful detention of petitioner.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Grant Petitioner a writ of habeas corpus directing Respondents to immediately release.
3. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
4. Award Petitioner attorney's fees and cost under Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. 504 and 28 U.S.C. 2412 and on any other basis justified under law;
and
5. Grant any other and further relief that this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted,



YEE SHAE

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Freeborn County Detention Center

Po Drawer 170

Albert Lea, MN 56007

Date: July 7, 2025