UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:25-cv-02782-JMB-DLM

YEE S.,

Petitioner,

v.

JAMES MCHENRY, *et al.*,

Respondent.

**RESPONSE TO PETITION AND MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Federal Respondents[1] respectfully submit this Response to the Petition for Preliminary Injunction, Temporary Restrain [sic] Order and Writ of Habeas Corpus, *see* ECF No. 1 ("Petition"), filed by Petitioner Yee S. ("Petitioner"). The Petition should be denied. Petitioner was lawfully taken into ICE custody under 8 U.S.C. § 1231 on June 6, 2025, to execute his long-standing final order of removal. His post-final-order detention of *less than four months*, which includes of his present detention of under two months, is constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Petitioner seeks immediate release and an injunction enjoining his further detention, *see* Petition at 11, arguing it is unlawful because "having released [him], the Government may not re-detain [him] without satisfying 8 C.F.R. § 241.13(i)." *Id.* at 2.

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[1] Federal Respondents are Pamela Bondi, U.S. Attorney General; Kristi Noem, Secretary of the Department of Homeland Security; and Tauria Rich, Acting St. Paul Field Office Director. Ms. Bondi and Ms. Rich are automatically substituted for their predecessors, Respondents McHenry and Berg, pursuant to Federal Rule of Procedure 25(d). Respondent Lisa Monaco, referred to in the Petition as "US Attorney General," was not the Attorney General but was the Deputy Attorney General. As the current Attorney General Pam Bondi is already a named respondent, Ms. Monaco should be terminated as respondent.

Not so. The government complied with its regulations, including by serving Petitioner with a Notice of Revocation of Release and by conducting an informal interview where he was afforded the opportunity to respond and provide evidence demonstrating that his removal in the reasonably foreseeable future was unlikely. Petitioner could not meet that burden—then or now—as his detention remains "presumptively reasonable" under *Zadvydas*. *See* 533 U.S. at 701. The Court should therefore dismiss the Petition and deny Petitioner's request for a temporary restraining order and injunction.

## RELEVANT FACTUAL BACKGROUND

### I. Petitioner's Background & Criminal Activity

Petitioner is a citizen of Burma who entered the United States as a refugee in July of 2007, and later adjusted his status to that of lawful permanent resident. *See* Declaration of Joshua L. Holien ("Holien Decl.") ¶ 4; Declaration of Liles Repp, Ex. B at 1.[2]

On January 19, 2021, Petitioner pled guilty to Criminal Sexual Conduct in the First Degree. Holien Decl. ¶ 6. On March 9, 2021, he was convicted of Criminal Sexual Conduct first degree-Penetration or Contact with Person Under 13 in violation of Minn. Stat. § 609.342.1(a) and was sentenced to 173 months of incarceration—a sentence that was immediately stayed for 30 years. *Id.*; *see* Ex. A at 2. The Statement of Probable Cause indicates that [redacted]. *See id.* at 14, Holien Decl. ¶ 5.

[2] Exhibits to the Declaration of Liles Repp are hereafter referred to simply as "Ex. __." References to page numbers in within those exhibits are to page numbering on PACER rather than to internal pagination.

## II. Petitioner's Immigration Proceedings

On June 25, 2021, the Department of Homeland Security commenced removal proceedings against Petitioner with the filing of a Notice to Appear, charging him as removable pursuant to section 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA"). *See* Ex. B at 2. Petitioner conceded the charge of removability but filed an application for protection under the Convention Against Torture ("CAT"). *Id.*

On September 13, 2021, an immigration judge granted Petitioner deferral of removal under CAT and ordered him removed to "any country other than BURMA that will accept him." Ex. B at 17; *see* Holien Decl. ¶ 7. As he did not appeal, Petitioner's removal order became administratively final on October 13, 2021, upon expiration of the 30-day appeal period in the order, *see* Ex. B at 17 (permitting 30 days to appeal), when the 90-day removal period began to run. 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(c).

On December 13, 2021, Petitioner was released from ICE custody on an Order of Supervision after it was determined that there was no significant likelihood of his removal in the reasonably foreseeable future ("SLRRFF"). Holien Decl. ¶ 8; *see* Ex. G (Order of Supervision). By that point, Petitioner had been ICE custody for ninety-two days since his removal order was issued, Holien Decl. ¶ 8, with approximately 61 of those occurring after his removal order became administratively final.

## III. Petitioner's Present Immigration Detention

On June 6, 2025, deputies from the United States Marshals Service arrested Petitioner in Lakeville, Minnesota, based on a determination that his removal is now significantly likely in the reasonably foreseeable future. Holien Decl. ¶ 9.

On June 7, 2025 Petitioner was served with a Notice of Revocation of Release stating that, "ICE is in the process of obtaining a travel document and there is a significant likelihood of your removal in the reasonably foreseeable future." Ex. C ("Notice") at 1. The Notice noted the "decision ha[d] been made based on a review of [his] official alien file and a determination that there are changed circumstances in [his] case." *Id.*[3] It also stated that he would "promptly be afforded an informal interview at which [he] will be given an opportunity to respond to the reasons for the revocation" and could "submit any evidence or information [he] wish[ed] to be reviewed in support of [his] release." *Id.*

Petitioner was afforded that Informal Interview that same day. *See* Repp Decl., Ex. C. *Id.* At the interview, he provided a written statement but did not provide a statement or documents showing that his removal was unlikely. *See Id.* He was also provided with notification of custody pursuant to INA Section 241. *Id.*, Ex. I.

Petitioner was not released after his informal interview and is presently in ICE custody at Freeborn County Adult Detention Center. *See* Petition ¶ 1. As the Notice reflects, he will next receive a notification of a custody review, which will occur "within approximately three months" of June 7, 2025, *see* Notice, a period which has not yet elapsed. The agency believes that Petitioner's removal is significantly likely in the reasonably foreseeable future, *see* Holien Decl. ¶ 9, and the Notice itself notes that the agency is "in the process of obtaining a travel document." Ex. C at 1. On June 11, 2025,

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[3] Among the changed circumstances is a change in government policy. *See*, e.g., Executive Order 14165, 90 Fed. Reg. 8467; Ex. J (DHS Guidance Regarding Third Country Removals issued in March of 2025).

the Field Office Director of ICE Enforcement and Removal Operations also issued a Warrant of Removal/Deportation for Petitioner. *See* Ex. F.

### IV. Procedural History

Petitioner filed the present Petition on July 7, 2025, asserting three separate claims. *See* ECF 1. First, Petitioner argues that his detention is "unlawful under the due process standards set forth by the United States Supreme Court in Zadvydas v. Davis," for reasons he does not specify and asserts that "his removal to Thailand or any third country is unlikely to occur in the reasonably foreseeable future." Petition ¶ 21, *see id.* ¶¶ 21-25. Though he does not articulate a basis for these conclusions, the cases he cites appear to indicate that he believes his detention is punitive or not reasonably related to a legitimate governmental objective, *see id.* ¶ 23, or that the government does not have legal authority to detain him. *Id.* ¶ 24. The Petition's second and third claims seek a preliminary injunction enjoining respondents from re-detaining him without court approval and a Temporary Restraining Order for his immediate release from custody. *Id.* ¶¶ 29-36.

## ARGUMENT

### I. Jurisdiction, Burden of Proof, And Scope of Review

28 U.S.C. § 2241 provides district courts with jurisdiction to hear petitions for writs of habeas corpus. When doing so, the burden is on the petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treatises of the United States in order to warrant relief. *See Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011).

Judicial review of immigration matters, including immigration detention, is also limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *see also Hampton v. Mow*

*Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("[T]he power over aliens is of a political character and therefore subject only to narrow judicial review."). The Supreme Court has "underscore[d] the limited scope of inquiry into immigration legislation," and "repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977).

For aliens their challenging civil immigration detention in a habeas action, courts employ a narrow standard of review and exercise "the greatest caution" in evaluating constitutional claims that implicate those decisions." *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976)). The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.").

Here, Petitioner's sole challenge is to his present immigration detention pending removal. *See, e.g.*, Petition at 1 (seeking "immediate relief from unlawful detention"). Petitioner does not challenge his final order of removal, nor could he. Jurisdiction over a challenge to such an order lies exclusively with the appropriate circuit court of appeals. *See*

8 U.S.C. § 1252; *see also Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007) (exclusive jurisdiction to review final orders of removal lies with the circuit court).

## II. 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 removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). Through the Immigration and Nationality Act ("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.

Section 1226 "generally governs the process of arresting and detaining . . . aliens pending their removal." *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). However, once an alien is subject to an administratively final removal order, as Petitioner is here, detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. pt. 241. Once ordered removed an alien lacks a legal right to remain in the United States and, as the governing legal rules reflect, his or her liberty interest is reduced. Under Section 1231, "when an alien is ordered removed," the Secretary of Homeland Security "shall detain the alien" "[d]uring the removal period." 8 U.S.C. § 1231(a)(1)(A), (a)(2).[4] The

[4] Although § 1231 and other provisions of the Immigration and Nationality Act refer to the "Attorney General," under the Homeland Security Act of 2002 many of those references are now read to mean the Secretary of Homeland Security. *See Straker v. Jones*, 986 F. Supp. 2d 345, 351 (S.D.N.Y. 2013).

"removal period" is the period during which the U.S. Department of Homeland Security ("DHS") begins to take steps to execute the alien's final removal order. *See Id.* § 1231(a)(1)(A)-(B). That period begins on the latest of three dates: (i) the "date the order of removal becomes administratively final"; (ii) "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order"; or (iii) "[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." *Id.* § 1231(a)(1)(B)(i)-(iii).

Although Section 1231 initially provides a 90-day period for the government to execute a final removal order, that period may be extended in some circumstances. For example, aliens removable as convicted of an aggravated felony pursuant to section 8 U.S.C. § 1227(a)(2), and those determined to be "a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period." *Id.* § 1231(a)(6); *see also Id.* § 1231(a)(1)(C) (suspension of period in certain circumstances). DHS also conducts periodic post-order custody reviews to determine whether an alien subject to a final removal order should continue to be detained beyond the initial removal period. *See* 8 C.F.R. § 241.4 (addressing continued detention for inadmissible, criminal, and other aliens). An alien held beyond the removal period may seek release from DHS custody, by showing that "there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." 8 C.F.R. § 241.13(a).

After the expiration of the removal period an alien may be released by DHS under an order of supervision. *See* 8 C.F.R. § 241.13. However, DHS may also revoke release in

certain circumstances, including for removal. 8 C.F.R. § 1231.13(i)(2) (DHS "may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the [DHS] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future."). Procedures for revocation are governed by the following section, 8 C.F.R § 1231.13(i)(3), and require that the alien:

> be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

8 C.F.R. § 241.13(i)(3). Where an alien is not released following the informal interview, the provisions of Section 241.4 govern continued detention pending removal. *Id.* § (i)(2).

### III. Petitioner's *Zadvydas* Claim is Premature

Petitioner's primary argument, that his present detention under 8 U.S.C. § 1231 to effectuate his removal is "unlawful under the due process standards" set forth in *Zadvydas v. Davis*, *see* Petition ¶ 22, is incorrect, as his detention remains "presumptively reasonable" and constitutional under that binding precedent. 533 U.S. at 701.

Under the Supreme Court's decision in *Zadvydas*, a person subject to a final order of removal cannot, consistent with the Due Process Clause, be detained *indefinitely* pending removal. *Id.* at 699-700. The Supreme Court has held that an alien subject to a final removal order may file a habeas petition and seek release if he can show that his detention has become prolonged and there is "no significant likelihood of removal in the

reasonably foreseeable future." *Id.* at 701. For individuals detained beyond the initial 90-day removal period, the Supreme Court established a temporal marker: post-final order of removal detentions of six months or less are *presumptively* constitutional. 533 U.S. at 701. Detention lasting longer than six months still comports with due process if a "significant likelihood of removal in the reasonably foreseeable future" exists. *Id.* However, as the Supreme Court explained, only:

> After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior post- removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

*Id.*; *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

Here, we remain well before the six-month marker. Petitioner's removal order was issued on September 13, 2021, *see* Ex. B at 17-18, and it became administratively final 30 days later, on October 13, 2021, when the appeal period expired. *See id.*, 8 C.F.R. § 1241.1(c). Petitioner was released from ICE custody on December 13, 2021, *see* Holien Decl. ¶ 8, 61 days after that. Petitioner's present custody commenced on June 6, 2025, *id.* ¶ 9, and he filed the instant Petition only 31 days later. Thus, as of the filing of the Petition, Petitioner had spent a total of 92 days in post-final order detention—well under of the six months that is presumptively reasonable under *Zadvydas*. 533 U.S. at 701.

As one court in this district observed, "Determining whether ongoing detention beyond the six-month period established by *Zadvydas* amounts to a constitutional violation

is fact-intensive and often difficult. *The same is not true of claims brought prior to the six-month period established by Zadvydas having elapsed.*" *Brian B. v. Tollefson*, No. 24-cv-2884 (NEB/ECW), 2024 U.S. Dist. LEXIS 158854, at *3 (D. Minn. July 26, 2024) (emphasis added), *report and recommendation adopted*, *Brian B. v. Tollefson*, 2024 U.S. Dist. LEXIS 157487 (D. Minn., Sept. 3, 2024). Instead, "[a] habeas petitioner must wait until the presumptively reasonable six-month detention period has passed before bringing a habeas petition challenging that detention...." *Id.*[5] *(citing, e.g., Bah v. Cangemi,* 548 F.3d 680, 684 (8th Cir. 2008); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002); *Mehighlovesky v. U.S. Dep't of Homeland Sec.*, No. 12-CV-0902, 2012 U.S. Dist. LEXIS 185286, 2012 WL 6878901, at *2 (D. Minn. Dec. 7, 2012).

## IV. Even Were the Petition Not Premature, Petitioner's Detention Does Not Violate Due Process.

Though the premature status of the Petition is a more than sufficient basis for denial, had the six-month *Zadvydas* period elapsed, the Petition would still fail to meet Petitioner's initial burden to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701; *Mehighlovesky v. U.S. Dep't of Homeland Sec.*, No. CIV. 12-902 RHK/JJG, 2012 WL

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[5] That Petitioner was previously released on an Order of Supervision does not alter the analysis. Indeed, at least one court has found that revocation touches off a new 6-month period under *Zadvydas*, even where (unlike here) the original period had expired. *See GHAMELIAN v. BAKER et al.*, No. CV SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("Petitioner's due process argument is premature. The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) detention poses a constitutional issue"), *reconsideration denied sub nom.*, *Ghamelian v. Baker*, No. CV SAG-25-02106, 2025 WL 2074155 (D. Md. July 23, 2025)

6878901, at *4 (D. Minn. Dec. 7, 2012), *report and recommendation adopted*, No. CIV. 12-902 RHK/JJG, 2013 WL 187553 (D. Minn. Jan. 17, 2013). Only once Petitioner successfully makes that showing must the government rebut it. *Zadvydas*, 533 U.S. at 701.

Here, Petitioner cannot meet his burden as the Petition lacks non-conclusory arguments showing that his removal is unlikely in the reasonably foreseeable future. *See* Petition. Petitioner offered no documents or substantive arguments at his informal interview. *See* Ex. E. Though he now conclusorily asserts that ICE tried and failed, at an unspecified time, to obtain travel documents from an unnamed country, Petition ¶ 15, and "has not begun the process of identifying a third country" or "securing documents . . . for his removal," *id.* ¶ 32, he fails to acknowledge his removal was order authorizes removal to *any* country aside from Burma that will accept him, Ex. B at 17, and that the Notice of Revocation itself stated that "ICE *is* in the process of obtaining a travel document" for him. Ex. C (emphasis added).

As Magistrate Judge Thorson summarized, there are generally five circumstances where courts have found no significant likelihood of removal: "(1) where the detainee is stateless, and no country will accept him; (2) where the detainee's country of origin refuses to issue a travel document; (3) where there is no repatriation agreement between the detainee's native country and the United States; (4) where political conditions in the country of origin render removal virtually impossible; and (5) where a foreign country's delay in issuing travel documents is so extraordinarily long that the delay itself warrants an inference that the documents will likely never issue." *Ahmed v. Brott*, No. 14-cv-5000 (DSD/BRT), 2015 WL 1542131, at *4 (D. Minn. Mar. 17, 2015), *report and*

*recommendation adopted*, 2015 WL 1542155 (Apr. 7, 2015). Petitioner makes no argument that any of these circumstances is applicable here, *see* Petition, nor could he given the many countries to which his removal was authorized. *See* Ex. B. at 17.

Nor do conclusory statements suffice to meet Petitioner's burden. One illustrative case, *Andrade*, involved a petitioner who had been detained for more than three years when his habeas appeal reached the Fifth Circuit. *See Andrade v. Gonzales*, 459 F.3d 538, 543-44 (5th Cir. 2006), *cert. denied*, 549 U.S. 1132, 127 S. Ct. 973, 166 L. Ed. 2d 739 (2007). The Andrade Court noted that *Zadvydas* "creates no specific time limits on detention," rather an alien "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* (citing 533 U.S. at 701). It found that, as "[t]he alien bears the initial burden of proof in showing that no such likelihood of removal exists" and he "ha[d] offered nothing beyond his conclusory statements suggesting that he will not be immediately removed . . . following the resolution of his appeals," "[h]is constitutional claim [wa]s meritless." *Id.* (citing *Zadvydas*, 533 U.S. at 701). So too here, where Petitioner offered nothing beyond conclusions[6] and unsupported statements.[7] *Id.; see also Skaftouros*, 667 F.3d at 158 (the burden is on the

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[6] Petitioner's assertion that "ICE should have obtain [sic] a travel document before they would have arrested him" and is therefore not "following its own [unspecified] regulation" Petition ¶ 32, lacks any support. Under his Order of Supervision, Petitioner was to assist ICE "in obtaining any necessary travel documents." Ex. G. His attempted legal citation to a pandemic-era case referring to lack of success with third country removals generally, Petition ¶ 33, fails to take into account recent changes in government policy, *see* Executive Order 14165, 90 Fed. Reg. 8467; Ex. J, and is not tied to his present removal circumstances.

[7] The Petition does refer to and purport to quote from a declaration of Daniel Bible, but it does not attach that declaration as it claims to. *See* Petition ¶ 33.

habeas petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treatises of the United States).

Even assuming *arguendo* that Petitioner could meet his initial burden under *Zadvydas*, the record is sufficient to rebut the notion that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future. 533 U.S. at 701. ICE is in the process of obtaining a travel document for Petitioner, Ex. C, and he has been ordered removed to any country aside from Burma that will accept him. Ex. B at 17.

Petitioner's detention continues to serve a clear purpose "assuring [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. Detention to facilitate removal has long been held to be a legitimate governmental objective. *See, e.g.*, *Wong Wing*, 163 U.S. at 235 ("Proceedings to exclude or expel would be vain if those accused could not be held . . . while arrangements were being made for their deportation."). Petitioner's detention also has an obvious endpoint at removal. His present detention remains in the presumptively reasonable period under *Zadvydas*, but even had it lasted for longer period, "the mere passage of time . . . is not alone sufficient to show that no such likelihood exists" without more. *See Chen v. Banieke*, No. CIV. 15-2188 DSD/BRT, 2015 WL 4919889, at *4 (D. Minn. Aug. 11, 2015); *Jaiteh v. Gonzales*, No. 07-cv-1727, 2008 WL 2097592 at *2–3 (D. Minn. Apr. 28, 2008).

**V. DHS Fully Complied with the Regulatory Requirements in Revoking Petitioner's Release.**

Insofar as Petitioner argues, that his detention does not comply with applicable regulatory requirements, this argument is incorrect. *See* Petition at 1-2 ("Petitioner

challenges the lawfulness of his detention . . . under 8 C.F.R. § 241.13" as he may not be re-detained "without satisfying 8 C.F.R. § 241.13(i)"). Though Petitioner claims he "was not given any reason for his detention, " Petition ¶ 18, and that the government "failed to follow its own regulations requiring ICE to determine that, 'on account of changed circumstances," there is now SLRRFF, *id.* ¶ 24, those assertions are belied by record, which includes the Notice of Revocation of Release and accompanying proof of service on Petitioner dated June 7, 2025. *See* NOTICE; Holien Decl. ¶ 10.

The Petition fails to point to any problem with the Notice, which mirrored requirements set forth in the regulation. 8 C.F.R. § 241.13(i)(2) states that DHS "may revoke an alien's release under this section and return the alien to custody if, *on account of changed circumstances, the [DHS] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.*" 8 C.F.R. § 1231.13(i)(2) (emphasis added). That is precisely what the Notice indicated. *See* Notice ("This decision has been made based on review of your official alien file and a determination that there are changed circumstances in your case."); *id.* ("ICE is in the process of obtaining a travel document and there is a a significant likelihood of removal in the reasonably foreseeable future.").

On June 7, 2025, Petitioner also received the informal interview required by the 8 C.F.R. 241.13(i)(3). *See* Ex. E (signed statement comprising the record from the informal interview). Though it seems clear from the record that Petitioner failed to dispute the government's basis for revocation at his interview or to provide any evidence or information that would rebut the likelihood of his removal in the reasonably

foreseeable future, *see id.*, he was given the *opportunity* to do so, which is all the regulation requires. 8 C.F.R. 241.13(i)(3). Nor was advance notice of the informal interview necessary. "The regulation only mandates that upon revocation of release, the petitioner must be given an initial opportunity to dispute the government's justification for revocation. There is no requirement that ICE give any advance notice of the informal interview . . . ." *Doe v. Smith*, 324 F. Supp. 3d 214, 223 (D. Mass. 2018) (denying petition for writ of habeas corpus following revocation). Notably, Petitioner will also be afforded additional procedural protections, including custody determinations under 8 CFR 241.4, going forward. *See* 8 C.F.R. 241.13(i)(2); Notice.

In many respects, this Petition is similar to the habeas petition filed in *Vue v. Mchenry et. al.*, No. 25-2827 (PAM/DLM) where Judge Magnuson recently issued an order dismissing the petition. *Vue v. Mchenry et. al.*, No. 25-2827 (PAM/DLM) (July 21, 2025) (ECF 7). Like Petitioner, Mr. Vue had been ordered removed, and after being ordered removed was placed on supervised release. *Id. at 2.* In June 2025, ICE revoked Mr. Vue's Order of Supervision and arrested him because ICE was in the process of obtaining travel documents from Loas and there was a significant likelihood of his removal in the reasonably foreseeable future. *Id.* Mr. Vue filed a petition similar to this one, and on \July 21, 2025, Judge Magnuson issued an order dismissing that petition finding that Mr. Vue received a Notice of Revocation that explained the basis for the revocation was that ICE was securing a travel document for him and that his removal to Laos was imminent. *Id.* at 4. This Court should similarly find that ICE complied with applicable regulatory requirements and dismiss this Petition.

Federal Respondents have therefore complied with the applicable regulatory requirements, and insofar as the Petition's claims premised on a failure to follow those requirements, those claims fail.

## VI. Petitioner is Not Entitled to Injunctive Relief or a Temporary Restraining Order.

Finally, seemingly relying on the same arguments already addressed, the Petition seeks both a preliminary injunction enjoining respondents from re-detaining Petitioner and a Temporary Restraining Order for his immediate release from custody. *Id.* ¶¶ 26-36. Petitioner offers no legal basis for either request,[8] *see id.*, which would not maintain the status quo in the present case.

Courts evaluating a motion for a TRO or preliminary injunctive relief weigh four factors: (1) the movant's likelihood of success on the merits; (2) the threat of irreparable harm to the movant in the absence of relief; (3) the balance between that harm and the harm injunctive relief would cause to the other litigants; and (4) the public interest. *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (*en banc*). Success on the merits is the most important factor—indeed, preliminary injunctive relief cannot be entered where a litigant cannot establish any likelihood of success on their claims. *Shrink Missouri Government PAC v. Adams*, 151 F.3d 763, 764 (8th Cir. 1998). Moreover, "[a] TRO is an extraordinary remedy, and the [Petitioner] has the burden of demonstrating that [she] is entitled to such relief." *Minneapolis Urban League, Inc. v. City of Minneapolis*, 650 F.

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[8] Nor did Petitioner properly bring a motion for either a Temporary Restraining Order or a Preliminary Injunction as contemplated under this district's local rules. *See* District of Minnesota Local Rule 7.1(d) (setting forth specific requirements for such motions).

Supp. 303, 305 (D. Minn. 1986).

Here, for the reasons already discussed, Petitioner cannot show any likelihood of success on the merits. *See supra* §§ III-V. Nor, even had he been able to show a violation of his due process rights—and he has not—would Petitioner be entitled to the relief he requests. *See, e.g.*, *Doe*, 324 F. Supp. 3d at 226. In *Doe*, a petitioner similarly subject to an order of supervision, received a release notification and was abruptly re-detained. *Id.* at 7-13. As here, the petitioner brought a habeas petition seeking immediate release from custody, including based on the contention that applicable regulations had not been properly followed. *Id.* at 13-14. As the Court observed, "Doe is not challenging the underlying justification for the removal order (although she seeks to reopen the proceeding). Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity. There is thus no apparent reason why a violation of the regulation, even assuming it occurred, should result in release." *Id.* at 24-25 (also noting regulations provide for conduct a custody review within 90 days under 8 C.F.R. § 241.4(k), and "[a]t that time, Doe may present any documentation or other evidence in support of her contention that continued detention is unwarranted."). The same is true here.

Finally, though a lack of likelihood of success on the merits is dispositive, the remaining *Dataphase* factors do not collectively support relief. In the absence of an injunction and TRO, Petitioner will remain detained but may be removed from the country in compliance with his longstanding removal order. There is potential for harm to the government, including because Petitioner seeks an injunction requiring court approval

for him to be re-detained, which would directly impact its removal efforts. The government would also incur costs in in supervising Petitioner outside of detention or in later re-detaining him only subject to judicial approval. Moreover, there is a public interest in the efficient administration of the nation's immigration laws. Thus, as with the first and most important factor, the remaining *Dataphase* factors thus do not weigh in Petitioner's favor and Petitioner's requests for emergency relief should be denied.

**CONCLUSION**

For all of the forgoing reasons, the Federal Respondents respectfully request that the Petition be dismissed and the relief requested therein be denied.[9]

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[9] The Federal Respondents do not believe an evidentiary hearing is necessary in this matter, as the submissions, including the declaration and exhibits, of the Federal Respondents provide the Court with a sufficient record upon which to adjudicate the Petition.