

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Martin Berchie,

Case No.: _____

Petitioner

v.

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS**

Pamela Bondi, Attorney General; Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of U.S. Immigration & Customs Enforcement; Marcos Charles, Acting Executive Associate Director for Enforcement and Removal Operations; Peter Berg, Field Office Director for Enforcement and Removal Operations; U.S. Immigration & Customs Enforcement; U.S. Department of Homeland Security; Joel Brott, Sherburne County Sheriff.

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Respondents are detaining Petitioner, Martin Berchie (A ), in violation of law.
2. Berchie is a citizen of Ghana who was ordered removed from the United States on March 25, 2021. This order of removal became administratively final when Berchie withdrew his administrative appeal on May 28, 2021.
3. Berchie was incarcerated in immigration detention after his order of removal was

issued from March 25, 2021 until January 31, 2022. Stated differently, Berchie obtained 312 days of post-removal-order custody credit before being released from immigration custody.

4. Berchie was released from immigration custody because it was determined that he had demonstrated to ICE's satisfaction that his removal would not occur in the reasonably foreseeable future.
5. Following his release from custody in 2022, Berchie was placed on an Order of Supervision ("OOS").
6. Some conditions of Berchie's OOS included continuing to try and obtain a travel document from Ghana that would allow for his deportation and to also maintain contact with ICE and comply with all check in requirements.
7. Berchie attended an ICE check in on August 7, 2025. He was redetained at that check in.
8. Berchie remains detained at this time. He is housed in Sherburne County Jail, a facility designed to house and punish convicted criminals. Berchie's conditions of confinement are totally indistinguishable from those of convicted criminals.
9. The government is not in possession of any credible or persuasive documents or evidence that Berchie's removal is likely to occur in the reasonably foreseeable future. This was true at the time Berchie was redetained, and it remains true at the time of this petition's filing.
10. The redetention of Berchie serves no legitimate purpose. Instead, his detention is

punitive. The redetention of Berchie is designed to send a message to other individuals with final orders of removal that they need to leave the United States or they will be jailed indefinitely and without any process.

11. Federal statutes and regulations require ICE to follow certain procedures before they redetained Berchie. ICE failed to comply with these laws prior to redetaining Berchie.
12. To remedy this unlawful detention, Berchie seeks declaratory and injunctive relief in the form of immediate release from detention.
13. Pending the adjudication of his Petition, Berchie seeks an order restraining the Respondents from transferring him to a location where he cannot reasonably consult with counsel, such a location to be construed as any location outside of the geographic jurisdiction of the day-to- day operations of U.S. Customs and Immigration's ("ICE") Fort Snelling, Minnesota of the Office of Enforcement and Removal Operations in the State of Minnesota.
14. Pending the adjudication of this Petition, Petitioners also respectfully request that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Berchie.
15. Berchie requests the same opportunity to be heard in a meaningful manner, at a meaningful time, and thus requests 72-hours-notice prior to any removal or movement of him away from the State of Minnesota.
16. Berchie requests an order compelling Respondents to release him pending the

outcome of this petition.

17. Berchie requests an order issuing a temporary statewide injunction preventing ICE from detaining certain aliens—i.e., those who: (1) have already served 90 days or more in post-administratively-final-removal-order custody, (2) have already served 180 days or more in immigration custody (regardless of when the removal order issued or became final), and (3) have subsequently been released on an Order of Supervision after demonstrating there is no significant likelihood of removal in the reasonably foreseeable future—prior to actually obtaining a valid travel document for the individual, potentially to be made permanent after further briefing and a hearing that complies with Fed. R. Civ. P. 65(a).

JURISDICTION AND VENUE

18. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 (federal question), § 1361 (mandamus action), § 1651 (All Writs Act), and § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); 5 U.S.C. § 702 (Administrative Procedure Act); and 28 U.S.C. § 2201 (Declaratory Judgment Act). This action further arises under the Constitution of the United States and the Immigration and Nationality Act (“INA”), specifically, 8 U.S.C. § 1231(a)(1)-(3) and 8 C.F.R. §§ 241.4, 241.13.
19. Because Berchie seeks to challenge his custody as a violation of the Constitution and laws of the United States, jurisdiction is proper in this court.
20. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their

detention by DHS. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018); *Nielsen v. Preap*, 139 S. Ct. 954, 961–63 (2019); *Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199, 1209–12 (11th Cir. 2016).

21. Venue is proper in this Court pursuant to 28 USC §§ 1391(b), (e)(1)(B), and 2241(d) because Berchie is detained within this District. He is currently detained at the Sherburne County Jail in Elk River, Minnesota. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(A) because Respondents are operating in this district.

PARTIES

22. Petitioner Berchie is a citizen of Ghana. His Alien Registration Number (“A number”) is A ~~XXXXXXXXXX~~. Petitioner Berchie is a resident of Minnesota. He is an alien with an administratively final removal order. Berchie is currently in custody at the Immigration and Customs Enforcement (“ICE”) detention center in Elk River, Minnesota. As of August 11, 2025, Berchie has 317 days of post-removal-order custody credits.
23. Respondent Pamela Bondi is being sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice, which encompasses the BIA and the immigration judges through the Executive Office for Immigration Review. Attorney General Bondi shares responsibility for implementation and enforcement of the immigration detention statutes, along with Respondent Noem. Attorney General Bondi is a legal custodian of Berchie.

24. Respondent Kristi Noem is being sued in her official capacity as the Secretary of the Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of the immigration laws pursuant to § 103(a) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1103(a), routinely transacts business in the District of Minnesota, supervises the Fort Snelling ICE Field Office, and is legally responsible for pursuing Berchie’s detention and removal. As such, Respondent Noem is a legal custodian of Berchie.
25. Respondent Department of Homeland Security (“DHS”) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.
26. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in his official capacity. Defendant Lyons is responsible for Petitioner’s detention.
27. Respondent Immigration and Customs Enforcement (“ICE”) is the subagency within the Department of Homeland Security responsible for implementing and enforcing the Immigration & Nationality Act, including the detention of noncitizens.
28. Respondent Marcos Charles is the Acting Executive Associate Director for ICE Enforcement and Removal Operations (“ERO”)
29. Respondent Peter Berg is being sued in his official capacity as the Field Office Director for the Fort Snelling Field Office for ICE within DHS. In that capacity,

Field Director Berg has supervisory authority over the ICE agents responsible for detaining Berchie. The address for the Fort Snelling Field Office is 1 Federal Drive, Fort Snelling, Minnesota 55111.

30. Respondent Sheriff Joel Brott is being sued in his official capacity as the Sheriff responsible for the Sherburne County Jail. Because Petitioner is detained in the Sherburne County Jail, Respondent Brott has immediate day-to-day control over Petitioner.

EXHAUSTION

31. ICE asserts authority to jail Berchie pursuant to the mandatory detention provisions of 8 U.S.C. § 1231(a)(1) and 8 C.F.R. § 241.4. No statutory requirement of exhaustion applies to Berchie's challenge to the lawfulness of his detention. *See, e.g., Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) ("There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention."); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *11 (W.D. Wash. Apr. 24, 2025) (citing *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 962 (N.D. Cal. 2019) ("this Court 'follows the vast majority of other cases which have waived exhaustion based on irreparable injury when an individual has been detained for months without a bond hearing, and where several additional months may pass before the BIA renders a decision on a pending appeal.'")); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) ((citing *Portela-Gonzalez v. Sec'y of the*

Navy, 109 F.3d 74, 77 (1st Cir. 1997) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992)).

32. To the extent that prudential consideration may require exhaustion in some circumstances, Berchie has exhausted all effective administrative remedies available to him as he has previously demonstrated to ICE's satisfaction that his removal is not substantially likely to occur in the reasonably foreseeable future. ICE has never rebutted this showing. Any further efforts would be futile.
33. Prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992), *superseded by statute on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81 (2006).
34. Prudential exhaustion is also not required in cases where "a particular plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *McCarthy*, 503 U.S. at 147. Every day that Berchie is unlawfully detained causes him and his family irreparable harm. *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 711 (D. Md. 2016) ("Here, continued loss of liberty without any individualized bail determination constitutes the kind of irreparable harm which forgives exhaustion."); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (explaining that "a loss of liberty" is "perhaps the best example of irreparable harm"); *Hamama v. Adducci*, 349 F. Supp. 3d 665, 701 (E.D. Mich. 2018) (holding that "detention has inflicted grave" and "irreparable harm" and describing the impact of prolonged detention on individuals and their families).

35. Prudential exhaustion is additionally not required in cases where the agency “lacks the institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute.” *McCarthy*, 503 U.S. at 147–48. Immigration agencies have no jurisdiction over constitutional challenges of the kind Berchie raises here. *See, e.g.*, *Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992) (“[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”); *Matter of Akram*, 25 I. & N. Dec. 874, 880 (BIA 2012); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345 (BIA 1982); *Matter of Fuentes-Campos*, 21 I. & N. Dec. 905, 912 (BIA 1997); *Matter of U-M-*, 20 I. & N. Dec. 327 (BIA 1991).
36. Because requiring Berchie to exhaust administrative remedies would be futile, would cause him irreparable harm, and the immigration agencies lack jurisdiction over the constitutional claims, this Court should not require exhaustion as a prudential matter.
37. In any event, Berchie has indeed exhausted all remedies available to him.
38. ICE has denied Berchie release because: (A) it incorrectly believes Berchie is responsible for reestablishing that removal is not substantially likely to occur in the reasonably foreseeable future, (B) ICE seeks to punish Berchie for remaining in the United States after previously having been ordered removed, and (C) ICE seeks to punish Berchie to send a message to similarly situated persons who have not yet been detained as a way to encourage those similarly situated people to immediately leave the United States to avoid Berchie’s fate.

FACTUAL ALLEGATIONS & PROCEDURAL HISTORY

39. Berchie is a native and citizen of Ghana.
40. Berchie was ordered removed by an immigration judge on March 25, 2021.
41. Berchie appealed this removal order to the Board of Immigration Appeals.
42. Berchie withdrew his administrative appeal on May 28, 2021.
43. Berchie's post-removal-order period of incarcerations include: (1) March 25, 2021 until January 31, 2022 (312 days) and (2) August 7, 2025 through the present (5 days and counting at time of filing).
44. In order to get released from custody in 2022, Berchie filed a habeas corpus petition. *See Berchie v. Garland, et al.*, No. 22-CV-00202 (NEB/BRT) (D. Minn. 2022). The petition was voluntarily dismissed after the government respondents released Berchie.
45. Berchie was released on January 31, 2022 under an OOS.
46. Between January 31, 2022 and August 7, 2025, Berchie attended regular ICE check ins in compliance with the terms of his OOS.
47. Between January 31, 2022 and August 7, 2025, Berchie repeatedly made quarterly attempts to secure a travel document from Ghana to allow for his removal.
48. Berchie's most recent attempt to obtain a travel document from Ghana occurred on or around August 1, 2025.
49. Each time Berchie tried to obtain a travel document, he failed.
50. Each time ICE tried to obtain a travel document for Berchie, it has failed.

51. On August 7, 2025, Berchie attended a regularly scheduled ICE check in. At that check in, he was served with a Notice of Revocation of Release (“Notice”), revoking his OOS.
52. The Notice does not provide a reasoned basis for believing that there is now a significant likelihood of removal in the reasonably foreseeable future.
53. In fact, the Notice does not even claim that ICE believes there is a significant likelihood of removal in the reasonably foreseeable future.
54. The Notice does not provide Berchie with sufficient information to be in a position to rebut the factual allegations underlying the Notice at an informal interview. Berchie does not understand the reason ICE now believes that there is a significant likelihood he will be removed in the reasonably foreseeable future.
55. The Notice does not provide enough information or detail to allow this Court to meaningfully review the relevant claims made in the Notice.
56. The Notice does not allege that Berchie has failed to comply with any of the terms of his OOS.
57. The Notice does not allege that Respondents have obtained a travel document allowing for Berchie’s immediate removal from the United States.
58. Instead, the Notice alleges that his “case will be reviewed by the government of Ghana for the issuance of travel documents.”
59. The Notice does not allege any new facts that might form an independent basis for taking Berchie into custody.

60. The Notice incorrectly claims that Berchie's redetention is governed by 8 C.F.R. § 241.4 notwithstanding the fact that he was previously released on an OOS after he demonstrated there was no significant likelihood of his removal in the reasonably foreseeable future, meaning his redetention is governed by 8 C.F.R. § 241.13 rather than 8 C.F.R. § 241.4.
61. As of August 11, 2025, ICE has not yet begun the steps of having Berchie apply for a travel document from detention.
62. Respondents maintain Berchie is ineligible for release from custody.
63. On April 30, 2025, the Department of Homeland Security issued a press release entitled *100 Days of Fighting Fake News*.¹ In that document, DHS referenced civil immigration detention and the present administration's heavy reliance on civil detention to accomplish its political aims. Specifically, the document states:

The reality is that **prison isn't supposed to be fun. It's a necessary measure to protect society and punish bad guys.** It is not meant to be comfortable. **What's more: prison can be avoided by self-deportation.** CBP Home makes it simple and easy. If you are a criminal alien and we have to deport you, you could end up in Guantanamo Bay or CECOT. **Leave now.**

(emphasis added).
64. Myriad courts around the country have granted habeas corpus petitions and/or enjoined the current administration's attempts to use civil detention punitively against noncitizens. *See, e.g., Mohammed H. v. Trump*, No.: 25-CV-1576-JWB-DTS, --- F. Supp. 3d ---, 2025 WL 1692739, at *5 (D. Minn. June 17, 2025)

¹ Available at: <https://www.dhs.gov/news/2025/04/30/100-days-fighting-fake-news>.

(“Punishing Petitioner for protected speech or **using him as an example to intimidate other students into self-deportation is abusive and does not reflect legitimate immigration detention purposes.**”) (emphasis added); *Mahdawi v. Trump*, --- F. Supp. 3d ---, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2021) (recognizing that immigration detention cannot be motivated by the desire to punish speech or to deter others from speaking); *Ozturk*, --- F. Supp. 3d ---, 2025 WL 1145250, at *60 (“So long as detention is motivated by those goals, and not a desire for punishment, the Court is generally required to defer to the political branches on the administration of the immigration system.”); *see also Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893) (“The order of deportation is not a punishment”).

LEGAL FRAMEWORK

65. Petitioner’s present detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. pt. 241.
66. Section 1231 mandates detention “[d]uring the removal period.” *Accord* 8 U.S.C. § 1231(a)(1)(A), (a)(2). However, the same sections also require the government to actually remove the alien during this removal period. 8 U.S.C. § 1231(a)(1)(A).
67. The “removal period” is “90 days.” 8 U.S.C. § 1231(a)(1)(A). Petitioner’s “removal period” ended on August 26, 2021.
68. Detention past the removal period can be lawful in circumstances not presented here. *See* 8 U.S.C. § 1231(a)(1)(C), (a)(6).
69. After a noncitizen has been detained past the removal period, they may seek and obtain their release by demonstrating “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).

70. Once a noncitizen is released on an OOS, they are subject to certain conditions of release. *See* 8 C.F.R. § 241.13(h)(1).
71. Redetention is permitted where it is alleged a noncitizen violated the conditions of release. *See* 8 C.F.R. § 241.13(h)(2), (i).
72. Regulations also permit the government to withdraw or otherwise revoke release under specific circumstances. *See* 8 C.F.R. § 241.13(h)(4). One permissible reason to revoke release occurs when, “on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). Once such a determination is made, the noncitizen must “be notified of the reasons for revocation of [their] release” and must be provided with “an initial informal interview... to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.13(i)(3). “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.” *Id.* If a noncitizen is not released following the informal interview, “the provisions of [8 C.F.R. § 241.4] shall govern the alien’s continued detention pending removal.” 8 C.F.R. § 241.13(i)(2). Once the provisions of § 241.4 take effect, it appears that the consequence is a total reset of the 90-day removal period under 8 U.S.C. § 1231(a). *See* 8 C.F.R. § 241.4(b)(4).

73. Under the Supreme Court's decision in *Zadvydas v. Davis*, a person subject to a final order of removal cannot, consistent with the Due Process Clause, be detained indefinitely pending removal. 533 U.S. 678, 699-700 (2001). "Zadvydas established a temporal marker: post-final order of removal detention of six months or less is presumptively constitutional."

74. *Zadvydas* also stated:

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.**

533 U.S. at 701 (emphasis added).

75. *Zadvydas* further held that civil detention violates due process unless special, nonpunitive circumstances outweigh an individual's interest in avoiding restraint. 533 U.S. at 690 (**immigration detention must remain "nonpunitive in purpose and effect"**) (emphasis added).

REMEDY

76. Respondents' detention of Berchie violates the Due Process Clause of the United States Constitution. Berchie's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const., amend. V.

77. Due Process requires that detention "bear [] a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas, v. Davis*, 533 U.S. 678, 690

(2001) (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

78. Berchie seeks immediate release to the extent that Respondents justify his detention on the idea that Petitioner has failed to demonstrate that there is no significant likelihood of his removal in the reasonably foreseeable future; Respondents bear the burden of rebutting the prior showing made by Petitioner. 8 C.F.R. § 241.13(i)(2)-(3). Respondents have failed to meet this burden.
79. Berchie seeks immediate release to the extent that Respondents have redetained him for the purpose of punishing him for remaining in the United States despite his final order of removal.
80. Berchie seeks immediate release to the extent that Respondents have redetained him for the purpose of punishing him to send a message to similarly situated individuals for the purpose of encouraging those similarly situated persons to leave the United States before they share Berchie's fate.
81. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").
82. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g., Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical

remedy for [unlawful executive detention] is, of course, release.”); *see also Wajda v. United States*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 “is to obtain release from the duration or fact of present custody.”).

83. That courts with habeas jurisdiction have the power to order outright release is justified by the fact that, “habeas corpus is, at its core, an equitable remedy,” *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and that as an equitable remedy, federal courts “[have] broad discretion in conditioning a judgment granting habeas relief [and are] authorized . . . to dispose of habeas corpus matters ‘as law and justice require.’” *Hilton v. Braunschweil*, 481 U.S. 770, 775 (1987) (quoting 28 U.S.C. § 2243). An order of release falls under court’s broad discretion to fashion relief. *See, e.g., Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018) (“Habeas corpus is an equitable remedy. The court has the discretion to fashion relief that is fair in the circumstances, including to order an alien’s release.”).
84. Immediate release is an appropriate remedy in this case.

CAUSE OF ACTION

COUNT ONE: DECLARATORY RELIEF

85. Berchie re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
86. Berchie requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Berchie is detained pursuant to 8 U.S.C. § 1231(a)(1).
87. Berchie requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that Berchie

has previously demonstrated to ICE's satisfaction that there is no significant likelihood of his removal in the reasonably foreseeable future ("NSLRRFF").

88. Berchie requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that ICE did not rebut Berchie's prior NSLRRFF showing prior to redetaining him.
89. Berchie requests a declaratory judgment pursuant to 28 U.S.C. § 2201 that until ICE rebuts Berchie's prior NSLRRFF showing, Berchie may not be redetained.

COUNT TWO: VIOLATION OF THE IMMIGRATION & NATIONALITY ACT
- 8 C.F.R. § 241.13(i)(2)-(3)

90. Berchie re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
91. Section 1231(a)(1)-(3) of Title 8 of the U.S. Code and 8 C.F.R. § 241.13(i)(2)-(3) governs the detention, release, and redetention of aliens with final orders of removal.
92. Respondents have failed to comply with these provisions prior to redetaining Petitioner after Petitioner's release on an OOS.
93. No independent alternative basis supports Respondents' decision to redetain Petitioner.
94. Petitioner is therefore detained in violation of the INA.

COUNT THREE: VIOLATION OF THE FIFTH AMENDMENT

95. Berchie re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
96. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by

adequate procedures to ensure that detention is serving its legitimate goals. It further requires that detention cease when a noncitizen has established to the government's satisfaction that there is no significant likelihood of removal in the reasonably foreseeable future after the noncitizen has been ordered removed and has served six months in post-removal-order custody.

97. Berchie is no longer subject to mandatory custody under the Immigration & Nationality Act. He has served more than six months in post-removal-order detention. In order to terminate his prior detention, he established to the government's satisfaction that there was no significant likelihood of removal in the reasonably foreseeable future. The government has not rebutted this with credible evidence. The government does not presently have a travel document for Berchie. There are no new circumstances that otherwise justify Berchie's redetention. Thus, Respondents have violated Berchie's Fifth Amendment guarantee of due process.
98. Respondents have also independently violated Berchie's Fifth Amendment due process right by incarcerating him to punish him and to otherwise send a message to similarly situated individuals that they must leave the United States to avoid a similar fate.

**COUNT FOUR: VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT
- CONTRARY TO LAW AND ARBITRARY AND CAPRICIOUS AGENCY
POLICY**

99. Berchie re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.
100. The APA provides that a "reviewing court shall . . . hold unlawful and set aside

agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

101. Respondents have failed to articulate any reasoned explanation for redetaining Petitioner.
102. Respondents have failed to articulate any reasoned explanation for deviating from or otherwise ignoring or failing to comply with the plain language of 8 C.F.R. § 241.13(i)(2)-(3).
103. Respondents’ decisions, which represent changes in the agencies’ policies and positions, have considered factors that Congress did not intend to be considered, have entirely failed to consider important aspects of the problem, and have offered explanations for their decisions that run counter to the evidence before the agencies.
104. Respondents’ decision to redetain Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Petitioner, Martin Berchie, asks this Court for the following relief:

1. Assume jurisdiction over this matter.
2. Issue an emergency preliminary order restraining Respondents from attempting to move Berchie from the State of Minnesota during the pendency of this Petition.
3. Issue an emergency preliminary order requiring Respondents to provide 72-hour notice of any intended movement of Berchie.

4. Issue an emergency preliminary order enjoining ICE, at a statewide level, from detaining certain aliens—*i.e.*, those who: (1) have already served 90 days or more in post-administratively-final-removal-order custody, (2) have already served 180 days or more in immigration custody (regardless of when the removal order issued or became final), and (3) have subsequently been released on an Order of Supervision after demonstrating there is no significant likelihood of removal in the reasonably foreseeable future—prior to actually obtaining a valid travel document for the individual, potentially to be made permanent after further briefing and a hearing that complies with Fed. R. Civ. P. 65(a).
5. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. Ch. 153.
6. Order Berchie’s immediate release.
7. Declare that Respondents’ action is arbitrary and capricious.
8. Declare that Respondents failed to adhere to binding regulations and precedent.
9. Declare that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment.
10. Permanently enjoin Respondents from redetaining Berchie under 8 C.F.R. § 241.13(i)(2)-(3) unless and until Respondents have obtained a travel document allowing Respondent to travel to Ghana.
11. Permanently enjoin Respondents from redetaining Berchie under 8 C.F.R. § 241.13(i)(2)-(3) for more than seven days after receiving a travel document. Stated differently, Order Respondents to execute Berchie’s removal within 7 days of

redetaining him after obtaining a travel document allowing Berchie to be removed to Ghana.

12. Permanently enjoin ICE, at a statewide level, from detaining certain aliens—*i.e.*, those who: (1) have already served 90 days or more in post-administratively-final-removal-order custody, (2) have already served 180 days or more in immigration custody (regardless of when the removal order issued or became administratively final), and (3) have subsequently been released on an Order of Supervision after demonstrating there is no significant likelihood of removal in the reasonably foreseeable future—prior to actually obtaining a valid travel document for the individual, potentially to be made permanent after further briefing and a hearing that complies with Fed. R. Civ. P. 65(a).
13. Grant Berchie reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).
14. Grant all further relief this Court deems just and proper.

DATED: August 10, 2025

Respectfully submitted,

RATKOWSKI LAW PLLC

/s/ Nico Ratkowski

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Attorney for Petitioner

Verification by Petitioner Pursuant to 28 U.S.C. § 2242

I am submitting this verification because I am the Petitioner. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding my detention status, are true and correct to the best of my knowledge. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that all of the factual allegations and statements in the Petition are true and correct to the best of my knowledge and belief.

/s/ Martin Berchie
Martin Berchie

Dated: August 11, 2025