

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Martin Berchie,

Case No.: 25-CV-3197

Petitioner

v.

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.

**PETITIONER'S MEMORANDUM OF
LAW IN SUPPORT OF
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER UNDER FRCP 65(b) AND
PRELIMINARY INJUNCTION
UNDER FRCP 65(a)**

**EXPEDITED HANDLING
REQUESTED**

Petitioner Martin Berchie has filed a petition seeking a Writ of Habeas Corpus under 28 U.S.C. § 2241. *See* ECF No. 1. Berchie concurrently filed a Motion for Temporary Restraining Order ("TRO"), which this Memorandum supports.

BACKGROUND ON HABEAS CORPUS

The origin of the writ of habeas corpus lies in clause 39 of the Magna Carta, which stated that no free man could be imprisoned except by lawful judgment of his peers or by the law of the land. *See Boumediene v. Bush*, 553 U.S. 723, 740 (2008) (citations omitted). The Magna Carta, and especially clause 39, was designed to limit the king's power by

protecting the most fundamental rights of free men. *See Boumediene*, 553 U.S. at 739-42 (collecting sources).

When the United States seceded from Great Britain, the Framers of the Constitution and the States that were to make up the Union, in order to ensure sufficient signatories, reserved debate on most of the civil rights for a few years in what would later become the Bill of Rights. However, one right was so fundamental and so undisputed that it was placed into the actual Constitution. *See generally* U.S. Const., Art. I, § 9, cl. 2. The Framers and the States thus recognized and agreed that habeas corpus is the most fundamental and important civil right in any free society. *Cf. Boumediene*, 553 U.S. at 743 (“Surviving accounts of the ratification debates provide additional evidence that the Framers deemed the writ to be an essential mechanism in the separation-of-powers scheme.”). As Alexander Hamilton explained in *The Federalist* No. 84:

“[T]he practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny. The observations of the judicious Blackstone ... are well worthy of recital: ‘To bereave a man of life ... or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a *more dangerous engine* of arbitrary government.’ And as a remedy for this fatal evil he is everywhere peculiarly emphatical in his encomiums on the *habeas corpus* act, which in one place he calls ‘the bulwark of the British Constitution.’ ” C. Rossiter ed., p. 512 (1961) (quoting 1 Blackstone *136, 4 *id.*, at *438).

Throughout the history of the United States, habeas corpus has had three principal eras of importance. First, there was the post-reconstruction era following the civil war. *See, e.g., Ex parte Milligan*, 71 U.S. 2 (1866) (ruling that civilians cannot be tried by military

tribunals when civilian courts are open and functioning); Habeas Corpus Act of 1867, 14 Stat. 385, 28 U.S.C. § 451 et seq. The second era occurred during World War 2 when the United States placed persons of Japanese origin in internment camps. *See, e.g., Korematsu v. United States*, 323 U.S. 214 (1944), *abrogated by Trump v. Hawaii*, 585 U.S. 667 (2018). Most recently, there was the war on terror and associated detentions at Guantanamo Bay, Cuba. *See Rasul v. Bush*, 542 U.S. 466 (2004) (foreign nationals housed at Guantanamo Bay had the right to challenge their detention via habeas corpus); *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (U.S. citizens designated as “enemy combatants” and detained in the United States have a constitutional right to due process, including a meaningful opportunity to challenge their detention before a neutral decisionmaker); *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006) (military commissions used to try Guantanamo Bay detainees lacked congressional authorization and violated both the Uniform Code of Military Justice and the Geneva Convention); *Boumediene v. Bush*, 553 U.S. 723, 740 (2008) (foreign detainees at Guantanamo Bay have a constitutional right to habeas corpus and the Military Commissions Act of 2006’s procedures were an inadequate substitute for habeas corpus).

We are now in the fourth major era of habeas, which began when the present administration started arbitrarily revoking student visas and detaining students on the basis of those revocations, deporting permanent residents to Salvadoran prison without due process, jailing immigrants for exercising their rights to free speech, and announcing an intent to use civil detention punitively against criminal aliens. *Accord, cf.*, ECF No. 1-1,

Exhibit A, *100 Days of Fighting Fake News*, HOMELAND SECURITY (Apr. 30, 2025).¹

The student visa issue showed that the administration's animus against immigrants is not restricted to immigrants who are present without authorization or in violation of law. *Accord Mohammed H. v. Trump*, No.: 25-CV-1576-JWB-DTS, --- F. Supp. 3d ---, 2025 WL 1692739, at *5 (D. Minn. June 17, 2025) ("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). The administration's animus against criminal aliens and other noncitizens with unexecuted final orders of removal is especially pronounced. *See* ECF No. 1-1, Exhibit A ("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).

Over the past few months, courts around the country have found that the present immigration administration is using immigration detention punitively, as well as to coerce noncitizens into self-deporting from the United States. *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); *Khalil v. Trump*, No. 25-CV-01963 (MEF/MAH), --- F. Supp. 3d ---, 2025 WL 1649197 (D.N.J. June 11, 2025), *opinion clarified*, No. 25-CV-01963 (MEF/MAH), 2025

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

WL 1981392 (D.N.J. July 16, 2025), and *opinion clarified*, No. 25-CV-01963 (MEF/MAH), 2025 WL 1983755 (D.N.J. July 17, 2025); *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025); *Mahdawi v. Trump*, No. 2:25-CV-389 (GWC), --- F. Supp. 3d ---, 2025 WL 1243135, at *11-12 (D. Vt. Apr. 30, 2025); *Ozturk v. Trump*, No. 2:25-CV-374 (WKS), --- F. Supp. 3d ---, 2025 WL 1420540, at *7 (D. Vt. May 16, 2025) (“Ms. Ozturk argued that her detention is punishment for her op-ed, and that her punishment is intended to serve as a warning to other non-citizens who are contemplating public speech on issues of the day. The Court found that Ms. Ozturk has presented credible evidence to support her argument.”).

The Petitioner in this case, Martin Berchie, is a victim of the present government’s animus against immigrants. His detention lacks legitimacy because it is intended to be punitive. His detention lacks legitimacy because it occurred in violation of law. Mr. Berchie requires a writ of habeas corpus.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

Berchie is a citizen and national of Ghana. ECF No. 1, ¶ 2. He was ordered removed from the United States by an immigration judge on March 25, 2021. *Id.* The removal order became administratively final on May 28, 2021 when Berchie withdrew his administrative appeal that had been pending at the Board of Immigration Appeals. *Id.* After his removal order issued, Berchie was stuck in immigration detention from March 25, 2021 until January 31, 2022 (a total of 312 days). *Id.*, ¶ 3. Berchie filed a habeas corpus petition on January 25, 2022 in relation to his post-removal-order detention. *Berchie v. Garland*, No. 22-CV-00202 (NEB/BRT) (D. Minn.), ECF No. 1. Rather than contest the petition,

Respondents (or their agency predecessors) voluntarily released Berchie from custody and placed him on an Order of Supervision (“OOS”) under 8 U.S.C. § 1231(a)(3) and 8 C.F.R. § 241.4.

In releasing Berchie from custody and placing him on an OOS, Respondents necessarily concluded, among other things, that: (1) “[t]ravel documents for the alien are not available or, in the opinion of the Service, immediate removal, while proper, is otherwise not practicable or not in the public interest;” (2) “[t]he detainee is presently a non-violent person;” (3) “[t]he detainee is likely to remain nonviolent if released;” (4) “[t]he detainee is not likely to pose a threat to the community following release;” (5) “[t]he detainee is not likely to violate the conditions of release;” and (6) “[t]he detainee does not pose a significant flight risk if released.” *See* 8 C.F.R. § 241.4(e)(1)-(6).

ARGUMENT

Petitioner’s present detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. pt. 241. Section 1231 mandates detention “[d]uring the removal period.” *Accord* 8 U.S.C. § 1231(a)(1)(A), (a)(2). However, the same section also requires the government to actually remove the alien during this removal period. 8 U.S.C. § 1231(a)(1)(A). Petitioner’s removal period began on May 28, 2021, “[t]he date the order of removal [became] administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i); ECF No. 1, ¶¶ 39-41.

The “removal period” is “90 days.” 8 U.S.C. § 1231(a)(1)(A). Petitioner’s removal period therefore elapsed on August 26, 2021. Nonetheless, Petitioner was not released on an OOS until January 31, 2022, a period of 158 days (175% longer than the 90-day

removal period). If Petitioner's periods of confinement in ICE detention since his removal order became administratively final are aggregated, Petitioner has been detained in ICE custody for 163 days as of August 11, 2025.

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). Redetention is permitted where it is alleged a noncitizen violated the conditions of release. *See* 8 C.F.R. § 241.13(h)(2), (i). No allegation is made that Petitioner violated the conditions of release. *See* ECF No. 1, ¶ 55.

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) (emphasis added). 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.* (emphasis added). 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).

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." ECF No. 6 at 12-13 (citing *Zadvydas* at 701). *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).

I. The Government Is Abridging Petitioner's Constitutional Right to Due Process.

Because Berchie was released under 8 C.F.R. § 241.4 on an order of supervision "after the expiration of the removal period," and after he "has provided good reason to believe there is no significant likelihood of removal to the country to which he... was ordered removed, or to a third country, in the reasonably foreseeable future," any future determinations as to whether there is a significant likelihood of removing Berchie in the reasonably foreseeable future are governed by 8 C.F.R. § 241.13. *See* 8 C.F.R. § 241.13(a)-(b).

Thus, if *Zadvydas* is read in conjunction with 8 C.F.R. § 241.13(i)(2)-(3), the Service was required to rebut, **with evidence**, Berchie's previous showing that there is no significant likelihood of removal in the reasonably foreseeable future **before** the Service redetained Berchie. *See Zadvydas*, 533 U.S. at 701. The Service is required to provide credible evidence of the changed circumstances used to justify redetaining Berchie. *See id.*

The Service cannot meet this burden, as the Notice of Revocation of Release ("Notice") that was served on Berchie on August 7, 2025 immediately prior to his redetention does not identify the changed circumstances that justify redetention. ECF No. 1, ¶¶ 44-60. This is dispositive because the government, not Petitioner, bears the burden of making an evidentiary showing that satisfies *Zadvydas* by rebutting the showing Petitioner previously made that there was no significant likelihood of removal in the reasonably foreseeable future prior to his release on January 31, 2022. If the Court were to allow the government to arbitrarily reset the removal period 3.5 years later and then force Petitioner to make another new showing that removal is not significantly likely to occur in the reasonably foreseeable future under 8 C.F.R. § 241.4, the Court would necessarily render 8 C.F.R. § 241.13(i)(2)-(3) and 8 U.S.C. § 1231(a)(1), (3) superfluous while simultaneously negating the Supreme Court's principal holding in *Zadvydas*. The Court must disallow the government's implicit attempts to improperly shift the evidentiary burden to Petitioner.

Berchie cannot be removed to Ghana until the government obtains a travel document for Petitioner that allows him to enter Ghana. The government has been unable to obtain a travel document that would permit Berchie's removal to Ghana since at least

January 31, 2022, a period of more than 3.5 years. Berchie was taken into custody prior to the government applying for a travel document for Berchie. The government still does not have a travel document for Berchie even though, as of the time of this, five days have elapsed since Petitioner was redetained.

Zadvydas stated that “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. In the case before the Court, Petitioner’s aggregate period of prior post-removal confinement has grown to 317 days as of the date of this memorandum’s submission (312 days between March 25, 2021 and January 31, 2022 plus 5 days so far in 2025). This means that “the reasonably foreseeable future,” as applied to the facts of Petitioner’s case, is significantly shorter than would be the case for an individual with a significantly shorter period of prior post-removal confinement. *Zadvydas*, 533 U.S. at 701.

Zadvydas, in the context of Petitioner’s case, requires the government to have sufficient evidence to rebut the previously established showing that Petitioner’s removal is not significantly likely to occur in the reasonably foreseeable future. Because Petitioner was already confined post-removal-order for a period exceeding six months, the government was required to already have a valid travel document for Petitioner prior to detaining Petitioner under 8 C.F.R. § 241.13(i)(2)-(3). At absolute minimum, the government would have needed to have already applied for said travel document *and* been given some sort of positive affirmation from the Ghanaian government that a travel document for Petitioner would be received by a specific date certain in the very near future

that would permit the government to promptly deport Petitioner after redetaining him.

II. The Government's Evidence of Removability Does Not Satisfy *Zadvydas* or 8 C.F.R. § 241.13(i)(2)-(3).

The only evidence the government relied upon to assert that Petitioner's removal was significantly likely to occur in the reasonably foreseeable future consists of: (1) the Notice of Revocation of Release (which states in a completely conclusory fashion 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"). The Notice's factual claim that "ICE is in the process of obtaining a travel document" is impeached by the Verified Petition for Habeas Corpus, in which Berchie alleges under penalty of perjury that as of August 11, 2025, "ICE has not yet begun the steps of having Berchie apply for a travel document from detention." ECF No. 1, ¶ 60; *see also* ECF No. 1, ¶ 56-57 ("The Notice does not allege that Respondents have obtained a travel document allowing for Berchie's immediate removal from the United States. Instead, the Notice alleges that his 'case will be reviewed by the government of Ghana for the issuance of travel documents.'").

Thus, the government's preliminary determination that removal to Ghana is significantly likely to occur in the reasonably foreseeable future requires presuming facts that have no basis for being presumed. Namely, it must be presumed that: (1) Ghana does not and will not begin to deny travel documents for Ghanaians (even though Ghana has denied travel documents for Petitioner for more than 3.5 years); and (2) Ghana will issue a travel document in the reasonably foreseeable future. Such presumptions are arbitrary, capricious, unlawful, unconstitutional, and are otherwise reliant upon abuses of discretion

in the present context because such presumptions are grounded on conclusory opinions and beliefs rather than on fact and experience. Perhaps more importantly, because the government's determination—*i.e.*, that changed circumstances now support concluding that Petitioner's removal is significantly likely to occur in the reasonably foreseeable future—relies on a series of suppositions rather than actual evidence, the evidence is not competent under *Zadvydas*' burden-shifting scheme and is otherwise incapable of satisfying the strict and explicit requirements of 8 C.F.R. § 241.13(i)(2)-(3).

The government, in response to this petition, will likely argue that the Notice complied with § 241.13(i)(2) because it identified changed circumstances, namely the fact that ICE was in the process of requesting a travel document from Ghana and ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in Berchie's case. However, in this scenario, the only alleged "changed circumstance" would be that "ICE was in the process of requesting a travel document." It is unclear how this could factually constitute a changed circumstance considering that ICE has been in the process of requesting a travel document from Ghana since March 25, 2021. It is unclear how this could legally constitute a changed circumstance considering that 8 C.F.R. § 241.13(h)(1) explicitly provides that one condition of release on an OOS is "that the alien continue to seek to obtain travel documents," and it is not alleged in the Notice that Petitioner has violated any of his OOS conditions. *See* 8 C.F.R. § 241.13(i)(2)-(3).

Even assuming *arguendo* that *Zadvydas*' burden-shifting scheme is somehow inapplicable to Petitioner's case, the Notice remains legally deficient because the half-sentence explanation of the changed circumstances allegedly justifying redetention is

“inadequate to enable [this Court] to perform any meaningful review.” *Cf. Gutierrez-Almazan v. Gonzales*, 491 F.3d 341, 343-44 (7th Cir. 2007). In similar circumstances, when circuit courts of appeals are reviewing denials by the Board of Immigration Appeals (“BIA”) of motions to accept an untimely brief, circuit courts have held the BIA holding “the reason stated by the respondent insufficient for us to accept the untimely brief in our exercise of discretion” is insufficient to allow for meaningful review of the agency’s determination. *See, e.g., Gutierrez-Almazan v. Gonzales*, 491 F.3d 341, 343-44 (7th Cir. 2007); *Garcia Gomez v. Gonzales*, 498 F.3d 1050, 1051 (9th Cir. 2007); *see also Davis v. Garland*, 91 F.4th 1259, 1261-62 (8th Cir. 2024) (citing *Garcia Gomez v. Gonzalez*, *inter alia*, before granting a petition for review based on the Board’s failure to provide “an adequate explanation” for its decision, preventing this Court from “conduct[ing] a meaningful review of the BIA’s... order”).

III. Petitioner’s Interest in Avoiding Unnecessary Extended Detention Far Exceeds the Government’s Interests in Detaining Petitioner.

Under the Fifth Amendment, no citizen or noncitizen may be deprived of life, liberty, or property without due process of law. *See* U.S. Const. amend. V; *Mathews v. Diaz*, 426 U.S. 67 (1976); *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976) (due process is flexible, and the protections depend on the situation, considering the private interest at issue, the risk of erroneous deprivation of that interest through the procedures used, and the Government’s interest). These protections extend to deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

“The essence of due process is the requirement that a person in jeopardy of serious

loss (be given) notice of the case against him and opportunity to meet it.” *Mathews*, 424 U.S. at 348–49; *cf. Bridges*, 326 U.S. 135, 152–53 (administrative rules are designed to afford due process and to serve as “safeguards against essentially unfair procedures”).

The *Mathews v. Eldridge* balancing test counsels heavily in favor of finding a due process violation. Petitioner’s private interest here is avoiding unnecessary periods of confinement in excess of those which are truly necessary to effect his lawful removal from the United States. *See* 424 U.S. at 334–35. The risk of erroneous deprivation of that interest is especially high where, as occurred in Petitioner’s case, the government detains an individual who has previously been thought to be unremovable in the absence of any newly acquired proof that the individual’s removal can now be effected. The procedures used in Petitioner’s own case are especially concerning, considering Petitioner has already been incarcerated for five days, yet the government still has not gotten around to applying for a travel document. ECF No. 1, ¶ 60. Petitioner’s substantial liberty interests and the risk of erroneous deprivation of said interests far outweigh the government’s interest in executing a 3.5-year-old removal order relating to an individual who was previously determined to not constitute a flight risk or ongoing danger to the community. *See* 8 C.F.R. § 241.4(e)(1)–(6).

IV. The Government’s Detention of Petitioner Is Punitive.

Zadvydas 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).

The government's redetention of Petitioner is punitive. First, the government detained Petitioner without first obtaining a travel document, which necessarily requires increasing the detention period beyond that which would be necessary to effect a removal after a travel document had already been obtained. Second, the present administration has expressed and vocalized an intent to use civil detention punitively against noncitizens for the dual purposes of: (1) encouraging self-deportation, and (2) coercing foreign recalcitrant governments to issue travel documents for its citizens ordered deported from the United States by demonstrating through a systematic campaign of abuse and terror that the recalcitrant government's citizens detained in post-removal-order custody will suffer immensely in the absence of such travel documents being issued. *Accord* ECF No. 1-1, Exhibit A, *100 Days of Fighting Fake News*, HOMELAND SECURITY (Apr. 30, 2025) (“**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);² *Mohammed H. v. Trump*, No.: 25-CV-1576-JWB-DTS, --- F. Supp. 3d ---, 2025 WL 1692739, at *5 (D. Minn. June 17, 2025) (“Punishing Petitioner for protected speech or **using him as an example to intimidate**

² To the extent necessary to accord the requested relief, Petitioner requests that the Court judicially notice this press release under Fed. R. Evid. 201(b). The fact of the press release's issuance, and the fact of its contents, both constitute adjudicative facts not subject to reasonable dispute because the press release “can be accurately and readily determined from [federal government] sources whose accuracy cannot reasonably be questioned.”

other students into self-deportation is abusive and does not reflect legitimate immigration detention purposes.”) (emphasis added).

The foregoing contentions are buttressed by the realization that Petitioner is detained in Sherburne County Jail, a facility designed to house and punish convicted criminals. Petitioner’s conditions of confinement are totally indistinguishable from those of convicted criminals, further demonstrating that Petitioner’s detention is punitive.

V. A Temporary Restraining Order Is Warranted.

In determining whether to grant a TRO, this Court must consider four factors:

- (1) the probability that the moving party will succeed on the merits;
- (2) the threat of irreparable harm to the moving party;
- (3) the balance between harm to the moving party and the potential injury inflicted on other party litigants by granting the injunction; and
- (4) whether the issuance of a TRO is in the public interest.

See Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109, 114 (8th Cir. 1981); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Consideration of these four factors does not require mathematical precision but rather should be flexible enough to encompass the particular circumstances of each case. *See Dataphase*, 640 F.2d at 113. The basic question is whether the balance of equities so favors the moving party “that justice requires the court to intervene to preserve the status quo until the merits are determined.” *Id.* Although the probability of success on the merits is the predominant factor, the Eighth Circuit has “repeatedly emphasized the importance of a showing of irreparable harm.” *Caballo Coal Co. v. Ind. Mich. Power Co.*, 305 F.3d 796, 800 (8th Cir. 2002).

Petitioner incorporates all prior arguments by reference and submits that he has demonstrated that all four factors weigh strongly in favor of granting the requested TRO.

CONCLUSION

The Government has wide—but not unlimited—discretion in the immigration realm. *See Zadvydas*, 533 U.S. at 700 (recognizing that Executive Branch’s wide discretion regarding immigration remains subject to constitutional limitations); *Ali v. Sessions*, No.: 18-CV-2617-DSD-LIB, 2019 WL 13216940, at *3 (D. Minn. July 30, 2019) (recognizing that attorney general’s discretionary detention authority is “subject to the constitutional requirement of due process”). At its foundation, due process prohibits detaining an individual without justification. Petitioner has established, and the Government has not sufficiently rebutted, that his detention is rooted in improper purposes and lacks an individualized legal justification. *See, e.g., Mohammed H.*, 2025 WL 1692739, at *5; *Ozturk v. Trump*, 2025 WL 1420540, at *7.

The Court must grant Petitioner’s emergency motion for a temporary restraining order and order Petitioner’s immediate release from custody.

DATED: August 10, 2025

Respectfully submitted,

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